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II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Directive amending Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement andmonitoring of such products [1]

(93/C 19/01)

On 5 November 1992 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal

The Section for Economic, Financial and Monetary Questions was responsible for preparing the Committee's work on the subject. In the course of its work the Economic and Social Committee appointed Mr Giacomelli as Rapporteur-General (Articles 18 and 46 of the Rules of Procedure).

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. The establishment and functioning of the internal market, with the abolition of tax controls at intra-Community borders, require the free movement of goods, including those subject to excise duty. Council Directive 92/12/EEC of 25 February 1992 laid down the arrangements for products subject to excise duty or other indirect taxes directly or indirectly affecting the consumption of these products, excluding value added tax and taxes established by the Commission [Articles 3(2) and (3) of the Directive]. The products in question are mineral oils, alcohol and alcoholic beverages, and manufactured tobacco.

1.2. The aim of the proposed Directive is to simplify and clarify certain Articles of Directive 92/12/EEC of 25 February 1992, without altering their content or substance.

1.3. As the simplification and clarification of texts can only add to their transparency, as reiterated at the end of the special summit in Birmingham, the Committee welcomes the Commission's initiative and approves the proposed Directive.

2. General comments

2.1. Paragraphs 1, 2 and 3 of Article 2 of Directive 92/12/EEC define certain national territories belonging to the Member States which are not covered by that Directive or the Directives on the structures and rates of excise duties. Article 1 of the proposal amends Article 5(2) of Directive 92/12/EEC to the effect that the aforementioned national territories and the Channel Islands shall be treated as third countries for the purpose of designating those products on which the excise duty is deemed to be suspended.

2.2. Article 15(1) of Directive 92/12/EEC states that the movement of products subject to excise duty under suspension arrangements must take place between tax warehouses. Article 3(a) of the proposal extends this provision mutatis mutandis to the intra-Community movement of products subject to zero-rate excise duty.

2.3. Article 3(b) of the proposal adds a fifth paragraph to Article 15 of the basic Directive and Article 4

[1] OJ No C 283, 31. 10. 1992, p. 8.

adds a new Article 15a to Title III of that Directive. Both additions refer to the procedure provided for in Article 24 of Title VI of Directive 92/12/EEC dealing with the Committee on Excise Duties which is to assist the Commission. Their purpose is to establish a legal framework for the submission to the above-mentioned Committee of technical draft simplification measures concerning the specific circumstances surrounding a change of consignee and verification by the consignor of the status of the consignee in connection with the movement of products subject to excise duty.

2.4. Article 5 makes several amendments to Article 18 with a view to simplification and clarification. Among other things it provides that, in order to simplify administrative procedures, contrary to Article 18(1) an accompanying document need not be used where computerized procedures are employed. Furthermore, where the dispatch of products subject to excise duty requires a declaration to the effect that those products are to be placed under the internal Community transit procedure by means of the single administrative document [eg. dispatch between Member States via European Free Trade Association (EFTA) countries], that document has the same legal validity as the accompanying document referred to in Article 18(1) as amended. This means that for this type of operation there will be no need for documents to be substituted, thus simplifying formalities, although certain instructions have to be followed (1st and 2nd indents of the new paragraph 1a to be added to Article 18 of the basic Directive).

2.5. Article 20(3) of Directive 92/12/EEC stipulates that when excisable products do not arrive at their destination and it is not possible to determine where the offence or irregularity was committed, that offence or irregularity shall be deemed to have been committed in the Member State of departure, which shall in principle collect the excise duties. Article 6 of the proposal supplements this with the provision that where the Member State of departure applies a zero-rate excise duty and products do not arrive at their destination due to an offence or irregularity, that offence or irregularity shall be deemed to have been committed in the Member State of destination, which must then collect the excise duties.

2.6. Article 7 of the proposal provides for the extension of the Committee on Excise Duties procedure (Title VI of Directive 92/12/EEC) to the measures required to implement the amended Articles 15 and 15a with respect to the arrangements to enable traders and the competent authorities to verify the status of the consignees, in particular in the event of a change of consignee.

2.7. Article 26a, which Article 8 of the proposal adds to Title VII 'Final provisions' of Directive 92/12/EEC, concerns products subject to excise duty which are under a suspension arrangement (tax or customs duty) before 24.00 on 31 December 1992. The excise duty on these products is deemed to be suspended after that date.

3. Specific comments

3.1. As the aim of the proposal is to simplify, clarify and supplement to good effect certain Articles in the basic Directive 92/12/EEC of 25 February 1992, it does not call for any specific comments except in respect of Article 6. In the event that it is not possible to determine where an offence or irregularity was committed when non-zero-rated products do not arrive at their destination, it is the Member State of departure, contrary to the principle that duties shall be payable in the State of consumption, which is deemed to be the place where the offence or irregularity has been committed and which must collect the duties [Article 20(3) of the Directive]. As the name of the consignor is known, it must be assumed in the absence of provisions to the contrary that the duties are collected from him. Article 6 of the proposal adds that where the Member State of departure applies a zero-rate excise duty to products which do not arrive at their destination and it is not possible to determine where the offence or irregularity was committed, the offence or irregularity is deemed to have been committed in the Member State of destination and it is the latter which must collect the duties. In this case and in the absence of any indication to the contrary in the text, it must be assumed that the duty is collected from the consignee, provided he is known, that he is the real consignee and, furthermore, that the consignee's address is not fictitious.

3.2. The text would undoubtedly be clearer if the collection operation were defined more precisely in these two cases covered by the amended version of Article 20(3) of Directive 92/12/EEC.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive on the Legal Protection of Data Bases [1]

(93/C 19/02)

On 18 June 1992, 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 6 November 1992. The Rapporteur was Mr Moreland.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. Summary of the Commission's proposal

1.1. This Draft Directive is designed to protect electronic databases through the medium partly of the law of copyright and partly through a specific new right to prevent 'unfair extraction' from a database.

1.2. Existing legislation in the Member States varies. The United Kingdom which has the largest share of the Community market [estimates vary but the UK share may be a high 60 % with 37 % of UK production being used elsewhere in the Community (see speech by D.R. Warlock, London 7 May 1992)], provides comprehensive copyright protection for databases and most databases qualify for protection. In Spain, databases are protected as such and there is an elaborate definition of precisely what qualifies as a database. In other Member States the level of protection is less and in some cases in need of clarification.

1.3. In this proposal, a database must be electronic to be protected at all. To enjoy copyright protection it must also be 'original', that is, its 'selection or arrangement' must constitute the author's own intellectual creation. It is the selection or arrangement which must be original, not the contents of the database.

1.4. The Commission does provide some protection for databases that are not 'intellectual creation' (i.e. often referred to as 'sweat of the brow'). As regards the contents of a database, there is an unfair extraction right which permits the maker of a database to prevent others from making extracts from the database for commercial purposes without the maker's consent. This applies whether or not the database itself is protected by copyright but does not apply if the contents of the database are themselves protected by copyright.

1.5. For example, white pages telephone directories are protected under the law of copyright in some Member States. If, as frequently happens, these white pages directories are made available on CD-ROM as databases, the databases themselves would not be protected as 'original' databases (because there would be no intellectual creation in transposing them from paper to the electronic medium) and would not be the subject of the unfair extraction right because, at least in some Member States, there would be copyright in the underlying materials.

1.6. Where the contents of a database which is made publicly available are either:

a) unobtainable from any other source; or

b) made available by a public body under a duty to gather and disclose information,

extraction of such contents must be licensed on fair and reasonable terms, but the proposal does not state how the 'fair and reasonable terms' should be determined.

1.7. The unfair extraction right lasts for ten years (in contrast to the copyright in a database which qualifies for copyright protection, which lasts for at least 50 years pma).

2. General comments

2.1. Although the Committee advocates changes in the Directive, it welcomes the Commission's initiative on this subject in order to ensure that the Community has a strong database industry, able to compete against its competitors in third countries. The Committee believes that in assessing this proposal the Council should keep as its paramount objective the need for a

[1] OJ No C 156, 23. 6. 1992, p. 4.

strong database industry. Consequently, examination should focus on ensuring that the legal protection envisaged leads to this objective and, equally, on the extent to which it does not hinder new entrants to the market. The Council should resist being sidetracked into a debate on legal philosophies which underlie the Directive, particularly on the subject of 'originality'.

2.2. The experience of the United Kingdom in attracting a substantial database industry (particularly vis-à-vis the United States) indicates that the development of a strong local database industry correlates with a high level of intellectual property protection. Any effective weakening of existing intellectual property protection may cause the Community to run the risk that potential database creators will look to third countries (e.g. Canada) where protection may be stronger, to create databases in future.

2.3. In this context the proposed 'unfair extraction' protection does have limitations in ensuring that the database industry is strong.

a) First, only if the contents themselves of a database are not protected by copyright do EC nationals have the benefit of protection.

b) Secondly, the term of the right is too short. More importantly, it is unclear as to when the term of either the unfair extraction right or the copyright begins. Databases are constantly being updated. The extent to which the term has been 'restarted' depends on whether a change is 'insubstantial', because an 'insubstantial' change does not start the term of protection running again. It will be difficult to judge objectively the concept of insubstantiality.

c) Thirdly, the borderline between a database from intellectual creativity or 'sweat of the brow' will be difficult to define giving rise to the risk of extensive (and expensive) legal action. This begs the question as to whether a distinction is important. Databases, which others would like to copy commercially may have involved much effort and expense without meeting the originality criteria. Yet, they would only be protected by the limited unfair extraction right.

2.4. Consequently, the Committee believes that the unfair extraction right may prove inadequate in providing the protection needed for a strong Community database industry and for those whose efforts need protection against copying.

2.5. The Committee believes that the Council should consider the following alternatives.

2.6. One choice would be for the unfair extraction right to be removed from the draft Directive as a separate right and that a right to prevent unfair extraction be inserted as one of the restricted acts under the copyright in a database. The Committee's reasons for this recommendation are as follows.

2.6.1. The unfair extraction right is a *sui generis* right. So far, in its proposals on the harmonization of intellectual property questions, the Commission has rejected the concept of new sui generis rights and the Council has followed this approach in its decision-making. It should be noted in particular that the Council followed this approach in respect of the recent Directive on the Protection of Computer Programs (the 'Software Directive'). This approach has also been endorsed by this Committee in the past.

2.6.2. It would be wrong to compromise on the question of whether or not something should be protected by allowing a measure of short-term intellectual property protection with a compulsory licence. It is preferable to take a decision on whether something qualifies for protection and, if so, then to grant intellectual property protection of a high standard.

2.6.3. It may be said that to include the unfair extraction right as one of the rights of the copyright owner is inconsistent with the philosophy that copyright protects the rights of authors. However, the concept of copyright as an economic right which is important in an industrial context has already been accepted in the Software Directive and the approach to copyright set out in the Software Directive has been widely welcomed throughout the Community.

2.7. The second choice is to accept the unfair extraction right as a *sui generis* right, but should ensure that it is as effective a right as it would be if it were a restricted act under the copyright in the database. In other words, the unfair extraction right should not be as limited as it is in Article 2.5 in respect of its term and the compulsory licensing provisions in Article 8.1 should be curtailed. Granted the increasing sophistication of the Community's laws ensuring fair competition, any misuse by its proprietors of this exclusionary right can be dealt with by the application of those laws.

3. Specific comments

3.1. *Preamble*

The Committee welcomes the practice of numbering paragraphs in the Preamble but wonders if is really

necessary to have 40 paragraphs of often repetitious wording.

3.2. *Article 1.1*

The draft is confined to 'electronic' databases. The Committee is concerned that this will mean that different legal regimes will apply to the same database if it is stored both electronically and otherwise. This would not only complicate the law but could lead to undesirable practical consequences.

3.3. *Article 1.4*

The use of the phrase 'insubstantial changes' as a means of defining when a database becomes a new 'original' database for the purposes of the term of protection (Article 9.2) is unsatisfactory. It is difficult to imagine changes made to the selection or arrangement of the contents (as opposed to the contents themselves) which would be insubstantial.

3.4. *Article 2.1*

The significance of the reference to the Berne Convention is that by protecting databases in this way Member States will be obliged to protect databases emanating from other countries of the Convention (in particular, the USA). The same would also be true of the unfair extraction right if it were made a restricted act under the copyright in the database. However, that is not, in the opinion of the Committee, a serious obstacle: this dichotomy between the rights granted in the USA and the rights granted in certain Member States already exists to no significant detriment to the database industry in the Member States concerned.

3.5. *Article 2.5*

If the unfair extraction right survives as a sui generis right it should be made clear that it applies to unauthorised access as well as to extraction and re-utilisation.

3.6. *Article 3.1*

As in the case of the Software Directive, the draft does not oblige Member States to protect computer-generated databases (i.e. databases which have no human author). This is an issue which will have to be addressed at some time.

3.7. *Article 4.1*

This appears to require an alteration to the laws of the Member States relating to the copyright in the underlying works which make up a database, rather than relating to rights in databases themselves. In the opinion of the Committee this is something which should await the harmonization of the general law of copyright.

3.8. *Article 5*

The exclusive rights are substantially the same as in the Directive on the protection of computer programs. This is the correct approach.

3.9. *Article 7*

It may be appropriate to extend the exceptions referred to in Article 7.1 to cover the reporting of, for example, current affairs and other exceptions normally made to the exclusive rights of the copyright owner in the laws of most Member States.

3.10. *Article 8.1*

It may be appropriate to make it clear that the compulsory licensing provisions under the unfair extraction right (if it is considered appropriate to have compulsory licensing at all, which would not be permissible if the unfair extraction right were part of the general law of copyright) only apply to the right created by Article 2.5 and not to the copyright (if any) in the database or its contents.

3.11. *Article 8.2*

The definition of 'public body' needs to be made more precise, bearing in mind in particular the need to ensure consistency in the type of activity which is to be the subject of these provisions throughout the EC.

3.12. *Article 8.3*

This is very vague. Is it intended that all Member States should be required to set up (if they do not have it already) a body equivalent to the UK Copyright Tribunal? If so, the powers and duties of such a tribunal, and the principles upon which it is to operate, should be specified in much greater detail.

3.13. *Article 9.3*

It is not clear why the specific term of ten years for this right was selected. As stated in section 3.4 above, it

does not appear that existence of the equivalent of an unfair extraction right as part of the copyright in some Member States has impeded the growth of the industry.

3.14. *Article 9.4*

The definition of 'insubstantial changes' in Article 1.4 refers to changes to the selection or arrangement of the contents of a database. As currently drafted, this is not an appropriate phrase to use in relation to the contents themselves for the purposes of determining when the unfair extraction right begins to run. Further, the Committee would repeat its criticisms of this Article as set out in section 2.3b) above. The Committee suggests that a more practical means of determining the start of a fresh term of protection would be for each item of data in the database to be electronically or otherwise 'date-stamped' on its incorporation into the database. Each piece of data would be protected for the appropriate term from the date of its date-stamp.

3.15. *Article 10*

The Council should consider whether it is appropriate to include a provision similar to Article 7.1 (c) of the Software Directive, namely a requirement that devices designed to circumvent technical protection of databases are unlawful.

3.16. *Article 11.3*

This will mean that the Commission would negotiate on this issue with third countries.

3.17. *Article 13*

The date specified of 1 January 1993 is wholly unrealistic. This issue is not one that was covered in the 1985 Single Market White Paper.

3.18. The Committee notes that the Council has, in previous Directives, asked for regular reports on aspects of copyright to be produced by the Commission. If similar action is incorporated in the final Council Decision on this proposal, the Committee looks forward to being an official recipient of such a report.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Decision concerning the promotion of renewable energy sources in the Community [1]

(93/C 19/03)

On 16 July 1992, 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 Energy, Nuclear Questions and Research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 30 October 1992. The Rapporteur was Mr von der Decken.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following unanimously.

1. Introduction

1.1. At its meeting of 29 October 1990, the joint Energy/Environment Council specified that the stabilization of CO_2 emissions by the year 2000 at the 1990 level of 2 738 million tonnes should be the Community's objective.

1.2. In order to meet this commitment, a strategy involving a set of non-fiscal and fiscal measures was proposed by the Commission in October 1991. The aim of this strategy was to improve efficiency in the use of energy and to encourage the use of energy sources which are less polluting in terms of CO_2 emissions [SEC(91) 1744 final of 14 October 1991]. In the absence of such measures, Community CO_2 emissions are forecast to increase by at least 12 % between 1990 and the year 2000.

1.3. In this context, the Commission thinks that priority must be given to making greater use of renewable energy sources (or renewables), as these can make a significant contribution to stabilizing CO_2 emissions. However, this presupposes the adoption of measures to strengthen research, development and demonstration programmes and improve these energy sources' position on the market in relation to other sources.

1.4. This strategy was approved by the joint Energy/Environment Council on 13 December 1991. Point 8 of the conclusions adopted by the Council provides inter alia for the introduction at Community level of specific measures intended to encourage the greater development of new renewable energy sources.

1.5. The Commission intends to take action in three complementary fields. This action will be additional to national initiatives (for which it will provide a stimulus at the same time) and will cover:

— continuation and strengthening of research and development activities in the field of renewable energy sources (Council Decision of 14 March 1989 on a specific technological research and development programme in the energy field—non-nuclear energy sources and rational use of energy (1989-1992) (Joule programme) [2] and of energy technology promotion (Thermie programme) [3];

— introduction of a Community energy/CO_2 tax, which should help to increase the competitiveness of renewables in particular;

— implementation of accompanying measures designed to draw maximum commercial benefit from research, development and demonstration efforts in the field of renewable energy sources and to create an environment favourable to their increased penetration of the market.

1.6. These measures are part of the Community action programme for promoting the penetration of renewable energy sources in 1993-1997: this programme has now been proposed by the Commission, and includes the draft Decision on which the Committee has been formally consulted.

1.7. This programme—Altener—should thus help to improve the use of local energy resources, make efficient use of public funds and protect the environment by limiting emissions of greenhouse gases and other pollutants. It should also play its part in the completion of the internal market and reduce the Community's dependence on imported energy.

1.8. In quantitative terms, implementation of the measures described in Point 1.5 should make it possible to achieve the following objectives by 2005:

— renewable energy sources' share of total energy demand to be increased from nearly 4 % in 1991 to 5 or 6 % in 2000 and 8 % in 2005;

— electricity production from renewables (excluding large hydroelectric power stations) to be trebled;

[1] OJ No C 179, 16. 7. 1992, p. 4.

[2] OJ No L 98, 11. 4. 1989, p. 13.

[3] OJ No L 185, 17. 7. 1990, p. 1.

— biofuels' share of motor vehicle fuel consumption to be increased to 5 %.

1.9. The Commission thinks that, as a result, a 180 million tonnes reduction in CO_2 emissions could be achieved by 2005. Implementation of the Altener programme alone should contribute to a one percentage point reduction in CO_2 emissions, i.e. slightly more than 30 million tonnes, by the year 2000.

1.10. Four kinds of practical action are envisaged under the Altener programme:

— measures to promote the market for renewable energy sources and to integrate these sources into the internal energy market.

  These measures will mainly involve the harmonization of legislation and the formulation of common technical standards;

— financial and economic measures;

— training, information and outreach activities;

— cooperation with third countries (developing and Central and Eastern European countries, including the countries of the former Soviet Union).

1.11. The Decision proposed by the Commission under this programme seeks to enable the Community to contribute financially to a range of activities designed to promote renewable energy sources. Four categories of activity are envisaged:

— studies and technical evaluations for defining technical standards or specifications;

— measures in support of national initiatives aimed at extending or creating infrastructures for renewables;

— measures to foster the creation of an information network designed to promote increased coordination between national, Community and international activities;

— industrial pilot projects relating to biomass energy, in particular the production of biofuels and biogas and the use of short-rotation coppices and C4 plants.

1.12. An allocation of ECU 40 million from the Community budget is proposed for the implementation of this programme, which will run for five years.

1.13. The draft Decision lays down the rates of Community financing and the selection procedures for each of the activities envisaged. It also provides for an interim report to be drawn up during the third year, accompanied if necessary by proposed amendments to the programme, and for a final report.

2. The development of renewable energy sources in the context of Community energy policy

2.1. The Altener programme constitutes the latest attempt to ensure a substantial increase in the contribution of renewable energy sources to the Community's energy balance.

2.2. Since the Council's adoption on 16 September 1986 of new Community energy policy objectives for 1995 [1], the Committee has had the opportunity of commenting on several draft Council resolutions or recommendations, all of which have been designed to create a more favourable environment and conditions for the increased development and use of renewables in the Community.

2.3. In this connection, it is regrettable that, beyond the information contained in the Explanatory Memorandum to the proposed Decision, no report has ever been sent to the Committee which would have allowed it to make a fuller assessment of renewable energy developments in the Community over recent years. Such reports would also have been particularly useful for the evaluation of the action programme that is now proposed.

2.4. It is also regrettable that to date there are no reliable, coherent and harmonized statistics which would make it possible to be more specific about the contribution of renewable energy sources to the Community's energy balance and which could serve as a basis for development projections.

In particular, it would have been useful to have such statistics on primary and secondary energy production and the trend in energy consumption in the various sectors of the economy.

2.4.1. In this connection, the Committee welcomes the measures currently being taken by the Commission, in collaboration with the Member States, with a view to developing a system for the collection and provision of statistics on renewable energy sources on a regular and comparable basis. The project was launched in 1990 by the Commission and has already enabled comparable, albeit in some cases still incomplete, statistics to be gathered for 1989.

2.5. Having said this, it must be recognized that, notwithstanding the various Council recommendations and resolutions, there has been no significant upsurge in renewable energy sources in recent years.

2.6. In 1985, the contribution of renewables (marketed and statistically recorded) to total energy demand was estimated to be 15 million toe, or scarcely 1 %. Moreover, some 85 % of this renewable energy was produced in hydro-electric stations. Again in 1985, genuinely exploitable potential by the year 2000 was put at between 42 and 52 million toe.

2.7. Nevertheless, as the Commission stressed in its May 1988 Communication: 'The main Findings of the Commission's Review of Member States' Energy Policies' [COM(88) 174 final], these forecasts were made before the dramatic fall in oil prices, since when there

[1] OJ No C 241, 25. 9. 1986, p. 1.

has been a deterioration both in the overall economic situation and in the competitiveness of renewable energy sources (see Point 62 of the Communication).

2.8. In 1991, renewable energy sales covered less than 2 % of primary energy demand, totalling some 23 million toe. Large hydro-electric plants accounted for more than 13 million toe of this total. If fuel-wood is also taken into account (20 million toe), renewable energy's share rises to nearly 4 %.

2.9. According to the Commission, the Altener programme should help to raise renewable energy's contribution towards meeting the Community's primary energy demand to 109 million toe, or 8 % of total energy consumption, by 2005.

2.10. However, almost half of this increase is expected to derive from a greater exploitation of biomass—including fuel-wood—the contribution of which should rise from 25,4 to 66 million toe. The contribution of biofuels—which are not produced at all at the moment—should in turn become 11 million toe by the year 2005.

2.11. The Commission considers that biomass 'is the only renewable energy source which will be able to make a substantial contribution to the replacement of conventional fuels'. At the same time, it stresses that 'priority will be given to the commercial penetration of biofuels and fuels of agricultural origin' (Explanatory Memorandum, Point 56).

2.12. The Commission also thinks that increasing renewable energy sources' contribution to the Community's energy balance will mainly involve (Explanatory Memorandum, Point 38):

— the exploitation of urban and industrial waste;

— wind power, and

— small hydro.

3. General comments on the Altener programme

3.1. *Overall assessment*

3.1.1. The Committee has on numerous occasions endorsed the increased development of renewable energy sources, as much from a concern to give Europe greater energy security as on broader environmental and socio-economic grounds. [A Community orientation to develop new and renewable energy sources. ESC Opinion of 18 August 1986 [1]; Proposal for a Council Recommendation to the Member States on developing the exploitation of renewable energy sources in the Community. ESC Opinion of 27 January 1988 [2]; Proposal for a Council Recommendation to the Member States to promote cooperation between public electricity supply companies and auto-producers of electricity. ESC Opinion of 27 October 1988) [3].]

3.1.2. In this context, it has also frequently questioned whether the Member States really have the political will to create the conditions which would allow renewable sources to make an effective contribution to Community energy supplies. It has called, in particular, for the removal of legal, regulatory and administrative obstacles and barriers arising from standardization procedures in order to ensure the widespread use of renewable sources.

3.1.3. The Committee has also stressed that the full potential of renewable energy sources cannot be exploited if the general infrastructure remains as it is.

3.1.4. It also thinks that the objectives fixed for this and other energy policy areas cannot be achieved unless they fit in with the activities conducted within the framework of other Community sectoral policies which directly affect the attainment of those objectives.

3.1.5. The Committee therefore reiterates its support for the Commission's initiatives in this area and endorses the presentation of the Altener programme which represents the latest attempt—this time including quantified objectives—to ensure the development and greater permanent use of renewable energy sources.

3.1.6. Nevertheless, it notes that the Commission's proposed programme is based on an analysis and evaluation of the state of development of renewables in the Community and of the prospects in this field, which the Committee—not having any information apart from that contained in the Explanatory Memorandum—is scarcely in a position to judge by itself.

3.1.7. Thus, the Committee can only note the favourable developments which are reported to have taken place in this area since 1988 and the obvious need for consolidation, in particular by supporting national action with initiatives which will help to create the necessary conditions for a permanent breakthrough in renewable energy sources that will not be jeopardized by falls in the prices of traditional energy sources.

3.1.8. The Committee also urges that this new expression of national will be reflected in increased financial support for research, development and demonstration activities in the renewables field. In recent

(1) OJ No C 316, 9. 12. 1986, p. 1.

(2) OJ No C 80, 28. 3. 1988, p. 5.

(3) OJ No C 337, 31. 12. 1988, p. 64.

years there has, after all, been a steady reduction in appropriations for this research sector. In this connection, account should be taken of the importance of such an effort for the goal of strengthening economic and social cohesion within the Community (see point 3.2 below).

3.1.9. The Committee thinks that the objectives fixed under the Altener programme are particularly ambitious and that the real possibility of achieving them should not be overestimated. The minimal growth in renewables in recent years, notwithstanding numerous declarations of intent, suggests the need for a certain scepticism, particularly as regards the goal of increasing renewables' contribution to total energy demand, from nearly 4 % in 1991 to 8 % in 2005.

3.1.10. Even assuming that such a goal could be attained, it would be wrong to overestimate the role of renewable energy either in the context of reducing CO_2 emissions or with regard to Community energy supplies.

3.1.11. On this latter point, it should be remembered that total energy consumption in the Community is forecast to increase by 20,7 % between now and the year 2005 (i.e. from 1 160 to 1 400 million toe) whereas, even on the most optimistic assumption, only 4 % of this additional demand will be met by renewable energy sources over the same period. According to the latest forecasts, total energy consumption should not in fact increase by more than a little over 19% between 1990 and 2005, from 1 226 to 1 461 million toe. In this case only 7,4% of the Community's total energy demand will be met by renewables—see *Energy in Europe*, special issue, September 1992, 'A view to the future'.

3.2. *Renewable energy sources and economic and social cohesion*

3.2.1. The Committee would, however, stress the importance of developing renewable energy sources with a view to strengthening the Community's internal economic and social cohesion.

3.2.2. In this connection, available statistics are very general and throw no real light on the state of renewables development in the different Community states and regions, where their contribution to primary energy supplies sometimes exceeds 10 %.

3.2.3. The exploitation of renewable energy sources thus represents a crucial factor for economic and social development, particularly in remote or peripheral regions which have a relatively underdeveloped energy infrastructure and/or a large-scale exploitable energy potential of their own.

3.2.4. These aspects have also been highlighted in numerous earlier ESC Opinions (see, in particular, footnotes 1, 2 and 3, page 9).

3.2.5. The Committee thinks that the large-scale development of renewable energy sources under the Altener programme raises several specific questions which should also be considered.

3.3. *Impact on the environment*

3.3.1. First, it would draw attention to the potentially adverse environmental effect of such a development which could, in time, largely offset the expected benefits with regard to the reduction of CO_2 emissions.

3.3.2. For example, noise pollution could result from the more widespread use of aerogenerators, environmental damage could be caused by the development of small hydro and short-rotation coppices and conifers could damage the soil and surface water.

3.3.3. Some of the Commission's statements on this matter must be treated with great caution and the Committee therefore calls for a regular assessment of the environmental impact of the increased development of the different forms of renewable energy.

3.3.4. These considerations do nothing to alter the Committee's view that, at present, in many cases, renewable energy sources have a potentially more favourable environmental impact than traditional fuels, thereby enhancing the economic importance of their development.

3.4. *Electricity production from renewable energy sources in the context of the internal energy market*

3.4.1. The second question is whether it really will be possible to triple electricity production from renewable energy sources, especially from small hydro, the contribution of which would double between 1991 and 2005.

3.4.2. In its Opinion of October 1988 on the proposal for a Council Recommendation to the Member States to promote cooperation between public electricity supply companies and auto-producers of electricity (see footnote 3, page 9), the Committee endorsed the Commission's initiatives to create a favourable framework for the development of electricity production from renewable energy sources and itself made several suggestions along these lines.

3.4.3. In this context, it endorsed the construction and operation of small hydro-electric plants and thus approves the removal of the legal, regulatory and administrative obstacles to their introduction.

3.4.4. Nevertheless, the removal of these obstacles would not, in itself, be sufficient. It must also be remem-

bered that, in most cases—and particularly that of small hydro—the economic viability of producing electricity from renewable energy sources can be guaranteed only in the long term and, even then, only if direct costs are taken into account.

3.4.5. Attainment of the Commission's goal thus presupposes that the electricity generated in this way can be sold at a price which at least makes it possible to cover investment costs and all direct costs. This raises the question of whether such an objective is compatible with the proposed liberalization of the electricity sector as part of the creation of a more open and competitive internal energy market.

3.4.6. The Committee therefore calls for an examination of the impact which the completion of the internal electricity market will have on the development of renewable energy sources.

3.5. *Increased use of biomass and biofuels*

3.5.1. The importance attached by the Commission to biomass and biofuels also prompts the Committee to make certain comments.

3.5.2. First, it would recall that it has itself endorsed the increased use of agricultural and forestry resources for energy purposes and particularly for biofuels production. Increasing the use of agricultural and forestry resources in the non-food industrial and energy sectors: prospects opened up by research and technological innovation. ESC Opinion of 29 March 1990 ([1]); Proposal for a Council Directive on excise duties on motor fuels from agricultural sources. ESC Opinion of 26 May 1992 ([2]).

3.5.3. Thus, whilst supporting exploitation of the possible synergies between the Common Agricultural Policy (CAP) and energy policy, the Committee drew attention to 'the need to avoid intensified farming techniques inflicting damage on the countryside, and thereby endangering the agricultural fabric and harming the environment' ([1]).

3.5.4. In this connection the Committee notes that, to reach the target set by the Commission, namely securing for biofuels a market share of 5 % of total fuel consumption by motor vehicles, it is stated quite specifically that an agricultural area of 7 million hectares will be necessary to produce 11 million toe. This figure represents nearly 5,5 % of the utilized agricultural area of the Community, estimated to be 128 000 million hectares. (Cf. 1991 Report on the Agricultural Situation in the Community, EC Commission, 1992.)

3.5.4.1. This—relatively large—percentage should allay any fears which the Commission's objective may raise from the environmental standpoint and with regard to the policy of reducing agricultural subsidies.

3.5.5. It also seems necessary to ask (a) on what premises is the Commission's objective based, in particular as regards the growth in the motor vehicle fleet between now and the year 2005 and fuel consumption forecasts and (b) how this fits in with the 'Community strategy for sustainable mobility' as formulated by the Commission in its Green Paper on the Impact of Transport on the Environment [COM(92) 46 final].

3.5.6. The Committee thinks that, in addition to incentives for the construction of pilot plants manufacturing biodiesel, the Altener programme should cover industrial pilot plants producing oxygenated petrol additives (bioethanol).

3.6. *Thermal solar energy*

3.6.1. The use of thermal solar energy varies greatly from one region of the EC to another. This applies, as one would expect on climatic grounds, to the difference between the southern and northern countries; but even within the southern countries themselves there are considerable differences, namely a pronounced decline from East to West. Greece leads the way by far, followed by France and Italy. There is very little use of thermal solar energy in Spain. The same applies to the production of solar panels.

3.6.2. The Committee calls on the Commission to look into the reasons for these differences and to develop strategies designed, in particular, to encourage market penetration in southern countries where thermal solar energy is little used.

4. Specific comments on the draft Decision

4.1. The Committee approves the proposal for a Decision provided that account is taken of the following comments and proposed amendments or additions:

4.2. *Budgetary aspects*

4.2.1. In the first place, the Committee would point out that no allocation has yet been fixed, even by way of guidance, for certain financial support measures and cooperation with third countries.

4.2.2. In this context, it finds it quite remarkable that no information is provided on the budgetary implications of the development of biofuels despite the priority attached to them.

([1]) OJ No C 124, 21. 5. 1990, p. 47.
([2]) OJ No C 233, 31. 8. 1992, p. 1.

4.2.3. Secondly, the Committee notes that the draft Decision itself contains no provision specifying the level of appropriations from the Community budget which is considered necessary for the execution of the programme. The figure of ECU 40 million mentioned in the Commission document and its breakdown are only rough estimates, a fact which merely accentuates their fragmentary nature.

4.2.4. The Commission explains that such a provision has been omitted because of its concern to preserve a negotiating margin with the different branches of the Budget Authority in order to secure the annual allocation of the appropriations it considers necessary for the implementation of the programme, and to retain sufficient flexibility to deal with unforeseen events and to switch priorities if necessary.

4.2.5. Even so, the Committee is concerned that the financing of the Altener programme may be subject to the uncertainties of the budget procedure unless there is a genuine political commitment on the part of the Member States to help develop renewable energy sources which is reflected, especially at a financial level, in the Decision to be adopted.

4.2.6. The Committee also wonders whether the Commission's approach might not cast doubt on the determination of the Community and its Member States to make an effective and significant contribution to the reduction of CO_2 emissions, in particular through a firm commitment to renewable energy sources.

4.3. *Action benefiting from Community funding*

4.3.1. The Committee calls for the Decision to specify the selection criteria and procedures applicable to the measures which are to benefit from Community funding.

4.3.2. It also thinks that all measures covered by such funding must be the subject of periodic progress reports in order, in particular, to ensure the efficient management of Community appropriations.

4.4. *Evaluation of programme results*

4.4.1. The Commission has not set a target figure for increasing renewable energy sources' share of total primary energy demand by 1997, i.e. by the end of the Altener programme.

4.4.2. The Committee therefore wonders on what basis it would be possible to evaluate progress towards attainment of the objectives fixed for 2005, through the implementation of, besides the Altener programme, all the measures referred to in point 1.5 above.

4.4.3. The Committee also calls for an evaluation of the following on completion of the programme:

— the impact of national and Community action on the environment, where this is appropriate;

— the programme's contribution to attainment of the goal of strengthening the Community's internal economic and social cohesion.

4.5. *Transmission to the ESC of the reports referred to in Article 8*

4.5.1. The Committee calls for Article 8 of the draft Decision to be amended to ensure that it, too, receives both the interim report to be drawn up during the third year of the programme and the overall evaluation report to be drawn up on the programme's completion.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) on Shipments of Radioactive Substances within the European Community

(93/C 19/04)

On 28 July 1992 the Commission decided to consult the Economic and Social Committee, under Article 31 of the Euratom Treaty, 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 30 October 1992. The Rapporteur was Mr Flum.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

On 23 July 1992 the Commission presented its Proposal for a Council Regulation (EEC) on Shipments of Radioactive Substances within the European Community. The aim of the new Regulation is to maintain radiation protection levels after abolition of intra-Community border controls on 1 January 1993.

2. General comments

2.1. The Committee welcomes the Commission's initiative but asks that the following comments and additions be taken into consideration.

2.2. With the abolition of checks at intra-Community borders, a uniform control system needs to be set up and secured at the Community's external borders and within individual Member States in order to avoid the risks associated with these shipments.

