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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Decision on a contribution from the general budget of the Communities to the European Coal and Steel Community (ECSC) to finance social measures connected with the restructuring of the steel industry [1]

(88/C 318/01)

On 24 June 1988, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for economic, financial and monetary questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 13 September 1988.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted the following Opinion unanimously.

1. Back on 24 November 1983, the Committee approved a proposal for a Council decision concerning a contribution to the ECSC from the general budget of the Communities [2].

The decision taken by the Council on 23 July 1984 [3] covered a sum of 60 million ECU for coal and a further decision of the Council of 23 October 1984 [3] provided 62,5 million ECU for steel.

2. In the aforementioned Opinion the Committee stressed the need to set aside redeployment aid for jobs affected by restructuring measures, a demand which was met in full by the Council in its decision of 23 October 1984.

3. The Committee has also commented on a

'Proposal for a Council Decision concerning contributions to the European Coal and Steal Community from the general budget of theEuropean Communities to finance measures connected with the restructuring of the coal and steel industries. [4]'

In its Opinion of 28 November 1985, the Committee approved this proposal but considered that a solution still had to be found to the problem of financing, even in the medium term. Because it was to be feared that further special social measures would be necessary in the near future, the Committee asked the Commission to look for a solution to this problem and submit a proposal to this effect [5].

4. Neither this proposal nor the amendment submitted by the Commission on 6 June 1986 to take account of Spain's and Portugal's accession, has ever been adopted by the Council.

5. The proposal now under discussion, which deals specifically with the financing of social measures connected with the restructuring of the steel industry, is to be welcomed.

6. The Commission estimates that the supplementary social aid for some 55 000 workers expected to lose their jobs as a result of restructuring between 1988 and 1900 (Art. 56, 2b/ECSC) will cost 50 million ECU in 1958, 55 million ECU in 1989 and 60 million ECU

[1] OJ No C 194, 23. 7. 1988, p. 23.
[2] OJ No C 23, 30. 1. 1984, p. 59.
[3] OJ No L 208, 3. 8. 1984, p. 55.
[4] OJ No L 291, 8. 11. 1984, p. 38.
[5] OJ No C 344, 31. 12. 1985, p. 35-36.

in 1990, making a total of 165 million ECU. The supplementary aid will be needed to help finance early retirement for some workers and reemployment premiums for others.

7. Given the limitations on action by the structural funds, the Commission thinks that the ECSC's budget must be reinforced in order to meet the special social needs which have arisen from the restructuring of ECSC industries.

It therefore proposes to finance the total of 165 million ECU by means of:

— an increase in the levy in 1989 and 1990 (80 million ECU, equally divided between the two years);

— the grant to the ECSC in 1989 and 1990 of the equivalent of a part of the new revenue from customs duties on ECSC products (85 million ECU: 65 to cover 1988 and 1989 commitments, 20 to cover 1990 commitments). This revenue is currently estimated to total 80 million ECU a year net of collection costs;

— an advance on ECSC reserves, of 50 million ECU maximum, could be made available, exceptionally and for one year only, to cover commitment requirements in 1988, it being understood that this amount will only be made available if the decisions in the two paragraphs above are adopted.

The present draft decision accordingly provides the legal basis for transferring the equivalent of a part of the ECSC customs from the Communities's general budget to the ECSC operating budget.

8. The Committee approves the proposal for strengthening the social measures which are to accompany the moves to restore the steel market to normal and reestablish free competition between Community firms. However, it will be necessary to define an overall social policy which will be capable, in this case as in others, of coping with all the consequences of the restructuring measures made necessary by economic constraints.

9. The Committee supports the resolution adopted by the ECSC Consultative Committee on 21 June 1988 which requests that the transfer of customs duties be high enough to meet the overall requirements of the complementary social measures.

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the:

— **proposal for a Council Directive on the prevention of air pollution from new municipal waste incineration plants, and the**

— **proposal for a Council Directive on the reduction of air pollution from existing municipal waste incineration plants** [1]

(88/C 318/02)

On 23 March 1988 the Council decided to consult the Economic and Social Committee, under Article 130 S of the Treaty establishing the European Economic Community, on the abovementioned proposals.

The section for protection of the environment, public health and consumer affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 5/6 September 1988. The rapporteur was Mr Boisserée.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted unanimously the following Opinion.

1. Waste strategy

1.1. The present draft Directives do not deal with the problem of waste management as a whole. The Committee feels that an overall approach should be proposed as soon as possible. In its Opinion on the fourth action programme on the environment [2] and in particular in point 2.4.3, the Committee proposed a 'waste strategy' with the following priorities ranked in order of importance:

— prevention of waste,

— treatment (including sorting) of waste and recovery of re-usable materials,

— waste disposal (reduction of volume, dumping in ways which are not harmful to the environment).

Incineration, which is dealt with in the present draft Directives, is becoming increasingly important as a means of waste disposal. Steadily increasing volumes of domestic waste are outstripping the availability of suitable sites for dumping. The reaction of local authorities to this critical situation has been to build municipal waste incineration plants which, whilst not completely solving the disposal problem, do at least produce a considerably smaller volume of residue (ash). The appreciably smaller land area needed for disposal and the reduced risk of the soil and the ground water being polluted as a result of unsuitable dumping methods mean that incineration is regarded as an environmentally sound alternative to dumping. However, the environmental consequences of the two methods of disposal depend on individual circumstances, and above all on whether disposal areas, incineration plants and waste reception areas in the vicinity of incineration plants are properly managed.

It should also be borne in mind that waste incineration poses serious environmental problems because of the risk of atmospheric pollution and for other reasons: some of the toxins contained in household waste are eliminated by incineration, but others remain present and are concentrated in the ash (e.g. heavy metals which, even after incineration, may pose a danger to the soil and water).

1.2. The Committee agrees with the Commission that it is appropriate to deal with the specific problem of preventing atmospheric pollution from waste incineration plants, independently of overall waste management issues and the environmental impact of various waste treatment methods, as the present draft Directives do.

Municipal waste incineration plants emit a variety of atmospheric pollutants which are released or many be formed during the combustion process (e.g. dioxins and furans). In order to limit this atmospheric pollution a number of emission rules have been adopted by the Member States and these are to be harmonized within the Community.

2. General comments on the draft Directives

2.1. Subject to the comments set out below, the Committee is in agreement with the basic thinking underlying the draft Directives, and particularly with the Commission's intention of laying down rules for existing, as well as new, waste incineration plants.

2.2. The Committee is aware that economic as well as technical factors are taken into account in establishing state-of-the-art limit values (see also point 3.1.) for atmospheric pollution.

[1] OJ No C 75, 23 3 1988, p 4 to 8
[2] OJ No C 180, 8 7 1987

The Committee agrees with the Commission that the environmental protection rules applicable to waste incineration plants should not cause local authorities or other bodies responsible for waste managements to switch to less environmentally compatible methods (e.g. dumping). But the Committee feels that, on the other hand, dumps throughout the Community should be subject to stringent environmental protection rules, so that local authorities will not opt for an environmentally more harmful method of waste disposal on grounds of cost. The incineration of domestic waste in the open air ought to be completely prohibited throughout the Community.

2.3. In considering the relative costs of waste incineration and dumping, the following factors should be borne in mind:

— The disposal of domestic waste—whether contracted out to private industry or carried out by local authorities themselves—is the responsibility of the public authorities. The costs of disposal have to be met—as with all public services—by individual citizens, either via specific levies (e.g. levies based on the use made of services or general tax receipts.) The individual citizen is generally obliged to use the service. Measures to reduce emissions of pollutants form part of the capital and operating costs.

— In modern plants, waste incineration is combined with the utilization of waste heat for electricity generation or district heating. Income from these sources should be taken into account in assessing the economic effects of the draft Directives.

— Re-usable materials can also be recovered to some extent where domestic waste is incinerated; this helps to reduce operating costs.

— Environmental protection measures (including necessary measurements) will need to be carried out regularly, with a view also to the protection of workers. At all events, such measures should be designed to protect both workers and the environment to an equal degree.

2.4. As waste incineration plants are often constructed near heavily populated areas, in order to minimize transport and facilitate the local use of surplus heat, particularly stringent rules are needed to protect the public. Practical experience shows that effective measures of this kind make the public much more willing to accept the construction of new plants. This is particularly important as waste incineration plants are among the installations in respect of which the authorities are required to consult the (local) population under the EC Directive of 27 June 1985 (85/337/EEC) on environmental impact.

The Committee assumes that waste incineration plants will only be approved if the air quality limit values [1] can be met. Emissions from existing plants in the area where new plants are to be constructed are also taken into account in this context.

3. Application of state-of-the-art technology

3.1. In the light of the fourth action programme on the environment and of the provisions of Articles 100 a and 130 r *et seq.* of the EEC Treaty, and in particular the wording introduced by the Single European Act, which refers to a 'high level of protection', the Committee would have expected the Commission to have based itself on the state of the art (as referred to in the fourth action programme and the ESC's Opinion thereon (point 2.2.2), at least as far as new plants are concerned.

3.2. This is not, however, always the case, as is shown by a comparison of the Commission's proposals with rules limiting atmospheric pollution from waste incineration plants in force in some Member States (which are quoted in the Commission document and have proved practicable).

3.3. Thie applies in particular to the provisions limiting atmospheric pollution from new waste incineration plants and the deadlines for adapting existing plants. The Committee is aware the smaller plants may be faced with special technical and economic problems, but large, modern plants, should not lag behind the state of the art.

4. Comments on the individual provisions

4.1. *New plants*

Article 1 (4)

The Committee understands the Directive to cover both privately operated and local-authority incineration plants.

Article 3

Given that dust contains polluants such as heavy metals and polychlorinated dioxins and furans, the limit value proposed by the Commission seems too high. The state-of-the-art figure is 30 mg/m^3.

It is to be welcomed that the Commission proposal contains limit values for a number of heavy metals.

[1] *Cf.* Directive of 15 March 1980, 80/779/EEC; Directive of 28 June 1984, 84/360/EEC.

The Committee assumes that compounds of the various heavy metals are also covered. The Commission is asked to examine the case for fixing limit values for tin and for cobalt in the light of possible health risks.

Article 4

The Committee approves in principle the proposed rules with regard to combustion temperature and residence time. But it would recommend that in the course of the further deliberations on the Directives it be checked whether the rules in question might not be improved by making a secondary combustion chamber mandatory—as is the case under Danish law—and stipulating the temperature to be achieved in it.

Article 5

The Committee would point out that some Member States have rules on permitted deviations from the limit values (see Article 5 (3)) which provide a more precise level of protection than the Commission's proposals. The Committee would ask in particular that the Commission reconsider the proposed permitted deviation of the daily averages. The rules in force in Germany, for example, stipulate that daily average concentrations must not exceed the limit value; if this were allowed, the limit values contained in the Directive would be largely or at least severely weakened.

Article 6

Article 6 (1) (a) should include SO_2 (sulphur dioxide) and HF (hydrogen fluoride) among the toxins that are to be continually measured and recorded; there two substances could then be removed from the list of substances that have to be measured periodically. This proposal is made in the light of the significance of both these toxins for the area surrounding waste incineration plants.

Article 6 (6) of the Commission draft provides for the measurement of dioxins and furans at a later date. The Commission is assuming that such measurements are not yet possible given the current state of technology. The Committee would ask the Commission to check whether the state of the art (e.g. in Germany) would not allow these measurements—the importance of which for public health is undisputed—to be prescribed now.

Article 9

The Committee welcomes the fact that the public are to have access to information. In conjunction with the aforementioned public participation in the impact assessment procedure, this will help make the decision-making process more transparent and make waste incineration plants in densely populated built-up areas more acceptable.

Article 10

The Committee has certain reservations regarding the proposed special arrangements for very small incineration plants operation is subject to seasonal variations.

— The Committee feels that it is not really possible for the authorization and operation of small plants of this kind to be regulated by means of general Community-wide provisions.

— If the special arrangements are retained they might, depending on local conditions, result in unacceptable pollution and damage in tourist areas. It is with good reason that some Member States have particularly stringent atmospheric pollution rules for recreation ares.

— A 350 mg/m^3 limit value for dust emissions is fundamentally unacceptable anywhere, since the state of the art (see above) makes possible better dust filtering with simple means even in small plants. It is inappropriate for limit values of this kind to be laid down in a Community Directive if, as the Commission proposes, responsibility for the details is to lie with local regional authorities.

4.2. *Existing plants*

Article 2

Given the large areas affected by air pollution, the ten-year transitional period seems too long. It could mean existing plants remaining operational for too long with detrimental effects on health and the environment. This is all the more important when one considers that the ten-year period begins to run only after the entry into force of the Directive (about 1 year after adoption) and the implementation period (about 2 years).

Article 3

The Committee appreciates the reasons for varying the transitional requirements for existing plants according to their size (nominal capacity). However, for the same reasons as those outlined above in connection with new plants, the limit values should be individually re-examined. This applies in particular to very small plants (nominal capacity less than one tonne). A dust limit value of 600 mg/m^3 does not constitute any real improvement.

5. **Industrial waste**

The Committee notes that the present draft Directives deal only with domestic waste. The Committee points out that industrial and similar (e.g. medical) wastes present particular problems, first of all because their composition is in some cases especially dangerous, but also because of the opportunities they offer for reclaiming re-useable materials. These cannot be dealt with in the present context but should be tackled at Community level as soon as possible.

Done at Brussels, 28 September 1988.

The Chairman
of the Economic and Social Committee
Alfons MARGOT

Opinion on the proposal for a Council Decision on preventing environmental damage by the implementation of education and training measures[1]

(88/C 318/03)

On 30 May 1988, the Council dediced to consult the Economic and Social Committee, under Article 130 S of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for protection of the environment, public health and consumer affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 5 September 1988. The rapporteur was Mr Nierhaus.

At its 258th plenary session (meeting of 28 September 1988) the Committee adopted the following Opinion unanimously.

1. General comments

1.1. The Committee welcomes the present Commission proposal which follows on from the Community's environmental action programme (1987-1992), in particular section 2.6 on information and education. The proposed measures represent a sensible and necessary step in the implementation of the programme. In this connection the Committee would refer to its Opinion on the action programme [2] and the initiatives which it took as part of the European Year of the Environment on encouraging environmental awareness by means of education and vocational training.

1.2. The prevention of all forms of pollution can be improved by the development of a systematic programme of environmental education and training which teaches and informs at an early stage and provides the wherewithal for practical action. The integration of environmental subjects into all appropriate areas of education and vocational training, including higher education and out-of-school further education, provides an opportunity to give people an early and comprehensive awareness of environmental problems. Inculcation of interdisciplinary knowledge and skills can lead to an improvement in behaviour and greater commitment. Environmental education shold be aimed at various target groups (e.g. teachers, scientists, trainees, producers and consumers, etc.) and should provide a broad, in-depth knowledge of the environment through the use of appropriate teaching aids and methods.

1.3. The systematic encouragement of environmental awareness at the earliest appropriate stage in the education system through the dissemination of reliable

[1] OJ No C 197, 22. 7. 1986, p. 13.
[2] OJ No C 180, 8. 7. 1987.

information on environmental problems and their regional and global ramifications will not only make consumers more aware of the effects of their behaviour, but also enable employers and employees in public and private enterprises and national administrations to recognize environmentally harmful products and production process and take appropriate measures to encourage their replacement by environmentally acceptable alternatives. An information and education campaign targetted on those responsible for environmentally harmful agricultural products could prevent pollution. It could also lead to the replacement of such pollutants by non-harmful substances and/or a change in farming methods.

1.4. The proposed interdisciplinary approach to environmental education can help to highlight the connections between the various environmental media and thus to develop a new relationship between man and nature. At the same time such a comprehensive, interdisciplinary approach can provide the individual with a theoretical and a practical training involving an evaluation of the relationship between the economy and the environment as well as the acquisition of specialized knowledge.

1.5. The proposed environmental education measures can pave the way for a more farreaching exchange of information and opinions and for improved cooperation between various groups and between the Member States and the EC Commission. In this way they will help to make people much more aware of the different ethical attitudes to the relationship between man and nature, the different values and cultural diversity which exist within the EC.

The interdisciplinary exchange of experience in all areas of general education, vocational training, out-of-school further education and higher education promotes each individual's critical awareness of the need for a preventive environmental policy. This is a *sine qua non* for a positive change in environmental behaviour and an improvement in the quality of the environment [1].

1.6. Environmental education can help to foster a greater understanding on the part of the Community's citizens for specific regional problems and a greater readiness and ability to give special support to preventive environmental measures. This also includes the readiness to bear physical and non-physical burdens. To do this, such education must take account of the particular characteristics of the Member States and the regional and global ramifications of pollution and must take as its subject the harm done to nature and man.

1.7. Bearing in mind the diversity of national education systems, the Committee welcomes the attempt to lay down a common set of principles for environmental education at Community level. It sees in this a first positive, albeit incomplete response to the recommendation in its Opinion on the fourth environmental action programme. The Commission, in collaboration with the European Centre for the Development of Vocational Training (Cedefop) and the European Foundation for the Improvement of living and working conditions, should undertake an immediate, systematic study of the content and suitability of general and vocational training courses in higher education and out-of-school further education with a view to including environmental education and training in the curricula. Furthermore, a special effort should be made to develop and try out teaching and learning aids which cover more than just one Member State, including in particular those to be used for instructing teachers in environmental matters. Information on pilot projects already carried out should be compiled and published.

In the Committee's view the aims of the proposed Decision will not be attained unless there is carefully targetted assistance for environmental education, training and research in the Community. It therefore calls for the Commission proposal to provide expressly for financial assistance for pilot projects.

Furthermore, undertakings or organizations which receive public funds in support of projects should be urged to develop in-house environmental education and training for staff. This would be consistent with the practice common in many Member States of not making public funds available for projects unless their environmental acceptability has been verified.

1.8. In view of the importance of environmental protection specialists in private and public enterprises and administrations (environmental officers), the Committee proposes a special Commission measure which goes beyond the vocational training of specialists; besides the rights and duties of such specialists, it should lay down the preconditions for freedom of movement in the Community and set standards for training and further training in the various disciplines. The powers of these environmental officers should be comparable with those of safety officers. Special attention should be paid to the positive repercussions which environmental protection has for small and medium-sized enterprises (SME). It should also be made easier for these enterprises to apply environmental provisions, and new activities for the preservation—and enhancement—of the environment should be promoted.

Environmental specialists should be provided for agriculture too, so as to reduce or avoid pollution systematically.

[1] *Cf.* the resolution of 9 June 1986 on consumer education in primary and secondary schools (OJ No C 184, 23. 7. 1986).

2. Specific comments

2.1. *Article 1 (2)*

The Committee proposes adding the following points:

Insert the following after the third indent:

> 'the responsibility of each generation for passing on to the next generation an undamaged environment and a natural habitat (contract between the generations)'.

Insert the following after the last indent:

> 'the responsibility which workers, specialists and employers in industry and administration have for supporting production processes and products which do not harm the environment';
>
> 'the responsibility of all sectors of the economy for reducing or avoiding pollution systematically'.

2.2. *Article 2*

2.2.1. Paragraph 1 to read as follows:

> 'The competent authorities of the Member States shall introduce the points set out in paragraph 2 of Article 1 at all levels of teaching, general education and vocational training (including further training), in cooperation with local bodies, environmental and consumer groups, the two sides of industry and, where appropriate, family associations, parent organizations and guardians'.

2.2.2. The first indent of paragraph 1 to read as follows:

> 'take heed of these aspects, bearing in mind the various target groups, when drawing up curricula and the disciplines in questions and organizing interdisciplinary courses;'.

Amend the second indent as follows:

> 'make provision for and promote extra-curricular school activities by means of which theoretical knowledge of the environment acquired in school can be tried out in practice, making use of the experience of relevant voluntary organizations (e.g. environmental and consumer associations or agricultural organizations);'.

