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Information and Notices

Notice No | Contents | Page

I *Information*

. . . . . .

II *Preparatory Acts*

Economic and Social Committee

Session of April 1989

89/C 159/01 Opinion on the proposal for a Council Directive concerning the protection of fresh, coastal and marine waters against pollution caused by nitrates from diffuse sources 1

89/C 159/02 Opinion on the proposal for a Council Directive amending Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement 3

89/C 159/03 Opinion on the proposal for a Council regulation (EEC) on guarantees issued by credit institutions or insurance undertakings 4

89/C 159/04 Opinion on the proposal for a third Council Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles 7

89/C 159/05 Opinion on the proposal for a Council Directive on the legal protection of biotechnological inventions 10

89/C 159/06 Opinion on the proposal for a Council Decision establishing a medium-term Community action programme to foster the economic and social integration of the least privileged groups 13

(Continued overleaf)

Notice No	Contents *(continued)*	Page
89/C 159/07	Opinion on the proposal for a Council regulation (EEC) on the statistics relating to the trading of goods between Member States	16
89/C 159/08	Opinion on the proposal for a Council Directive on the driving licence . . .	21
89/C 159/09	Opinion on the proposal for a Council Directive on speed limits for certain categories of motor vehicles in the Community	23
89/C 159/10	Opinion on the proposal for a Council Decision adopting a specific research and technological development programme in the field of biotechnology (1990-1994): BRIDGE, Biotechnology Research for Innovation, Development and Growth in Europe	26
89/C 159/11	Opinion on the proposal for a Council Decision adopting a specific research and technological development programme of the European Economic Community in the fields of raw materials and recycling (1990-1992)	31
89/C 159/12	Opinion on the proposal for a Council Decision on High Definition Television	34
89/C 159/13	Opinion on the proposal for a Council Directive on the establishment of the internal market for telecommunications services through the implementation of Open Network Provision (ONP)	37
89/C 159/14	Opinion on the proposal for a Council Decision relating to the improvement of the business environment and the promotion of the development of enterprises, in particular of small and medium-sized enterprises, in the Community	38
89/C 159/15	Opinion on: — the proposal for a Council Directive on the introduction of compulsory nutrition labelling of foodstuffs intended for sale to the ultimate consumer, and — the proposal for a Council Directive on nutrition labelling rules for foodstuffs intended for sale to the ultimate consumer	41
89/C 159/16	Opinion on the draft Council recommendation on banning smoking in public places	44
89/C 159/17	Opinion on the proposal for a Council Directive on the approximation of the laws of the Member States relating to active implantable electromedical equipment	47
89/C 159/18	Opinion on: — the proposal for a Council regulation (EEC) amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals, — the proposal for a Council regulation (EEC) setting general rules on the production aid for high quality flint maize, and — the proposal for a Council regulation (EEC) fixing the production aid for sowings in the 1988/1989 marketing year of certain varieties of high quality flint maize	50

(Continued overleaf)

Notice No	Contents *(continued)*	Page
89/C 159/19	Opinion on the proposal for a Council regulation (EEC) amending Regulation (EEC) No 1418/76 on the common organization of the market in rice . . .	51
89/C 159/20	Opinion on the proposal for a Council Directive amending Directives 81/602/EEC and 88/146/EEC in respect of the prohibition of certain substances having a hormonal action and of substances having a thyrostatic action	52
89/C 159/21	Opinion on the proposal for a Council Directive on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3,5 tonnes	52
89/C 159/22	Opinion on the proposal for a Council Directive relating on the maximum permitted blood alcohol concentration for vehicle drives	54
89/C 159/23	Opinion on the proposal for a Council Directive amending Directives 80/778/EEC on drinking water, 76/160/EEC on bathing water, 75/440/EEC on surface water and 79/869/EEC on methods of measurement and frequencies of analysis of surface water	55
89/C 159/24	Opinion on: — the draft joint Decision of the Council and the Commission establishing a programme of options specific to the remote and insular nature of the French Overseas Departments (POSEIDOM), and — the proposal for a Council Decision concerning the dock dues arrangements in the French Overseas Departments	56
89/C 159/25	Opinion on the proposal for a Council Decision adopting a specific multiannual research and training programme for the European Atomic Energy Community (Euratom) in the field of radiation protection (1990/1991)	62
89/C 159/26	Opinion on: — the proposal for a Council regulation amending Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community, and — the proposal for a Council Directive amending Directive (EEC) No 68/360 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families	65
89/C 159/27	Opinion on the proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in the Member States concerning the pursuit of broadcasting activities	67

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Directive concerning the protection of fresh, coastal and marine waters against pollution caused by nitrates from diffuse sources [1]

(89/C 159/01)

On 17 January 1989 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 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 4 April 1989 (rapporteur: Mr Saïu).

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted by a large majority, with 3 votes against and 3 abstentions, the following Opinion.

1. Introduction

1.1. The rise in nitrate levels in Community waters poses two major environmental problems: (a) the safety of drinking water supplies, (b) the eutrophication of coastal and inland waters.

1.2. The two main diffuse sources of nitrates are agriculture and municipal waste water discharges. Nitrate pollution from agricultural sources is caused by certain land and crop management practices and the excessive or inappropriate use of chemical fertilizers and manures.

1.3. The Commission is proposing measures to control the discharge of nitrates into the aquatic environment. Member States wil have to identify vulnerable areas, i.e. those most affected by nitrate pollution, where action is required. Such measures include EC limits on quantities of animal manure applied to the land, national limits on the amount of chemical fertilizers used, the establishment of land management practices and limits on the nitrate content of municipal waste-water discharges.

1.4. The implementation of this Directive may impose a financial burden on some farmers in regions where soil nitrate content is already high for historical reasons. In this context, the Commission recalls its recent communication on environment and agriculture, in which it states that Member States should *inter alia* be allowed to include in their programmes the appropriate 'technical and/or financial assistance to help farmers adapt to the new agro-economic context'.

2. General comments

2.1. Nitrate concentrations in some areas have reached or even exceeded the 50 mg nitrate/litre limit for drinking water set by Directive 80/778/EEC. The Commission has therefore drafted a new Directive (COM(88) 708 final) which the Committee approves, on condition that its general and specific comments, particularly those concerning manure, are taken into account.

2.2. The Commission's plans for the introduction of Community measures on manure application are acceptable provided that the guidelines set out by the Commission are adjusted in line with the heterogeneous climatic and soil conditions in the different regions of the Community. Responsibility for limits on the amount of chemical fertilizers used, land management practices

[1] OJ No C 54, 3. 3. 1989, p. 4.

and limits on the nitrate content of municipal waste-water lies, however, with the national authorities.

2.3. The new Directive will only be effective in terms of drafting an application if (a) agriculture, industry and local communities are all made aware of the problem and genuinely involved in finding a solution, and (b) the general public is regularly informed about changes in the quality of drinking water supplies and the nitrate content of municipal waste-water discharges.

2.4. In many remote, rural communities, it is sometimes difficult to achieve the recommended nitrate level of 44 mg/l necessary to avoid the risk of methaemoglobinaemia; this is particularly true of small, private springs. Programmes to set up mains drinking water supply networks in vulnerable areas should therefore be encouraged.

2.5. The way in which vulnerable areas are defined and demarcated could have a considerable impact of farm incomes in these areas. Member States should therefore consult with each other before making any decisions, in order to avoid introducing disparate measures which would create distortions in competition between farmers in neighbouring countries.

2.6. The matter of animal manure production, its storage and the specific periods when it can be applied to the land should be carefully reviewed, as should pretreatment by methanation which is designed to make storage more financially viable, particularly in the context of the Valoren programme.

2.7. The various requirements of different crops, levels of nitrate pollution in water, different types of soil and their consequently different capacities for nitrate production in line with their physical and biological composition, and different types of climate resulting from solar radiation, are all elements which call for a more rational application of chemical fertilizers and manure in farming.

For this purpose, the Member States should be recommended to implement programmes encouraging a more rational application of fertilizers, taking into account systematic analyses of soil conditions and the use of other techniques.

2.8. The Committee suggests that Member States set up such suitable programmes to be run by official institutions, or by private organizations which have concluded agreements with the State.

2.9. Permission for land application of manure in vulnerable areas should only be granted if the manure has first been tested for its fertilizer content, particularly inorganic nitrates.

2.10. As penalties do not constitute effective deterrents, the Directive should comprise recommendations to Member States regarding the role of the programmes in informing, advising and assisting both producers and users of manure and fertilizers, thus ensuring maximum impact in a short space of time.

2.11. The definition of the periods when land application of manure is not permitted should be supplemented by a definition of 'recommended' periods for application; this should take account of optimum conditions for reducing pollution risks. When it is not possible to apply manure during these periods out of consideration for tourist requirements, Member States should provide for compensation.

2.12. Conditions for the application of livestock manure and fertilizers must be taken into consideration when other agricultural measures such as land set-aside are implemented.

2.13. Given the paramount importance of upgrading the environment, the provisions of Annex 3 should be viewed as essential requirements. For this reason Article 4(3) should be mandatory, as well as Articles 4(1) and 4(2).

3. Specific comments

3.1. *Article 2 (d)*

The Committee is surprised that the possibility of varying the number of animals according to the amount of nitrate produced by their manure, or by other manure considered in this proposal, has not been explored.

The composition of animal manure is, in fact, extremely heterogeneous, due *inter alia* to the different feeding habits of different animals.

For the purposes of Article 2(d), it is the surface over which the manure is applied, and not the number of animals on the holding, which indicates the actual number of livestock producing manure. For this reason, the term 'livestock' cannot be confined to animals kept for use or profit, but must also cover domestic animals and animals used for leisure or educational activities (pets, zoo and wild-life park animals).

3.2. *Article 2 (h)*

Discharge of waste into ditches or adjacent waterways cannot be considered as 'land application', because it is

likely to cause pollution without being of any economic benefit, as set out under the fourth recital.

Discharges into ditches should be banned and the waste should be monitored and undergo special purification treatment.

3.3. *Article 4(1) (a)*

Particularly in vulnerable areas, the amount of waste cannot be calculated without first ascertaining the type of soil involved, the content of the waste and the number of animals in the area under study. It is therefore of prime importance to establish how many animals are on that area of land. Article 4(1) (a) should consequently be amended to take account of this.

3.4. The Committee is of the view that Articles 6, 7 and 8 should only cover technical requirements which are not likely to alter the scope of this Directive or to have serious economic consequences for the Member States.

3.5. The reports drawn up under Article 10 should be forwarded to the Economic and Social Committee.

3.6. *Annex 2*

Horses should be added to the list of animals, while other ruminants used for leisure activities (zoo and wild-life park animals, etc.) such as fallow deer, roe deer and stags, should be included in the category of young stock and beef cattle.

3.7. *Annex 3*

Techniques such as lagooning and the use of bacteria and enzymes should be added to the list of measures.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive amending Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement [1]

(89/C 159/02)

On 16 January 1989, the Council decided to consult the Economic and Social Committee, under Article 100 A 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 5 April 1989. The rapporteur was Mr Proumens.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion unanimously.

1. General comments

The Committee fully approves the proposed phasing-out of imperial units. It is necessary to take account of national customs which often date back a long time; any changes will pose problems for people of all ages but especially the elderly.

1.1. The extension of the provisions to 1994 or 1999 si therefore justified.

[1] OJ No C 31, 7. 2. 1989, p. 7.

1.2. In addition, because of international commerce, the Commission proposes to add one measure—the troy ounce—for use throughout the Community.

1.3. The road traffic signs included in the specific uses in point 2 of the Annex clearly do not pose any problem for other Member States.

1.4. However, when milk is exported to other Member States in pints (another of the units listed in point 2 of the Annex), the approximate value of the pint should be indicated on the packaging.

Equally, when land sales in the UK and Ireland are advertised outside these two countries, the approximate value of the acre should be indicated.

1.5. Of the units of measurement listed in point 3 of the Annex, the fathom and the therm would appear to pose no problem because they are traditionally both national and international units.

1.6. On the other hand, the SI (International System) equivalents of the pint and fluid ounce should be mentioned on exports.

1.7. Finally, since the ounce is used only for goods sold loose from bulk, it is safe to assume that only local sales are involved.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Regulation (EEC) on guarantees issued by credit institutions or insurance undertakings [1]

(89/C 159/03)

On 24 January 1989 the Council, acting in pursuance of Article 100A of the EEC Treaty, asked the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Committee's Opinion was prepared by its Section for Industry, Commerce, Crafts and Services. The Section adopted its Opinion on 5 April 1989, on the basis of the report by Mr Meyer-Horn.

The Committee adopted the Opinion set out below at its 265th plenary session (meeting of 26 April 1989) by a unanimous vote.

1. Introduction

1.1. Under the proposed Regulation all public authorities are to be obliged to accept guarantees from credit institutions or insurance undertakings licensed in an EC Member State. The public authorities will, therefore, no longer have the discretion to assess the creditworthiness of such credit institutions or insurance undertakings. Rules which are not in accordance with this principle are to be abolished. The 1977 Regulation on Community transit, in particular, is to be amended to provide for the acceptance of joint and several guarantees from any licensed credit institution or authorized insurance undertaking in a Member State, rather than

[1] OJ No C 51, 28. 2. 1989, p. 6.

only from approved guarantors in the Member State concerned.

1.2. The principle referred to in point 1.1 above is to be implemented in the present draft Regulation even though (i) different prudential requirements are still applied in the Community in respect of credit institutions (e.g. in the field of solvency and capital and reserves) and insurance undertakings and (ii) responsibility in this field is not vested solely in the supervisory authorities of the State in which the enterprise concerned is registered. Public authorities are thus being obliged to accept guarantees without, at the same time, being informed of the prudential requirements applying to the guarantees from the different Member States.

2. General comments

2.1. The Committee is fundamentally in favour of the proposal put forward by the Commission to ensure, by means of draft Regulation COM(88) 805, that responsibility for assessing the creditworthiness of credit institutions and insurance undertakings henceforth rests exclusively with the supervisory authorities concerned and is not left to public authorities in other Member States.

Whilst fully accepting this principle, the Committee wonders whether the practical legal implications have been fully taken onboard in respect of the determination of the national law which is to be applied, or the court which is to have jurisdiction (see point 3.2).

2.2. The Committee also approves the decision to opt for a Regulation, based on Article 100A of the EEC Treaty, which will directly regulate relations between guarantors and bodies in receipt of guarantees in all EC Member States.

3. Comments on the individual provisions

3.1. Under Article 1 the Regulation is directly addressed to all 'public authorities'. The Commission points out in the explanatory memorandum (Article 1) that the term 'public authority' means any 'entity' for which a Member State (or the EC) could be held responsible. The Commission goes on to give examples of such entities, listing local authorities, social security institutions, law courts and diplomatic representations of these authorities in third countries. The Committee wonders whether the term 'public authorities' could not be construed to cover an even broader range. In the absence of a clearer definition of the term 'public authorities' in the Regulation, it is conceivable that Article 1 could also apply, for example, to notaries who attest documents and to certain public credit institutions. The Committee assumes that the Regulation will, at all events, apply to those bodies which could, in the absence of such a regulation, invoke their status as an authority or a sovereign body in order to entitle them to insist that guarantees be provided by credit institutions or insurance untertakings established in the Member State concerned.

3.2. Article 1 sets out the obligation to accept guarantees from all credit institutions licensed under Directive 77/780/EEC or insurance undertakings authorized under Directive 73/239/EEC, irrespective of the Member State in which they are established. It is, however, not stipulated in the draft Regulation itself which national law is to be applicable and which court is to have jurisdiction. It is no doubt assumed that the national law of the public authority accepting the guarantee is normally to apply, that the authority will stipulate that the national courts of its own country are to have jurisdiction and that the guarantee will be realized or enforced in accordance with the rules applicable in that country.

3.2.1. The question of legal jurisdiction is in fact dealt with by the Brussels implementing agreement of 27 September 1968. There are, however, some areas of doubt. Has the agreement unreservedly come into effect in all Member States? What is the effect of the subsequent amendment of the agreement by Article 3 of the agreement of 9 October 1978, which was concluded after the accession of the UK, Denmark and Ireland and which expressly excludes tax, customs and administrative matters? At what juncture is it likely that the agreement will be applied in Greece (which signed on 25 October 1982) and Spain and Portugal (which have yet to sign the agreement)?

3.2.2. The national law to the applied would clearly be determined by the Rome agreement of 19 June 1980. This agreement, which codifies the private international law applied in all Member States, has, however, not yet been ratified. Would it then follow that, unless otherwise agreed, in the event of a guarantee being taken up, the law applicable would be that of the country of the guarantor?

3.2.3. In view of the questions which arise in this context, measures should be taken to ensure that:

— the obligation to accept guarantees set out in Article 1 will not lead to a situation in which creditors are subject to the law of a different Member State to that in which the main liability arises, and

— in the case of guarantees being provided from other EC Member States, creditors shall be entitled to stipulate that jurisdiction be granted to courts in their own countries and to have the guarantee enforced, where necessary, in the simplified form provided for by the Brussels agreement of 27 September 1968.

3.3. The obligation to accept guarantees is based on the consideration that the prudential regulations, which exist in all Member States and are being approximated and further developed, will ensure that every credit institution and insurance undertaking will be subject to supervision in respect of the guarantees which it provides. It is argued in the explanatory memorandum that a credit institution or an insurance undertaking which

has a licence under the harmonized Community systems has all reasons to respect the limits 'drawn up by their supervisory rules' because otherwise a withdrawal of the licence would appear necessary. The Committee questions whether this statement adequately provides the desired legal assurance. One of the essential requirements is that, in the case of guarantees provided by credit institutions and insurance undertakings, comparable prudential conditions must be complied with. This applies particularly in respect of the supervisory rules—which are to be aligned—governing, for example, the need to hold adequate capital, solvency ratios and balances and the need to conform to the restrictions on 'large credits'. The Committee calls for the requisite legal assurance to be provided, particularly in the event of the present Regulation becoming directly applicable law very much sooner than the various outstanding Directives on the alignment of prudential rules governing credit institutions and insurance undertakings (scheduled for 1992). In connection with the need for parallelism in timing the enactment of laws, the Committee would draw attention to its Opinion [1] on the proposal for a second Directive on the co-ordination of the legal and administrative provisions governing the taking-up and exercise of the activity of credit institutions.

3.4. The purpose of Article 2 is to amend the wording of Regulation (EEC) No 222/77 on Community transit in order to authorize the acceptance of guarantees from guarantors approved in other Member States, in particular from credit institutions licensed in other Member States under Directive 77/780/EEC and insurance undertakings authorized in other Member States under Directive 73/239/EEC. The Committee wonders if the draft Regulation should not address more clearly decisions based on the discretion allowed administrative authorities by other Community rules relating to guarantees. The Commission states in the section of the explanatory memorandum dealing with Article 2 (see point 3, page 6) that these rules do not require amendment as, in the case of guarantees provided by credit institutions and insurance undertakings, discretion is 'limited' by Article 1 of the draft Regulation. Reference is also made in the sixth recital to a 'limitation' of the discretion of public authorities. The Committee's premise is that there is absolutely no place for such discretion in the areas covered by the draft Regulation; discrimination against guarantors from other EC Member States would thereby be precluded, which is, after all, the object of the Regulation.

[1] OJ No C 318, 12. 12. 1988, p. 42 (point 1.4.2).

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a third Council Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [1]

(89/C 159/04)

On 16 January 1989 the Council decided to consult the Economic and Social Committee under Article 100 A 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 5 April 1989. The rapporteur was Mr Speirs.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted unanimously with 1 abstention the following Opinion.

The Committee welcomes the Commission's proposal subject to the following comments.

1. General comments

1.1. The proposed Directive is welcomed in that it continues the work undertaken by the first two motor insurance Directives, namely to promote the free movement of vehicles and their passengers and to improve insurance protection and guarantee fund coverage for accident victims throughout the Community. However, the wording of certain articles needs to be improved for the purposes of clarity.

1.2. The main provisions of the proposed Directive may be summarized as follows:

a) All passengers, other than the driver and any passengers who have knowingly and willingly entered a sloten vehicle, must be given the protection of third party insurance cover (some countries do no require passenger cover at the present time).

b) Member States must ensure that third party motor insurance policies provide the minimum cover required by law in all the Member States. Thus, in the future every policy of third party motor insurance should, on the basis of a single premium, provide cover throughout the Community.

c) Guarantee funds, set up *inter alia* to compensate the victims of uninsured drivers, must not require such victims first to establish that the uninsured party although liable to pay compensation is unable or unwilling to do so.

d) In the event of a dispute between an insurer and the guarantee fund as to which of them should compensate an accident victim, Member States must oblige one or the other to compensate the victim without delay.

1.3. The Committee understands that the Commission's proposal is based on the principle of the green card system, i.e. the obligatory provision of the minimum cover required by law in the country visited (see Annex). It notes that the Commission has not opted for the possibility of requiring that motor insurance policies issued in Member States imposing high levels of statutory cover should apply those same levels throughout the Community irrespective of the (lower) level required in the country visited. The Committee can accept the Commission's approach provided that it strictly monitors progress towards the minimum statutory levels of cover laid down by Article 1.2 of the second insurance Directive (84/5/EEC) (i.e. minimum cover of 350 000 ECU per victim or a minimum package of 500 000 ECU for all personal injuries irrespective of number of victims; 600 000 ECU for all personal injuries and material damages inclusive, arising from any one accident).

1.4. The ending of 'one state coverage' appears to be the most controversial proposal. The Committee approves the Commission's approach. Insurance companies will no doubt adjust the premiums for vehicles which have no prospect of leaving their home state.

1.5. It is understood that the second Directive is not yet being implemented in full in all Member States. The Commission should take whatever steps are necessary to ensure that both the spirit and the letter of the law are observed.

1.6. It is understood that the Commission is discussing with those countries who have already signified their agreement to comply with the provisions of the 1st and 2nd Directives on a reciprocal basis, extension to accommodate the terms of this Directive. The Committee would encourage the Commission to pursue these discussions vigorously to secure early implemen-

[1] OJ No C 16, 20. 1. 1989, p. 12.

tation particularly by countries of the European Free Trade Association (EFTA).

1.7. The Commission should take whatever steps are possible to ensure that guarantee funds settle claims for which they are responsible promptly once liability has been established, and the amount of compensation determined.

1.8. The Commission should ensure that when drawing up contracts assurers consider only risk aspects, not the nationality of the customer.

2. **Specific Comments**

2.1. *Article 1*

This Article is generally acceptable. The Commission should ensure that insurance cover is provided also for persons who are forced to travel in a vehicle against their will.