2.3. The Committee would ask the Commission to check whether the relevant Directives on shipments of radioactive substances have actually been transposed into national law and applied by the Member States. Should it transpire that the Directives have not been fully transposed into national law or not fully implemented, the Commission must, in the the Committee's view, take appropriate action without delay.

3. Specific comments

3.1. The Committee considers that the standard shipping document to be found in Annex 1 should be set out in such a way that uniform identification of each shipment operation is possible and is guaranteed, thereby enabling checks to be carried out by the competent Member State authorities at any time.

3.2. The Committee would reiterate its conviction that the following items must be included in the relevant documents accompanying each shipment operation:

— type and quality of packaging, as well as the proportion of nuclear fuel;

— radiation dose rate;

— name of party responsible for radiation protection and destination of radioactive substances.

3.3. The Committee would emphasize that this demand precludes a blanket declaration covering multiple shipments; in other words each individual shipment must be accompanied by separate documentation.

3.4. Article 7 is unclear. Its wording needs to be clear and unmistakable.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive introducing Community measures for the control of certain fish diseases

(93/C 19/05)

On 2 July 1992, the Council decided to consult the Economic and Social Committee in accordance with Article 198 of the Treaty establishing the European Economic Community on the abovementioned proposal.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 3 November 1992. The Rapporteur was Mr Wick.

At its 301st Plenary Session held on 24/25 November 1992 (meeting of 24 November 1992) the Economic and Social Committee unanimously adopted the following Opinion.

1. The Committee welcomes the draft Directive, which is intended to limit the impact and the spread of certain fish diseases.

2. General comments

2.1. In aquaculture large numbers of fish are confined in a small quantity of water and outbreaks of certain diseases affecting fish can therefore quickly assume epizootic proportions. This can mean that the entire population of a fish farm soon becomes infected and substantial losses ensue.

2.2. However, the natural conditions make it much more difficult to control fish diseases than to control animal diseases in livestock farming.

2.3. The Committee accordingly considers it necessary for these fish diseases to be brought under control very quickly, as the economic existence of the farms would otherwise be severely jeopardized.

2.4. As fish are traded both within and outside the Community, uniform control measures for these diseases are required at least at Community level. The Committee also considers contacts with the European Free Trade Association (EFTA) countries to be desirable.

2.5. The Committee welcomes the fact that particularly infectious diseases are to be eradicated within the Community.

2.6. Diseases which are prevalent in the Community are to be eradicated in areas and farms which are officially recognized as being disease-free, and promptly controlled in other farms.

2.7. The Committee welcomes a non-vaccination policy, as, when fish are vaccinated, the danger of vaccines being released into the water and infecting other fish cannot be entirely ruled out.

2.8. The Committee would point out that derogations from the non-vaccination policy can be dangerous and should be subject to very strict safety precautions and scientific safeguards.

2.9. The Committee welcomes the fact that the diagnosis of diseases within the Community is to be harmonized and carried out only by approved laboratories. It also welcomes the fact that these tasks are to be coordinated by a reference laboratory.

2.10. The Committee would point out that there must be sufficient testing laboratories to enable final diagnoses to be reached very quickly, so that the further spread of diseases can be prevented where an outbreak is suspected. Sufficient qualified staff must also be available.

2.11. The Committee calls on the Commission to table statistics on the economic importance of aquaculture and its role in the fishery industry as a whole.

2.12. The Committee notes that the draft Directive is a logical follow-up to the Council Directive of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products. It refers to its Opinion of 19 September 1990 [1].

2.13. The Committee also refers to its Opinion [2] on the proposal for a Council Decision introducing a Community financial measure for the eradication of Infectious Haematopoietic Necrosis (IHN) of salmonids in the Community [COM(89) 502 final].

[1] OJ No C 332, 31. 12. 1990, p. 105.
[2] OJ No C 124, 21. 5. 1990, p. 3.

2.14. The Committee urges the Commission to provide financial assistance for the necessary eradication programmes.

2.15. The Committee calls for a scientific study to collate the knowledge available in the Community concerning the transmission and spreading of fish diseases, including knowledge of disease-resistant fish. The results of the study should provide the basis for promoting future scientific research into fish diseases.

2.16. The Committee notes that the Commission is assisted by an advisory committee whose remit includes aquaculture. The Committee considers it important for all economic and social partners involved in aquaculture to be represented on that committee.

2.17. The Committee would point out that the Commission proposal does not consistently refer to gametes as well as fish and eggs. To avoid misunderstandings, all references to fish and eggs should also refer to gametes.

2.18. The various language versions of certain Articles of the Commission proposal (in particular Articles 5, 10 and 13) should be aligned.

3. Specific comments

3.1. *Article 1*

The Committee notes that the Commission proposal is confined to measures for the control of certain fish diseases and does not cover molluscs. The Committee calls for corresponding measures for molluscs to be adopted in a separate directive as soon as possible.

3.2. *Article 2*

This Article should be supplemented by the definitions laid down in Article 2 of the Council Directive of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products, as these definitions are frequently referred to in this Directive.

3.3. *Article 2(3)*

The Committee proposes the following wording:

> 'Fish suspected of being infected:
>
> Fish showing clinical signs, post-mortem lesions and positive reactions in laboratory tests indicating the possible presence of a List I or II disease.'

This wording makes it clear that suspicion of infection is based on more than just supposition.

3.4. *Article 3*

The beginning of the Article should read as follows:

> ' All farms rearing, keeping or catching fish ....'

In respect of List I diseases, it is important to include enterprises which only catch wild fish from rivers, lakes or the sea, which may nevertheless be infected or act as carriers; otherwise it is not possible to implement the measures referred to in Article 6(1)(c).

3.5. *Article 3(2)*

This amendment does not affect the English text.

3.6. *Article 4*

Paragraph 2 should mention the fact that Article 5 applies only to List I fish diseases.

3.7. *Article 8(2)*

The Committee considers it inappropriate to exclude fish species which are not carriers of disease, and accordingly proposes that this paragraph be deleted.

3.8. *Article 10(3)*

It should be stated here that measures must be taken to ensure that during transport no agents of the disease can escape from the means of transport.

3.9. *Article 13(1)*

It should be stated here that vaccination with live vaccine is prohibited.

3.10. *Article 15*

The Committee notes that the Standing Veterinary Committee procedure proposed is fundamentally different from the procedure hitherto used in animal health arrangements. It precludes political influence on the fixing of individual measures.

As hitherto, the Member States should have a say in such matters. However, the proposed procedure provides only for the Member States to be heard. The Committee accordingly considers it necessary for decisions to be taken by the Council, or at least by the Standing Veterinary Committee, in line with the current procedure.

3.11. *Annex*

Annex A to the Council Directive of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products should be included among the annexes, as this Directive contains frequent references to the fish diseases listed in that Annex.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive amending Directive 90/679/EEC on the Protection of Workers from Risks Related to Exposure to Biological Agents at Work [1]

(93/C 19/06)

On 10 August 1992 the Council decided to consult the Economic and Social Committee, under Article 118a 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 19 November 1992. The Rapporteur was Mr Etty.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introductory remarks

1.1. This draft Directive is amending Directive 90/679/EEC on the protection of workers from risks to exposure to biological agents at work. The latter Directive was one of the individual Directives under the 'framework' Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. The Committee gave an Opinion on the draft for Directive 90/679/EEC in December 1988.

1.2. The present draft amendment to Directive 90/679/EEC was already announced in the text of the Directive. Article 18 of this instrument says that within six months of the date of implementation of the Directive a first list of group 2, group 3 and group 4 biological agents shall be adopted by Council, i.e. by 28 May 1994.

1.3. Annex III in Directive 90/679/EEC was reserved for the list of bacteria, viruses, parasites, and fungi presented by the Commission, together with notes on the application of the scheme.

1.4. In its Opinion of December 1988 the Committee did not make observations pertaining to the relevant parts of the draft of Directive 90/679/EEC.

[1] OJ No C 217, 24. 8. 1992, p. 32.

1.5. The Committee notes that the Advisory Committee on Safety, Hygiene and Health Protection at Work made a positive judgement on earlier drafts for the proposals now submitted by the Commission, whilst noting a number of shortcomings. These pertained to both the proposed classification and the proposed list of biological agents.

2. General remarks

2.1. The Committee welcomes the proposed amendment to Directive 90/679/EEC. It notes the Commission's assurance that the list reflects the present state of knowledge. It recognizes that additions and amendments to the list of agents may be realized in the light of future information after consideration by the Commission and national experts. With a view to rapid developments in the field it recalls the provisions for adaptations to technical progress, laid down in Article 19 of the framework Directive 89/391/EEC.

2.2. The Committee emphasizes that this instrument and its parent Directive 90/679/EEC relate specifically to protection of workers from risks from biological agents at work. The Committee notes that the distinction between occupational and other exposures requires careful definition and may be complicated by systems in different states.

2.3. The Committee considers it important that relevant protective measures for special categories of workers (notably pregnant women but also other vulnerable groups) should be developed, whilst avoiding overlap or conflict with other Community instruments. The addition of other special notations in the list (for example P: special risk in pregnancy and C: particular hazard of cancer) should be referred to the Commission for expert consideration.

2.4. The Committee regards it as important that when new protection measures are identified, they should be introduced rapidly. It is known that intensive work is in progress on development of vaccines.

3. Specific remarks

3.1. Discrepancies have been found between the English and the French texts of the Commission proposals. The Committee has been assured that most of the difficulties which arose from differences in different language texts have now been corrected.

3.2. Genetically modified micro-organisms have not been considered in this first list. The Committee has been informed that the Commission intends to deal with them in a future extension of the list in Annex III. The Committee notes that this seems to be an objective very difficult to realize. While it is of great importance that adequate protective measures will be developed for workers who might be exposed to these biological agents at their workplace, the Committee doubts that a classification list as the one presented here is the adequate instrument.

3.3. The list proposed is based on the effect of the biological agents on healthy workers. In the General remarks the Committee has addressed the matter of special risk groups especially pregnant women or those intending to become pregnant. The utmost attention should be given to the provision of adequate information to workers employed in the enterprises concerned. This aspect is not fully covered in Articles 10 and 14(6) of the parent Directive.

3.4. The Committee foresees difficulties as concerns the special indication Vaccination recommended given in the proposed list. It is clear that the Commission cannot go any further than the provisions given in Article 14 of Directive 90/679/EEC, and there is room for doubt whether this Article requires vaccination for workers who are not already immune to the biological agent to which they are exposed or are likely to be exposed. It is also not clear who will bear the costs of vaccination. The Committee thinks that this point needs clarification. Further, the Committee is concerned that vaccination should be available to workers at risk.

3.5. The list of undertakings, given in the Impact note appended to the Commission proposal, is not identical with the one in Annex I of Directive 90/679/EEC (Indicative list of Activities). In particular, work in agriculture is omitted in the Impact note list. The Committee notes that many undertakings in the agricultural field are small- and medium-sized enterprises.

3.5.1. The Committee is aware of the fact that the Commission proposal exclusively deals with Annex III. Nevertheless it raises the question, in addition to the previous point, whether the Indicative list of Activities in Annex I is still adequate.

3.6. The Committee is of the view that it should be made clear that the lists of enterprises are only indicative and that Article 3 of 90/679/EEC requires a risk assessment for 'activities in which workers are, or are potentially, exposed to biological agents as a result of their work'. In this context the Committee sees the classification list as a valuable tool for use in risk assessment.

3.7. Finally, whilst recognizing the protective intention of assignment of biological agents not yet identified to risk categories, the Committee advises that the Commission should arrange for an examination of the implications of this action; including its scientific validity and its place as a principle in a Directive.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) on measures to adapt the profession of customs agents to the internal market

(93/C 19/07)

On 13 August 1992, 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 19 November 1992. The Rapporteur was Mr Müller R.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee adopted the following Opinion by a majority vote, with one abstention.

1. General comments

1.1. The Committee welcomes the draft Regulation, subject to the comments below.

1.2. It must be stressed that the abolition of tax frontiers and customs controls at the ECs internal frontiers on 1 January 1993 is a direct consequence of the completion of the internal market decided under the Single European Act. The repercussions as regards the activity of customs agents involved in frontier formalities and acting as intermediaries between the customs and economic operators will be considerable. Community-wide, the industry has an annual turnover of ECU 5 694 million and embraces more than 16 000 firms with 239 000 employees. In terms of expected job losses, 63 100 jobs (around 25 %) will go, with particular problems for older workers concerned as regards re-training, adaptation and re-allocation of employment.

1.3. In this context, both the European Community as a whole and the individual Member States and regions primarily affected share responsibility for managing the transition in a socially-aware manner. Significant sums of money have already been committed to easing this transition under existing EC measures financed through the European Social Fund and Interreg. The Commission, moreover, can be complimented in having classified as long-term unemployed all customs agents in the Community who have lost their jobs. The fact that this one-off budget of urgent supplementary measures has now been proposed nonetheless indicates that there is a serious sense of unease, that perhaps the Community but also the Member States, regions and sectors directly concerned have not prepared themselves sufficiently for the inevitable shake-out of employment and economic activity.

1.4. The Commission proposal is therefore welcome in principle but has been criticised in some quarters as being implemented too late. [It should be noted that

the Economic and Social Committee has already drawn attention to the problem in its earlier Opinion of 27 February 1991 on the Matthaeus Programme [1]]. It also raises the question as to whether those firms which reacted in good time in restructuring, retraining and reorganising their staff might not be penalised by this current proposal, which takes effect from 1 January 1993. The Committee would strongly urge the Commission to take a flexible view in allocating sums to assist such companies which have already taken measures now deemed 'eligible' under the proposal and which will still have an impact in 1993 in terms of jobs and economic activity. The Committee also takes the view that measures which deserve support should also be eligible for financial assistance from the special fund if they come into effect in 1993 but are not concluded until 1994.

1.5. The Regulation must be rapidly implemented; any delay would render all the proposed measures ineffective.

1.6. The Committee urges the Commission to widen the scope of the support measures and in particular the new assistance provided in the 1993 budget, so as to include employed persons amongst those benefiting directly from this action. For example, mobility grants could be considered for customs agents seeking to remain in the sector but work elsewhere. 'Economic' support for small firms concerned could also accompany 'social' and 'technical' forms of assistance (for example, direct grants, soft loans, etc. for firms attempting to diversify their activity).

1.7. The Committee would point out that it is particularly small- and medium-sized firms which are in difficulty. These difficulties are not of the firms' own making but are a consequence of European unification.

2. Specific comments

2.1. *Budget*

The Committee considers that a one-off budget of a least ECU 30 million is necessary.

2.2. *Article 1*

The Committee is relieved that the Commission, in collaboration with the Member States, has already quantified the geographical areas which will be hardest hit by the abolition of frontiers. It would seek reassurance that all Member States are cooperating in meeting this challenge and that some do not consider it a matter purely to be resolved by 'market forces'.

2.3. *Article 2*

The Committee has been assured that the measures listed are open to broad interpretation and that the spread and diversity of operations depends on input from the Member States. It considers that the involvement of the social partners at the conception, application and evaluation stages is vital to the success of such operations.

2.4. *Article 3*

All areas of the Community can be eligible. The Committee has been given assurance that the Commission has the resources at hand efficiently to administer the requests expected and that this will be done in conjunction with ESF and Interreg management operations. The Committee also has the impression that interested parties have easier access to the ESF than to Interreg. In this connection it calls for measures to make the Interreg programme more accessible. The Committee would consequently urge that both underdeveloped regions and regions in industrial decline be afforded equal treatment.

2.5. *Article 4*

Given the large number of small firms or self-employed persons and the equally large number of employed persons involved, the Committee would stress the need for properly vetted projects to be refunded as quickly as possible. The payments could also be made via trade or professional associations. It also repeats the view (see point 1.4.) that firms and branches which have already taken measures now deemed 'eligible' under the proposal and which will still have an impact in 1993 in terms of jobs and economic activity will be entitled to support under the programme.

2.6. *Article 5*

The Committee agrees with and insists upon the levels of assistance proposed. It stresses that additionality be ensured.

2.7. *Articles 6 and 7*

The Committee would argue that more flexible deadlines for assistance might be considered by the Com-

[1] OJ No C 102, 18. 4. 1991, p. 5.

mission, within the limits of a proper vetting procedure. The deadline for the submission of applications should not be regarded as a cut-off point for entitlement.

2.8. *Article 8*

The term 'technical assistance' should, in the Committee's view, be accurately defined. Does the term embrace, for instance, the provision of assistance by specialists who help firms as part of follow-up measures?

The Committee would welcome the overall amount for these measures being increased to 5 % of the total budget appropriation provided for in the Regulation.

2.9. *Article 9*

A formal evaluation report should be drawn up and communicated both to the European Parliament and the Economic and Social Committee. The evaluation should also include a social review.

Representatives of employers and employees should also be involved in the consultation procedure.

2.10. *Article 10*

The Committee urges that the payments be made without delay, particularly when the applicants are small- and medium-sized firms.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) extending into 1993 the application of Council Regulations (EEC) Nos 3831/90, 3832/90, 3833/90, 3834/90 and 3835/90 applying generalized tariff preferences for 1991 in respect of certain products originating in developing countries, and adding to the list of beneficiaries of such preferences

(93/C 19/08)

On 22 October 1992, the Council decided to consult the Economic and Social Committee in accordance with Article 198 of the Treaty establishing the European Economic Community on the abovementioned proposal.

The Section for External Relations, Trade and Development Policy, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 5 November 1992. The Rapporteur was Mr Giesecke.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion by a majority vote, with one abstention.

1. The Economic and Social Committee once again approves the temporary extension of the Generalized System of Preferences (GSP) scheme in operation in 1992. It does so in the renewed and pressing expectation that the General Agreement on Tariffs and Trade (GATT) Uruguay Round can be brought to a successful conclusion as soon as possible, thus enabling the revision of the scheme for the Nineties to be concluded. The Committee has already delivered a detailed Opinion on the revision [1].

2. The Committee particularly welcomes the fact that, in addition to the Baltic States, the eleven members of the Commonwealth of Independent States (CIS) and Georgia are to be included in the scheme in 1993. The Committee proposed this in the above-mentioned Opinion.

3. The Committee also supports the addition of seven countries to the list of least-developed countries, in line with the United Nations list.

4. The Committee nevertheless repeats its view that the effectiveness of tariff preferences should be increased by shortening the list of beneficiaries in line with the criteria proposed by the Committee [1].

5. The Committee also welcomes the arrangements for cumulation of origin within the CIS and Georgia. However, the existing division of labour within the former Soviet Union could be underpinned even more effectively by the Lomé origin rules.

6. The Committee agrees with the Commission's decision, in view of the completion of the internal market, to replace the tariff quotas divided among the Member States with fixed duty-free amounts. The Committee hopes that administration by the Commission will lead to more rapid processing and better use of preferences by the beneficiary countries and importers concerned.

7. On the basis of experience to date with the Eastern European countries, the Committee considers the proposed arrangements for sensitive products to be broadly appropriate. However, it would be desirable to make them less restrictive in specific cases.

8. The Committee expects both the Commission and the Governments and administrative authorities of the Member States to do everything possible to make the system for administering the GSP effective as soon as possible.

[1] OJ No C 69, 18. 3. 1991, p. 36.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the Consumer and the Internal Market

(93/C 19/09)

On 26 November 1992 the Economic and Social Committee decided, in accordance with Article 24 of its Rules of Procedure, to draw up an opinion on The Consumer and the Internal Market.

The Committee instructed its Section for Protection of the Environment, Public Health and Consumer Affairs to prepare its work on the matter.

At the request of the abovementioned Section the Committee decided, at its Plenary Session on 1 and 2 July 1992, to issue the Information Report in the form of an Opinion, in accordance with the third paragraph of Article 20 of the Rules of Procedure, with a view to complementing its Own-initiative Opinion on consumer protection and completion of the internal market.

The Section for Protection of the Environment, Public Health and Consumer Affairs adopted its Opinion on 4 November 1992. The Rapporteur was Mr Ataíde Ferreira and the Co-Rapporteurs were Mr de Knegt and Mr Proumens.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted the following Opinion by a majority vote, with 3 abstentions.

1. Introductory remarks

1.1. On 26 September 1991, the Committee adopted an Own-initiative Opinion on consumer protection and the completion of the internal market [1]. In view of the constraints imposed by the procedure for adopting its Opinions, the Committee opted to give priority in its Opinion to the political aspects of promoting consumer interests in the run-up to the single market. The content of the common policies which have a bearing on consumers are not looked at in detail.

1.2. In its Opinion of 26 September 1991 the Committee urged the Member States to give explicit recognition, when adopting the Treaty on political union, to the right of the EC institutions to take action in the field of consumer policy. The Committee also emphasized the need for systematic consultation of the Economic and Social Committee (ESC) on consumer policy in view of the fact that the ESC by virtue of its membership and the way in which it operates, constitutes an ideal venue for dialogue between representatives of industry and consumers.

1.3. The Committee welcomes the reflection in the Maastricht Treaty, signed on 17 February 1992, of the concerns expressed in its Own-initiative Opinion. Article 3 of the Treaty lists a number of measures to be carried out by the Community with a view to achieving the aims which it has set itself and indent (s) of this Article specifies 'a contribution to the strengthening of consumer protection'. This contribution is defined in the new Article 129a of the EEC Treaty which authorizes the Community to take specific action in the field of consumer policy, thereby placing EC consumer policy on the same footing as the other common policies, in particular the single-market policy. Article 129a also stipulates that when it adopts these specific measures the Council is to follow the joint decision-making procedure involving the European Parliament and to consult the Economic and Social Committee. Article 129a reads as follows:

> '1. The Community shall contribute to the attainment of a high level of consumer protection through:
>
> a) measures adopted pursuant to Article 100a in the context of the completion of the internal market;
>
> b) specific action which supports and supplements the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to provide adequate information to consumers.
>
> 2. The Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, shall adopt the specific action referred to in paragraph 1b).
>
> 3. Action adopted pursuant to paragraph 2 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.'

1.4. The Committee points out that the Community must give priority, when carrying out the measures provided for under Article 129a, to establishing the conditions which will enable consumers most effectively to fulfil their role as the arbiter of the market.

[1] OJ No C 339, 31. 12. 1991, p. 16.

A market economy can only function effectively if such conditions exist. In this context consumer policy is to be regarded as an accompaniment to economic policy since it provides mechanisms to correct the possible inadequacies, imbalances and shortcomings of the market. These mechanisms are as follows:

— the provision of consumer information in order to enable the market to operate effectively;

— a competition policy which takes account of the interests of consumers, particularly in the context of anti-dumping policy and the establishment of advertising standards, and is designed to improve the operation of the market;

— from a general point of view, the incorporation of consumer policy into all the other common policies which have a bearing—direct or indirect—on the interests of consumers, in particular: agricultural policy and the policies with regard to financial services, tourism, public services, telecommunications, pharmaceutical products and food products;

— legal protection for the consumer, and, in particular, access to the courts in order to enable the consumer to ensure that his rights are respected;

— the establishment of the necessary conditions for a dialogue; this is only the logical consequence of the recognition of the consumer as a market partner. If these conditions are to be established, however, certain efficiency criteria have to be met. These criteria were defined by the Committee in its Own-initiative Opinion on the matter issued in 1984 [1].

2. Aims of the present Additional Opinion

2.1. In its Own-initiative Opinion the Committee looked at a number of issues linked to the promotion of consumers' interests, such as: representation of consumers, the need to improve the legal basis provided by the Treaty and a whole series of issues directly relating to the completion of the internal market. Following on from this Own-initiative Opinion—which dealt with the broad issues involved in relations between the internal market and consumer policy—and given the new situation created by the signature of the Treaty of Maastricht, the Committee intends to consider more specifically the question of the content of an EC consumer policy in the present Additional Opinion.

2.2. The preliminary work on the Own-initiative Opinion highlighted the lack of comprehensive studies on the promotion of consumer interests by the EC. This gap is mainly attributable to the rigid nature of the EC policies which have a bearing on consumer interests and protection. Such a comprehensive study would be very useful when work commences on defining the future guidelines for EC consumer policy, particularly in view of the recent developments linked to the signing of the Treaty on political union. For this reason the Committee has commissioned an in-depth study on consumers and the internal market (*Study on Consumer Protection and the internal market—Evaluation and Prospects*—publication planned for the beginning of 1993. The Study will be available in French, English, German and Spanish).

2.3. On a more general level, the recommendations which the Committee made in its own-initiative Opinion to the other EC institutions and the Member States have lost none of their pertinence and they should be read in conjunction with the observations set out in the present Additional Opinion.

3. General comments

3.1. One particular point needs to be made at the outset: the EC institutions have introduced a whole battery of measures to protect consumers' interests and there is a large array of legislation in this field. What is noticeable, however, is the considerable imbalance between the large number of measures introduced to protect the health and safety of consumers, the smaller number of measures designed to protect their financial interests and the almost complete absence of measures to provide them with greater legal protection.

3.2. It has become apparent that in order to assess the role played by EC law in promoting the interests of consumers it is not enough simply to make a formal study of EC laws. In order to produce this assessment it is of vital importance to make a survey of the extent to which EC law has been transposed into national law and, above all, into national practice. A single legal concept, such as 'default' is interpreted in different ways by national courts. An approach geared more to what happens in practice—which is the only proper way of judging the impact of laws on the target groups—has not yet been adopted by the EC institutions, at least not systematically. As a result the information available to economic operators is seriously flawed and false assessments are made of the level of legal harmonization. The Committee notes that no accurate, up-to-date, realistic survey has been carried out into the extent to which EC provisions have been transposed into national law and brought into effect; the Committee therefore deplores the shortcomings in the information available to those working in politics and business. The failure to adopt a sufficiently pragmatic approach is illustrated by the Commission's 9th annual report to the European Parliament on Commission monitoring of the application of Community law—1991 [2].

3.3. A further point which should be noted is that in several sectors involving the economic or legal interests of consumers (financial services, legal remedies) the EC institutions have quite frequently opted for non-mandatory instruments, such as resolutions or recommendations addressed either to the Member States

[1] OJ No C 206, 6. 8. 1984.

[2] OJ No C 250, 28. 9. 1992.

or to those working in the sector concerned. Experience has shown how extremely difficult it is to implement the principles set out in these instruments. Codes of conduct or good practice and voluntary agreements, advocated and drawn up by those employed in the sectors concerned, should be introduced whenever progress is being sought in fields where laws or regulations are not readily applicable, even though such codes or agreements are not held to be binding by the courts which sometimes make reference to them. Consultation of consumer associations before such codes or agreements are drawn up is desirable and even necessary.

3.4. From a more general point of view, and given the process of liberalization which is under way, regulation is increasingly the responsibility of the economic agents concerned. In its own-initiative Opinion the Committee drew attention to the need for a dialogue between industry and consumers ([1]). However, attempts to establish institutionalized forms of dialogue between industry and consumers have all too frequently ended in failure. There is a need to carry out an in-depth study into the reasons for the failure of the current forms of dialogue, so as to make it possible to establish the conditions required for realistic and effective dialogue in respect of all levels of regulatory activity.

3.5. The Committee welcomes the fact that, thanks to the perseverance of the European Parliament, the 1992 appropriation for consumer protection policy is twice the amount initially asked for by the Commission. The Committee hopes that the Commission will submit a detailed report on the allocation of funds to alert consumers to their rights. The study of EC consumer law revealed that regulatory measures are rarely accompanied by auxiliary instruments for informing consumers of the changes made to their rights and obligations. There is no point in formulating protective legislation if the beneficiaries of such legislation are unable to take advantage of it because of a failure to inform them [See also the survey in the Euro-barometer dated September 1991 which indicated the degree of consumer distrust of the internal market (52%)]. The public authorities should provide consumer associations with the means to fulfil the role of providing information, in the absence of appropriate legal instruments for this purpose.

3.6. The facilities provided by Article 129a of the new Treaty must be exploited to the full. In this context the principle of subsidiarity set out in the new Article 3b of the Treaty, although providing a point of reference guaranteeing that the Community will act more efficiently and be closer in touch with the general public, might be abused and might jeopardize any EC initiative whose specific aim is to promote consumers' interests. The Committee recognizes that correct interpretation of the subsidiarity principle will improve the functioning of the Community; however, unilateral interpretation of this principle might hold up any Community initiative not dictated by the requirements of the Single Market. Although the general principles of the Treaty considerably restrict Member States' freedom of action, such a unilateral application would make it impossible to make any progress towards an EC consumer policy. As the Committee pointed out in its Own-initiative Opinion, this situation is likely to lead to a 'regulatory gap'. The Committee welcomes the fact that the European Parliament has started to look into this issue, defining both the content and limits of the subsidiarity principle in detail.

4. Findings of the survey of EC measures having an impact on consumer protection

4.1. The study of the legislation in the various fields which has a bearing on consumer policy demonstrated that the EC has introduced a number of measures which have helped improve the position of the consumer in his dealings with the world of business. These measures include the Directives on product liability, misleading advertising, toy safety and package tours and the proposal for a Directive on the protection of the purchaser in contracts for timeshare properties. The study did, however, also highlight the inadequate nature of a number of the approaches being pursued by the EC in order effectively to promote the interests of consumers. This shortcoming may be explained, inter alia, by the fact that consumer protection is often neither the sole nor the main objective of the measures being taken. This problem illustrates the difficulty in reconciling the completion of the internal market, on the one hand, and consumer protection, on the other hand. This point was made in the own-initiative Opinion. The main shortcomings are identified in the paragraphs set out below.

4.2. In the field of product regulation, the new approach to technical harmonization has led to the establishment, with a view to protecting the safety of consumers, of an EC-mark 'passport' system. The certification process does, however, need to be subject to safety and quality inspections carried out by official or approved bodies.

4.3. Furthermore, the definitions of essential requirements set out in the 'new approach' Directives are not always precise. This may lead to the establishment of grey areas—a phenomenon which could be dangerous from the point of view of consumer safety. It is acknowledged that the setting of standards plays an extremely important role in the process of establishing safety requirements; in view of this, qualified consumer representatives should be much more involved in the standardization process. In its own-initiative Opinion

([1]) OJ No C 339, 31. 12. 1991.

the Committee called for consumers to be given an enhanced level of participation in the standards process by allowing their representatives to participate effectively in the process of defining precise safety standards for consumer goods.

4.4. Despite the large number of regulatory provisions on food, no detailed common provisions have yet been introduced covering the official inspection of food. It is only by introducing common rules in respect of the official inspection of food that real guarantees can be provided to consumers as regards the observation of the Community standards which replace national standards. This observation confirms the justification of the Committee's request that common rules be introduced with regard to the qualifications of inspection personnel, quality standards to be met by inspection laboratories and the exchange of experience between national authorities [1].

4.5. The Committee notes the lack of uniformity in the approach pursued by the various Commission departments and it calls upon the Commission to streamline the work of its departments and to take account of the need for greater involvement on the part of its consumer policy department. Additives and contaminants (pesticides, extraction solvents) are covered by a variety of regulations and draft regulations, which highlights the conflicting claims of consumer protection policy, the internal market policy and the Common Agricultural Policy (CAP). The same problem arises with regard to certain information given to consumers [protection of proprietary names [2], nutritional claims [3], etc.].

4.6. In the field of medicinal products, the Committee welcomes the establishment of a European Agency for the assessment of medicinal products; this agency must play an increasingly important role. Furthermore, the Committee draws attention to the economic policy being pursued in respect of medicinal products; this policy fails to take adequate account of the interests of consumers, particularly with regard to parallel imports and generic substitutes. The Committee calls upon the Commission to submit proposals for promoting parallel imports and generic drugs, in accordance with the decisions of the Court of Justice of the European Communities [4]. Such measures are necessary following the introduction in the EC of an additional protection certificate which enables pharmaceutical companies to extend the duration of the patent and, consequently, the monopoly granted to them in respect of a specific pharmaceutical product. This additional protection enables European companies to finance their research out of their own funds. There is therefore a need for corrective mechanisms, including measures involving a system of reimbursement, in order to offset the economic consequences of such monopolies by providing greater scope for competition after the expiry of patents (measure to promote generic drugs, giving chemists the right to issue substitute products, etc.).

4.7. On the subject of consumers' trans-frontier purchases of motor vehicles, the Committee believes that this freedom is still all too frequently impeded, either by the Member States or by private enterprises, thereby preventing consumers from taking advantage of the considerable price differentials existing in this sector. In the Committee's view the EC Institutions do not systematically take action against infringements of the Treaty by the Member States or by private enterprises.

4.8. In the field of road safety, the Committee notes that there is considerable scope for improving the safety of road-users; despite the achievement of some progress, the rate of progress has been very slow for reasons relating, inter alia, to the technical harmonization of vehicles. The Council is also very slow in adopting Commission proposals—already endorsed by the ESC—to improve the behaviour of road users (level of alcohol in the blood, the wearing of helmets by motor cyclists, the wearing of safety belts, etc.) owing to the lack of a specific legal basis in respect of road safety. The debates on the technical harmonization of vehicles have proved to be extremely laborious. The authorities in the Member States, working together with bodies set up to protect road-users, should launch campaigns to encourage road-users to observe measures such as the wearing of safety belts, the wearing of helmets by motor cyclists and abstention from alcohol when driving, prior to the entry into force of the requisite laws.

4.9. As regards the EC Regulations governing product liability and liability in respect of services, the Committee draws attention to the fact that the revision clause in Directive 85/374/EEC expires in 1995. There is a need to carry out a detailed assessment of the impact of the Directive on compensation awarded to victims, particularly in view of the options open to Member States under the Directive. As regards the draft Directive on the liability of persons providing services, the Committee points out that, whilst it is in favour of affording better protection to the victims of defective services, it rejects the approach adopted by the Commission [5].

4.10. The Commission has let it be known that the building sector and the medical sector are to be excluded from the field of application of the Directive. In the Committee's view these exclusions are acceptable only on condition that the Commission at the same time prepares specific Directives in respect of these two sectors in order to ensure that victims of defective services in these sectors are not left without protection. In this context the General Directive should stipulate that, pending the adoption of specific Directives, the

[1] OJ No C 347, 22. 12. 1987.
[2] OJ No L 208, 28. 7. 1992.
[3] OJ No C 122, 14. 5. 1992..
[4] See Case No 215/87, Schumacher, Judgement of 7 March 1989, and Case No 347/89, Eurim-Pharma Judgement of 16 April 1991.
[5] OJ No C 269, 14. 10. 1991.

provisions of the General Directive would be applicable. The principles underlying the provision of compensation to victims in the sectors excluded from the General Directive must also not differ significantly from the compensation principles set out in the General Directive. The EC must introduce an overall policy on safety and, as a corollary, an overall policy on liability, covering both products and services.

4.11. Turning to the protection of the economic interests of consumers, a number of inadequate approaches should be highlighted.

4.11.1. In the field of advertising, only misleading advertising—and not unfair advertising [1] (racial and sexual discrimination, etc.)—is subject to regulation. The rules have proved to be ineffective as a means of combatting misleading cross-frontier advertising, one of the reasons for this being that consumer associations do not have a clearly recognized right to take action under the existing rules, let alone in Member States other than that in which they are based. It is also not possible under the existing rules to award compensation to consumers who have entered into contracts based on misleading advertising. A recent proposal to authorize comparative advertising has been presented as an instrument for informing the consumer. Even though some consumer information may indeed be improved by this type of advertising, the fact does, however, remain that the main aim of all advertising is to promote, either directly or indirectly, sales of products or services.

4.11.2. In the field of televised advertising, the Committee notes that responsibility for supervising advertising rests with the state of origin of the advertising, whereas the consumer expects to be protected by the state in which he is exposed to the advertising.

4.11.2.1. On a more fundamental issue, the Committee notes that the Community has so far failed to adopt an overall approach to regulating commercial practices. The adoption of a measure specifically in respect of certain sales methods involves the risks which are attendant upon a vertical approach, e.g. limited scope. EC rules laying down general provisions applicable to all commercial practices would constitute a better means to regulating these practices.