2.2.3. In Article 2 (2) even greater emphasis should be placed on the need to train specialists. The paragraph should therefore read as follows:

> 'The Member States shall promote the training and further training of specialists in the various disciplines relating to the environment by introducing ecological subjects into basic and further training programmes. The school and university education and vocational training programmes and the curricula for out-of-school further education are to be drawn up by the Commission in cooperation with Cedefop and the European Foundation for the improvement of living and working conditions. This approach shall also be encouraged in the field of vocational training, including university education, with a view to steering the behaviour of those with future responsibilities in a direction which is most favourable to the conservation of the environment and natural resources'.

2.2.4. The national programmes in general education and vocational training provided for in Article 2 (3) should be evaluated by the Commission and submitted to the Economic and Social Committee as well as the European Parliament.

2.2.5. In Article 2 (4) delete 'of relevance both (...) social sciences'.

2.2.6. The Committee recommends a new paragraph 5 providing for the promotion of pilot projects in the Member States.

It proposes the following wording:

> 'In order to speed up the national introduction of environmental education and enable an exchange of experience to take place, the Commission shall provide financial support for pilot environmental education projects which take into account all the points set out in Article 1 (2). The findings of these pilot projects shall be evaluated and made available to the Council of Education Ministers and the Member States. In addition, information on pilot projects already carried out shall be compiled and published. Teaching aids and pedagogical concepts which take account of the differing environmental features of the Member States should also be developed and tested'.

2.3. *Article 4*

The Committee would expect the report on the implementation of the Decision to be forwarded to the ESC too.

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a twelfth Council Directive on company law concerning single member private limited companies [1]

(88/C 318/04)

On 10 June 1988 the Council decided to consult the Economic and Social Committee, under Article 54 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for industrie, commerce, crafts and services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 13 July 1988 (rapporteur · Mr Speirs).

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted the following Opinion unanimously with 5 abstentions.

The Committee welcomes the Commission's proposal subject to the following reservations·

1. General comments

1.1.1. The Committee is in favour of the basic objective of the Commission's proposal which is to provide the sole trader with the option of setting up an organizational structure which enables him to limit his liability for debts incurred in the pursuance of his business by distinguishing between his private possessions and his company's assets. Promoting the spirit of enterprise by permitting the access of individual entrepreneurs to the status of company will, provided protection of third parties is ensured, represent an appropriate framework for business development and employment growth in the internal market.

1.1.2. In the Committee's Opinion on the action programme for Small and medium-sized enterprises (SME) it was proposed that tax systems be set up that favour a reduction in succession duties for SME. The implementation of the present proposal should be a step towards this end.

1.2. The legal technique used by the Commission is to limit single member companies as far as possible to natural persons but allow single member companies for legal persons under certain more stringent circumstances.

1.2.1. The Committee agrees with this approach but does not feel that the setting of a minimum capital level should be left to individual Member States' discretion in the cases where the single member is allowed to be a legal person.

1.2.2. The Committee is of the opinion that the Commission, given the wide divergence in the levels of minimum capital in the Member States, should undertake a harmonization in this area in order to set up a system sufficiently capable of guaranteeing obligations to third parties. The sum must not, however, be such that entrepreneurs in the SME sector will have undue difficulty in meeting this requirement.

1.2.3. Given the increasing number and importance of private limited companies and the fact that such harmonization has already been undertaken for public limited companies, the Committee considers such harmonization to be essential in order to avoid distortions of competition and, indeed, circumvention of the Directive.

1.3. The Committee feels that the proposal could serve as a useful option in the Community's efforts to encourage the creation and development of SMF.

1.3.1. The Committee invites the Commission, however, to undertake all necessary efforts to ensure, insofar as this is not mandatory, the *de facto* mutual recognition at Community level of one-person limited companies established in accordance with the proposal.

1.4 The Committee cannot help but support the Commission's attempt to bring the legal realities in the Community in line with economic ones in which one-person companies already exist *de facto* with front men as pro-forma partners, the present proposal should do away with this unnecessary extra cost and complication of running a small company.

1.5. The Committee is of the opinion that the interests of third parties are appropriately safeguarded in the proposal through the application of the Directives on disclosure, on annual accounts, consolidated accounts, approval of auditors, etc It would have liked however to see the direct applicability of these Directives stipulated directly in the body of articles itself instead of just in the recitals.

1.6. The implementation of the Directive must not encroach on workers' existing right

[1] OJ No C 173, 2 7 1988, p 10

2. Specific comments

2.1. *Article 2 (2)*

2.1.1. The commentary on this provision indicates that the purpose of this Article is to prevent the creation of inextricable chains of compagnies. However, in those Member States which already permit single-member companies and have no rules on this matter (Netherlands, Denmark and Germany), the problem of 'inextricable chains' has in practice turned out to be not as bad as might be expected.

2.1.2. It may also be pointed out that if someone is really determined to set up an inextricable chain of this sort, it is not necessary for them to be the sole member of various companies; they can achieve the same end by means of shareholdings and subsidiaries.

2.1.3. If the reason for the provision is a fear of 'abuse' of such set-ups, a better way of countering this would be specific measures such as, for instance, the abuse legislation in certain Member States.

2.1.4. Furthermore, it is not clear what the consequences will be of infringing the prohibition. In the interests of legal certainty, the Commission should prescribe a penalty or, as in the case of Article 4, lay down in the relevant commentary that it is left to the Member States to make provision for the penalties which seem appropriate to them.

2.2. *Article 2 (3) (a)*

2.2.1. Under this provision the legal person has unlimited liability for the company's obligations on the sole ground that they are the only member. The Committee agrees with this provision, but asks the Commission to redraft the Article to make it clear that the liability of the legal person only extends to his business assets.

2.3. *Article 2 (3) (b)*

2.3.1. This clause lays down the requirement of a minimum capital. A minimum capital is already required for public limited companies at Community level under Directive 77/91/EEC. [1] This Directive however does not apply to private limited companies. In most Member States a certain minimum capital is, however, already prescribed for private limited companies. The sums vary greatly however. The Committee therefore invites the Commission to lay down a harmonized specific minimum sum required as minimum capital for the setting-up of a single-member company. The sum must not, however, be such that entrepreneurs in the SME sector will have undue difficulty in meeting this requirement.

2.4. *Article 4*

2.4.1. With a view to greater transparency and as an aid to enforcement, the right of interested parties to have access to minutes and other documentation should be specifically stated.

2.5. *Article 5 (1)*

2.5.1. This provision relates to agreements between the company and the shareholder. Since conflicts of interest could arise here, a certain measure of transparency is necessary as far as these agreements are concerned, and the requirement that the agreements must be in writing can be endorsed.

2.5.2. It is, however, unclear what the consequences of failure to comply with this formal requirement will be. In the interests of legal certainty it would be desirable for the Commission to prescribe a penalty or, as in the case of Article 4, to lay down in the relevant commentary that it is left to the Member States to make provision for whatever penalties seem appropriate.

2.6. *Article 6*

2.6.1. The present wording of this Article is unclear. The Commission is invited to redraft this Article in accordance with the specific commentary in its explanatory memorandum.

3. Conclusion

In principle the proposed directive is acceptable to the Committee. However the attention of the Commission is directed to the following points:

3.1. The Commission should attempt to harmonize the levels of minimum capital which such companies should have so that to some extent obligations to third parties can be guaranteed.

3.2. Steps should be taken to ensure that the rights which employees normally enjoy when employed by a company are not jeopardized by the establishment of this type of enterprise.

3.3. The Directive should be promoted as offering yet another option available to encourage the spirit of enterprise among SME.

3.4. So that the interests of third parties may be appropriately safeguarded an article should be incorporated in the body of the Directive making it clear that other Company Directives such as those relating

[1] OJ No L 26, 31. 1. 1977, p. 1-13.

to annual accounts, approval of auditors etc. apply also to single member companies.

3.5. The maximum degree of transparency in relation to the activities of such companies is desirable.

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Directive amending:

— **Directive 74/561/EEC on admission to the occupation of road haulage operator in national and international transport operations,**

— **Directive 74/562/EEC on admission to the occupation of road passenger transport operator in national and international transport operations, and**

— **Directive 77/796/EEC aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment** [1]

(88/C 318/05)

On 24 March 1988 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for transport and communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 20 July 1988 (rapporteur: Mr René Bleser).

At its 258th plenary session (meeting of 29 September 1988), the Economic and Social Committee adopted the following Opinion by a large majority, with 3 dissenting votes and 9 abstentions.

1. General comments

1.1. Organization of the transport market is a prerequisite for introducing a transport policy. Coordination and harmonization of criteria for admission to the occupation of carrier will enable operators to exercise their right of establishment and freedom to provide services.

Common rules need to be introduced for national and international transport, in order to upgrade transporters' qualifications. This will make for a healthier market and improve the quality of services to the benefit of road safety, users, transporters and the economy as a whole.

1.2. The ESC reaffirms its support for Council measures to secure progressive harmonization and improvement of the terms of competition. In view of the uneven implementation of Directives in this field, the Committee endorses the thrust of the proposed amendments but would stress that harmonization must be brought about by raising, and not lowering, standards.

[1] OJ No C 102, 16. 4. 1988, p. 6.

1.3. The draft Directive makes a number of qualitative changes to Community rules on admission to the occupation of road passenger and haulage operator. Existing legislation covers the general criteria for setting up a transport firm.

With the prospect of a single road transport market from 1992, the Commission has felt it necessary to provide a more precise definition of some of the measures set out in Directives 74/561/EEC, 74/562/EEC and 77/796/EEC.

1.4. The draft Directive is significant in that it sets out to specify the criteria for assessing good repute, financial standing and professional competence.

1.5. It is regretted that the Commission did not consult the joint transport committee when drawing up the draft Directive. Referral to the ESC is no subsitute for preliminary consultations with the two sides of the transport industry, which would have introduced new ideas into discussions.

1.6. The ESC regrets that there is no impact statement. Given that the declared aim of the draft Directive is to clarify some of the vaguer provisions of current legislation, it would have been useful to assess the effect of the new definitions on transport firms.

1.7. To avoid distortions in competition, the Commission should ensure that qualitative criteria applicable to EEC carriers are equivalent to those applied to non-EEC transport firms operating in the Member States.

2. Specific comments on the Articles of the proposal

AMENDMENTS TO DIRECTIVE 74/561/EEC

2.1. *Article 1 (1)*

2.1.1. The Directive has not so far been applicable to undertakings which use vehicles with a payload not exceeding 3,5 t or a total permissible laden weight not exceeding 6 t. In its specific considerations, the Commission notes that 'since 3,5 t maximum permissible weight is a minimum weight for applying other Community legislation, it seems appropriate to include it in this Directive too'.

2.1.2. In the Committee's view, the proposed decrease is a step in the right direction. The Committee feels that the proposed weight limit safeguards the legitimate interests of firms whilst guaranteeing a certain degree of transport safety and environmetal protection.

2.1.3. However, the Commission intends to scrap the option that Member States have at present of reducing the weight threshold.

The Committee would strongly argue that the option should be retained to prevent the proliferation of small firms which specialize in different services, and are thus potentially immune to the quality criteria.

2.2. *Article 1 (2)*

2.2.1. The proposal seeks to obtain a certain uniformity in the criteria of good repute, which are at present defined by each individual Member State. A dual condition is therefore laid down:

'Good repute shall consist of not only satisfying the general conditions required to exercise any commercial profession but also of not having been convicted over the last three years of any offences which would bar such persons from exercising their profession under national, Community and international transport and traffic laws.'

With regard to the latter, the proposal specifies infringements of rules on:

— drivers' driving and rest periods,

— road safety,

— vehicle safety,

— the obligations of company management.

2.2.2. As most offences contravene labour and social law in the widest sense, the terms 'labour law and social law' should be added to the list contained in Article 3 (2) of Directive 74/561/EEC, after 'national, Community and international transport and traffic laws'.

2.2.3. The Committee feels that the term 'infringement', out of context, is too vague and would allow the Directive to be applied in an arbitrary fashion. The instrument should specify that it is referring to serious, repeated offences which have attracted convictions. This would have the added advantage of introducing objective criteria.

2.3. *Article 1 (3)*

2.3.1. This lays down the minimum financial requirements to be met by carriers.

Generally speaking, financial standing consists of having sufficient financial resources to guarantee the setting up and efficient management of a firm. To this end the Commission proposes introducing a financial guarantee equal to 10% of the purchase price of each vehicle used by the firm.

2.3.2. The Committee attaches importance to this criterion as it could do much to put the market on a healthy footing. However, it finds fault with the wording '10% of the purchase price of each vehicle used', as it is too vague. Does this mean 10% of the cost of replacement or of the non-adjusted purchase price? In any event the purchase value of each vehicle does not necessarily reflect the financial state of the business in cases, for example, where the operator leases vehicles. Nor does the instrument specify how guarantees are to be established. The Member States will be free to decide ways and means for themselves. The danger of this kind of *laissez-faire* approach is that wide discrepancies in application could emasculate the proposed measure.

2.3.3. The Committee feels it is not sufficient to fix a financial guarantee, no matter what form it takes. A healthy balance should be established between the financial guarantee required and the firm's obligations (especially commitments to banks). Apart from financial guarantees, then, provision should be made for monitoring a firm's financial situation in general.

2.3.4. The 10% limit may be reduced by Member States, to take account of a firm's size. This measure, designed to protect small firms, will doubtless unleash a barrage of requests for exemption, which will pose administrative difficulties for Member States.

The Committee also wonders why the Commission has seen fit to introduce such a loophole. Financial guarantees are not needed for major undertakings, but to prevent a large number of small, financially precarious, firms from swamping the market or remaining in business when they are not economically viable. The Committee is therefore opposed to exemptions.

2.4. *Article 1 (4)*

2.4.1. Adequate and equivalent minimum professional standards amongst those wishing to become carriers will henceforth be guaranteed through attending courses, gaining practical experience and passing a written examination.

2.4.2. The Committee endorses the idea of a written examination, but feels that it is not enough for knowledge to be acquired through a course and relevant work in a transport undertaking for at least five months. Other professions require a certificate of ability or even a professional diploma as evidence of professional competence. Surely this should also be the case for transport operators?

2.4.3. The text should prescribe refresher courses. Changes in legislation and in goods for transport are so rapid that professional knowledge needs to be regularly updated.

2.4.4. 'Member States may exempt holders of certain advanced or technical diplomas which offer proof of a sound knowledge of the subjects listed in the Annex to be defined by them from sitting an examination in the subjects covered by these diplomas.' The Committee would urge the Commission to carry out close checks to ensure that such exemptions are granted only to candidates who have followed courses of training which included national and Community transport legislation.

2.5. *Article 1 (5)*

2.5.1. The Commission intends to oblige Member States to inform each other of any offences committed by non-resident carriers.

If a Member State revokes a firm's right to practise as a road haulage operator in international transport operations, it is to inform the other Member States.

2.5.2. The Committee endorses the obligation concerning mutual information, and agrees with the explanatory memorandum that this will be especially important in the future with the open Community transport market and should help maintain professional standards.

2.5.3. A policy of mutual information will be difficult to enforce, however. Sentences for serious offences do not usually come to the attention of the national monitoring authorities.

The Committee would like to know by what right a Member State's monitoring authorities will be informed of sentencing.

2.6. *Article 1 (6)*

The term 'logistics' should be clarified. Also it should be made clear that 'environmental protection' refers to the maintenance and use of vehicles (i.e. noise, fumes etc.).'

AMENDMENTS TO DIRECTIVE 74/562/EEC

2.7. *Article 2*

2.7.1. The amendments to this Article are identical to those proposed for Article 1, and the Committee would therefore make the same comments.

AMENDMENTS TO DIRECTIVE 77/796/EEC

2.8. *Article 3*

2.8.1. The amendment stems from the fact that carriers will from now on be required to pass an examination.

AMENDMENTS TO DIRECTIVE 74/561/EEC, 74/562/EEC and 77/796/EEC

2.9. *Article 5*

2.9.1. This Article stipulates that the Commission proposals will be applicable as of 1 January 1990. The present proposal should come into effect on 1 January 1989, to give the Member States time to adopt any national laws necessary to implement the new provisions.

Done at Brussels, 29 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

APPENDIX

to the Economic and Social Committee Opinion

The following amendment to the Draft Opinion, tabled in accordance with the Rules of procedure, was rejected during the debate:

Paragraph 2.3.4

Delete and replace by:

'The 10% limit may be reduced by Member States, to take account of the firm's size.

The Committee agrees with the Commission that it is desirable not to place undue burden on small companies serving local markets and not affected by intra-Community trade. It proposes that the Member States should in conjunction with the Commission establish appropriate criteria for reductions for small firms.'

Result of vote

For: 24, against: 53, abstentions: 4.

Opinion on the proposal for a Council Regulation (EEC) modifying Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterways [1]

(88/C 318/06)

On 11 May 1988 the Council, acting in pursuance of Article 75 of the EEC Treaty, asked the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Committee instructed its section for transport and communications to prepare its work on the matter. The section adopted its Opinion on 20 July 1988. The rapporteur was Mr Haas.

The Committee adopted the following Opinion at its 258th plenary session (meeting of 28 September 1988) by a substantial majority, with 2 abstentions.

1. Introduction

1.1. The Committee has issued numerous Opinions on combined transport [2]. All these Opinions called for expansion of this form of transport.

1.2. In its information report entitled 'Stocktaking and Prospects for a Community Rail Policy' (rapporteur: Mr Querleux), which it adopted unanimously in July 1986, the Committee attached particular importance to combined transport. It drew attention to a number of points, including:

— the high investment cost of the terminals which, as they are an integral part of the infrastructure, should be met by the regional authorities, and

— the need for strategic decisions in respect of this form of transport to be taken by the railways in the light of the establishment of the single internal market by the end of 1992.

1.3. In its Own-initiative Opinion of 23 March 1988 on EC transit traffic through non-EC countries—an Opinion which was adopted unanimously—the Committee drew attention to the considerable development potential of combined transport in transit traffic. It also called upon the railway companies concerned to adopt a more positive approach to this field [3].

1.4. In its Opinion endorsing the proposal to amend Regulation (CEE) No 1107/70 (Opinion of 23 September 1981), which is now to be the subject of further amendment, the Committee highlighted the importance of the various forms of combined transport to the economy in general and the transport industry in particular (in respect of energy-saving and environmental protection, helping to reduce the traffic flow on the overloaded roads, improved road transport safety, reduced transshipment costs, etc.).

2. Comments on the appended report by the Commission on the granting of aids for combined transport

2.1. It emerges from the report that various Member States have made use of Article 3 (1) (e) of Regulation (CEE) No 1107/70 to provide financial aid towards the cost of infrastructure and transshipment installations; the action taken by the Member States does, however, vary considerably, not least with regard to the extent of the measures taken. There are also some Member States which have so far not availed themselves of the possibilities being offered. One Member State has made payments on the basis of Regulation (CEE) No 1191/69. The Commission does not exclude the possibility that similar action has also been taken by other Member States, for instance by making up railway deficits.

2.2. The report also illustrates the various possibilities available under EC law for intervention with respect to combined transport. The Commission also refers to this in point 3 of the explanatory memorandum preceding the draft Regulation.

2.3. The two preceding observations demonstrate the complete lack of an overall EC plan. In this important field for the single internal market we are still a long way away in practice from having joint objectives and consequently far from achieving a common transport policy.

2.4. The Committee regrets this situation. Combined transport is capable of development and, more especially, it makes good sense in many cases for the reasons set out in point 1.4 above. In pursuance of transport policy objectives it should therefore be further developed in a purposeful way.

2.5. The role played by the advisory committee provided for under Article 6 of Regulation (CEE) No 1107/70 in the action so far undertaken is not clear from the report.

3. Opinion on the draft Regulation

3.1. *General comments*

In spite of the progress made in combined transport in recent years the initial phase of introducing this tech-

[1] OJ No C 113, 29. 4. 1988, p. 10.