2.2. *Article 2*

The use of the word 'the same single premium' along with the words 'at least the cover required by law in each Member State' makes the meaning of this Article unclear. It should be reworded, in accordance with paragraph 1.3 above, to make it clear that the cover referred to is the minimum statutory cover required by law in each of the other Member States on the understanding that nothing prevents the assurer from giving an additional cover.

2.3. *Article 3*

The emphasis on inability or unwillingness to pay clouds the issue. It should be made clear that this Article only comes into play once liability and the amount of compensation payable have been established either in a court of law or by agreement between the parties concerned.

2.4. *Article 4*

This Article should be reworded so that it requires Member States to establish machinery, insofar as this does not already exist, whereby one party is designated as responsible for compensating the victim in the first instance. The Commission should impress on the Member States the need for swift, appropriate compensation for victims.

2.5. *Article 5*

This Article should be reworded to make it clear that the Directive comes into force one year after its adoption by the Council of Ministers.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

APPENDIX

Compulsory motor insurance in the Member States at 1 January 1989

Member State	Personal injuries per event		Personal injuries per person		Property damage	
	Currency	ECU	Currency	ECU	Currency	ECU
Belgium	Unlimited		Unlimited		Unlimited (except for fire and explosion) 5 million FB	115 940
Denmark	60 million Dkr	7 514 136	50 million Dkr	6 261 780	10 million Dkr	1 252 356
Germany	1,5 million DM	721 848	1 million DM	481 232	400 000 DM	192 493
Greece	10 million DR	62 965			2 million DR	12 593
Spain			8 million Ptas	58 024	2,2 million Ptas	15 957
France			5 million FF	722 871	3 million FF	433 723
Ireland	Unlimited		Unlimited		40 000 £IRL	51 672
Italy	500 million LIT	333 544	300 million LIT	200 127	50 million LIT	35 355
Luxembourg	Unlimited		Unlimited		Unlimited (except for fire and explosion) 50 million FL	1 159 396
Netherlands	2 million FL (including property damage)	855 334				
Portugal	20 million Esc (including property damage)	122 236	12 million Esc (including property damage)	73 342		
United Kingdom	Unlimited		Unlimited		250 000 £ST	360 288

Notes: — ECU conversion rates ruling on 30 September 1987 (amounts rounded up or down to nearest ECU).
— France, Germany, Italy, the Netherlands and Portugal apply higher amounts for certain vehicle categories. Greece and Italy apply lower amounts for all or certain motorcycles.

Source: Commission of the European Communities.

Opinion on the proposal for a Council Directive on the legal protection of biotechnological inventions [1]

(89/C 159/05)

On 3 November 1989 the Council decided to consult the Economic and Social Committee, under Article 100A 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 5 April 1989. The rapporteur was Mr Saïu.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion by a majority vote in favour and 1 vote against, with 5 abstentions.

1. Introduction

1.1. While acknowledging that the Commission has good reason to tackle the problems associated with the legal protection of biotechnological inventions, the Committee considers that the proposed Directive does not face up to all the issues and should be revised in the light of the comments and suggestions set out in this Opinion.

1.2. This Directive concerns biotechnological inventions. Biotechnology is understood as all the techniques that use or cause organic changes in any biological material, microorganisms, plants and animals, or that cause changes in inorganic material by biological means. Biotechnology covers areas in which inventive work is most active and promising and in which the results of that work have particular economic and social importance.

1.3. The existing legal protection as contained in the national legislation of the Member States is derived from international agreements concluded in the 1960's, namely:

— the 1961 Convention of the International Union for the Protection of New Varieties of Plants (UPOV),

— the 1963 Strasbourg Convention,

whose principles were then incorporated in

— the 1973 European Patent Convention, and

— the 1975 Community Patent Convention.

Under these Conventions only a few biotechnological inventions are patentable (microbiology).

In general the legal situation suffers from deficiencies as well as discrepancies in statutory law and regulations and their interpretation, and a shortage of case law.

1.4. The aim of the Directive is to enable Community industry to keep pace with leading nations such as the US and Japan in the field of biotechnology and to close or narrow existing gaps.

Its aim is also to further the internal market by eliminating existing national differences in the legal protection of biotechnological inventions, something which cannot be achieved by either the Community Patent Convention (CPC) or the European Patent Convention (EPC).

Its provisions must be compatible with those of the existing international conventions.

They are based on four principles:

— discoveries as such are not regarded as patentable inventions:

'It is not the discovery as such which is patentable, but its use for the purpose of transformation or multiplication.'

The demarcation between the simple discovery of a natural substance and its patentability depends on the degree of human technical intervention necessary to obtain it.

— plant and animal varieties as such or essentially biological processes for the production of plants or animals are excluded from patent protection,

— microbiological processes or the products thereof are eligible for patent protection,

— methods for treatment of the animal body by surgery or therapy are not regarded as inventions which are susceptible of industrial application if practised for a therapeutic purpose.

[1] OJ No C 10, 13. 1. 1989, p. 3.

2. **General comments**

2.1. The Committee approves the proposal for a Council Directive on the legal protection of biotechnological inventions (COM(88) 496 final — SYN 159) provided that the following general and specific comments are taken into consideration.

2.2. Such a Directive is a first step towards an enlargement of the field of patentability.

2.3. Agriculture is one of the sectors most directly concerned, being a principal consumer of the products of biotechnology.

2.4. Consequently the Committee regrets that it was not possible to adopt an overall approach covering both the legal protection of biotechnological inventions and Community plant breeders' rights.

2.5. The Committee is convinced that such a dual approach would have led to a better balance between breeders' rights and patents, which preserved the rights and interests of the parties concerned (farmers, agricultural cooperatives, breeders, researchers, industry).

Although the Directive was drawn up in agreement with all the directorates concerned, the working method—i.e. dealing first with patentability and only afterwards with how this would affect breeders' rights—did not allow all the interested parties to have a fair say.

Most of the solutions adopted are those suggested by the World Intellectual Property Organization (WIPO), whose 1987 study was based on consultations representing industry's interests only.

Furthermore, such a dual approach would have been more likely to avoid the risks inherent in an extension of the protection of biotechnological inventions and the interrelation between the effects of patents and plant breeders' rights, i.e. the possibility of double protection to the detriment of farmers and consumers.

In fact the EPC no longer regulates these issues and hence the European Patent Office has no competence in the matter.

2.6. The distinction between (a) 'traditional' plant varieties, i.e. those produced by familiar selection methods and covered by the specific, proven legal protection provided by breeders' rights under the UPOV Convention, and (b) the 'new' plant varieties, i.e. those which incorporate the findings of biotechnological research, seems likely to lead to legal disputes where a biological invention is incorporated in a plant variety.

2.7. The Committee suggests the setting-up of a licence system which would be a fair solution favouring neither the one nor the other of the parties concerned.

The plant breeder wishing to use a patented invention for breeding purposes would have to ask the patentee for a licence contract against payment of a reasonable fee.

This payment would exhaust the patentee's rights to the variety subsequently created by the breeder.

2.8. To facilitate research, the Directive should permit the same automatic free access for the purpose of plant research as is laid down for existing varieties under the UPOV Convention.

2.9. This system should be arranged in such a way that plant breeders who use a biotechnological invention, either directly or through a variety, can share in its cost; the aim would be to encourage the continuous improvement of varieties and to avoid the emergence of monopolies ultimately detrimental to innovation.

2.10. The Committee also has misgivings about the possible combined effect of the two rules—the patentability of living matter and the extension of patentability. These cumulative effects are likely to reduce the scope of the UPOV Convention and hence might lead to the disappearance of the independent breeder.

2.11. Furthermore, the Committee believes that the Directive will go only part way to achieving one of its main objectives, namely to put Europe on an equal footing with Japan and the US in obtaining patents.

2.12. In the Committee's view this can only be achieved if researchers are better motivated. Such motivation hinges on the emergence of a genuine inventors' charter and this is something which the Directive does not address.

It should be noted that in twenty years the Japanese have lodged and obtained five times more patents than any other country in the world.

2.13. This Japanese efficiency derives from, among other things, their legislation on the protection of inventions, drawn up in 1967 and based on

— the first inventor system, and

— the law of motivation.

The Committee thinks that the Commission should give urgent consideration to the drafting of an EC Directive designed to have the same beneficial effects in motivating researchers by recognizing their rights and guaranteeing them a share in the fruits of their inventions.

2.14. It is a pity that the present draft Directive does not provide for the alignment of the Member States' arrangements for settling disputes which may arise between industrial property law and labour law, as well as the question of jurisdiction.

Would it not be worth extending to the rest of the Community the principle of a national commission for the inventions of employed persons introduced in France by Article 68*bis* of the law of 13 July 1976?

2.15. While endorsing the patentability of living matter with the exception of plant and animal varieties, the Committee would point out that this new situation of extended patentability could raise ethical problems in respect of some applications, e.g. those involving animals where possible secondary effects should be taken into account, especially the pain which the animals may suffer.

The Committee also regrets that human beings per se are not expressly mentioned in the Directive as not being patentable.

In fact the Directive does not expressly provide for its non-application to biotechnological processes modifying man's genetic inheritance for reasons other than maintaining or improving health.

3. Specific comments

3.1. *Article 3*

This Article is too general. It does not state sufficiently clearly that Article 2(1) of the UPOV Convention must be respected; this obliges contracting States to provide only one form of legal protection for the same genus or species.

The text does not state expressly that a variety is not patentable because covered by breeders' rights.

Accordingly the Committee proposes that this Article be amended as follows:

'Micro-organisms and the genetic components of plants and animals up to protoplasms shall be considered patentable subject matter.'

This new wording of Article 3 would make it clear that a set body of genetic components forms a variety and is hence excluded from patent protection.

Furthermore, classifications higher than varieties must remain outside any system of legal protection by patents.

A new genus which complies with the characteristics of a variety may in fact be covered by breeders' rights protection.

3.2. The EPC provides for the exclusion of human beings from patent protection but cannot oblige the Member States to comply. Therefore the Directive must contain a specific Article clearly stating that human beings are not patentable.

3.3. *Article 10*

At the end of the paragraph replace 'is used for other than private or experimental purposes' by 'is used for industrial purposes with a view to commercial exploitation'.

3.4. *Article 12(2)*

The extension of protection to products obtained from a patentable process does not exclude plant or animal varieties from patentability. This clashes with lines 1 and 2 of Article 3(1) which state 'other than plant or animal varieties'.

Plants and plant material are patentable unless they are produced by a previously known biotechnological process [Article 3(2)], but there is still an ambiguity with regard to animal varieties.

3.5. *Article 13*

Patent law cannot apply to plants and/or animals in which the invention has been incorporated, in accordance with the reworded Article 3.

3.6. *Article 14(3)*

Paragraph 3 represents a serious legal injustice as between the interests of the breeder and of the patentee.

This provision is even superfluous as the patentee, by introducing a gene into a plant or animal, is behaving like a breeder. By creating a new variety he comes up against breeders' rights.

Moreover, if a breeder has obtained a licence to an invention and does not exploit it, the patentee can enforce a dependency licence on grounds of market supply, as provided for under patent law.

Article 14(3) should be amended accordingly; an inventor who is not a breeder may exploit his invention commercially if such exploitation is only possible in the form of a variety using a licensing arrangement.

3.7. *Article 15(3) b)(ii)*

Add:

'And the right to exploit patented inventions with a view to obtaining an adequate offer in the marketplace on reasonable terms.'

3.8. *Article 17*

The Committee is not convinced of the need to derogate from ordinary law by reversing the burden of proof.

The reversal of the burden of proof, besides changing the legal practice of many Member States, could place the breeder of a variety incorporating a biotechnological invention in a difficult position, especially in view of the extension of patentability provided for elsewhere in the Directive.

Looking at the Commission's position on the court of jurisdiction provided for in Article 14(4), there would seem to be a desire to treat breeders' rights less favourably than patents.

Moreover, the fact that national courts are to be entrusted with the task of resolving disputes between patentees and holders of breeders' rights on such questions as the significance of the technical progress or the amount of the royalties, inexplicably introduces the possibility of a distortion of competition.

3.9. *Article 19 a)*

The farming industry has reservations about edible fungi, cells and algae in view of the implications for plant breeders' rights.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Decision establishing a medium-term Community action programme to foster the economic and social integration of the least privileged groups [1]

(89/C 159/06)

On 16 January 1989 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 Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 13 April 1989. The rapporteur was Mr Burnel.

At its 265th plenary session (meeting of 26 April 1989), the Economic and Social Committee adopted the following Opinion by a majority vote, with 1 abstention.

I. GENERAL COMMENTS

1. The Economic and Social Committee is fully aware of the scale and complexity of the phenomenon of poverty in the Community. In the information report drawn up by the Section for Social, Family, Educational and Cultural Affairs, the Committee set out the harsh

[1] OJ No C 60, 9. 3. 1989, p. 11.

facts and, for pragmatic reasons, confined its comments and proposals to three major themes:

— the right to education and training,

— the right to information and communication,

— a minimum guaranteed income with a view to reintegration in society and working life.

The information report on poverty also pointed out that it was crucial to take decisive action against the causes and hence the effects of poverty, in particular by giving priority to a major assault on unemployment. Measures would also have to be taken in the field of housing and to tackle illiteracy.

Besides general measures, action was needed at grass roots level to help the most vulnerable groups, such as the disabled [1].

The Committee has always attached importance to the health and social protection of individuals and families, primarily through a social security system based on solidarity.

For this, political action is needed by the Member States and the Community. The programme submitted by the Commission should be seen as complementary to the measures to be taken at national, regional and local level.

2. The Committee has already stated that substantial resources will be needed to have a significant impact in combatting this evil eating away at society.

3. Although the present proposal for a medium-term Community action programme to foster the economic and social integration of the least privileged groups is markedly better funded than its predecessors, it is still inadequate when one considers the scale and urgency of the problems to be tackled. This programme is experimental in that it is basically limited to 30 'prototype' schemes. These are to serve as models for measures by the Member States and the Community institutions.

4. Bearing in mind the limited nature of the programme, but also the potential benefits to be reaped from comparing notes, it is therefore necessary to evaluate the strengths and weaknesses of the proposal.

5. Firstly, the Committee regrets that the proposal does not draw more on the lessons of the previous programmes when defining the prototype schemes which it proposes assisting. It would have been less like a simple request for funds if it had been possible to classify the measures in a few broad categories, such as translation of successful schemes from one Member State and social context to another, evaluation of failures of a previous programme, schemes launched on a new basis, etc.

5.1. The Committee stresses that the prototype schemes adopted should serve as models from which all those concerned at national, regional and local level can draw lessons in their fight against poverty. This is the only way of avoiding a race in the twelve Member States to obtain Community funds.

5.2. Since the draft Community programme provides for finance for only 30 prototype schemes and assistance for barely 100 000 poor people, it is essential that schemes be selected because they are exemplary and not in an attempt to spread the funds evenly or on a first-come-first-served basis.

5.3. The Committee has repeatedly stressed the vital importance of preventive measures in the fight against poverty and of measures to tackle the underlying causes (social and structural). Hence it would like to see the prototype schemes concentrate on the prevention of poverty in declining areas or underdeveloped areas, and areas adversely affected by the completion of the single internal market.

5.4. The combined effect of the action programme to combat poverty and the use of the structural funds should lend sufficient weight to the Community measures to persuade the governments of the Member States and the regional and local authorities to participate financially in ambitious schemes. It is also important that the Commission ensures that government and regional and local authorities work together on the spot in accordance with the Council Decision on the use of the structural funds and its implementing provisions.

5.5. As far as the implementation of the programme is concerned, the Committee suggests that an integrated economic and social strategy be developed to combat poverty in all its aspects.

6. The second general comment concerns the excessive proportion of the proposed budget (9 million ECU

[1] Cf. ESC Opinions on the disabled (OJ No C 347, 22. 12. 1987 and OJ No C 189, 28. 7. 1986).

out of a total of 70 million) allocated to technical assistance and back-up for the programme. While it fully appreciates the value of the exchange of information provided for in the action programme and the importance of the technical assistance, the Committee wonders whether it would not be possible to devise a less expensive but equally effective back-up procedure. It is suggested that the Commission be provided with the means to carry out these tasks itself without, however, forgoing essential outside expertise.

7. The third general comment concerns the in-depth study of poverty. The Committee cannot but approve the principle of a more rigorous definition of poverty thresholds and the introduction of a programme whereby comparisons can be made between the Member States. The Committee itself felt this lack of reliable information when it drew up the aforementioned information report.

7.1. The Committee considers that the task of improving our factual knowledge should fall first to the Statistical Office of the European Communities and the national statistical offices and be allowed for in their budgets. The Committee recognizes, however, that some encouragement is needed and agrees that some of the funds from this Community action programme should go to improving our understanding of poverty.

7.2. It is also essential that the progress reports be drawn up more frequently and be submitted to the ESC.

8. The Committee would stress the need to improve cooperation with international institutions such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO) and with the major non-governmental organizations responsible for dealing with problems connected with poverty.

II. SPECIFIC COMMENTS

Article 2

The Committee would reiterate the comments made in its information report regarding the difficulty of giving a single definition valid for every type and form of poverty, every age and every geographical area. Furthermore, the term 'least privileged' is not the most apt.

Article 3

In the Committee's view priorities should be laid down, drawing in particular on the lessons of previous schemes.

Article 5

The role of the Commission and of the team of consultants should be stated precisely.

Article 9

The Advisory Committee should be enlarged to include non-governmental experts who have worked for a long time in combatting poverty in all its forms.

Article 12

The reports on the implementation and results of the programme must be presented to the Committee too.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Regulation (EEC) on the statistics relating to the trading of goods between Member States [1]

(89/C 159/07)

On 23 January 1989 the Council decided, in accordance with Article 100 A of the EEC Treaty, to ask the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Section for Economic, Financial and Monetary Questions, which was responsible for the preparatory work on this matter, adopted its Opinion on 11 April 1989. The rapporteur was Mr Giacomelli.

At its 265th plenary session (meeting of 26 April 1989), the Economic and Social Committee adopted the following Opinion with no votes against and five abstentions.

Preliminary remark

While acknowledging that the present proposal is a first step towards a possible solution to the problem of statistics concerning intra-Community trade in goods, the Committee notes that it cannot be divorced from the question of harmonizing indirect taxation, on which the ESC expressed its views in several Opinions adopted at the plenary session of 7 July 1988 (see point 2.6 below). The Committee therefore can only endorse this proposal subject to a number of remarks on matters of substance made at the time and certain fundamental and technical reservations expressed in the various chapters of the present Opinion.

1. Introduction

1.1. At present, and this will doubtless be the case until the end of 1992, when the Single European Market is due to be completed, statistics on Member States' trade in goods with each other and with non-EEC countries are based on information provided as part of the formalities involved in crossing the Community's internal and external frontiers. These data are gathered from the statistical pages of the Single Administrative Document (SAD), a customs form introduced on 1 January 1988 which is used for all Member States' trade with each other and with non-EEC countries and which provides a standard, codified framework for acquiring the figures used by statisticians.

The same date saw the introduction of the combined Community nomenclature, which is now the sole instrument used for designating products. If fulfils statistical and tariff objectives, translates into reality European harmonization and standardizes the processes of gathering statistics and monitoring trade for administrative purposes.

1.2. The general aim of the White Paper as embodied in the Single European Act includes the elimination of physical borders from 1 January 1993 onwards. Frontier formalities, checks and the documentation involved (the latter being a tool for collecting information for statistical purposes) will therefore disappear.

1.3. While the White Paper recommends the abolition of internal Community frontiers, there are ambiguities both in the letter and spirit of the text as regards the consequences for Member States' foreign trade statistics. Paragraph 45 states nothing less than that techniques other than the present collection of data by means of customs documents will have to be used in order to obtain statistics on intra-Community trade.

1.4. The White Paper says that statistical information will have to be obtained from firms, which may provoke fears that the administrative burden may be maintained or even increased, rather than made easier; but the drafters of the present proposal are trying to reassure commercial operators by hinting at the setting-up of a replacement system capable of satisfying existing needs for information while at the same time limiting the contribution to be made by firms. It is therefore proposed that, with a view to compiling statistics relating to the trading of goods between Member States, a permanent data collection system, known as the Intrastat system, should be set up (Article 6 of the proposal).

1.5. So, even if physical frontiers are abolished as part of the great single market of tomorrow and this manifests itself, in the eyes of the general public, by the disappearance of stops at intra-Community frontiers, economic operators will still have to comply with certain formalities so that the Community's and Member States' needs for information can be satisfied, on the understanding that all those who have to provide the information will, under Community law, have to comply with common rules, so that goods may circulate freely within the future single market under the same conditions in all the Member States.

[1] OJ No C 84, 5. 4. 1989, p. 4.

1.6. The drafters of the present proposal anticipate a problem in making those with an obligation to submit information aware of their duty regarding statistics, since the customs formalities to be fulfilled at internal frontiers, which are compulsory, will have been abolished. They suggest two solutions: one 'preventive' (i.e. through administrative instructions or intermediaries such as customs agencies or carriers) and the other 'critical', involving the use of registers of intra-Community operators to be drawn up and managed by the national authorities in each Member State.

1.7. It is expressly stated that the proposed collection system will continue to allow the globalization of information for a given reference period, a facility which is currently available to all operators, whatever their size, provided that their internal organization permits it. In addition, the new system is said to be geared to the new options offered by the constant development of technology for automatic information processing, and the Commission is responsible for adopting measures in this area which are best suited to taking advantage of post-1992 technological developments.

1.8. The proposal's explanatory memorandum does not hide the risks involved in applying the new system for collecting statistics, as it has to record events taking place 'in a hitherto unknown economic environment'. The drafters therefore think that, before dealing with the measures accompanying the new system and the implementing measures, it would be preferable to take a closer look at some sensitive problems which arise, such as:

— using the remaining formalities for statistical purposes,

— the advisability of retaining certain national provisions,

— the limits of collaboration between tax authorities and statistical departments, and

— the regular supplementary surveys which will be needed concerning the movement of goods not covered by the statistics or persons exempted from the obligation to submit statistics.

It is hoped that any difficulties which arise during the first few years can be smoothed over or resolved within three or four years.

1.9. In the Intrastat system, which will also apply to transit and warehousing statistics (except for goods still subject to customs and tax formalities: goods from non-EEC countries and which, as part of processing by customs, are transported from one Member State to another), statistics on trade between Member States will be given priority in the move from the old system of collection to the new.