4.11.3. Turning to the subject of consumer contracts, the Committee notes the Council's common position and points out that, although the common position does take account of a number of the points put forward by the Committee, it does have a very much narrower scope than the Proposal for a Directive referred to the Committee. It is a matter of regret that the EC consultation process applies to texts which at a later stage are radically amended when they are discussed at intergovernmental level, and as a consequence, bear little resemblance to the basic texts originally drawn up by the institution which initiated the draft document. The Committee also recognizes the need to regulate various distance selling practices (tele-shopping, videotext, mail-order sales, telephone selling and the use of automatic calling machines) and welcomes the fact that the Commission has just referred to it an Opinion on the Proposal for a Directive on contracts negotiated at a distance (distance selling) [2]. An EC proposal in this field is necessary given the potentially international nature of distance communications techniques.

4.11.3.1. In this field, too, an overall approach to contract law would be a more effective way of meeting consumer protection requirements in the Single Market (rules in respect of the form of the contract, the law in respect of proof, implementation of the contracts, time limitation, etc.). Particular attention should be paid to the establishment of an EC system—which would be effective throughout the Community—to provide consumers with guarantees in respect of hidden defects. Furthermore, given the fact that there are several national and EC instruments under which guarantee funds are established to assist consumers, there is a need to ensure that the rules governing the operation and management of these funds do, in practice, meet the needs of the consumers for whom the funds have been set up.

4.11.4. The EC has introduced a large number of measures governing financial services. The EC measures specifically designed to protect the consumer are, however, not mandatory and it is apparent that they are not being respected. Examples which may be mentioned in this context are the Recommendation of 17 November 1988 on relations between bodies issuing payment cards and the holders of such cards and the Recommendation of 14 February 1990 on cross-frontier financial transfers. In this context the Committee has noted the publication by the Commission of a charter for users of cross-frontier payment systems. The Committee deplores the fact that, after many years considering the issue, the Commission has been unable to make substantial progress with regard to the definition of consumers rights in this field and has, by opting for a charter, availed itself of an instrument which does not have the slightest legal value in the context of the EEC Treaty. Such a step is tantamount to merely calling upon the banking sector to endeavour to comply with the requirements of an internal market from which it is the first to benefit in other respects. In the Committee's view it is essential, if the EC institutions are to retain their credibility, for the Community to carry out a systematic review of the non-mandatory instruments which have been introduced and, where necessary, to replace them by mandatory instruments. Furthermore, with a view to the satisfactory completion of the internal market, it is essential that cross-frontier payment systems do not penalize users. It is particularly necessary that the financial institutions treat payments in ECU on the same basis as payments in national currencies.

[1] Unfair practices in the field of comparative advertising are, to a certain extent, subject to regulation—see the proposal for a Directive in OJ No C 180, 11. 7. 1991.

[2] OJ No C 156, 23. 6. 1992.

4.11.4.1. Although the Community has paid some attention to consumer credit, it does not intend to intervene on mortgages. And yet important consumer protection issues are involved here, particularly as mortgage repayments represent a major part of household budgets. It is therefore essential to have common consumer protection rules which enable consumers to take out mortgages with foreign lenders safely. More fundamentally, whilst excessive levels of consumer indebtedness have been identified and made the subject of legislation in some Member States, there have not as yet been any Community legislative initiatives in this area, although there is a Community dimension to the problem.

4.11.4.2. What needs to be done therefore, in the context of a social economy, is to introduce a system for protecting the least well-off consumers. In the same general context the fact that a number of people are not covered by the banking system—which is a further example of social marginalization—makes it necessary to carry out a radical appraisal of the concept of the 'basic service' which financial institutions should be obliged to provide to the public as a whole. There is also an EC dimension to this issue in view of the fact that the diversity of national laws in this field may lead to distortions in competition which are incompatible with the Single Market.

4.11.5. Turning to the question of insurance, the third generation of Directives is designed to introduce freedom of movement with regard to life and non-life insurance services. These Directives will not, however, produce a system sufficiently harmonized to enable those insurance companies which avail themselves of the freedom to provide services, to enter into contracts with consumers in other countries and to enable the consumer to take out such contracts with full confidence. The Directives will lead rather to the establishment of a rigid and complex system for determining the law applicable to insurance contracts and this system will not provide any legal security for the parties involved. Recent surveys have shown that companies are hesitating to enter into contracts under the freedom to provide services because of their lack of knowledge of the provisions of the laws which would apply and because of the attendant risks. For this reason the Committee calls upon the Commission to put forward proposals with a view to introducing harmonized, minimal rules applicable to insurance contracts (rules governing the conclusion of contracts, certain risks covered, procedures with regard to claims notices, the production of proof, reasons for loss of entitlement to compensation, etc.) in order to enable insurance companies and their clients to enter into cross-frontier contracts drawn up on the basis of comparable conditions.

4.11.6. Competition policy is characterized by the limited ability of consumer representatives to intervene, given the financial constraints on consumer organizations and the large number of files lodged (or not as the case may be) with the Commission. The problem is compounded by the fact that the Commission (acting in accordance with competition rules) informs the public of certain cases only very late, which makes it difficult to assemble a complete dossier within the required deadline.

4.11.6.1. EC external trade policy, and in particular the CAP and the anti-dumping policy, fail to take adequate account of the interests of the consumer, despite the fact that it is the consumer who has to pay the increased prices and taxation attendant upon these policies. The Committee deplores the inconsistency in the actions of the EC institutions which, on the one hand, advocate the liberalization of trade within the EC, whilst at the same time protecting EC industry against foreign competition. Such an attitude fails to take adequate account of the growing internationalization of world trade and also shows a lack of confidence in competition as a tool for promoting the competitiveness of businesses. EC external policy must, moreover, be implemented in a spirit in keeping with GATT agreements. It has never been proven that protectionism is a better means of developing and promoting EC industry than the stimulus provided by foreign competition. The Committee urges the Commission to give more specific recognition to the interests of the consumer when assessing the interests of the Community in order to ensure that its decisions are fairer to the tax-payer and the consumer.

4.11.6.2. Furthermore, the CAP has hitherto encouraged intensive farming methods which are much less respectful of the environment than are more traditional methods. Protection of the environment is, however, one of the aims set out in Article 2 of the EEC Treaty as amended at Maastricht. In view of the fact that the initial goals of the CAP have been achieved (the EC is self-sufficient in food), the policy must now take account of changing expectations on the part of the consumer and reflect the demand for higher quality products to protect the health of the consumer and prevent certain illnesses.

4.11.7. Environmental policy, for its part, takes account in many respects of the expectations of consumers. A number of decisions in the environmental field, such as the tax on CO_2 emissions and measures in respect of packaging waste, may have an important effect on consumers. The Committee calls upon the Commission and the other EC institutions to involve consumers' representatives—and in particular the Commission's own Consumer Policy Department—in their work in the field of environmental protection in order to enable the interests of the consumer to be identified and taken into account when measures and instruments are being formulated.

4.11.7.1. The Committee endorsed([1]) the Community programme of policy and action in relation to the environment and sustainable development, in which

([1]) OJ No C 287, 4. 11. 1992.

an attempt is made to link environmental and consumer policies—a matter to which greater thought must be given.

4.11.8. The Community energy policy currently being drawn up must take account of the specific features of domestic consumer demand, and in particular of its captive nature (no mobility, no elasticity of demand). Price transparency measures must be extended to domestic uses and pricing policy must not penalise domestic consumers who lack the economic muscle of industrial users. Particular attention must be paid to the supply needs of disadvantaged consumers, particularly families with small children and the elderly. Moreover, the energy conservation initiatives taken by the Community must be reinforced and go further than printing consumer information on labels. They should take the form of tax or tariff incentives.

4.11.9. Specific account should also be taken of the needs of domestic consumers in the context of Community telecommunications policy. The Committee notes that, whilst the Community is heading towards greater competition in this sector, the equipment and services which interest the domestic consumer most may continue to be provided by monopolies. The concept of public service urgently needs to be delineated, particularly with regard to telephone services. Community quality criteria for telephone and postal services are essential to enable domestic consumers to benefit from technological innovation. (This point is illustrated by the fact that whilst local calls cost less than ECU 0,10 in the Netherlands, Italy and Spain, they can cost up to ECU 0,82 in the UK. Likewise an international call from Berlin to Dublin may cost as little as ECU 2,12 whereas the same call carried out in the opposite direction would cost ECU 3,11.)

4.12. Questions arising in connection with the protection of the legal rights of consumers have been commented on briefly in the Own-initiative Opinion [1]. The Community's interventions with regard to legal remedies have been timid out of concern for Member States' sovereignty in organizing their judicial systems. It is however possible, without compromising this sovereignty, to ensure that the legal interests of consumers are better protected. The Committee feels that there is a need for simplified, rapid and inexpensive procedures, applicable either in or out of court, to deal with 'small claims'—the category into which the majority of consumer disputes fall. As far as cross-border disputes are concerned, there is a great need for specific training and information for persons providing legal assistance to consumers involved in legal disputes; disputes involving manufacturers, suppliers, etc. based in other Member States are occurring with increasing frequency. The Committee would therefore draw attention to the fact that, in its Opinion on the Citizens' Europe [2], it underlined the need to 'provide the citizens of the Community, in their capacity as consumers, with improved access to courts throughout the Community'.

5. Final comments

5.1. The Own-initiative Opinion, complemented by this Additional Opinion, presents the Community Institutions with the Committee's views on the shape which the social partners feel that the Community's future consumer policy should take. The Committee regrets the gaps in the Community-institution information on the process of transposing Community law into national law.

5.2. The Commission's legislative programme for 1992 does not take adequate account of the issues highlighted by the Committee in its Own-initiative Opinion. The programme fails to address the distrust and fear voiced by consumers with regard to the completion of the internal market. The programme is geared solely to the completion of the single market, rather than demonstrating a balanced approach with a view to making the establishment of the single market more acceptable to consumers and more credible in their eyes.

5.3. In the light of the achievements and shortcomings identified by the Committee, 1992 will be the time for the Community Institutions not only to finalize the programme for completion of the internal market but also to identify the first malfunctions of the measures adopted. They will also have to draw up the policies arising from European Union leading to greater integration in the economic, social and political fields. All these policies require that account be taken from a Community perspective, of the issues raised by the protection of consumer interests, which goes beyond the free movement of goods and comes under the Social Europe and the Citizens' Europe. The Committee notes that consumer policy has not yet been incorporated to an adequate degree in the other EC policies, despite the plans to that effect which have been announced by the Commission. The Committee underlines the need to find appropriate solutions whereby the interests of consumers are more effectively taken into account in decisions which concern them.

5.4. Consumers enjoy rights as citizens of the Community; better consideration will therefore have to be given to problems relating to access to justice if consumers are to have the means to ensure that these rights are respected. In this context the Committee welcomes the appointment of a mediator at the European Parliament following ratification of the Maastricht Treaty; the Committee awaits with interest the results of the European Parliament's deliberations.

5.5. The Committee urges the Commission to consider introducing more far-reaching measures, based on the proposals put forward by the Committee in its earlier Own-initiative Opinion and the present Additional Opinion, once the new Treaty on European Union has been ratified. The aim of these new

[1] OJ No C 339, 31. 12. 1991.
[2] OJ No C 313, 30. 11. 1992, p. 34.

measures should be to give a new impetus to EC consumer policy in 1993. In this context the Council Resolution of 13 July 1992 [1] on the future priorities for the development of consumer protection policy is an interesting step on the road towards an EC system providing a high level of consumer protection in the single market. The Committee regrets the fact that the Council failed to make any reference to its Own-initiative Opinion.

[1] OJ No C 186, 23. 7. 1992.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on:

— **the proposal for a Council Decision concerning the establishment of a combined transport network in the Community,**

— **the proposal for a Council Directive amending Directive 75/130/EEC on the establishment of common rules for certain types of combined carriage of goods between Member States, and**

— **the proposal for a Council Regulation (EEC) amending Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway** [1]

(93/C 19/10)

On 5 October 1992 the Council, in accordance with Articles 75 and 84(2) of the Treaty establishing the European Communities, decided to consult the Economic and Social Committee on the abovementioned proposals.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 18 November 1992. The Rapporteur was Mr Tukker.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee unanimously adopted the following Opinion.

1. Introduction

1.1. The Economic and Social Committee welcomes the Commission's initiative aimed at improving and extending combined transport.

1.2. The Commission document [COM(92) 230] comprises inter alia:

— a Communication from the Commission to the Council;

— a proposal for a Council decision concerning the establishment of a combined transport network in the EC;

— a draft Council Directive amending Directive 75/130/EEC;

— a draft Council Regulation amending Regulation (EEC) No 1100/89 on financial aid.

1.3. This Opinion will concentrate on the first document which is by far the most interesting and important.

2. General

2.1. The Commission points out that the following factors make it necessary to improve combined trans-

[1] OJ No C 282, 30. 10. 1992, p. 8, 10, 12.

port (the combination of road, rail, inland waterway and sea transport):

— roads in the Community are congested or becoming so;

— the increase in traffic expected after 1993 cannot be absorbed by road transport alone;

— railways can carry a larger proportion if international cooperation between them is improved;

— the inland waterways still have enough capacity to expand;

— sea transport (especially coastal shipping) could also play a major role in combined transport (the Commission is preparing a proposal on sea transport);

— transport by rail or water is less harmful to the environment than road transport.

2.2. The Commission's objective is to create a structure enabling combined transport to transfer traffic from the overcrowded roads to other modes of transport. This applies not only to road/rail and to road/inland waterway, but should be extended to include sea transport.

2.3. Each stage should be managed so as to ensure that the transfer of traffic from one transport mode to another occurs naturally, i.e. without coercive measures.

2.3.1. Shippers must have a free choice of modes of transport.

2.4. To this end it will be necessary to compare the costs of road transport, including 'external costs', with those of each of the other modes of transport, in order to prevent distortion of competition.

2.5. The question of whether the Community must take action to improve and extend combined transport is answered affirmatively by the Community itself. Given the importance of transport in the EC, the impact on the environment (CO_2), the greenhouse effect, congestion and the difference between transport in the central part of the EC and transport from and to the peripheral regions, the Committee takes the view that, in this case, the Community interest takes precedence over that of the individual Member States.

3. **Commentary**

3.1. The Committee shares the Commission's view that plans to promote combined transport can be effective only if they are adopted centrally in the EC and approved by all Member States.

3.2. However, the Committee believes that combined transport can absorb only part of the increase in traffic after 1993, and that it will do little to relieve congestion on the roads. Other measures, such as free cabotage and extension or improvement of the road network, will therefore remain important.

3.2.1. EC railways are focusing on 'high-productive lines'. In this context a study and cost/benefit analysis of double-stack container transport and all other technical systems which boost productivity is desirable.

3.3. The Commission's aim of protecting the environment by reducing CO_2 emissions can and must also be pursued in other ways [see the NEA Report of March 1992 (NEA Foundation—Dutch Centre for Transport Studies and Training)].

3.4. The Committee takes the view that the Commission, while respecting the principle of subsidiarity must ensure that no new bottlenecks are created through a lack of reflection and cooperation in the execution of the joint plans for infrastructure.

3.4.1. The Commission should also ensure that infrastructure is put in place by the Member States in such a way that links between Member States are available on time.

3.4.2. Measures must be taken to ensure that Member States do not refrain from building, or postpone the construction of planned combined transport projects on competition grounds.

3.4.3. Following examination of the maps annexed to the Commission document, the Committee is concerned that a series of Member State priorities could take precedence over the European framework. The Committee emphasizes that trans-European networks must be based on a cost-effective European framework.

3.5. The Committee is afraid that internal difficulties arising from the reorganization and/or privatization of a number of European railway concerns may delay the introduction of combined transport.

3.5.1. There is also the fear that funds available for infrastructure will be used primarily for laying high-speed-train lines and that other traffic will come a poor second.

3.5.2. The Committee wonders whether a cost/benefit analysis is carried out before investment decisions are taken.

3.6. *Financing*

3.6.1. In Annex 4 the Commission deals with financial aid to combined transport [amendment of Regulation (EEC) No 1107/70].

3.6.2. The Commission proposal is rather vague about financing procedures.

3.6.2.1. Some funding will be available from the Cohesion Fund (peripheral regions) and/or the European Regional Development Fund (ERDF), but the bulk will have to be provided by the Member States.

3.6.2.2. Sound planning and supervision of financing will therefore be essential, otherwise the possibility of gaps in the infrastructure cannot be excluded, should one or more Member States not be in a position to meet the financial commitments.

3.6.3. The Committee endorses the proposal that governments (or in some cases lower-tier authorities) of Member States can supply financial aid for infrastructure construction, provided fixed installations and rolling-stock are involved, there is a time-limit and the percentage of investment is specified and the same in all Member States. Subsidizing the freight charges for combined transport, in whatever way, should be forbidden.

3.6.3.1. Financial aid to infrastructure works for transit traffic through non-member countries should be allowed, provided that it is in the Community's interest.

4. **Further comments**

4.1. If plans for combined transport infrastructure works are to be submitted to the Commission for approval, this will prove a hindrance. If not, appropriate criteria must be laid down.

4.2. The technical compatibility of systems is threatened by:

— larger container sizes in the USA;

— other forms of combined transport.

4.2.1. These technical innovations cause more serious problems for the compatibility of load units on wagons and at terminals. There are more and more systems, which are difficult or impossible to interchange.

4.2.2. The Commission will have to choose between:

— compatibility of new and existing systems;

— imposing a single system; or

— allowing the best systems to emerge at the expense of compatibility, i.e. refrain from intervention.

4.3. What is the risk of infrastructure projects being refused EC aid simply because a neighbouring country is concerned about its competitive position?

4.4. According to the EC, road/waterway transport must also be promoted but:

— road/waterway transport is relevant to only a few countries;

— the other EC Member States have virtually no inland shipping trade and have little knowledge of it.

4.5. The Commission proposal lists routes which must be ready by 1997, and others which must be ready by 2005. Not all Member States are included in these lists.

4.6. The new Article 2 retains the old definition of road/rail transport, including the reference to the 'nearest suitable rail loading/unloading station'. This should be replaced by 'the most suitable loading/unloading station within 150 km'.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on:

— the proposal for a Council Regulation (EEC) amending Regulation (EEC) No 3359/90 for an action programme in the field of transport infrastructure with a view to the completion of an integrated transport market in 1992,

— the proposal for a Council Decision on the creation of a trans-European road network, and

— the proposal for a Council Decision on the creation of a European inland waterway network

(93/C 19/11)

On 11 September 1992 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the abovementioned proposals.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 18 November 1992. The Rapporteur was Mr Bonvicini.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee unanimously adopted the following Opinion.

I. FOREWORD

1.1. The Commission document seeks to define trans-European transport networks for roads and inland waterways and to insert these into a wider intermodal plan. Another Commission document [COM(92) 230 final] deals with combined transport, and the Commission intends in the near future to present proposals for rail, air and maritime networks. All transport modes will thus be covered.

1.2. The present document stresses the potential dangers facing the transport sector throughout the Community as regards:

— safety;

— the environment;

— congestion.

1.3. The statistics contained in the Commission document highlight two main points:

— a dramatic increase in transport/traffic, with the lion's share going to road transport;

— a growing imbalance between trends in transport/traffic and in infrastructure investment: investment declined from 1,5 % of Gross National Product (GNP) in 1975 to 1 % in 1990.

1.4. It was precisely for this reason that the Maastricht Treaty made a major commitment to a high-quality transport network of 'Community interest' that would be coordinated and linked at EC level and would meet the growing needs of a growing continent.

1.4.1. The establishment of a European transport network should contribute towards the efficiency of the internal market by guaranteeing 'sustainable mobility' for people and goods. Community action must thus address three main points:

— the clarity of the plans for developing the networks, which requires the drawing-up of master plans;

— how gaps in networks are to be filled in;

— the strengthening of those sections and networks which could impede the development of part of EC territory.

1.4.2. It should be noted that the general outline of the networks is merely for guidance; it is up to the Member States to determine the precise details and time-scales (see point 1.4.4 below).

The Committee recommends the establishment of a mechanism for consulting the Member States, in order

to coordinate project implementing schedules and avoid bottlenecks or delays in the completion of intra-EC routes.

1.5. The involvement of the Member States has made it possible to define network plans for the modes of transport under consideration.

1.5.1. Priority is to be given to long-term objectives (ten to 20 years), and to medium-term projects covering the duration of the financial perspectives (five years).

1.6. The immediate objectives are:

— establishment by the end of 1993 of guidelines for the different modes of transport, including multimodal transport;

— continuation and reinforcement of the financing measures taken since 1982;

— implementation of measures for the technical harmonization of the networks.

2. The draft Regulation

2.1. The draft Regulation is designed simply to bridge the gap between the existing 1990-1992 programme and the new Treaty.

2.2. It gives legal force to the principles laid down in the Communication. Of particular importance is Article 3, setting out the priority projects which are to be eligible for EC financial support on certain conditions.

2.3. It should be noted that the general plan is divided into two stages: a transitional stage spanning 1993, followed by the definitive launch once the new Treaty has entered into force and the financing plan has been approved.

3. Road infrastructure

3.1. Stress is laid on the economic and social role of high-quality road infrastructure for the operation of the internal market, and its importance for other modes. The plan thus gradually tends towards a multimodal transport system.

3.2. The purpose of the Decision is therefore to:

— build missing links in national networks;

— upgrade existing links;

— make networks 'inter-operable' by standardizing their design.

3.3. The maps appended to the proposal show the outline plan for the road network along with the priority measures proposed in Article 2.

3.4. The plan for the network comprises:

— 37 000 km of road links;

— including 12 000 km of high-quality roads and motorways, to be built in the next ten years; 40 % of this will be in the four outlying Member States, which will see a 70 % increase in their networks, from 7 000 to 12 000 km.

3.5. The Communication also considers traffic policy, stressing the need to:

— rationalize existing traffic;

— encourage the use of other transport modes (especially for goods);

— debit users directly for the direct and indirect costs actually incurred in using the infrastructure.

4. Inland waterways

4.1. The Commission emphasizes the role of inland waterways in taking the burden off road and rail transport. It aims to make this mode more efficient in economic terms by eliminating bottlenecks and building missing links.

4.2. Between 1984 and 1989, waterways' share of surface goods transport fell from 12,5 % to 9 %. The Community's promotion of waterways as a combined mode is a particularly worthwhile aim because of their:

— low costs;

— limited impact on the environment;

— low energy consumption;

— large spare capacity, in terms of infrastructure and transport material.

4.2.1. Even so, it should be noted that just three countries account for around 90 % of waterway traffic.

4.2.2. The blueprint focuses on the development of four transport axes on the main European waterways:

— east-west;

— north-south;

— south-east;

— Rhine-Rhône.

4.3. In this sector too, particular attention is given to two aspects:

— the links between Member States, to make the network more 'European';

— the implementation of a general transport policy.

II. THE COMMITTEE'S COMMENTS

1.1. The plan put forward by the Commission, complex though it is, is on the whole to be welcomed, not least in view of the undoubted difficulties which the Commission faced in preparing it.

1.2. The growth in transport/traffic highlighted in the Commission's analysis inevitably gives serious cause for concern and is fraught with danger on the following counts:

— A. safety;

— B. congestion;

— C. quality of life (environment);

— D. imbalances between the different modes;

— E. energy consumption.

1.3. The current infrastructure network is insufficient. The shortfall in transport infrastructure alone is estimated at about ECU 4 000 million per year. If radical action is not taken, this figure will treble over the next 20 years.

1.4. A few points need stressing here:

1.4.1. Firstly, the need for precise, circumstantiated technical and financial feasibility studies which highlight two key aspects:

— the flow of people and goods according to origin and destination;

— knowledge of the plans and capacity of all the transport modes potentially interested in a particular transport catchment area, so as to avoid costly and unproductive duplication. At all events, no encouragement should be given to the development of networks that are prompted solely by local loyalties or considerations of prestige.

1.4.2. Secondly, the need for modern, high-quality, carefully-located infrastructure networks. Industry, agriculture and the service sector cannot operate without infrastructure systems: integrated networks must be built to cater for the innovation and internationalization of the economy.

The construction of a modern network calls for systems-based planning. The main problems to be solved are thus integration between systems and hence intermodality between different transport modes.

1.4.3. Thirdly, vast resources will be needed to develop the networks. New sources of public and private finance will have to be identified and tapped. A balance must be struck between user tariffs and the actual cost of the service, as otherwise capital could not be invested profitably.

1.4.4. To this end, authorization procedures and disbursement mechanisms must be speeded up. The approval of aid for infrastructure is contingent on a whole series of checks. Care must be taken to avoid cases where the take-up of funds remains minimal months after they have been committed. In short, complex aid schemes call for smooth and efficient relations between the authorities and operators.

1.4.5. The Committee stresses the implications and problems which the pooling of public and private capital could involve. Without prejudice to the responsibilities of the Community and the Member States, the operational, financial and administrative aspects must be clear. This is necessary in order to ensure that a perfectly sound general plan is not thwarted in its practical implementation.

1.5. The Commission highlights three areas for investment:

— development of combined transport;

— creation, development and upgrading of infrastructure networks for all transport modes. This must be supported by major efforts in such fields as telematics, intelligent road-vehicle systems and signposting. All these areas should receive Community support via such instruments as Drive. Ertico could also be particularly useful here. Specific Commission projects such as Combicom-Frame (for dangerous goods) and Metafora-IFMS are also of assistance;

— payment of 'wear and tear' costs by the user.

1.5.1. Such measures must be welcomed if a balanced development is to be secured for future generations. Two closely interconnected points need to be made here:

A. The move towards alternative and/or complementary modes must respect the principle—repeatedly espoused by both Commission and Council—of freedom of choice. A dirigiste approach is out of the question, as any attempt to preset quotas for different modes would be completely ineffective.

B. The common denominator of all transport modes must be that infrastructure costs are charged equally. The Commission has not yet managed to arrive at an unambiguous set of rules.

1.6. The Committee has no particular criticisms about the strictly technical aspects, partly because it cannot check the accuracy of the figures and drafts, which were produced by high-level working parties.

1.6.1. Hence the Committee is unable to comment on the plans' choice of axes. However, during its discussions doubts were raised about the choice of routes, as there was concern that not all of the Member States' requests had been accepted by the Commission.

1.6.2. The Commission's recent document on Trans-European Networks (VI/BO8/92) gives a few figures.

55 % of the ECU 40 thousand million spent every year in Europe goes on the building of new roads.

After a steady rise, investment fell back in 1989 to its 1975 levels, despite the obvious increases in traffic.

The initial estimates for a masterplan of European road networks suggest that ECU 120 thousand million are needed for the period 1992 to 2002.

There is thus a serious imbalance between growing transport demand and the percentage of investment allocated to infrastructure.

1.7. The percentage breakdown of funds seems right, and is in keeping with the general thinking of the Communications. The one vague point is how and whence the funds are to be obtained.

1.7.1. Vast funding will be needed and cannot come out of the public purse: situations have changed, and state budgets are in serious deficit.

Responsibilities must be clarified and coordinated, to prevent road users from being penalized unfairly.

The main aspects of the problem are:

— taxation (VAT, excise duties on fuels, etc.);

— use of infrastructure (the user pays);

— environment protection (the polluter pays).

The Community should focus on two elements for overcoming the 'political' risks of transnational action:

— the declaration of European interest, to certify that the works fit into the framework laid down by the Community;

— immediate contributions to feasibility studies.

1.7.2. Greater emphasis should be placed on two vital preconditions for the whole undertaking:

— self-financing of the works, with direct contributions from users;

— encouragement for integration of the networks, to act as a catalyst for private finance, which requires reliable implementation schedules.

A certain number of major road infrastructure projects (such as bridges and tunnels) have been financed by private capital. These include the Mont Blanc,

St. Bernard and Pyrenees tunnels, the tunnel under the Scheldt, the Tancaville bridge, the Dartford crossing and the bridge over the Liffey in Dublin. Other schemes are also under way or in the pipeline in the UK and France.

This shows that capital can be attracted for reliable investments, and that users too are ready to finance infrastructure.

1.7.3. The Community must be inventive and should assess the feasibility of using 'authorities' to look after the construction and administration of major infrastructure which then pays for other infrastructure.

1.8. In conclusion, the Committee supports the Commission proposals and notes that they are part of a broader intermodal transport policy that can only be fully effective once the networks for all transport modes—including maritime transport and infrastructure—have been dealt with. The Committee hopes to have the chance to give its views on this intermodal policy, which will obviously be included in the Commission's forthcoming white paper.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on:

— **the proposal for a Council Directive on the Frequency Bands to be designated for the coordinated introduction of Road-Transport Telematic Systems (RTTS) in the Community including Road Information and Route-Guidance Systems, and**

— **the proposal for a Council Directive on Common Frequency Bands to be designated for the coordinated introduction of the Terrestrial Flight-Telecommunications System (TFTS) in the Community** [1]

(93/C 19/12)

On 13 August 1992 and 18 August 1992 the Council decided to consult the Economic and Social Committee under Article 100A of the Treaty establishing the European Community on the abovementioned proposals.

The Section for Transport and Communications which was responsible for preparing the Committee's work on the subject adopted its Opinion on 18 November 1992. The Rapporteur was Mr Bell.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. These proposals deal with the harmonization of frequencies for Road-Transport Telematic Systems (RTTS) in the Community including Road Information and Route-Guidance Systems, and the harmonization of frequencies for an Aeronautical Public Correspondence System throughout Europe more generally known as the Terrestrial Flight-Telecommunications System (TFTS).

[1] OJ No C 222, 29. 8. 1992, p. 10.

1.2. Recent years have seen great growth in services, both public and private, wishing to make use of the radio spectrum. Efficient administration and in particular great care in the allocation of frequencies is needed to ensure that great benefits can be derived from the finite resources of the radio spectrum.

1.3. Because frequencies are a limited resource and because there are a great many competing needs to use frequencies, both military and civil, public and private, it is clear that harmonization of frequency allocation on an international level will assist in ensuring the maximum efficiency in exploiting the radio spectrum. The elimination of conflicting frequency allocation at a domestic level is therefore essential. In addition, the harmonization of frequency allocation throughout the Community will assist in creating a pan-European market for RTTS and TFTS uncomplicated by national boundaries and inconsistent frequency-allocation policies.

1.4. The need for international coordination of frequency allocation has been recognized for many years and implemented on a large scale at both the International Telecommunications Union and the European Radiocommunications Committee (ERC) of the Conference of European Postal and Telecommunications Administrators (CEPT). (The countries whose telecommunications administrations participate in CEPT are the twelve Member States of the Community and the following other countries: Albania, Austria, Bulgaria, Croatia, Cyprus, Czechoslovakia, Finland, Hungary, Iceland, Liechtenstein, Lithuania, Malta, Monaco, Norway, Poland, Romania, Sweden, Switzerland, Turkey, the Vatican City and the Republic of San Marino.) The Committee supports the principle of pan-European coordination of frequency allocation as recognized by the Council Resolution of 28 June 1990, however this is subject to the comments on the question of how that coordination should be implemented that appear below.

2. The RTTS proposal

2.1. The RTTS proposal sets out provisions whereby the Member States of the European Communities are required to allocate frequency bands indicated by the Community Research and Development Programme (Drive) (Dedicated Road Infrastructure for Vehicle Safety in Europe), and the European Radiocommunications Committee (ERC) (notably 5,795-5,805 GHz (with possible extension to 5,815 GHz), 63-64 GHz and 76-77 GHz) for the RTTS.

2.2. The objective of the proposal is to assist the development of the RTTS by specifically allocating frequency bands to it.

This should add momentum to the progress already being made in the development of the RTTS with a view to achieving the following:

a) Completion of a single European standard for RTTS. This will involve a standard setting process of the European Telecommunication Standards Institute (ETSI).

b) The coordinated introduction of the RTTS applications throughout the Community which will improve road safety, maximize road-transport efficiency and minimize the adverse environmental impact of transport.

c) The operation of RTTS on a pan-European basis because of the availability of common Europe-wide frequencies.

d) The development of Europe's transport infrastructure through the unrestricted carriage and operation of RTTS communications equipment throughout the Community.

e) The creation of a large Europe-wide market for RTTS to give manufacturers and operators increased confidence.

3. The TFTS proposal

3.1. The TFTS proposal sets out provisions whereby the Member States of the European Communities are required to allocate frequency bands indicated by the ERC and the World Administrative Radio Conference 1992 (WARC 92) (notably 1 670 to 1 675 MHz ground to air and 1 800 to 1 805 MHz air to ground) for the TFTS.

3.2. The objective of the proposal is to assist the development of the TFTS by specifically allocating frequency bands to it.

This should add momentum to the progress already being made in the development of the TFTS with a view to achieving the following:

a) Completion of a single European standard for TFTS. This involves a standard setting process of ETSI scheduled to be completed during 1992. In addition aircraft fit standards are being developed by the European Aeronautical Electronics Committee (EAEC) and standards for airline-cabin systems and on board telecommunication services are being developed by the Airline Electronic Engineering Committee (AEEC).

b) The coordinated introduction of the TFTS throughout the Community.

c) The operation of TFTS on a pan-European basis because of the availability of common Europe-wide frequencies.

d) The development of Europe's transport infrastructure through the unrestricted carriage and operation of communications equipment throughout the Community.

e) The creation of a large Europe-wide market for TFTS to give manufacturers and operators increased confidence.

4. General comments

4.1. The Committee fully supports the introduction of the RTTS and the TFTS and is also in full agreement with the principle of the allocation of common frequency bands for their establishment. The Committee has considered whether the Commission's action in proposing these Directives is necessary, given the following reasons.

4.2. The coordination of frequency-band allocation in Europe is also administered by the ERC of CEPT as well as by the Commission.

4.3. In the Explanatory Memorandums to the Proposals the Commission notes that the ERC has currently identified the most suitable frequency bands for RTTS to be exactly the same as the area it proposes, namely 5,795-5,805 GHz (with a possible extension to 5,815 GHz), 63-64 GHz and 76-77 GHz and the TFTS to be exactly the same as the area it proposes, namely 1 670-1 675 MHz (ground to air) and 1 800-1 805 MHz (air to ground).

4.4. To date it has been a common criticism that ERC measures on frequency-band allocations were not sufficient to give manufacturers confidence, because they only constituted a Recommendation and were therefore not binding. The Committee notes, however, that there has been a recent change in ERC procedures. At its sixth meeting the ERC agreed to the principle of more binding measures to be called Decisions and to adopt a written procedure whereby CEPT members would write to the ERC Chairman within two months after the Decision being approved by the ERC advising whether or not they commit themselves to implementing the Decision.

4.5. The ERC, at its 7th meeting on 20-23 October 1992 endorsed these measures for the implementation of ERC Decisions. In addition, at that meeting the ERC adopted a Decision in respect of the designation of frequency bands for RTTS and TFTS.

4.6. The ERC Decision proposes the allocation of the same frequencies for RTTS and TFTS as are proposed in the proposal.

4.7. It is arguable that measures taken by the ERC have advantages over those taken by the Commission in this regard because they are directly relevant to a larger group of countries (including all 12 Member States of the Community) and are more flexible than Council Directives, being more easily revised or amended. Accordingly, it is arguable that the ERC is a more appropriate forum for the coordination of frequency allocation.

4.8. However, the Committee considers that the enforceability of ERC Decisions is open to question. If a Member State administration were to fail to implement an ERC Decision (even though it had agreed to be bound by it), enforcement would be dependent upon general principles of international law which, if effective at all, would be long-winded and difficult to achieve. By contrast, if a Member State of the Community were to fail to implement a Directive, an action would be brought against it in the European Court of Justice. This would not be a swift enforcement action, but it would be clear and precise and would use a well-tried legal mechanism.

4.9. In conclusion, therefore, while the Committee has sympathy with the view that matters of frequency allocation should be dealt with by the ERC rather than the Community, it takes the view that, because of the greater certainty regarding the enforcement of Community measures, the proposals should be supported.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive on the Definition and Use of Compatible Technical and Operating Specifications for the Procurement of Air Traffic Management Equipment and Systems

(93/C 19/13)

The Council decided on 14 August 1992, in accordance with Article 84(2) of the EEC Treaty, to ask the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for the preparatory work, adopted its Opinion on 18 November 1992. The Rapporteur was Mr Schmidt.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. The initiative of the Commission of the European Communities to support the harmonization of air traffic management (ATM) systems in Europe is in principle supported. The objective of the proposed directive is in line with the proposals made by the airspace users, e.g. as laid down in the study 'The Crisis of European Air Traffic Control' by Planungsbüro Luftraumnutzer/Wilmer, Cutler & Pickering 1989.