[2] Opinion of 23 September 1981 (OJ No C 310, 30. 11. 1981, p. 18); Opinion of 30 October 1985 (OJ No C 330 of 20. 12. 1985, p. 5); Opinion of 23 November 1983 (OJ No C 23 of 30. 1. 1984, p. 3); Opinion of 24 November 1983 (OJ No C 23 of 30. 1. 1984, p. 49).

[3] OJ No C 134, 24. 5. 1988, p. 19.

nique has not been completed throughout the EC. This is for instance the case in the new Member States, where the necessary infrastructure for combined transport is less extensively developed. The Commission thus proposes, on the one hand, that the current aid provisions be extended until the end of 1992 and, on the other hand, that the provisions be broadened so as to authorize the granting of financial aid by the Member States, in particular cases, towards the operating costs of combined transport.

3.1.1. As a result of increased traffic density and heightened awareness of the environment and the need to save energy, the original objectives are if anything even more valid than they were in the past. The Committee therefore once again confirms its fundamental endorsement of the further development of combined transport and approves the draft Regulation, subject to the following basic comments.

3.1.2. The reason for extending the possibility of providing aid for infrastructure and transshipment installations is clear from the explanatory memorandum.

In this context the Committee would draw attention to a proposal which it made in the report referred to in point 1.2 above. It proposed that consideration be given to whether transshipment installations may not be regarded as forming part of the infrastructure to be provided and financed by the public authorities, especially bearing in mind that though terminals provide for the transshipment from one mode of transport to another, the necessary financial investment is largely met by only one of the modes of transport.

3.1.3. The extension of the aid provisions to encompass the payment of grants in respect of operating costs in particular cases can be justified by the fact that this would enable all modes of transport to benefit in the same way.

The proposed extension of the aid facilities would also be beneficial as it would make it possible to give financial aid to the cost of trials of modern techniques which would promote the further development of combined transport [1].

The Committee would, however, draw attention to the fact that aid towards operating costs must only be granted in accordance with the underlying purpose of the Regulation; it must not create distortions in transport or other areas of the common market [2].

3.1.4. In spite of these basically favourable views, the Committee, given the different courses of action being taken by the individual Member States (see point 2 above), is unable to see how the situation can change enough by 1991 to enable the Commission to issue a definitive Opinion. The transport undertakings concerned will only operate those forms of transport which are in their economic interests. We must therefore in all probability reckon with the fact that the conflict between political objectives and the business requirements of the companies concerned will continue to exist even beyond 1991.

3.1.5. In the Committee's view the intervening period should therefore be put to good effect by formulating strategies for economically beneficial cooperation between the transport undertakings concerned, whilst safeguarding their interests.

With this aim in view, there is a need for practical consideration and investigations to determine criteria for assessing the extent to which particular forms of combined transport (e.g. whole vehicle combinations transported by rail, international combined goods transport) are to be utilized more intensively with a view to achieving economically desirable objectives. In cases where transport operations meeting the abovementioned criteria are established at the request of the public authorities, the authority concerned should make the requisite compensatory payment in accordance with the principle of special payments set out in Regulation (CEE) No 1191/69.

3.1.6. The Committee has been informed of the intention of the Commission to consider these issues, as part of a market study of combined transport infrastructure, and, where appropriate, to formulate ideas on the establishment of such criteria. The Committee welcomes this development. It is urgently necessary that no time be lost in carrying out this work. The Committee reserves the right to give its views on the findings of this study at the appropriate time.

3.1.7. In the Committee's view the aim should be to evolve, after an extended trial period, a common transport approach, based on an overall strategy and backed up by corresponding strategies for the transport undertakings involved.

The aim of the investigations and the overall strategy should be to promote the development in the single internal market of rapid, long-distance combined transport, including transport through areas presenting geographical problems (e.g. the Alps).

The overall strategy should be comprehensive. Aids should only be one aspect. There is also a need to take account of considerations such as the techniques to be employed, the various clearance gauges used and the question of tariffs.

The various modes of transport involved must participate in this appraisal. As far as the railways are concerned, the Committee draws attention to the rec-

[1] An example of such a new technique is the 'semi-rail' (horizontal transshipment technique without the use of a crane) and mention could also be made of the problem of transshipping 53-foot containers carried by sea. With a view to the establishment of the single internal market the aim of such aids should be to promote the use of uniform techniques of benefit to transfrontier transport.

[2] See Article 2 of Regulation (CEE) No 1107/70 and Article 92 of the EEC Treaty.

ommendation made by the Council on 19 December 1984 to the national railway companies in the Member States calling for greater cooperation in international passenger and freight transport [1] and to its own Opinions on this subject [2].

As regards the possible need for financial support, consideration should be given to the possibility of providing EC funding [e.g. money from the European Regional Development Fund (ERDF)] to assist transfrontier transport.

3.2. *Specific comments*

3.2.1. In order to be more specific the second indent of the first paragraph of Article 1 should be amended to read as follows:

'... or to the costs of operating the combined transport, on condition that the traffic flow is thereby reduced on routes or parts of routes where the road infrastructures are over used, highly polluted or present particular problems.'

The Committee considers that the granting of aid in respect of operating costs should be subject to the approval of the Commission.

3.2.2. The Committee calls for a reconsideration of the timetable set out by the Commission.

3.2.3. The Committee also proposes that the joint committees on road and rail transport established by the Commission be involved in the discussions.

[1] See OJ No L 333, 21. 12. 1984, p. 63.

[2] *Cf.* especially the Opinion on the draft Council Recommendation on railway tariffs for international transport by container and piggy-back techniques (OJ No C 23, 30. 1. 1984, p. 3).

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Decision on the conclusion of the agreement between the European Economic Community, Finland, Norway, Switzerland, Sweden and Yugoslavia on the international combined road/rail carriage of goods (ATC)

(88/C 318/07)

On 19 September 1988 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for transport and communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 20 July 1988. The rapporteur was Mr Haas.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Comittee unanimously adopted the following Opinion.

1. The Committee welcomes the fact that the Commission has been successful in bringing about the initialling of an agreement with the majority of the relevant third countries which will extend the Community combined goods transport regime to traffic between the Community and these countries. This agreement, which gives combined transport the encouragement that the Committee has always advocated, creates the basic political conditions for facilitating combined goods transport between the Community and third countries, even though not all commercial and technical aspects have been covered.

2. The Committee accordingly approves the proposal for a Decision, subject to the following comments.

2.1. First of all it is regrettable that Austria has not so far decided to accede to the agreement. In its Opinion of 23 March 1988 [1] the Committee drew attention to the importance of, and the need for, involvement of Austria, Switzerland and Yugoslavia in Community transit traffic. The Committee therefore calls upon the Commission to do everything in its power to persuade Austria to accede to the agreement.

2.2. As regards the Protocol concerning the application of Article 3, paragraph 2 b), in the territory of the European Economic Community, the Committee would welcome the earliest possible application of the Article in question.

2.3. The Committee interprets Article 2 (1)(a), second paragraph, as meaning that containers belonging to firms established outside the territory of the Contracting Parties are also covered by the liberalization provisions, provided the maximum dimensions of the swap bodies or containers do not exceed those laid down in current Community regulations.

2.4. It is regrettable that the Agreement does not cover carriage by inland waterway as referred to in Directives 82/603/EEC and 86/544/EEC [2].

[1] OJ No C 134, 24. 5. 1988, p. 19.

[2] Council Directives of 28 July 1982 and 10 November 1986 amending Directive 75/130/EEC on the establishment of common rules for certain types of combined carriage of goods between Member States (OJ No L 247 of 23. 8. 1982, p. 6; OJ No L 320 of 15. 11. 1986, p. 33).

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Directive on the reciprocal recognition of national boatmasters' certificates for the carriage of goods by inland navigation [1]

(88/C 318/08)

On 5 May 1988 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the above-mentioned proposal.

The section for transport and communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 14 September 1988. The rapporteur was Mr Tukker.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee unanimously adopted the following Opinion.

1. General Comments

1.1. *(Paragraph A.1 of the Commission document)*

The first of the general points in the Explanatory Memorandum raises two questions:

1. To which Community countries does the Directive apply?
2. Is reciprocal recognition of national boatmasters' certificates really necessary?

Re: question 1: Although not explicity stated, it is clear from the text that the Directive applies only to those countries also covered by document COM(88) 111 final (reorganization of the inland waterways fleet). If this is in fact the case, the countries concerned (France, Germany, the Netherlands, Belgium and Luxembourg) should be mentioned by name.

[1] OJ No C 120, 7. 5. 1988, p. 7.

Re: question 2: This question is dealt with below.

1.2. *(Paragraph A.2)*

The Rhine navigation licence covering the Rhine itself and a number of tributaries (Neckar, Main and Moselle) is valid only between Basel and the Spijk ferry, i.e. not for the Dutch part of the Rhine, i.e. the Lek and the Waal.

This is surprising, since freedom of Rhine navigation was established by the 1868 Mannheim Act from Basel to the sea. The Commission's first task could therefore be to ask the Central Rhine Commission in Strasbourg to take steps to extend the validity of the Rhine navigation licence to the sea.

This should be no problem as present wording of the licence already covers the Rhine as far as the sea. The Dutch government might make difficulties, however.

1.3. *(Paragraphs A.3, A.4)*

For the purposes of clarification Appendix I to this Opinion contains a list of existing boatmasters' certificates and their validity. This makes it absolutely clear how confused the current situation is. Only Germany and France have reorganized their certificate systems. A certificate does exist in the Netherlands, but it is not (yet) compulsory. Certificates are not needed in Belgium and Luxembourg.

1.4. *(Paragraphs A.5, A.6)*

Things being as they are, is there really any point in attempting to achieve reciprocal recognition of certificates which do not yet have any legal force, if indeed they exist at all.

It would make more sense for the Commission to attempt to ensure that existing gaps are filled and to encourage the Member States to introduce boatmasters' certificates as soon as possible. It might be a good idea for the Commission to set a deadline for this. Care must be taken to ensure uniformity of the requirements and rules. It is important that the criteria to be met by the certificates should first be established (e.g. using the Rhine navigation certificate as a model).

2. **Specific comments**

2.1. *(Paragraph B.4)*

It must be ensured that the conditions for the issue of a boatmasters' certificate are as stringent as those attached to the Rhine navigation certificate.

3. **Directive**

3.1. *[Article 3 (5)]*

60 m should be amended to read 55 m.

3.2. *[Article 3 (6)]*

'Subject to consultation of the Commission' should be replaced by 'Subject to authorization by the Commission ...'.

Add to the end of 3 (6):

'The waterways in question are: the Elbe, the Weser and the Danube.'

3.3. *(Article 4)*

Does not apply to English text.

Add to the end of Article 4 the words '..., except for those waterways covered by the Rhine navigation certificate'.

4. **Appendix**

Does not apply to English text.

Expand the text to include the content of Appendix to this Opinion.

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

APPENDIX

List of national and international boatmasters' certificates for the carriage of goods by inland waterway

Rhine navigation

Rhine navigation certificate

Valid for the Rhine and its tributaries the Neckar, the Main and the Moselle from Basel to the Spijk Ferry (at the German-Dutch frontier).

This certificate is compulsory for vessels of more than 150 tonnes carrying capacity or 50 m^3 displacement.

Not valid for the Elbe, Weser and Danube.

Germany

Navigation certificate (Inland navigation certificate decree of 7 December 1981)

Compulsory on German rivers and canals in the absence of a Rhine navigation certificate. Otherwise not required.

An additional local certificate is required for the Elbe, Weser and Danube.

Netherlands

A boatmaster's certificate exists but it is not compulsory as the law in question has not yet entered into force.

Belgium

None.

Luxembourg

None.

France

CAT. A

on all inland waterways for vessels of up to 55 m in length and/or 11,4 m in breadth.

CAT. C.P.

for vessels and multiple barge convoys longer than 55 m or wider than 11, 4 m.

Expert knowledge is required on the Seine between Rouen and Le Havre. Otherwise a pilot must be taken on board.

Opinion on the proposal for a Council Regulation applying generalized tariff preferences for 1989

(88/C 318/09)

On 31 May 1988, the Economic and Social Committee decided, in accordance with Article 20 (4) of its rules of procedure, to draw up an Opinion on the abovementioned proposal.

The section for external relations, trade and development policy, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 16 September 1988. The rapporteur was Mr Gavazzutti.

At its 258th plenary session (meeting of 29 September 1988) the Economic and Social Committee adopted the following Opinion by a majority in favour, with three votes against.

1. The Committee reiterates its full support for the scheme, which helps promote balanced growth in developing countries.

2. It is imperative that the generalized system of preferences (GSP), or any other form of aid to developing countries, and all bilateral or multilateral EEC agreements, adhere to rules of the General Agreement on Tariffs and Trade (GATT) and reflect the position taken by the EEC delegation at the current Uruguay round talks in Geneva.

3. A coherent and comprehensive system of Community aid to development, of which the GSP would have to be an integral part, should be geared primarily to:

— the poorest developing countries,

— developing countries whose economies have reached take-off, i.e. countries which, with a regular flow of aid for industrial and agricultural development and a new international division of labour, could rapidly acquire majority status and become full members of the international trading community governed by GATT.

4. The introduction of differentiated criteria in the application of the GSP, and in particular the exclusion of some products and countries, is a first, positive step in this direction, although it falls short of the dual objective outlined above.

5. Aid schemes should therefore be concentrated, to guarantee effectiveness; dependable; transparent; objective, i.e. based on up-to-date and reliable data; simple to understand and apply.

6. Despite the fact that its shortcomings are becoming increasingly apparent (the Commission admits as much in the explanatory memorandum), the present GSP is unlikely to be replaced before 1990, inter alia because the latest round of GATT talks in Geneva will probably result in further tariff reductions.

7. The current aim is to revamp (or replace) the present scheme when it expires in 1990, in the light of the completion of the internal market by 1992.

8. It is hoped that the review will be carried out as soon as possible and that the Committee will be invited to take part in the preparatory work.

9. Turning to the more detailed aspects of the present scheme, the Committee notes that the application of differentiated country/product criteria has failed to exclude certain very competitive countries which are more highly developed overall than some EEC countries and regions.

10. Other criteria should therefore be introduced to determine whether to exclude a country from the GSP, e.g. higher per capita GDP than an EEC Member State, possibly combined with other general considerations, such as a constant surplus on external accounts.

11. In any event, the proposed transfer of products with reference numbers 10.0500, 10.0810, 10.0830, 10.0870, 10.0920, 10.1030, 10.1200, 10.1260 and 10.1268 [1] to the list of non-sensitive products is unacceptable because it affects ailing sectors of Community industry. In addition, product no. 4410 (fibreboard) should be transferred from the list of non-sensitive to sensitive products, in anticipation of the application of the steps requested in point 14 below.

[1] 1. 10.0500 New pneumatic tyres and inner tubes; 2. 10.0810 Iron or steel bars; 3. 10.0830 Flat-rolled products of iron or non-alloy steel (2%); 4. 10.0870 Iron cables, cords; 5. 10.0920 Copper bars; 6. 10.1030 Electric motors and generators (2%); 7. 10.1200 Watch cases; 8. 10.1260 Other furniture; 9. 10.1268 Prefabricated buildings of wood.

12. The Committee agrees that the reference base for re-establishing customs duties on given industrial products could be raised from 5% to 6% of the total value of Community imports of the relevant product in 1987. The Committee is however opposed to doubling the reference base from 1% to 2% for products of ailing sectors which are an exception to the rule.

13. The Committee is wary of allowing the currencies of many countries to fluctuate against the ECU. This could lead to sudden, uncontrolled influxes of zero-rated imports. In some cases (chemical, iron and steel and other ailing sectors) it might be better to limit the quantity, rather than the value, of products imported under the GSP. Whilst it appreciates the difficulties and implications involved, the Committee feels that every possible means of achieving this should be explored, perhaps on a limited trial basis to start with.

14. The Committee believes that dumping, particularly of chemical products, is widespread, and reiterates the need for prompter verification. Once the official verification procedure has been initiated, eligibility for GSP treatment should automatically and immediately be withdrawn from the product/country in question, as has been advocated in the past.

15. Normal GATT tariffs should be automatically reintroduced for imports in excess of tariff ceilings and/or quotas, to prevent any ambiguities or misunderstandings from arising.

16. The Committee is regrettably forced to conclude that exclusion from the GSP is the only possible course of action in the case of South Korea, in view of its discrimination in the field of intellectual property. The fact that this dispute cannot be settled within the GATT is both surprising and disappointing; the Committee would urge the Commission to raise the matter during the current round of GATT talks so that this serious irregularity can be dealt with.

17. The Committee would renew its call that the Community, when establishing economic ties with developing countries, actively promote social progress by requiring the countries in question to respect fundamental human rights and the basic social rights enshrined in the main conventions of the International Labour Organization (ILO). Instead of continuing to offer GSP facilities to countries which systematically oppose any social or civic progress, or which are involved in protracted wars, it might make more sense to suspend the GSP, in line with actions taken by other countries.

18. The Committee supports the Commission's aim of gradually switching to the Community quota system for all products, but feels that this can only be accomplished by computerizing and standardizing to a large degree the internal and external mechanisms of customs services.

19. A quota system could result in the Community being inundated by imports (in terms of time, space and category of product), ultimately triggering commercial practices designed to make use of every available means to keep competing products out of the market. Arrangements should be made for preventive measures to be included in GSP rules, e.g. an immediate freeze on imports, followed by a reduction in quotas.

20. Finally, firm action should be taken against countries pursuing aggressive export policies as these are detrimental to other developing countries' production and exports. This could culminate in the withdrawal of GSP treatment, as such practices are accompanied by dumping and, without exception, by unacceptable labour and wage policies.

Done at Brussels, 29 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on a draft Council Decision upon a European Stimulation Plan for economic science 1989-1992, SPES

(88/C 318/10)

On 4 April 1988 the Council of the European Communities decided to consult the Economic and Social Committee, under Article 130 Q(2) of the Treaty establishing the European Economic Community on the abovementioned draft Council Decision.

The section for energy, nulcear questions and research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 9 September 1988. The rapporteur was Mr Velasco-Mancebo.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted the following Opinion unanimously.

The Committee approves the Commission proposal and in particular the objectives of the programme. It considers, however, that an assessment of the needs of economic science in Europe is essential so as to avoid duplication and a waste of funds. It is also particularly important that the views of the relevant economic, social and academic groups be taken into account when the topics of research are selected.

1. Introduction

1.1. In its Opinion of 16 December 1987 [1] on the Commission SCIENCE plan proposal [2], the Committee endorsed the idea of a similar measure in the field of economic science, with the same objectives, i.e. 'increasing mobility and cooperation within the research community in Europe in order to increase their professional performance'.

1.2. For the purposes of this programme, 'economic science' must be understood to mean not only the fundamental principles of economics as a science, but also its practical applications in society, such as business economics, social economics, economic policy per se, etc. This is certainly how the Commission understands it too.

1.3. The Committee reaffirms its support for the Commission's initiative in proposing the present SPES Programme and approves its objectives.

1.4. The Committee notes, however, that the funds made available for the implementation of the framework programme of community activities in the field of research and technological development (1987-1991) [3] are not sufficient at present for the development of a similar programme for all human and social sciences.

1.5. The Commission, which is aware of this situation, should provide the funds necessary to launch such a programme when it carries out its planned revision of the framework programme.

2. General comments

2.1. The Committee only partly shares the Commission's view that its proposal is justified by the 'relatively weak performance of economic science' in Europe which is 'well below what might be expected'. Although the United States was the world's leading producer of economic technology for a long time, this is no longer the case; the reasons for this include the relative failure of the theoretical models developed in the United States and the difficulties they have encountered in resolving the problems of their own economy (budget and trade deficits, industrial productivity, controlling the money supply, foreign debt).

2.2. While acknowledging the important contributions of economic science as developed in the United States, Europe has nevertheless become aware of the need to develop its own theoretical and practical models which take account of its own particular social, economic and cultural identity.