Council Regulation (EEC) No 1736/75 of 24 June 1975 [1] laid down, at the same time, definitions and standard practices for the Community's external trade and for intra-Community trade. Some ten years later Council Regulation (EEC) No 2954/85 [2] 'for the purpose of standardization and simplification', defined 'the subject of statistics of trade between Member States in such a way that it is clearly distinguishable from the subject of external trade statistics of the Community' (first recital) and noted that for this purpose 'some of the provisions of Regulation (EEC) No 1736/75 should no longer apply for the purposes of statistics of trade between Member States'.

1.10. When the physical and fiscal frontiers between the Member States are abolished as scheduled on 1 January 1993, the statistics on intra-Community trade in goods will lose the support provided by the formalities and checks imposed by the customs authorities on consignors and consignees of goods circulating within the Community. The present proposal therefore makes provision right now for the immediate implementation of a new system of collection based on existing administrative monitoring arrangements, ensuring the continuity of statistical findings and, by testing them as quickly as possible, enabling one to verify the comprehensiveness of the new system and its ability to keep abreast of events so that any shortcomings or weaknesses can be detected and, if necessary, the system can be immediately improved and simplified in order that trade does not suffer. The proposal consequently intends to adapt the rules and provisions of intra-Community trade statistics as defined in Regulation (EEC) No 2954/85, and the explanatory memorandum states that similar provisions will be prepared as soon as the collection of data on so-called special trade begins, with a view to drawing up transit and warehousing statistics.

1.11. The drafters of the proposal are anxious to avoid forcing commercial operators, for statistical requirements, to distinguish between intra-Community and extra-Community trade when running their businesses. They therefore wish to prevent the Intrastat system from giving rise to a collection process which is incompatible with that in force for extra-Community trade under Regulation (EEC) No 1736/75. However,

[1] OJ No L 183, 14. 7. 1975, p. 3.
[2] OJ No L 285, 25. 10. 1985, p. 1.

because of the complexity of the relationships between the two types of information, certain rules, in particular those concerning the transmission of data, have not yet been laid down.

2. General comments

2.1. One has to acknowledge that the drafters of the proposal have made a meritorious attempt to find a solution for a complicated and difficult problem: how to meet the Single Market deadline and set up in good time a data collection system that does not impede intra-Community trade, which will no longer be subject to frontier formalities and which therefore will have to be measured by statistics largely bereft of administrative support, i.e. documents for other purposes connected with crossing frontiers and of which the statistics were only a by-product.

2.2. It therefore has to be inferred that the creation of a vast internal market without physical, technical or fiscal frontiers, in line with the thinking in the White Paper, cannot be fully implemented in the field of statistical information. It is doubtful that European integration will have attained such a stage by 1993 that a single economic, monetary, commercial and external union can be guided and its results measured by a single statistical system spanning the whole of Europe.

2.3. The completion of the Internal Market does not rule out the need for information on a national, or even regional scale. The writers themselves recognize this need to the extent that such information should enable the Member States, as it has during the last thirty years, to assess their individual growth and follow, indeed guide the movement towards the economic and social cohesion of Europe following the gradual completion of the Internal Market. What is more, a European statistical system cannot be merely a juxtaposition at Community level of Member States' statistics, because such a solution will give no indication of the inter-regional flows which will be of vital importance in a Europe increasingly centred on its regions; nor can it be a copy of the American system, which hardly measures trade between the different states at all. In view of the Single Market, the Community statistical system will have to cover both intra-Community and inter-regional trade flows.

2.4. Experts have felt that in order to fulfil the need for detailed information on trade in goods per product and per country for each Member State, the SAD should continue to be used for gathering statistics. The reasons for this are many; the SAD permits detailed knowledge to be gained of flows (direction, type of product, value, quantity, partner countries), transport conditions, financial terms (trading contacts, invoice values, currencies used) and foreign trade operators, subject to the establishment by the Member States of a register of intra-Community operators up to 31 December 1992 [Article 10(1) of the proposal].

2.5. After having examined in detail and duly appreciated the technical value of the proposal submitted by the Commission, although this does still leave some doubts about the feasibility and reliability of the system and about the administrative and monitoring constraints which remain, particularly for operators, after the abolition of stops at frontiers, which, by the way, have more of a symbolic value, the Committee has to say that its position on the present proposal is conditioned, as regards its content, by the ESC's cautious approach to the harmonization of indirect taxation which, without denying the aim of eliminating frontiers, is an embodiment of the eight Opinions [1] adopted at the 257th plenary session on 7 July 1988.

2.6. The present proposal presupposes the implementation of initiatives to harmonize indirect taxation and related measures, resulting from the various communications and proposed directives from the Commission [COM(87) 320-321-322-323-324-325-326-327-328]. Worth mentioning are the reversal of territorial jurisdiction for the tax treatment of exports, which would henceforth be liable for VAT in the country of origin, rather than being exempt, and the introduction of machinery to offset VAT on intra-Community sales, a scheme which, because of its complexity and the serious doubts felt about its operation, has caused controversy and questions to be asked both by the ESC and by other bodies and forums.

As the present proposal is mainly of a technical nature, it can only be seen with regard to solutions that will be finally adopted in the field of harmonizing indirect taxation, or even in terms of the time when this will be finally achieved. The Committee would refer here to paragraph 6.6 of Opinion CES 739/88 on the Commissions's global communication concerning the approximation of rates and the harmonization of structures of indirect taxation [COM(87) 320 final 2], a paragraph of a general nature which states that 'tax convergence ... cannot be considered as an absolute prerequisite for the establishment of the single market'. Moreover, and quite apart from the doubts about how the compensation machinery will operate, it remains to be seen

[1] OJ No C 237, 12. 9. 1988, p. 14, 19, 21, 24, 27, 29, 34 and 36.

whether the Commission will maintain its proposals for abolishing tax exemption on exports or whether it will opt for a scheme for holding over internal payments, which would enable the present system for collecting statistics on intra-Community trade to be retained and the introduction of the compensation machinery to be abandoned, machinery which, from the taxation point of view, underpins the present proposal.

3. **Specific comments**

3.1. *Articles 6 and 7*

Article 6 sets up the INTRASTAT system as a permanent system for collecting statistics on the trading of goods between Member States.

Article 7(5) states that, barring a decision to the contrary by the Council taken no later than 31 December 1991, national provisions on the intra-Community trade statistics referred to in Article 4 shall cease to apply after 31 December 1992.

As a result, the maximum harmonization of procedures sought by the proposal may lose ground in relation to the current situation in certain Member States. In some small countries or geographical areas, such as the Benelux, data are collected by a 'flash' system, i.e. through a single declaration upon exportation, with firms being exempted from making a declaration upon importation under the Benelux form 50 scheme. Consideration should therefore be given to the possibility of providing for exemption so as to avoid the splitting-up of such an entity within the Community and of maintaining the single declaration for intra-Benelux trade within the new system, subject to some adjustment being made.

3.2. *Articles 21, 22 and 23*

In the list of data to be given on the statistical data medium, mention is made only of the Member State of consignment within the meaning of Article 24(1); there is no provision for information on the country of origin.

Now, for the very large majority of Member States, this information is very important, both for analyzing specific intra-Community flows and for making comparisons with trade with non-EEC countries. It is therefore essential that the heading 'country of origin' be included in Article 23(1).

Moreover, objections, even disapproval, have emerged in the meantime in the steel industry, which feels that, because of its own particular statistical needs, the INTRASTAT system as proposed by the Commission will not measure up to its requirements as regards ease of application, reliability and comprehensiveness of nomenclature and statistical support. The steel industry also points out that it is subject to the Treaty of the European Coal and Steel Community (ECSC) of Paris, not the Treaty of Rome, and that as a sensitive sector it has its own statistical obligations. Other sensitive sectors, such as textiles and agriculture, might also feel that the INTRASTAT system is inadequate and insufficient. The question therefore arises of how to incorporate the waivers which provide for separate statistical treatment for those sectors that have a legitimate need for it.

3.3. *Articles 28 and 29*

A substantial reservation needs to be expressed regarding Articles 28 and 29. Although Article 28 sets up a 'committee on the statistics relating to the trading of goods between Member States' and lays down how this committee is to be made up and operate, Article 29 only gives an advisory role to it, even though the provisions necessary to the implementation of the draft regulation which may be enacted in pursuance of this same Article 29 may be the source of decisions involving financial investments by companies and administrative authorities in the different Member States. It therefore seems inadmissible to exclude the committee from the decision-making process, especially as Article 29 gives a maximum of powers to the Commission; the only restriction is that in Article 27(b), which states that measures adopted by the Commission concerning the simplification of statistical information cannot apply before 1 January 1999.

As regards the function of the Committee, it is worth noting that the present Committee on external trade statistics is a management committee. In view of the implications of Article 29 therefore, among other things, it is requested that the committee on the statistics relating to the trading of goods between Member States also be made a management committee where the Member States can be involved more effectively in the taking of decisions concerning the measures provided for within the framework of the present draft regulation. Article 29 will therefore have to be amended, which will avoid divergences arising between the structures of the committees dealing with intra-Community and extra-Community trade statistics.

3.4. *Articles 29 and 30*

Although one must recognize the obvious efforts made by the authors of the proposal to devise a sufficiently flexible system and avoid the risks of incompatibility—and hence duplication—between the intra-Com-

munity and extra-Community trade statistics of the Community, one can only deplore the uncertainty which arises as soon as an Opinion has to be issued on a new INTRASTAT system and its suitability for the future single market, and which concerns too many of the essential measures which still have to be taken under Articles 29 and 30, Article 29 in particular being a real catch-all provision. Reference is made in no less than 24 different places in the draft regulation to the implementing measures that the Commission is empowered to adopt under Article 29, which shows both a certain hastiness in preparing a text that has far too many shortcomings and an ill-concealed wish by the Commission to keep the Council out of decisions which have to be taken if the proposal is to be inacted, as is borne out by the purely advisory role given to the statistics committee.

The Committee therefore recommends that the authors of the draft go over the text again so as to reduce references to Article 29 to a minimum, after having finalized as many implementing provisions as possible and either incorporated them in the draft regulation or in an appendix to it.

4. Conclusions

4.1. The present proposal can only be assessed subject to the previous Opinions of the Economic and Social Committee on the harmonization of indirect taxation (see point 2.5 above) and the solutions finally found to the problems raised in this context with regard to the proposals and communications submitted by the Commission (see point 2.6 above).

So, while congratulating the writers of the present proposal on the work done in submitting right now a possible solution to the statistics problem after fiscal barriers are abolished, the Committee believes that it does not have to spell out what seems obvious, namely that, before any decision on statistics is taken, one should wait and see what form the abolition of frontiers as regards indirect taxation will finally take. It seems a good idea here to refer to the thinking which has occurred in certain Member States in the meantime and which involves proposals which are different from those of the Commission.

4.2. Although the technical aspects of the proposed new system may not give rise to any fundamental objections beforehand, as they are geared to the aim of eliminating frontiers within the Single Market, the fact still remains that it is difficult to give an overall judgement on the present draft regulation in view of its shortcomings, the lack of measures concerning transit and warehousing statistics and the lack of knowledge about too many implementing measures or procedures, which, in any case, are left to the Commission's discretion.

4.3. Until the new system has been tested, one must remain cautious about whether the system is applicable and whether it will be effective after the abolition of border checks, in view of its need for statistical information. It would be useful to schedule a trial period while the present system is still in operation, with the voluntary collaboration of selected major taxpayers. Such a trial itself requires that the essential implementing provisions be known rapidly.

4.4. One last caveat is necessary regarding the reaction of some of those obliged to submit information, and hence the reliability of the statistics provided by the new system. The tax motive will be lacking, as will the constraints involved in complying with the present formalities and checks at frontiers, which ensure that statistical data on the trade in goods is collected by means of customs documents. The authors of the proposal recognize the difficulty of making those with an obligation to submit information aware of their 'duty regarding statistics' (point 5 in the explanatory memorandum). It is doubtful whether the means they propose for resolving this problem will be effective, owing to the lack of motivations and constraints.

4.5. Whatever solutions may be adopted as regards fiscal and statistical matters, it will be necessary, in order to fulfil the need for information after the completion of the Single Market, either to retain the existing data collection system where appropriate, or, depending on the stage reached in harmonizing indirect taxation, to introduce a new system which, after the completion and amendment of the INTRASTAT draft under discussion, is most suitable for providing reliable statistics on intra-Community trade. One may therefore reasonably question the degree to which the abolition of frontier checks will lighten the administrative burden on commercial operators, which is the main argument used in favour of the proposal to harmonize indirect taxation.

At any rate, as the present proposal is closely linked to the harmonization of indirect taxation and is largely dependent on the prior enactment of the measures proposed by the Commission, it is obvious that if these controversial proposals undergo major modifications, the proposal on statistics relating to intra-Community trade will have to be reviewed and modified in its turn, in which case the ESC will expect to be asked for an Opinion on the new version of the text.

4.6. Moreover, in view of the complexity of the new system proposed, the reliability of statistical information may suffer, especially in the outlying countries, from the lack of technical facilities and training for the staff responsible for collecting and processing statistics. Another technical problem will affect Luxembourg, which will need to strengthen its administrative services which currently benefit from collaboration with the Belgian authorities under the Belgo-Luxembourg Economic Union (BLEU). It would be a good idea if, in addition to any introduction of a new system, the Commission provides at the same time adequate assistance with technical, training and financial facilities.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive on the driving licence [1]

(89/C 159/08)

On 21 December 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 12 April 1989. The rapporteur was Mr Tukker.

At its 265th plenary session (meeting of 26 April) the Economic and Social Committee adopted the following Opinion by a large majority with 4 abstentions.

1. Introduction

1.1. Directive 80/1263/EEC of 4 December 1980 [2] provides as follows:

a) when the holder of a driving licence moves to another Member State his/her original licence remains valid for one year but must be exchanged for a licence issued by the other Member State before the end of that period;

b) a Community model driving licence is to be introduced with effect from 1 January 1986.

1.2. There are difficulties in comparing driving licences issued by different Member States. There are disparities as regards:

a) categories of vehicle;

b) period of validity;

c) driving test requirements.

1.3. The Commission work programme for 1985 states that the Commission is to submit a proposal for making driving licences valid throughout the Community, regardless of the Member State in which the holder is resident.

There are also to be more favourable arrangements for the disabled and invalids.

1.4. In order to fulfil these commitments the Commission is proposing that Directive 80/1263/EEC be replaced by a new Directive.

2. General comments

2.1. The Committee believes that driving licences should be harmonized in the EC, for technical and also psychological reasons.

2.1.1. It is of course desirable from the technical point of view that the same rules should apply in all Member States so that all driving licences have the same value.

[1] OJ No C 48, 27. 2. 1989, p. 1.
[2] OJ No L 375, 31. 12. 1980, p. 1.

2.1.2. Harmonization is also psychologically important for the People's Europe. People would be brought into contact with a Directive which affects, and will be welcomed by, virtually every EEC citizen. As a result people would begin to appreciate that steps are being taken to further the integration of Europe.

3. Specific comments

3.1. *Article 4(1)*

These rules are already in force in most Member States. The categories already appear on the EC driving licence.

3.2. *Article 4(3)*

This would involve some change for three Member States.

3.3. *Article 4(4)*

Introduction of the 400 cm^3 threshold for motorcycles. Already exists in some Member States.

If adopted, a sufficient transitional period should be allowed.

3.4. *Article 4(5)*

The Committee supports the introduction of specific licences for these categories, particularly the proposals for categories C and D.

3.4.1. Category C

Vehicles heavier than 3 500 kg are in effect lorries with quite different characteristics from private cars. They are larger and harder to manoeuvre, e.g. when reversing.

3.4.2. Category D

Vehicles with less than 8 passenger seats (not counting the driver's seat) include estate cars and vehicles for the carriage of workmen which are nonetheless the size of normal cars.

Vehicles with 8 or more passenger seats (not counting the driver's seat) can be described as minibuses. The situation regarding responsibility is different; roadholding characteristics are different and manoeuvring is more difficult. More stringent training and a corresponding licence are thus needed.

3.4.3. Categories C and E

See under C.

3.4.4. Categories D and E

See under D.

3.4.5. The Committee feels that more stringent driving skill requirements are needed for the categories of vehicle listed in Article 4(5) but that the group 1 medical requirements are sufficient.

3.4.6. Article 4(5) is a controversial point, as the United Kingdom and Ireland have different standards from other Member States. Furthermore, minibuses play an important role in both these countries. Opinions are in any case divided even in those two countries and among their representatives.

3.5. *Article 8*

See point 3.4.5 regarding the requirements for the categories of vehicle listed in Article 4.5, and the group I medical requirements.

3.6. *Article 9*

When a single uniform driving licence is introduced in the EC, it should have the same period of validity in all Member States.

3.7. *Article 10(2)*

A resident of a Member State who moves to another Member State may apply for a driving licence in his/her new country of residence. In this case he/she must, however, surrender the licence issued by his/her original country of residence. He/she is, however, not obliged to apply for a new licence, as the original licence is and remains valid in other Member States regardless of where the holder is resident.

3.8. *Article 10(3)*

It would be unthinkable for a Member State issuing a licence to a citizen of a non-Community country to withdraw the original licence issued by the non-Community country. In most countries driving licences, like passports, remain the property of the State and cannot thus be withdrawn by another State.

3.9. *Annexes*

It is difficult to assess the annexes.

3.9.1. Point 6 of the comments in Annex 1 (p. 19) states that:

Member States shall have the right to:

— dispense with the photograph requirement,

— replace the permanent place of residence by the postal address.

The Committee does not support these provisions and considers that the photograph and the exact address are, on the contrary, necessary in order to prevent fraud.

3.9.2. Annex 2 is very long and it may be asked whether all the requirements listed are really necessary.

3.9.3. The sub-categories C + E and D + E should be added to group I in point 1.1 of Annex 3.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive on speed limits for certain categories of motor vehicles in the Community [1]

(89/C 159/09)

On 26 January 1989 the Council decided, in accordance with Article 75 of the Treaty establishing the European Economic Community, to consult the Economic and Social Committee 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 12 April 1989. The rapporteur was Mr Cavazzuti.

At its 265th plenary session (meeting of 26 April 1989), the Economic and Social Committee adopted the following Opinion by a substantial majority, with one dissenting vote.

1. The Committee endorses the Commission's aim of standardizing road traffic regulations in the Community.

2. The Committee notes that the proposed Directive covers only certain aspects (introduction of differentiated speed limits according to the characteristics of vehicles and roads) and agrees with this pragmatic approach. It basically endorses the Commission proposal, but would make the following comments.

3. It would ask the Commission to complete the rest of its work in this area as soon as possible by drafting general rules for road traffic and for cars. The Committee hopes that the points (both general and specific) made in its Opinion of 21 October 1987 [2] on speed limits will be given due consideration.

4. Although the Commission proposal concerned does not mention the 1987 Opinion as such, the Committee notes that the two are broadly similar.

5. The explanatory memorandum is somewhat cursory as it covers traffic of all kinds (goods vehicles, public transport and private vehicles). The fact that it is so sweeping means that, in addition to sounding slightly unconvincing, there are frequent inaccuracies, e.g. as regards the link between accidents and different types of road, and the factors determining the impact in an accident (points 5 and 6).

6. To be effective, safety policy requires coordinated action, the objective being to reduce the likelihood of accidents. Sensible road traffic rules will help to achieve this.

7. The Committee therefore hopes that the recitals will be reworded so as to give priority to this objective

[1] OJ No C 33, 9. 2. 1989, p. 9.
[2] OJ No C 347, 22. 12. 1987.

and set out a more uniform, integrated approach to the various issues involved.

8. The Committee would also draw attention to the fact that some specific aspects which are relevant to regulations on speed limits have not been mentioned in the Commission document, e.g. the need for a minimum speed limit in some situations; the need for the appropriate authorities to identify and apply specific speed limits to 'black spots' in the road network.

9. Whilst basically agreeing (in spite of some inconsistencies) with the proposal to introduce differentiated speed limits according to the type of road and category of vehicle, the Committee would recommend that 'expressways' be dealt with separately—at present they are placed in the category of non-urban roads, whereas in actual fact they are similar to motorways.

9.1. The Committee recommends that the rules to be introduced for category M1 vehicles (cars) should be applicable to category M2 and N1 vehicles.

9.2. The Committee would call for the same speed limit (70 km) for category N2 and N3 vehicles on non-urban roads; it would be better not to differentiate between these two types of vehicle here.

10. The Commission should include relevant scientific, technical and statistical data in support of its proposals on Community road traffic rules, particularly as regards traffic density on the various types of road, accident rates, the most common causes of accidents, the types of accident and the vehicles involved and/or responsible.

11. Given the complexity of the problem and the lack of comparable data and surveys, the Committee would stress the need for a Community data bank on road accidents, providing standardized data on research carried out as well as more general information on safety in the road and transport sector. This would also be a useful stimulus for Community policies.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

APPENDIX

Bus and lorry speeds (km/h)

Type of road / Category of vehicle	Commission proposal				ESC Opinion October 1987			
	Motor way	Express way	Non-urban road	Built-up area	Motor way	Express way	Non-urban road	Built-up area
M_2 = bus + 9 seats including driver's seat – 5 tons	100	80	80	50	100	As for cars		
M_3 = bus + 9 seats including driver's seat + 5 tons	100	80	80	50	100	90	80	50
N_1 = lorry – 3,5 tons	100	80	80	50	As for cars			
N_2 = lorry 3,5 - 12 tons	100	80	80	50	90	80	70	40
N_3 = lorry + 12 tons trailers, semi-trailers and caravans	80	80	70	50	90	80	70	40

Opinion on the proposal for a Council Decision adopting a specific research and technological development programme in the field of biotechnology (1990-1994): BRIDGE, Biotechnology Research for Innovation, Development and Growth in Europe [1]

(89/C 159/10)

On 24 January 1989, in accordance with Article 130Q(2), of the Treaty establishing the European Economic Community, the Council of the European Communities decided to consult the Economic and Social Committee on the abovementioned proposal.

The Section for Energy, Nuclear Questions and Research which had been instructed to prepare the Committee's work on the matter, drafted an Opinion on 7 April 1989 (rapporteur: Mr De Tavernier).

The Economic and Social Committee unanimously adopted the following Opinion at its 265th plenary session (meeting of 26 April 1989).

The Committee supports the objectives of the BRIDGE programme and approves the proposal, subject to the following comments.

1. Introduction

1.1. The BRIDGE programme seeks to continue and step up research and technological development in biotechnology; these activities were initiated with the BEP programme (1982-1986) [2] in 1982 and subsequently extended and supplemented by the BAP programme (1985-1989) [3].

1.2. The Committee has repeatedly stressed the importance of biotechnological research in relation to the social and economic objectives of the Community and its Member States, most recently in its Opinion of 27 January 1988 concerning a revision of the BAP programme [4].