1.2. The harmonization of ATM systems is regarded as an interim step towards an integrated European ATM system. This should finally lead towards the implementation of a uniform European ATM system taking account of future demand and the operational requirements of the airspace users.

1.3. The ECAC Strategy for the 1990's and the European Air Traffic Control Harmonization and Integration Programme (EATCHIP), derived from that strategy, form the widely accepted basis for the short- and medium-term development of air traffic management in Europe. ECAC has commissioned Eurocontrol with the development of individual measures within the framework of EATCHIP. This includes the development of standards, recommendations and common technical and operational specifications in the relevant areas. However, the implementation of these measures remains solely within the responsibility of the individual Member States.

1.4. The proposed Council Directive supports the objectives laid down in the ECAC Strategy by making the standards and common specifications developed or to be developed by Eurocontrol legally binding for EC Member States. The decisions of Eurocontrol in this area would thus have the same status as EC-law. This could accelerate the implementation of the measures on national level.

1.5. ECAC Transport Ministers and Commissioner Van Miert agreed at their meeting on 17 March 1992 to lay down an agreement between the Commission and Eurocontrol related to the division of competences between both organizations. The proposal for a Council Directive is deemed to be too limited to replace such an agreement which should encompass all the relevant areas. It should be emphasized that air traffic management is not regarded as an area for which the principle of subsidiarity would apply. On the contrary, there is common agreement that the current problems of air traffic management in Europe may only be solved on a Pan-European level.

2. General remarks

2.1. The Commission's document points out that there are several factors which combine to limit the capacity of air-traffic control system, e.g., the scheduling for equipment and staff of some airlines. This view cannot be shared. The services offered by the airlines are primarily determined by demand. An optimal use of the resources of an airline, as it is reflected by scheduling for equipment and staff, is a prerequisite in order to maintain the competitiveness of an airline. Therefore, the capacity of the infrastructure, i.e. airports and air traffic management, should be adapted to the requirements derived from the schedules of the carriers to the extent possible in terms of cost.

2.2. The Committee notes that greater compatibility would reduce costs and that common specifications for equipment would clearly benefit European industrialists. However it remains unclear how these benefits are derived unless the specifications would be as such that only European industry could comply with them. This

however would restrict competition and may lead to an increase of cost.

2.2.1. The competitiveness of the European industry could be augmented by Community funding of related research and development programmes.

2.2.2. For the airspace users, it is of no importance whether ATM systems or components thereof are developed and manufactured in Europe or elsewhere. The procurement of ATC equipment should be based on a systematic and transparent cost-benefit analysis taking into account costs and benefits for the system-providers as well as for the airspace users.

2.3. The Committee believes that the directive is intended to help establish a high level of safety in Community airspace. This does not mean that the current safety level in air transport is insufficient. The view of the Committee on this is that the capacity of the ATC systems should be increased while maintaining or enhancing the currently high level of safety.

3. Specific remarks

3.1. *Article 1*

3.1.1. The term 'air control' is not consistent with ICAO terminology. It should be replaced by the term 'Air Traffic Control' or 'Air Traffic Services'.

3.2. *Article 2*

3.2.1. The definition of the term 'standard' is inconsistent with the use of the term by ICAO and Eurocontrol. However, the definitions are adequate for the purpose of this Directive.

3.3. *Article 3*

3.3.1. It is agreed in principle that the Draft Directive should incorporate the objectives of the ECAC strategy. However, the goals laid down in Article 3 are formulated rather vaguely so that a control of goal-attainment is very difficult. The goals and the corresponding deadlines for the implementation of related measures should take due account of technical feasibility as well as cost aspects. An expensive replacement of recently installed, fully usable, equipment should not be given higher priority as a result of the proposed Directive, due to its repercussions on ATC user charges. In particular, the following comments are made with regard to the aims listed in Article 3:

— The terminology 'air control centres' should be changed to 'air traffic control centres'.

— Where ECAC only asks for 'Comprehensive radar coverage .... to be completed throughout the continental ECAC area by 1995 at the latest' the EC Draft Directive also requires '.... using interoperable radar equipment which provides full, organized surveillance'. While the goal of using interoperable radar equipment should in principle be supported in order to optimise the use of radar equipment throughout Europe, it seems to be questionable whether this can be achieved cost-efficiently until 1996. A requirement to use interoperable radar equipment by 1996 would entail a replacement of recently installed equipment which would be hard to justify in purely economic terms.

— The requirement to guarantee 'computer assisted execution of air traffic management tasks as from 1996' needs to be further elaborated. The requirement does not directly correspond to an objective of the ECAC strategy. It is unclear which tasks or functions should be executed, and to what extent, with the assistance of computers. It could be argued that all the existing ATM systems in Europe are using computers so that a degree of computer assistance already exists.

— The 'optimization of the network of ATS routes and airspace structure ...' is not only related to the definition and use of compatible technical and operating specifications. It requires several measures which are outside of the scope of this Draft Directive.

3.3.2. For the time being, the measures to be taken in order to attain the goals laid down in Article 3 cannot be fully foreseen. Therefore, it is suggested that the aims set out in Article 3 be put in an annex. This annex should be legally binding with a possibility for amendment. The amendment of the contents and deadlines given in the annex should be pursued by the Commission after consultation of the Advisory Committee according to Article 7 and the other parties involved according to Article 8.

3.3.3. In particular, it is not foreseeable which ATM system-components need to be standardized and to what degree of detail. This can only be determined in the course of the work to be done by Eurocontrol in the framework of phases 2, 3 and 4 of EATCHIP and the progressive development of the future European Air Traffic Management System (EATMS).

3.4. *Article 9*

3.4.1. In the Draft Council Directive itself, the Commission claims the right to propose appropriate measures if Eurocontrol does not adopt technical specifications by the deadline provided for in Article 3 (see

Article 9). The provision of the right to the Commission to propose own initiatives is supported. It is assumed that the European organizations representing airspace users will be consulted on these initiatives as provided for in Article 8.

3.5. *Article 10*

3.5.1. The Commission should also report to the Economic and Social Committee.

3.6. *Annex I*

3.6.1. The classification of some of the 'areas covered' is questionable in the following cases:

Under the heading 'Communication Systems':

— automated SSR code assignment systems (it might be more appropriate to include this under the heading 'surveillance systems').

Under the heading 'Navigation Systems':

— radar separation (this should come under 'Surveillance systems')

— Short-term Conflict Alert (STCA) (STCA is a specific function of an ATC system and might be listed under a heading like 'Automated Assistance to Air Traffic Control')

— airspace delegation (should be put under the heading 'Airspace Management': as mentioned before, this is supposed to be outside of the scope of this Directive).

3.7. *Statement of Effect*

The statement made under 4 ('economic effects') with regard to the competitiveness of businesses is of doubtful validity. It is not clear how the Directive will improve the competitiveness of European equipment manufacturers. Specifications should not affect the competitiveness of businesses.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) on a system of distribution of Rights of Transit (Ecopoints) for vehicles having a laden weight greater than 7,5 tonnes registered in a Member State transiting through the Republic of Austria

(93/C 19/14)

On 23 September 1992 the Council decided 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 18 November 1992. The Rapporteur was Mr Tukker.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. The EEC's road-transit agreement with Austria stipulates in Articles 15-17 that environmental pollution (NO_x) in Austria is to be reduced by 60 % between 1992 and 2003 on the basis of 1991 levels and that combined transport is to be encouraged.

1.2. For this purpose, the present system of licences is to be replaced by an Ecopoints system which operates as follows:

a) The total number of Ecopoints to be available to the European Community has been calculated on the basis of NO_x emissions in 1991 from lorries weighing more than 7,5 tonnes. In the first year this total will be equivalent to 1 264 000 trips (laden and empty) by both commercial and own-account operators.

b) There can be a (non-cumulative) 8 % increase in the 1 264 000 Ecopoints total each year if the NO_x emissions are reduced more quickly (i.e. at a rate of more than 5 % each year). If the 8 % limit is exceeded in any one year, the maximum increase permitted the following year will be only 4 % regardless of the margin by which the limit was exceeded.

1.3. The Commission proposal COM(92) 343 final deals only with the distribution of Ecopoints among Member States.

2. Gist of the proposal

Articles 1-6 of the proposal deal with the way in which Ecopoints are to be distributed by the Community.

Article 4 deals with unused Ecopoints and Ecopoints returned by the Member States. These together constitute the Community reserve.

Article 5 makes provision for a committee to assist the Commission. This committee will be set up under Article 4 of a Council Decision to be adopted on the basis of Commission proposal COM(92) 107 final.

3. Comments

3A. *General*

The Committee thinks that the Ecopoints system is extremely complicated and may pose practical problems for the haulage industry.

It therefore urges the Commission to monitor the scheme carefully and, if problems arise, to provide EC hauliers with support and back-up.

3B. *Specific*

1. The Committee agrees with Article 1.

2. It also agrees with Article 2(1).
However, as regards Article 2(2), it would ask why the Ecopoints are to be distributed twice a year and not once a year as in the case of the road-haulage authorizations. The industry would prefer once a year.

3. Article 3 should apply for the whole of the year and unused Ecopoints should not be handed back until the end of the year.

4. Article 4 specifies some of the criteria to be applied when allocating Ecopoints to the Member States:

   a) a disadvantageous starting position;

   b) problems with the technical upgrading of the vehicle fleet concerning NO_x emissions;

   c) geographical circumstances;

   d) unforeseen occurrences.

The Committee has the following questions or comments to make with regard to these criteria:

As regards b):

The Committee thinks that Member States with modernized fleets of vehicles should not suffer from other Member States' failure or quasi-failure to help reduce NO_x emissions.

The Commission should take this into account when distributing Ecopoints and reward goodwill.

The Committee thinks that encouragement should be given to the modernization of vehicle fleets and especially engine designs.

As regards c):

What does the Commission mean by 'geographical circumstances' and how does it translate these into Ecopoints? Does the Commission take sufficient account of the specific problems of peripheral areas?

As regards d):

The Commission refers in this connection to the collapse of a bridge in Austria some years ago.

The Committee thinks that if something like this happens in Austria, the Austrian government should adapt or rescind the Ecopoints system temporarily.

If transit through Austria were to be seriously impeded by such an obstruction elsewhere, the Commission should hold direct consultations with the committee mentioned in Article 5.

5 and 6

The Committee agrees with the content of Articles 5 and 6.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on:

— **the Draft Commission Regulation (EEC) on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports, and**

— **the Draft Commission Regulation (EEC) amending Regulation (EEC) No 83/91 on the application of Article 85(3) of the Treaty to certain categories of agreements between undertakings relating to computer-reservation systems for air-transport services** [1]

(93/C 19/15)

On 22 September 1992, the Committee Bureau decided, under Article 20(3) of the Internal Regulation to draw up an Additional Opinion on the abovementioned proposals.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 18 November 1992. The Rapporteur was Mr Moreland.

At its 301st Plenary Session (meeting on 24 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. The Commission proposal

1.1. This is a proposal for a Commission decision under Article 85(3) of the Treaty (i.e. the Competition provisions) on aspects of air transport in the light of the recent agreement by the Council known as the 'Third Air Package'.

1.2. The main components of the proposals are: to exempt from the competition rules under certain conditions:

— joint planning and coordination of the schedules of air services between Community airports;

— joint operators of a scheduled air service on a new or on a low density route between Community airports;

— the holding of consultations on tariffs for the carriage of passengers with their luggage and of freight on scheduled air services between Community airports;

— slot allocation and airport scheduling in so far as they concern air services between airports in the Community;

— agreements to provide Computer-Reservation Services.

The main conditions are as follows:

— scheduling will relate to less busy periods or routes or to facilitate interlining;

— joint operations can be only on low capacity routes or those not previously covered;

— consultations on tariffs must give rise to interlining and take place, as regards normal tariffs, only in the context of a multilateral meeting once a year and for promotional tariffs twice a year;

— new entrants have priority in the allocation of 50 % of newly created or unused slots;

— the Commission may withdraw the exemptions if they result in an absence or reduction of competition;

— a parent carrier (i.e. an airline) should provide to a competing computer reservation the same information as it provided on its own computer-reservation system.

2. General comments

2.1. The Committee notes that the block exemption follows on from the agreement by the Council on the 'Third Air Package'. The Committee would in general agree that there is a need for a block exemption and,

[1] OJ No C 253, 30. 9. 1992, p. 6.

in particular, would agree that tariff consultation be restricted to interlining. It supports the provisions for consultation in exceptional circumstances.

However the Committee is concerned that:

a) The extent of the Commission's role in consultations on tariffs should not be overly bureaucratic;

b) Slots and Computer-Reservations Systems are the subject of proposals before the Council. As the Committee emphasized in its Opinion on previous block exemptions on these subjects, a Council decision on these issues should not only be 'reconsidered' but should take precedence. (Should the Council fail to take a decision on these issues by the end of 1992, the Commission should extend existing exemptions or base the exemptions on the existing position in the Council with a revision when the Council reaches a final decision.)

3. **Draft Commission Regulation (EEC) on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports**

Specific comments

3.1. *Preamble*

(1) not clear if this refers to the provision of transport services between Community airports.

3.2. *Article 3: Special Provisions for Joint Operations*

3.2.1. The Committee recognizes that the creation of a block exemption removes the need for airlines, acting within the restrictions of the 'Third Air Package', to go through all the time consuming procedures of applying to the Commission to set up joint operations. However, the circumstances behind joint operations vary considerably and there may be justifiable joint operations not necessarily within the restrictions of the 'Package'. Consequently the Commission should consider the alternative of an examination on a case-by-case basis.

3.2.2. Article 3.F

It is unclear as to the extent which the existence of a group exemption for joint operations prejudices possibilities to obtain or prolong individual exemptions for joint operations falling outside the scope of this group exemption.

3.3. *Article 4: Special Provisions ... Tariffs*

3.3.1. The Committee generally supports this Article but as stated in 2.1, it believes the Commission should not necessarily send observers or have reports regularly, although there should be effective monitoring to remove any fear of abuse. Also there needs to be a more precise definition of 'normal' and 'promotional' fares. Further the Commission should ensure that the limitations on consultation do not work to the disadvantage of small airlines.

3.4. *Article 5: Special Provisions ... Slots*

3.4.1. The Committee notes that the Commission has accepted the Committee's view that the subject is too important to be left to a Commission decision and is more appropriately a Council decision, and presumes this Article is intended only to force a Council decision (which the Committee agrees should be taken as soon as possible).

3.4.2. The Committee notes that this is basically the same as the 1990 Commission decision. Should it not have been up-dated in the light of Council discussion (which the Commission is allowed to sit in on) (see paragraph 2b).

4. **Draft Commission Regulation (EEC) amending Regulation (EEC) No 83/91 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings relating to computer-reservation systems for air-transport services**

4.1. The Committee notes that the Commission will reconsider Article 7a in the light of a Council decision on its proposal for a Code of Conduct. The whole proposal should be considered in this light.

4.2. *Proposed New 7a*

Paragraph 2. This surely conflicts with the proposed code-of-conduct modification which specifically rejects mandatory participation in all CRS at the highest level of functionality.

4.3. The conditions proposed really apply to airline-owned systems rather than jointly owned systems. Consequently the Commission should bear in mind that the application of the block exemption will be

discriminatory as between CRS systems. This underlines the need for the block exemption to be superseded by the 'code of conduct' (as the Committee has pointed out previously).

4.4. The Committee would remind the Commission of its concern that CRS systems should be competitive across the Community and that the dominance of one system over another in a Member State should not reflect the predominance of an owner-airline in that Member State.

4.5. The Committee will reserve any further comments on CRS to its Opinion on the Code of Conduct.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) amending Regulation (EEC) No 1785/81 on the common organization of the markets in the sugar sector [1]

(93/C 19/16)

On 9 October 1992 the Council decided to consult the Economic and Social Committee, under Article 43 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Economic and Social Committee decided to appoint Mr Charles Pelletier as Rapporteur-General for its Opinion.

At its 301st Plenary Session (meeting of 25 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. **Preliminary comments**

1.1. Article 303 of the Portuguese Act of Accession of 12 June 1985 contained transitional arrangements for the import of raw sugar to supply the Portuguese refining industry.

1.2. These transitional arrangements allow the annual import of 75 000 tonnes of raw sugar from four ACP States with which Portuguese refineries had concluded multiannual agreements prior to Portugal's accession to the EC.

1.3. By way of derogation from Article 16(2) of Regulation (EEC) No 1785/81, a reduced import levy is paid on this tonnage, based on the intervention price rather than the threshold price.

1.4. The Act of Accession also states that if Community supplies of raw sugar are insufficient, Portugal can be authorized by Commission Regulation to import from third countries, at the same reduced levy, the amount of sugar necessary to make up the supplies to its refineries.

1.5. These transitional arrangements, designed to ensure that the Portuguese refining industry receives all the supplies it needs to meet domestic consumer demand, expire on 31 December 1992.

[1] OJ No C 265, 14. 10. 1992, p. 3.

1.6. The current production quota arrangements in the sugar sector also expire on 30 June 1993. Regulation (EEC) No 1785/81 requires the Council to decide by 1 January 1993 on the new common market organization for sugar to be applied from 1 July 1993.

1.7. As the Commission has not yet presented a proposal on the subject, it is unlikely that the Council can respect this deadline.

1.8. In order to ensure that the arrangements for the import of raw sugar into Portugal after 1 July 1993 are in keeping with the new EC sugar arrangements, a Regulation is needed covering arrangements in Portugal for the period from 1 January to 30 June 1993. At the same time, the new sugar Regulation, to apply from 1 July 1993, should also lay down the conditions under which the EC refining industry (including that of Portugal) is to be supplied.

1.9. Accordingly, the Commission proposes to extend the present arrangements for Portugal for a further six months, reducing the tonnage to be imported to fit in with the length of this period.

2. General comments

2.1. The Committee regrets that the Commission has not issued proposals for the new sugar Regulation and the supply conditions for the EC refining industry concurrently. The Committee could then have issued a single Opinion on the Portuguese refining industry.

2.2. The Committee will thus have to return to the matter in a separate Opinion on the arrangements for the common market in sugar to be applied from 1 July 1993.

3. Specific comments

3.1. Since altering the supply arrangements for Portuguese refineries twice within a few months would impede trade, the Committee approves the proposed Regulation.

3.2. However, this approval is without prejudice to the Opinion which the Committee will issue on the Commission's forthcoming proposals on supply conditions for the EC refining industry, including that of Portugal, from 1 July 1993.

3.3. The Committee stresses that these proposals must respect Community preference on the Portuguese market with regard to white sugar and raw sugar produced within the EC.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) establishing a Community system for fisheries and aquaculture

(93/C 19/17)

On 21 October 1992, 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 instruct Mr Silva, as Rapporteur-General, to prepare the Committee's work on the subject.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee unanimously adopted the following Opinion.

1. The aim of the present proposal is to follow on from the proposals set out in the Report on the Common Fisheries Policy [1] presented to the Council by the Commission as required under Regulation (EEC) No 170/83 [2].

2. Given the need to comply with the deadline laid down for the Council's decision, the present ESC Opinion will have to be confined to the most important aspects of the question; for this reason, this Opinion will be supplemented by an additional Opinion.

3. The Economic and Social Committee, consulted for this purpose by the Commission, has, through its Opinions [3], been fully involved in the debate on the situation in the fisheries sector between 1983 and 1990, and the perspectives for this sector for the 1993-2002 period.

4. The Committee welcomes the fact that some of the suggestions set out in its Opinions, inter alia relating to:

— improved consideration of all factors affecting fish mortality;

— greater transparency in decision-making and more involvement of professionals;

— the need to improve the TAC and quota system;

— the need for multi-species and multi-annual TACs to take better account of the situation in the fisheries sector;

— a system of annual carry-over of TAC and quotas.

have been included by the Commission in the present draft Regulation.

5. Some priority issues advocated by the ESC, the EP and socio-occupational bodies, as well as by the Commission itself in the above-mentioned Report, have not however been taken sufficiently into account in the present proposal. Consequently, the ESC endorses the present proposal for a Regulation subject to the following comments.

6. The conservation of fishery resources is, today, without doubt an absolute priority.

However, as highlighted in previous ESC Opinions, the fisheries sector is not the only party responsible for the present state of affairs. Other factors also contribute to the sector's current vulnerability.

7. The need to conserve fishery resources and to guarantee the continuation of fisheries activities in the best conditions possible will involve some restrictions and the reshaping of some assumptions on which the common fisheries policy was based.

8. However, one should not lose sight of the fact that, over and above purely technical aspects, fisheries and related activities continue to be of fundamental economic and social importance, particularly in some regions where there is a high concentration of fisheries, or others which are particularly dependent on this sector. Its particular importance is therefore much greater than its relative significance in terms of its contribution to the Community's Gross Domestic Product (GDP).

9. Regarding priorities for guidelines for the sector's future, the ESC stresses the need for an overall, coherent approach, taking full account of the different aspects of the sector. With this in mind and against the background of the latent crisis facing the sector, social policy assumes particular importance.

10. As regards the principle of relative stability, the ESC reiterates the need to maintain this principle with any adaptations and adjustments which may be warranted in overall terms by changes in the situation since 1983.

11. Establishing a Community licensing system

[1] SEC(91) 2288 final.
[2] OJ No L 24, 27. 1. 1983.
[3] OJ No C 339, 31. 12. 1991, p. 76; OJ No C 223, 31. 8. 1992, p. 30.

designed to rationalize exploitation of stocks could prove beneficial.

Licensing could be a means of identifying vessels, finding out about fishing levels and even ensuring that rules are complied with.

12. However, with a view to maintaining stability in the sector and because the licences cover a shared resource, it must be made clear, as advocated by the ESC [1], that licences may not be transferable.

13. Reduction in fleet capacities with a view to achieving a better balance between available stocks and fishing efforts will be reflected in employment and income levels in the whole fisheries sector and related activities.

Measures must be provided for financial compensation for affected sectors so as to ensure that the fisheries sector is viable.

14. As anticipated in the 1991 Commission Report on the Common Fisheries Policy approved by the Council, it is essential to compensate for 'socio-economic upheaval by appropriate accompanying measures' [2].

15. Consequently, the proposal—particularly since it concerns a framework regulation—must specify that structural adjustment measures will have to incorporate social and regional back-up measures as part of an effective link-up between the Common Fisheries Policy and the Structural Funds, particularly by means of action for the new objective 6 areas.

16. Lastly, reforming and adjusting the Common Fisheries Policy presupposes the availability of financial resources commensurate with the proclaimed aims.

[1] OJ No C 223, 31. 8. 1992, p. 30.

[2] SEC(91) 2288 final.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to passenger transport

(93/C 19/18)

On 12 November 1992 the Council decided to consult the Economic and Social Committee under Article 198 of the EEC Treaty on the abovementioned proposal.

The Section for Economic, Financial and Monetary Questions was responsible for preparing the Committee's work on the subject. Mr Giacomelli was appointed Rapporteur-General.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion by a majority vote, with one abstention.

1. Introduction

1.1. The proposal seeks to amend the sixth Value Added Tax (VAT) Directive as regards passenger transport by road and inland waterway, in order to suit the conditions on the Single Market which enters into force on 1 January 1993.

1.1.1. The provisions concerned must be amended because VAT on passenger transport has hitherto been collected and monitored at frontier posts.

1.2. The Commission accordingly considers it essential for the following steps to be taken by 1 January 1993:

— the place where passenger transport services by road and inland waterway are considered to be supplied must be changed—the territorial criterion currently in force (taxation of that part of the fare corresponding to the distance covered in each Member State) is to be replaced by taxation of the entire service in the country of departure [first and second subparagraphs of Article 1(1)];

— the concept of successive transport services, each with a new place of departure, must be introduced [third and fourth subparagraphs of Article 1(1)];

— the taxable amount must be adapted (principle of breakdown between Member States) to take account of successive transport services [Article 1(2)];

— transport services to a place situated outside the Community (i.e. to a non-member country) must be exempted [Article 1(3)].

1.3. Passenger transport by air and by rail are excluded from the scope of the proposed Directive and the Commission provides for the Council to review this question by 31 December 1995 on the basis of a report on all forms of passenger transport, which it will present by 31 December 1994; particular attention is to be paid to the risks of distortion of competition between different modes of transport.

2. General comments

2.1. The Committee endorses the proposal's aims. The rules on the application of VAT to passenger transport must indeed be adapted to the conditions on the Single Market, including the abolition of tax controls at intra-Community frontiers on 1 January 1993.

2.2. Under the existing arrangements, VAT on road passenger transport is collected and monitored at the borders of four Member States: Germany and Denmark levy a tax on non-resident carriers on each kilometre travelled by each passenger (DM 0,007/pkm in Germany and Dkr 0,05/pkm in Denmark); they consider this to be equivalent to the VAT (14 % and 25 % respectively) levied on domestic services provided by domestic bus companies; Belgium levies a daily flat-rate charge on foreign coaches which replaces the 6 % VAT levied on the domestic turnover of its own nationals.

2.2.1. VAT is levied at French borders on transit operations involving groups of up to ten passengers (5,5 % levied on the transit fare on coaches and taxis).

2.3. The same VAT application principles apply to passenger transport by inland waterway, except in the specific case of waterways in border areas which are managed in condominium or subject to other international arrangements.

2.4. The proposal concerns only passenger transport by road and inland waterway.

2.4.1. The Explanatory Memorandum (point 6 on page 12) states that the Commission will draw up a general report by 31 December 1994 evaluating the overall situation regarding VAT on passenger transport with respect to the evolution noted and the necessities of the proper functioning of the internal market. The report will, as a priority, examine the risks of distortion of competition between different modes of transport and take account of new forms of rail transport (TGV, ICE) which compete mainly with air transport.

2.5. The proposal confines VAT to two modes of transport, thus introducing discrimination between modes of transport; the Committee considers that uniform tax arrangements should be devised for all modes of transport. Moreover, for the reasons set out below (see specific comments), the Committee takes the view that the current proposal should be suspended until a draft Directive applying VAT to all modes of transport has been drawn up.

2.5.1. The Committee accordingly considers the levying of VAT on intra-Community passenger transport to be not only a burden on users not subject to VAT, but also an obstacle to the free movement of persons and to the process of economic integration. The Committee therefore believes that consideration should be given to zero-rating all modes of transport. This would eliminate all danger of distortion of competition between transport modes and between internal and external journeys. The abolition of border controls on 1 January 1993 would also be facilitated by the abolition of the tax levied in Denmark, Germany, Belgium and France. Should this approach not secure unanimous approval at this stage, it should nonetheless be considered by the Council when preparing its decisions on the basis of the report which the Commission is to present by 31 December 1994.

3. Specific comments

3.1. Levying VAT at the place of departure will have a tangible effect on intra-Community bus fares. Levying VAT on the total distance covered from a place of departure in a Member State which levies VAT at the standard or reduced rate (Belgium: 6 %; Germany: 14(15) %; Denmark: 25 %; Spain: 6 %; France: 5.5 %; Greece: 8 %; Netherlands: 6 %) will, in most cases, increase the amount of VAT payable. This refutes the Explanatory Memorandum's claim that the new provisions will not adversely affect the price of passenger transport (point 4 on page 10). In most cases, consumers will in fact pay more.

3.2. The above comments apply also to intra-Community passenger transport by inland waterway, with the exception of waterways managed in condominium or subject to other international arrangements.

3.3. There is therefore a total contradiction between the above calculations and the Explanatory Memorandum's assessment with respect to the consumer benefits of the proposed provisions and the expansion of tourism in the Community.

3.4. The introduction of the concept of 'successive transport services' [third and fourth subparagraphs of Article 1(1)] and its definition, henceforth subject carriers to the VAT systems of all the Member States from which they operate transport services. The outward and return legs of shuttle services will automatically be subject to separate taxation in the two Member States concerned.

3.4.1. The VAT arrangements will even change in the course of a journey by occasional services where the means of transport spends more than 24 hours on the territory of a State of transit or destination.

3.4.2. This provision will not only increase the amount of VAT payable in respect of passengers on many journeys between Member States; it will also generate considerable administrative costs due to the obligation to:

— appoint tax representatives outside the country in which the carrier is established;

— keep accounts in several Member States for VAT purposes;

— create a plethora of supporting documents (invoices for inputs, lists of ticket sales, passenger waybills, etc.).

Moreover, a period of 1-2 years will be needed to make the necessary arrangements.

3.4.3. The Committee believes that the application of this provision will generate serious problems for this transport sector, which is dominated by SMEs. There are even grounds for fearing that these new administrative and bureaucratic constraints will exclude many small and medium-sized carriers from markets outside their country of establishment. This is a perverse effect at a time when the Community is preparing to abolish its internal frontiers and open up the large internal market and emphasizing the new openings for SMEs.

3.5. The proposal [Article 1(2)] includes rather vague rules on the determination of the taxable amount in the case of successive transport services, where the amount of VAT is to be divided up between several Member States.

3.5.1. There are grounds for fearing that excessive flexibility in this respect may lead to conflicting assessments by the authorities of the various Member States involved. In any case, the breakdown of VAT should follow clear parameters which it should be possible for the carriers to calculate themselves.

3.6. The Committee believes that exempting traffic to a third-country destination involving input tax deductibility would discriminate against intra-Community coach and inland waterway transport services which are subject to VAT.

3.6.1. The formula proposed by the Commission could even generate distortions of competition in transport to or from Member States, insofar as carriers could use transit through a third country to create successive transport services.

3.6.2. This should be treated as seriously as the risk of deflection of traffic to a number of third countries in the absence of exemption (commentary on the articles, page 17, point 3, second paragraph).

3.7. Since frontier controls are due to be abolished on 1 January 1993, a system permitting control-free passage is in principle to operate from that date. In the case of intra-Community trade in goods, the system was laid down by Directive 91/680/EEC of 16 December 1991.

3.8. As regards the matter in hand, the Committee is sure that (a) even if the ad hoc Directive is adopted by 1 January 1993, it almost certainly cannot be incorporated into national law on time; (b) neither the national authorities or the carriers concerned will be able to apply these new provisions by that date. Authorities and carriers will therefore continue to apply their national legislation, and there will inevitably be a conflict with Community law.

3.9. The relevant Community legislative procedure has indeed only just started, on account of the delay in the presentation of the proposal to the Council.

3.9.1. The transposition of these EC rules into national law is subject to the parliamentary procedures in force in the Member States.

3.9.2. The practical application of VAT does after all require administrative rules.

3.10. A change in the rules on the application of VAT will clearly have an effect on the amounts due and on fares; it is therefore essential for the carriers concerned to have an appropriate period in which to adapt. As a very large proportion of tourist products are developed, organized, costed and marketed some 6 to 12 months before the journey is undertaken, it is unrealistic for the proposed Directive to enter into force on 1 January 1993, and is quite inconceivable for the economic operators concerned.

4. Conclusions

4.1. The Committee has come to the conclusion that it cannot endorse the proposal and that neither a legal instrument nor the approach proposed by the Commission can apply from 1 January 1993.

4.2. In any case, the provisions of Article 28(3) of the sixth VAT Directive and the derogation referred to in Annex F, point 17 of the sixth VAT Directive are to remain in force, initially until the end of the transitional period (Directive 91/680/EEC of 16 December 1991).

4.3. Under these circumstances, the Committee must conclude that VAT on passenger transport services should continue to be levied in accordance with the principle of territoriality and at the rates currently applied by the Member States for the same transitional period.

4.3.1. Appropriate provisions must accordingly be adopted so that:

— VAT can be applied and monitored without frontier controls, in line with the abolition of formalities;

— the VAT due is not greater than at present;

— the administrative provisions adapted to the Single Market do not create additional administrative and bureaucratic structures.

4.4. On this basis, all intra-Community passenger transport services will be subject to the territorial VAT of the country of departure up to the intra-Community frontier, and, thereafter, to the VAT rates applicable in the countries of transit and destination.

4.4.1. Controls in the country of departure will take the form of a VAT declaration by the carrier or operator, who will be obliged to have a VAT registration number for services provided in other Member States;

the comparison between the declaration lodged in the country of origin and those lodged in respect of services provided in the other Member States will serve as a means of verification.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive amending Directive 77/388/EEC and introducing Simplification Measures

(93/C 19/19)

The Council decided on 10 November 1992, in accordance with Article 198 of the Treaty establishing the European Economic Community, to ask the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Committee decided to appoint Mr Giacomelli as Rapporteur-General responsible for preparing its work on the matter.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted unanimously the following Opinion.

1. Introduction

1.1. In the absence of an agreement in the Council on the introduction of the principle of Value Added Tax (VAT) on intra-Community trade being levied in the country of origin, and as rates have not been harmonised within a sufficiently reduced range, Directive 91/680/EEC of 16 December 1991 introduced transitional arrangements whereby checks and formalities at internal Community frontiers would be abolished from 1 January 1993, when the Single Market comes into force, while rate differentials in the Member States and taxation in the country of destination would be maintained.

1.2. Major changes covering both intra-Community trade and transactions with non-EC countries were thus made to the Sixth VAT Directive.

1.3. In accordance with the commitment made when Directive 91/680/EEC was adopted on 16 December 1991, measures have been taken to facilitate the implementation and application of the transitional arrangements. The aim of these measures is to simplify, in the true sense of the term, the procedures for taxing certain transactions. In addition, they help to clarify the tax principles which will apply from 1 January 1993.

1.4. To the extent that the simplification and clarification measures fulfil the expectations of business circles and answers the concerns expressed by the Member States when Directive 91/680/EEC was transposed into national law, the ESC approves the present proposal. But while this applies to the proposal's contents (which do not modify the transitional arrangements for VAT) and aims (simplification and clarification), the ESC has far more reservations about the proposal's form and the extremely short, or even clearly inadequate, period of time allowed between now and 1 January 1993 for analyzing each of the arrangements proposed and consulting the trading interests concerned.

2. General comments

2.1. The additional measures supplementing Council Directive 91/680/EEC of 16 December 1991 concern both the actual simplification of the procedures for taxing certain transactions and the clarification of the principles of taxation to be applied from 1 January 1993.

2.2. Their general aim is to simplify tax procedures for operators and the administrations of the Member States. The taxation principles and declaration procedures defined by the Directive of 16 December have not been changed.

2.3. The explanatory memorandum divides the proposals into five groups:

2.3.1. Additional measures which clarify the wording of some of the provisions of the Sixth VAT Directive, as amended by Directive 91/680/EEC.

2.3.2. Simplification measures are to be introduced for the tax treatment of transactions effected with third territories relating to goods which rank as Community goods under customs legislation. The measures will apply to the presentation of the principles of taxation and the application to these transactions of the same tax provisions as those applicable to any non-Community goods entering the customs territory of the Community.

2.3.3. For intra-Community trade in products subject to excise duty, the rules for the imposition of VAT are adapted to the provisions of Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, a Directive which is itself currently the subject of a proposal [COM(92) 426 final] seeking to amend and simplify certain of its articles. The simplification measures put forward in the present proposal will obviate the need for traders who are not subject to the general arrangements for taxing their intra-Community acquisitions to be identified for VAT purposes solely because they buy products subject to excise duty from other Member States. In such cases the procedures for applying excise duties may be used for applying VAT. This will result in a simplification of the formalities for traders and of the VAT administrative burden facing Member States.

2.3.4. For supplies of goods and services [other than those referred to in Article 21(1)(b) of the Sixth VAT Directive: foreign supplier jointly liable for tax with the domestic recipient of the service] taxable within a Member State where the trader is not established, the Sixth VAT Directive imposes obligations which differ depending on the Member State in which these transactions are effected. Under the present proposal such transactions would be treated in the same way whatever the Member State concerned. While the principles of the Sixth VAT Directive would be maintained, the arrangements currently offered as options in Article 21(1)(a) [taxable transactions other than those referred to in Article 9(2)(e)] would be made generally applicable in all Member States. Two procedures may be chosen: the trader performing the taxable transaction and subject to foreign tax may either designate a tax representative to pay tax in the country where the transaction is performed, or designate the recipient of the goods or services as the person liable for payment of the tax. In the latter case the trader would not have to be identified for VAT purposes in a Member State where he is not established.