2.3. In doing this, Europe's aim is not to produce an economic technology to compete with the United States, but to devise and put into practice the means for constructing a macro- and micro-economic technology which is geared to the needs of both European governments and firms and which, more generally, meets the needs of European society as a whole.

2.4. In particular these needs are linked to the development by the Community of concepts covered by such terms as internal market, harmonization, economic and social integration, integrated programmes, critical masses, social costs, minimum thresholds, etc., which

[1] OJ No C 35, 5 2 1988, p 5
[2] OJ No C 14, 19 1 1988, p 5
[3] OJ No L 302, 24 10 1987, p 1

help to identify problems which cannot be solved properly by existing economic technology. Not until Europe has evolved such a technology will economic debate be able to play its full role in Community research.

2.5. Bearing this objective in mind, the aims of the proposed programme would seem decidedly limited. Nevertheless, the Committee endorses the programme which should eventually help to boost Europe's economic science potential by improving collaboration between the responsible bodies.

2.6. The Committee recognizes the merits of the measures which the Commission is proposing to introduce and considers that this pilot phase of the programme should also provide an opportunity to:

2.6.1. Take stock of the resources available in the field of economic research in the Community. There is a lack of knowledge about the main specialists and research centres when the Community is viewed as a whole (transport economics in the University of Leeds, sociology of labour and industrial economics in various Italian and English universities, regional economics at Valencia, etc.). The most immediate effects would be to avoid duplication, to draw on the experience of others and to give a boost to future cooperation.

2.6.2. Encourage a Community-wide debate (universities, business, trade unions and consumers) on the main social and economic problems in the Community; this should help to determine the most relevant lines of research and which subjects should be studied at secondary and university level in all Member States. In short, make a start on the groundwork for the creation of a European economic technology.

2.7. One of the reasons for the relatively weak performance of economic science is the occasional inadequacy of the statistics available at European level. The Committee would ask the Commission to reflect on this and to come up with proposals as to how the Statistical Office of the European Communities could help to alleviate these shortcomings and thus become a reference point for all European economic science researchers.

2.8. To achieve this it is vital to construct a statistical data bank on economic activities using criteria which can be applied and assessed uniformly in all the EC countries [components of gross domestic product (GDP), evaluation of the performance of foreign economies, social balance-sheet, consumer price index, statistics on the employment of the active population, etc.].

2.9. It should be remembered that the choice of what is included in the data and of how this information is presented implies a socio-economic assessment of what most needs to be known. It is essential that the definition of 'what it is desirable to know' be discussed as part of the work referred to in point 2.6.2.

3. Specific comments

3.1. *Budget*

3.1.1. The Committee realizes that at this stage the programme is experimental, which may explain the modest level of funding allocated by the Commission. The Committee would once again warn the Commission that the funds could be wasted by being spread too thinly over a large number of stimulation measures and research projects.

3.1.2. Consequently the Commission is urged, in this experimental phase, to concentrate its efforts on providing opportunities for debate at European level (seminars, conferences, associations of specialists in various fields, in cooperation with universities and relevant economic and social interest groups) and on the establishment of joint research networks by economic science researchers of the Member States.

3.2. *Criteria for selecting applications for financial support*

3.2.1. The Committee approves the criteria which the Commission intends to apply for selecting applications for financial support (scientific excellence, multinational European aspect, European interest of the substance of the research).

3.2.2. It also supports the Commission's concern to give priority to those research topics which deal with specific social and economic problems in the Community and the development of Community policies (internal market, economic and social integration, coordination of economic policies, tax harmonization, etc.) rather than pure economic theory.

3.3. *Composition and role of the Committee for the European development of science and technology (Codest)*

3.3.1. Article 4 of the draft Decision states that the Commission shall be assisted in the execution of the programme by Codest, in particular for the selection

of the measures, projects and researchers to receive financial support.

3.3.2. The Committee doubts whether the composition of Codest is suited to this task. Nor does the wording of Article 4 seem to reflect the Commission's real intentions, namely to set up within Codest an ad hoc committee comprising an as yet unspecified number of highly qualified economists in addition to three members of Codest.

3.3.3. These intentions should be clear from the actual wording of the draft Decision, which the Committee could then approve, provided that the members of this committee were also representative not only of academic circles, but also of the socio-economic interest groups.

3.3.4. This committee should also submit an annual report containing a list of applications for financial support and of the stimulation measures projects and/or researchers receiving support. The report must be published.

3.4. *Forwarding of the report reviewing the results of the programme to the Economic and Social Committee*

3.4.1. Article 5 of the draft Decision states that the Commission shall draw up a report reviewing the results of the programme and forward it to the Council and the European Parliament. Once again the Commission omits all reference to its forwarding to the Economic and Social Committee.

3.4.2. The Committee can only repeat its demand that express provision be made for it to receive the research programme reviews. Both for the Committee and the Council and the European Parliament these reports are particularly important in assessing the programmes launched by the Commission and in deciding not only whether its proposals for modification or prolongation are justified but also whether the funds allocated to these programmes are being used in an appropriate fashion.

3.4.3. Naturally this demand applies equally to the forwarding of the report on the evaluation of the final results of the programme as provided for in Article 5 (2).

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Directive concerning the minimum safety and health requirements for the use by workers of machines, equipment and installations (second individual Directive within the meaning of Article 13 of Directive ...) [1]

(88/C 318/11)

On 23 March 1988 the Council decided to consult the Economic and Social Committee, under Article 118 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for social, family, educational and cultural affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 September 1988. The rapporteur was Mr Flum.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted the following Opinion with eight votes against and three abstentions.

1. General comments

1.1. On 28 April 1988 the Economic and Social Committee issued an Opinion on the proposal for a Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at the workplace (Framework Directive). The Committee saw the proposal as a major advance in the protection of workers' health and safety and the harmonization and improvement of working conditions in the Member States in accordance with Article 118 A of the EEC Treaty. The Committee praised the Framework Directive as an important instrument, in the run-up to 1992, for putting humanization of the working environment —a vital aspect of social policy—on a par with economic harmonization and for helping to reduce social security costs in the medium and long term.

1.2. The Committee welcomes the fact that the Commission has now given practical expression to the Framework Directive by submitting the present proposal on the minimum safety and health requirements for the use by workers of machines, equipment and installations (the Use-of-Machinery Directive). This is a necessary addendum to the proposal for a Council Directive on the approximation of the laws of the Member States relating to machinery [Doc. COM(87) 564 final — the General Machinery Directive]. However, the General Machinery Directive (based on Article 100 A of the EEC Treaty) and the Use-of-Machinery Directive (based on Article 118 A) must be made legally consistent. This applies in particular to the legal links between Annex II of the Use-of-Machinery Directive (which contains only a non-binding check list) and Annex I of the General Machinery Directive (which sets out binding essential safety requirements). To this extent, the need for clarity is also in the interests of the Use-of-Machinery Directive's implementation by plant operators.

1.3. The Committee recognizes that the proposal on the use of machines, equipment and installations marks an important departure in the field of occupational health and safety, but it thinks that further protective measures are necessary.

1.4. A self-contained body of safety requirements for machinery in the Community also requires the adoption of a Directive, in accordance with Article 100 A of the EEC Treaty, on existing, as opposed to new, machines and their placing on the market, commissioning and use. This is necessary in order to prevent the development of a market for old machines which, in view of the lack of safety provisions, could lead to distortions in competition. Such a Directive would have to prescribe the same safety requirements for old machines imported from non-EC countries.

1.5. The Directives on placing machines on the market and their use must come into force simultaneously.

1.6. In addition, reference should be made to the Opinion of the Economic and Social Committee of 28 April 1988 on the proposal for a Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at the workplace (Doc. CES No 454/88).

2. Specific comments

2.1. *Article 1*

It should be made clear that the Directive is to apply not only to workplaces in an undertaking and/or establishment but also to workplaces in general, e.g. places outside an establishment where assembly or repair work is carried out.

[1] OJ No C 114, 30. 4. 1988, p. 3.

In connection with Article 1 (2) there would seem to be a need to clarify whether more stringent national provisions, e.g. retrofitting obligations, are a barrier to trade. The relationship between Articles 100 A and 118 A of the EEC Treaty is affected by this.

2.2. *Article 2*

The reference to the safety or health hazard for workers should be deleted in the definition of work equipment so as to prevent this from being used as a reason for not applying the Directive.

'Worker' should be defined as follows:

> 'All employed persons, including public employees, students undergoing training and apprentices' (*cf.* Committee Opinion on the Framework Directive) [1].

In addition, the definition of 'workplace' should read as follows:

> 'All places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer' (*cf.* Committee Opinion on the Framework Directive) [2].

The words 'Work equipment (machines, equipment and installations)' at the end of Article 2 should be deleted. They are clearly intended to serve as a descriptive title for Articles 3 to 6 but they do not appear to fit in with these Articles' content.

2.3. *Article 4*

2.3.1. Under Article 4 (1) existing equipment in use has five years in which to comply with Annex I. No distinction according to the health hazards facing workers is planned for this transitional period. It is obvious that this five-year period cannot apply, for example, to serious equipment-related health hazards. Is should be borne in mind in this connection that serious accident or health hazards caused by machinery, equipment and installations can often be eliminated cheaply. It would be inconsistent with Article 118A of the EEC Treaty and the Framework Directive on occupational safety to tolerate hazards during this five-year period which might result in fatal accidents or diseases, such as the hazards posed by electricity, fire, explosion, radiation and dangerous substances. Therefore, the conversion of existing equipment before the end of the five-year period must be made compulsory if the protection of workers' health so demands. The fact that the proposal lays down minimum requirements is another reason why this 'escape clause' for the protection of workers is indispensable. Without an escape clause, there could be legal discrepancies between (a) the Use-of-Machinery Directive and (b) other occupational safety Directives, e.g. the Council Directive on 27 November 1980 on the protection of workers against exposure to chemical, physical and biological agents at work (80/1107/EEC).

2.3.2. Article 4 (2) states that only Annex I is to apply to equipment which is placed on the market again after the Directive has entered into force. The protective measures applicable to such equipment should be stricter in some cases than those governing equipment in use in establishments, e.g. a safety certificate should be required. This matter should, however, be dealt with in accordance with Article 100 A of the EEC Treaty in a Directive on old machinery (see 1.5).

2.3.3. The wording of Article 4 (3) is unsatisfactory. (This may be due to the German translation.) It should be made clear that it is the employer's responsibility to identify health and safety hazards facing workers, including those caused by the working environment, work organization or any other circumstances relating to the establishment. For each application the employer should also be obliged to acquire the technical equipment which poses the least risk for workers' health and safety. Article 4 (3) should include the provision that the employer is responsible for guaranteeing the safety and health protection of workers.

2.3.4. It should be specified in Article 4 (4) that the employer is obliged to take the corresponding measures. The expression 'The employer shall ensure that' falls short of stipulating the responsibility of the employer for the safety and health protection of the workers.

Article 4 (4) should also oblige employers to bear aspects of occupational health and safety in mind at the planning phase, so that these aspects can be incorporated in the construction plans. This applies in particular to equipment designed and built on the employer's premises.

2.3.5. Article 4 (5) should specify that Annex II not only serves as a guide but also sets out legally binding minimum standards in respect of workers. See the comments on Annex II below.

[1] [2] OJ No C 175, 4. 7. 1988, p. 22.

2.3.6. Article 4 should also provide for a partial or general ban on equipement being used for certain purposes in establishments.

2.4. *Article 5*

2.4.1. From the point of view of worker protection it is pointless to supply workers in all cases with full written instructions if they are of no relevance to health and safety. The aim must rather be to ensure, by means of written and oral instructions issued by the employer, that safety provisions are observed and the health and safety of workers is protected. The employer should therefore be obliged to adopt provisions for his establishment which cover all aspects of the protection of workers' health and safety. Written instructions should be included in these provisions.

2.4.2. Article 5 (2) should specify that the employer must also issue operating provisions for equipment already in use. The 'as far as possible' proviso should be deleted, since there is no plausible reason why the obligation to provide information about health hazards in operating instructions should not exist.

2.4.3. Article 5 (3) should expressly state that the occupational health and safety provisions for the establishment should refer to all factors specific to the establishment, e.g. the risk factors arising from the working environment, the work organization or any other specific circumstances.

2.4.4. The safety provisions for the establishment and adequate oral instructions should be in the languages of the workers concerned, insofar as the type of hazards so requires.

2.4.5. Article 5 should stipulate that the occupational health and safety provisions or instructions for an establishment should also apply to workers from outside firms.

2.5. *Article 6*

Article 6 (1) restricts the workers' right to be consulted since it relates solely to Annexes I and II. This right—involving the employer-worker consultations provided for this purpose—must be extended to all aspects relating to health and safety, including those not covered in the Annexes.

It should be made clear in the second indent of Article 6 (1) that the 'second-hand equipment placed on the market' refers to second-hand machines used in the undertaking.

Article 6 (2) should be amended so as to stipulate that the workers or their representatives may only appeal to the responsible authorities after they have given the employer an opportunity to remedy the shortcomings.

2.6. *Inclusion of operating provisions*

The following particular aspects of the use of equipment in undertakings should be dealt with in a new Article which could be inserted between Articles 5 and 6:

— demands on individuals (training of workers, instruction and supervision, powers of workers),

— use of equipment for its intended purpose (equipment must be used only for its intended purpose and in accordance with the operating and other safety instructions),

— use of protective equipment and equipment with a protective function (equipment may only be operated if the necessary protective equipment, equipment with a protective function and interlocks and couplings are used and are in good working order. These devices must not be bypassed or rendered ineffective),

— setting-up of equipment, running repairs and maintenance (work must not be started unless hazardous movements have come to a halt and the unauthorized, erroneous or unexpected activation of equipment or the triggering by stored energy of hazardous movements is precluded; appropriate operational and personal measures to cover exceptional cases),

— operation of warning devices (removal of the risk of unexpected hazardous movements; rules governing danger signals).

2.7. *Article 7*

Article 7 should provide for consultation of the Advisory Committee on safety, hygiene and health protection at work, the Economic and Social Committee and the European Parliament. This is necessary, because in legal terms amending the Annexes means amending the Directive. See also the comments on Article 14 of the Framework Directive contained in the Committee's Opinion of 28 April 1988.

2.8. *Article 8*

Article 8 (3) should provide for notification of not only the Advisory Committee on safety, hygiene and health

protection at work but also the Economic and Social Committee and the European Parliament.

2.9. *Annex I (old machines)*

2.9.1. At the moment Annex I is confined to machinery. The Committee therefore trusts that it will be extended speedily.

2.9.2. Even as far as machinery is concerned, Annex I is not suitable for safeguarding the safety and health of workers adequately. On the one hand, it is focused exclusively on accident hazards and ignores factors which induce illnesses (e.g. vibrations, radiation, noise and dangerous substances); and on the other hand, inadequate reference is made to the accident hazards themselves (e.g. explosion risks).

2.10. *Annex II (new machines)*

Annex II, which applies to new machines, contains only a non-binding list of features (see fourth paragraph of point 4 of the Explanatory Memorandum to the draft Directive). The Commission has explained in this connection that the purpose is to provide workers with greater protection than Annex I of the General Machinery Directive provides with regard to new machines. This aim of the Commission is to be welcomed. However, it cannot be achieved with the aid of a non-binding list. Therefore, the express purpose of the list in Annex II of the Use-of-Machinery Directive should be to bring about, where possible and by means of the criteria listed, a higher level of safety and health protection than that afforded by Annex I of the General Machinery Directive.

For the sake of the two machinery Directives' legal consistency, it should be clearly stated that Annex I of the General Machinery Directive is always to apply to new machines in conjunction with the Use-of-Machinery Directive. This is borne out by the stipulation in Article 8 of the General Machinery Directive that its provisions also apply to anyone constructing machinery for his own use.

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Directive concerning the minimum health and safety requirements for the use by workers of personal protective equipment [1]

(88/C 318/12)

On 23 March 1988 the Council decided to consult the Economic and Social Committee under Article 118 A of the Treaty establishing the European Economic Community on the abovementioned proposal.

The section for social, family, educational and cultural affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 September 1988, in the light of the report by Mr Schade-Poulsen, rapporteur, and Mr Aspinall, co-rapporteur.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted the following Opinion by a majority vote in favour and 2 votes against, with 3 abstentions.

1. General comments

1.1. In line with its earlier endorsement of the draft 'Framework' Directive [2], the Committee welcomes the Commission proposal which is likewise considered as a first valuable step at EC level towards improving the safety and health of workers, in this case as regards the use of personal protective equipment.

1.2. The Committee notes that the proposal is linked to the draft Directive on the approximation of personal protective equipment, introduced under Article 100 A of the Treaty which aims to establish an 'internal market' and which also requires the Commission to 'take as a base a high level of protection' in its proposals concerning health and safety.

The current proposal is based on Article 118 A of the Treaty which aims at harmonizing conditions in the working environment 'while maintaining the improvements made'. In this connection, the involvement of the social partners, together with the development of appropriate collective or professional agreements and the implementation of additional measures provided for by the Directive, are all important.

1.3. It must also be stressed that risk prevention at the workplace remains a priority. This means avoiding or overcoming risks in the first place through collective and organizational means and methods, as set out in the proposal and explained in more detail in the 'Framework' Directive and in the 'First Individual' Directive on safety and health requirements for the workplace [3].

1.4. Both risk prevention and the optimal use of personal protective equipment require clear, understandable and up-to-date information and continuous training, for management and the workforce. This is especially the case as regards small and medium-sized undertakings which are increasingly widespread but sometimes under-resourced. The Commission might therefore consider providing special assistance to this category, and for the involvement of employers and workers in general, along the following lines:

— diffusion of Community information brochures and checklists on risk-assessment at the workplace and on the appropriate use and quality of protective equipment (building on the information appended to the draft Directive),

— promotion of relevant EC-sponsored training courses, distance and programmed learning 'packs', pilot projects, etc.,

— EC aid and guidance in training specialized personnel and in developing preventive group occupational medical services in this field.

1.5. In all this, the implementation stage of the Directive should be seen as an on-going process, monitoring progress made in the Member States, promoting additional measures in the light of proposals expressed by employers' and workers' representative organizations, and continuing to improve norms, especially where technical progress has been made or approximation has developed between the Member States, as set out in the parallel draft Directive on technical norms.

2. Specific comments

2.1. Articles 1 and 3 might usefully refer to Articles 5 and 6 of the 'Framework' Directive and to the 'First Individual' Directive as a whole in order to clarify the priority given to avoiding or overcoming risks by collective means of protection.

[1] OJ No C 161, 20. 6. 1988, p. 1.
[2] See Committee Opinion (OJ No C 175, 4. 7. 1988, p. 22-28) on the 'Framework' Directive.
[3] See Committee Opinion (OJ No C 175, 4. 7. 1988, p. 28-29).

2.2. The definitions of 'workplace' and 'worker' given in Article 2 should be modified so as to conform to recognized definitions of the International Labour Organization (ILO), as already proposed by the Committee in its Opinion on the 'Framework' Directive [1].

The Committee also urges the Commission to introduce in the near future specific Directives dealing with services and agencies excluded under Article 2, especially as regards equipment used by emergency and rescue services.

2.3. Article 3 should be modified to read as follows: 'Personal protective equipment shall be readily available and be used ...'. Translation of this article also needs revision.

2.4. The last two indents of Article 4 should be modified to read as follows:

'— take account of the worker's known state of health,

— if possible, incorporate components which can be used and adjusted by the operator when required, in accordance with Articles 5 and 12 of the 'Framework' Directive.'

2.5. With regard to the assessment of personal protective equipment proposed under Article 5 and based on the guidelines appended to the Directive, it might be borne in mind that such equipment does not always guarantee protection. For example, in the case of 'protective clothing'—i.e. 'clothing to provide protection from chemicals' or from 'radioactive contamination'—the risk remains of workers being exposed to such contamination on the protective clothing itself when it is removed.