1.3. Like the BAP programme, the BRIDGE programme is to consist of two distinct but related actions: (i) research and training and (ii) concertation.

1.4. Activities falling under Action I are classified under four headings:

— information infrastructure,

— enabling technologies,

— cellular biology,

— pre-normative research.

1.5. Action II—Concertation—covers various monitoring, information and cooperation activities designed to facilitate effective application of biotechnological findings to the economic and social objectives of the Community and its Member States.

1.6. The Commission proposes that 100 million ECU be allocated to this new programme, in line with the appropriations earmarked for research under subdivision 4.1—Biotechnology—in the framework programme for Community action for research and technological development (1987-1991) [5]. 90 million ECU are to be channelled into Action I and 10 million ECU into Action II.

1.7. This total budget of 100 million ECU represents an increase of 25 million ECU over the BAP programme and 85 million ECU over the first programme, BEP.

1.8. Research activities are to be implemented via shared-cost research contracts and the total cost of the programme is estimated at around 171 million ECU, of which 71 million ECU are to be provided by other national level sectors.

2. General comments

2.1. The Committee welcomes the particular attention the Commission has paid to assessing achievements under the BEP and BAP programmes since 1982, and the concordant, generally positive conclusions, which have appeared in all reports produced to date. It is, however, noted that the final assessment of the BAP programme, still in progress, has yet to be made.

[1] OJ No C 70, 20. 3. 1989, p. 1.
[2] Biomolecular Engineering Programme (OJ No L 375, 20. 12. 1981, p. 1).
[3] Biotechnology Action Programme (OJ No L 83, 23. 3. 1985, p. 1, as amended by OJ No L 306, 30. 7. 1988, p. 38).
[4] OJ No C 80 of 18. 3. 1988, p. 7 (rapporteur: Mr de Normann).
[5] OJ No L 302, 24. 10. 1987, p. 1.

2.2. The assessment is being conducted at three levels: by the contractors themselves, the 'Biotechnology' management and coordination committee and a panel of independent experts. This type of assessment should be extended to all research programmes.

2.3. Major successes under the BAP and BEP programmes include their contribution to breaking down national barriers between laboratories. A case in point is the Commission's innovatory action under BAP, which involved bringing together teams of research workers employed in multidiciplinary research on a specific objective, to work in open transnational associations known as European laboratories without walls (ELWW).

2.4. The Committee considers that the Commission could quite usefully extend this initiative to other research programmes.

2.5. The Committee broadly endorses the objectives and content of the BRIDGE programme, *inter alia* the emphasis on relieving bottlenecks which hamper the exploitation of modern biology. The causes of these bottlenecks are twofold: (1) gaps in basic knowledge, (2) constraints imposed by structure and scale.

2.5.1. For the first category, the Commission advocates the establishment of European laboratories without walls. Basic scientific projects carried out in these laboratories will receive Community support ranging from 200 000 to 400 000 ECU per project per annum. Such projects will be entitled 'N' projects.

2.5.2. For the second category, the Commission believes that the structural and scale constraints which lie at the root of the bottlenecks could be overcome by a major investment of skills and resources over a given period of time, with the aim of building up the necessary 'critical mass' of resources and personnel. These large-scale targetted projects, entitled 'T' projects, will benefit from Community funding of between 1 and 3 million ECU per project per annum.

2.6. The new approach followed by the Commission, in conjunction with the relevant implementing procedures, should help to introduce the flexibility necessary to ensure better matching of funds and available resources to Europe's biotechnological research needs.

3. Specific comments

3.1. *Ethical and moral aspects of biotechnological research*

3.1.1. The Committee has repeatedly stressed the moral and ethical aspects of bio(techno)logical development. The most recent instance was its Opinion of 14 December 1988 on the proposal for a Council Decision adopting a specific research programme in the field of health—Predictive medicine: human genome analysis (1989-1991) ([1]).

3.1.2. The Committee then emphasized that 'our faith in science and the creativity of research should not blind us to the fact that there must be limits, despite the existence of ethical and moral standards and the vast scale of scientific progress. If research is to serve the interests of mankind, self-restraint is required to make the research findings controllable and to protect them from abuse'.

3.1.3. This is equally applicable to the general sphere of modern biotechnological research, where an overall balance must be maintained between long-term utility of current or planned research and ethical aspects transcending commercial, political and economic considerations.

3.1.4. The Committee notes and endorses the measures taken by the Commission in this context, including those taken in conjunction with other European or international bodies. These include the October 1989 conference which the Commission is organizing in conjunction with the United Nations Educational, Scientific and Cultural Organization (UNESCO) on genetic heritage and rights of humanity.

3.1.5. The Committee also welcomes the recent establishment of a working party on the ethical, social and legal aspects of the use of research findings on the human genome. The working party comprises scientists, philosophers, sociologists, theologians and legal experts.

3.1.6. The Committee points out, however, that its Opinion of 14 December 1988 called for the establishment of a genuinely representative ethics committee, comprising delegates from the social interest groups concerned. It deplores the absence of such representatives in the working party set up by the Commission, and asks it to remedy the situation. In addition, the Committee asks that current discussion also be extended to the general area of biotechnology.

3.1.7. The Committee believes that the working party should seek to define ethical criteria for all research,

([1]) OJ No C 56, 6. 3. 1989, p. 47 (rapporteur: Mrs Tiemann).

culminating in the establishment of a code of reference setting out ethical and moral limits for the programmes. This has also already been requested by the Committee.

3.2. *Risk assessment*

3.2.1. The Committee wholeheartedly supports the Commission in its attempts to secure a substantial increase in pre-normative research activities, particularly in assessing the possible risks associated with the intentional release of genetically engineered organisms into the environment.

3.2.2. In view of the limited experience with intentional release of genetically engineered organisms into the environment, these activities should be included among the priority objectives of the BRIDGE programme. No Community arrangements would in fact be able to guarantee sufficient protection for man and the environment against all potential risks associated with genetic engineering, unless they were adjusted to advances in knowledge.

3.2.3. In this context, the Committee refers to the comments set out in its Opinion on the Proposal for a Council Directive on the deliberate release to the environment of genetically modified organisms, dated 24 November 1988 ([1]).

3.3. *Involvement of industry*

3.3.1. In its Opinion of 27 January 1988, the Committee pointed out that 'effective involvement with industry, both in the research programmes and in the subsequent stages of development, is a key factor in assessing the value which will accrue to the Community from this proposed expenditure'.

3.3.2. The Committee therefore welcomed the considerable progress made in increasing industry's involvement in the biotechnology programme. It noted, however, that cooperation with industry springs not so much from direct financial participation in research projects as from procedures which allow firms to monitor the progress of these projects, such as the organization of seminars and round tables, which give them the opportunity to show an interest in exploiting research findings.

3.3.3. In this respect it should be noted that, although industry is only directly involved in the funding of 15 % of the research teams, it has expressed interest in more than 80 % of the research projects. This indicates that it may well become directly involved in the subsequent development and marketing of research findings.

3.3.4. The Committee is in no doubt, however, that industry needs to be kept abreast of progress in this field, since a study carried out by the panel of independent experts has produced some surprising results; almost two thirds of European biotechnology firms, mostly small and medium-sized enterprises (SME), claim that they had received little or no information about Community programmes.

3.3.5. Consequently, the Committee cannot support the Commission decision not to take any measures specifically aimed at SME; these firms should, on the contrary, benefit from research carried out under the proposed programme. It is superfluous to highlight the difficulties SME often face in participating in Community research programmes.

3.3.6. There has been little or no involvement of the agricultural sector in Community biotechnology projects, and the Committee believes that specific action should be taken to remedy this; in this context, its Opinion on the BAP ([2]) programme states that it is vitally important to secure the support and involvement of the European agricultural communities for the development of the potential of biotechnology.

3.4. *Assessment of the social impact of biotechnology*

3.4.1. The Committee reiterates the request made in its Opinion of 25 January 1988, that a social impact assessment be introduced into the BRIDGE programme. It deplores the fact that this request has not been taken on board by the Commission.

3.4.2. As emphasized in several earlier Committee Opinions, the best prospects for technological progress are linked to economically and socially acceptable conditions. Suitable consultation procedures should be set up with all social and trade organizations, including agricultural organizations, consumers' association and environmental conservation groups, in order to ensure that technological development in Europe is balanced in terms of social considerations.

3.5. *Intellectual property in biotechnology*

3.5.1. As was stressed by the panel of independent experts, uncertainties surrounding intellectual property rights in biotechnology have created a major bottleneck which has hampered the full development of Europe's scientific potential and placed us at a disadvantage vis-à-vis the United States.

([1]) OJ No C 23 of 30. 1. 1989, p. 45 (rapporteur: Mr von der Decken).

([2]) OJ No C 25 of 28. 1. 1985 (rapporteur: Mr de Normann).

3.5.2. In November 1988, the Commission sent the Council a proposal for a Directive on the legal protection of biotechnical inventions [1] which has already provoked certain criticism. In this context, the Committee refers to its own parallel work in the area.

3.6. *Information infrastructures*

3.6.1. Research and training activities under this heading extend the 'contextual measures' set out in the BAP programme. They are designed to (1) develop a communications system providing rapid access to biological culture collections and (2) apply information technology to biological research (bio-informatics).

3.6.2. The Committee supports the continuation and further development of these activities; Community support guarantees that the information infrastructure will be accessible to all research workers in all Member States. Community intervention is also necessary to ensure that these activities are coordinated with, and complemented by, similar activities such as the ESPRIT programme.

3.6.3. The Committee considers that the proposed centralized European data bank of microorganisms and other biotic materials should come under Commission administration or, at the very least, Commission responsibility; this would guarantee universal access to such data under conditions and arrangements, *inter alia* of a financial nature, to be specified in due course.

3.7. *Training activities*

3.7.1. The Commission is proposing that 10 million ECU be allocated to training activities for research covered by the programme. These activities will include the conclusion of 6-month to 2-year training contracts for scientists (an annual average of the 160 persons), and the organization of training classes and summer courses.

3.7.2. These activities, which have met with such success in the BAP programme, should continue to receive particular attention because of the need to:

— ensure that research staff are able to keep up with constant adaptation to complex techniques and rapid advances in knowledge, and

— enable some Member States, less well-equipped in terms of research infrastructure and scientific personnel, to participate fully in the research activities of the programme.

3.7.3. The Committee believes that these training activities can make a significant contribution 1) to narrowing development gaps between Member States, and 2) to the achievement of economic and social cohesion in the field of biotechnology.

3.7.4. In this context, the Committee is pleased to note that the Commission intends to encourage the award of training contracts to scientists from Greece, Spain and Portugal and to organize 20 summer courses in these three countries between now and the end of the BRIDGE programme.

3.8. *Concertation activities*

3.8.1. The concertation activities, which began with the BAP programme, are designed 'to improve the knowledge and resources applied in life sciences and to render their strategic application to the economic and social objectives of the Community more effective'.

3.8.2. While noting the successes of the BAP programme, the report compiled by the panel of independent experts expressed considerable criticism of the concertation activities (*inter alia*, a lack of public awareness of the benefits of biotechnology and the risks involved in its application, and insufficient integration of data from other Commission directorates-general into BAP programme research activities). The report also stated that the work schedule was too ambitious and that the workload of the individual CUBE [2] units was too heavy.

3.8.3. While endorsing the proposed concertation activities of the BRIDGE programme, the Committee considers that they should focus on:

— identifying optimum conditions for more effective and coherent national and Community biotechnology programmes and associated policies, particularly those affecting the research-agriculture-industry-environment interface,

— informing the general public of the potential of biotechnology, its benefits and possible risks; an area which the Committee believes has been neglected.

[1] OJ No C 10, 13. 1. 1989, p. 3.

[2] Concertation Unit for Biotechnology in Europe.

3.9. *Expansion of the BRIDGE programme to cover European non-Member States*

3.9.1. The Commission is proposing that 3 million ECU be allocated to the continuation of research activities carried out in conjunction with countries involved in European scientific and technical cooperation, entitled 'COST Actions'.

3.9.2. It also proposes that the BRIDGE programme be opened up to organizations and firms from European non-Member States with whom the Community had concluded framework agreements in science and technology.

3.9.3. This initiative is supported by the Committee; it meets a request expressed in one of its previous Opinions.

3.9.4. However, would it not be appropriate at this juncture to look at long-term integration of COST actions into the biotechnological research programme, with a view to rationalizing resources? After all, the European non-Member States participating in these actions, i.e. countries of the European Free Trade Association (EFTA), have all concluded framework agreements for scientific and technical cooperation with the Community. Wider European cooperation transcending EFTA could also be considered.

3.10. *Programme review and assessment reports provided for under Article 4 of the draft Decision to be forwarded to the Economic and Social Committee*

3.10.1. As with other programmes, the Committee asks that Article 4 of the draft Decision be amended to provide expressly for the forwarding to the Economic and Social Committee of (a) the report containing the programme review and (b) the report assessing the research findings.

3.10.2. We reiterate that, in accordance with Article 130Q(2) of the Treaty establishing the European Economic Community, the Committee must be consulted on any proposal for amendment, extension or renewal of the programme. Consequently, these reports constitute a key element in the appraisal of Commission proposals.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Decision adopting a specific research and technological development programme of the European Economic Community in the fields of raw materials and recycling (1990-1992) [1]

(89/C 159/11)

On 10 February 1989, the Council decided to consult the Economic and Social Committee, under Article 130q(2) of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Energy, Nuclear Questions and Research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 7 April 1989. The rapporteur was Mr Jaschick.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion unanimously.

The Economic and Social Committee approves the abovementioned proposal, subject to certain reservations.

1. Introduction

1.1. The proposed programme comes under research activity line 3—modernization of industrial sectors—of the framework programme for Community activities in the field of research and technological development (1987-1991) [2], and more specifically under heading 3.3 'Raw materials and recycling', whose aim is to 'contribute to the competitiveness of traditional and new industrial sectors of the Community, by satisfying their requirements in raw materials, both renewable (wood) and non-renewable'.

1.2. This new programme extends some of the research activities undertaken as part of the programme on materials (raw materials and advanced materials) (1986-1989) [3].

1.3. The proposed new research activities, which are to receive 45 million ECU as provided for under the framework programme, are broken down into four sub-programmes:

— primary raw materials: 21 million ECU,

— recycling of non-ferrous metals and strategic metals: 6 million ECU,

— renewable raw materials, forestry and wood products: 12 million ECU,

— recycling of waste: 6 million ECU.

1.4. These activities will be mainly carried out in the form of shared-cost contracts with part of the funding going to coordination activities, particularly for the recycling of waste. Funds will also be made available for training purposes (notably in the form of fellowships).

2. General comments

2.1. *Overall assessment of the programme*

2.1.1. The Committee generally approves the objectives and content of the proposed programme, and notes that very extensive consultations were held with the relevant scientific and industrial circles when the programme was being drawn up. It also notes the favourable opinion of the Management and Coordination Advisory Committee (CGC) on raw materials and other materials.

2.1.2. The Committee believes that the programme puts too much emphasis on primary raw materials at the expense of the other sub-programmes, particularly recycling. Greater importance should be attached to the recycling sub-programme in the interests of raw material supplies and for the sake of the environment.

2.1.3. The Committee also regrets that when the new programme was being prepared, many of the projects being executed under the 1986-1989 programme had still not produced enough scientific findings for potential industrial applications to be assessed. The Commission itself points out this shortcoming several times.

2.1.4. Although the Committee has not had the chance to study in detail the interim report drawn up by a group of independent experts, it notes with satisfaction the fairly positive initial conclusions of the report regarding achievements so far in the field of primary and secondary raw materials.

2.2. *Priorities and criteria for the selection of research projects*

2.2.1. The Committee shares the CGC's view that the programme would seem to be rather ambitious given the funds allocated to it. Priorities will therefore have to be pinpointed and precise criteria for the selection of projects established if the programme is to have maximum economic impact, efforts are not to be

[1] OJ No C 52, 1. 3. 1989, p. 24.
[2] OJ No L 302, 24. 10. 1987, p. 1.
[3] OJ No L 159, 14. 6. 1986, p. 36.

dissipated by trying to tackle too many projects, and there is to be no overlapping with national or other Community programmes.

2.2.2. Great care will also have to be taken to ensure that the projects selected are designed to satisfy the long-term needs of the Community as a whole. According to the experts' group, many of the projects in the past have been used to deal with problems of immediate economic importance which it would have been better to tackle in other ways.

2.2.3. The Committee is pleased that research is to become increasingly trans-national in character.

2.2.4. The Committee also fully supports the Commission's desire to give preference, whenever there is a choice between projects of similar technological benefit and potential industrial impact, to those projects which involve small and medium-sized enterprises (SME).

2.2.5. The Committee would also underline the need to pay special attention to the regional and social (particularly employment) impact of the projects and their contribution to the narrowing of the gaps between Member States' levels of development. Expansion of small-scale mining is likewise of great importance in this respect.

2.2.6. The Committee would urge the Commission to take these comments fully into account when selecting research projects and setting priorities within the various sub-programmes.

2.2.7. The Committee would impress upon the Commission the need to consult the economic and social interest groups concerned, and not only the CGC.

2.2.8. The Committee also proposes that the Commission consider the possibility of using some of the available funds to promote pilot and demonstration projects to establish the technological and commercial feasibility of research projects whose results have proved to be promising. The Committee made the same proposal in its Opinion of 18 December 1985 on the 1986-1989 programme [1].

2.3. *Coordination with related Commission proposals*

2.3.1. The activities proposed under the new programme have links—and frequently very close links —with several other Community research programmes, such as BRITE/EURAM, JOULE (non-nuclear energies), STEP (environment) and research programmes in the fields of agriculture and biotechnology. This implies the existence of appropriate procedures and arrangements to avoid duplication of work. The Committee supports here the recommendation made by the CGC.

2.3.2. The Committee would also reiterate the urgent recommendation made in its Opinion on 18 December 1985 to the effect that the Commission should 'ensure that the relationship between all relevant R & D programmes is reviewed at programme formulation, and thereafter on a routine and regular basis, to ensure that value for money is being obtained by the optimum use of available resources'.

2.4. *Coordination with related Member State programmes*

2.4.1. The Committee believes it is vital to ensure that Community funds do not go to research projects which could be carried out by individual Member States or by firms acting independently in their own interests.

2.4.2. The Committee cannot therefore but be concerned about the comments contained in the interim report of the experts' group to the effect that a large number of research projects in the field of primary and secondary materials could have been carried out under national programmes, even if, on the whole, the relevance of the research activities to the requirements of industry and the needs of the Community is not in dispute.

2.4.3. This situation confirms that the Committee was justified in making the point that a chapter in the communication should have been devoted to a description of the activities carried out by the Member States in the different areas in question, with details being given of both programme content and financial commitment.

2.4.4. The Committee strongly endorses the following recommendation of the independent experts' group:

A prime aim of the Commission should be to produce a comprehensive directory which would detail all ongoing research activities in the raw materials field taking place throughout the EC and in associated countries with whom links exist at present, or may be established in the future. This directory would need to be continuously updated and would include all projects funded by the EC since the first raw materials programme (1978-1981), and all EC funded projects of subsequent and current programmes, and as complete information as can be obtained on all other relevant R & D work in the private, semi-private and public sectors. Consideration should also be given to including facilities and equipment. The directory, which would form the

[1] OJ No C 354, 31. 12. 1985, p. 8 (rapporteur: Mr de Normann).

principal EC raw materials data base, should have a universal distribution, and should be accessible through one of the EC computer networks.

2.4.5. This recommendation is valid for the whole of the new programme and could be applied with great profit to all Community research programmes. The Committee urges the Commission to act upon the recommendation, which would make it easier to set priorities and select research projects. Extra staff might, however, be needed to implement this measure.

2.5. *Proposed funding of the different sub-programmes*

2.5.1. The Committee notes that about half of the proposed budget for the entire programme, including personnel, is to go to the primary raw materials sub-programme alone. It likewise notes that most proposals for participation under the previous research programme were also related to this sector.

2.5.2. The Committee considers that the allocation of funds does not reflect the order of priorities and the relative importance of the various sub-programmes, given the acute environmental protection problems and the urgent need to find solutions to the problems. The Committee therefore calls for a reduction in the funding of the 'primary raw materials' sub-programme and transfer of the funds thereby released to the other three sub-programmes.

2.5.3. The Committee also notes that, unlike the previous programme, the new Commission proposal does not allow any budget flexibility, i.e. it no longer permits the definitive funding of each of the sub-programmes to differ from the original appropriation. The Commission is urged to provide for such flexibility so that unforeseen developments in the course of the research can be taken into account in the allocation of funds. The CGC likewise recommends such flexibility.

3. Specific comments

3.1. *Primary raw materials*

3.1.1. The Committee is not convinced that EC funds to 'enhance the competitive position of the Community's industries in world markets' are really necessary for all the activities listed in Annex 1. The fact that potential beneficiaries have indicated their interest does not in itself in any way justify the Commission going beyond simple coordination.

3.1.2. It is important to take into consideration not only the structure and level of technological sophistication of Community firms in this sector, but also the contribution of the project in question to the development of the mining potential of the Member States and more generally to the economic and social development of the most backward regions of the Community.

3.1.3. The Committee attaches great importance to the development of new operating methods and special equipment for small-scale mining.

3.1.4. The Committee also considers that priority should be given to research areas which are of particular importance from the point of view of improving working conditions and reducing the impact of mining operations on the environment.

3.2. *Recycling of non-ferrous and strategic metals*

3.2.1. The Committee endorses this sub-programme, regarding it as being consistent with Community objectives in the field of environmental protection.

3.3. *Renewable raw materials: forestry and wood products*

3.3.1. The Committee unreservedly approves this sub-programme. It is pleased that the Commission attaches so much importance to the environmental aspects and so supports the Commission's efforts to offer the consumer high-quality products, whilst at the same time preserving natural resources and the environment. Nevertheless the programme should be focussed on securing an overall improvement in quality—not just the quality of wood as a raw material or other material but also the quality of the final product based on wood.

3.4. *Recycling of waste (REWARD)*

3.4.1. The Committee is convinced that this sub-programme is worthwhile. However, the resulting benefits to the environment should not be regarded simply as a by-product but should be made an integral part of the research projects. Furthermore, a waste-recycling research programme must not be allowed to detract from the need to use resources sensibly and responsibly since it is always better to prevent waste rather than have to treat it. However, this does not in any way mean that research and the development of new methods and technologies in this sector must not be encouraged.

3.4.2. The Committee considers that whilst this sub-programme is being executed, a major campaign should be launched to inform, and raise the awareness of, the public at large.