2.3.5. A final set of additional measures relates to the changeover from the provisions in force until 31 December 1992 to those which will enter into force on 1 January 1993. In the Single Market the concepts of importation and exportation will have disappeared; one will speak instead of the place of acquisition and the place of delivery respectively. The additional measures will apply to transactions involving a movement of goods between Member States which begin before 1 January 1993 and are completed after 31 December 1992, when the import/export procedure for intra-Community trade has been abolished. Without the proposed measures such transactions could result in definitive situations of either double taxation or non-taxation creating unequal treatment within the Community.

3. Specific comments

3.1. As regards VAT, all traders, all sectors and all individual heads of businesses have already been faced in the past with obscure texts, such as the Directive of 17 May 1977 (77/388/EEC), the so-called Sixth VAT Directive, which has finally been digested by those concerned, and the Directive of 16 December 1991 amending the Sixth VAT Directive, which abolished border checks and introduced transitional arrangements for trade in goods between Member States, a directive which has been extremely difficult for traders to understand and which, barely 45 days before the deadline of 1 January 1993, has still not yet been fully incorporated into national law.

3.2. The present proposal is no exception. Apart from the fact that its authors have waited more than ten months before bringing out a very long text which must also come into force on 1 January 1993, the text itself, while claiming to contain measures to make things simpler and clearer, has all the faults of a 23-page supplement, with a large number of references, superimpositions and additions which modify, amend or expand two previous directives of 22 and 19 pages respectively (in the *Official Journal*).

3.3. Still bearing in mind the remarks which have just been made on the lateness of the proposal, its complexity, the tightness of the deadline set for the ESC to state its position and the hastiness with which the 'simplification' and 'clarification' measures will have to be implemented, even if their unanimous adoption by the Council and incorporation into the national laws of the Member States can reasonably be contemplated for 1 January 1993, the sixteen or so introductory recitals to the proposal do not call for any particular comments.

3.4. Although it does not seem like it, the proposal has only three articles: the first of these consists of 24 points containing the main body of the provisions, the two others merely deal with points of order.

3.5. The comments which follow therefore refer mainly to the different points of Article 1, to the extent that its provisions require explanation or amendment.

3.6. *Article 1*

3.6.1. To help the reader and answer traders' calls for clearer texts, the introduction to the 24 points of Article 1 should read as follows:

> ' Directive 77/388/EEC of 17 May 1977, as amended by Directive 91/680/EEC of 16 December 1991, is hereby amended as follows:'

3.6.2. The title of the proposal should be amended accordingly.

3.7. *Point 1*

3.7.1. It should also be stated that Article 3(4) is a provision amended by Directive 91/680/EEC, especially as in some of the points which follow the modifications or additions concern the unamended articles or paragraphs of the Sixth VAT Directive 77/388/EEC.

3.8. *Points 2 and 3*

3.8.1. As regards Article 7, reference must be made to Directive 91/680/EEC.

3.9. *Point 4*

3.9.1. Reference must again be made to Directive 91/680/EEC. As regards the actual new wording of Article 8(1)(c), it is more explicit and should ensure that the Directive is applied properly.

3.10. *Point 5*

3.10.1. Article 11(B)(1) of the Sixth VAT Directive has been amended by Directive 91/680/EEC. It this text which point 5 is proposing to replace. Reference should therefore be made to the 1991 Directive.

3.10.2. The clarification of the new wording is useful and necessary, after the amendment in point 2. It will mean that, for import taxation purposes, imports of goods will be included from territories which, while forming part of the customs territory of the Community, are third territories in the common VAT system.

3.11. *Point 6*

3.11.1. Article 12 has not been expanded or amended by Directive 91/680/EEC. It is therefore the initial text of the Sixth VAT Directive of 1977. However, the wording of Article 10(3) was replaced in 1991, so the new text proposed in point 6 for Article 12(1)(b) should be expanded to read:

> ' In the cases provided for in the second and third sub-paragraphs of Article 10(3), as amended by Directive 91/680/EEC of 16 December 1991, the rate applicable shall be that in force at the time when the tax becomes chargeable.'

3.12. *Point 7*

3.12.1. Article 14(1)(c) has been amended by Directive 91/680/EEC. Reference should therefore be made to the latter.

3.12.2. The explanation given for the proposed deletion of point (c), as a result of the amendments made to Article 7(3) (see point 3), is plausible.

3.13. *Point 8*

3.13.1. Except for a slight amendment by the 1991 Directive, Article 15(2) has kept the original text of the Sixth VAT Directive. The proposed amendment adapts the exemptions on exportation solely to relations with third countries or territories. As regards the latter, reference should be made to the details of Article 3, which it is proposed to amend with regard to the status of the Principality of Monaco and the Isle of Man.

3.14. Points 9 to 24 deal entirely with provisions introduced by the new Title XVIa of Directive 91/680/EEC concerning transitional taxation arrangements for trade between Member States (see 1.1 above). To make the text clearer to the traders concerned it would have been preferable to renumber the amendments to reflect the approach of 1 January 1993.

3.14.1. Point 9

3.14.1.1. The insertion of paragraph 3.14 above dispenses with the need to refer at each point to Directive 91/680/EEC.

3.14.1.2. The proposal plans to replace the second sub-paragraph of Article 28a(1)(a) by a new text. The text could be clear if reference was not made to the conditions set out 'in paragraph 1a', which only become apparent in point 11; reference could be made to this point. It could be supposed that the text replaces all of the second sub-paragraph, including the first, second and third indents. If this were the case, mention should be made here of the deletion of these indents, which are included in paragraph 1a, since the third sub-paragraph is retained.

3.14.2. Point 10

3.14.2.1. This still refers to Article 28a(1), to which a new point (c) is added imposing VAT on certain intra-Community acquisitions of goods subject to excise duties and for which excise duties become chargeable within the territory of the country in accordance with Directive 92/12/EEC referred to in paragraph 2.3.3.

3.14.3. Point 11

3.14.3.1. This deals with the insertion of the new paragraph (1a) in Article 28a, which covers the procedures and conditions under which intra-Community acquisitions of goods effected by a taxable person or by a non-taxable legal person are exempted from VAT, namely when they are made by:

— a taxable person who is eligible for the flat rate scheme provided for in Article 25 (of the Sixth VAT Directive—Common flat rate scheme for farmers);

— a taxable person who carries out only supplies of goods or services in respect of which VAT is not deductible;

— a non-taxable legal person;

— when acquisitions do not exceed an annual threshold laid down by the Member States but which may not be less than ECU 10 000, provided that this threshold has not been exceeded during the previous calendar year; the acquisitions may not be new means of transport or goods subject to excise duty.

3.14.4. Although the explanations accompanying the explanatory memorandum speak, in connection with points 9, 10 and 11, of a rearrangement of the provisions of Directive 91/680/EEC and of a simplification of the procedure for applying the derogation from the principle of taxation, one doubts whether the objective will be achieved as regards traders before 1 January 1993. But it is true that the drafting changes make it possible to confirm the obligation of VAT identification incumbent on traders subject to the general tax rules on acquisitions and to exclude from this obligation traders liable for tax at the point of destination simply through having acquired goods subject to excise duty.

3.14.5. Point 12

3.14.5.1. A sub-paragraph is to be added to Article 28b A(2). This will supplement the simplification measures adopted with respect to the person liable for payment of the tax and allow them to be effectively implemented when a taxable person makes an intra-Community acquisition of goods in a Member State in which he is not established for the purposes of a supply within that Member State.

3.14.6. Point 13

3.14.6.1. It is proposed here that point (c) in Article 28c(A) be replaced by a new text which is more explicit and adapted to the exemption, under certain conditions, of deliveries of products liable for excise duty within the Community effected for taxable persons or non-taxable legal persons who qualify for the derogation

set out in the second sub-paragraph of Article 28a(1)(a), when the dispatch or transport of the goods is carried out in accordance with Article 7(4) and (5), or Article 16 of Directive 92/12/EEC, which is referred to in point 1.1 above. The exemption will not apply to taxable persons who benefit from the tax exemption set out in Article 24 (Special scheme for small undertakings).

3.14.6.2. As regards exemptions, a point (d) is to be added to Article 28c(A) which refers to Article 28a(5)(b) (transfer by a taxable person of goods from his undertaking to another Member State). The same exemption will apply to deliveries made on behalf of another taxable person.

3.14.6.3. As regards the movement of products subject liable for excise duty, things will be simpler because traders and the administrative authorities will be allowed to make use of the obligations laid down with respect to excise duties for the purposes of applying VAT. The new point (d), which is also intended to simplify matters, makes it possible to adapt the exemptions provided for under the preceding points to cases of transfers of goods treated as supplies effected for consideration.

3.14.7. Point 14

3.14.7.1. The text replacing Article 28c(E), 'Other Exemptions', will clarify the conditions under which the exemptions that Member States implement pursuant to Article 16(1) or (2) also apply to intra-Community trade. To this end, Article 16 of the Sixth VAT Directive will receive an additional paragraph (1a) and Article 16(2) as amended by Directive 91/680/EEC will undergo adaptations and receive two additional sub-paragraphs consistent with the same exemption measures.

3.14.8. Points 15 and 16

3.14.8.1. Article 28d(3) is to be replaced by a new text and the second sub-paragraph of Article 28d(4) will be expanded in order to define the moment at which the tax becomes chargeable for both intra-Community acquisitions of goods (formerly imports) and intra-Community supplies of goods (formerly exports) effected exempt of VAT.

3.14.9. Points 17 and 18

3.14.9.1. The second sentence in the first sub-paragraph of Article 28e(1) is replaced by a new text and a sentence is added to the second sub-paragraph. Finally, paragraphs (2) and (3) of Article 28e are to be renumbered (3) and (4) to enable a new paragraph (2) to be inserted. To sum up, additions are to be made to the references to Article 11 of the Sixth VAT Directive concerning the elements to be taken into account in establishing the taxable amount for intra-Community transfers of goods on which the tax is chargeable. For acquisitions of products subject to excise duty effected outside the duty-suspension regime, a new provision is to be introduced which will reduce the taxable amount where the person acquiring the goods obtains a refund of the excise duties paid in the Member State in which the products are released for consumption.

3.14.9.2. Points 17 and 18 therefore seem to fit in with the effort at simplification and clarification which is said to be the basis of the current proposal.

3.14.10. Point 19

3.14.10.1. Article 28f, which modifies Article 17(2), (3) and (4) of the Sixth VAT Directive of 17 May 1977 as regards the right to a deduction, is to be expanded by the addition of a sub-paragraph to Article 17(4); this addition will particularly refer to the period of application of the transitional arrangements (see point 1.1 above). During this period the tax due or paid in one Member State may not be deducted in another Member State; but it may only be refunded under the conditions laid down in Article 17(3) and (4) of the amended Sixth VAT Directive. The new text will guarantee the right to a refund in the case of traders who purchase goods or services in, or import goods into, a Member State in which they are not themselves liable to tax. Supplies of goods transported to another Member State by or on behalf of the person acquiring them are not covered, so as to avoid the risk of tax evasion.

3.14.10.2. The amendments proposed in point 19 are approved, since they guarantee the refund of the tax levied within a Member State on persons not liable for tax.

3.14.11. Point 20

3.14.11.1. In Article 28g of Directive 91/680/EEC, which replaces the text of Article 21 of the Sixth VAT Directive 77/388/EEC relating to persons liable to pay the tax imposed by the Treasury, it is proposed to replace the new Article 21(1)(a), (b), (c) and (d) by texts aimed at making it possible throughout the Community for taxable persons not established in the Member State in which they effect taxable transactions to designate a tax representative or the person for whom the transaction is effected as the person liable for payment of the tax. As a result, such traders' obligations regarding declarations will be eased without affecting the fundamental principles behind such taxation. However, an individual may not be designated for this purpose.

3.14.11.2. As regards suppliers of services for which the transitional arrangements alter the place of taxation, the customer may not be the person liable for

payment of the tax unless he is a taxable person or a non-taxable legal person identified for VAT purposes.

3.14.11.3. According to the explanatory memorandum this is also a simplification measure.

3.14.12. Point 21

3.14.12.1. Following on from points 9, 10 and 11, the purpose of the proposed amendments to Article 28h of Directive 91/680/EEC, which replaces the text of Article 22 of the Sixth VAT Directive concerning the obligations of domestic tax-payers, is to ensure that any trader covered by the general scheme for taxation of intra-Community acquisitions of goods is given a VAT identification number and is thus able to receive from another Member State goods exempt from the tax due in that other Member State.

3.14.13. Point 22

3.14.13.1. Article 28i on the Special scheme for small undertakings, which amplifies Article 24(3) of the Sixth VAT Directive, is replaced by a new text which seeks to insert in the present text, after 'Article 28c(A)', the phrase 'as well as supplies of goods and services effected by a taxable person who is not established in the territory of the country'.

3.14.13.2. This means that, in addition to deliveries of new vehicles under the conditions set out in Article 28c(A), deliveries of goods and supplies of services effected by the taxable persons concerned are also excluded from the tax exemption provided for in Article 24(2) of the Sixth VAT Directive.

3.14.13.3. It must be said that the explanation of point 22 contained in the explanatory memorandum is difficult to understand at first reading.

3.14.14. Point 23

3.14.14.1. The present proposal plans to add an Article 28n to the text of Directive 91/680/EEC of 16 December 1991; the text will concern the changeover from the provisions in force until 31 December 1992 to those which will enter into force on 1 January 1993.

3.14.14.2. It is foreseeable, even certain, that VAT will not have been charged on some imports of goods effected prior to 1 January 1993. In the case of goods placed under a transit or temporary importation regime, the chargeable event for the tax on importation would have been deferred until the goods were removed from that regime, in accordance with the provisions in force before 1 January 1993, which concern both goods imported from third countries and intra-Community trade. To avoid any hiatus as regards taxation, these transactions remain subject to the provisions in force prior to 1 January 1993 until the goods are removed from these 'suspensive' regimes. To avoid any risk of non-taxation, removal is treated as an importation of goods under the provisions in force from 1 January 1993. According to Article 7(2) of Directive 91/680/EEC, importation is deemed to have taken place in the Member State of removal from the regime to which the goods were subject before 1 January 1993.

3.14.14.3. Transactions effected in similar conditions receive equivalent treatment. Imports from other Member States, by definition effected before 1 January 1993, are taxed in the same way, whether or not the chargeable event giving rise to the tax has been deferred. Imports from third countries effected before 1 January 1993 but not yet taxed at that date will be subject to the same provisions as if they had been effected after 31 December 1992. These goods will be deemed not to have entered the Community until the regime under which they were placed in 1992—or earlier—comes to an end. Article 7(3) of Directive 91/680/EEC of 16 December 1991 can therefore be applied to them.

3.14.14.4. Article 28n(2), according to Article 7(1) of Directive 91/680/EEC, treats the end of certain internal Community transit operations in the same way as an importation of goods. However, this treatment only applies to such operations initiated for the purposes of a supply of taxable goods effected prior to 1 January 1993. Any supply of goods effected after 31 December 1992 by a taxable person will automatically be covered by the transitional arrangements. Moreover, such treatment will only apply to supplies of goods which have qualified, or are eligible, for an exemption in the Member State from which the transport leaves by virtue of the fact that the goods are being exported to another Member State. In this way cases of double taxation are avoided.

3.14.14.5. By way of derogation, special measures will be taken so that the tax is not charged in cases where goods are re-exported outside the Community or redispatched to the Member State from which they were temporarily exported.

3.14.14.6. The same measures will apply to means of transport acquired or imported in accordance with the general conditions of taxation in force on the domestic market of a Member State, or put into service for

the first time before 1 January 1988, or for which the tax due would be insignificant. These special provisions will considerably simplify the tax arrangements for means of transport placed under a national VAT-exempt temporary importation regime before 1 January 1993 and still subject to this regime on 31 December 1992.

3.14.14.7. It is not clear whether some of the provisions referred to in connection with the transitional measures of the new Article 28n(1), such as Article 14(1)(b) or (c) or Article 16(1)(A), are to be used with the wording which they originally had in the sixth VAT Directive or with the modified wording of Directive 91/680/EEC, which deleted Article 14(1)(b) and replaced Article 16(1)(A) with another text.

In paragraph 2 of the new article, Article 7(1) doubtless derives from Directive 91/680/EEC. In point (a), Article 14(1)(e) as contained in the Sixth VAT Directive has been replaced by another text by Directive 91/680/EEC. In point (b), the question of Article 16(1)(A) has already been raised in the preceding paragraph. In paragraph 3, Article 7(2) must derive from 91/680/EEC, while in paragraph 4, the original text of Article 10(3) referred to there comes from the Sixth VAT Directive 77/388/EEC, a text which, however, has been replaced by Directive 91/680/EEC of 16 December 1991.

3.14.14.8. It is regrettable that the, to put it mildly, vague wording of the different paragraphs of the new Article 28n as regards its legislative references shows how little consideration has been shown for the reader and the user in a particularly important text which has to regulate the transition from the rules in force up to 31 December 1992 to those in force from 1 January 1993. While the text may be understood by experts and similar initiates, one must pity the traders, especially those in small and medium-sized firms, who have to pick their way through the spaghetti-like stew of rules and regulations to find out what is their exact legislative basis, i.e. the Sixth VAT Directive 77/388/EEC or Directive 91/680/EEC of 16 December 1991.

4. Conclusion

4.1. Article 2 states that the Member States shall bring into force such laws, regulations and administrative provisions as are necessary to conform with the proposed directive on 1 January 1993.

4.2. On this matter reference should be made to paragraph 1.4 and to the comments contained in paragraphs 3.2 and 3.3 of this Opinion. The proposal has been published far too late, having been gestating for more than ten months; the provisions themselves, which are supposed to simplify and clarify things, are in fact highly complex; very little time has been left for enacting the directive at either EC or national level; the traders concerned have received far too little information or guidance; it is feared that there will be the most severe difficulties, if not total legislative disorder, when the time comes for the transition from the current regime, which expires on 31 December 1992, and the new regime due to come into force on 1 January 1993.

4.3. The question arises of whether the Commission should not seek without delay to find a solution for avoiding a situation which might become chaotic. At any event, it seems impossible that all the measures in the present proposal can be brought into force on 1 January 1993. Perhaps for the first few weeks of 1993 it should be envisaged to apply only the most necessary provisions. It is up to the Commission, whose work got bogged down after Directive 91/680/EEC was adopted on 16 December 1991, and who cannot off-load its responsibility on to the Member States, to submit a practical interim proposal as a matter of urgency.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on:

— **the proposal for a Council Regulation (EEC) on the statistical classification of products by activity in the European Economic Community,**

— **the proposal for a Council Regulation (EEC) on the statistical units for the observation and analysis of the production system in the European Community** [1], **and**

— **the proposal for a Council Decision on the framework programme for priority actions in the field of statistical information 1993-1997** [2]

(93/C 19/20)

On 13 August, 29 September and 1 October 1992 respectively the Council decided in accordance with Articles 100a and 198 of the EEC Treaty to consult the Economic and Social Committee on the abovementioned proposals.

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 17 November 1992. The Rapporteur was Mr Giacomelli.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee unanimously adopted the following Opinion.

Proposal for a Council Regulation (EEC) on the statistical classification of products by activity in the European Economic Community

1. Introduction

1.1. Operators on the single market require reliable, comparable and up-to-date statistical information.

1.2. The proposed harmonization of classifications of products by activity (CPA) is a milestone on the path towards a European statistical system.

1.3. The CPA will play a central role in the comparison of statistical data on production and foreign trade at Community and world level. Further classifications both at EC and world level are in future to be derived from it.

1.4. The Economic and Social Committee accordingly welcomes the draft Regulation.

2. Qualifying comments

2.1. The Committee notes that a uniform classification of products is not provided for, and that products can continue to be classified in accordance with the various national criteria. There are probably reasons for allowing the Member States such latitude, but the Committee takes the view that a uniform classification would have done more to promote the harmonization of statistical classification in the Community.

2.2. Such an approach could result in all twelve Member States using the same product descriptions but twelve completely different alphanumeric codes. This would make the CPA harder to use in practice, as each user would need to use eleven conversion tables.

2.3. It would therefore be preferable for the Regulation to lay down uniform codes for all the Member States.

2.4. The draft Regulation provides for the Commission to be assisted only by an advisory committee. In line with its previous Opinions on statistical matters, the Committee takes the view that the management committee procedure is more appropriate. In this connection the Committee endorses the recommendation of the SPC NACE working group (page 3 of the explanatory memorandum). Moreover, a management committee procedure would take substantially greater account of the principle of subsidiarity.

3. Conclusions

3.1. A final appraisal of the proposal is not yet possible, as so far only the text of the Regulation is

[1] OJ No C 267, 16. 10. 1992, p. 3.
[2] OJ No C 277, 26. 10. 1992, p. 54.

available and not the important annexes containing the classification of products referred to in Article 2(2).

3.2. The Committee takes the view that the Regulation can be adopted, or at least enter into force, only after these annexes have been made available for detailed scrutiny by the economic sectors concerned.

3.3. This can hardly be done by the end of 1992. It is accordingly not acceptable for the Regulation to enter into force on 1 January 1993. Postponing entry into force until 1 January 1994 would allow sufficient time for any rewording of the annexes which may prove necessary.

Proposal for a Council Regulation (EEC) on the statistical units for the observation and analysis of the production system in the European Community [1]

1. **Introduction**

1.1. The Regulation on statistical units is intended to form a basis for the progressive harmonization of the definitions used in Member States' official statistics.

1.2. The Economic and Social Committee endorses the objective of the draft Regulation.

1.3. The proposed definitions constitute an addition to Council Regulation (EEC) No 3037/90 [2]. They meet the requirements of the classification of economic activities in the European Communities (NACE Rev. 1) provided for therein and of the European System of Integrated Economic Accounts (ESA).

2. **General comments**

2.1. Community-wide uniform definitions of economic units are an essential precondition for integrated statistical information, not only for it to be reliable, up-to-date, flexible and sufficiently detailed, but also and more importantly because only in this way can national statistics and the corresponding Community statistics be made comparable. Moreover, because these definitions are in line with international classifications, including the International Standard Industrial Classification (ISIC, Rev. 3) and the United Nations System of National Accounts (SNA), they contribute to the international comparability of economic statistics.

2.2. In accordance with the principle of subsidiarity, the creation of common statistical norms that permit the production of harmonized data can be undertaken efficiently only at Community level.

It is accordingly necessary for the proposed alignments in the definitions of statistical units at Community level to be laid down in a Council Regulation, above all because the intention here is to systematize the variety of real manifestations of economic units and make them operational.

2.3. The proposed Regulation is therefore an important basis for Community-wide harmonized economic statistics and will make it possible to compare the national statistics produced by the Member States.

3. **Specific comments**

3.1. The official statistics of the Member States generally refer to three statistical units: the enterprise, the works and the production unit.

3.2. The Annex to the draft Regulation contains definitions of these statistical units, which are referred to as 'enterprise', 'local unit' and 'kind-of-activity unit'. The definition of an 'enterprise' is closer to reality than the definition which is widely used at national level.

3.3. The need to harmonize the definitions of these three statistical units is indisputable. The need to harmonize the definitions of 'institutional unit' and 'unit of homogeneous production'—statistical units required for the purposes of national accounts—is also recognized.

3.4. The purpose served by the other statistical units—'enterprise group', 'local kind-of-activity unit' and 'local unit of homogeneous production'—must be questioned, above all with a view to restricting European statistics to what is strictly necessary.

3.5. This applies in particular where a greater number of statistical units leads to an increased reporting burden on enterprises. As the meanings of 'local kind-of-activity unit' and 'local unit of homogeneous production' are not made clear in the Annex to the draft Regulation and the 'enterprise group' statistical unit is of questionable economic usefulness, the Committee urges that these three statistical units be dropped.

3.6. Article 7 of the draft Regulation provides for an advisory committee to be consulted on the implementing provisions and the adaptation thereof. An advisory committee does not have a great enough

[1] OJ No C 267, 16. 10. 1992, p. 3.
[2] OJ No L 293, 24. 10. 1990.

say to ensure that sufficient attention is paid to the various national interests. Here too, as in similar cases, it would be desirable for the proposed committee to take the form of a management committee, variant (b).

3.7. This appears all the more appropriate as Article 6 provides for the measures for implementing the Regulation, including those for adaptation to economic and technical developments concerning in particular the statistical units of the production system, the criteria used and the definitions specified in the annex, to be determined by the Commission after consulting the committee and in accordance with the procedure set out in Article 7.

3.8. There is a lamentable lack of information about the implementing measures, which usually accompany a legal instrument (the proposed Regulation would be directly applicable under the national law of the Member States).

4. Conclusion

4.1. The draft Regulation provides for the newly defined statistical units to apply from 1 January 1993. This would appear to leave insufficient time for the Regulation to be transposed in the Member States, particularly in view of the fact that the proposed definitions clearly exceed the units hitherto collected. It would therefore be desirable to postpone entry into force until 1 January 1994. The transitional periods referred to in Article 4 should be adapted accordingly.

Proposal for a Council Decision on the framework programme for priority actions in the field of statistical information 1993-1997 [1]

1. Introduction

1.1. The Commission has presented the framework programme for priority actions in the field of statistical information 1993-1997 to the Council for decision. This action substantially raises the significance of statistics in the EC.

1.2. The Committee endorses the basic objective of the framework programme, i.e. to implement a system of standards, methods and organized structures which is capable of producing comparable, reliable and relevant statistics throughout the Community.

1.3. The promise given in the chapter on statistics on enterprises (Financial Statement, point 9.2, paragraph 4) to reduce the burden on enterprises is welcomed and will be critically monitored when the individual statistical modules are transposed.

2. General comments

2.1. The Commission's statistical programme is explicitly justified by reference to the Maastricht Treaty. The aim of the programme is to provide Commission and Government officials with the information they require in order to draw up, monitor and evaluate Community policy in connection with the provisions of the Treaty on European Union.

3. Critical comments

3.1. The EC's statistical programme is ambitious. With a total of 35 sectoral programmes and well over 200 individual modules, covering virtually all reporting areas for official statistics in the EC, it is to be feared that the statistical programme reflects the expected data requirements of Commission statisticians following ratification of the Maastricht Treaty.

3.2. However, a list of data requirements does not constitute a statistical programme. A major criticism of the framework programme as presented is therefore the relative imbalance between political and methodological priorities. A uniform statistical system in Europe cannot be created in the space of five years. Financial constraints, the burden on those providing the data, and the need to ensure the quality of the statistics produced make it necessary to proceed cautiously. The following procedure is suggested:

3.2.1. The capacities of national statistical systems within the EC still vary enormously. At the beginning of a European statistical system absolute priority should accordingly be given to aligning the capacities of national statistical systems on the highest possible level.

3.2.2. The first step should be to standardize statistical bases, norms and nomenclatures.

3.2.3. The reporting of additional statistics—which are certainly necessary and useful in some areas—should not be ventured on until later.

3.3. The conception of the statistical programme and the draft Regulations so far produced give the impression that the Commission is endeavouring to set up a highly complex and differentiated statistical system

[1] OJ No C 277, 26. 10. 1992, p. 54.

extending to all areas of official statistics before the implementation of economic and monetary union.

3.4. It transpires from the description of the programme that the statistics are intended first and foremost to be an instrument for the realization of European Union. The information needs of the general public and the significance of statistical information for economic agents are clearly ranked far behind the politically motivated information requirements. There is reason to fear that this order of priorities will have a substantial influence on the practical formulation of the more than 200 statistical modules contained in the programme. This would be particularly ominous if the harmonization of norms, methods and structures in European statistics were solely to reflect political requirements, whereas businesses are anxious to provide data of use to them and to know that the cost is not out of proportion to the benefits to them.

3.5. The clear connection between the statistical programme and the Maastricht Treaty raises the question of the kind of economic policy being pursued. It is clear that a free enterprise economic policy mainly requires macroeconomic data.

3.6. The competitiveness of the European economy is fundamentally a matter for businesses. The economic policy contribution of the Commission should be restricted to establishing a business environment reflecting the objectives being pursued. Statistics must provide enterprises with the logistical aid needed to develop their business plans, particularly with the approach of the large single market.

4. Conclusions

4.1. EC statistics must not be transformed into an instrument for an interventionist sectoral policy. Its purpose must remain that of improving the availability of data and the transparency of economic and social conditions. Above all, statistics are a diagnostic tool, and facilitate decision-making by economic agents within the context of a free-enterprise economic policy.

4.2. For these reasons too, the construction of a coherent, adaptable and efficient statistical system based on the same fundamental principles in all Community countries should be limited to essential data. Data available outside enterprises could also be used wherever possible. The quantity of statistics deemed necessary and the method of compiling them should not be prescribed by political decisions alone, but should be worked out jointly with the suppliers and users of statistical data. This is in the end not only more efficient, but also increases the degree of acceptance by those concerned.

4.3. The declarations from the special Summit meeting in Birmingham, promising greater transparency and comprehensive consultations of those affected by the common economic policy, are cause for optimism.

Supplementary remarks

The Committee considered it useful to supplement its examination of the Community's statistical programme with brief comments on Community coordination in drawing up business registers for statistical purposes.

1. The Commission states that all the Member States have business registers, but that these differ widely in coverage, scope and quality of information.

2. Business registers help official statistics departments to plan and implement the collection of statistics. They can also help reduce the administrative burden on those obliged to report data, or share the burden evenly. Thus there is a real need for a business register compiled in accordance with uniform criteria in the twelve EC Member States.

3. The Economic and Social Committee therefore basically endorses the development of harmonized registers for the compilation of comparable statistics in the Community.

4. However, the Commission proposal for a Council Regulation on Community coordination in drawing up business registers for statistical purposes goes far beyond what is necessary.

5. A business register should contain only those data which are necessary for the identification and classification of statistical units. These include an identification number, the name and address of legal units, enterprises and local units, the relevant NACE code, and the size category of the enterprise. The number of employees should be sufficient for this purpose. Any other information, including data on turnover and net assets, are unnecessary in a business register and must be justified in each individual case. Their inclusion may also indicate that the harmonized business register is being used to pursue other objectives. This is also suggested by the proposed references to other registers. Overall, one cannot help thinking—and this emerges also from the explanations regarding the impact of the proposal on enterprises—that the Commission is using

this proposal and the burden it imposes as a way of acquiring additional statistical data on small- and medium-sized enterprises, instead of using the statistics and data which are already available.

6. The argument that linking various registers and databases together will reduce the administrative burden on enterprises may well hold true, but, in view of the amount of information demanded over and above what is strictly necessary, the burden on the bodies which compile the registers (including chambers of industry and commerce) will be that much greater.

7. Moreover, as with all institutionalized database link-ups, there is the objection that the reporting enterprise no longer knows to what extent and in what combination the data which it has communicated will be used by third parties. Not least to prevent abuse, business registers should contain only strictly essential data.

8. The proposal contains no information on the deadline by which the harmonized business registers in the Member States must be compiled.

Here too the timetable should not be too short. As several EC countries still have no comprehensive registers, generous transitional periods are recommended.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on:

— **the Conclusions and Recommendations of the Ruding Committee of Independent Experts on Company Taxation, and**

— **the Commission Communication to the Council and to Parliament subsequent to the Conclusions of the Ruding Committee indicating Guidelines on Company Taxation Linked to the Further Development of the Internal Market**

(93/C 19/21)

On 29 April 1992, the Economic and Social Committee decided, in accordance with the fourth paragraph of Article 20 of the Rules of Procedure, to draw up an Opinion on the Conclusions and Recommendations of the Committee of Independent Experts on Company Taxation (Ruding Committee).

On 15 July 1992, the Commission decided to ask the Economic and Social Committee to draw up an Opinion on the Commission Communication to the Council and to Parliament subsequent to the Conclusions of the Ruding Committee indicating Guidelines on Company Taxation Linked to the Further Development of the Internal Market.

The Section for Economic, Financial and Monetary Questions, which was responsible for the preparatory work, adopted its Opinion on 17 November 1992. The Rapporteur was Mr R. Pelletier.

At its 301st Plenary Session (meeting of 24 November 1992) the Economic and Social Committee adopted the following Opinion by 78 votes to 54, with 5 abstentions.

I. ASSESSMENT OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE RUDING COMMITTEE

THE OVERALL APPROACH ADOPTED BY THE RUDING COMMITTEE

The aim of eliminating the double taxation of cross-border income flows is a continuation of the Commission's earlier work (see the 'parent-subsidiary' directive and the draft directives on extra-territorial losses and intra-group payments of interest and royalties).

So, this is a traditional approach which has already been approved by the ESC.

The aim of harmonising company taxation systems, rates and bases of assessment is more ambitious: it would eventually lead to the harmonisation of Member States' tax systems and of the relative weight given to different types of taxation: VAT, corporation tax and income tax.

It is based on the conclusion (which the Ruding Committee has taken over) that tax differences between Member States distort competition, since they have a impact on multinational companies' decisions to set up in a foreign country.

The Economic and Social Committee has reservations about the second objective, since it believes that the taxation of companies must continue to be decided autonomously by the Member States; it would point out here that the Commission's previous attempt to harmonise the taxation of companies did not meet with the agreement of the Member States; this has led the Commission to push the principle of subsidiarity.

DETAILED EXAMINATION OF THE RUDING COMMITTEE'S PROPOSALS

1. Elimination of the double taxation of cross-border income flows

1.1. *Elimination of the double taxation of dividends distributed by a company in one Member State to a resident of another Member State*

Extension of the 'parent-subsidiary' directive

The recommendations of the Ruding Committee reflect the concerns already expressed by the ESC.

It is important to point out that, in general, while it is justified to require evidence of a parent-subsidiary relationship when the aim is to eliminate the double taxation of a group's profits, there is no need for one when the aim is to exempt dividend flows from withholding tax: eventually such flows must be exempted from withholding tax when they occur between companies situated in different Member States, since no distinction should be made between dividend payments and interest and royalty payments.

Introduction, to combat tax avoidance, of a 30 % withholding tax on dividends other than those referred to in the 'parent-subsidiary' directive and paid to shareholders not identified as EC residents

However praiseworthy the motives behind such a step may be, the introduction of a 30 % withholding tax on dividends other than those referred to in the 'parent-subsidiary' Directive and paid to shareholders not identified as EC residents would have the following serious inconveniences:

— it could discourage non-EC investors from committing funds to the EC and lead to EC residents investing outside the EC: it was precisely this double risk that made the Member States reject the proposal for a directive seeking to introduce a Community withholding tax on interest;

— it would be contrary to the principle of tax neutrality to encourage financing through loans at the expense of financing from capital, which determines the durability of any investment-led recovery within national economies.

1.2. *Elimination of withholding taxes levied by source countries on interest and royalty payments between enterprises in different Member States*

This proposal by the Ruding Committee reflects the concerns already expressed by the ESC.

1.3. *Elimination of double taxation arising from transfer pricing disputes*

The Economic and Social Committee approves the guidelines suggested by the Ruding Committee. It also thinks it would be advisable to deal with the problems posed by thin capitalization and the allocation of headquarters costs under the heading of transfer pricing, and not under that of corporation taxes. It considers that it would be desirable here to extend the reflection exercise to all the issues raised by the invoicing of centrally-provided group services (including expenditure on research).

The ESC would also draw attention to the importance of implementing harmonised methods for calculating the interest rates applicable to cross-border financing within groups.

More generally, it feels there would be justification for laying down the principles for calculating transfer prices and the rules for allocating central group expenditure in a directive; one should not merely limit oneself to examining shareholder costs.

1.4. *Offsetting by parents of losses incurred by branches or subsidiaries located in different Member States*

The Ruding Committee's proposals reflect the concerns already expressed by the ESC.

The Economic and Social Committee would point out that the reference to accounts losses could provide an alternative solution to establishing specific tax losses in accordance with the assessment rules applicable in the countries of registration of permanent establishments and subsidiaries. As such an accountancy approach would be consistent by its very nature, it would facilitate adoption of the Ruding Committee's second recommendation, i.e. full offsetting of losses within groups of enterprises.

1.5. *Tax treaties*

The Economic and Social Committee supports the Ruding Committee's proposals.