Article 5 should also state that, when choosing personal protective equipment, the employer needs to cooperate closely with the workers and/or their representatives as required under Articles 5 f, 9 and 10 of the 'Framework' Directive.

Article 5 (1) (a) should be modified to read as follows:

'(a) Analysis of risks which cannot reasonably be avoided...'

[1] Committee Opinion (OJ No C 175, 4. 7. 1988, p. 22), *op. cit.*, point 2.2.

2.6. It should be noted that the Framework Regulations proposed in Article 6, to be established by individual Member States, both indicate the flexible nature of the Directive and will also constitute a vital means for identifying the circumstances, activities and sectors of activity in which personal protective equipment is needed and which might require additional measures and attention as provided for by the Directive.

With regard to Article 6.3, the proposal should stress that all relevant national organizations officially representing management and workers are to be consulted by the Member States.

2.7. Article 7.1 should be modified in order not to give the impression that the list of measures to be implemented through collaboration between the 'social partners' is exhaustive. It also needs to make explicit that workers should be involved regarding decisions not to take collective measures of protection.

Article 7.2 should make it clear that the employer's responsibility in question is that of taking the necessary measures for the protection of the safety and health of workers, as set out in Article 5.1 of the 'Framework' Directive.

The requirements under Article 7.3 should be consistent in all language versions, in compliance with the original (French) text.

2.8. As already stated in its Opinion on the 'Framework' Directive, the Economic and Social Committee, as well as the European Parliament, ought to be consulted on any amendments to the Directive and be kept informed at the practical implementation stage described in Articles 8 and 9.

2.9. The Annexes to the Directive should be considered as useful guidelines and should be kept under constant review, in accordance with Article 6.

In this connection, whilst recognizing that Annex II provides a non-exhaustive list, the Committee would recommend the inclusion of other examples such as visors for eye and face protection, elbow pads for arm protection, localized skin protection (e.g. adhesive tape or plaster), protective clothing for medical, laboratory and first aid services, etc.

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Directive concerning the minimum safety and health requirements for work with visual display units (fourth individual Directive within the meaning of Article 13 of Directive ...) [1]

(88/C 318/13)

On 23 March 1988 the Council, acting in pursuance of Article 118 A of the EEC Treaty, asked the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Committee instructed its section for social, family, educational and cultural affairs to prepare its work on this matter. The Section adopted its Opinion on 14 September 1988. The rapporteur was Mr Meyer-Horn and the co-rapporteur was Mr Etty.

The Committee adopted the Opinion set out below at its 258th plenary session (meeting of 28 September 1988) by 71 votes to 56, with 1 abstention.

1. Introduction

1.1. The present draft Directive is based on Article 118 A of the EEC Treaty and the Commission's programme concerning safety, hygiene and health at work [2]. The Directive is the fourth of the individual Directives covering a specific subject announced in Article 13 and Annex I of the proposed Framework Directive of 7 March 1988 [3]. It relates to minimum safety and health requirements in respect of work with visual display units (VDU).

This fourth individual Directive dealing with VDU work should therefore be taken together with the framework Directive. The latter Directive sets out a large number of general health protection provisions applicable at the workplace which are complemented by the minimum requirements concerning VDU work set out in the present draft Directive. The two Directives thus both apply together to the field of VDU work.

1.2. In order to take account of the specific nature of small and medium-sized undertakings it is pointed out in the Explanatory Memorandum that there is to be a certain flexibility as regards the implementation of the Directive, depending on the size of the undertakings concerned. Account is also to be taken of 'socio-economic factors'.

As was already observed in the Committee's Opinion on the framework Directive [4], this does not in any way imply that different safety and health protection requirements in respect of VDU work are to be laid down depending on the size of the undertakings concerned. The flexible approach with regard to the minimum requirements should rather be embodied in accompanying measures designed to make it easier for small and medium-sized undertakings to observe the minimum requirements and the timetable for their introduction.

1.3. In drawing up the draft Directive the Commission consulted the Advisory Committee on safety, hygiene and health protection at work set up under Council Decision 74/325/CEE of 27 June 1974. The Opinion of that Committee is however not published.

1.4. Under the draft Directive Member States are to adopt the necessary legal and administrative provisions by 1 January 1991 are to inform the Commission of the standards and technical specifications adopted and are to report to the Commission on the practical application of the Directive, indicating also the views of the two sides of industry. The Commission is to be assisted by a committee, which still has to be set up, in the implementation of the supporting measures set out in the draft Directive.

It would be advisable for that committee to include expert representatives from the interest groups concerned, in particular employers and employees. The Advisory Committee on safety, hygiene and health protection at work should also be involved, as should the Economic and Social Committee and the European Parliament, when amendements are being made to the Directive (see ESC opinion, points 2.12 and 2.13) [5].

2. General comments

2.1. The following observations complement those set out in the Committee's Opinion on the framework Directive [6]. The views expressed in the latter Opinion also apply to safety and health protection in respect of VDU work.

The draft Directive sets out minimum health and safety requirements for VDU operators. The Committee welcomes the fact that this proposal will bring about a further improvement in the health protection afforded to workers in some Member States where comparable national provisions do not exist or fall short of the proposed minimum requirements. The Committee also welcomes the proposed retention of higher levels of health protection in other Member States where the rules which go further than the proposed minimum requirements have been in force for many years.

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[1] OJ No C 113, 29. 4. 1987, p. 7.
[2] OJ No C 28, 3. 2. 1988.
[3][4] ESC Opinion of 28 April 1988 (OJ No C 175, 4. 7. 1988, p. 22).
[5] OJ No C 175, 4. 7. 1988, p. 22.
[6] OJ No C 175, 4. 7. 1988, p. 28.

2.2. The draft Directive contributes towards the standardization of the health protection provisions applicable to VDU work. As a result of the broad definition given in the draft Directive, future EC provisions will apply to all VDU work: this is to be welcomed. However, care should be taken to ensure that the draft Directive covers VDU units and their accessories but not other equipment such as calculating machines with displays.

2.3. The provisions laid down in the Annex to the draft Directive cover only a few fields of application. They do not cover, for example, the following areas: working document, food rests, the lay-out of equipment, space needed for working with VDU, and the whole body of regulations relating to the minimization of exposure to X-rays, low-frequency electromagnetic fields, ultraviolet rays, electrostatic charges and ultrasound. Moreover the essential requirements set out in Annex I are far from complete.

Furthermore, the authors of the draft Directive use terms such as 'adequate', 'flexible arrangement', 'psycho-social factors' and 'aspects of health' without being more precise. Generally speaking, framework legislation ought preferably to refer in respect of these terms to the definitions given in European standards.

2.4. The draft Directive does not regulate the restrictions or breaks in the working time of persons doing monotonous VDU work on a continuous basis. Such restrictions are standard practice in some Member States; in the Netherlands, for example, they are recommended by the industrial safety inspectorate. In the Commission's view the restrictions or breaks in working time for VDU users may be regulated by national collective agreements.

2.5. The draft Directive does not contain any provisions with regard to the problem of harmful radiation which may occur in open-plan offices containing many VDU, especially where these are older models. According to the EC Commission the level of such emissions is far below the level of emissions from—much larger —television screens (though the TV viewer does sit further away from the screen than a VDU operator). It would, nonetheless, be appropriate to make a precautionary reference in the draft Directive to radiological protection standards. In Germany, for exemple, there is paragraph 4.1.12 of the safety rules for office workstations equipped with a VDU [ref. GUV (statutory accident insurance) 17.8] which regulates protection against X-rays. The establishment of minimum European requirements on the effects of electrostatic charges, ionizing radiation and electromagnetic waves is not yet possible given the current level of scientific knowledge in this field.

However, stringent limits have already been introduced in Sweden in all three areas. The experience of public administrations in Sweden shows that such limits can be adhered to. Manufacturs have adjusted to the new requirements for the Scandinavian market. In the Federal Republic of Germany, strict regulations concerning X-rays are already in force.

3. Comments on the individual Articles

3.1. Under Article 1 (2) and Article 2 the draft Directive is to apply to any user of a VDU. This field of application is approved. It ensures that there are no differing interpretations and rules at national level.

Steps must be taken to ensure that display screens used outside offices (e.g. those used at airports and reception deks and for industrial control systems and monitoring operations in hospitals and in energy supply and distribution undertakings) are also covered by the present Directive.

The definition of a display screen given in the Directive is questionable insofar as it embraces all electronic screens, e.g. pocket calculators, digital watches, cash registers. This cannot be the intention, hence the need for a narrowing of the definition.

3.2. For the sake of clarity, reference should be made in Article 4 to the consultation of workers or their representatives, as provided for in Article 8.

There are some discrepancies in the different language versions of Article 4 (1). The German version speaks of *Gefahren* (dangers) whilst the French version speaks of *risques* (risks).

A list of the various safety and health risks should perhaps be given in national framework regulations or standards.

The term 'insofar as is reasonably possible' should be replaced by 'insofar as this is necessary to protect the health of workers' (see the Committee's Opinion in respect of Article 7 of the Commission Directive) [1].

3.3. It is not clear whether the qualification 'insofar as is reasonably possible' in Article 6 (adaptation of workstations to comply with the minimum requirements) is meant in a financial or technical sense, particularly as reference is also made in point 9 of the Annex to the need to take account of the 'psycho-social factors' applicable to work using VDU. In this case, too, the

[1] OJ No C 175, 4. 7. 1988, p. 28.

qualification should be linked to health-protection requirements for employees or other objective constraints, such as the depreciation period for the equipment, with reference being made to the framework Directive.

3.4. There is a need to make a more precise reference in point 9 of the Annex ('operator/computer interface') to the stipulation in Article 7 (2) that workers are to be informed on 'all aspects' of 'physical or mental problems'.

3.5. A reference should be made in Article 8 to the stage in the preparations at which workers or their representatives are to be consulted on the measures taken pursuant to this Directive which concern them directly. As regards definitions, attention is drawn to the Framework Directive of 27 November 1988 and the Committee's Opinion on the draft Directive (point 2.2) [1].

3.6. An ophthalmological examination of workers prior to commencing work at a workstation equipped with a VDU is stipulated in the first paragraph of Article 9. This is endorsed, although it will cause problems in some Member States with a less-developed medical infrastructure and—as in other areas of work—may have social consequences for workers found to be unsuitable because of eyesight problems. It would seem doubtful whether these consequences could be avoided by stipulating that these initial examinations should be carried out only at the request of the worker.

It would therefore be desirable if the minimum Community rules provided for regular examinations, as is the case in some Member States, allowing a certain flexibility in those countries whose medical services are not yet adequate.

In order to make matters clearer, it should be stipulated in the second paragraph of Article 9 that employers have to pay the cost of special glasses for workers, if the ophthalmological examination shows that such glasses are necessary for VDU work, bearing in mind that the focussing distance involved is different to that for normal reading.

3.7. It is not clear from the wording of Article 11 (1) whether the 'laws, regulations and administrative provisions' to be enacted by the Member States are necessary in cases where, safety regulations and standards have been drawn up by professional associations or standards institutions and have virtually the same power as laws. It also appears necessary to specify in Article 11 that, under the draft Directive, the two sides of industry retain the right to adopt more far reaching provisions in collective agreements with regard to safety and health at work.

[1] OJ No C 175, 4. 7. 1988, p. 22.

4. Comments on the Annex on minimum requirements concerning work with visual display units (VDU)

4.1. The Annex setting out the minimum requirements contains a number of misleading or unclear terms. The Commission should add to the Annex a technical report. This technical report should preferably be drawn up in collaboration with the European Committee for Standardization (CEN) by a standards committee, on which the two sides of industry would play an active role.

4.2. In the German version of paragraph 1 (display screen) the rules are mandatory ('shall be'), while other versions, such as the Spanish, say 'should be'; the different versions should be aligned.

Also, the German *versetzbar* is not the same as *mobile* in the French version, which means *beweglich* in German (and implies that it can also be rolled).

As well as being rotatable, tiltable and movable, the screen should also be of a certain minimum size so as to display a sufficient amount of information.

It should also be explicitly laid down that the screen should not emit rays that according to the state of the art are harmful to health (see 2.5).

4.3. The rule in the first paragraph of point 2 that the keyboard is to be separate from the screen would mean that portable VDU with directly incorporated keyboards could no longer be used in an office. Instead of referring to a 'position avoiding muscle fatigue' and a 'space (...) sufficient to provide support for the hands and arms' it would be better to have a drawing showing an ergonomically designed VDU workstation (see Appendix), as in point 4.6.8 of the previously mentioned German safety standard GUV 17.8 or in the *Digest of Working Conditions* No 5/1986 of the International Labour Office (ILO).

If the keyboard is to be separate from the screen it would also be a good idea to refer to standards which (as in GUV 17.8, point 4.3.1) lay down that the keyboard must not slip or slide about.

4.4. Likewise, the directions about the work desk in paragraph 3 should be supplemented by the drawing mentioned in 4.3, which is reproduced in the Appendix.

The rule that the document holder shall be situated on the desk on the same level as the screen is inappropriate. It would be better to have a rule like that in point 3.4 of DIN standard 66234, whereby the document holder is to be situated in such a way as to minimize the need to maintain awkward positions for long periods and frequently make unnecessary adjustments when changing one's glance.

4.5. The rule in paragraph 6 that neither the screen nor the operator should be facing a window is unnecessary, especially as glare from windows can be cut out or reduced by using specially coated windows or blinds. It would be better to have a rule which specifies the result to be achieved: VDU workstations should be so designed that sources of light, such as windows or lamps, and brightly coloured fixtures or walls cause no direct glare and, as far as possible, no disturbing reflections on the screen.

4.6. The rule in paragraph 7 on the noise of the printer should be supplemented, because there are soundproofed printers, or laser printers which are virtually silent, and there should be some clarification about the noise level which does disturb concentration or understanding of speech. If it is decided to express this in decibels, it should be borne in mind that the noise level at the workplace should not exceed 55 dB (A) for predominantly mental tasks, or 70 dB (A) for simple or predominantly mechanized office tasks and comparable tasks; the noise level produced by office machinery, as recorded at the workstation, should accordingly be less than 70 dB (A).

4.7. The rule about 'an adequate level of humidity' in paragraph 8 should refer to precise standards. It is doubtful whether these can be laid down throughout the Community.

The Directive should therefore only lay down that in air-conditioned workplaces not only the rules for temperature but also those for humidity should be laid down at national level.

4.8. The 'principles of software ergonomics' and 'psycho-social factors' mentioned in paragraph 9, which are to be taken into account when writing programmes, should also refer to national or European standards. These should include principles of 'dialogue management' and guidelines for the adaptation of the properties of computer programmes (dialogue systems) to the intellectual characteristics of the people working with them, having regard, in particular, to cases where workers carry out monotonous procedures on a continuous basis.

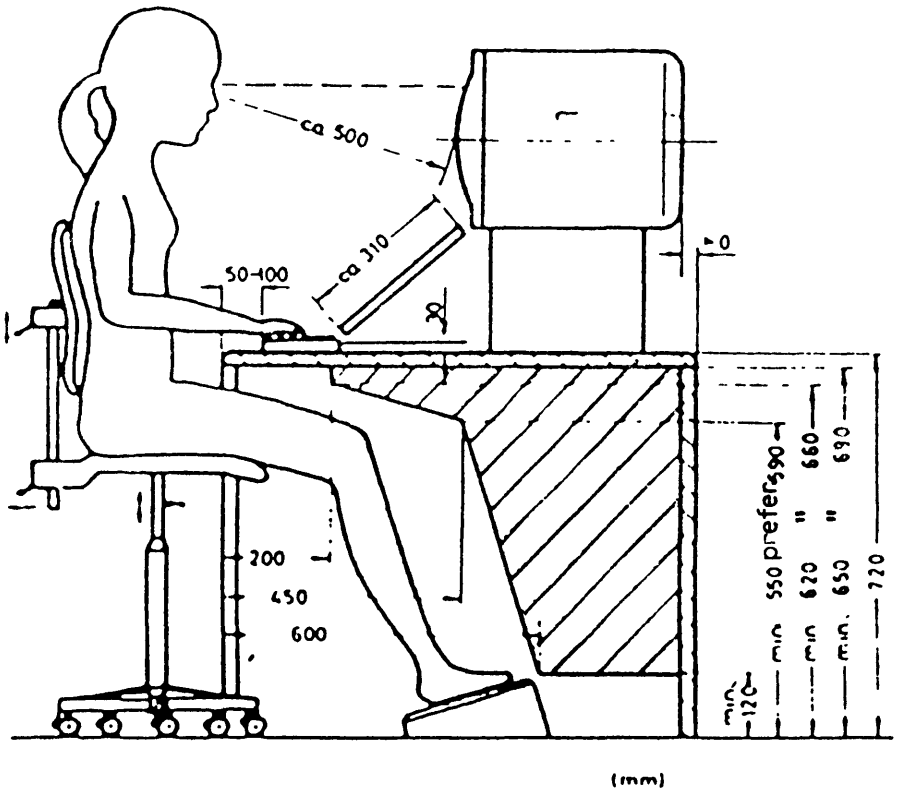
Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

APPENDIX



Example of an ergonomically designed VDU workstation with a working top which cannot be adjusted in height and with the workstation's equipment arranged one behind the other

Opinion on the proposal for a Council Directive on the minimum health and safety requirements for handling heavy loads where there is a risk of back injury for workers (fifth individual Directive within the meaning of Article 13 of Directive ...) [1]

(88/C 318/14)

On 23 March 1988, the Council decided to consult the Economic and Social Committee, under Article 118 A of the Treaty, on the abovementioned proposal.

The section for social, family, educational and cultural affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 September 1988. The rapporteur was Mr Vidal.

At its 258th plenary session (meeting of 28 September 1988) the Economic and Social Committee adopted the following Opinion by 79 votes to 41, with 9 abstentions.

1. General comments

1.1. We endorse the Commission's proposed Directive, which is in line with the Directive on the safety and health of workers at the workplace, but would make the following comments.

1.2. Back complaints are one of the main causes of unfitness for work in the Community. It would be useful to define the scope of the Directive, as it should not be limited to the lumbar vertebrae. Handling heavy loads can cause injury to many organs and other parts of the body: back complaints are amongst the most serious, however.

1.3. The present proposal deals exclusively with the risk of back injury. In addition to weight, the reference terms used to describe loads include dimensions, type of manual handling, balance and method of carrying.

Perhaps the Commission ought, therefore, to reconsider the title of its proposal, the term 'heavy' being somewhat restrictive.

The adjective 'heavy' could in fact be omitted throughout, for there are other aspects of loads, apart from their weight, which may present a risk of back injury, as listed in Annex I.

If it is rechnically impossible to change the title, the term should at least be used in inverted commas ('heavy').

1.4. We would stress that all workers should be covered by the Directive, irrespective of the sector or size of the firm in which they work.

Nevertheless, we do agree that special consideration should be given to the special features of small and medium-sized firms and to how developments in national legislation in this area will affect them. Member States should actively strengthen forms of association and cooperation between small and medium-sized firms, with the aim of reducing occupational hazards.

1.5. The proposal is a major step forward in Community terms, in that it lays down minimum requirements for the carrying of loads which may cause back injuries to workers.

The recommended measures are wide-ranging, allowing Member States to adopt a flexible approach. Much work remains to be done, however, to deal with converging or diverging applications of the Directive in its various stages. The two sides of industry have a crucial role to play both in the initial phase of application and in the development of further measures.

These measures can only be developed if a genuinely dynamic outlook is adopted: priority should be given to informing and training workers, and also to raising awareness of the problem in schools.

2. Specific comments

2.1. The final part of the fourth recital (page 6 of the Commission document) should be reworded as follows

'..., a Directive on protection against the risks resulting from the handling of 'eavy' loads which present

[1] OJ No C 117, 4 5 1988, p 8

characteristics and/or conditions which make them unsuitable for handling and which may be a risk to the safety and health of workers.'