3.4.3. The research activities to be carried out under this sub-programme are closely linked to the work under the heading 'Technologies for Environmental Protection' in the STEP [1] programme. The Commission is urged to ensure that the activities under the two programmes are complementary so that maximum benefit can be obtained from the limited funds to be allocated to the REWARD sub-programme.

3.4.4. This recommendation also holds good for the 'Energy production from waste' programme, whose research activities are closely linked to the JOULE programme (non-nuclear energies) [2] and its sub-programme 'Energy from biomass'.

[1] Science and Technology for Environmental Protection.
[2] Joint Opportunities for Long Term Energy Supply.

Done at Brussels, 26 April 1989.

3.5. *Review and evaluation of the programme*

3.5.1. Article 4 of the draft Decision states that a review is to be carried out when the programme is in its second year. The outcome of the review will, if necessary, give rise to proposals to amend or extend the programme.

3.5.2. When the Commission was drawing up its present proposal, sufficient scientific results of research under the current 1986-1989 programme were in many cases not yet available. The Committee therefore considers that the final evaluation of the 1986-1989 programme should be taken carefully into account when reviewing the new programme.

3.5.3. The Committee would also reiterate its request that Article 4 be amended to make express provision for the Economic and Social Committee to be sent the findings of the review and of the evaluation of the results achieved.

The Chairman
of the Economic and Social Committee
Alberto MASPRONE

Opinion on the proposal for a Council Decision on High Definition Television [1]

(89/C 159/12)

On 16 December 1988, the Council decided, in accordance with Article 198 of the Treaty establishing the European Economic Community, to consult the Economic and Social Committee on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services was instructed to prepare the work on this topic and adopted its Opinion on 5 April 1989, in the light of the report by Mr Poeton, rapporteur.

The Economic and Social Committee, at its 265th plenary session, meeting on 26 April 1989, adopted the following Opinion with no dissenting votes and 3 abstentions.

1. Introduction

1.1. The Commission's proposal for a Council Decision to involve the EC in the funding and to assist in the development of high definition services in Europe has the full support of the Committee.

1.2. The development of High Definition Television (HDTV) possesses a dramatic potential by providing in the home and elsewhere a viewing experience similar to that of the wide screens of the cinema. It has been possible to achieve this by providing more detail in the picture which satisfies the technical relationship between visual acuity and viewing distance.

1.3. HDTV contains a lot more detail which, combined with a larger screen, allows a new viewing experience. Furthermore, the new technology can be used in new areas like printing, education, health, etc.

[1] OJ No C 37, 14. 2. 1989, p. 5.

1.4. Twenty years ago colour was introduced in a manner such that although downward compatibility was maintained with existing black and white receivers, there was no international or indeed even European standard. As a result, two different systems (PAL and SECAM) developed and hindered the European consumer electronics industry for years.

1.5. At the 1986 International Radio Consultative Committee (CCIR) in Dubrovnik, the European Community succeeded in preventing the adoption of a Japanese proposal for a world HDTV standard and obtained an additional study period of 4 years, up to Summer 1990, for reaching world-wide agreement. The Japanese standard was incompatible with all existing TV sets and equipment and would therefore require new equipment throughout.

1.6. European industry under its 'EUREKA' R&D HDTV project (EU 95) has succeeded in demonstrating a new system, based on the MAC standard, which provides a complete HDTV service and is also at the same time fully compatible with existing normal TV sets and equipment. This demonstration met CCIR requirements.

2. Compatibility through standards

2.1. There are however still a number of technical problems to overcome.

2.2. The larger amount of detail contained within an HDTV picture demands a larger slice of the broadcast spectrum (bandwidth):

— it cannot therefore be transmitted over an existing terrestrial UHF television channel,

— the existing satellite channel bandwidths are also insufficient, without adopting bandwidth compression techniques. To obtain the necessary number of satellite channels new bandwidth reduction techniques (HD MAC) can and must be introduced simultaneously.

3. General comments

3.1. The Committee congratulates the EU 95 project team on the success so far achieved but stresses that the tight schedule up to now respected cannot be relaxed at this stage. This is not only in view of the CCIR deadline but also of the strong competition from the USA, Japan, South Korea (and soon other countries) where governments are working with industry to obtain the largest share of the world market.

3.2. The following points are, in the Committee's opinion, of particular relevance:

a) Obsolescence of the TV receivers currently in use must be prevented at all costs, and the European approach makes this possible.

b) The fact that the Japanese have recently produced a convertor from their MUSE system to NTSC (the existing American/Japanese standard) must not create uncertainty in the market place. The 'inherent compatibility factor' achieved by EUREKA, which should be emphasised at every stage, makes such a convertor unnecessary.

c) Every incentive must be given to maintain and expand Europe's consumer electronics sector, not least to avoid job losses such as those which occurred 20 years ago; in tandem with this public commitment, every effort should be made to prevent substantial production being transferred to areas outside the Community and countries of the European Free Trade Association (EFTA).

d) The Committee observes that it is already commercially possible for 'Japan Incorporated' to manufacture and market their own HDTV 'MUSE' system (video-disc recorders and monitors) independently of any CCIR decisions and therefore establish *de facto* their own standards in the market place. Conversely no one can prevent European industry doing likewise: it should be given every encouragement to do so as soon as possible.

e) Progress with the technical work on equipment needs to be accompanied by similar development of production techniques for software (programme material, films, etc.) and an increase in funding of programme production.

f) Projections of market penetration are a real hazard and may well be over-optimistic: different estimates place the value of the HDTV technology market (production, transmission and reception equipment) between 25 and 52 billion dollars in the USA alone; considering the European and Japanese markets, the figures could reach 150 billion dollars in the 10 years after the launch of services.

g) The US consumer electronics industry, although ossified, is reported to be mobilizing itself with federal government assistance to develop HDTV technology and manufacture HDTV products.

h) Patient long term, strategic, investment and financial planning backed substantially by the financial instruments of the Community is essential.

i) In the short term, the Community should continue to contribute to the funding of pilot projects that include studio and demonstration equipment such as OB vans, giant screens, etc. which need every encouragement and support.

3.3. Funding has been allocated within the RACE (Research and Development in advanced telecommunication technologies for Europe) programme. Its estimated cost of 45 million ECU (of which 15 million ECU would be provided by Community funds) represents 4,1% of the total RACE budget (1 100 million ECU); the 15 million ECU are 2,73% of the RACE costs in charge of the Community (550 million ECU).

4. Specific comments on the objectives of the European HDTV strategy

4.1. The Committee endorses the 4 objectives.

4.1.1. Article 1

The European success in securing a 4 year breathing space on the CCIR (the world TV governing body) was crowned with a EURO R&D technical advance. Vigorous diplomatic activity throughout the rest of the world is most important to promote European industry and standards in this field. With a view to meeting the Summer 1990 deadline, all Member States, the EC institutions and the relevant interested parties should be actively involved: in particular, it is vital that the public and private broadcasting networks provide strong commitment to help the industry in its efforts, increasing substantially the number of programmes conforming to Objective 2 of Article 1.

4.1.2. Article 2

4.1.2.1. In view of the importance of the subject, the widest consultation is needed and must involve the social partners, both through consumer (e.g. viewers organizations), worker and employer organizations and through the Economic and Social Committee.

4.1.2.2. Comprehensive support to all the professional 'users' (broadcasters, programme makers, etc.) of the new equipment is the top priority. The major structural changes now taking place, as direct satellite broadcasting is introduced, places HDTV lower on the list of these broadcasting organizations' priorities. This imperils development and thus employment in the manufacturing industries.

The Committee demands that the action plan foreseen in Article 3 include a specific programme of professional training. This programme must ensure that all the people employed in the industry at all levels and sectors (programming, broadcasting, etc.) are ready to accept and technically prepared to use the new technology successfully. Equally it would be very beneficial to link, right away, the world of audio-visual artistic productions with this proposal, e.g. through coordination with the programmes to aid the European film industry. Consultation of the Economic and Social Committee should be officially foreseen.

5. Conclusion

The Committee has already expressed its strong support for the development of European standards in HDTV [1]. The EUREKA EU 95 project presents the opportunity to establish the only fully compatible standard capable of introducing HDTV without making existing sets and equipment obsolete.

The Council Decision is therefore urgently needed to provide a framework of support for the final stages required to demonstrate that the European standard is technically the most suitable to be adopted as the world standard.

In conclusion, the Committee lays the greatest possible stress on the vital importance of the economic and social issues at stake and calls on the Community to mobilize all its forces unreservedly and with the utmost vigour in support of the efforts pursued by European industry in this field.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

[1] ESC Opinion on the Communication from the Commission on a fresh boost for culture in the European Community, point 3.3.3 (High Definition Television programmes (European standards), dated 28 april 1988) (OJ No C 175, 4. 7. 1988, p. 40).

Opinion on the proposal for a Council Directive on the establishment of the internal market for telecommunications services through the implementation of Open Network Provision (ONP) [1]

(89/C 159/13)

On 24 January 1989, the Council decided to consult the Economic and Social Committee, under Article 100a 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 12 April 1989. The rapporteur was Mr Rouzier.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion by a large majority (two votes against).

1. The Committee would point out first of all that the proposal comes under the Green Paper on the development of the common market for telecommunications services and equipment, on which it delivered its Opinion on 27 April 1988 [2]. In this Opinion the Committee endorsed the basic aim of the proposal, which is to enable the market to provide European users with a greater variety of higher-quality and lower-cost telecommunications services, thereby affording Europe the full benefits of a strong telecommunications sector both within and beyond its frontiers.

2. The Committee agrees with the Commission that open access to telecommunications infrastructure is vital for the implementation of a common market in telecommunications services.

3. The proposal lays down the guiding principles and the structural framework for the development of open access to the public network, which must be offered to suppliers of telecommunications services and other users. The ultimate aim of the Commission's initiative is a set of fully harmonized access conditions, including the mutual recognition of authorization procedures so that an authorization obtained in one Member State entitles a supplier of non-reserved services to operate throughout the Community without having to submit to any other procedures.

The Committee approves the Commission proposal and underlines the importance of the basic principles governing ONP conditions [Article 3(1)].

The Committee would also stress that it is necessary in the public interest to respect the essential requirements of a non-economic nature mentioned in Article 3(2), and especially the protection of confidentiality and privacy.

The Committee trusts that when ONP conditions are laid down they allow for the fact that the telecommunications administrations have the funds required for the qualitative and quantitative extension of networks and their further development, thereby ensuring fair competition.

4. The Committee would stress that Community telecommunications policy forms a coherent whole which it is difficult to split up. Thus, the present proposal has been preceded by others and gives notice of further proposals to come. The Committee strongly regrets that the Commission does not plan to consult the Committee on some of its more important proposals. It would therefore like to be informed of any decisions taken by the Commission and would like the Commission to review progress made in the field of telecommunications. While endorsing the need for the rapid establishment of an open Community-wide telecommunications network, the Committee subscribes to the principle that ONP conditions should be defined in stages and that all interested parties should be consulted, especially user and industrial organizations, trade unions and organizations representing consumer interests. These consultations should, if necessary, be direct.

5. With regard to the 'public networks' referred to in Article 2(2), the Committee calls on the Commission to lay down a definition which takes account of its previous Opinions on this subject and also specifies the boundaries (where does the network stop and the terminal start?).

[1] OJ No C 39, 16. 2. 1989, p. 8.
[2] OJ No C 175, 4. 7. 1988.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Decision relating to the improvement of the business environment and the promotion of the development of enterprises, in particular of small and medium-sized enterprises, in the Community [1]

(89/C 159/14)

On 14 March 1989, 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 Industry, Commerce, Crafts and Services was instructed to prepare the Committee's work on the subject. In the course of the proceedings Mr Lustenhouwer was appointed rapporteur-general by the full Committee.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion with no dissenting votes and one abstention.

1. Introduction

1.1. The Commission has been paying much closer attention to small and medium-sized enterprises (SME) in the Community since the 1985 agreement by the Council on SME, and its proposal is the logical sequel to this.

Since the European year of small and medium-sized enterprises in 1983 the SME important economic role has become clear in a number of fields. The ESC has referred to this fact in several reports—and particularly its Opinion on the SME action programme (rapporteur: Mr Calvet Chambon) [2]—and given the Commission both support and encouragement in its policy towards small and medium-sized enterprises.

After 1983 SME policy rapidly acquired a place ot its own at the Commission. For the first time in the history of the Community the Commission which took up office in 1984 had a member specially responsible for SME policy.

1.2. A special department—the SME task force—was also created at the Commission.

The newly appointed Commission, in presenting this proposal, wishes to give its policy a proper legal basis (Treaty Article 235); by providing funds for a four-year period it also wishes to put itself in a position to pursue a medium-term policy.

1.3. The Committee lends its general support to this aim of the Commission, as reflected in its proposal. However, in view of the deadline it was set, it is not able to form a considered opinion about the size of the budget being requested. It does note that at this stage the budget is justifiedly focused on 'information and assistance' but thinks that other policy areas should not suffer in consequence.

1.4. The Committee would like to examine this proposal in relation to a number of the aspects of the Commission's present and future policy towards SME. It was not able to make an in-depth analysis of the proposal because the Council's timetable left it with only a few weeks in which to deliver its Opinion. It is suggested that present and future policy should be discussed shortly in more depth in an additional Opinion.

2. The task of integration

2.1. The Commission which took up office on 4 January 1989 also has a member with special responsibility for SME. The Committee thinks that this Commissioner must make an effort to have the 'SME dimension' included in all policies. This means that SME interests should be borne in mind by all Commission policymakers and not simply by the responsible Commissioner. The latter should play a coordinating and supervisory role and should also have the power to address his colleagues on such matters. Only then will it be possible to incorporate SME policy in all elements of Community policy.

2.2. The Committee supports the Commission's decision to create a new DG XXIII because this will improve the machinery for shaping and preparing SME policy on the condition that it is supplied with adequate means to properly fulfill this task. However, the Committee notes — with some concern — that the term 'SME' has been replaced by 'enterprise policy' in the directorate-general's title.

2.3. The Committee is opposed to this if it means that SME are not to be given as much special attention. The Committee does, however, believe that large and small/medium-sized enterprises are not automatically

[1] OJ No C 79, 30. 3. 1989, p. 5.
[2] OJ No C 232, 31. 8. 1987.

in opposition to each other. After all, they are regarded as complementary in very many cases — and should also be seen as such in Community policy.

2.4. The Committee thinks that as least a directorate for crafts and small and medium-sized enterprises should be formed within the new DG XXIII; the distribution sector must also be given a fully-fledged place within this DG in view of its economic importance in the Community.

3. Policy since the 1986 action programme

3.1. The SME action programme divided the proposed policy into two, viz.:

— improvement of the business environment, and

— improvement of SME flexibility and adaptability.

3.2. Action has been taken by the Commission in both areas, as its annual policy assessment reports indicate. This policy should also give thorough consideration to social issues of importance to SME. The need to give SME a boost does not mean that less attention should be paid to social policy in firms which does justice to the employees' interests. SME policy's social component is thus linked to the implementation of the Internal Market's 'social dimension' which, as the Committee has already stated (February 1989), should progress hand-in-hand with the completion of the Internal Market in the economic, financial and tax fields.

3.3. However, the Committee cannot get away from the impression that too many projects and pilot schemes are *ad hoc* and are not the result of a deliberate strategy. It would be better to be active in fewer fields rather than embarking on a large number of studies and projects which, in the Committee's view, are not always logically connected.

3.4. The Committee also calls on the Commission to lay down a timetable for its programme for promoting enterprises and especially SME so that the time-scale and other relationships between the separate policy-making areas become clearer and are easier to evaluate properly.

4. Specific topics

4.1. Impact assessment: although a reasonably positive start has been made with the business impact assessment, the Committee thinks that the quality of the replies leaves room for improvement. All too often organizations of entrepreneurs and employees still have too little chance to consult each other about the questions, and all too often the replies provided by the services of the Commission are vague or extremely brief.

4.2. Consultations with the Member States: the Committee thinks that the Community's and the Member States' policies for promoting enterprises (and especially SME) must operate in parallel. Only then can good coordination in the various policymaking areas be attained. The Committee thinks that it is imperative for the Commission, the Member States and the organizations concerned to hold proper and continuous consultations. In this way projects launched by the Commission can fit in with the appropriate national machinery and it will be possible to prevent policies from overlapping or—worse still—clashing.

5. Information and assistance

5.1. Almost 70% of the proposed budget is to be allocated to this area of policy. Apart from other vehicles for information (printed matter, seminars) the Euro Info Centre project naturally springs to mind in this context. Although the Committee sets great store by this project, some caution is called for.

5.2. The growth in the number of centres will make it all the more necessary to fit in with the situation in each Member State. Otherwise there is a danger of information networks operating side-by-side and making it difficult and confusing for small businessmen easily to gain access to the required information. The fees charged by the centres' operators for using these services should not be prohibitive, either.

5.3. There is a clear relationship between the Euro Info Centres and, for example, the BC-Net, which in the view of the Committee should also be developed. This also applies to new activities announced in the explanatory memorandum of the proposal whose import is not yet fully clear to the Committee, i.e. the network of institutes for lending support to SME strategic management (a very important aspect for SME development) and the subcontracting centre to be set up by the Community.

The Committee expects to be consulted on this by the Commission at a later date so that it can go into the more specific proposals in greater detail.

5.4. The Euro-partenariat project could also be included under the heading of 'assistance' even though it is a cooperation project. The Committee would place a large question mark against the amount of energy devoted to this project which in consequence would seem to have produced hardly any results to date. The Commission should give thorough consideration to this project's impact before devising new activities.

5.5. The Committee stresses the fact that information and assistance policy should go hand-in-hand with stimulation of training, in all its aspects, of entrepreneurs and employees in SME.

6. Conclusion

6.1. The Committee supports the Commission proposal, which establishes a legal basis for the policy for improving the position of enterprises and particularly small and medium-sized enterprises but however stresses the fact that 'the removal of undue administrative, financial and legal constraints which hold back the development and creation of small and medium-sized enterprises' (Article 2) should respect the acquired rights of all parties involved.

It notes that not all of the planned initiatives can be assessed at the moment since some of the finer points still have to be worked out. As soon as this has been done, the Committee would like to be consulted further.

It also intends to take up the question of the Community's SME policy in the near future.

6.2. On surveying the number of projects planned or already implemented, the Committee is certainly impressed by the Commission's diligence and would like to offer its congratulations. However, it would stress the need to furnish SME policy with a detailed vision of the task, the specific characteristics of all its components, and role of the SME in the Community. The heterogeneity of the SME in the Community should be reflected in such a vision. Many of the activities to date seem to focus on small craft and industrial firms and overlook the existence of small firms in high growth areas such as distribution and services. The Commission should also pay the requisite attention to these important SME sectors by finding a place for them within the new DG XXIII. The Committee would refer in support of this call to the information report by its Section for Industry, Commerce, Crafts and Services on small firms in the services sector in the Community (rapporteur: Mr G. Regaldo) (27 May 1986.)

6.3. Finally, the Committee would point out that Article 4 of the proposal makes no provision for the involvement of the Committee in the annual policy assessment. The Committee feels that it is an absolute necessity for it to be involved and notes with satisfaction the Commission's declared interest in ensuring this.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on:

— **the proposal for a Council Directive on the introduction of compulsory nutrition labelling of foodstuffs intended for sale to the ultimate consumer, and**

— **the proposal for a Council Directive on nutrition labelling rules for foodstuffs intended for sale to the ultimate consumer** [1]

(89/C 159/15)

On 24 October 1988, the Council decided to consult the Economic and Social Committee, under Article 100 A 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 4 April 1989. The rapporteur was Mr Gardner and the co-rapporteur was Mrs Williams.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted, by a large majority with 1 abstention, the following Opinion.

1. General comments

1.1. Nutrition labelling provides basic nutritional information about a food, in order to help the consumer in establishing a balanced diet and guidance in choosing well and wisely in view of personal needs.

1.2. The Committee approves the Commission proposal, which is to establish a Community framework for nutrition labelling. Nevertheless certain changes, clarifications and additions are needed.

1.3. Given the importance of nutrition labelling it is essential to have a harmonized format which will be used as widely as possible by food producers and sellers (farmers, manufacturers, butchers, greengrocers etc.) and which is sufficiently simple and clear to be understood and applied by consumers. It is especially necessary to find ways which can readily be used in the multilingual context of the 1992 market without frontiers.

1.4. The proposal of course also applies to food which is not pre-packed as this forms a great part of the total dietary intake. The Commission should devise methods of facilitating the provision of nutritional information on such food. This is particularly important for farmers, butchers, greengrocers, etc.

2. Information and education

2.1. Nutrition labelling can provide the crucial information which is the basis for wise choice and decision making. In other words if it is accurate, up-to-date and easy-to-read, it can provide essential facts. But this is only a starting point, and not a substitute for more wide-ranging education.

2.2. The Committee stresses therefore at the outset that nutrition labelling can serve its purpose if backed up by systematic and continuing consumer education resulting in an increase of awareness of the public. For education is the process which enables people to understand and interpret information and then act upon it according to their own need.

The Committee recognizes that such education is essentially long-term. Nevertheless it points to the Resolution of the Council of Ministers (June 1986) on consumer education in primary and secondary schools, supported by all Member States. This Resolution specifically mentions nutrition in its list of basic rights under the heading of the right to health and safety.

2.3. The Committee accordingly urges the Commission to produce, publicize and update every three years, details of relevant policies and practices in Member States. In particular it reiterates the need for urgent promotion of nutritional education and dietary advice within the broader context of consumer education in all Member States, together with the means to carry it out. Especially it points to the need for:

— its inclusion in the initial training of teachers and further training of those already in service, both of which will depend on expertly informed instructors,

— the development of appropriate and diverse up-to-date teaching materials constantly under review,

[1] OJ No C 282, 5. 11. 1988, p. 8 and 10.

— the Commission to organize a conference on the specific issue of food labelling, to deal with its problems and possibilities.

2.4. The Committee also underlines the role and special responsibility of the media in raising levels of public awareness about the importance of nutrition labelling as a contribution to public health and well-being.

2.5. It is important that food marketing should support the nutrition information drive that is already being undertaken in some Member States.

3. Present experience

3.1. *World-wide*

3.1.1. CODEX [a joint body of the UN Food and Agriculture Organization (FAO) and the World Health Organization (WHO)] has worked over many years to establish a world-wide framework of nutrition labelling. This task was carried out with active collaboration by the Commission and the individual Member States.

The resulting recommended CODEX guidelines [1] consists of a framework for voluntary nutrition labelling, comprising the essential nutritional elements: energy, protein, carbohydrate, fat (called 'the big 4'), together with a list of other nutrient elements, which should be given only in particular cases, for instance when relevant claims are made.