2. **Corporation taxes**

2.1. *Removal of discrimination resulting from corporation tax systems and harmonisation of these systems*

Apart from its reservations about the principle of harmonising corporation tax systems, the Economic and Social Committee feels that the Ruding Committee's proposals would lead to the country of residence of shareholders benefiting from extra-territorial dividends having to bear unilaterally the cost of reimbursing or imputing corporation tax paid in the source country of the dividend: in its view such a proposal is unrealistic and inadvisable.

2.2. *Approximation of the statutory rates and bases of corporation taxes—Statutory rates of corporation tax*

The Economic and Social Committee observes that Member States compete with each other not only on tax rates but also on tax bases: it therefore feels it is unrealistic to fix a minimum and a maximum tax rate unless the rules on the base of corporation tax are totally harmonised. For this reason a long-term, step-by-step approximation of corporation tax should be started with a convergence of the principles governing tax bases, not least so that the necessary transparency of competing enterprises may be increased.

The proposal to include local taxes in corporation tax systems also seems impossible to put into practice, since such a step would jeopardise the political structure of a number of Member States.

2.3. *Tax incentives*

The Economic and Social Committee thinks it highly important that transparency be evident in the implementation of any tax incentives which have a subsidising effect.

2.4. *Definition of taxable profits*

The ESC considers that reference to the accounts should be used to avoid increasing the tax base in relation to the accounts, since such an increase more often than not amounts to a disguised increase in corporation tax rates out of keeping with the principle of transparency.

2.5. *Depreciation*

Even if complete harmonisation of depreciation methods is not possible at the moment, the first steps should still be taken towards an approximation of them. The Economic and Social Committee is against any harmonisation of depreciation rates at the present time.

On the other hand, it seems reasonable to calculate depreciation by incorporating the consequences of obsolete investments.

2.6. *Intangibles; leasing; stock valuation; provision; business expenses; occupational (extra-legal) pensions*

Any move to harmonise the rules for deducting the various charges under these headings would clash with the principle of subsidiarity raised by the Economic and Social Committee.

It does not think that such harmonisation can be decided at Community level.

2.7. *Deductibility of pension contributions paid in respect of expatriate workers or to foreign pension funds*

The Economic and Social Committee approves the Ruding Committee's recommendation, which in effect concerns freedom of movement for workers and also raises the issue of double taxation.

2.8. *Headquarters costs; thin capitalization; tax losses*

These issues are part of the specific problem of how to eliminate double taxation arising from cross-border income flows.

The comments on them can be found under that heading.

2.9. *Capital gains*

The Ruding Committee's proposals are at odds with the principle of subsidiarity raised by the Economic and Social Committee.

Apart from this objection on a point of principle, the Economic and Social Committee considers it reasonable that only gains in real terms (i.e. after netting out inflation) should be taxed.

In addition, it appears that exemption on condition that gains are reinvested in fixed assets is not the only possible formula; gains may be reinvested in order to increase working capital.

It is therefore also justified to apply a reduced tax rate to gains realised from the transfer of fixed assets, provided that they are not distributed: by following a line of reasoning based on updating, such a technique may achieve the same effect of reducing the tax burden as would be achieved by the deferred payment of capital gains tax in a system allowing exemption on reinvested gains; moreover, it does not introduce any distortion between the taxable figure and the fiscal figure, and is therefore simpler to apply.

2.10. *Harmonisation of the dates at which taxes of common application are payable*

It seems difficult to reconcile this proposal with the Member States' sovereignty on budget matters; it is important to point out here that the financial year does not always correspond to the calendar year, which may affect the date on which taxes are due.

II. ASSESSMENT OF THE COMMISSION COMMUNICATION

The Commission approves the recommendations of the Ruding Committee concerning elimination of the double taxation of cross-border income flows, pointing out that these recommendations are fully consistent with the measures that it has itself proposed or which have already been adopted by the Council.

It is not so keen about the alignment of national laws on corporation tax because they are so complex and because it is wary about the economic basis of the measures proposed by the Ruding Committee and their

effects on the tax receipts and power of decision of the Member States.

The Economic and Social Committee shares the Commission's general line, feeling that the principle of subsidiarity continues to be an obstacle to the adoption of proposals to align national laws on corporation tax.

Having examined the Commission Communication in detail, it wishes to make the following comments:

1. **Elimination of the double taxation of cross-border income flows**

1.1. *Extension of the 'parent-subsidiary' and 'mergers' directives; studying, in collaboration with the Member States, of new procedures to simplify and speed up the machinery for applying agreements on withholding taxes*

The Economic and Social Committee approves the Commission's recommendations and repeats its previous call that the participation threshold for triggering application of the 'parent-subsidiary' directive should be lowered from 25 % to 10 %.

More generally, it considers that, while it is justified to require evidence of a parent-subsidiary relationship when the aim is to eliminate the double taxation of a group's profits, there is no need for one when the aim is to exempt dividend flows from withholding tax: eventually such flows must be exempted from withholding tax when they occur between companies situated in different Member States.

It would also stress the importance of implementing new procedures to simplify and speed up the machinery for applying agreements on withholding taxes.

1.2. *General rules applicable to transfer pricing*

The Economic and Social Committee approves the approach adopted by the Commission, which consists of dealing with the problems posed by thin capitalization and the allocation of headquarters costs under the heading of transfer pricing, and not under that of corporation taxes.

It also considers that the Commission's reflection exercise must be extended, in collaboration with the Member States, to all the issues raised by the invoicing of centrally-provided group services (including expenditure on research).

It would also draw attention to the importance of implementing harmonised methods for calculating the interest rates applicable to cross-border financing within groups.

While it is in favour of a procedure for consultations between Member States prior to any correction of transfer prices and with a view to strengthening the Arbitration Convention, it would also like a directive to spell out the principles to be followed when calculating transfer prices and the rules for allocating central group expenditure.

1.3. *Bilateral agreements designed to prevent double taxation*

The Economic and Social Committee approves the Commission's guidelines.

1.4. *Taxation of groups of companies*

The Economic and Social Committee recalls the Opinion it issued on the proposal for a directive on the offsetting by parents of losses incurred by branches or subsidiaries located in different Member States: the reference to accounts losses could provide an alternative solution to establishing specific tax losses in accordance with the assessment rules applicable in the countries of registration of permanent establishments and subsidiaries.

As such an accountancy approach would be consistent by its very nature, it would facilitate adoption of the Ruding Committee's second recommendation, i.e. full offsetting of losses within groups of enterprises.

1.5. *Neutrality of treatment as between foreign-source and domestic-source dividends*

The Economic and Social Committee would point out that the Ruding Committee included under the heading on corporation tax its recommendation for ending the existing discrimination over the taxing of dividends originating from profits gained in another Member State.

It considers that this recommendation, together with the abandonment of the reciprocity rule suggested by the Commission, would lead to the country of residence of shareholders benefiting from extra-territorial dividends having to bear unilaterally the cost of reimbursing or imputing corporation tax paid in the source country of the dividend: in its view, it is highly improbable that such a proposal would obtain the unanimous agreement of the Member States.

2. **Measures relating to the rates, the base and the systems of corporation tax**

2.1. *Corporation tax rates*

The Economic and Social Committee agrees with the Commission that it is inadvisable to set a maximum corporation tax rate and that the proposed reform of local taxes is politically motivated and unrealistic.

It also has reservations about entering into discussions with the Member States on the principle and the level of a minimum corporation tax rate.

As the Commission points out, Member States compete with each other not only on tax rates but also on tax bases: it therefore seems difficult in practice to separate the discussion of a minimum rate from a discussion on the harmonisation of the rules determining the tax base.

2.2. *Tax base for company profits*

The Economic and Social Committee would point out that the Commission's previous attempt to harmonise the taxation of companies did not meet with the agreement of the Member States; this has led the Commission to push the principle of subsidiarity.

It therefore has reservations about having a detailed discussion on the desirability and possibilities of harmonising the tax base, since the utility of such talks seems debatable.

Similarly, the ESC feels that any specific action to define taxable profits in terms of a minimum base which would be the profit for accounting purposes seems to clash with the principle of subsidiarity.

However, it approves of the detailed analysis which the Commission wishes to undertake of the deductibility of contributions paid to foreign pension funds by or for expatriate workers, since the issue which has been raised cannot be considered as being merely associated with the harmonisation of tax bases.

It also supports the Ruding Committee's proposal concerning small and medium-sized enterprises and seeking to allow unincorporated enterprises the option of being taxed as if they were a company: it approves of the steps taken by the Commission on this point. Finally, as regards tax incentives, it shares the Commission's preference for instruments of the tax credit type rather than for those acting through the tax base.

2.3. *Link between the tax treatment of shareholders and corporation tax*

The Economic and Social Committee supports the Commission's suggestion that a debate on the choice of a common corporation-tax system should be initiated at Community level.

On the other hand, however praiseworthy the motives behind such a step may be, the introduction of a 30 % withholding tax on dividends other than those referred to in the 'parent-subsidiary' directive and paid to shareholders not identified as EC residents would have the following serious inconveniences:

— it could discourage non-EC investors from committing funds to the EC and lead to EC residents investing outside the EC: it was precisely this double risk that made the Member States reject the proposal for a directive seeking to introduce a Community withholding tax on interest;

— as the Commission itself hints, it would be contrary to the principle of tax neutrality to encourage financing through loans at the expense of financing from capital, which determines the durability of any investment-led recovery within national economies.

III. FINAL REMARKS

1. The Ruding Committee's brief was very wide-ranging, since it was asked for 'an assessment of the impact of taxation relative to other factors' which might lead to major distortions affecting the functioning of the internal market.

The Ruding Committee was also asked to look into the possibilities of correcting any such distortions 'taking into account the influence that other policies (e.g. economic and monetary union) might have on the extent of the tax-induced distortions'.

2. Through a lack of time or through its own modesty the Ruding Committee has voluntarily limited its investigations to the strictly fiscal aspects of company taxation.

The Economic and Social Committee regrets that the Ruding Committee has thus deprived itself of the findings of an in-depth analysis of the place of company taxation in national economic policies. The Ruding Committee did not seek to go into the role and economic impact of corporate taxation, which is unfortunate.

3. One question worth answering would have been whether it is possible for a Member State which has to

encourage its industry to make up a development gap to have the same corporate taxation as the most advanced EC countries.

4. Should Member States be deprived of taxation as a traditional intervention— or incentive—tool?

The Ruding Committee does not hide its distaste at the use of taxation as a lever. It questions the effectiveness of tax aids as an investment incentive and seems to prefer direct subsidies, sometimes even to the point of contradicting itself, as when it says taxation plays a decisive role in investment location.

But the Ruding Committee's position is understandable when one realises that its members are mostly tax specialists who—quite rightly—are wary of the secret manipulations of tax base rules.

Economists generally have a less restrictive view, but there is unanimity on the basic principle of transparency when granting aid. Aids must be public and known to all.

But one must not forget that monetary union will considerably reduce the Member States' room for manoeuvre in economic policy. Perhaps it is not a good thing to further reduce, or even do away with, the few remaining instruments for acting on the economic cycle and economic growth.

5. The Economic and Social Committee regrets that the Ruding Committee did not take a more overall look at the burden weighing on enterprises, by including, for instance, the question of provisions for retirement: of course, this is a welfare matter but it has a considerable effect on the profits base, since the Ruding Committee considers that tax-exempt provisions may account for 6% of the balance sheet in Italy and Belgium and up to 27% in Germany.

6. The ESC wonders why the Ruding Committee has nothing to say on essential aspects of the very subject which the Commission asked it to study.

As regards its very precise proposals for harmonising the rules on the tax base and corporation tax rates, the Ruding Committee did not think it useful to consider what would be the effect of its proposals on Member States' budget receipts. The excuse given, that there was a lack of reliable statistical information, is unconvincing as tax receipts are, without doubt, among the most reliable statistics available to researchers and economists.

What would be the effect of a big cut in company taxation on other taxes, particularly personal income taxes?

Did the Ruding Committee not have the possibility of setting up an econometric model to show the effects of its proposals for transferring the tax burden?

7. The Economic and Social Committee considers that the Commission should try and remedy this oversight, for the problems of tax harmonisation cannot be tackled without considering the budgetary impact of the measures being proposed and the effects of transferring charges from one tax category to another.

8. The ESC is concerned about the lack of information on the effect that establishing a uniform level of company taxation—as a medium-term objective—will have on investment location. It is not unreasonable to suppose that, far from ensuring neutrality in the operation of the economic union, such a degree of harmonisation would increase the concentration of industrial activity around existing centres at the expense of outlying or less-developed areas in the EC. This seems all the more probable since the Ruding Committee itself concludes from simulations that tax differences affect investment location.

The ESC feels that additional analysis should concentrate on knowing whether corporate tax unification would not lead to a sort of 'reverse distortion', benefiting the strong and hurting the weak.

9. The Ruding Committee has not avoided certain contradictions which the Commission itself was obliged to mention. Thus, after clearly stating its support for the principle of subsidiarity and arguing in favour of harmonisation limited to 'the minimum necessary to remove discrimination and major distortions', the Ruding Committee finally proposes the adoption of a common system of company taxation entailing both a unification of tax bases and a considerable narrowing of the range of rates.

The discrepancy between the Ruding Committee's proposals and respect for the principle of subsidiarity is at

its widest when the Committee proposes that local taxes be incorporated into a corporation tax rate 'so that the combined rate of tax falls within the range of 30 to 40 % prescribed by the Committee'.

10. Despite these few criticisms of the Ruding Committee's report the ESC has much esteem for the quality of a study which will remain a reference document for researchers.

11. As the comments on the Commission's recommendations to the Council show, the ESC is pleased that the Commission has generally taken up positions which are less categorical and more measured than those in the Ruding Committee's report.

12. Taxation undoubtedly poses the most difficult problems for the achievement of economic and monetary union. The rule of unanimity in Council decisions acts as a curb to the development of Community legislation—albeit essential in future—but also prevents an undue proliferation of rules, which all Member States are not yet prepared to accept.

The ESC would like to see the healthy principles of subsidiarity safeguarded in this area and the necessary prudence shown in everything to do with the burden borne, at the end of the day, by all taxpayers.

It feels it should point out that the unification of corporation tax systems and the harmonisation of rates and tax bases should not be considered in isolation from the effect of such measures on Member States' relations with non-EC countries; the bilateral context of the renegotiation of agreements concluded with countries would not necessarily be adapted to the existence of a harmonised corporation tax.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the amendment to the proposal for a Council Directive on the charging of infrastructure costs to heavy goods vehicles

(93/C 19/22)

On 11 November 1992 the Council decided, in accordance with Article 198 of the EEC Treaty, to ask the Economic and Social Committee for a Opinion on the amendment to the proposal for a Council Directive on the charging of infrastructure costs to heavy goods vehicles.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee appointed Mr Moreland as Rapporteur-General and adopted the following Opinion by a large majority, with 5 votes against and 2 abstentions.

1. Introduction

1.1. In 1986 the Commission put forward a document [COM(86) 750 final], concerning the elimination of distortions in competition in goods transport: survey of vehicle taxes, fuel taxes and road tolls. The Economic and Social Committee [1] agreed in principle to the objectives of the Commission with regard to the future taxation of goods vehicles such as:

— elimination of distortions in competition within and among modes of transport,

— charging of the overall economic infrastructure costs to the user,

— sufficient tax yield for Member States,

— free flow of goods and passengers within the Community,

[1] OJ No C 232, 2. 7. 1987, p. 87.

— acceptable transit agreements with non-Member States.

In its report, unanimously passed, the Committee emphasized inter alia that:

— distortions in competition must be eliminated by 1992,

— in this context an agreement on tax structures must be reached, covering at least the marginal costs,

— the levy of taxes according to the principle of territoriality would be a reasonable solution, the long-termed option but saw practical problems;

— road tolls except for bridges, ferries and tunnels should be abolished at the end of contractual agreements,

— the chosen solution should not entail a complicated tax practice and avoid any administrative overburden.

1.2. Next, the Commission presented in 1987 a first proposal for a Directive on the charging of transport infrastructure costs to heavy vehicles [COM(87) 716 final]. The Committee [1] gave its Opinion to this and stated in its report, carried by a majority of votes:

— that in the long run a regulation must make allowances for the economic and social costs of each mode of transport,

— that the introduction of the principle of territoriality could lead to the harmonization of competing conditions as well as to the charging of infrastructure costs to the actual user and that the same principle should obviously be in force for road transport, railways and inland shipping,

— that the Committee supported the principle of territoriality although it recognized practical problems in following fully this principle.

1.3. In 1991 the Commission modified its proposal [2]. The Committee believed [3] a simpler and step-by-step solution based 'largely on ensuring that related infrastructure costs are covered' would be a reasonable solution to meet the 1992 deadline. It repeated its support for territoriality as a 'fair basis for taxation' as an 'ultimate objective'. It expressed concern that small goods vehicles should not be unduly penalized vis-à-vis larger vehicles and also that the proposal could act as an incentive to produce more toll roads.

1.4. The Commission has now modified its proposal again [COM(92) 405 final] in the light, inter alia, of discussions in the Council and the Court of Justice's judgement of 19 May in Case C-195/90 (Commission versus Germany). While maintaining the principle of territoriality the minimum rates of vehicle tax rates are now set at a lower level (Portugal and Greece will have only 50 % of this rate). These rates will be reviewed every two years. The structure of the vehicle tax previously proposed by the Commission, has now been made optional and a far-reaching harmonization is to be considered at a later stage.

1.4.1. The amended proposal also contains a new provision authorizing each Member State to levy a motorway user charge on goods vehicles of 12 tonnes or more from Member States.

2. General comments

2.1. The Committee has repeatedly emphasized the importance of agreement on this subject in the context of the removals of distortions of competition in the internal market. It is concerned that the Council has so far failed to come to an agreement and it appears that the deadline of 1 January 1993 will not be achieved (1 January 1994 is now proposed).

2.2. However the Committee notes that it views that a simpler, step-by-step approach has been accepted (if not acknowledged) by the Commission and believes this should make Council agreement easier. It agrees with the Commission that this requires a political solution and believes, as a matter of urgency, the 'Presidency' should take a lead.

2.3. However, the provisions laid down in the proposal are only a step toward the tax harmonization needed to remove distortions of competition. Authorizing individual Member States to take their own initiatives on the taxation of Community vehicles would not speed up the introduction of a Community system for the charging of infrastructure costs.

2.4. The Committee would repeat its view expressed in its 1991 Opinion on toll roads.

2.5. Given the background of the Court Case C-195/90, and the possible implications of discrimination (e.g. as regards tolls and user charges) careful legal examination should be made to ensure that the terms of Article 75 are fully met and that no conflict arises with Article 76 of the EEC Treaty which bans Member States from imposing new tax measures on non-resident carriers pending implementation of the Common Transport Policy under Article 75(1)(c) of the EEC Treaty.

[1] OJ No C 208, 8. 8. 1988, p. 29.
[2] OJ No C 75, 20. 3. 1991, p. 1.
[3] OJ No C 159, 17. 6. 1991, p. 18.

3. **Specific comments**

3.1. *New 7th Preamble*

3.1.1. The Committee welcomes the agreement of the Commission with the previously expressed view of the Committee that excise duty on fuels is 'particularly well suited to implementing the principle of territoriality'.

3.2. *New 8th Preamble*

3.2.1. The Committee welcomes the recognition of environmental costs.

3.3. *New 13th Preamble*

3.3.1. The Committee welcomes this modification but suggests that the ideal of a common model for infrastructure costs and external costs is a distance in time away.

3.4. *Old 8th Preamble*

3.4.1. The Committee assumes that this article is deleted because the Council will not readily accept the negotiating role of the Commission. Nevertheless the Committee does not believe the impact of vehicle taxation in third countries can be ignored.

3.5. *Article 2*

3.5.1. Motorway—presumably all three criteria have to be met?

Tolls: for administrative simplicity tolls need not be precisely based on distance travelled.

3.5.2. User charges: it would have been helpful if the Commission had indicated examples of what it had in mind.

3.6. *Article 2.2*

3.6.1. This Article should not be used to give benefits to public sector owned vehicles against competitors in the private sectors. It should not be discriminatory against local services contracted out to the private sector.

3.7. *Article 3.2*

3.7.1. The Committee welcomes the Commission's acceptance of its amendment.

3.8. *Article 4*

3.8.1. The Committee is concerned at the scope of this Article, e.g. it is unclear as to the position in the directive of the giving use of 'road pricing' and also charges relating to 'pollution' (as stated in its previous Opinion).

3.8.2. The Committee welcomes the Commission's acceptance of its proposal to separate tolls etc. from parking fees.

3.9. *Article 5.1b*

3.9.1. As stated in both its previous Opinions, the Committee still thinks this is too imprecise.

3.10. *New Article 5.1d*

3.10.1. This seems too prescriptive.

3.11. *New Article 5.2*

3.11.1. If tolls are to be acceptable then surely this is too limited Member States should be allowed the scope to introduce tolls on bridges or, for example, in the context of road pricing schemes.

3.12. *New Article 8.3*

3.12.1. Two years may be too short. In any event the report should also be sent to the European Parliament and the Economic and Social Committee who should be consulted on any proposal to alter the rates.

3.13. *New Article 9*

3.13.1. The Committee welcomes this revised Article. The report and proposals should be sent to the European Parliament and the Economic and Social Committee.

3.14. *New Article 11 (Old Article 10)*

3.14.1. This superficially appears attractive in the context of subsidiarity. However the Committee maintains the view that it expressed in 1991.

3.14.2. Logically to meet the requirements of territoriality there should be no discrimination between the practices of Member States and either all Member States should give rebates or none.

4. **Further consideration**

4.1. The Committee finds it alarming that the Commission states in its 'Impact Assessment Form' that 'the application of this directive is likely to lead to an increase of the transport costs especially for the peripheral countries of the Community' and 'Increased transport costs especially for the weaker and smaller firms of peripheral countries is likely to adversely affect their competitiveness'.

4.2. This is hardly in the interest of 'cohesion' and serious attention should be given by the Commission and Council to measures to help the peripheral regions offset these effects.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on EC Relations with the Countries of Central and Eastern Europe— Bulgaria and Romania

(93/C 19/23)

On 30 June 1992 the Economic and Social Committee, acting under the third paragraph of Article 20 of the Rules of Procedure, decided to draw up a Opinion on EC Relations with the Countries of Central and Eastern Europe.

The Section for External Relations, Trade and Development Policy, which was asked to prepare the Committee's work on the subject, adopted its Opinion on 5 November 1992. The Rapporteur was Mr Petersen.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee adopted the following Opinion by a large majority with two votes against.

Summary

The blueprint for Association Agreements presented by the EC Commission at the beginning of 1990 embraces not only the step-by-step creation of a free trade area, the free movement of workers, the liberalization of services, the approximation of legislation and the intensification of economic, social and financial cooperation, but also the institutionalization of political dialogue and cultural cooperation (point 1.8).

These preferential agreements, termed Europe Agreements because of the inclusion of political dialogue, may in principle be concluded with all countries of Eastern Europe for an indefinite period of time. In the case of the Commonwealth of Independent States (CIS) and Georgia, however, a separate approach needs to be adopted on the basis of the European Community's blueprint for partnership and cooperation agreements. The crucial precondition for the conclusion of Europe Agreements is that (a) real progress is being made in the political, social and economic transformations now under way there, and that (b) the point of no return for democracy and the market economy has already been reached. The Committee has appealed to the EC Commission on several occasions to monitor political and economic reforms in each case before launching into specific association discussions (point 1.9).

In its Opinion on the Europe Agreements concluded with the Visegrad countries (Poland, Hungary and the CSFR) the Economic and Social Committee made an in-depth analysis of the European Community's association blueprint and found it could offer its support.

The Committee is pleased that the EC Commission has now also begun association negotiations with Bulgaria and Romania. The aim of the negotiations is to conclude Europe Agreements which are largely similar in content to those signed on 16 December 1991 with Poland, Hungary and the CSFR. The Committee's critical comments and recommendations concerning the agreements with the Visegrad triangle remain equally valid as far as one can make out for the current Draft Agreements with Bulgaria and Romania (points 2.1 and 2.2).

The Committee emphatically approves the commitment of the contracting parties to strengthening political and economic freedoms, which constitute the very basis of Association. It also strongly supports their declared intention to act in unison in order to (a) carry forward the construction of a new political and economic order based on the rule of law, respect for human rights and the rights of minorities, (b) guarantee a multi-party system with free, democratic and secret elections and (c) speed up the pace of economic liberalization in accordance with the principles of a market economy (point 2.3).

The Committee has repeatedly emphasized that, given the social and cultural conditions prevailing in Europe today, an 'economic area' which is not at the same time a 'social area' is unthinkable. The Committee therefore once more calls upon the Council to refer in the preambles of the Europe Agreements to the social dimension of European unification and to mention the Community Charter of the Fundamental Social Rights of Workers adopted, albeit not unanimously, by the Heads of State or of Government of the Community in December 1989. The Committee further notes with concern that although advocacy of the principle of 'social justice' remains a 'Fundamental Element of Association' and is underlined as such in the Europe Agreements with Poland, Hungary and the CSFR, the concept has been dropped in the preambles of the new Agreements (point 2.4).

With regard to the EC membership option incorporated in the preambles of the new Europe Agreements, it will have to be assumed that any future enlargement of the EEC will take place under vastly different circumstances—achievement of the Single Market, Economic and Monetary Union, Foreign and Security Policy, the Acquis Communautaire. These will all place considerable demands on potential members—demands which cannot be fulfilled by all applicant countries within a short period of time. The EC Commission should therefore as soon as possible test and flesh out new forms and options for a coherent EC membership blueprint (point 2.5).

In its Opinion on the Europe Agreements with the Visegrad states, the Committee has already called on the contracting parties to involve economic and social interest groups in the political dialogue. It therefore proposes the incorporation of provisions in the new Europe Agreements whereby the Association Council guarantees that economic and social interest groups will be involved in the political dialogue during the first stage of the transitional period. From the second stage this dialogue would take place within the framework of a Consultative Association Committee representing economic and social interest groups. Such cooperation would form part of a wide-ranging dialogue between the economic and social interest groups of the European Community and those of countries in Central and Eastern Europe (points 2.7 and 2.8).

The Committee approves the inclusion of a provision in the Agreements whereby respect for democratic principles and human rights, as well as adherence to free market principles, are regarded as vital elements of Association. At the same time the Committee also recommends that the safeguarding of basic social rights and the rights of minorities should be regarded as a 'vital element of Association'. Appropriate measures could be taken if these obligations are not met (point 2.9).

With regard to the free movement of goods, the Committee welcomes the asymmetrical approach, which will help to prop up the difficult restructuring processes in Bulgaria and Romania. In view of the dramatic deterioration in these countries' overall economic performances, the Community should make a serious attempt to shorten the six-year period before it removes all its customs duties on industrial goods, and should try to complete the inevitable liberalization of the markets by an earlier date. Article 110 of the Rome Treaty—which should also be borne in mind from time to time—expressly obliges the Community to press for a liberal trade policy in the common interest. The Committee thinks that this obligation is too frequently neglected (point 2.12).

As far as sensitive sectors—textiles, ECSC products and agriculture—are concerned, the Committee would refer once more to the relevant provisions of the General Agreement on Tariffs and Trade (GATT) and the material conditions needed for the creation of free trade areas. The main condition is that customs duties and other trade restrictions on bilateral trade are eliminated 'on substantially all the trade'. Because of the need to comply with GATT, it will not be possible in the long run to exclude any area—not even agriculture—from market liberalization (point 2.15).

In order not to perturb the Community's agricultural markets any further through excessive imports of particularly sensitive products, the Committee would reiterate its proposal that much of the agricultural surplus from Bulgaria and Romania should be exported to other neighbouring Eastern European countries for hard currency. At the same time the agricultural and industrial capacity of Eastern European countries should also be channelled into finding industrial and

energy outlets for agricultural products (point 2.27 to 2.29).

The Committee considers the proposed consultation procedure in established cases of dumping to be particularly important. It assumes that the GATT codes will be fully observed. It is acceptable on political grounds to treat the associated counties from the very outset as countries with functioning market economies. Objectively, it will not be at all easy for the Commission in future years to make a fair comparison—within the meaning of the EC anti-dumping Regulation—between the export price and 'normal value' (point 2.32).

Free trade arrangements can only be enjoyed if there is concrete proof of the origin of products. The Committee has frequently supported the call of the Eastern European contracting partners for multilateral cumulation. The Commission did not accept this call, with the result that the extremely restrictive rules of origin laid down in the Interim Agreements with the Visegrad states have proved to be a major obstacle to increased trade. Since only a uniform system for the determination of origin can serve to further the division of labour within Europe, the Committee calls for the EC-European Free Trade Association (EFTA) rules of origin currently in force, or the future rules of European Economic Area (EEA) with an alternative percentage criterion, to be inserted into all the Europe Agreements with the countries of Central and Eastern Europe ('pan-European' cumulation) (points 2.33 to 2.35).

The Committee welcomes the agreements on the free movement of workers, but would still like to see agreements covering workers from Eastern partner states who are employed illegally in the Community. The Committee likewise regrets once more that the Commission has not even referred in a protocol to the Community's limited scope for action on freedom of movement in the medium term. In the Committee's view it is high time to ponder in depth the complex and many-layered issue of freedom of movement for workers between the European Community and associated partner states and work out durable solutions, within the framework of a coherent immigration policy, which do not arouse great expectations today only to dash them by tomorrow at the latest (points 2.37 to 2.39).

The Committee warmly welcomes the Arrangement whereby all state aid granted in Bulgaria and Romania is to be scrutinized in terms of the relevant provisions of the EEC Treaty. In addition, EC aid monitoring instruments should be incorporated in the Agreements in order to effectively protect competition against distortions caused by state aid, be it granted anywhere in the Community or in Bulgaria and Romania (points 2.25 and 2.47).

Alignment of the laws of Bulgaria and Romania on those of the Community is an important condition for the economic and social integration of both countries into the European Community. The Committee regrets, however, that no priorities have been set. What firms on both sides need more than anything else is a reliable climate for action and more scope for reorganizing themselves in order to strengthen their competitiveness, find a flexible response to the growing pressures from international firms based outside the Community, and create and permanently safeguard jobs (points 2.48 to 2.50).

With regard to economic cooperation the Committee feels that it would have been much more sensible to have concentrated initially on just one or two key areas where urgent action is needed. The Committee primarily has in mind policy areas such as infrastructure, education and training, and nuclear power (point 2.53).

In the field of financial cooperation, the contracting parties will inevitably need to closely coordinate available funds. This means that it will be necessary for all spending by, and funding of, Bulgaria and Romania to be continuously monitored and coordinated within the Association Committee; both sides will also have to monitor the situation to ensure that the funds are used efficiently. The Association Council will also have to be regularly informed of the findings. (point 2.62).

1. Introduction

1.1. Twenty years ago the Heads of State and of Government of the EC Member States affirmed their intention of pursuing a common trade policy vis-à-vis the Eastern Bloc countries from 1 January 1973 onwards and Member States voiced their determination to promote a policy of cooperation with these countries based on the principle of reciprocity. 1 January 1973 was an important date since from this time onwards individual Member States were not allowed to either negotiate or conclude bilateral trade agreements with the countries of Central and Eastern Europe. When the bilateral trade agreements signed before 1973 ran out at the end of 1974, the European Community proposed to members of the Council for Mutual Economic Aid that bilateral trade agreements be henceforth concluded with the Community as a whole. With the exception of Romania there was no immediate reaction from the Council for Mutual Economic Assistance (CMEA) states. At the beginning of 1976 the CMEA instead submitted a draft framework agreement between the Council for Mutual

Economic Aid and the European Community on the principles of mutual relations. In a countermove the Commission presented a paper which clearly reflected the Community's twin-track approach, i.e. a policy which encouraged the conclusion of bilateral trade agreements between the Community and individual members of the Council for Mutual Economic Aid to improve the framework for the expansion of trade in visibles and services. The idea was also to forge working links between the two bodies in order to discuss general matters.

1.2. In adopting this approach the European Community could be certain of the support of the smaller Central and Eastern European countries which, through bilateral agreements with the Community, were thus given the opportunity to escape at least partly from the dominant political and economic influence of the Soviet Union. However, Romania was the only country which was able to seize this opportunity. At the end of 1980 the Community signed two agreements with Romania which not only facilitated the access of a large number of Romanian products to the Common Market, but also provided for the establishment of a Joint Committee with the task of continuously monitoring trade developments and the smooth functioning of existing agreements.

1.3. Many attempts have been made to explain why Romania was able to go it alone in relations with the European Community. However, what cannot be denied is that in foreign policy areas Romania did not go beyond the limits set by the Soviet Union. It is equally true to say that for historical and political reasons Romania was once more playing its own distinct role in the community of Eastern European states. By mid-1958 Soviet troops had withdrawn whilst the firmly established regime of communist terror was turning Romania into one of the most reliable fraternal countries of the Soviet Union. This was also one of the main reasons why Romania was able to introduce some temporary liberalization under the cloak of socialism, whereas progress in this area was unknown to other members of the CMEA (H. Vastag, G. Mandics and M. Engelmann: *Temesvar, Symbol of Freedom*, Vienna/Munich 1992). The many and varied contacts with Western governments were also a factor, as was the liberalization which tended to manifest itself in the Romanian economy. The decision taken by the Government in Bucharest not to take part in the crushing of the Prague spring was an aspect of foreign policy which should not be underestimated. This temporary liberalization—which was presumably also a political manoeuvre for the benefit of the West—was immediately rewarded by the Western world. In 1972 Romania was the sole CMEA state allowed to become a member of the International Monetary Fund (IMF) and the World Bank. Furthermore, at the beginning of 1974, Romania was included among the countries granted unilateral preferential treatment by the European Economic Community in its scheme to help developing countries.

1.4. Since the trade agreement of 1980 was relatively limited, the Community recommended in the mid 1980s that its trade policy section be expanded, e.g. by improving the access of Romanian agricultural products to Community markets and by intensifying industrial and scientific cooperation. Negotiations began in 1987 but had to be suspended in April 1989 when widespread human rights abuses in Romania hit the headlines and Securitate was turning into a prop of the political absolutism of the dictator Ceaucescu. Even the obligations stemming from the trade agreement of 1980 were no longer respected. Finally, the Community decided on 20 December 1989, under the influence of the bloody massacre in Temesvar, to temporarily freeze the trade agreement. Only two days later the collapse of the Ceaucescu dictatorship opened the way to freedom for the Romanian people. Diplomatic relations with the Community were resumed at the end of March 1990 and the Council charged the EC Commission with the task of negotiating a trade and cooperation agreement. This was signed on 22 October 1990. Further human rights abuses nevertheless delayed the approval of the European Parliament so that the agreement only came into force on 1 May 1991.

1.5. The signing of the Joint Declaration on the establishment of official relations between the European Community and the Council for Mutual Economic Aid was a milestone in the long-overdue normalization of relations between the EEC and other CMEA countries, including Bulgaria. In this Declaration both negotiating partners committed themselves to developing cooperation in areas of mutual interest and within their respective terms of reference. This finally put an end to the CMEA's repeated call for an EC/CMEA umbrella. Under the terms of the Joint Declaration each CMEA country decides individually on the establishment of diplomatic relations and trade talks with the Community. At its meeting in Rhodes (December 1988) the European Council said that it welcomed the readiness of the European members of the CMEA to develop relations with the European Community and reaffirmed its willingness to further economic relations and cooperation with them, taking into account each country's specific situation, in order to be able to use the opportunities in a mutually beneficial way.

1.6. Only a few weeks after the signing of the Joint Declaration, the European Community established diplomatic relations with six of the European Member States of the CMEA. On 24 September 1990 a ten-year agreement was signed with Bulgaria on trade as well as on commercial and economic cooperation. This agreement came into force on 1 November 1990. In

addition, the Community extended its Generalized System of Preferences to include Bulgaria from 1 January 1991, and quotas on imports from Bulgaria were either abolished or suspended.

1.7. The Committee is convinced that the establishment of diplomatic relations and the conclusion of trade and cooperation agreements are the cornerstone of the process of political and economic integration, strengthening inter-state dialogue and deepening European political cooperation. With these agreements the Community possesses a useful instrument which not only permits many different types of short-term aid to Eastern European countries but also contributes, in the medium term, to the economic underpinning of the process of transformation and renewal now under way in these countries.