2.2. A new recital should be added, reading:

'Whereas the objectives of the proposed Directive seek primarily to reduce or eliminate processes which present a risk of back injury, thereby limiting, wherever reasonably practicable, the handling of loads without mechanical assistance.'

2.3. Another new recital should be added, reading:

'Whereas the manual handling of loads entails a variety of risks which may affect a number of organs and/or parts of the body and, in many cases, may cause back or other injuries.'

2.4. The seventh recital should be reworded in the following way:

'Whereas, in order to guarantee a high degree of protection for workers, which is vital for their safety and health, they should be provided with regular information and training with regard to risks.'

2.5. The eighth recital should be reworded to read:

'... must be strengthened in a genuine endeavour to prevent risks and enhance safety at work.'

2.6. The ninth recital should be reworded as follows:

'Whereas employers must keep abreast of technical and technological progress, particularly in the fields of ergonomics and medicine, ...'

3. Comments on the various provisions of the Directive

3.1. *Article 1*

We propose that the Article be amended to read:

'This Directive, which is an individual Directive within the meaning of Article 13 of Directive (...), lays down the minimum health and safety requirements for workers for the manual handling of loards which, owing to their unfavourable ergonomic characteristics and/or conditions, may present risks, resulting chiefly in back complaints for workers.'

3.2. *Article 2*

'The Member States shall take the necessary measures to ensure that, as far as possible, employers provide mechanical assistance for the handling of loads, in order to protect the safety and health of workers.

The Member States shall, on the basis of current technical and scientific criteria, establish the minimum ergonomic safety conditions for the handling of loads wherever it is not possible to provide mechanical assistance.'

3.3. *Article 3*

The two indents (paragraph 1) should be listed the other way round, i.e. in the order in which they appear in Annex I.

3.4. *Article 4*

Should be amended to read:

'Employers must take account of the individual characteristics of the workers when organizing manual handling work on the basis of Annex I. Workers should have regular medical check-ups.

The frequency and advisability of medical check-ups should be established either by the doctor at work, or by the employer, or by the worker.

The constant values set out in Annex IV are purely indicative and are not intended as maximum weights or binding requirements. Their purpose is to help to establish a set of ergonomic criteria for handling loads.

As ergonomic handling conditions will probably vary from one Member State to another, differences could be classified upon entry into each 'receiver' Member State in accordance with its own national laws.

To this end a 'Table of Equivalence' of ergonomic conditions for handling loads in all Member States will be drawn up, for use in each Member States.'

3.5. *Article 5*

The first indent of Article 5 (2) should be reworded as follows:

'— the weight of a load under the conditions described in Annex I.'

A third paragraph should be added:

'3. The Member States shall promote the surveys and measures required in order to be able to mark and label loads.'

3.6. *Article 6*

Amend to read:

'Workers or their representatives must participate, alongside the employer, in drawing up the measures to be taken pursuant to this Directive, in accordance with national practice.'

3.7. *Article 7*

Article 7 (1) should be worded as follows:

'The Commission shall adapt the annexes of this Directive to take account of technical and technological progress and the development of international regulations or specifications on the manual handling of loads under the conditions laid down in Article 1, always in accordance with ergonomic principles.'

3.8. *Article 8*

Article 8 (3) should be amended to read:

'... on the handling of loads under the conditions laid down in Article 1, indicating the views of the employers and workers. The Commission shall inform the Economic and Social Committee and the tripartite committee.'

3.9. *Annex I*

The last indent of paragraph 1 should be read:

'— located in a position requiring it to be held or manipulated at an unsuitable or insufficient distance from the trunk, or with the trunk in a harmful position.'

3.10. *Annex III*

The title and wording of Annex III should be amended as follows:

'Title: Workers referred to in Article 4 (1)

The worker may be at risk if he/she is:

— insufficiently informed or trained,

— wholly or partly unable, physically or physiologically, to carry out the task in question,

— too small or tall for the task,

— inappropriately dressed, including unsuitable footwear,

— working in unfavourable environmental conditions.'

3.11. *Annex IV*

The following additional annex could be useful:

'*Annex IV — Indicative values for loads to be handled by the individual worker*

The values contained in the following table apply to the lifting and carrying of loads without external assistance. The weights given are purely indicative (they are neither maximum weights, nor are they binding), as there are other factors involved in the handling of loads, in addition to the characteristics of the load itself (outlined in Annex I), such as age, physical and physiological characteristics of the worker, stamina, distance involved and the number of repetitions of handling. The Commission should take these additional factors into consideration, with a view to completing the Directive.

Table

	Adults		Pregnant women	Young people aged 16-18	
	Men	Women		Men	Women
Infrequent Mass (kg)	50	25	10	20	12
Force (N)	490	245	98	196	118
Regular Mass (kg)	25	10	5	15	9
Force (N)	245	98	49	148	88'

Done at Brussels, 28 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

APPENDIX

to the Economic and Social Committee Opinion

Rejected amendments

The following amendments were rejected during the debates, but received at least 25 % of the votes cast.

Point 1.3.

Delete paragraphs 2, 3 and 4 of point 1.3.

Reason

The definition proposed in the text of the Directive is sufficiently clear and precise.

Result of vote

For: 49, against: 72, abstentions: 7.

Point 3.4.

Delete.

Reasons

The second paragraph lays down a general and sweeping procedure for medical check-ups without any criteria for establishing frequency or the degree of risk involved.

The third paragraph seeks to establish some presumed ergonomic criteria which are completely at odds with the Directive's aims and of no practical use.

The last two paragraphs present hypotheses which are practically impossible to apply in practice.

Result of vote

For: 53, against: 75, abstentions: 3.

Point 3.11, Annex IV

Delete.

Reasons

It is obvious from the text itself: the weights given are not maximum loads, nor are they binding, nor do they have any known technical justification, they have to be considered and modified in the light of various circumstances and conditions and, last of all, it is not known whether they are of any practical use or can be applied.

Result of vote

For: 45, against: 69, abstentions: 7.

Opinion on the proposal for a Second Council Directive on the coordination of laws, regulations and administrative provisions relating to the business of credit institutions and amending Directive 77/780/EEC [1]

(88/C 318/15)

On 7 March 1988 the Council decided to consult the Economic and Social Committee under Article 57 of the Treaty establishing the European Economic Community on the abovementioned proposal.

The section for industry, commerce, crafts and services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 7 September 1988. The rapporteur was Mr Pardon.

At its 258th plenary session (meeting of 29 September 1988) the Economic and Social Committee adopted the following Opinion by 105 votes to 10, with 3 abstentions.

1. General comments

1.1. *Purpose and basis of the proposal for a Directive*

The aim of the proposed Directive, which is based on Article 57 (2) of the Treaty, is to make it easier for credit institutions to exercise the right of establishment and the right to provide services freely. It seeks to harmonize, where necessary, the laws, regulations and administrative provisions in force in the Member States so as to ensure the safety of deposits, the protection of savings and, more generally, the sound operation of credit institutions in the general interest.

1.2. *The need for consistent and complete protection of savings*

The principles of the single licence and of home country supervision are to be implemented both in respect of business conducted via a branch established in another Member State and where services are provided without the establishment of a branch. The rules to protect savings must therefore be consistent and complete throughout the Community and in each Member State individually.

1.3. *Aspects of the protection of savings*

Two aspects can be distinguished:

a) the supervision of credit institutions authorized to take deposits from the public in the form of repayable funds and to use such funds for their own account to make loans and investments and engage in other types of banking transaction;

b) supervision of the use of the public's savings by any economic operator in any other form including securities.

1.4. *The supervision of credit institutions, the subject of te proposal for a Directive*

1.4.1. Directive 77/780/CEE and the current proposal for a Directive deal exclusively with the continuous supervision of credit institutions in all the Member States, the aim being to promote proper management of these institutions and prevent as far as possible any failure or loss of confidence.

1.4.2. Mutual recognition of licences and supervisory systems, allowing a single licence valid throughout the Community to be granted, and application of the principle of home country control will require, simultaneously with implementation of the second Directive, the implementation of:

— a specific Community law on own funds, i.e. the proposal for a Directive on the own funds of credit institutions,

— a specific Community law on solvency ratios, i.e. the proposal for a Directive on the solvency ratios of credit institutions,

— a specific Community law on controlling large exposures, i.e. the Commission recommendation of 22 December 1986 (87/62/EEC, OJ No L 33, p. 10),

— a specific Community law on deposit guarantees, i.e. the Commission recommendation of 22 December 1986 (87/63/EEC, OJ No L 33, p. 16).

If these last two recommendations are not applied by the Member States, we think they will have to be replaced by Directives.

The Commission feels that mutual recognition does not require prior harmonization of the conditions relating to the reorganization and winding-up of credit institutions. The matter will however be pursued (fourth recital).

As a matter of urgency, the Council should adopt the Directive concerning freedom of establishment and

[1] OJ No C 84, 31. 3. 1988, p. 1.

freedom to provide services in the field of mortgage credit.

1.4.3. The Commission maintains that harmonization of these various matters is enough to ensure application of home country control.

This harmonization is necessary and must be accomplished within the planned timescale.

1.4.4. Supervising the financial position of credit institutions must cover everything to do with their liquidity, solvency and profitability, so as to ensure that creditors are protected.

Approval and supervision solely by the appropriate authority in the home country means that there must be close collaboration between the authorities in each Member State. These must keep each other informed, cooperate with each other, especially when defining standards for supervision, coordinate their actions and try and reach some degree of agreement on the most appropriate techniques to use to ensure the level of safety which is essential.

1.5. *Action needed in connection with securities*

The protection of savings must constitute a coherent package. We call upon the Commission to see that this is so, so that there are no gaps in the system of protection.

The Council should, as a matter of urgency, adopt the Directive concerning provision of investment services to the public. Particular care must be taken to see that any provisions which overlap both Directives are consistent and relevant in each case.

Operators not licensed and supervised must not be allowed to draw on the public's savings. If existing legal instruments prove inadequate, the Commission should formulate proposals to guarantee complete protection of the public's savings.

1.6. *Basic principles to be respected by the proposal for a Directive*

The present proposal for a Directive should uphold and promote certain basic principles, e.g. with regard to:

— the protection of savings,

— equal conditions of competition,

— fairness in commercial transactions,

— consumer protection,

— respect for the social legislation in force in each of the Member States.

1.6.1. Protection of savings — Penalties

The text of the Directive should make it clear that only credit institutions which are licensed and subject to scrutiny in one of the Member States are permitted to take deposits from the public in the form of repayable funds.

All the Member States should be required to prescribe penalties for infringements of this rule, applicable immediately an unlicensed institution bids for deposits from the public.

1.6.2. Equal conditions of competition

The Directive allows Member States to establish stricter standards than those laid down in Articles 3, 4, 9, 10 and 14 in relation to credit institutions authorized by its competent authorities (sixth recital). This provision could give rise to 'reverse discrimination' to the detriment of credit institutions licensed in the states in question.

Such a situation will distort inter-firm competition. It does not seem to be compatible with the idea of a single market without internal frontiers. It could be avoided through greater harmonization.

1.6.3. Fairness in commercial transactions

1.6.3.1. The Member States generally have laws to ensure fairness in commercial transactions. The purpose of these is on the one hand to ensure that competition between economic operators is not distorted and on the other to ensure that consumers are protected.

1.6.3.2. Here we are concerned in particular with laws requiring that prices be clearly displayed, and in more general terms, that the conditions under which sales are made or services provided are made clear; also, laws preventing improper conditions being attached to sales or services, laws banning the offering of financial inducements and laws banning the door-to-door sale of certain products, etc.

1.6.3.3. Rules of this kind may impede the free provision of services, but they are necessary to protect the public interest. They are the expression of the needs and aspirations of a specific socio-economic interest group. In the absence of coordination, harmonization and approximation of this area of the law, the existing rules will remain in force and will be applicable not only to branches of credit institutions in the country in which the law applies, but also to providers of services, even if licensed in their Member State of origin and even if the services provided appear on the list appended to the proposal for a Directive.

1.6.3.4. The purpose of the draft Directive is to approximate the laws of the Member States relating to the supervision of credit institutions: this covers coordination of the conditions for access to the business and coordination of the minimum rules governing the continuous administrative supervision of credit institutions in the exercise of their business from the point of view of liquidity, solvency, the suitability of their managers and major shareholders, the minimization of risk in the reinvestment of deposits (Art. 10, equity participations) and good administrative and accounting mechanisms.

1.6.3.5. The draft Directive must not — as this is not its purpose — have the effect of overriding the individual Member States' laws on fairness in commercial transactions, or of forming an obstacle to what constitutes honest trading practices recognized as such by law or jurisprudence.

1.6.4. Protection of consumers

1.6.4.1. The civil law of the Member States generally includes rules designed to uphold public policy: legal incapacity, family and matrimonial law—in some cases designed to protect family assets—the prohibition or regulation of gambling and betting, the prohibition of usury etc. Some of these measures may be backed up by penalties.

1.6.4.2. There are also laws of a mandatory or prohibitory nature, to protect the interests of 'consumers' or private persons who enter into contracts. Here too these laws take account of the socio-economic background against which they are applied; they therefore exhibit considerable disparities which the Commission recognizes to be legitimate, as Article 15 of the Directive on consumer credit [1] allows the Member States to adopt more stringent provisions.

1.6.4.3. The concept of the public good, applied to financial supervision, which can only be invoked by the Member States with regard to economic agents not licensed as credit institutions or services not listed in the Directive (recital No 11), is unconnected with the concept of public policy in civil and criminal law and the concept of mandatory and prohibitory, or directly applicable, laws in international civil law. Contract-law provisions of this kind, are designed to protect the interests of the party deemed to be more vulnerable or less well informed. Although it is true that they can constitute an obstacle to the free provision of services, the interests in question require the continuation in force of the substantive laws of the Member States designed to protect the more vulnerable or less well informed party to a contract.

1.6.4.4. The only solution is for the provisions of the Convention on the law applicable to contractual obligations, signed by the Member States in Rome on 19 June 1980, to be implemented in all the Member States, at the latest to coincide with the entry into force of the draft Directive. The purpose of these provisions is, inter alia, to prevent the consumer being deprived of the protection of the mandatory provisions of the law of the country in which he/she is habitually resident (Art. 5 of the Convention). In this situation the case can only be heard in the courts of the country of residence (Convention between the Member States of the European Economic Community concerning legal jurisdiction and the execution of civil and commercial decisions, signed in Brussels on 16 September 1968, Article 13 as amended by Article 10 of the Convention of 9 October 1978).

1.6.5. Respect for the social legislation of the Member States

With regard to working conditions, it is assumed that the implementation of the Directive and in particular the application of the principle of home country control will, in the present state of Community law, not interfere with the application of the social legislation of the host country. For instance a bank branch will be subject to the social legislation of its host country (e.g. requirement to establish a works council and provide that council with information) even if its head office is located in another Member State and is therefore subject to supervision by the authorities of that State.

1.7. *Indispensable nature of the principles concerned*

The Directive can only be approved if the principles under discussion here are respected and genuinely implemented.

The Commission should provide assurances in this respect and amend the recitals and operative part of the draft Directive accordingly to ensure that there is no possible ambiguity in such a delicate matter.

Once in force, the effect of the Directive will be to oblige each Member State to recognize the financial supervision exercised over credit institutions in other

[1] Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States in relation to consumer credit.

Member States to be equivalent. It will also prevent the Member States—where services appearing on the attached list are concerned—from invoking the public interest to apply national laws on the supervision of economic operators to all persons or firms carrying out that activity on their territory. By adopting the Directive in Council, the Member States will be deemed to have recognized once and for all that, where licensed credit institutions and the listed services are concerned, the public interest, as defined in their domestic administrative provisions covering the supervision of credit institutions, is adequately protected by the rules, which are deemed to be equivalent, in force in this particular field in the other Member States.

1.8. *Social aspects*

1.8.1. Irrespective of the question of respecting the social legislation of the Member States (see point 1.6.5 above), we are particularly concerned about the effect the Directive may have on jobs in credit institutions.

But the jobs issue is quite separate from the Directive being prepared. The right of establishment and the right to provide services freely are principles which are applicable right now. The Directive's only aim is to regularize and regulate the implementation of these principles, which are directly and immediately applicable, in the interest of legal security.

The examination of this proposal does, however, provide an opportunity to tackle this problem, which is causing disquiet among those concerned.

1.8.2. The Commission maintains that increased cross-border business by credit institutions will have a very beneficial effect on employment in the banking sector.

Restructuring will probably be necessary. Rationalization will no doubt be needed, as will higher levels of qualification.

Vocational training programmes could be adopted, after consultation, to promote better adapted qualifications.

1.8.3. But for all that, it is essential for management and labour to be informed and consulted and for the social dialogue to be stepped up, so as to find the best way of solving the employment problems that are likely to arise [1].

[1] See ESC Opinion of 27 April 1988 on the creation of a European financial area, especially point 3.6.2 (OJ No C 175, 4. 7. 1988, p. 1).

1.9. *Taxation*

In the ESC Opinion of 27 April 1988 on the creation of a European financial area, concern was expressed that certain financial activities would be shifted elsewhere solely because of differences in Member States' tax laws. Such moves will be even easir when the proposed Directive comes into force.

An effort must be made to harmonize the whole taxation system. Pending this, we would repeat our view that general introduction of a withholding tax applied at a uniform rate in all the Member States to financial income of any kind may be a solution.

1.10. *Conclusions*

Providing that the principles and conditions listed above are respected, and subject to the following comments, the draft Directive, once amended, will be a suitable instrument for the realization of the internal market in the field of supervision of credit institutions in the interests of depositors and savers.

2. Specific comments

2.1. *Article 1: Definition*

The Directive uses the same definition as the First Directive (77/780/EEC): a credit institution is 'an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account'.

Given the emergence of new financial products and intermediaries, a broader definition than the 1977 one is needed in order to protect savers and consumers and maintain equal conditions of competition. It should include firms which offer credit without taking deposits or other repayable funds from the public.

The general principle should be that all firms carrying out identical operations must do so in accordance with identical relevant rules.

2.2. *Article 3: Initial capital*

2.2.1. The constitutive elements of the 'capital' are not defined. The Commission should propose some harmonization here.

2.2.2. The proposed text seems to reflect the difficulties in determining initial capital.

Article 3 (1) lays down a relatively high but quite arbitrary figure.

Article 3 (2) allows an exception whose aim is understandable: to take account of institutions whose scope of business is restricted by law or statute, so as not to provoke social or economic difficulties or deprive them of the right of establishment and freedom to provide services which they are allowed under the Treaty.

However, the limits to this exception are unclear.

2.2.3. The solution could be for the minimum initial capital to be fixed in an objective manner, taking special account of:

— the credit institution's proposed programme of activities,

— the size of the organization needed to implement this programme, and

— the time needed for the institution to be operational and for its performance to offset initial expenditure.

2.2.4. Any extention of the programme of activities or of organizational facilities could be grounds for a corresponding increase in capital.

2.2.5. For this to happen, the supervisory authorities would have to collaborate closely to establish the criteria for determining the minimum capital necessary and, coordinate, under the aegis of the Commission, the standards they apply in this area in such a way as to bring about their harmonization.

2.3. *Article 4: Identity and suitability of shareholders or members holding a qualified participation* [1]

The definition of suitability—laid down in Article 3 (2) of Directive 77/780/EEC—is within the jurisdiction of the Member States.

The criteria chosen by the Member States should be coordinated, and until this can be achieved, the supervisory authorities should keep each other informed of the criteria adopted as part of the cooperation expected of them.

2.4. *Article 5: Single banking licence and abolition of endowment capital*

A single banking licence is only acceptable if, in addition to the current Directive, Community legislation is enacted in the following areas: own funds, solvency ratios, control of large exposures and deposit guarantees. The drafting of the Community law on deposit guarantees will need to take account of the new allocation of responsibilities among the banking supervisory authorities.