3.1.2. The EC Advisory Committee for food when it was consulted by the Commission in preparation for this proposal 'welcomed the development of Community recommendation and agreed that the CODEX guidelines were a very good basis for this'.

3.2. *In the EC*

3.2.1. National provisions

Only three EC countries have official nutrition labelling systems [2]: Germany, the Netherlands and the UK. All three apply the basic 'big 4', with other elements given only in particular cases. All systems provide for optional nutrition labelling in general, with compulsory nutrition labelling being triggered off by claims.

The UK system has an interesting addition. It provides producers with the choice of three basic options: 'the big 4', 'the big 4' plus saturated fats or 'the big 4' plus saturated fats, sugars and fibre.

3.2.2. EC Directive on foods for particular nutritional uses

The ESC Opinion on the revision of this Directive was issued in 1986 [3] and the Council agreed its common position in November 1988. This provides for nutrition labelling of the 'big 4'. It also provides for the development of specific sub-directives for nine groups of foods. For these, further appropriate information can be required.

3.3. *Outside the Community*

The United States have had a voluntary nutrition labelling scheme since 1973, i.e. long before the CODEX standard. The scheme has a set framework going beyond the 'big 4'. There is controversy as to why this system has not been successful.

4. Detailed comments

The Commission proposal, in fact, consists of two quite separate ones and detailed comments on these are as follows.

5. Proposal for the introduction of compulsory nutrition labelling of foodstuffs

5.1. The Commission envisages that there may be cases when certain nutrients have to be given compulsorily, though such cases 'cannot be as yet defined'.

5.2. The Commission proposes to invoke this procedure, only after obtaining scientific approval from the Scientific Committee for Food (SCF). The Committee agrees with this, but requests that the priority should be to review compulsory nutritional labelling in general and that of saturated fats, sugars, sodium and fibre in the first instance, bearing in mind the proposals under point 6 of the present Opinion.

[1] CODEX guidelines on nutrition labelling, Alinorm 85/22A.

[2] Germany: *Nährwert-Kennzeichnungsverordnung*, 9 December 1977 (as amended)—Netherlands: *Voedingswaarde-aanduidingenbesluit*, 2 March 1988 — UK: Guidelines on nutrition labelling, January 1988.

[3] OJ No C 238, 22. 12. 1986, p. 9.

5.3. The Commission wants to introduce such compulsory labelling by a Committee procedure, claiming this is 'of a technical nature'.

5.4. While the Economic and Social Committee has no objection to use of the Committee procedures for genuine technical matters, this proposal goes far beyond the technical.

5.5. The Committee therefore insists that such compulsory labelling be introduced only by the Article 100a procedure involving consultation of the ESC and the European Parliament.

5.6. Given the 1992 market, the Commission will also have to consider how to deal with problems affecting only one or more Member States or regions. Several States currently believe they have such a problem.

5.7. Such labelling should of course complement and not be a substitute for the labelling provided for by the following proposal.

6. Proposal on nutrition labelling rules for foodstuffs intended for sale to the ultimate consumer

6.1. In line with the evaluation set out under (5), the Committee agrees with the Commission that nutrition labelling should be compulsory only when a nutrition claim is made in labelling or advertising (see Article 2).

6.2. The Committee—bearing in mind the desire of consumers to be well informed and the technical difficulties facing accommodation of this wish by producers and sellers—urges steps to promote a dialogue between all the parties concerned, with a view to establishing harmonized, mandatory nutrition labelling within five years.

The Committee considers that the Commission should draw up an information report after three years and submit it to the Economic and Social Committee.

6.3. It is the aim of the Committee to have as many foods as possible with nutrition labelling.

6.4. There are however considerable problems in applying the rules proposed by the Commission to many foods.

6.4.1. In particular, while it is possible to label most foods with the 'big 4'—energy, protein, fat and carbohydrate, there are difficulties associated with the application of the Commission proposals (7 nutrients).

6.4.2. There are also some nutritional questions about the validity of some of the Commission's proposals. The Committee proposes that these be reviewed by the SCF (see 5.2).

6.5. These problems will effectively mean that many foods will not have nutrition labelling.

6.6. Therefore so as to get nutrition labelling introduced as widely as possible and to get practical experience for the report mentioned in 6.2, the Committee proposes:

6.7. *Article 3*

Article 3 should be amended as follows:

Point 1 should read:

> 'Where compulsory nutrition labelling is provided ...'

Insert a new point 2:

'Where optional nutrition labelling is used it shall consist of the following in this order:

a) the energy value, plus

b) either category I:

the amounts of protein, carbohydrate and fat

or category II:

the amounts of protein, carbohydrate, sugars, fat, saturated fat, dietary fibre and sodium.'

6.8. *Article 5.4*

The proposed list of recommended daily allowances (RDA) does not reflect the present consensus in the Member States. At present, for instance, on vitamin C, we have: France 80 mg, Germany 75 mg, Netherlands 60 mg, Italy and Spain 45 mg, UK 30 mg. Similar national differences exist for other vitamins and for some, such as vitamin D, there are probably real differences between northern and southern regions in the amount which has to be supplied from the food.

The Commission has given a reference list of RDA for labelling purposes, but should establish a mechanism

of having this revised regularly in the light of new scientific evidence. Different national lists should not be allowed to constitute a technical barrier to trade.

6.9. *Article 5.7*

'Typical' would be better than 'average'. The same applies to the definitions in Article 1(k).

6.10. *Article 5.8*

Although this is not an ideal solution, the Commission should look at the possibility of using charts or visual symbols as permitted alternatives to words. However, such alternative methods of presentation would need to be harmonized, so as to avoid further barriers to trade.

6.11. *Article 7*

The Committee approves the timing proposals given by the Commission, i.e. x months after notification; and would encourage the Commission to use this method for proposals in orther directives as well.

6.12. *General*

Standard methods of food analysis and common tables of nutrient contents for food must be agreed between the Member States.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the draft Council recommendation on banning smoking in public places[1]

(89/C 159/16)

On 19 January 1989, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned recommendation.

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 4 April 1989. The rapporteur was Mr Ferraz da Silva.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion by 71 votes to 25, with 19 abstentions.

1. Introduction

1.1. The recommendation to ban smoking in public places forms part of the campaign against tobacco contained in the 'Europe against cancer' programme. This programme received the endorsement of the Economic and Social Committee [2].

1.2. This is the fourth Committee referral in this area. The previous three concerned:

— the proposal for a Council Directive on the approximation of taxes on cigarettes, and the proposal for a Council Directive on the approximation of taxes on manufactured tobacco other than cigarettes [3],

[1] OJ No C 32, 8. 2. 1989, p. 9.
[2] OJ No C 105, 21. 4. 1987.
[3] OJ No C 237, 12. 9. 1988.

— the proposal for a Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products [1],

— the proposal for a Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning the maximum tar yield of cigarettes [2].

2. General comments

2.1. The Committee approves the proposal, subject to the following comments.

2.2. The Committee is pleased to see that the Commission is continuing its action against tobacco use. Such action is an effective way of reducing the number of deaths caused by cancer in the Community, and of reducing the incidence of other illnesses (fatal or otherwise) caused by contact with tobacco smoke.

2.3. The Committee realizes that the campaign against tobacco will take a long time and will require educational measures and medical support for those who stop smoking. However, it feels that a recommendation is an inadequate and rather limited tool for solving the problem.

2.4. In its Opinion on the tar content of cigarettes [3], the Committee stressed that 'every effort must be made in the interests of personal and public health to reduce smoking in general'.

2.5. The Committee is well aware that smoking brings an increased risk of illness and early death, as it carries a high risk of cancer and involves a specific carcinogen.

2.6. Recent studies backed by the World Health Organization have shown that non-smokers who come into contact with tobacco smoke in closed environments are equally at risk. Pregnant women (and the foetus), children, the elderly, and sufferers from respiratory diseases, bronchitis and heart disease are particularly vulnerable.

2.7. The burning of tobacco gives off:

— carcinogens:
  — benzopyrene,
  — 5-methylchrysene,
  — dibenzanthracene;
— other chemicals which can encourage carcinogenesis:
  — volatile phenols,
  — acidic compounds.

2.8. The carcinogens in tobacco exhaled by the smoker may combine with other carcinogens in the atmosphere to increase the risk not only of lung cancer, but also of cancers of the mouth, pharynx, larynx, stomach, etc.

2.9. The smoking of cigarettes, cigars, etc. is also an accident and fire hazard. In most Member States, smoking was initially banned in public places in order to reduce the risk of fires.

2.10. All forms of tobacco use, but particularly those which entail contact with tobacco smoke, increase the risk of premature death and illness among users.

2.11. The Committee also notes that scientific data and reports on the subject have shown again and again that tobacco is one of the main sources of air pollution in enclosed areas.

The European Parliament [4] has emphasized the need to pay due attention to the problem of air quality in indoor environments, given that human beings spend most of their lives indoors.

The Committee would also point out that in the fourth environmental action programme the Commission undertook to 'define and implement preventive measures against indoor pollution'.

2.12. The Committee therefore asks the Commission to consider making its measures to ban smoking in public places part of a wider strategy to protect air quality in indoor environments.

2.13. Whilst realizing the possible economic and social implications of measures to reduce tobacco consumption, the Committee trusts that in the interests of public health the Commission will press ahead with the actions scheduled in its campaign against tobacco.

2.14. Smokers become psycho-socially dependent on cigarettes (stress, or peer-group pressure, or as a form of 'worry-bead') and physically dependent on nicotine. Smoking is thus a serious social problem. Mindful of this, the Committee urges the Commission to submit another more aggressive package of measures to complement the measures already taken. This should include

[1] OJ No C 48, 20. 2. 1988, p. 8.
[2] OJ No C 48, 20. 2. 1988, p. 10.
[3] OJ No C 237, 12. 9. 1988.
[4] OJ No C 290, 14. 11. 1988.

a hard-hitting campaign featuring European personalities, targeted specifically at young people, and the setting-up of special centres to help people who wish to stop smoking.

2.15. The Committee notes that the Commission is to present the Council with a proposal for a Directive regulating advertising of tobacco brands.

Given the undisputed harm which tobacco causes, the Committee would like to see a Community-level move by Member States towards outlawing direct or indirect tobacco advertising (including sponsorship of sports events).

2.16. There is growing concern that children are being encouraged to smoke through the ready availability of imitation products (they wish to imitate the adult).

The Commission is therefore urged to present a proposal, perhaps as part of action 8 (protection of children), to discourage the manufacture and sale of such products.

In the meantime, every effort should be made to point out the harmful effects that imitation tobacco products can and will have in the programme to discourage people now and in the future from using tobacco products.

Done at Brussels, 26 April 1989.

3. **Specific comments**

3.1. *Preamble*

The Committee suggests that the preamble to the recommendation should include a reference to the risk of accident or fire associated with cigarette smoking.

3.2. *Point 1, second paragraph*

Areas reserved for smokers should be equipped with systems for changing for air.

The Committee suggests that the words 'equipped with proper systems for changing the air' be added after 'clearly defined areas'.

3.3. *Point 3*

Taking safety as the paramount consideration, the Committee wonders whether such a ban is workable on all forms of transport if no maximum journey-time is set. It would prefer to see a distinction between (a) means of transport where the measure could be implemented immediately without compromising safety (e.g. trains, boats), as separate compartments may be provided for smokers and non-smokers, and (b) means of transport where separation is more difficult (e.g. planes, buses). For the latter cases, until efficient techniques are devised, a maximum journey-time (such as three hours) should be set; outside this period, smoking would be allowed in areas set aside for the purpose.

3.4. *Annex 1*

The Annex should be revised accordingly.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive on the approximation of the laws of the Member States relating to active implantable electromedical equipment [1]

(89/C 159/17)

On 16 January 1989, the Council decided to consult the Economic and Social Committee, under Article 100 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Committee instructed the Section for Protection of the Environment, Public Health and Consumer Affairs to prepare its work on the matter. In the course of this work, the Committee appointed Mr Proumens as rapporteur-general.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion by a unanimous vote.

1. General comments

1.1. The Committee is in agreement with the present proposal. However, certain specific comments and reservations are expressed below, although these do not basically call into question the proposal. In addition, it should be borne in mind that this proposal does not cover non-active devices or prostheses, which will be the subject of another proposal for a Directive.

1.2. The proposed Directive has two clear-cut aims:

a) to harmonize conformity assessment procedures and to encourage harmonization of technical standards;

b) to guarantee the safety of the active implantable electromedical equipment covered by the proposed Directive.

1.3. The equipment concerned is not confined solely to cardiac stimulators, though these are most familiar, but also encompasses other types of devices used for the following purposes:

— defibrillation,

— biostimulation,

— input of an active substance (for example, medicines),

— active implantable organs,

— implantable artificial heart,

— implantable monitoring devices.

1.4. The use of all such equipment is currently increasing significantly. This is due both to new technologies and the increasing longevity of the population in the Member States.

1.5. According to industry estimates, market turnover in such equipment is currently running at around 400 million ECU. We do not have any accurate statistics on quantity, but fairly reliable estimates from the same sources suggest that some 200 000 pacemakers are used annually, i.e. more than 500 per day throughout the Member States.

1.6. Apart from the commercial considerations, these devices are clearly intended to give often many more years of life (as in the case of pacemakers). They also alleviate discomfort (e.g. 'drug pumps' implanted in patients suffering from diabetes or very painful diseases such as cancer). In addition, muscle stimulators are increasingly used in the case of patients with partial paralysis.

1.7. Some devices, particularly pacemakers, could be reused on other patients. Although such cases are fairly rare, it is obvious that where this occurs the devices must be retested, especially from the point of view of sterility, effectiveness and compatibility.

2. Technical harmonization and safety requirements for such equipment

2.1. The present proposal can be split into four main headings:

a) harmonization;

b) safety;

c) conformity assessment; and

d) limits and constraints.

2.2. For harmonization purposes, the proposed directive has taken account of the laws existing in a number of Member States and the assessment processes as defined must ensure free movement of such equipment without compromising the level of safety required and existing in those Member States which have already passed legislation.

[1] OJ No C 14, 18. 1. 1989, p. 4.

2.3. The essential safety criteria are:

— product sterility,

— technical safety, and

— clinical evaluation.

2.4. At present, a number of standards have been devised by the European Committee for Electrotechnical Standardization (Cenelec), particularly for pacemakers, and these could be extended fairly easily to other types of equipment.

In addition, the system of good manufacturing practice (GMP) codes enables firms to ensure that the criteria mentioned above are respected.

2.5. As regards conformity assessment, the provisions in the present proposal are based on existing rules, but allow some flexibility in implementation.

2.6. At present the pace of technical progress in all such devices is extremely rapid: a device will be modified—sometimes even radically transformed—every 3 to 4 years.

2.7. Moreover, in view of the diversity of the equipment concerned and the extent of technological change, rules must be high level but the way they are applied must be flexible.

2.8. Industry is well aware that it must accept stringent standards, and notably the attendant costs; but producers feel that the procedures set out make it possible to guarantee that the equipment meets all the requisite quality requirements without impeding distribution by setting over-specific standards which would take so long to frame that they would be a significant obstacle to the development of new equipment. Delays in marketing these devices caused by too much red tape would ultimately harm the patient, quite apart from the difficulties of all kinds which would be faced by firms developing new products.

3. Benefits of harmonization

3.1. After sounding out the groups concerned (medical specialists and representatives of the industries involved), the Commission has come to the conclusion that in addition to bringing about free movement of the equipment concerned, harmonization should achieve savings of 4%. Bearing in mind the size of the market this figure represents savings of 16 million ECU per annum for the Community as a whole, which is a far from negligible sum.

3.2. It must also be remembered that although such devices, particularly pacemakers, are relatively expensive (between 1 300 ECU and 4 000 ECU), medical insurance schemes normally refund the full cost. The savings achieved can only be beneficial to those operating such schemes.

4. Specific comments

4.1. *Definition of a medical device [Article 1 (2)]*

In this definition, two terms should be either modified or expanded, namely:

— 'substance', and

— 'in combination'.

The term 'substance' may cause confusion and, consequently, lead to the devices in question being treated as medicines, with all the implications that this would entail from the point of view of distribution and the associated advertising.

In addition, the term 'in combination' should be developed to explain that what is meant is the device itself and peripherals such as electrodes etc.

4.2. *Prototypes*

Prototypes intended for research and/or testing are mostly sold to medical research units; this does not mean that they are already being marketed on a more general scale.

4.3. The question arises as to whether a third indent should not be added to Article 4 (2), namely: 'Devices manufactured on prescription.'

However, this understandable request should not, if it is accepted, become a means of avoiding all of the procedures. It should only apply to isolated cases justified by special circumstances.

4.4. *Mention of the CE-mark—Article 10 (1)*

This mark may only be affixed on the packaging or on the documents accompanying the device. This is because some devices are very small and it may not be possible to affix the CE-mark on the device itself (which is sometimes no more than an electric wire).

4.5. *Penalties—Article 11*

The Committee did think that the penalty for wrongful affixing of the CE-mark seemed fairly lenient.

This is not at all the case, because the withdrawal of a certificate of approval is, on the contrary, a very heavy penalty for the firm involved, for its reputation would be severely damaged, since those who order such devices are specialists, i.e. doctors, and they would know straightaway which firms were breaking the rules.

On the other hand, perhaps the Commission should consider recommending to the Member States that they make provision for penalties in their respective national laws.

5. Special remarks

5.1. The Committee stresses that all the proposed provisions should be applied both to devices manufactured in the European Community and to devices from non-EEC countries.

5.2. The Committee has taken note that Annexes 1 to 5, particularly Annexes 1 and 5, can only be amended through a proposal for a Council directive, which means that the normal procedure of consulting the European Parliament and the Economic and Social Committee must be followed.

5.3. The Committee recommends that the Commission could perhaps review some of the headings in Annex 1 and perhaps modify the text of Annex 5 on clinical evaluation, so that the provisions regarding safety are in keeping with the proposal on this matter made by the European working group on cardiac pacing.

5.4. The Committee recommends that the Commission incorporate in Appendix 2 (and in point 2.7 in particular) provisions which enable a firm to appeal against the withdrawal of, or the refusal to issue, an EC type-approval certificate. Detailed rules for the appeals procedure should be laid down.

5.5. The Committee believes that a time limit should be set for the issue of a certificate.

5.6. The Committee also believes that the rules covering confidentiality (set out in point 7 of Appendix 4) should be spelt out in detail, as is the case for pharmaceutical products.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on:

— **the proposal for a Council regulation (EEC) amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals,**

— **the proposal for a Council regulation (EEC) setting general rules on the production aid for high quality flint maize, and**

— **the proposal for a Council regulation (EEC) fixing the production aid for sowings in the 1988/1989 marketing year of certain varieties of high quality flint maize** [1]

(89/C 159/18)

On 10 April 1989, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the abovementioned proposals.

The Economic and Social Committee decided to appoint Mr Strauß as rapporteur-general with the task of preparing its work on the subject.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion unanimously.

1. The Committee supports the proposals of the Commission under which production aid would be introduced over a three year period to encourage the growing of high quality flint maize.

2. Flint maize is required for the manufacture of certain types of breakfast cereals. It does not crumble when pounded into flakes. All supplies have currently to be imported, mainly from the Argentine. The Committee is of the view that it would be in the interest of the Community not to have to rely for the bulk of its supplies on foreign sources.

3. Flint maize is lower yielding (only about two-thirds) than other types of maize grown in the EC. Its production is also complex; it has to be left in the field for drying down to 15% moisture content. Insurance and financial costs are therefore higher than for other types of maize.

4. To persuade producers to grow flint maize, a special incentive is required. Given this incentive, growers in Andaluçia, and possibly also in some other parts of Southern Europe, could switch from dent to flint maize.

5. The Committee concurs with the Commission's view that the proposed production aid must neither encourage production in excess of market demand nor constitute an excessive charge on the Community budget. It therefore welcomes the provision that to qualify for aid producers have to contract with processors who must give an undertaking to process the maize into corn flakes and similar products. The Committee shares the view that the premium should be determined annually so that it can be adjusted in the light of response to the scheme. The system of contracting should also enable the Commission to ensure that the price paid by processors reflects the c.f. price of Plata maize, which is normally above the threshold price.

6. The Committee supports the concept of pump priming. It believes that the scheme should, as intended, operate for three years only. It would then be up to the processors to provide producers with the necessary premium.

7. The Committee regrets the delay which has occurred in framing the proposal. Although it is proposed that a production aid of 155 ECU per ha should be paid for flint maize sown during 1988/1989, all the maize grown this year will by now have been planted. The Committee is, therefore, of the view that the scheme should run for three years commencing 1989/1990. Early agreement to the Commission's proposal is necessary if sufficient seed is to be procured for significant plantings in 1989/1990.

8. Careful consideration will have to be given to the introduction of the proposed scheme in view of the mid-term agreement on the Uruguay round of trade negotiations. It should, however, be noted that the Community is now an exporter of maize. A switch from high yielding dent maize to low yielding flint

[1] OJ No C 87, 8. 4. 1989, p. 8 and 9.

maize will therefore reduce pressure on world markets. Moreover the proposed production aids will cost less than export restitution so that the overall level of EC support expenditure in the maize sector will be reduced.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council regulation (EEC) amending Regulation (EEC) No 1418/76 on the common organization of the market in rice

(89/C 159/19)

On 10 April 1989, 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.

Mr Della Croce, as rapporteur-general, was responsible for preparing the Committee's work on the subject.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion with no dissenting votes and one abstention.

The Economic and Social Committee endorses the Commission's proposal.

1. The Committee wishes to make the following comments:

1.1. Article 1(1) does need to be amended to take account of the new classification of rice. In practice, however, the proposed amendment does not alter existing rules.

1.2. The geographical location of Réunion (separated from Europe by a distance of 10 000 km), the high per capita consumption of rice in the island (a staple food) and the need to prevent a decline in the living standards of the poorer inhabitants provide every justification for the exemptions from import levies provided under Article 11a.

1.3. The proposed subsidy for rice consignments from Member States [Article 11a(4)] is perfectly justified given the total abolition of the levy on imports of husked rice and the reduction to a co-efficient of 0,30 of the levy on imports of milled rice.

1.4. The subsidy should be readjusted at regular intervals to take account of market pressure in the Community and fluctuating demand in Réunion.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive amending Directives 81/602/EEC and 88/146/EEC in respect of the prohibition of certain substances having a hormonal action and of substances having a thyrostatic action

(89/C 159/20)

On 17 April 1989, 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 Economic and Social Committee decided to appoint Mr Storie-Pugh as rapporteur-general with the task of preparing its work on the subject.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion unanimously.