1.8. There is no doubt that first generation agreements have also been important milestones in paving the way for the next stage in the process of pan-European rapprochement, namely the raising of cooperation with Central and Eastern European countries to an even higher qualitative level. In reality, what is at stake is the transition from cooperation to association. The blueprint for Association Agreements presented by the EC Commission at the beginning of 1990 embraces not only the step-by-step creation of a free trade area, the free movement of workers, the liberalization of services, the approximation of legislation and the intensification of economic, social and financial cooperation, but also the institutionalization of political dialogue and cultural cooperation.

1.9. These preferential agreements, termed Europe Agreements because of the inclusion of political dialogue, may in principle be concluded with all countries of Eastern Europe for an indefinite period of time. In the case of the Commonwealth of Independent States (CIS) and Georgia, however, a separate approach needs to be adopted on the basis of the European Community's blueprint for partnership and cooperation agreements. The crucial precondition for the conclusion of Europe Agreements with these countries, however, is that (a) real progress is being made in the political, social and economic transformations now under way there, and that (b) the point of no return for democracy and the market economy has already been reached. The Committee has appealed to the EC Commission on several occasions to monitor political and economic reforms in each case before launching into specific association discussions. The Committee likewise assumes that its Eastern European negotiating partners will have stable, democratic and legitimate governments.

2. Europe Agreements with Bulgaria and Romania

2.1. In its Opinion on the Europe Agreements with the Visegrad countries, the Economic and Social Committee makes an in-depth analysis of the European Community's association blueprint and welcomes it on the grounds that it is likely, by virtue of the principles set out therein, to secure and further the establishment of wider political, economic and social relations between the European Community and the EC's neighbours in Eastern Europe [1]. Only an active association policy can gradually remove the economic and social imbalances between the Community and its negotiating partners. This task has become all the more urgent as the moral energy of people who first paved the way for democracy in those Eastern European countries now undergoing reform is likely—given the conditions experienced in every-day life in the post-communist era—to be rapidly eroded by (a) half-hearted reforms, (b) the collapse of existing foreign trade relations, (c) economic contraction, (d) high inflation, and (e) growing unemployment. [K.A. Koerber in: *After socialism. How are the new democracies in Europe to proceed in the future?* (Minutes of the 93rd Bergedorf Discussion Group on questions relating to a free industrial society). Berlin, 13/14 July 1991.] The European Community is urged to offer these countries realistic prospects and also convince them that they cannot afford to stand on the sidelines.

2.2. The Committee is pleased that in May of this year the EC Commission began association negotiations with Bulgaria and Romania. The aim of the negotiations is to conclude Europe Agreements which are largely similar in content to those signed on 16 December 1991 with Poland, Hungary and the CSFR. The Committee's critical comments and recommendations concerning the agreements with the Visegrad triangle remain equally valid as far as one can make out for the Draft Agreements with Bulgaria and Romania. Since, pending the entry into force of the Agreements, provisions on trade and trade-related matters will be implemented first under Interim Agreements, the Committee will also comment on the experiences with such Interim Agreements at the appropriate time.

Preamble

2.3. The Committee emphatically approves the willingness of the contracting parties to contribute to the strengthening of political and economic freedoms, which constitute the very basis of Association. It strongly supports their declared intention to act in unison in order to (a) carry forward the construction of a new political and economic order based on the rule of law, respect for human rights and the rights of minorities, (b) guarantee a multi-party system with free, democratic (and secret) elections, and (c) speed up the pace of economic liberalization in accordance with the principles of a market economy. Particularly worth noticing is the explicit undertaking of the contracting parties to abide by their CSCE commitments, more especially in

[1] OJ No C 339, 31. 12. 1991, p. 12.

respect of the full implementation of the principles and provisions contained in the Final Act of the Helsinki Conference, the concluding documents of subsequent meetings in Vienna and Madrid, the Charter of Paris for a new Europe, and the European Energy Charter.

2.4. The Committee has repeatedly emphasized that, given the social and cultural conditions prevailing in Europe today, an 'economic area' which is not at the same time a 'social area' is unthinkable. The Committee therefore once more calls upon the Council to refer in the preambles of the Europe Agreements to the social dimension of European unification and to mention the Community Charter of the Fundamental Social Rights of Workers adopted, albeit not unanimously, by the Heads of State or of Government of the Community in December 1989. What is the point—the Committee wonders—of having a detailed protocol on social policy in the Draft Treaty on European Union, including a statement that eleven Member States 'wish to continue along the path laid down in the 1989 Social Charter', if the preambles of Europe Agreements do not even mention the Community Charter of the Fundamental Social Rights of Workers? The Committee further notes with concern that although advocacy of the principle of 'social justice' remains a 'fundamental element of association' and is underlined as such in the Europe Agreements with Poland, Hungary and the CSFR, the concept has been dropped in the preambles of the new Agreements. Has the European Community not come recently increasingly under the influence of advisors who have long been disturbed by the fact that 'Western economic systems have had to make concessions to social needs—the establishment of a welfare state, help for the poor, the provision of public services, cooperation with trade unions, attempts to distribute incomes fairly, and the economic, financial and social responsibility of the state for the functioning of the economic system as a whole' [J.K. Galbraith, *Ein Rezept namens Kapitalismus* (A recipe by the name of capitalism). In *Die Zeit,* No 44 of 26 October 1990] via the creation of an appropriate framework and a sound general climate? A clarification by the Council on this point would seem to be called for, not least because the European Council emphasized at the end of its meeting in June 1991 'the need to strengthen the Community social dimension in the context of political union and economic and monetary union'.

2.5. At some future time Bulgaria and Romania will seek, like the Visegrad countries, to join the European Community. The Committee supports the contracting parties of Eastern Europe in their desire to incorporate in the preambles of their Europe Agreements the EC membership option. At the same time the Committee shares the view of the Council and EC Commission that the dynamic and evolutive structures of Europe Agreements should be used to achieve closer partnership with these countries and so systematically prepare the way for entry. At the same time it must be assumed that any future enlargement of the EEC will, as the EC Commission makes clear in its report on Europe and the Problems of Enlargement, take place under vastly different circumstances—achievement of the Single Market, Economic and Monetary Union, Foreign and Security Policy, the Acquis Communautaire. These will all place considerable demands on potential members—demands which cannot be fulfilled by all applicant countries within a short period of time. The EC Commission should therefore draw up as rapidly as possible a coherent EC membership blueprint, testing and fleshing out new forms and options which are (a) based on the existing architecture of European organizations and (b) create a European political area. [Report of the EC Commission 'Europe and the Problems of Enlargement' (Appended to the conclusions of the European Council of 26/27 June 1992)].

Political dialogue

2.6. The Europe Agreements form the institutional framework for a political dialogue which is intended to accompany and consolidate the rapprochement between the European Community and the associated partners. As a platform for an exchange of views on urgent bilateral and multilateral problems it establishes new relations based on solidarity and creates new forms of cooperation between the contracting parties. At ministerial level the political dialogue takes place in the Association Council, at parliamentary level in the Parliamentary Association Committee.

2.7. The ESC has always seen political dialogue as pointing the way towards pan-European integration. In the present phase of wider European and multilateral cooperation and increasingly complex political and economic processes, reciprocal information and consultation play a decisive role for both political decision-makers and social groups. In its Opinion on the Europe Agreements with Poland, Hungary and the CSFR, the Committee called on the contracting parties to involve the economic and social interest groups in the political dialogue. These groups are a vital element in a pluralistic society and pillars of Europe's social and political life. The more the social groups speak to each other, the more fruitful will be their contribution to the political dialogue.

2.8. The Committee therefore proposes that two further Articles be inserted in the Europe Agreements under Title I ('Political Dialogue'), reading as follows:

' Article ...

The Association Council shall guarantee that economic and social interest groups will be involved in the political dialogue during the first stage of the transitional period. From the second stage this dialogue will take place within the framework of a Consultative Association Committee representing economic and social interest groups.

Article ...

Protocol No. 1 concerns the cooperation of the economic and social interest groups.' (Protocol No 1 concerning the cooperation of the economic and social interest groups. The contracting parties are agreed that this dialogue shall form part of a more wide-reaching dialogue embracing the economic and social interest groups of the European Community and those of the Central and Eastern European countries.)

General principles

2.9. The treaties now include the provision that respect for democratic principles and human rights, as enshrined in the Helsinki Final Acts and the Charter of Paris for a New Europe, as well as adherence to free market principles, are vital elements of Association. In consequence, appropriate measures could be taken if these obligations are not met. The Committee regrets, however, that there is no longer any possibility of resorting to Article 60 of the Vienna Agreement on Treaty Law, as originally provided for. The Committee urges at the same time that the protection of basic social rights be regarded as an 'element of association'. The same holds good for the rights of minorities: in the view of the Committee these are inalienable rights and likewise constitute a vital element of Association. Finally, it should not be forgotten that minorities are human beings and not expendable by-products of the vicissitudes of history (F. Elbe in: *Zwischen Integration und nationer Eigenständigkeit: wie findet Europa zusammen?* Minutes of the 93rd Bergedorfer Discussion Group on questions relating to a free industrial society. Tallium, 30/31 May 1992). The Committee furthermore assumes that this new provision—the result of recent experience with Yugoslavia—will also apply to future Europe Agreements.

2.10. The Committee sees problems in that part of the draft Agreement according to which the Association Council will meet in the course of the twelve months before expiry of the first stage to discuss—against the background of the experience acquired since the entry into force of the Agreement—the transition to the second stage and any amendments to current implementing provisions. The intention is unreservedly welcomed, but the passage is worded too generally and could act as a block on decisions regarding transfrontier cooperation between firms. Necessary investment decisions might then be deferred until the overall economic climate had settled down.

Free movement of goods

2.11. The aim in the field of trade policy is to phase in a free-trade area over a period of no more than ten years. As was already the case with the Visegrad states, the European Community will introduce free trade before Bulgaria and Romania do. The Community is to abolish customs duties and quota restrictions on industrial goods within six years. Special rules are to apply once again for textiles, European Coal and Steel Community (ECSC) products and agricultural products. Bulgaria and Romania will probably need to use the whole of the ten-year transitional period to liberalize trade at their end. However, if the overall economic situation and developments in particular sectors allow, customs duties affecting trade with the European Community will be lowered before the agreed date.

2.12. The Committee welcomes this asymmetrical approach, which will help to prop up the difficult restructuring processes in Bulgaria and Romania. In view of the dramatic deterioration in these countries' overall economic performances, the Community should make a serious attempt to shorten the six-year period before it removes all its customs duties on imported industrial goods, and should try to speed up the inevitable liberalization of the markets. Article 110 of the Rome Treaty—which should also be borne in mind from time to time—expressly obliges the Community to press for a liberal trade policy in the common interest. The Committee thinks that this obligation is too frequently neglected. Whenever this happens, the necessary restructuring fails to materialize and the Community loses political credibility.

2.13. Bulgaria and Romania will be able to introduce temporary derogations in the form of higher customs duties for fledgling industries and sectors in the throes of restructuring or facing other difficulties, e.g. serious social problems. The Committee endorses these derogations, but trusts that they will not become the rule; the way they are worded leaves them open to interpretation. The Association Council should also make sure that the five-year limit is strictly observed in each individual case and that all derogations will cease to apply by the end of the transitional period at the latest.

2.14. Once again the Committee would urge that the Community's partners in Eastern Europe be obliged to take over the Combined Nomenclature in full by a specific date so that trade can flow smoothly. The customs and foreign trade authorities in Bulgaria and Romania must also be reorganized. The technical assistance which the Community has promised should be provided forthwith. In addition, the Community should take advantage of the vast experience of Community trade associations and firms and ask for their active support.

2.15. Sensitive sectors—textiles, ECSC products and agriculture—are dealt with separately in additional protocols; the content of these protocols was not known with certainty at the time of this Opinion's drafting. It is to be assumed that the provisions are based in part on the provisions contained in the Europe agreements with Poland, Hungary and the CSFR. The Committee would refer once more at this point to the relevant GATT provisions and the material conditions needed for the creation of free trade areas. The main condition is that customs duties and other trade restrictions on bilateral trade are eliminated in both directions 'on substantially all the trade' (GATT Article XXIV 8b). Because of the need to comply with GATT, it will not be possible in the long run to exclude any area—not even agriculture—from market liberalization.

2.16. The Community's customs duties on textile products are to be phased out in the same way as in the other Europe Agreements. This means that there will be complete freedom from customs duties in the seventh year after the preferential agreements come into force. Bulgaria and Romania will abolish their customs duties by the end of the ten-year transitional period in accordance with a timetable which has still to be laid down. A special safeguard clause has been agreed stating that account will be taken of the transitional arrangements still to be negotiated in the GATT Uruguay Round for textiles and clothing.

2.17. The Committee would urge the EC Commission to bear in mind that the Generalized Tariff Preferences already granted to Bulgaria and Romania are to be terminated before the entry into force of the Interim Agreements. The removal of these preferences must not, however, put these countries in a worse position retroactively (as happened with the Visegrad states). The Committee believes that it would be a piece of trading nonsense if Bulgarian and Romanian textile and clothing exports to the Community, for example, were in future subject to the planned phased reduction of customs duties whereas previously they were totally exempt. Such action would clearly impede both countries' exports and would hardly be commensurate with the Community's much vaunted market liberalization policy. Nor would it accord with the Commission's original assurance that the Conclusion of Europe Agreements would under no circumstances lead to a deterioration of the status quo.

2.18. The outward processing of knitted and woven clothing products is to be free from customs duties once the trading agreements come into force. This is to be welcomed. However, the Commission considers that freedom from customs duties is to apply only to outward processing traffic subject to quotas, and this is to be criticized. The outward processing of quota-free clothing products, on the other hand, will be subject to the phasing out of customs duties. There is no convincing reason, the Committee believes, why products subject to quotas should be treated any differently from products not subject to quotas. It would be more correct to extend the freedom from customs duties, as soon as the textile protocols enter into force, to all outwardly processed knitted and woven clothing products.

2.19. The steps to be taken to liberalize ECSC products will be dealt with in a second additional protocol.

2.20. In the steel sector the parties are also to apply a step-by-step approach. The Community will probably abolish customs duties completely within five years. Bulgaria and Romania will require the ten-year transitional period to abolish their customs duties, with the timetables adopted for their phasing-out likely to depend on the sensitivity of ECSC steel products. The quota restrictions on ECSC steel imports and measures of similar effect will be lifted—as in the case of the agreements with Poland, Hungary and the CSFR—when the steel protocols come into force. Judging from what the Commission says in its industrial policy blueprint, 'an open approach requires that the rules of the game be respected by all trading partners since the Community's economy will become more sensitive to such practices in line with its even greater openness.

2.21. In view of our two Eastern European partners' crude steel capacities—15 million tonnes per year in the case of Romania and 5 million tonnes per year in the case of Bulgaria—the Committee endorses the Commission's plan to make it clear during negotiations that both countries' steel exports to the Community must develop smoothly and not upset the Community market. The steel industries in the countries of Eastern Europe have considerable problems selling products because of the collapse of their domestic markets and other markets in Eastern Europe. They will therefore attempt to offset this at all cost by increasing their exports elsewhere and especially to the Community.

2.22. The removal of national import quotas with the entry into force of the Interim Agreements has in the case of Poland and the CSFR already produced serious disturbances on the Community market. In the first half of 1992, for example, the CSFR more than doubled its exports of ECSC rolled steel products to the Federal Republic of Germany compared with the

same period the previous year. In Poland's case there was an approximately 90 % increase. It is the EC steel industry's view that these growth rates can only be achieved by fixing low prices which undercut the market prices by almost 25 % (weighted average). The exports of some steel products to the Community have taken on such proportions that, at the insistence of France, Italy and the Federal Republic of Germany, the Commission has been forced to introduce measures to protect against imports of hot-rolled wide strip, light sheet and wire rod from the CSFR [1]. Further protective measures are being advocated by the EC steel industry in the meantime.

2.23. In order to avoid the recurrence of serious disturbances on the steel market once the agreements are signed with Bulgaria and Romania, the EC steel industry—with the backing of the Spanish Government—has suggested that Community steel imports from both countries be restricted during a transitional period to past levels. The transitional period is defined in this instance as the period during which the Bulgarian and Romanian steel industries continue to receive restructuring aid from the state. Once restructuring has been completed, the steel firms have been privatized and a ban on state aid has been introduced in accordance with ECSC law, the markets should be completely liberalized. So far the European Community has apparently not been willing to take up this proposal. Instead, it is contemplating a 'safeguard clause' which will remain in force as long as Bulgaria's and Romania's iron and steel industries receive restructuring aid from the state. The purpose of this provision is to ensure that Bulgaria and Romania respect the special sensitivity of the Community's steel market. The Committee supports the Commission's proposal because it satisfies the Community's multilateral obligations better than a voluntary restraint clause. However, it is assumed that, in the event of the agreed rules on competition being violated and the markets being seriously disturbed, the Commission will be free to introduce and enforce suitable quota restrictions straightaway.

2.24. In the coal sector Community customs duties are set to fall more rapidly than in the steel sector. The phasing out of these duties is in fact to be completed four years after the agreements' entry into force. Bulgaria and Romania will abolish their duties by the end of the transitional period. Quota restrictions on imports are in principle to be lifted by the Community within one year. There are, however, to be four-year derogations for certain products and regions. Bulgaria and Romania themselves will once again have only lifted their quota restrictions at the end of the ten-year transitional period.

2.25. The Committee considers the joint protocol provisions for ECSC products to be particularly important. The obligations here are similar to those contained in the Treaties with Poland, Hungary and the CSFR. The Committee's main concern is the state aid question. Because it is harmful to trade between the Community and its associated partners, state aid is incompatible with the orderly functioning of the agreements. The Committee calls on the Commission to make full use of available machinery in the Association Council in order to effectively protect competition against distortions caused by state aid, be it granted anywhere in the Community or in Bulgaria and Romania.

2.26. Trade in processed agricultural products which do not come under Annex II to the EEC Treaty will be dealt with in a third additional protocol. Not much was known about these arrangements when this Opinion was drafted, but they will contain provisions on the dismantling of customs duties and charges of equivalent effect, plus provisions about quota restrictions. Concessions based on balance and reciprocity will be granted for trade in agricultural products, and in particular goods coming under Chapters 1 to 24 of the Combined Nomenclature and the customs tariff of the associated countries. However, these concessions will apply only to products in which there has been regular large-scale trade in recent years.

2.27. Bulgaria and Romania have huge potential in the field of agricultural production and this potential will increase considerably once the reforms start to take effect in agriculture, too. Both countries will make a great effort to substantially boost their agricultural exports to the Community, even in the case of those products which come under EC agricultural market regimes. The Committee agrees with the Commission that the Association Council should continually examine the possibilities for further concessions on all goods on the basis of reciprocity. These concessions should depend on the particular sensitivity of products, the Community's Common Agricultural Policy (CAP) provisions, the importance of agriculture for the associated countries and the likely outcome of the GATT Uruguay Round. For many years now the Community has had to contend with structural surpluses in agricultural markets and, despite the step-by-step reform agreed on in May 1992, it is doubtful whether these serious difficulties can be eliminated for the moment. It would therefore be disastrous to exacerbate the situation on the Community's agricultural market by excessive imports of particularly sensitive products. At the time of drawing up this Opinion there are differences of opinion between the contracting parties on import quo-

[1] OJ No L 238, 21. 8. 1992, p. 26.

tas for beef and sheepmeat just as there are apparently major problems in fixing preferential quotas for plums and cherries, wine and tobacco.

2.28. In view of this tense situation, the Committee would reiterate a proposal made in its Opinion on the Europe agreements with Poland, Hungary and the CSFR, namely that much of the agricultural surplus should be exported to other neighbouring Eastern European countries for hard currency. There will be a heavy demand for agricultural imports in these countries—including most certainly the Commonwealth of Independent States (CIS)—for some time yet. The Community and the 'Group of 24' should provide funds specifically for this purpose in their aid programmes for Bulgaria and Romania. This aid, which should also help to support economic reform in both countries, should be granted over a period of several years.

2.29. Just over two years ago the Committee pointed out that the economic and social changes in Central and Eastern European countries would also have a significant impact on the Community's agricultural markets. Hence the Committee's recommendation in its Opinion at the time that the EC Commission should immediately frame proposals which would help to channel Eastern Europe's agricultural and industrial capacity 'into both traditional food production and industrial and energy outlets for agricultural products' ([1]). The Committee believes that the Europe Agreements provide a suitable framework for successfully transforming such proposals into reality in the associated countries.

2.30. Furthermore, the Committee still thinks it would make sense to hold consultations with Bulgaria and Romania in the Association Council on a set-aside and extensification programme that would stabilize agricultural production and improve the rural environment. This programme should also receive financial support from the Community within the limits of the funds available. The set-aside should primarily be for heavily contaminated land which has to be taken out of agricultural production because food could not be grown on it anywhere in any country.

2.31. To help create a free-trade area, the Europe Agreements contain a series of flanking measures which apply to all trade in goods, except as otherwise provided by the General Conditions or Additional Protocols 1-3. These include standstill agreements, consultations in the case of dumping, safeguard clauses, State monopolies, non-discrimination and dispute settlement. Preferential rules of origin are set out in an additional protocol; a further protocol lays down special arrangements for trade between the associated countries and Spain and Portugal. The Committee welcomes the package of measures which will help, above all during the transitional period, to eliminate disturbances to trade in goods between the Community and the two associated countries.

2.32. The Committee considers the proposed consultation procedure in established cases of dumping to be particularly relevant. It assumes that the GATT anti-dumping and anti-subsidy codes will be fully observed. At the same time the associated countries of Eastern Europe should give an assurance at a suitable point in the Agreements that they intend to comply unconditionally with EC subsidy discipline, subject to the agreed derogations. Treating the associated countries from the outset as countries with functioning market economies is—in spite of the lack of clarification—acceptable on political grounds and constitutes a valuable incentive for rapid progress with the economic reform process. Objectively, it will not be at all easy for the Commission in future years to make a fair comparison—within the meaning of the EC anti-dumping Regulation—between the export price and 'normal value'.

2.33. Free trade arrangements can only be enjoyed if there is concrete proof of the origin of products (proof of preference). In its Opinion on the Europe Agreements with Poland, Hungary and the CSFR, the Committee supported their call for multilateral cumulation. The Commission did not accept this call, with the result that the extremely restrictive rules of origin laid down in the Interim Agreements have proved to be a major obstacle to increased trade. This is an enormous qualification of the European Community's concession of allowing the Visegrad countries duty-free access to the markets of the twelve EC Member States for nearly all industrial products from the entry into force of the trade part of the Europe Agreements.

2.34. Although the Protocol on preferential rules of origin appended to the Europe Agreements with Bulgaria and Romania is not yet available, references in related documents suggest that the Commission has in mind the same restrictive origin rules as in the other Europe Agreements. For as long as diagonal cumulation among all countries associated by means of the Europe Agreements cannot be applied to the further processing of goods, processing can take place in no more than two countries without loss of the existing originating status. Such restrictive rules are to be found neither in the EC-

([1]) OJ No C 124, 21. 5. 1990, p. 51.

EFTA free-trade agreement nor in the rules negotiated for the purposes of the EEA Agreement. These new rules of origin—which are expected to apply from 1 January 1993—are in certain respects even more liberal than the EC-EFTA rules of origin currently in force, as set out in Protocol 3 to the free-trade Agreement.

2.35. The Committee finds it extremely difficult to understand the reasoning behind the Commission's position. The Commission must realize that only a uniform system for the determination of origin can serve the division of labour within Europe, into which the associated countries of Eastern Europe are to be integrated. The Committee therefore calls for the EC-EFTA rules of origin currently in force, or better the future EEA rules with an alternative percentage criterion, to be inserted into all the Europe Agreements with the countries of Central and Eastern Europe ('pan-European' cumulation).

Free movement of workers, the right of establishment and freedom to provide services

2.36. In addition to free movement of goods, the basic freedoms pursued by the European unification process are above all freedom of movement for workers, the right of establishment and freedom to provide services. These have paramount economic importance and are of great symbolic value.

2.37. For the contracting partners, free movement of workers concerns primarily the integration of workers legally employed on the territory of the other contracting party and their family members legally resident there. At the same time social security systems for these persons should be co-ordinated. Existing facilities which the EC Member States provide under bilateral agreements should where possible be improved and extended. The Committee warmly welcomes the agreements but would still like to see agreements covering workers from Eastern European countries who are employed illegally in the Community.

2.38. The Committee, which has discussed migration from third countries in a number of Opinions [1], calls for legally resident immigrants in the Community to be given their full place in the 'Citizens' Europe'. Steps should be taken to ensure that Community rights and obligations affecting residence, employment and mobility also apply without restriction to this category. At the same time, the Committee has called upon the EC Member States and the Commission to bring about Community-wide harmonization of legal provisions, instruments and measures necessary for the social integration of immigrants without significant delay. In addition, conditions should at last be laid down under which immigrants from third countries can enjoy freedom of movement within the Community on an equal footing with Community citizens. The Committee believes that this is the only way of removing discrimination, ensuring a properly functioning Single Market and achieving the aim of creating a unified Community labour market.

2.39. In the second stage of the transitional period, if not earlier, the Association Council will try and find further ways and means of improving the 'rights of workers' to move freely across borders, whilst taking into consideration the economic and social conditions prevailing in the associated states just as much as the employment situation in the Community. The Committee again regrets that the Commission has not even referred in a protocol to the Community's limited scope for action on freedom of movement in the medium term. The evidence suggests that the Community labour market will have no significant need of additional labour from third countries for the time being since the Community's rate of unemployment is not likely to fall to any appreciable extent in the next few years; on the other hand, concessions in existing agreements (Turkey) already limit immigration possibilities for job seekers. Finally it should not be forgotten that the provisions which have come in for criticism turn up again in all agreements: they are to be found in the Europe Agreement with Poland, Hungary and the CSFR, are now being inserted into the agreements with Bulgaria and Romania and—for reasons of equal treatment—will also have to be included in future Europe Agreements. In view of the considerable job shedding in Eastern European countries as a result of reform, pressure on the Community labour market will increase sharply in the medium term. Which job-seekers from which partner states will then be given priority by the Community? Even a quota scheme offers no satisfactory solution here. Whoever 'lays down quotas for individual groups or countries which lets in some and turns away others deals with basically equal circumstances in an unequal way. Equal treatment of equal circumstances, however, is the foundation of a constitutional state and its guarantee of the rule of law'. [H. Afheldt, *Europa vor dem Ansturm der Armen* (Europe before the onglaught of the poor), *Süddeutsche Zeitung* No 234 of 10 October 1992.] In the Committee's view it is high time to ponder in depth the complex and many-layered issue of freedom of movement for workers between the European Community and associated partner states and work out durable solutions, within the framework of a coherent immigration policy, which do not arouse great expectations today only to dash them by tomorrow at the latest.

2.40. As regards the right of establishment, the Member States believe that as soon as the Europe Agreements

[1] OJ No C 343, 24. 12. 1984; OJ No C 188, 29. 7. 1985; OJ No C 159, 17. 6. 1991; OJ No C 339, 31. 12. 1991; OJ No C 40, 17. 2. 1992.

come into force, businesses and nationals in the associated states should be subject to the same conditions as the EC's own enterprises and citizens. Bulgaria and Romania will do this right away, except in certain sectors where there will be equal treatment by the end of the ten-year transitional period at the latest. Derogations will be possible in individual industries in Bulgaria and Romania in order to deal with the constraints of structural adjustment or other serious difficulties, including major social problems. However, these measures must terminate two years after the end of the first stage. Protective measures will also be possible in cases where businesses in a given industry or sector of the economy are forced to accept a 'dramatic' loss of their domestic market shares.

2.41. The Committee broadly endorses these Arrangements. The right of establishment will facilitate the transition to a market system and help to create a modern, competitive economy in the associated states. The Committee also appreciates the need for temporary protective measures in exceptional situations. At the same time, 'dramatic' reductions in domestic market shares can hardly justify protectionism. Such a policy will not boost the competitiveness of domestic industries and will only put off the necessary structural adjustments to a possibly more difficult future, when they may cause even more pain. In addition, the Committee still thinks that this passage should be discussed once more with the contracting parties and worded in more concrete terms; in particular the 'relevant' market variables and the notion of market shares should be defined clearly.

2.42. The Committee approves the phased and reciprocal liberalization of services. In view of the increasing worldwide significance of services markets, the importance of liberalization in this area can hardly be overestimated. The Committee is pleased that both contracting parties wish to incorporate the results of the GATT Uruguay Round—which aims to establish a multilateral framework of principles and rules governing service transactions—into the Europe Agreements at the appropriate time.

2.43. Special provisions are planned for cross-frontier transport services: in international maritime traffic the prevailing principle will be unrestricted market access. Rights and duties under the UN Code of Conduct for Liner Conferences will remain unchanged. In air and land transport mutual market access will be regulated in transport agreements worked out between the partner states after the Europe Agreements come into force. At the same time Bulgaria and Romania want to bring their air and land transport legislation, including administrative, technical and other provisions, generally into line with Community rules during the Agreements' transitional phase.

Capital movements, competition and approximation of laws

2.44. As the Committee said in its Opinion on the Europe Agreements with the Visegrad states, the advantages of a liberalized goods and services sector from the standpoint of location and specialization can only be fully exploited if the free movement of capital across frontiers is guaranteed. The free movement of capital will create favourable conditions for monetary cooperation and reinforce stabilization efforts. The Committee supports all agreements which are designed to increase the free movement of capital between the Community and its partners in Eastern Europe. It is pleased that the contracting parties have undertaken to guarantee, from the entry into force of the Agreements, free movement of capital in connection with direct investments, their liquidation and the repatriation of any profits. In addition, the conditions for the gradual application of Community laws on free capital movements will be created during the first five-year period of the Agreements; at the end of this period the Association Council will consider the possibilities of adopting the relevant Community provisions in full.

2.45. The provisions in the new draft Europe Agreements on competition, public procurement and state aid are similar to those to be found in the Europe Agreements already concluded with Poland, Hungary and the CSFR. The new provisions nevertheless include a safeguard clause in the event of balance-of-payments difficulties. The Committee supports in principle these Arrangements. Competition is a central pillar of the Common Market: without competition there can be no guarantee that the advantages of the Single Market will be advantageously exploited; without competition the process of pan-European integration would be seriously flawed. From the very outset Bulgaria and Romania should therefore align their national competition laws as closely as possible on those of the European Community. The Committee also wonders whether the adoption of implementing provisions on competition rules will really require three years after the entry into force of the Agreements.

2.46. We would underline the contracting parties' conviction that the opening up of public procurement on the basis of non-discrimination and reciprocity, particular in a GATT context, is an objective well worth pursuing. The liberalization of public procurement in all areas is a centrepiece of the Single Market programme and has great importance from an industrial

policy point of view. The European economy—as the EC Commission and Committee have pointed out on several occasions—will not move closer together unless the tendency to favour 'national champions' when awarding public contracts is abandoned once and for all.

2.47. The Committee expressly welcomes the Arrangement whereby all state aid granted in Bulgaria and Romania during the first stage of the transitional period is to be scrutinized in terms of Article 92(3)(a) of the EEC Treaty. It would also have been useful if the new Europe Agreements had stipulated the need to review national aid in accordance with Article 93 of the EEC Treaty. The Committee believes that the requirement to produce an annual report on the total volume and distribution of the aid given does not go far enough. As has already been made clear elsewhere, the Association Council should, in the case of Bulgaria and Romania, be in a position where it can effectively bring into play all EC aid monitoring instruments.

2.48. The contracting parties recognize that alignment of the laws of Bulgaria and Romania on those of the Community is an important condition for the economic and social integration of both countries into the European Community. As the Section for Industry pointed out in its Opinion on European industrial policy [1], what firms on both sides need more than anything else is a 'reliable climate for action and more scope for reorganizing themselves in order to strengthen their competitiveness, find a flexible response to the growing pressures from international firms based outside the Community, and create and permanently safeguard jobs'.

2.49. The Committee agrees wholeheartedly with the EC Commission that legislative harmonization is a colossal task involving a great variety of provisions which can only be adjusted gradually. These include customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of the health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport and the environment. Both Bulgaria and Romania have already given an assurance that their legislative provisions will be gradually aligned on those of the Community.

2.50. The Committee regrets once more the failure of the draft Agreements to fix priorities. Although the two-stage plan applies equally to the approximation of legislation, there is no actual indication as to which provisions are to be approximated during the first stage and which will need the full ten-year transitional period before they can be aligned on Community legislation. For example, on ecological and competition grounds, the Committee regards it as essential for Bulgaria and Romania to transpose Community legislation on the environment, competition and subsidies during the first transitional stage. Similarly, legislative and administrative provisions on nuclear technologies should be approximated rapidly and the safety provisions laid down in the Euratom Treaty adopted without delay. Finally, action is imperative in the field of worker protection at the workplace and in connection with certain consumer protection directives (e.g. on product liability). Now the Community has entered into an agreement to provide Bulgaria and Romania with technical assistance in approximating legislation, it should be possible to set priorities and push through much of the legislation during the first stage.

Economic cooperation

2.51. The European Community and its two associated partners wish to strengthen and deepen economic cooperation, putting it on a wide basis. Cooperation should go well beyond the limits laid down by trade and cooperation agreements. It should also promote social development in the associated countries, whilst particular attention should be paid to measures which further cooperation between the countries of Central and Eastern Europe in the interests of harmoniously developing the whole region. The aim of joint activities is finally to support economic development in Bulgaria and Romania and make it easier for these two countries to become an integral part of the international division of labour.

2.52. The draft Europe Agreements with Bulgaria and Romania, like those concluded with the Visegrad states, mention a large number of different areas where both parties intend to intensify cooperation and accelerate development: industrial cooperation, the promotion and protection of investment, industrial standards and conformity assessment, cooperation in science and technology, vocational training, agriculture and the agro-industrial sector, energy and nuclear safety, the environment, transport, telecommunications, banking and insurance, monetary policy, money laundering, regional development, social cooperation, tourism, small and medium-sized enterprises, customs, statistics, drugs and public administration. All areas of cooperation are further divided into concrete fields of action.

2.53. The sheer variety of the areas of cooperation is impressive and deserves to be endorsed. Nevertheless, the Committee harbours serious doubts (as already in the case of the Visegrad states) as to whether common projects can be executed in all these areas within a

[1] OJ No C 40, 17. 2. 1992, p. 31.

reasonable period of time. Neither the manpower nor the financial resources of Community institutions would seem to be sufficient to ensure satisfactory coverage of the whole range of activities. Nor should it be forgotten that there are now five Eastern European partner states with which wide-ranging cooperation has been agreed. The Committee feels that it would have been much more sensible to have concentrated initially on just one or two key areas where urgent action is needed. The Committee is particularly interested in 'high-cost' priorities with a cross-border dimension where the Community and its associated partners, or also actual firms of EC Member States, need to act as locomotives. Here the Committee principally has in mind policy areas such as infrastructure, education and training, and nuclear energy.

2.54. In the field of basic public infrastructure, the establishment and development of an infrastructure network geared to actual needs is an important prerequisite of successful structural reorganization. This will require an investment policy capable of meeting higher quality requirements and the demands of a competitive, market-oriented economy. Such an approach implies that infrastructure investment in Bulgaria and Romania today should be seen and evaluated in a European-wide context.

2.55. The second priority for joint action by the contracting parties should be education and training since workers' training will play a key role in the economic reform and renewal process. The principal shortcoming is the lack of appropriate knowledge and experience regarding the operation of market-oriented systems and the use of modern production, information and communication techniques. There are also shortcomings of a non-technical nature since autonomy, initiative and creativity were not required in a centrally-planned economy.

2.56. The third major objective is to increase nuclear power-plant safety. In particular, the first generation of Soviet-designed pressurized water reactors (VVER 440/230) presents serious safety problems. A call to take them out of service was made a long time ago. Four of these reactor units are located in Kosloduj (Bulgaria); two of them were shut down by the Bulgarian Government in 1991. Several incidents in recent months nevertheless show that considerable safety risks are still being taken in Kosloduj. Measures to improve the safety levels of reactors must therefore be taken immediately. The Committee is pleased that the G-24 states have in the meantime approved the multilateral action programme of the Munich summit for improving the safety of nuclear power plants in Eastern Europe, and have shown their willingness to implement the programme without delay. The EC Commission should also resolutely carry out its own studies under the Phare programme so that the findings can be evaluated as soon as possible with a view to the retrofitting of nuclear power plants in Eastern Europe.