2.5. *Article 7: Third country institutions*

2.5.1. When a third country credit institution sets up a subsidiary in a Member State, this subsidiary is a company covered by laws of the Member States and is therefore subject to Community law. Consequently, it is entitled to benefit from the right of establishment and the right to provide services freely throughout the Community.

The subsidiary will thus have access to the whole European market through being approved in a single Member State.

Such a situation in the opposite of that encountered by EEC credit institutions, who experience often insurmountable difficulties when seeking access to the baning market of certain third countries or who are allowed either to operate in certain geographical areas or to carry out only a limited number of operations.

2.5.2. The Commission proposes that a request for a licence from a subsidiary of a third country credit institution (or the acquisition of a holding in an EEC credit institution by non-EEC interests) should not be considered until it has been verified that the third country in question grants reciprocal treatment. If it does not, examination of the request would be suspended. The aim of this procedure is to bring about the opening of negotiations with the third country or countries concerned on setting up a fair system of reciprocity.

The proposed procedure is approved bearing in mind the Community-wide effect of the single braking licence and its considerable economic importance.

2.5.3. Subsidiaries of third country credit institutions which already have a licence to operate in a Member State should keep their licences subject to the terms of

[1] See Article 1: qualified participation means direct or indirect holding which amounts to 10 % or more of the capital or of the voting rights or which enables the exercise of a significant influence within the meaning of Article 33 of Council Directive 83/349/EEC.
This refers to the Seventh Council Directive of 13 June 1983 based on Article 54 (3)(g) of the Treaty concerning consolidated accounts: 'Article 33. First paragraph. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking ...'.

Article 4 of Directive 77/780/EEC, and should not be allowed to benefit from the Directive being proposed until reciprocal treatment has been granted.

2.6. *Article 8: Initial capital and own funds*

2.6.1. It is essential that a credit institution should always have sufficient own funds in relation to the risks incurred.

2.6.2. If these own funds are sufficient to meet the solvency ratios, there seems to be no point, from the point of view of banking supervision, to require that they be at least equal to initial capital, especially if the institution's programme of activities has been restricted and its organizational needs reduces (see point 2.2.3).

2.6.3. In the course of a firm's activities, the question of maintaining initial capital is a matter of company law, and not of banking supervision.

2.7. *Article 9: Supervision of holders of qualified participation* [1]

Reference is made here to the comments on 'suitability' in point 2.3 (Art. 4).

The same problem is raised by the definition of 'prudent and sound management'. The criteria chosen by the Member States should be coordinated, and until this can be achieved, the supervisory authorities should keep each other informed of the criteria adopted as part of the cooperation expected of them.

2.8. *Article 10: Participations*

2.8.1. The question here is of qualified participations amounting to more than 10% of own funds in a firm which is neither a credit institution nor a financial institution, nor the subsidiary of a credit institution whose activity is a continuation of banking or its auxiliary services.

2.8.2. The holding of such participations on a permanent basis as an investment is allowed by law in some Member States but prohibited in others.

2.8.3. Article 10 would oblige all Member States to recognize licences granted by those Member States whose laws do allow participations to be held—provided that the latter remained within the limits laid down in Article 10 of the Directive—but it would not oblige those Member States whose laws prohibit the holding of participations to allow credit institutions under their supervision to hold such participations.

2.8.4. Such a situation would provide yet another deplorable example of reverse discrimination (see point 1.6.2).

2.9. *Article 11: Sound administrative and accounting procedures; adequate internal control mechanisms*

This provision should be read in conjunction with Article 3 (6) of Directive 77/780/CEE. This requires licence applications to be accompanied by a description of the business activities envisaged and the organizational structure of the institution.

As stated above (points 2.3 and 2.7), the appraisal criteria should be aligned more closely. Consequently, they should be examined by the competent authorities.

2.10. *Article 12: Host-country responsibilities*

2.10.1. Article 12.1 extends the list of information required to be provided to the competent authorities under Article 7 (1) of Directive 77/780/CEE.

This extension of cooperation is welcomed.

2.10.2. Notwithstanding the principle of home-country control, pending eventual coordination the competent authorities of the host Member State remain responsible under Article 12 (2) for the supervision of credit institutions' liquidity. The host Member State retains sole responsibility for measures arising from the implementation of monetary policy.

2.10.2.1. Reference is made here to the ESC Opinion on the creation of a European financial area and in particular to point 2, general comments.

2.10.2.2. This clause is of a provisional nature:

— until the instruments for measuring liquidity have been coordinated, as regards the supervision of liquidity, and

— until a common monetary policy based on the existence of a central body has been brought into being, as regards measures resulting from the implementation of monetary policies.

2.10.2.3. We are pleased that measures remaining the responsibility of the host Member State must not embody discriminatory or restrictive treatment based on the fact that the credit institution is authorized in another Member State.

2.10.3. Under Article 12 (3) the competent authorities of the host country may also take the necessary measures to require credit institutions authorized in

[1] See note 1, p. 46.

other Member States to make sufficient provision against market risk in respect of operations on securities' markets in their territory.

2.10.3.1. This is a very important exception to the principle of home-country supervision of branches.

2.10.3.2. It is up to the Commission to study techniques for delimiting positions in securities, foreign exchange, interest-rate risks, etc. and to co-ordinate the work of the competent authorities, so as to bring about, eventually, a harmonization of supervision techniques which would enable the competent authority in the home country to exercise overall control.

2.10.3.3. At all events the text of the Directive should stipulate that any measures adopted in this area by the competent authorities of the host Member State must not embody discriminatory or restrictive treatment based on the fact that the credit institution is authorized in another Member State.

2.11. *Article 14: Professional secrecy*

This provision reinforces those contained in Article 12 of Directive 77/780/CEE.

The Directive's professional secrecy provisions do not in any way invalidate the powers of the Member States' criminal courts in this field.

Generally speaking, the Directive should not lead to any modification of Member States' criminal legislation, especially as regards penalizing violations of tax legislation. The criminal, criminal procedure and tax legislation in force in each of the Member States must continue to apply to all economic agents, whether established or not, operating in the area of the Member State's law where such legislation is applicable.

2.12. *Article 15: Sanctions*

Competent authorities which impose sanctions under Article 15 should inform the competent authorities in countries where branches of the credit institutions in question are based.

2.13 *Article 16: Scope of mutual recognition*

2.13.1. Credit institutions may benefit from mutual recognition if they meet the following two requirements:

— they are authorized and supervised by the competent authorities of their home Member States, according to the provisions of the banking Directives,

— they undertake activities which come within the agreed list in the Annex.

2.13.2. This list seems fairly complete. It lists those transactions which form the basis of banking activities.

2.13.3. However, this provision does not affect voluntary legal or statutory restrictions imposed on credit institutions by their private or public owners or guarantors, limiting their freedom to engage in the activities listed. The following should also be considered as permissible forms of voluntary restriction within the meaning of the Directive: measures which laws and statutes permit a Member State to adopt in favour of autonomous public corporations as part of overall government policy or policy relating to public enterprises (e.g. in order to protect the state budget or enable the enterprise in question to fulfil its objectives; also, the 'limited territory' principle and operating restrictions imposed on savings banks).

2.13.4. The existence of a list does not mean that all credit institutions are obliged to carry on the activities enumerated.

Neither does the list in itself prevent credit institutions from carrying on other activities. Clearly, if the other activity in question is the subject of specific rules, these will have to be observed. It is equally clear that this other activity may be monitored by the banking supervisory authority if it is liable to place at risk the assets entrusted to the credit institution. This is, after all, the reason for the existence of prudential controls.

2.13.5. A credit institution licensed in a Member State engaging in non-listed business will not enjoy mutual recognition as defined by the Directive in preparation, but its right of establishment and freedom to provide services will not be otherwise affected. A non-licensed institution engaging in listed business will be in the same situation.

In such situations the host Member State can, in relation to the exercise of the right of establishment and the freedom to provide services, require adherence to specific provisions of its national laws or regulations on the part of institutions not authorized as credit institutions in their home Member State and with regard to activities not mentioned in the list, provided that on the one hand such provisions are compatible with Community law and seek to protect the public good and that such institutions or such activities are not subject to equivalent legislation or regulation in their home Member State (see eleventh recital).

Paradoxically this could mean a non-licensed institution being subject to fewer formalities (see Art. 17 and 18) than a licensed one.

2.13.6. Article 16 (2) introduces the concept of a 'banking group'.

2.13.6.1. The Commission has envisaged a situation where certain activities are carried on by specialized subsidiaries (leasing, factoring, dealing in securities, mortgage credit etc.).

2.13.6.2. These subsidiaries come within the ambit of consolidated supervision Directive 83/350/CEE, but are not credit institutions within the meaning of Directive 77/780/CEE.

2.13.6.3. However, the single licence and home country supervision, a principle established by the Directive currently in preparation, may be extended to these subsidiaries if the following conditions are met:

— the parent undertaking or undertakings are authorized as 'credit institutions' in the Member State by whose law the subsidiary is governed,

— the parent undertaking or undertakings hold 90 % or more of the shares in the subsidiary,

— the parent undertaking or undertakings have declared that they jointly and severally guarantee the commitments entered into by the subsdiary,

— the subsidiary is included in the consolidated supervision of its parent undertaking, or of each of its parent undertakings, in accordance with Directive 83/350/CEE.

2.13.6.4. With regard to the first condition, what will happen if the parent undertakings are each licensed in a different Member State?

2.14. *Article 17: Conditions to be met by credit institutions wishing to benefit from mutual recognition with regard to the right of establishment. Procedure to be followed by home country authorities and in dealings between authorities of home country and host country*

2.14.1. A credit institution wishing to establish a branch in another Member State is required to notify the authorities of its home Member State.

The authority appraises the application and if the outcome is favourable communicates within three months of notification the information it has received.

It must be ensured that the appraisal process does not compromise the fundamental freedom of establishment which is enshrined in the Treaty.

The three-month deadline seems too long.

2.14.2. Before the branch of the credit institution commences its activities, the competent authority of the host Member State has three months following receipt of the communication to prepare for the supervision of the institution (see Art. 19) and if necessary to decide, in the interest of the public good, to prohibit the credit institution from engaging in some of the activities envisaged, where the conditions of authorization in its home country do not preclude such activities, but those activities are not contained on the list in the Annex.

Here too it must be ensured that the host country's right to appraise the application does not compromise the fundamental freedom of establishment enshrined in the Treaty.

2.15. *Article 18: Conditions to be met by credit institutions wishing to benefit from mutual recognition with regard to the freedom to provide services. Procedure to be following by home countries authorities*

A credit institution wishing to exercise the freedom to supply services in the territory of another Member State for the first time is simply required to notify the competent authorities of the home Member State of the activities included on the list in the Annex which it intends to undertake.

2.16. *Article 20: Powers of the Commission with regard to technical amendments*

2.16.1. The power, in accordance with certain procedures, to make 'technical amendments' to the Directive in preparation has been conferred on the Commission. These 'technical amendments' are listed as follows:

— extension of the activities on the list mentioned in Article 16 and set out in the Annex,

— the amount of initial capital laid down in Article 3,

— the list of categories of institution referred to in Article 3 (2),

— the thresholds set in Article 10,

— the fields in which the competent authorities must exchange information, as enumerated in Article 7 (1) of Directive 77/780/CEE.

2.16.2. The Commission submits its draft to a committee of representatives of the Member States. It adopts the measures envisaged if they are in accordance with the opinion of the committee.

2.16.3. If there is disagreement, the Commission submits its proposal to the Council.

2.16.4. If the Council has not acted within a period laid down by itself, which may not exceed three months, the measures are adopted by the Commission.

2.16.5. The power thus granted to the Commission to act on its own seems excessive.

Done at Brussels, 29 September 1988.

The Chairman
of the Economic and Social Committee
Alfons MARGOT

Opinion on the 'GATT/Uruguay Round' negotiations: the current situation and future prospects from the viewpoint of relations between the European Community and the main industrialized countries, the developing countries and the State-trading countries

(88/C 318/16)

On 31 May 1988 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its rules of procedure, decided to draw up an Opinion on the current situation and the future perspectives of the GATT/Uruguay Round negotiations.

The section for external relations, trade and development policy, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 16 September 1988. The rapporteur was Mr Romoli.

At its 258th plenary session (meeting of 29 September 1988) the Economic and Social Committee adopted the following Opinion unanimously.

General considerations

1. Over the last few months the Study Group on GATT/Uruguay Round has been monitoring the Uruguay Round negotiations. EC Commission officials have given informal briefings on specific subjects covered by the negotiating groups; the views of representatives from contracting countries such as India, Brazil and the United States have been heard; the Study Group Rapporteur and Chairman have had contacts with the Director-General of the General Agreement on Tariffs and Trade (GATT) and Secretariat; GATT has been covered at ESC meetings with the countries of the European Free Trade Association (EFTA) and at a public hearing of the European Parliament's External Relations Committee; and the Secretariat of the external relations section has also kept the study group regularly supplied with extensive documentation from the specialized press.

2. Major progress has been made since the Punta del Este declaration on the general objectives of the new round and during the sectoral negotiations which took place in 1987. This progress is pleasing both in terms of the volume of work carried out, and because of the active contributions of many delegations in determining the goals and procedures to be followed on the huge number of specific problems under negotiation.

The current far more difficult stage began in January 1988. This covers the negotiations proper, the submission of demands, and the offering of concessions by the individual contracting parties.

A ministerial mid-term review is scheduled for the beginning of December. This will assess progress so far, providing a political boost for the further negotiations which should in principle finish by the end of 1990.

In the run-up to this mid-term review, which is to take place in Montreal on 5 December, the Committee feels it useful to give the Commission and Council its views on the negotiations, as they have emerged during the study group's discussions. The aim of this is to help provide a clearer picture of the European Community's standpoint in relationship to the other participants.

3. As the Committee is also currently preparing a separate Opinion on the negotiations in the agriculture sector, the present Opinion will not be covering this subject. The Committee would, however, note that progress on the agricultural aspects is crucial to the final success of the Uruguay Round.

4. In general, the Committee fully endorses the Commission's overriding concern to ensure that the negotiations are treated as a single package as pledged in the declaration of Punta del Este.

The negotiations must always be seen as one whole, in which the various problems and aspects remain closely interlinked. The sub-division of the negotiations into fourteen specific subjects (plus the separate topic of 'services') is no reason for pursuing separate paths, with varying aims and timescales for arriving at piecemeal solutions (although some of the main negotiating parties actually seem to want this).

One of the most serious dangers facing the negotiations is that they will become over-technical and will concentrate on specific individual topics. This would lose sight of the main goal, which is to distribute benefits and obligations fairly between the parties, thus securing a general increase in international trade and cooperation.

5. For this reason too, the Committee feels it best to consider the sectoral aspects of the negotiations within an overall assessment of the Community's current and future relations with industrialized countries, developing countries and State-trading countries.

It is vital to fix priorities in the discussions. Above all, it is vital to ascertain whether an effective and clear line is being taken on the basic issues, the differences in approach and the most deeply-rooted sources of conflict between the main partners.

If not, there is a serious danger of pursuing compromise solutions of a technical nature, or — worse still — merely glossing over the issues without getting to grips with the contradictions and conflicts of interest: these would resurface immediately the negotiations are over, as they unfortunately already have in various areas covered by the Tokyo Round.

The European Community's relations with the industrialized countries

6. The Community's relations with Western industrialized nations are covered by the GATT, based on the principles of non-discrimination ('most-favoured nation' clause) and reciprocity.

The lowering of tariff barriers has been given priority in past negotiations, and the satisfactory results achieved (particularly in the Tokyo Round), as reflected by a general fall in the average level of customs duties in industrialized countries, leave little scope for further significant reductions in the present negotiations.

Some problems remain concerning the reduction of particularly high tariffs, uniform classification of customs headings, customs valuation, consolidation of certain concessions etc., but the path ahead for the relevant negotiating group does not seem too difficult.

7. A much more complicated problem is how to restore order in the jungle of non-tariff barriers which impede trade between industrialized countries too. Technically it should not be difficult (though it will be laborious) to decide which non-tariff measures should receive priority. However, it is well known that more access to other countries' markets is the key problem in relations with many countries, including some of the most highly developed (such as Japan).

The Committee stresses here that, despite the undoubted efforts and definite progress made, Japan's trade surplus (particularly *vis-à-vis* the Community) and the serious difficulties of penetrating the Japanese market remain one of the most serious problems facing GATT. Japan's efforts to develop its domestic market and imports must be stepped up, and not simply continued.

8. A glance down the list of negotiating groups reveals a number which seek to define relations between the industrialized and the developing countries. This applies to the negotiations on tropical products, textiles, safeguards, anti-dumping and export licences.

9. Other subjects have a direct bearing on present and future relations between the developed countries (i.e. between the European Community, the United States, Japan and the other industrialized market-economy countries).

Take, for example, subsidies, State aid and discriminatory public procurement policies; or the failure to respect the 'standstill' commitments and the tendency of some leading nations to push through national legislation (such as the United States Congress's recent Omnibus Trade and Competitiveness Act of 1988) in breach of multilateral commitments) or again, the common tendency to seek bilateral solutions and voluntary agreements outside GATT.

If viewed in the longer term, these 'grey area' agreements to some extent represent a transitional phase in the difficult process of opening up national economies to which the new rules of international competition do not apply at present.

However, some of the 'grey area' voluntary restraint agreements are a reaction on the part of importing countries to certain industrialized or newly industrializing countries' aggressive trade policies in certain sectors.

10. Nevertheless, all this creates a climate of uncertainty and unease in international trade as a whole, and systematic efforts are needed to dispel it.

11. In these circumstances, it is important that the credibility of the GATT system should be restored, first and foremost by strengthening the dispute settlement procedure. A special negotiating group is tackling this subject.

However, there does not yet seem to be sufficient consensus among the major nations or among the developing countries on how to make the dispute settlement procedure more effective in tackling the more politically charged disputes.

12. Little progress has also been made in revising the GATT Articles. The deluge of proposed amendments risks distracting attention from the really important points. The EC Commission, for example, would like to see amendments to Article XII (restrictions to safeguard the balance of payments of developing countries), Article XVII (State-trading enterprises), Article XXV (non-application of the agreement between contracting parties), and the Protocol on provisional application.

However, the real problem is that in the absence of consensus or political will, the provisions of the treaty (which are inevitably general) are not implemented precisely and uniformly, and too often receive a biased interpretation.

Attention should focus here on 'how' the rules should be applied, rather than believing that a radical review of the treaty would everything.

13. Unfortunately views, opinions and theories differ in the most developed nations on these points. In fact, these differences are only partly caused by differing ways of thinking and are very often simply a cover for the defence of national or sectoral interests.

14. For all these reasons, some in-depth clarification must be made and a preliminary consensus must be sought between the main industrialized nations on a few basic issues.

For example, one question which should be asked is how the principle of 'comparative advantage' in the production of goods and services, which some people feel should always have priority, can exist alongside the principle of the right to defend national interests (contained in various articles of the GATT) when threatened by aggressive foreign competition.

In the Committee's view, it is unreasonable always to expect strict application of the principle of comparative advantage if serious tensions in international economic relations are to be avoided.

Both at international level and within GATT, much of the current talk about subsidies, national aid, the protection of domestic markets, and piecemeal solutions outside the multilateral framework, stems precisely from the fact that this conflict of principles has never been cleared up.

At the centre of this problem is the survival of major sectors (steel, shipbuilding, petrochemicals, agriculture and many more) which are widely felt to be strategic.

15. Hence the paradox of looking for piecemeal or compromise solutions within GATT, when questions of principle have not yet been tackled or resolved

Even the reasonable proposal to add a safeguards code to Article XIX of the GATT, containing obligations on notification and transparency, in order to bring all protectionist measures under the GATT umbrella, would have little chance of success unless the main trading partners could agree on the basic premises

underpinning it. The EC could give a lead here by systematically giving formal notification of its measures.