The Committee agrees with the Commission's proposal subject to the following recommendations:

Article 1: The Committee approves the addition of the words 'ovine balanoposthitis' after the words 'therapeutic treatment'.

Article 2: The Committee approves the wording amending Article 7 of Directive 88/146/EEC.

The Committee would wish an on-going study be maintained of other possible therapeutic applications.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3,5 tonnes [1]

(89/C 159/21)

On 16 November 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 7 February 1989. The rapporteur was Mr Tukker.

At its 265th plenary session (meeting of 27 April 1989) the Economic and Social Committee adopted the following Opinion by 78 votes to 4, with 5 abstentions.

1. Introduction

1.1. There are already a number of Council Directives on the approximation of the laws of the Member States on safety belts and their anchorage points in certain categories of motor vehicle. The provisions of the most recent Directives—81/575/EEC, 81/576/EEC and 82/318/EEC—were to be implemented by the Member States not later than 30 September 1982; this deadline was respected.

[1] OJ No C 298, 23. 11. 1988, p. 8.

1.2. However, the above Directives make it compulsory to fit safety belts only for the driver and the passengers on the front seat of the following categories of motor vehicle:

— M1: vehicles used for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat,

— M2: vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum weight of not more than 5 metric tons,

— N1: vehicles used for the carriage of goods and having a maximum weight not exceeding 3,5 metric tons.

1.3. Since experience has shown that the compulsory use of safety belts has reduced the number of deaths and serious injuries, it is logical that the Commission should propose making the use of safety belts by passengers on the rear seats of motor vehicles compulsory also.

1.4. The Committee can thus generally endorse this proposal for a Directive, provided that account is taken of the comments set out below.

2. Specific comments

2.1. *Article 2*

The Council should allow for the fact that safety belts on the rear seats may have to have anchorages different from those for front-seat belts. In some motor vehicles it will only be possible to use two-point belts on the rear seats, as opposed to belts with three anchorage points. This certainly applies to the middle passenger seat, but it may also be the case with rear seats whose back can be folded down in order to enlarge the luggage space or make it accessible from inside the vehicle.

2.2. *Article 3*

The Committee considers that, in the case of the categories of vehicles referred to in this Article (N1 and M2), insofar as the maximum weight is less than 3,5 metric tons (minibuses), the Directive should apply not just to the driver and the front seat passengers but to all seats.

2.3. *Article 7*

The Committee takes the view that there are already enough restraint systems on the market specially designed for small children (under 12) to justify the early adoption of a Directive for this category of passengers too.

2.4. *Article 9*

The Committee considers that it should be stipulated that these derogations apply only in built-up areas, or—alternatively—not on main highways or motor ways.

2.5. *Article 10*

The Committee would like the Commission to give wide publicity to the need for seatbelts on both front and rear seats, and further hopes that it will be possible to adhere to all the dates proposed by the Council.

Done at Brussels, 27 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive relating to the maximum permitted blood alcohol concentration for vehicle drivers [1]

(89/C 159/22)

On 22 december 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 12 April 1989. The rapporteur was Mr Morselli.

At its 265th plenary session (meeting of 27 April 1989) the Economic and Social Committee adopted the following Opinion by 95 votes to 12, with 6 abstentions.

I. INTRODUCTION

1. High blood alcohol concentration is one of the main causes of road accidents.

1.1. The Council demonstrated its concern to improve road safety in its Resolution of 19 December 1984, in which it broadly accepted the Commission's proposal for a programme of Community measures to promote road safety. Prominent among these are the measures on the maximum permissible alcohol concentration and the effects of various drugs on drivers.

1.2. In its Opinion of 14 May 1984 on the above Commission proposal [2], the Committee approved the draft Resolution and stressed the importance of road safety.

1.3. The Committee Opinion on the European year of road safety (1986) [3], having regard to the prospect of closer European integration, called for standardization of national road safety laws and for Community-level action to reduce the number of road accidents.

II. COMMENTS

2.1. The Commission's draft Directive sets the maximum permissible alcohol level at 0,5 mg/ml of blood as from 1 January 1993. The current maximum limit is 0,8 mg/ml in ten of the twelve Member States. The proposed maximum limit of 0,5 mg/ml is therefore considerably lower than the level currently considered adequate by ten of the twelve Member States. The Committee therefore wonders what prompted the Commission to propose the lower level of 0,5 mg/ml; this would seem unjustified in the absence of conclusive evidence that it will enhance road safety.

2.2. Under the circumstances, the Committee feels that a maximum permissible limit of 0,8 mg/ml would be sufficient to curb one of the major causes of road accidents.

2.3. The Committee would ask the Commission to compile detailed statistics on the link between high blood alcohol concentrations and the number of accidents. The link between blood alcohol levels and the number of fatal accidents should also be carefully assessed, as should the effects of medicines and drugs on road safety If necessary, the maximum permissible limit should be amended after an appropriate transitional period has elapsed. Research findings should be widely publicized, as should the maximum permissible limit, so that drivers can sensibly decide when and how to consume alcohol so as not to exceed the legal limit.

2.4. The Committee maintains that, whatever the level fixed, the maximum permissible limit should be accompanied by rules on suitable, uniform checks and, most importantly, by appropriate preventive measures to heighten people's awareness of the problem—this is the only really effective way of reducing the number of accidents caused by drink/driving.

2.5. The Section agrees with the various preventive

[1] OJ No C 25, 31. 1. 1989, p. 9.
[2] OJ No C 95, 6. 4. 1984.
[3] OJ No C 101, 28. 4. 1986.

measures described in the explanatory memorandum, which are designed to better inform the public by means of national and Community-wide media campaigns and educational programmes in schools.

Done at Brussels, 27 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive amending Directives 80/778/EEC on drinking water, 76/160/EEC on bathing water, 75/440/EEC on surface water and 79/869/EEC on methods of measurement and frequencies of analysis of surface water [1]

(89/C 159/23)

On 16 January 1989, the Council decided to consult the Economic and Social Committee, under Article 130s 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 4 April 1989. The rapporteur was Mr Saïu.

At its 265th plenary session (meeting of 27 April 1989) the Economic and Social Committee adopted the following Opinion unanimously.

1. The Committee approves the proposal, which aims to improve and accelerate the practical implementation of Directives 80/778/EEC, 76/160/EEC, 75/440/EEC and 79/869/EEC.

2. The Committee notes that the regulatory committees are not to issue opinions which would change the scope of the Directives or incur major economic consequences in the Member States.

3. The Committee therefore asks the Commission to ensure that the measures envisaged in Article 5(3)(a) conform fully to the requirements of the abovementioned Directives. Implementing difficulties in some Member States must not allow these measures to relax or weaken the Directives.

4. The Committee is surprised to see that the proposal would allow a representative of a Member State to propose a matter for referral to the technical implementation committees. The Commission alone should have the power to refer a matter to the committees.

5. Article 5 should be amended to specify that the 'measures envisaged' are technical measures, to the exclusion of all others.

[1] OJ No C 13, 17. 1. 1989, p. 7.

6. At the end of the three-year trial period, the European Parliament and the Economic and Social Committee should be informed of the results of the Directive. Any proposal to extend or amend the Directive in the light of these results should be referred to the Parliament and the Committee.

Done at Brussels, 27 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on:

— **the draft joint Decision of the Council and the Commission establishing a programme of options specific to the remote and insular nature of the French Overseas Departments (POSEIDOM), and**

— **the proposal for a Council Decision concerning the dock dues arrangements in the French Overseas Departments** [1]

(89/C 159/24)

On 15 December 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 Decision and proposal.

The Section for Regional Development and Town and Country Planning, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 18 April 1989. The rapporteur was Mr Della Croce.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion by a large majority, with two dissenting votes and five abstentions.

I. DRAFT JOINT DECISION OF THE COUNCIL AND THE COMMISSION ESTABLISHING A PROGRAMME OF OPTIONS SPECIFIC TO THE REMOTE AND INSULAR NATURE OF THE FRENCH OVERSEAS DEPARTMENTS (POSEIDOM)

1. Introduction

1.1. The purpose of the proposal is to launch a multiannual action programme, running from 1 July 1989 to 31 December 1992. This will help the French Overseas Departments (DOM) to integrate with the rest of the Community and draw closer economically in the run-up to 1992, and will also bolster regional cooperation.

1.2. The programme is to include:

a) continuation of Community measures already underway;

b) consideration of the special position of the DOM when framing Directives or other measures concerning the internal market, the 'social dimension', technological research and development, and environment protection;

c) aid for the production, processing and marketing of farm products which are not covered by common measures;

[1] JO No C 53, 2. 3. 1989, p. 12.

d) measures regarding the banana market;

e) measures regarding tax arrangements and quotas for rum;

f) measures to offset the DOM exceptional location (facilitating the supply of feedingstuffs and food, encouraging the production of certain agricultural products, promoting trade);

g) authorization for France to grant national aid for sugar cane and cane sugar;

h) assistance from the structural funds, the European Investment Bank (EIB) and the other financial instruments;

i) regional cooperation, in the form of consultations between the various States, territories and departments in the two regions where the DOM are situated.

1.3. The proposal steers a pragmatic course, midway between an entirely European and an entirely regional approach.

1.4. The legal basis of the proposal is Article 227(2) of the Treaty of Rome.

1.5. In its explanatory memorandum to the proposal, the Commission places particular emphasis on complementarity, partnership and programming.

2. General comments

2.1. A programme to assist the economic growth and development of the DOM is desirable. In general terms, the proposal should therefore be approved. A specific aid programme for the DOM is particularly necessary now, as the completion of the internal market could harm the DOM economies if no special precautions are taken.

At the same time, this is a complex problem, requiring the right approach. Careful attention must be paid to all its specific aspects.

2.2. The Section would here refer to the Committee Opinion of 2 July 1987 [1] on disadvantaged island regions (rapporteur: M. Vassilaras).

2.3. The Commission's explanatory memorandum, particularly points 1 to 29, is sound and well argued.

2.4. The legal basis, resting entirely on Article 227(2) of the Treaty, seems a little contrived, but this is in fact the only one applicable.

2.5. Outside the introduction, the Commission only considers the DOM underdevelopment. The measures proposed are thus confined to economic assistance, much of which would form part of regional development policy anyway.

2.6. The Commission's approach is seriously restricted by its concentration on particular economic difficulties. Other aspects which are in fact very important are underestimated. From a purely economic viewpoint, the DOM are of course underdeveloped regions with a gross domestic product (GDP) well below the Community average. However, GDP is no lower than that of other disadvantaged regions. A list of the regions with the lowest per capita GDP puts Guadeloupe in sixteenth place, Réunion in eighteenth, and Martinique in twenty-eighth. A large area of Spain, almost all of Greece, and the whole of Portugal have a lower GDP than Guadeloupe, which is the most backward DOM (the figures for Guiana are not comparable).

The DOM are distinctly better off than independent States in the same part of the world.

Underdevelopment thus does not provide the sole justification for a special programme, even though the DOM are the only part of the Community singled out for special attention in Article 227(2) of the Treaty.

2.7. Yet the DOM extreme remoteness from the rest of the Community, their geographical situation in the developing world, and their unpredictable tropical climate are important factors.

Furthermore, unemployment and under-employment, demographic trends, the extreme fragility of manufacturing industry, the complete lack of savings, the historical heritage, and the low level of education and occupational skills all make the situation in the DOM much worse than in the rest of the Community.

2.8. Thus, what is needed is a wide-ranging operation which goes beyond the field of regional policy and embraces a number of Community policies. For such an operation, the Community would have to use these regions as a platform for exerting its cultural influence on the surrounding areas.

2.9. Specific assistance—topping up Community regional development aid—should be channelled into

[1] OJ No C 232, 31. 8. 1987, p. 91.

investment in agriculture, industry, trade and other service sectors with a potential locomotive effect on the economies of neighbouring countries. Tourism also deserves special attention, both on economic grounds and for the part it plays in cultural relations. The DOM would become fully-fledged Community regions in the tropics, providing platforms for Community technology and production skills and acting as a bridge between the Community and the nations of the Caribbean, South America and the Indian Ocean.

2.10. The programme must first assess past assistance from the Community and from France. French intervention should not be underestimated: it has achieved major political results, making these territories a more closely integrated part of the nation, although they still receive a high level of assistance.

Although in relative terms GDP has grown faster than in mainland France, this is largely due to transfer payments. In absolute terms the gap has widened.

The shortcomings are even more evident in the manufacturing sector, partly because of failure to exploit natural resources (e.g. Guiana).

2.11. The compilation of a systematic list of national measures is proposed, in order to decide which measures should be harmonized by the end of 1992 and which should be maintained or adjusted. However, this examination of national measures should have been at the basis of the programme.

2.12. It is difficult to assess the effect of French aid to the DOM in quantitative terms, but the spending channelled through FIDOM (which is in any case criticized for its centralizing aspects) appears modest even when compared to Community aid.

2.13. A programme for the DOM should consist of integrated measures, using national and Community contributions side-by-side ('additionality' principle). If Community support is to include assistance from the structural funds which are to be doubled in size, France too should double the resources of FIDOM and the other contributions it makes to these regions.

2.14. The programme for the DOM will require systematic cooperation between the Community, France and the DOM regional authorities.

2.15. The explanatory memorandum (points 1 to 86) to the joint Decision is extremely full and detailed, but it is not adequately reflected in the text of the Decision itself.

2.16. In this connection, the principle of partnership is underlined in point 45 but is not fully developed in the provisions of the Decision. The Decision should specify which matters are to be the subject of collaboration, the role of the social partners, and the collaboration procedures themselves. At the very least, the Decision should make collaboration obligatory in the preparation and administration of the programme.

2.17. The aims of the programme should be geared more to vocational training and productive investment in manufacturing industry.

Agriculture undoubtedly deserves specific attention, and it would also be useful for the service sector to be rationalized; some areas should be strengthened and others diversified.

However, the DOM economies can only be modernized with an efficient, technologically advanced manufacturing sector.

Due regard must also be paid to the social implications of modernization, and the need to achieve a significant reduction in the high unemployment rate.

The possible repercussions on neighbouring economies must also be assessed.

2.18. Some aid measures may (and perhaps will have to) be scheduled for agriculture and tourism, but they will not suffice to overcome the competition from neighbouring countries with low labour costs.

The creation of modern service and manufacturing industries with a high added value, tapping the vast human resources available locally, could prove a winning strategy. However, this is bound to require major investment and appropriate managerial and occupational skills.

2.19. The development of manufacturing industries also requires modern and efficient transport, telecommunications and social infrastructure. The Section would here note the need to open up the transport sector to competition in order to minimize the effect of transport costs on the prices of locally produced goods

and on supplies of imported products. Retention of the derogations to Community rules on air transport would run counter to the DOM development strategy.

2.20. The whole tax system of the DOM should be carefully analyzed. Reform should be based on the following principles:

— as far as is economically feasible, the system should fit in with Community rules,

— the system should be more geared to economic development, as regards both the use made of tax revenue and its effects,

— provisions should be adopted to encourage investment by economic operators from all parts of the Community.

2.21. Taxation must in no way hold down living standards in the DOM, particularly for the less wealthy classes.

2.22. There is no denying the special problems of the DOM, but a proper regional policy must recognize the analogies with the situation of other islands and regions which are a long way from their member countries. The Commission should also set up programmes for the Canaries, Ceuta and Melilla, Madeira, the Azores, Pantelleria, Crete and others.

3. Specific comments

3.1. The general comments made above form the backbone of the Section's Opinion. They may however be amplified by a detailed examination of the text of the proposal.

3.2. The proposal's preamble should be redrafted in line with the general comments made above.

3.3. Article 1 covers the establishment of the programme, stating its underlying principles and aims but not specifying the content.

3.4. Article 2 states that the programme will run for three and a half years, from 1 July 1989 to 31 December 1992 (with the exception of certain measures which are not specified).

This starting date seems quite impossible, even if the Commission and the Council were to adopt the Decision forthwith, because the programme still has to be fleshed out. At all events, the duration of the programme is not long enough to solve the serious problems facing the DOM.

3.5. The specific objectives of the programme (Article 3) deserve full endorsement, but the Section regrets the lack of indications about the instruments for achieving them.

The 'coordinated and concentrated action' mentioned in Article 3(b) must follow clear procedures which need to be defined.

The pursuit of the three objectives outlined in Article 3 must take account of the particular circumstances of each DOM.

Lastly, the economic development priorities must be established and the financial assistance tailored accordingly.

3.6. Article 6 mentions assistance for the production, processing and marketing of agricultural products not covered by common measures, based on measures which the Council or the Commission will adopt within the first year of the programme. Because of the extremely general wording of this provision, any assessment thereof is bound to be negative. A clear indication is needed of what concrete arrangements will apply for each product, in order to meet the need to organize the market in local products.

The undertaking concerning the banana market in Article 6(2) does not go far enough. Point 55 of the explanatory memorandum also gives cause for concern. The considerable economic and social importance of banana production in the DOM makes Community organization of the market a necessity, and this must take account of production in all banana-growing areas of the Community. The Committee asks to be consulted on the Commission proposals on the banana market.

For rum, a clear indication is needed of the measures planned, bearing in mind that this too is an important product for some DOM and that production is falling significantly. Here too, the Committee would ask to be consulted on the Commission proposals.

3.7. The measures planned for the supply of cereals for animal feed and for human consumption, and for the development of certain DOM farm products (Article 7) appear endorsable.

It is not clear from Article 7(3)(c) exactly how the structural funds are to help promote trade.

Article 7 is limited to measures to encourage farm and food production. Yet the geographical situation of the DOM also requires assistance in industry, transport

and telecommunications—sectors which are not mentioned at all. Stress must also be placed on the need to encourage local small firms, particularly in terms of job openings and their ability to compete against importers of ready-made products.

3.8. The list of national measures (Article 8) is most welcome, but must be accompanied by a careful examination of the practical results which these measures have achieved, in order to draw properly on past experience.

3.9. The granting of national aid for sugar cane and cane sugar can be endorsed, but must take account of likely trends on the world sugar market.

Measures with an impact on agriculture must be viewed within the framework of an agricultural policy for each DOM. The aim must be to avoid monocultural dependence and non-profitable increases in production, while guaranteeing farmers a fair income and ensuring adequate social conditions for farmworkers.

3.10. The tax system of the DOM requires careful analysis. It must be aligned with the Community system with a view to the DOM becoming full members of the internal market.

Here too, attention must be paid to the specific features of each DOM, and the need to pursue harmonious economic and social development.

3.11. The decision to implement the measures primarily through operational programmes is to be supported. These programmes (which could also take the form of integrated operations) should be founded on the consensus and involvement of all the socio-economic groups, and the vocational training and education of the population.

The programmes must be widely advertised amongst the local populations and must ensure real progress in the financial development of the DOM. The destination of the aid must also be clear, in order to ensure that Community contributions do not replace national or regional contributions.

The choice of projects should give priority to strategic fields such as infrastructure of economic importance, promotion of local products, development of corporate services, vocational training geared to future needs, and regional cooperation.

Structural fund assistance should also be extended to projects for boosting the economy. These should include the promotion of exchange schemes with the EEC for businesses (BC-NET) and people (COMETT, ERASMUS, YES), the setting-up of Euro Info Centres, participation in trade fairs and exhibitions in the Community, and telecommunications and modern means of communication. The aim should be to cut the excessive costs caused by the DOM remoteness and provide a link with the rest of Europe.

Lastly, each measure must always take account of employment problems and social conditions.

3.12. Regional cooperation is a key element in development and deserves a much more detailed framework than that given in Article 11. Precise procedures and methods must be devised, with appropriate arrangements for regional consultation.

Relations with the African, Caribbean and Pacific States (ACP) need special attention, taking account of the Lomé Convention. The Section would here refer to the Committee's Opinion of 3 June 1988 (rapporteur: Mr Delhoménie).

3.13. The principle of consultation and partnership outlined in points 45 and 46 of the explanatory memorandum is not reflected in the text of the Decision. This is an unacceptable omission which must be rectified.

3.14. The financial memorandum appended to the proposal fails to give an idea of the scale of the programme.

Since it is very difficult to specify the exact financial resources which will be available for the programme, it would be better to omit the financial memorandum, rather than to allow the possibility of ambiguous or negative interpretations.

II. PROPOSAL FOR A COUNCIL DECISION CONCERNING THE DOCK DUES ARRANGEMENTS IN THE FRENCH OVERSEAS DEPARTMENTS.

1. Introduction

1.1. Dock dues are described in point 61 of the explanatory memorandum.

1.2. Dock dues are import duties applied upon the entry of all goods to the islands, from whatever source.

The rates at which they are levied vary according to the product. The products and rates are established by each DOM regional council.

Dock dues are similar to customs duties (although they also apply to goods coming from metropolitan France), and date back a long time. The revenue from them goes to the regional authorities.

1.3. The Commission proposes a radical change in dock dues, which may however be retained in their present form until 31 December 1992.

1.4. By that date, dock dues are to be replaced by a special tax on goods imported into or produced in the DOM. Revenue from the tax should go towards the economic and social development of the DOM.

1.5. The rates of the new tax may vary according to the category of product, and exemptions may be granted for local products (for a period of not more than ten years).

1.6. The tax which will replace the dock dues and the current value added tax (VAT) arrangements are to be considered jointly for the purposes of approximating VAT rates.

2. General comments

2.1. The proposal to reform dock dues and convert them into a different type of tax is not at present supported by the local authorities.

2.2. Because of the DOM geographical situation and the conditions applicable on their markets, competition with other regions will not be significantly affected by the existence of indirect tax arrangements which are not the same as those in the rest of the Community.

2.3. Nevertheless, the DOM are an integral part of the Community, and their tax system should therefore resemble that of the other Member States as closely as possible. Reform of the dock dues should thus work towards this goal.

2.4. The present dock dues provide useful revenue for the regional authorities and offer local products some degree of protection.

However, they have the disadvantage of not encouraging local authorities to reduce imports or purchases from the rest of the Community, because this would mean a drop in revenue.

Furthermore, they give local firms no incentive to be competitive, to diversify, or to adopt new technologies. They also adversely affect consumption.

2.5. It is very difficult in an examination of regional policy to make valid judgements on a tax of this sort.

For a full assessment of the implications for economic and social development, the tax would have to be considered within the overall context of taxation.

3. Specific comments

3.1. The second recital in the preamble links the dock dues proposal to the POSEIDOM programme. Unless the revenue from the new tax is to be channelled into the programme, this link seems unfounded.

3.2. The nature and characteristics of the special tax mentioned in Article 2(1) should have been specified in greater detail.