16. At all events, the safeguard clause of Article XIX —which is non-selective and provides for degressive temporary measures—is ill-equipped to tackle unfair anti-GATT practices by one or more countries (subsidies for industrial products, obstacles to the import of specific products, etc.). These practices are generally an attack on specific production sectors and can be highly damaging to whole areas of Community industry. In such circumstances, specific voluntary restraint measures against the countries engaging in these practices are perfectly legitimate and should be pursued for as long as the practices which occasioned them continue. However, such measures should be transparent, and in particular should be notified to GATT.

17. The Committee considers that it is up to the main industrialized nations to start discussing the underlying issues and clarifying the future course of international economic relations in order to give the multilateral trade system regulated by GATT a solid foundation. This is the only way to prepare the ground for an effective package of rules to govern relations between the industrialized world and the developing countries.

The European Community should play an active part in promoting these clarifications, which are political rather than technical, and should take place at the highest level.

Here the Committee would refer back to its Opinion on the impact of current United States economic and political developments on the Uruguay Round and international trade, adopted on 2 July 1987.

This stated that:

> 'The time has therefore come for the European Community to propose to the United States that a frank comprehensive assessment be made of the situation with a view to working together for a new international equilibrium based on solidarity and sincere reciprocity.
>
> These discussions—which should later involve all major Western countries—should not be limited to trade issues, i.e. to bringing the Uruguay Round of the GATT multilateral negotiations to a successful conclusion. They should also cover the international monetary system and the search for a healthy balance between demand for and supply of raw materials and agricultural products.'

18. The Committee now reiterates this recommendation, at the same time specifying that this does not mean establishing *ad hoc* rules for the main industrialized nations, but rather clarifying the principles which should form the basis of an effective multilateral GATT system. Clearly it would have been preferable to clarify matters before the Uruguay Round began; but the decision can be put off no longer. The installation of the new United States administration following the forthcoming elections could provide a good opportunity for a careful assessment.

The Committee regrets to note that the adoption of the new Trade Act bij the United States Congress is not a step in the right direction, and confirms the fears voiced in the Committee Opinion of July 1987. The Trade Act encourages a protectionist attitude worldwide, and favours neither the retention of the status quo requested by the instigators of the Uruguay Round nor the multilateralism which is the cornerstone of GATT. It should prompt the Community seriously to reconsider the significance and prospects of the present negociations.

In the meantime the Commission of the EC should give immediate consideration to the adoption of similar provisions mirroring the United States legislation.

The Committee notes that trade problems cannot be divorced from monetary problems, and that a currency's excessive depreciation (whether voluntary or not), or conversely its excessive overvaluation, often has a far greater effect than customs duties.

Progress in the GATT negociations should go hand in hand with progress in setting up a satisfactory international monetary system.

The European Community's relations with the developing countries

19. The negociations on the subjects which directly affect relations between industrialized and developing countries involve some complex considerations.

Firstly, the spontaneous moves by all developing countries to join an informal 'group of developing countries', regardless of their economic and social conditions and their prospects for the future, makes it difficult to pinpoint the best solutions for their individual problems.

Part IV (Trade and Development) of the GATT provides for more favoured differential treatment of the developing countries by the developed nations, who are

to renonce the principle of reciprocity and encourage exports from those countries.

A general consensus is already emerging that the poorest countries (e.g. sub-Saharan Africa) should receive more favoured treatment, and specific aid programmes are also proposed for these countries.

However, points of uncertainty remain.

It is well known, for example, that the newly industrializing countries of South-East Asia have no external debts and do in fact have large surpluses in their trade balances of payments. This has been partly due to the linkage of local currencies to the United States dollar at the time of its most serious depreciation, thus forcing up exports. Mention should also be made of the policies pursued by these countries in specific sectors where massive subsidized investments allow them to profit from the most up-to-date plant while pay and social security remain at rock-bottom levels.

It is worth asking whether it is right for the GATT negociations to treat these countries in the same way as Latin American and other nations which have heavy debts and are obliged to follow extremely tight economic policies. See the information report of the ESC on African, Carribbean and Pacific (ACP) States' indebtedness (1987).

20. It should be noted that all the ACP States spontaneously joined the Group of Developing Countries (headed by a few individual countries), without any distinction being made for their preferential links with the European Community.

The ACP States are concerned about possible erosion of the advantages they have won from the Community, and continually seek the Community's solidarity. It would be well if they could extend their recognition of the Community's role to the Uruguay Round negotiations.

21. Some progress has been achieved in the discussions of the various negotiating groups, for example over the liberalization of tropical products. However, they are many more points causing dissent and conflict between the contracting parties and the work is proceeding very slowly. Some of the divergences have been inherited from earlier negotiations (textiles, agricultural products, safeguard measures, anti-dumping, etc.).

Other problems concern subjects not tackled in previous rounds, such as the trade-related aspects of intellectual property rights, trade-related investment measures (on which the developed countries rightly insist, though with little success so far), and the service sector, about which the developing countries are extremely wary.

Here too, many of the main problems stem from the failure to clarify a few basic issues which continue to cloud relations between industrialized and developing countries.

22. For example, nothing has been done about the problem of social dumping—the absence (or very low level) of basic rights and safeguards for local workers in many developing countries.

The Geneva negotiations should take account of the stands of the International Labour Organization (ILO) on this, which have been endorsed by the European Community and cited by the Economic and Social Committee on a number of occasions.

The legitimacy of a 'comparative advantage' in production costs obtained by such means and at such a price to question.

23. Further study is also needed of the policies of some raw material producing countries where export prices are much higher than the very low (in some cases non-existent) prices charged to local industries for the same materials.

Many raw material producing countries have for many years faced difficulties arising mainly from the drop in world prices. However, this must not blind us to the existence of practices which run counter to GATT rules. These involve petrochemical and high-energy products in certain Middle Eastern countries, discriminatory two-tier pricing, hoarding of scarce raw materials (such as non-ferrous metals), closing of markets, dumping of semi-processed products, etc. These practices are pursued not only by many developing countries, but also by various industrialized or newly industrializing countries such as Japan, South Korea, Taiwan and Brazil.

24. Consideration has also not been given to the restrictive line adopted by certain well-known cartels of producer countries [not only Oil producing and exporting countries (OPEC)] which for decades have been abusing dominant positions won by restrictive trade practices.

The negociating group on natural resource-based products is bogged down by a number of outstanding problems and by the uncertainties which exist within the

industrialized nations themselves. Discussion continues on the inclusion of energy products, access to fisheries resources, and the situation of certain specific products.

The industrialized nations have even failed to agree hitherto on the classification criteria for developing countries which are to benefit from the Generalized System of Tariff Preferences (GSP). This is a further reason for considering their position vis-à-vis the developing countries.

25. The developing countries are generally very clear about one basic point: the call for wider and freer access to Western markets.

However, there is total silence on the other side of the coin: their own closed markets and the existence of entrenched practices which impede imports, impenetrable licensing systems, quotas, monetary constraints and sky-high customs duties, which cut these countries' markets off—albeit with some exceptions—from normal free-market trade.

It is clear that this lop-sided interpretation of the purpose of the GATT negotiations is unacceptable.

The European Community and the other Western nations should keep reminding the developing countries of the commitment made at Punta del Este. Although worded in the negative, its meaning was clear:

> 'the developing countries will not be expected to make contributions which are inconsistent with their individual development, financial and trade needs'.

In positive terms, this means that those developing countries which have already achieved high levels of growth, production, consumption and financial equilibrium, are duty-bound to assume their share of obligations, i.e. to liberalize their national markets in line with the benefits which they already enjoy and could use to increase international trade.

These countries should be explicitly excluded from the provisions of part IV of the GATT covering concessions, privileges and exemptions from the obligations of the agreement.

26. There remains the critical problem of the third world countries whose external debts are so heavy that their servicing now eats up a large proportion of the countries' export revenue.

In the current GATT negotiations, these countries find it quite impossible to open up or integrate their economies any further into the international economic system.

The communiqué issued by the seven leading industrialized nations at the Toronto summit of 19-21 June contained a statement on this point.

27. In such a situation, the Committee feels that there are two courses open to the European Community and the other industrialized nations.

The first is to increase the powers and efficiency of the GATT system, by defining precise codes of conduct and coherent technical procedures, so that the system can carry out its role as the guardian of multilateralism and defender of the need for open and liberalized international markets.

The aim must be a coherent, efficient system which functions smoothly.

It must be borne in mind here that many developing countries will not be able to adhere to the new rules immediately. A longer term approach will be required if these countries' structural imbalances and more especially their debt problems are to be ironed out.

An efficient and balanced GATT system of standards and codes, geared to a changing world, will be a vital tool for checking the full commitment of each developing country—which will need support and financial aid from the Western world—to a free market economy underpinned by GATT.

28. The GATT negotiations are thus crucial if the Western industrialized nations are finally to define a more global and coherent policy towards the international economy, calling on all countries who are in a position to do so to accept their respective responsibilities.

While the GATT system can hardly be blamed for the world economic crisis, the contribution which a healthy increase in trade could make to world growth has been severely underestimated in the last few decades.

For a long time the prescriptions for economic recovery imposed by the International Monetary Fund (IMF) on developing countries seeking financial assistance, have inexorably led to a squeeze on domestic consumption and a cut in imports and hence investment. It would

have been more sensible to try and achieve balance by increasing these countries' trade (export/imports) and investment, within the international economic system.

29. Turning to the second course of action, the Committee is pleased that for some time now the EC Commission has been calling for closer ties between various multilateral bodies; a more strongly structured GATT organization, with higher-level representation from its contracting governments, can take its place alongside the IMF and the World Bank. The policies of these latter institutions also need to be revised and revitalized.

The Committee therefore calls on the Council and the Commission to press ahead with the action in hand. The long-term strategy of the Western nations must be a steady revival of the developing countries' economies, thereby freeing them from the serious structural problems which for a number of reasons have held them back for so long.

Gradual integration of these countries, their economies and their citizens into the world trade network can provide an enormous boost to world economic growth, and the European Community can play a full role in this.

The State-trading countries' participation in the GATT negotiations

30. The Uruguay Round negotiations are being attended by Czechoslovakia (a founder member of the General Agreement), Poland, Rumania and Hungary in their role as members and the People's Republic of China which has applied to be reinstated as a founder member of GATT. Bulgaria has recently made a formal application for GATT membership. The Soviet Union has for the time being merely expressed a general interest in closer ties with GATT, as part of the present leadership's greater openness on economic matters.

31. The Punta del Este declaration of September 1986 makes no explicit reference to the problems posed by the participation of the State-trading countries in GATT's multilateral system though it is widely realized that there are major problems in both theory and practice. The State-trading countries which belong to GATT became members between 1967 and 1973; their admission was due first and foremost to political reasons, that is to say the wish that economic and other relations with those countries should be improved. Right from the start, however, it was realized that the General Agreement was hardly suitable, in its original form, for regulating trade relations with countries whose economies are differently structured and have nothing in common with the principles of a market economy.

The protocols governing these countries' accession to GATT (Poland 1967, Rumania 1971 and Hungary 1973) have selective safeguard clauses which make it possible, for example, to introduce trade quotas and to initiate anti-dumping and countervailing procedures if the State-trading countries engage in distorting trade practices.

32. However, no detailed consideration has ever been given to the main problem: the fact that most of these countries' foreign trade has so far been in the hands of an impenetrable centralized monopoly in which the authorities have full latitude to issue special authorizations or bans, or vary volume, prices, licences and currency reserves, according to needs. Under these circumstances duties and tariffs become meaningless and it is not possible to observe the 'most favoured nation' principle, i.e. the non-discrimination of freely competing countries and operators on which GATT's multilateral system is founded.

In addition, the fact that prices are not determined by supply and demand and the means of production are publicly owned means that there is no point in these countries' authorities pledging not to grant subsidies or aid. It is also difficult for other countries to apply anti-dumping procedures or countervailing duties, because domestic prices and production costs cannot be used as a benchmark.

These difficulties have come clearly to the fore in recent years.

33. In other words, the participation of State-trading countries in GATT has so far been little more than an empty gesture. It has been tolerated above all because of the political importance of maintaining a forum for talking with these countries, while waiting to see what the future brings.

However, the prospect of active participation in GATT by populous economic and political powers such as the People's Republic of China and the Soviet Union means that the problem cannot be ignored any further.

34. Hence the need to start considering whether GATT can be adapted structurally to these requirements. If so, one possible suggestion might be to set up a relevant working group straight away as part of the Uruguay Round negotiations.

For example, a transitional phase should be established for the candidate countries before they become full members. Periodic checks should be made on the pro-

gress achieved, and on whether commitments have been respected.

Care must also be taken to ensure that the mass entry of the State-trading countries does not lead to the political exploitation of relations between GATT members.

35. Alternatively, consideration could be given to the possibility of focusing on specific machinery or agreements for interfacing between differently structured economies (as in the case of incompatible computers).

In other words, is GATT the only possible instrument for tackling these problems?

36. At all events, the aim will clearly have to be a sharp increase in trade and closer relations and cooperation, especially in view of the greater openness now emerging between the EEC and the Comecon countries, which must be encouraged.

The Committee thinks that the European Community should give this subject its maximum attention. In particular, the Commission should make an in-depth analysis of possible solutions, thereby triggering off a constructive debate within the Community institutions.

Done at Brussels, 29 September 1988.

Additional considerations

37. The Opinion has not considered several points on which there is a broad consensus within both the Community and the Organization for economic Cooperation and Development (OECD):

— extension of GATT to services (respecting the key principles of reciprocity, transparency, treatment on a par with nationals, non-discrimination), and the definition of rules for consumer protection with particular reference to services provided by the liberal professions),

— respect for intellectual property, through the creation of a 'general agreement' which newly industrialized countries and some developing countries would also sign.

This General Agreement should cover not only counterfeiting but also trade marks, designation of origin, geographical indications, designs and models, copyright, patents etc.

38. Lastly, the Committee stresses that there must be no conflict between the completion of the Community's internal market by 1992 and its participation in the Uruguay Round. The advantages of the internal market for our GATT partners must be reciprocated (especially with regard to standards, public procurement, and the lifting or globalization of quotas).

The Chairman

of the Economic and Social Committee

Alfons MARGOT

Opinion on the proposal for a Council Regulation on structural improvements in inland waterway transport

(88/C 318/17)

On 1 June 1988 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for transport and communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 14 September 1988. The rapporteur was Mr Tukker.

At its 258th plenary session (meeting of 29 September 1988) the Economic and Social Committee adopted the following Opinion by a large majority with one abstention.

1. Introduction

1.1. As long ago as April 1979 the Directorate-General for Transport (DG VII) produced a working document (VII/181/79) containing a proposal for reorganizing inland waterway transport in Western Europe. That proposal was almost identical to the one now submitted by the Commission, apart from one important point. In 1979, DG VII wanted to make it possible to refuse, during periods of severe crisis in inland shipping, operating licences for new vessels or vessels imported from other countries. The Federal Republic of Germany refused to accept such reorganization arrangements because of this clause.

The present Commission proposal makes no reference to licences as these have been made superfluous by the second Additional Protocol to the Act of Mannheim. It does, however, provide for measures to discourage, but not to prohibit, new building during periods of crisis. This should remove the objections of Germany.

It would of course have been possible to try to introduce EC rules (i.e. without Switzerland) in 1979, but this would have had no effect as it was very attractive at that time for inland shipping to be registered in Switzerland on account of its social and fiscal provisions; in addition, registration there was very easy. In the meantime, however, Switzerland has virtually closed its borders to foreign inland shipping companies so that it no longer perpetuates overcapacity by providing an outlet for excess EC capacity. Nevertheless, it is advisable to include Switzerland in any EC scrapping scheme.

The acceptance by the Central Rhine Navigation Commission of the Additional Protocol No 4 of 5 May 1988 means that the way is clear for the introduction of a scrapping scheme, including Switzerland, provided that the following conditions are met:

— limited duration of the scheme, e.g. 5 years with a possible maximum 5 years' extension,

— uniformity of the national scrapping funds,

— ratification of the Additional Protocol by the Governments belonging to the Central Rhine Navigation Commission.

If these conditions are met, the Swiss Government is prepared to endorse the scrapping scheme.

1.2. In the Explanatory Memorandum the Commission states that overcapacity is estimated at 20%. On account of the fluctuations in water levels, a surplus of 10-15% is necessary to satisfy the demand for capacity even in low water periods. The 20% ought to be added to this reserve capacity, giving an excess capacity of 30-35%. This figure seems more in line with the situation at the moment.

1.3. In assessing the situation the Commission states in the Explanatory Memorandum that this has been brought about by the changing pattern of demand on the inland waterway market.

Nowhere, however, does the Commission point out that the main reasons for the growth of surplus capacity have been tax concessions (especially in Germany and the Netherlands) and investments grants. The Commission proposal should therefore state that such concessions must be abolished and may not be restored for inland shipping.

1.4. In the case of new building or purchase of a modern vessel it is recommended that the tonnage to be scrapped be higher than the new tonnage to be acquired, e.g. 125% or 140%.

A modern vessel almost always has greater engine power, better loading and unloading facilities and therefore a shorter turnaround time. This means an increase in capacity, hence another small contribution to the excess capacity or a smaller decrease in the surplus tonnage.

2. General comments

2.1. The Committee is surprised that the Commission proposal is confined to provisions aimed at curbing the volume of transport.

Inland waterways offer one of the least pollutant, safest (also for non-users) and most energy efficient modes of transport.

Here the Committee is reiterating points already made in various other Opinions.

2.2. The Committee regrets that the Commission does not provide more figures in support of its proposal. Rather more data on the volume of freight, the capacity of the fleet and the nature of the excess capacity would have been desirable.

Nevertheless, the Committee broadly endorses the Commission proposal. It would, however, ask the Commission to amend or supplement certain important points.

The Commission should ensure that Luxembourg also respects the provisions of the Regulation and takes part in a scrapping fund. It is unthinkable that Luxembourg should provide a means of evading the rules. Therefore in the penultimate line of the second paragraph of point 6 of the general considerations Luxembourg 'carriers' should be replaced by 'owners'.

2.3. Point 6 also states that the participation of vessels from Eastern European countries would have a negligible impact. This is true for 1988 and the following few years until the Rhine-Main-Danube link-up is finished. Although restrictions will then be imposed on Eastern Bloc shipping through the second Additional Protocol to the Act of Mannheim, the Commission should strictly ensure that the effect of the Western European scrapping scheme is not destroyed by bilateral agreements between an EC Member State and an Eastern Bloc State.

2.4. Point 6 of the Explanatory Memorandum refers to pusher craft and cargo vessels. These terms do not make it clear which vessels are concerned. It should read: barges, lighters, powered vessels, pusher craft and tugs.

2.5. Also in point 6, the last sentence of the penultimate paragraph, beginning 'However, vessels which ...', should be deleted. There are no closed national markets, unless the reference is to mountain lakes, for instance, with passenger vessels which have to be brought in and removed by road. Western Europe is a market with interconnecting waterways (insofar as the countries mentioned are concerned).

2.6. Point 8 (b): insert 'or export their vessels to a non-European country (e.g. Africa or Asia)'.

3. **Specific comments**

3.1. *Article 2*

3.1.1. Second paragraph:

a) Insert: 'Hence this does not apply to the five Member States specified in the preamble';

b) Retain;

c) 'Vessels with a deadweight capacity of less than 450 t.'

3.2. *Article 4*

3.2.1. In paragraph 2 insert 'by the owner' after 'paid'.

3.2.2. At the end of paragraph 3 delete 'or operated by the same undertaking' and insert:

'provided these vessels have been in his possession for more than one year.'

3.3. *Article 9*

The social and financial measures to be taken in connection with the scrapping scheme must be spelt out more clearly by the Commission, which must ensure that these measures are the same for all the areas concerned so that unfair competition cannot arise again.

It must also be examined whether resources from the EC Social Fund could be made available for this.

Done at Brussels, 29 September 1988.

The Chairman

of the Economic and Social Committee

Alfons MARGOT

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