3.3. The destination of the revenue should be specified in greater detail, and the whole process must be as clear as possible.

3.4. The proposed system of exemptions will have to be drawn up and monitored very carefully to ensure that products which are manufactured or processed locally do not become less competitive.

4. Conclusions

4.1. Subject to the above comments, the Section approves the proposal.

4.2. However, the Section regrets that the Commission did not first consult the regional authorities in order to better accommodate their wishes and obtain a consensus on the goals to be pursued.

4.3. The tax which will replace dock dues must be targeted solely on the economic and social development of the DOM, according to clear rules which the social partners and the local populations can monitor easily.

Done at Brussels, 26 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Decision adopting a specific multiannual research and training programme for the European Atomic Energy Community (Euratom) in the field of radiation protection (1990/1991) [1]

(89/C 159/25)

On 16 January 1989, the Council decided, in accordance with Article 170 of the Treaty establishing the European Atomic Energy Community, to ask the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Section for Energy, Nuclear Questions and Research, which was responsible for the preparatory work on the matter, adopted its Opinion on 6 April 1989 (rapporteur: Mr Saïu).

At its 265th plenary session (meeting of 27 April 1989) the Economic and Social Committee unanimously adopted the following Opinion.

The Committee supports the continuation of research and training activities in the field of radiation protection and approves, subject to certain reservations, the aims and content of the proposed programme. But it considers the proposed funding to be unsuited to the Community's long-term needs in the field of radiation protection and asks that, when the framework programme is reviewed, there should be a very substantial increase in the budget earmarked for research and training in this area.

1. Introduction

1.1. The aim of the proposed Decision is to continue the research and training activities in the field of radiation protection begun in 1961 and performed most recently in the 1985-1989 programme [2] which is still being implemented; this programme was adopted by the Council in March 1985 and modified in December 1987 [3].

1.2. Under the terms of the framework programme of Community activities in the field of research and technological development (1987-1991) [4], the aims of the radiation protection programme are to provide data and methods with a view to preventing and combatting the harmful effects of ionizing radiation and radioactivity and assessing the consequences of accidents involving irradiation.

1.3. Under this new programme, the Commission proposes that the following subjects be dealt with:

a) human exposure to radiation and radioactivity:
   - measurement of radiation dose and its interpretation,
   - transfer and behaviour of radionuclides in the environment;

b) consequences of radiation exposure to man: their assessment, prevention and treatment:
   - stochastic effects of radiation,
   - non-stochastic effects of radiation,
   - radiation effects on the developing organism;

[1] OJ No C 16, 20. 1. 1989, p. 5.
[2] OJ No L 83, 25. 3. 1985, p. 23.
[3] OJ No L 16, 21. 1. 1988, p. 44.
[4] OJ No L 302, 24. 10. 1987, p. 1.

c) risks and management of radiation exposure:

— assessment of human exposure and risks,

— optimization and management of radiation protection.

1.4. The proposed research and training activities must form part of a five-year programme for the years 1990-1994; the Commission considers that appropriations amounting to 90 million ECU are necessary for its implementation.

1.5. But for budgetary reasons the proposed decision submitted by the Commission is limited to a period of two years, 1990/1991, as the framework programme of Community activities in the field of research and technological development 1987-1991 at present only allows a budget of 21,2 million ECU for research into radiation protection.

2. General comments

2.1. In its Opinion of 18 November 1987 [1], the Committee stressed that 'the Chernobyl nuclear disaster has helped to highlight the need to spend more on research in the field of radiation protection' and added that 'sufficient funds must be set aside as from now to ensure effective radiation protection research in the Community. Otherwise, competence will be impaired.'

2.2. In this respect, the Committee is deeply concerned by the corroborating conclusions of the Management and Coordination Advisory Committee (CGC) on radiation protection and of the independent panel of experts regarding the evaluation of the programme for 1985-1989 and the consequences of the Council's reduction of the appropriations earmarked for this programme from the Commission's initial proposal; according to the panel of experts, this reduction in funding 'represents a large bill for the future radiation protection efforts in the Community'.

2.3. Among the consequences noted by the Committee are:

— a retreat from, or even abandonment of certain research areas, leading to a loss of scientific knowledge,

— the stoppage of work by several research teams,

— a shortage of young researchers who are experts on radiation protection, mainly due to the lack of resources provided for training, and

— a lack of flexibility, preventing the Commission from responding to the Chernobyl nuclear accident by an appropriate redirection or extension of research activities.

2.4. Bearing in mind what has just been said, and the Community's long-term needs in the field of radiation protection, the Committee would have expected the new radiation protection programme to have been given priority and, in particular, to have been given appropriate funding.

2.5. An increase in the funding for radiation protection activities is all the more necessary because:

— the Chernobyl nuclear accident has engendered new radiation protection needs, which it has only been possible to cover partially and through a big cutback in the already reduced funds allocated for research and training under the 1985-1989 programme, and

— in order to prevent a recurrence of the situation described above with the same effects, provision should be made for funds to enable the Community to deal with the possible consequences of nuclear accidents like Chernobyl, without having to jeopardize the aims and content of programmes which have initially been decided.

The Committee therefore emphasizes the necessity of creating a reserve fund to enable the Community to cope with such emergencies.

2.6. The Committee regrets that such has not been the case and that, on the contrary, as the Commission itself admits, research and training in the field of radiation protection for the two years 1990/1991 will still have to be severely restricted. This negative trend is confirmed by the independent panel of experts, who note that the 21,2 million ECU proposed will cover little more than 50 % of the research activities carried out under the 1985-1989 programme.

2.7. This situation is all the more unacceptable, especially bearing in mind the expectations and concerns of public opinion, because the general public, which is particularly aware after the Chernobyl accident, would have backed an extra special effort by the Community and its Member States.

2.8. The Committee feels under these circumstances that the proposal for a decision does not make it possible to preserve a balanced research programme and thereby ensure a large pool of knowledge of radiation protection for the future, an area in which it is essential for the Community to maintain and increase its expert-

[1] OJ No C 356, 31. 12. 1987, p. 4.

ise so as to ensure an ever-greater protection of people and the environment against the dangers resulting from ionizing radiation.

2.9. The Committee is particularly aware that this state of affairs, which is totally inadmissible and which must be put right with the greatest urgency, is one of the consequences of the cut in the funds allocated by the Council to the 1987-1991 framework programme, to which the ESC has already drawn attention, and that it is no longer possible in this framework to get more money set aside for research and training in radiation protection.

2.10. In view of this, the Committee cannot endorse such a situation for much longer; it particularly asks that, when the framework programme is reviewed, priority be given to research and training activities in the field of radiation protection, and firmly expects, at the very least, that the Commission's intention to allocate 90 million ECU to the implementation of the programme for 1990-1994 will be put into effect. Assuming this will happen, the Committee feels, in spite of everything, that it would be appropriate to examine the aims and content of the proposed programme.

2.11. The Committee generally approves the aims and content of the proposed programme, which incorporates several suggestions made, in particular, in its Opinion of 23 November 1983 on the programme for 1985-1989 [1] and in the Opinion of 18 November 1987 referred to earlier.

2.12. In this regard, the Committee considers the following as essential:

— the continuation of research activities which enable the Commission to perform the regulatory task assigned to it by the Euratom Treaty, particularly the updating of the basic standards for the protection of workers and the general public against the dangers resulting from ionizing radiation,

— the assessment of the cancer and genetic risks of exposure at low dose and dose rate to natural radiation, medical x-rays and the nuclear industry,

— the acquisition of the information necessary to develop concepts and practices in radiation protection resulting from the application of radiation in medicine and industry,

— the active publication of information to the public in plain language about the results of research and the progress made in understanding the nature and effects of radiation and the actions which are being taken for public safety and the protection of the environment.

2.13. The Committee considers in this context that priority must be given to research concerning:

— the consequences of radioactive substances in the food chain, so that the maximum permissible levels of radioactive contamination in food, drinking water and animal feed can be updated,

— exposure to radon, which could be the cause of around 15 000 lung cancer deaths a year in Europe,

— irradiation of the embryo, which many experts feel is a probable cause of mental retardation,

— irradiation from medical and dental x-rays, which is said to be the origin of up to 40 % of the public's total exposure to radiation in the Community,

— the effects of using ionizing radiation for medical treatments.

The Committee would stress here that the reliability of the radiological equipment used for x-rays should be improved, as should the means for monitoring irradiation of the public by such practices, as these are currently considered as untrustworthy.

2.14. The Committee would also like to reiterate the importance it attaches to finding a solution for the problems associated with exposure to radiation at work, and to the recommendation in its Opinion of 23 November 1983 that the radiation protection programme could contribute more towards solving the problems raised in the safety and hygiene committees.

2.15. The Committee therefore finds it deplorable that the Council has still not adopted the proposal for a decision submitted by the Commission in 1987 concerning the extension of the responsibilities of the Advisory Committee on safety, hygiene and health protection at work to include health protection against the dangers arising from ionizing radiation, an extension which the ESC approved on 30 November 1987 [2].

2.16. The Committee vigorously supports the panel of experts when it stresses that there is an absolute need to preserve knowledge about radiation protection and build on what is known. The panel notes that past pleas about training have not been answered and that new pleas must be couched in terms of the utmost urgency before it is too late.

2.17. The Committee doubts whether the effort proposed by the Commission can enable this objective to

[1] OJ No C 23, 30. 1. 1984, p. 12.

[2] OJ No C 319, 30. 11. 1987.

be attained, unless a particular effort is made as regards training in radiation protection as part of the decisions referred to in point 2.10.

2.18. The Committee also feels that particular attention should be given to training Spanish and Portuguese scientists, so that these two countries can be associated fully and without delay in the Community's radiation protection work.

2.19. The Committee wishes to emphasize that the Community's research and training activities in the field of radiation protection must be accompanied by a major effort to inform the public and make people aware of the problems connected with radiation and how they can be solved; among those involved in this effort should be the two sides of industry, consumers' associations and environmental protection organizations.

2.20. Also worth remembering is the ESC's request in its previous Opinions that the abovementioned interests should be involved as widely as possible in consultations leading to the drawing-up of a radiation protection programme. The Committee notes that such practice has not always been the case under the present programme.

2.21. Finally, the Committee repeats its request that Article 4 of the proposed decision be modified so as to provide expressly for the forwarding of the assessment of the programme to the Economic and Social Committee, especially as Article 7 of the Euratom Treaty, which is the legal basis of the present proposal, states that 'the Commission shall keep the Economic and Social Committee informed of the broad outlines of Community research and training programmes'.

Done at Brussels, 27 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on:

— **the proposal for a Council regulation amending Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community, and**

— **the proposal for a Council Directive amending Directive (EEC) No 68/360 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families**

(89/C 159/26)

On 23 January 1989, the Council decided to consult the Economic and Social Committee under Article 49 of the Treaty establishing the European Economic Community on the abovementioned proposals.

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 13 April 1989. The rapporteur was Mr Pearson.

At its 265th plenary session (meeting of 27 April 1989) the Economic and Social Committee adopted the following Opinion by a unanimous vote with one abstention.

1. Introduction

1.1. The Committee recognizes that, in view of the problems and challenges concerning free movement and residence in other Member States, the Commission is correct in wishing to bring up to date the relevant legislation, in the spirit of the advancement towards a People's Europe, and as endorsed by the Committee in its Opinion on guidelines for a Community migration policy [1].

[1] OJ No C 188, 29. 7. 1985.

1.2. The Committee recognizes the difficulty for the Commission in the implementation of its wish to bring up to date the situations which arise from the application of (a) the regulation on the freedom of movement of workers and (b) the Directive concerning the right of residence of workers. The two subjects are interwoven in practical terms and yet remain as separate documents for amendment; this Opinion deals with both together.

1.3. The Committee considers that there is a need for an updating of the original provisions and welcomes the revisions proposed in both documents for the following reasons:

— twenty years' experience of their application have revealed shortcomings,

— it is preferable to tackle such shortcomings through the appropriate consultative and political decision-making channels rather than continue to rely on individual rulings from the European Court of justice,

— the Community membership has doubled in size in this period, bringing a new dimension to the original provisions,

— likewise, the labour market has clearly changed since 1968,

— the passing of the Single European Act, with its emphasis on the free movement of goods and the entitlement to free movement of workers, justifies the new approach.

1.4. The Committee reiterates a point made on previous occasions. The term 'migrant worker' should only refer to a person whose nationality is other than that of one of the Member States of the Community. The revised regulation and the revised Directive are each drafted in accordance with that precept but in a number of cases 'migrant workers' are referred to in the explanatory memorandum. This can cause the reader to be confused and should be changed, as the provisions are intended to concern citizens of the Member States.

2. Regulation on freedom of movement for workers

2.1. The Committee notes the intention to extend the categories protected by Community legal provisions so that the family unit is now to be included. It is pleased with the proposed strengthening of proper equal treatment for nationals of the host Member State and other Community citizens.

2.2. Also the Committee believes it only right and equitable that the loopholes which have been operated on occasion against Community citizens living and working in a Member State, other than their own, should be closed. It is particularly pleased to see that the rights of a 'non-Community spouse' will be adjusted so that in the case of death or divorce he/she may retain the right to employment and residence and no longer be put at a great disadvantage. In the same context, the revisions to Articles 10 and 12, with provision for members of the family are also strongly endorsed, on the understanding that this means immediate family unit.

2.3. The Committee is glad that the principles used in practical implementation of the regulations for social security of Community citizens working in another Member State are to be operated in relation to tax allowances, social security contributions and life assurance premiums. The reluctance of financial houses or local authorities to assist in the leasing of domestic accommodation should be removed by the proposals in general and particularly in the new clause as proposed at 9 (1).

2.4. The revision to Article 5 to see that equal treatment is afforded to those seeking work is approved. It also seems sensible to ensure that EC nationals performing their contractual duties on secondment in another Member State or third country for employers based in the EC are covered, and therefore the proposal to include aid and assistance to promote mobility for such workers is to be welcomed.

3. Directive on rights of residence

3.1. In line with the spirit of a 'People's Europe', the Committee recognizes that, if there is to be proper free movement within the Community by citizens of the Member States, then a less complex and more practical procedure is necessary in order to establish rights for persons moving for professional/occupational reasons to enter and reside in another Member State.

3.2. The terms of the proposal for the introduction of a 'European Community residence card' (as opposed to the current EC residence permit) are welcomed, and these revised terms should enable the worker and with him/her the family, to plan the future on a more realistic basis. The current form of temporary residence cards, for periods of less than a year in particular, has led to employment abuses and great difficulty in arranging settled domestic accommodation. The introduction of a five-year residence card is reasonable if the total duration of short term contracts exceeds one year within a period of 18 months temporary residence. Only right and equitable also is the recognition of

entitlement to social security benefits for the full term of payment under the legislation of the Member State.

3.3. In practical terms, the Committee believes that a Community citizen wishing to take up employment—or seek employment—in another Member State may well experience difficulty in finding out where he should apply for the necessary residence card. Member States should, in order to simplify the procedures and any language difficulties, have details available at appropriate places such as passport, social security and labour offices, with competent staff available to advise. The relevant forms could be completed in either the host State or country of origin.

3.4. The Committee regrets that long administrative delays are still being experienced by citizens moving within the Community entitled to, and claiming, social security benefits. It would strongly urge the Commission to see that the formal commitment upon Member States to deal swiftly with the totalization of calculation and payment of *pro rata* pensions, unemployment benefits and sickness and invalidity entitlements is properly exercised.

4. Article 43(2) of the Regulation (EEC) No 1612/68 requires Member States to communicate to the Commission, for information, the texts of agreements, conventions or arrangements concluded between them in the manpower fields. In order to have a complete picture of the present situation and the additional steps to be taken to ensure the realization of European citizens' rights to move freely throughout the Community, the Committee requests the Commission to let it have, at an early opportunity, an updated and comprehensive report on the matter.

Done at Brussels, 27 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

Opinion on the proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in the Member States concerning the pursuit of broadcasting activities [1]

(89/C 159/27)

On 22 November 1988, the Bureau of the Economic and Social Committee decided, under the third paragraph of Article 20 of the Rules of Procedure, that an additional Opinion should be drawn up on the abovementioned proposal in order to update the Opinion adopted by the Committee on 1 July 1987 [2].

On 13 April 1989 the Council drew up its common position [3] with a view to the adoption of a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

At its meeting on 25 April 1989 the ESC bureau appointed Mr Ramaekers rapporteur-general.

At its 265th plenary session (meeting of 26 April 1989) the Economic and Social Committee adopted the following Opinion by a majority of votes, with 1 dissenting vote and 4 abstentions.

1. Introduction

1.1. The Economic and Social Committee notes that the EC Council has been able, through this common position, to deploy efforts to strengthen the audiovisual capacity of the Community, by promoting free circulation of programmes and stimulating creativity, production and distribution, in line with the convention drawn up by the Council of Europe.

[1] OJ No C 179, 17. 7. 1986, p. 4.
[2] OJ No C 232, 31. 8. 1987, p. 29.
[3] Doc. No 5858/89 of 10 April 1989 and Doc. No 5858/59 Corr. of 13 April 1989.

It is, in fact, because of the cultural aspects that cooperation across Community frontiers is desirable and necessary.

1.2. The Economic and Social Committee draws attention in this respect to the connection between more European cultural ventures in the field of film and television programmes and world-wide standardization for high definition television, in accordance with the EUREKA 95 project [1].

2. General comments on the common position

2.1. The Committee notes that the future Directive will cover only television broadcasting, to the exclusion of sound broadcasting.

2.1.1. While it can agree to this new approach, the Committee would, however, stress that identical or similar standards, particularly regarding advertising, and criteria guaranteeing pluralism and the quality of information are concerns to be borne in mind when considering sound broadcasting, while having regard to the specific nature of that medium.

2.2. The freedom to provide services in the form of retransmission of televised broadcasts is now guaranteed, subject to a safeguard clause allowing provisional suspension of the retransmission of broadcasts that do not conform to the Community provisions.

2.3. In the context of the internal market the free movement of broadcasts represents the exercise of a fundamental freedom laid down in the Treaty, viz. the freedom to provide services.

2.3.1. The Committee notes in this connection the Commission's concern to ensure the prevention of any acts which could be detrimental to this freedom or promote the creation of a dominant position and thereby restrict pluralism and the freedom of information. The Commission should step up its monitoring in this area, and ensure compliance with Articles 85 and 86 of the Treaty.

2.3.2. In this context the Committee would like the biennial reports provided for in Article 26 of the Directive to include a survey of trends regarding cultural diversity and pluralism.

3. Specific comments

3.1. The Committee notes that the common position is largely in line with its earlier Opinion, in that the promotion of European programmes no longer takes the form of uniform quotas but respects the specific situations in the Member States under flexible and adaptable arrangements.

However, it will not be possible to achieve the objective of encouraging the production of television programmes unless all broadcasters abide by the rule that a majority proportion of their transmission time is to be reserved for European programmes. The Committee would question whether the proposed system of reports is an effective guarantee thereof.

3.2. The new provisions allow certain Member States to take account of their linguistic and cultural ties with third countries, as recommended in the Committee's Opinion.

3.3. The Committee notes with satisfaction that the common position now provides for a right of reply for any natural or legal person whose legitimate interests have been damaged by an assertion of incorrect facts in a television programme. It points out that the introduction of this right, which was not initially provided for in the Commission's proposal for a Directive, had been advocated in its earlier Opinions.

3.4. The Committee would also stress that the common position no longer has any provisions on copyright. It observes that in its earlier Opinion it rejected a partial solution as an unsatisfactory approach and called for comprehensive regulation of copyright in a separate Community instrument of general application. Such a Directive, which should also cover satellite broadcasting and confirm the principle of voluntary collective bargaining, should be adopted as soon as possible.

The Directive would also have to rule out any recourse to statutory licensing; moreover its entry into force would have to be coordinated with the Directive on television broadcasting.

3.5. In any event, the problem urgently needs to be resolved. Any delay will result in damage to the legitimate rights of copyright holders, particularly in the form of video copying [2].

4. Specific comments on advertising

4.1.1. The Committee notes with satisfaction the

[1] *Cf.* Opinion on the proposal for a Council Decision on High Definition Television (*cf.* this OJ, p. 34).

[2] See the Committee Opinion on the Green paper on copyright (OJ No C 71, 20. 3. 1989, p. 9).

introduction of the concept of 'surreptitious advertising' and the definition of 'sponsorship'.

4.1.2. It wonders, however, about the consequences of excluding direct offers to the public from the definition of 'television advertising'.

4.1.3. It wonders whether it would not be expedient to apply Articles 12-16 of the present Directive to them and trusts that these new marketing techniques will be regulated in the near future in the interests of legal certainty.

4.2. The Committee notes that the Member States may lay down stricter or more detailed rules in the areas covered by the Directive.

4.2.1. It wonders, however, what this facility will really mean in the face of competition, which is liable to result in a lowering of standards.

4.3. As regards the protection of minors, the Council's common position basically accords with the Committee's view that interruptions for advertising in children's programmes should not be in line with the Committee's recommendation. The common position also prohibits advertising that directly exhorts minors to buy a product or a service by exploiting their inexperience or their credulity.

4.3.1. The Committee is pleased that the Directive expressly prohibits subliminal techniques.

4.4. It notes that the common position takes account of its Opinion in that it prohibits advertising for tobacco products and for medicinal products and medical treatment available only on prescription.

4.4.1. As far as over-the-counter medicinal products are concerned, the Committee wonders whether it would not be expedient to induce presenters to recommend viewers to seek the advice of a doctor or a pharmacist in the case of prolonged use.

4.4.2. It is pleased that the common position lays down that television advertising must not include any discrimination on grounds of nationality and takes account of the importance of protecting the environment.

4.5. As regards the quantitative limits for advertising fixed in the common position, the Committee regrets that the Council has exceeded the threshold of 10 % recommended in its earlier Opinion.

4.5.1. It would also like philosophical and political programmes to be treated in the same way as religious programmes, i.e. interruptions for advertising should be prohibited.

5. Conclusions

5.1. The Committee would stress once again the importance of Community action to support the production of original programmes in the Community.

5.2. The Committee regrets that the Commission has not adopted the idea put forward in its earlier Opinion [1] of an independent transnational complaints committee to examine abuses, particularly in advertising, and it reserves the right to have its say when the Commission's monitoring arrangements make it possible to evaluate the effects of the Directive on European audiovisual production and the competitiveness of the European programme industry.

Done at Brussels, 27 April 1989.

The Chairman

of the Economic and Social Committee

Alberto MASPRONE

[1] ESC Opinion (OJ No C 232, 31. 8. 1987, p. 31).

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