2.57. The Committee would underline the assurance given by the contracting partners to develop and strengthen cooperation in the field of the environment. The Committee emphatically supports the declared intention of fully taking into account the environmental impact of all economic measures from the very outset. As the Committee has already made clear in a number of different Opinions, environmental policy should be preventive and cooperative in kind and should be carefully coordinated with other policies such as regional policy or research and development policy. As a pan-European issue, environmental policy should be seen as a cross-frontier challenge which cannot be tackled by individual countries acting in isolation.

2.58. Areas of top priority in environmental cooperation include water management and the protection of water quality, especially in cases where waterways cross frontiers. This is why a protocol should be appended to the Europe Agreement with Bulgaria containing concrete provisions designed to protect and ensure the water quality of international waterways (Danube, Nestos, Strimon, Evros and the Black Sea). The Committee considers that priority should be given to developing a system for monitoring and controlling the quality and quantity of cross-frontier waterways and that the relevant provisions should be written into the additional protocol with Bulgaria. The system should include appropriate measures:

— to lower the pollution levels of cross-frontier waterways;

— to provide early warnings of floods and dangerous levels of pollution;

— to tackle soil erosion caused by varying rates of water flow;

— to promote the rational and fair utilization of water resources;

— to protect flora and fauna in the deltas of cross-frontier waterways, as well as in neighbouring areas.

To finance the necessary measures, the contracting partners should propose acceptable solutions within the framework of financial cooperation.

Financial cooperation

2.59. The challenge of structural adjustment in Bulgaria and Romania and the task of creating a competi-

tive economy cannot be successfully tackled without effective outside assistance. All new democracies in Central and Eastern Europe require funds in hard currency; their need for financial support has grown steadily since the beginning of the economic reform movement.

2.60. The temporary financial aid granted by the Community consists of a combination of loans and non-repayable grants. The draft Agreements stipulate that the Phare programme is to continue until the end of 1992, operating within the context of financial cooperation. Thereafter, Community grants and loans from the European Investment Bank (EIB) are to be provided on a multi-annual basis within the framework of Phare or under a new financing mechanism.

2.61. The Committee endorses the EC's approach and agrees that Community aid can only be reasonably contemplated on the basis of a plan extending over a number of years. Initially, at least, this period should last no more than three to five years and should form an integral part of the first stage of the transitional period provided for under the Europe Agreements. In the case of macroeconomic loans from the EIB, aid will be determined in the light of needs, priorities, the absorption capacity of the economy, the ability to repay, and the progress made by Bulgaria and Romania towards a market economy system.

2.62. Funds will inevitably have to be closely coordinated. This means that it will be necessary to coordinate Community funding, including bilateral assistance, with financial aid given to Bulgaria and Romania by other countries of the Organization for Economic Cooperation and Development (OECD) or by international financial institutions (International Monetary Fund, World Bank and the European Bank for Reconstruction and Redevelopment). All funding and spending should be continuously monitored and should be coordinated within the Association Committee; both sides should also monitor the situation to ensure that the funds are used efficiently. The Association Council should also be regularly informed of the findings.

Institutional, general and final provisions

2.63. Within the framework of the political dialogue, the Committee has called upon the contracting parties to set up at some time in the future a Consultative Association Committee in addition to the Association Council and the Parliamentary Association Committee. It therefore follows that the institutional provisions set out under Title IX of the draft Europe Agreements will have to be amended in two places. First of all a third paragraph needs to be added to Article 108 (Bulgaria)/ Article 111 (Romania) dealing with the setting up of special committees or working groups by the Association Council. The new paragraph would read as follows:

Article 108(3)/Article 111(3)

' During the first transitional stage (Article 7) of the Agreement the Economic and Social Committee of the European Community shall organize, under the aegis of the Association Council, dialogue and cooperation between the economic and social interest groups of the European Community and those of Bulgaria/Romania. Regular meetings shall be held for that purpose.'

An additional Article setting out the duties and composition of the Consultative Association Committee also needs to be included under Title IX. In the view of the Economic and Social Committee this Article should read as follows:

Article ...

' A Consultative Association Committee of economic and social interest groups of the European Community and of Bulgaria/Romania shall be set up at the beginning of the second transitional stage of the Agreement (Article 7). It shall comprise an equal number of members of the Economic and Social Committee of the European Community and of representatives of economic and social organizations in Bulgaria/Romania.

The Consultative Association Committee shall further develop dialogue and cooperation between the economic and social interest groups of the European Community and those of Bulgaria/Romania.

Within the framework of this cooperation, fundamental questions regarding the participation of Bulgaria/Romania in the process of European integration, the establishment of a new political and economic order in Bulgaria/Romania, and other aspects of cooperation within the Europe Agreement, shall be discussed.

The Consultative Association Committee shall have its own Rules of Procedure and shall express its views in the form of reports and opinions.'

2.64. The latest EC Commission information suggests that the contracting partners might be receptive to the Committee's proposals on the involvement of social interest groups in the political dialogue. In a joint declaration Romania and the European Community have agreed that 'the Association Council is to examine, in the light of Article 111 of the Agreement, the setting up of a consultative mechanism consisting of members of the Economic and Social Committee of the European Communities and their counterparts in Romania'. Incorporating a similar passage in the Europe Agreement with Bulgaria cannot be ruled out. The Committee welcomes the joint declaration and considers it to be a first step in the right direction. The Committee at the same time assumes that similar declarations can subsequently be agreed and included in the Europe

Agreements with Poland, Hungary and the CSFR respectively.

2.65. The Europe Agreements have to be ratified by the Parliaments of the states concerned. This means that there will be some delay before their entry into force. However, to ensure that trade relations continue to develop further without interruption, the European Community and the Visegrad states have concluded Interim Agreements on trade and trade-related matters. Similar interim agreements will also be concluded with Bulgaria and Romania and could enter into force as early as the spring of 1993. The Committee considers that this approach is right and necessary. Nevertheless, the EC Commission should take steps in future—and also put pressure on the EC Member States—to ensure that trade between the Community and the associated states is not unnecessarily hindered by technical hitches as has been the case with the Interim Agreements with the Visegrad states. We would illustrate these shortcomings with three examples:

— The Interim Agreements with Poland, Hungary and the CSFR came into *de facto* force on 1 March 1992 but the relevant legal provisions were only published in the Official Journal of the European Communities on 30 April 1992. During this interval most imports could only be cleared after the deposit of a guarantee.

— When the trade sections of the Europe Agreements came into force, the rates at which customs duties were to be reduced were known but not the basis on which this was to be done. Even the embassies of the Visegrad states were unable to come up with watertight answers.

— The situation was made worse by the fact that the knowledge of the customs officers responsible for handling the goods was sometimes very poor since there had been too little time to train them properly.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the XXIst Report on Competition Policy

(93/C 19/24)

On 30 April 1992 Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the XXIst Report on Competition Policy

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 6 November 1992. The Rapporteur was Mr Mourgues.

At its 301st Plenary Session (meeting of 25 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

0. Presentation of the Opinion

0.1. The initial debate conducted by the Committee considerably broadened the scope of its reflections on competition policy:

— firstly, by confirming its deep-seated conviction that the Community's competition policy must, of necessity, be inseparable from its industrial policy;

— secondly, by taking into account the repercussions of the current political and economic upheavals taking place throughout the world in general, but also and more particularly on the continent of Europe and their impact on agreements and trade.

0.2. For this reason it was deemed necessary to split the Opinion into two parts:

a) the Opinion on the XXIst Report;

b) some ideas as to the future course of competition policy within the overall context of EC policy.

A. OPINION ON THE XXIst REPORT

1. General comments

1.1. The Commission has always recognized the relevance of the Committee's Opinions and in particular that on the last Report on Competition Policy. The Committee welcomes this, but regrets that some of its proposals have not been taken up. In point 4.I, §2, however, the Commission states that it shares many of the Committee's basic concerns.

1.1.1. The Committee is pleased to note that the Commission, in its Report, draws particular attention to the interests of consumers: it is urged to continue in this vein.

1.1.2. The improved layout and readability of the Report, making for greater transparency, as well as its publication before the end of the first half of the current year, are major steps forward. The Committee considers, however, that the presentation of the Report could be improved still further if the technical and legal aspects of its analyses were thoroughly aired.

1.1.3. The Commission will thus be able to consult the contribution of the political and socio-economic interest groups institutionalized by the Treaty before it drafts the next annual report.

1.2. It is interesting to note that, as called for by the Committee in its last Opinion [1], the XXIst Report further analyzes Community policy and the practical application of the competition rules in the light of the imminent completion of the internal market; it is accompanied by an analysis of the initial effects of the application of the merger control Regulation. Under these circumstances 'competition policy has been taking on growing importance as the Community advances towards economic and monetary union and nears the completion of the single market' [2].

1.2.1. These aspects foreshadow and will facilitate the implementation of the new Rome Treaty Articles 130 and 130a to 130p provided for in the Maastricht Treaty.

1.3. *Merger control*

1.3.1. The strengthening or creation of dominant positions sometimes constitutes a negative response to the opening-up process brought about by the completion of the internal market. These attitudes must be countered by the combined application of Treaty Article 86 and Regulation (EEC) No 4064/89 on merger

[1] OJ No C 49, 24. 2. 1992.
[2] XXIst Report, Introduction, p. 1.

control. The Committee notes the results of the first full year's application of this Regulation as described in the XXIst Report. In particular the assessment of dominant positions, potential competition and the growth of concentration must be based on (a) an objective evaluation of the facts and (b) a realistic forecast of the impact on competition. With regard to this control, on no account must the Commission lean towards decisions of a dirigiste nature.

1.3.2. However, the excessively high threshold at which control is triggered (ECU 5 000 million) continues to raise many doubts. This threshold cannot be justified on either economic or competition grounds. At all events the Committee calls on the Commission to take stock of this matter in its XXIInd Report as regards both the threshold and its reduction and certain structural controls.

1.3.3. The Committee notes the legal means placed at the disposal of third parties, employees in particular, under the provisions of Article 18(4) of Regulation (EEC) No 4064/89 on merger control. It would, however, point out that such means can only be used if the employees' representatives are provided with the relevant information in good time by the employers.

1.4. The elimination of distortions of competition between the Member States is all the more crucial because the measures contained in the Internal Market White Paper have now been incorporated in Community legislation and have started to be transposed into national laws. The behaviour not only of economic operators but above all of the public and political authorities will have to be watched more closely so as to prevent national, regional and local aid schemes detrimental to the operation of the Internal Market. In this respect the Committee would like to see Community legislation and national laws aligned more rapidly.

2. The application of competition policy in the regulated sectors

2.1. Generally, regulated industries provide a public service which must always be accessible and available to all 'user' citizens. These sectors have a *de facto* monopoly in that they have exclusive use of a supply or distribution network. Real competition is possible only if several suppliers of services have access to these networks, subject to certain conditions.

2.2. This is feasible in the case of air, sea, road and inland waterway routes and of telecommunications, television and banking networks. Competition policy must, however, be wary of the effects of deregulation in certain cases; it can facilitate the formation of consortia which are not backward in offering tariffs which are initially below cost price and put their competitors out of business, with dramatic social consequences.

2.2.1. The rule that products and services must not be sold below cost price must be a fundamental criterion for assessing whether competition is healthy.

2.3. Where a monopoly in the use of networks is unavoidable (rail transport, electricity and gas distribution, drinking water, sanitation, household waste), they are operated by public companies, private companies, or companies bound by limited term concessions.

2.3.1. In these cases the prices paid by the consumer are approved by the grantor of the concession and sometimes vary according to user category (large or small consumers, age brackets, social cases, regular use of service, etc.).

2.3.2. It would appear difficult to apply the competition rules in these sectors; consequently certain principles should be respected if the abuse of a dominant position is to be avoided, viz:

a) total transparency in pricing based on financial statements and application of a uniform system of cost accounting;

b) any price reductions granted as part of a social policy to be paid for by the concession grantor rather than the concessionaire;

c) adherence to the time limitations of concessions and obligation to call for tenders when they come up for renewal;

d) concessionaires to adhere scrupulously to Community Directives on public contracts.

2.3.3. The Committee must direct its suggestions to those cases in application of Treaty Article 90(2) and the case-law derived therefrom. The XXIst Report is explicit in this respect (Part 2, Chapter II, §9 and 10).

2.4. Public services frequently benefit from State aid, especially in the transport sector. The Committee will follow closely the introduction of the 'public service contracts' on 1 July 1992. It would like to see future annual reports give an account of their effects. The Committee also considers that the concept of European networks of Community interest is relevant to the

future balance of the internal market. Everyone, in their own sphere (Community, State, regions), will have to act together to ensure that the special or exclusive rights granted to companies holding concessions evolve in accordance with the EEC and European Union Treaties.

2.5. The misgivings over certain monopolies, e.g. those generating, transporting and distributing energy, must be closely studied in accordance with the provisions of Treaty Article 37. The Committee is ready to examine the Draft Directives drawn up in application of this Article.

3. **Industrial policy—aid and competition policy**

3.1. *Links between industrial policy and competition policy*

3.1.1. The outlines of a Community industrial policy were defined in 1990. Competition policy is a key part of it at both internal and external level. The primary legal instruments which will govern any measures remain Treaty Articles 85(3) and 90 to 94 and the merger control Regulation.

3.1.2. In this respect the Committee would refer to its Opinion of 27 November 1991 on the Commission's Communication entitled 'Industrial policy in an open and competitive environment', more specifically to its comment that 'Having thresholds in an initial phase which are too high will make it more difficult, if not impossible, to formulate a uniform competition policy for all Member States—at any rate in the key areas' [1].

3.2. *Block exemptions*

3.2.1. Specialization and franchise agreements deserve sustained attention in view of the imminence of the internal market. An inquiry into the distribution and sale of cars, to be supplemented by another into the distribution and sale of spare parts, has revealed price distortions between Member States. The period before the Commission decides on the renewal of Regulation (EEC) No 123/85 after 30 June 1995 should be used for a comprehensive analysis of the terms of this renewal in the light of (a) new knowledge gained from the introduction of the single market and (b) indispensable consultations between the Commission and the relevant trade organizations and consumers.

3.2.2. Research and development agreements and joint venture agreements for the marketing of products are a key component of industrial policy. Insofar as they are linked to specialization/distribution agreements, a change in the current rules might give a boost to industrial recovery and Community competitiveness at world level. In this respect the Committee shares the Commission's 'desire to ensure convergence between specific interests and the Community's general interest is at the heart of all competition policy', and approves the Commission's Draft Regulations [2]. As regards the block exemption Regulation for agreements in the insurance sector, the Committee calls for a tight policy prohibiting agreements on premium rates which are particularly sensitive from the point of view of competition and would refer to its Additional Opinion of 25 November 1992. [3]

3.2.3. It goes without saying that any changes in the Regulations on patent licensing and know-how licensing agreements must be consistent with each other and carried out in parallel.

3.3. *State aid*

3.3.1. The Committee strongly urges the Commission to continue insisting that State aids be transparent, temporary and on a diminishing scale, in line with the requirements of competition policy. They must also be compatible with the objective of economic and social cohesion. In this connection the Committee welcomes with interest the third report on State aid published by the Commission.

3.3.2. The Commission has at its disposal structural funds, the European Regional Development Fund (ERDF) in particular, which must be the primary catalyst for State aid for the development of the least privileged regions, in line with the priority objective of economic and social cohesion. In this respect the Committee shares the Commission's concern to curb the granting of significant aid to non-eligible regions. The proposed Community framework based on investment percentages and ceilings would seem suitable.

3.3.3. The Committee would point out that the rules for Economic and Monetary Union laid down by the Maastricht Treaty will have the effect of reducing national debt and deficit margins. Henceforth State expenditure may only just exceed current receipts, a classic method of budget management, which should mean a significant reduction in distortions of competition in the Community.

3.3.4. As regards the conditions for granting aid to small and medium-sized enterprises (SMEs), including

[1] Opinion on industrial policy, OJ No C 40, 17. 2. 1992.

[2] OJ No C 207, 14. 8. 1992.

[3] See following opinion.

craft businesses, the Committee approves the proposal for positive action to stimulate SME development and the introduction of a *de minimis* rule (ECU 50 000—three years—cf. 3.IA, §1, 8) [1].

4. The international dimension of competition

4.1. The welcome integration of the world's economies, largely consequent upon the international growth of free trade, creates conditions which favour concentrations of transnational and transcontinental companies; such companies may involve a risk of anti-competitive behaviour.

4.2. The measures, negotiations and agreements undertaken by the EC to counter such risks are endorsed by the Committee. Special mention should be made of the European Economic Area, the association agreements with the countries of Central and Eastern Europe, and contacts with the relevant Japanese authorities. It goes without saying that these negotiations must be undertaken in compliance with the legal rules laid down in the Treaty. The same applies to the agreements already concluded (cf. the opposition of some Member States to the agreement between the Commission and the US anti-trust authorities).

4.3. *GATT*

4.3.1. The General Agreement on Tariffs and Trade (GATT), concluded after the last world war with the purpose of rebuilding an ailing international trade system, facilitated and accelerated the dismantlement of traditional customs barriers. Numerous States with convalescent or shaky economies have replaced these now marginal customs barriers with other effective measures, such as exchange controls and quotas.

4.3.2. These rear-guard actions had, and still have, the effect of reviving bilateral or multilateral trade agreements, the proliferation of which is completely contrary to the spirit in which the original GATT was negotiated.

4.3.3. Furthermore, in the absence of a balance between levies and refunds, the present negotiations are stalled on farm subsidies and the difficulty of squaring production costs with abnormally low world prices.

4.3.4. These comments à propos of GATT are a measure of the difficulties to be overcome if healthy competition is to become the norm throughout the world. For its part, the Committee urges the Uruguay Round negotiators to continue their efforts and wonders whether a precise, up-to-date definition of international competition policy might re-establish general agreement. The second part of this Opinion proposes a specific measure in this respect (cf. below: B, 9.1 to 9.3).

4.3.5. Finally, the collapse of the European command economies and the end of the division of the continent between liberal and planned economies undoubtedly calls for transitional measures (cf. below: B, 10.1 to 10.5), since under present circumstances unbridled free competition would result in considerable social imbalance.

4.3.6. In the light of these reflections, the Committee would urge the GATT negotiators, on the Commission's initiative, to work from the principle of a coordinated policy of economic and social cohesion between the European Community and the other parties to GATT.

4.4. *Anti-dumping measures*

4.4.1. Under no circumstances should these measures lead the Community to abandon the means at its disposal for combatting blatant dumping. For this reason a comparative study of the market value and price of products would greatly facilitate the detection of dumping. An analysis of the Community's and Member States' external trade statistics could be its working tool.

4.4.2. It would also be desirable to detect the links between, for instance, a third country enterprise and its subsidiaries in a Member State. Such links not uncommonly make it possible to charge higher or lower prices depending on the strategy of the group, whose private interest could go largely against the general interest.

4.4.3. At all events if it is assumed that anti-dumping measures are linked to the objectives of competition policy, there is a need to make them more consistent. The application of simultaneous measures against unfair competition must be published by the Commission so as to ensure total transparency.

4.4.4. In this context it must be ensured that the rules adopted for the implementation of the anti-dumping measures—and in particular those concerning comparisons between the price of goods when placed on the Community market and their normal cost price—are applied.

[1] OJ No C 213, 19. 8. 1992.

5. Specific comments

5.1. The Committee approves the stress which the Commission places on the general ineffectiveness of interventionist sectoral policies. The question arises, however, of whether the fragmentation of this aid and the multiplicity of forms which it can take are not such as to limit the procedures provided for in Article 93(2) (cf. XXIst Report, 3.IA, §5).

5.2. The stated objective of phasing out aid to shipbuilding through the conclusion of bilateral agreements with the various shipbuilding nations would on the face of it seem difficult to achieve. The difficulties are compounded by the need to apply ever more costly technical navigation and safety standards.

5.3. *Publishing*

5.3.1. The question arises of whether price competition should be curbed in the publishing sector.

5.3.2. Such a curb on the competition rules, entailing price control, could only be justified if there were serious grounds for such action in the sector concerned. Books have a cultural as well as a commercial value.

5.3.3. Any approach to this problem would have to be examined carefully and discussed beforehand with not only publishers and distributors, but also consumers.

5.3.4. Up until now the latter have hesitated, insofar as the French experience does not seem to have had any effect on either the publishing or the distribution of books, its only consequence being an increase in the prices paid by readers. Under these circumstances the Commission should keep an eye on how this particular situation evolves.

5.4. *Agriculture*

5.4.1. As far as agriculture is concerned, competition between producers leads to major difficulties both within and between Member States [Common Agricultural Policy (CAP)] and at world level (cf. above, GATT, point 4.3.3). Under present circumstances a distinction must therefore be made between agricultural production, which is eligible for CAP support, and other sectors, including the food industry, which must respect the free play of competition. It is not impossible that in some cases producers' groups and concentrations in distribution manage to create a de facto situation analogous to that of some industrial concentrations. The Committee calls on the Commission to look into these groups and to comment on its findings in future Reports.

5.4.2. It should be noted that the rural development programme and aid for environmental/landscape protection measures bring a new factor into play alongside the CAP. This specific policy is likely to bolster the current process of reform. The Committee would like to see these new measures monitored by the annual reports on competition policy.

6. Powers of national courts with respect to competition law

6.1. It is true that Article 85(1) and (2), Article 86 and secondary legislation have direct effect. Consequently national courts are competent to apply these provisions. In case of doubt, moreover, it is always possible for them to apply for a preliminary ruling to the Community court of first instance so as to avoid conflicting interpretations.

6.2. Only the Commission is competent to apply, if necessary, Article 85(3). The courses of action which, according to the Commission's reports, are open if the disputed agreement could qualify for exemption, are debatable insofar as the national court would have to assess the probability of the Commission giving a favourable decision and granting an exemption.

6.3. Furthermore, it is difficult to imagine that a national court would question the national or even Community authorities. Under these circumstances there is some risk of inconsistency between national courts. The same applies with respect to distortions in the cost of the proceedings instituted. This is yet one more drawback resulting from the lack of common provisions on disputes in the EC Treaty. The Committee awaits with interest the document on this subject announced by the Commission.

7. The Commission's power of assessment

7.1. The same applies to the Commission's assessment of the impact of public financing on intra-Community competition where aid is granted to enterprises in a sector with excess production capacity (XXIst Report, Part 3, II, §4).

7.2. On the other hand, subsidiarity should apply to national competition laws consistent with the Treaty, the intervention thresholds for merger control and the *de minimis* rules for SME aid, though it should be remarked that it is up to citizens, consumers, and their organizations to challenge any provisions which may go against free competition [1].

[1] OJ No C 213, 19. 8. 1992.

B. REFLECTIONS ON THE NEW CONDITIONS OF COMPETITION

8. General considerations

8.1. The political and economic upheavals taking place throughout the world and more specifically on the continent of Europe mean that it is likely that States or groups of States will be induced to conclude all kinds of cooperation agreements. These agreements will very probably have an effect on the conditions under which the Community's competition policy is applied. Aware of just how much is at stake, the Committee thinks that certain possible courses of action should be aired.

8.2. The Committee notes first of all that the buyer/consumer usually chooses the product which he or she considers the best in terms of quality and price. Such sound behaviour will automatically entail risks under certain conditions of economic imbalance, especially at global level. It may therefore be argued that certain limits should be placed on totally unrestrained competition.

8.3. The political decisions to be made will weigh heavily, involving 'strategic' balance and international solidarity. In large measure these future guidelines will be linked to the ratification and implementation of the Maastricht Treaty. They will mean the introduction of competition policy, including its exemptions, within a carefully thought-out framework aimed at competitiveness and cooperation, both in research and development (R&D) as well as product quality, environmental protection and social guarantees of a decent income; in short their aim will be an orderly development within the framework of a new international redistribution of labour.

8.4. The main factors of change can be divided into two categories involving:

— firstly, the developing countries and the use of their resources;

— secondly, trade relations with the former Comecon countries.

9. The resources of the developing countries

9.1. Stabilization of farm incomes and regulation of the market in raw materials whose sale constitutes the primary income of less-developed countries (LDCs) are probably the best way of keeping their internal economies afloat, promoting social progress and damming the flow of emigrants to wealthier countries.

9.2. Such a policy of income stabilization must not, however, have the effect of encouraging the production of goods in quantities over and above the requirements of the world market; it must be backed by incentives to diversity production as part of regional cooperation policies for the economic development of the LDCs.

9.3. In addition to the advantages of a regular payment for their labours, the LDCs will be able to use the revenue to finance the purchase of the imports they most require.

10. Imports from the former Comecon countries

10.1. The combined impact of the efforts of the Eastern European countries to switch to a market economy and their substantial currency devaluations is leading to distortions in production costs between the European Economic Area (EEA) and the former Comecon countries, where the introduction of a competition policy has barely got off the ground.

10.2. These exports at prices substantially below world levels benefit from abnormally low wage costs, State aid and reduced energy costs. Besides adding to the excessive hardships of the people of the former Comecon countries, they adversely affect the economic equilibrium of the EC and countries of the European Free Trade Association (EFTA) in that they tend to exacerbate unemployment by distorting competition; this has the same effect as unfair competition.

10.3. Nevertheless, it is essential that the economies of these countries are supported; the European Union has the duty to make a substantial contribution to this and thus enable them to install a democratic system of government and a market economy, including a concern for social questions (cf. ESC Opinion of 23 September 1992—CES 1039/92 on enlargement).

10.4. Under these circumstances the Committee feels it must recommend the introduction for a long-term transitional period of economic measures aimed both at protecting its own economic area and social cohesion and at promoting recovery in the former Comecon countries. The association agreements with the countries of Central and Eastern Europe, which include the introduction of competition on the basis of Community principles, point the way to how this could be achieved on a more general scale.

10.5. It is crucial that these concerns—as regards both compliance with the provisions and the conditions under which they are drawn up—be taken into account when the association agreements are negotiated.

C. GENERAL CONCLUSIONS

This Opinion on the XXIst Report clearly demonstrates that very careful attention has to paid to the development of competition policy and its practical application.

This Opinion was drawn up against a background of specific political, economic and social developments in the world. The Committee would stress those factors which define the limits of competition, principally:

- regulated sectors (points 2.3.1 to 2.3.3)
- special and exclusive rights (points 2.1 to 2.4)
- block exemptions, one of the linchpins of industrial policy (points 3.2.1 to 3.2.3)
- eligibility for aid (points 3.3.2 and 3.3.3)
- agricultural products (points 4.3.3 and 5.4.1)
- the GATT negotiations (point 4.3.4)
- the economic growth of the developing countries (points 9.1 to 9.3)
- relations with the former Comecon countries (points 10.1 to 10.5).

This list highlights the difficulties which have still to be overcome if we are to achieve healthy and effective competition in both the European Community and the world.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Commission Regulation (EEC) on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector [1]

(93/C 19/25)

On 22 September 1992 the Economic and Social Committee decided in accordance with the third paragraph of Article 20 of the Rules of Procedure to draw up an Opinion 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 6 November 1992. The Rapporteur was Mr Mourgues.

At its 301st Plenary Session (meeting of 25 November 1992), the Economic and Social Committee unanimously adopted the following Opinion.

The Committee approves the draft Regulation subject to the following comments.

1. Introduction

1.1. On 31 May 1991 the Council adopted Regulation (EEC) No 1534/91 [2], based on Article 87(2)(b) of the EEC Treaty, empowering the Commission to apply Article 85(3) of the Treaty to certain categories of agreements in the insurance sector.

1.1.1. To enable economic and social operators to comment thereon, the Commission published the draft Regulation exempting various categories of agreements in *Official Journal* No C 207 of 14 August 1992.

1.2. The Committee notes that its Opinion on the enabling Regulation [3] was broadly accepted and that the Commission also took account of it in the draft exempting Regulation. Nevertheless, the ESC is anxious to apprise the Commission of various proposals it would like to see incorporated in the final version of the Regulation.

1.3. Thanks to its regular work on competition policy, including its annual Opinions on the Commission reports [4], the Committee can agree that the Commission has acquired sufficient experience in the treatment of individual cases to apply Article 85(3) to certain agreements between insurance companies.

1.4. The categories of agreement covered by the draft exempting Regulation involve the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims, standard policy conditions, the common coverage of certain types of risks and the testing and acceptance of security devices.

2. General comments

2.1. The Committee congratulates the Commission on completing the work necessary to permit the adoption before 31 December 1992 of a Regulation applying Treaty Article 85(3) to the insurance sector and thus facilitating company behaviour as the Internal Market reaches completion.

2.2. Given the potential threat to competition from risk premium tariffs, the proposed text must not be amended in such a way as to be less favourable to policy holders.

2.3. The Committee notes that as regards risk premiums the Commission seeks to protect policy holders (firms and individual consumers) from the danger of anticompetitive behaviour and unfair clauses (Articles 2, 3 and 4). The Committee interprets Article 2(a) as meaning that the calculation of pure premiums is to be based exclusively on the compilation of historical data; it would welcome clarification here. In the French version of Article 4, 'concentrer' should be replaced by 'concerter'.

2.4. The Committee agrees with the restrictions to be applied to standard policies (Articles 6 and 7), but would point out that Article 6(2) must not lead to the standardization of premiums.

[1] OJ No C 207, 14. 8. 1992.
[2] OJ No L 143, 7. 6. 1991, p. 1.
[3] OJ No C 182, 23. 7. 1990, p. 27.
[4] See the previous Opinion.

2.5. The Committee also endorses the provisions on the common coverage of certain types of risks (Articles 11, 12 and 13). The definitions of eligible clauses are such as to protect policy holders and preclude the formation of dominant market positions, which are liable to be abused.

3. Specific comments

3.1. Irrespective of the degree of consumer protection offered by the provisions on standard policy conditions, the Committee favours a provision stipulating that under no circumstances may a policy holder be obliged to accept contract clauses which he has not approved, particularly in the case of contract amendments or supplements.

3.2. Insurance companies sometimes refuse to cover certain risks, even against payment of an additional premium. Although this attitude can be explained by legal uncertainty in the field of compulsory insurance, such refusal should nevertheless be accompanied by a written explanation. The Regulation should impose such a condition in the standard contracts.

3.3. The Committee reiterates that cooperation in the field of the verification and acceptance of security devices must take account of the statutory provisions laid down by the authorities and never fall short of these requirements.

4. Conclusions

4.1. The draft Regulation guarantees that insurance companies market products and services which are compatible with economic and social requirements, under conditions which are acceptable to consumers.

4.2. The Committee calls on the Commission to adopt at a later date provisions ensuring that claims are settled more quickly, possibly via clearing agreements between insurance companies where more than one are concerned.

4.3. The Commission should also tackle the problems associated with insurance policies used to guarantee loans, e.g. in connection with the purchase of real estate.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) on the common organization of the market in bananas [1]

(93/C 19/26)

On 24 August 1992 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 Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 3 November 1992. The Rapporteur was Mr Ovide Etienne.

At its 301st Plenary Session (meeting of 25 November 1992), the Economic and Social Committee adopted the following Opinion by 80 votes to 43 with 14 abstentions.

1. Gist of the Commission document

1.1. Completion of the single market on 1 January 1993 means that an internal market must be established in the banana sector, with common arrangements for the import of bananas into the EC.

1.2. The Commission is therefore proposing that the Council set up a common market organization for the banana sector, with internal and import-related price-support measures.

1.3. *Internal measures*

1.3.1. The common market organization is scheduled to last ten years. It covers fresh bananas and products processed from bananas.

1.3.2. The products marketed must comply with certain quality and marketing standards.

1.3.3. In order to improve the management of supply and match it more closely to demand, and to encourage consultations, provision is made for the setting-up of producers' organizations and of 'concertation mechanisms'.

1.3.4. Prices are to be supported by import arrangements.

1.3.5. Supplementary aid will also be granted, in order to maximize the incomes of producers who comply with quality policy and standards.

1.4. *The internal arrangements*

1.4.1. The system devised by the Commission seeks to:

— support Community production;

— offer reasonable prices, in the consumer interest;

— respect the Lomé agreements;

— permit supplies from third countries;

— meet obligations of the General Agreement on Tariffs and Trade (GATT).

1.4.2. The arrangements are designed to maintain the existing pattern of Community imports.

1.5. *General provisions*

1.5.1. The common market organization will rest on two pillars:

a) a management committee comprising representatives of the Member States and chaired by the Commission;

b) an *ad hoc* committee comprising representatives of sectoral interests.

1.6. *Relations with the African, Caribbean and Pacific States (ACP)*

1.6.1. The establishment of a common market organization and EC rules on market access and preferential conditions for bananas will alter the position of the ACP States under the Lomé Convention and in particular Protocol 5 thereof.

1.6.2. Under Protocol 5, ACP States' access to the traditional markets for their banana exports may not worsen.

1.6.3. The Commission plans to put forward a Regulation establishing an aid system for a programme to

[1] OJ No C 232, 10. 9. 1992, p. 3.

upgrade quality together with a compensatory aid scheme for ACP producers.

1.7. *Relations with Latin American producer countries*

1.7.1. The Commission considers that its proposals will allow the traditional exports from these countries to be maintained.

1.7.2. To strengthen EC cooperation with these countries, it also proposes a diversification and development fund for them.

1.8. *GATT negotiations*

1.8.1. The Commission points out that the proposal makes it necessary to ask the GATT contracting parties to approve the Community import regime under Article XXV(5) of the GATT.

1.8.2. The regime will only be considered in conformity with the GATT if and when it has been approved in the form of a waiver.

1.9. Accordingly, the Commission:

a) asks the Council to adopt the proposed Regulation;

b) informs the Council that consultations will begin with the ACP States in due course;

c) recommends the Council to authorize it to open negotiations under GATT.

2. General comments

2.1. The Committee recognizes the merits of the proposals which the Commission is submitting to the Council.

2.2. It recognizes that the Commission document fills an important gap, given the economic importance of the banana sector in the Community in terms of both trade and consumption.

2.3. The Committee is also pleased that the Commission's substantive proposals adopt the same general line as the ESC Section for Agriculture and Fisheries' Information Report on the Community's banana market in the run-up to 1993, issued on 9 December 1991 (CES 1012/91 fin).

2.4. The Committee hopes that the proposed arrangements will have maximum effect. Five main measures are involved:

a) an overall quota for banana imports from third countries, comprising a basic quota of two million tonnes to be consolidated within the GATT and a separate additional quota (Article 17);

b) the establishment of 'partnership arrangements' covering 30 % of the overall quota, to ensure outlets for bananas produced in the EC and ACP States (Article 17);

c) a compensatory aid scheme to offset any income losses suffered by EC and ACP producers;

d) a structural aid scheme for modernizing production systems (Article 10). The Committee hopes that this scheme will form part of a specific programme for developing the EC and ACP banana sector;

e) a safeguard clause to trigger appropriate measures at EC frontiers in the event of threats to the Community market.

2.5. However, the Committee cannot overlook certain points which it feels could hinder the common market organization.

2.6. These concern:

— the granting of a waiver under GATT Article XXV(5);

— the consolidated quota and its relation to trends in market demand;

— the organization of producers;

— clarification of the establishment of the average EC price;

— clarification of the term 'importer'.

3. Specific comments

The following comments concern points which the Committee feels would clarify or enhance the Commission proposal.

3.1. Points 45 and 46 of the Commission's explanatory memorandum raise two types of problem:

— a legal one;

— a political one.

3.2. The legal problem stems from the obligation to have a two-thirds majority to obtain a waiver under GATT Article XXV(5). Support will therefore be necessary from outside the contracting parties, and this in turn will mean parallel negotiations calling for some form of compensation.

3.3. The political problem follows on from the legal one. The Dunkel paper (Annex 3, Section 1, Paragraph 1) calls for an end to quota restrictions maintained under past GATT waivers. This suggests that it would be difficult for the EC to obtain a 'banana' waiver.

3.4. As regards the overall quota of banana imports from third countries, the Committee would not rule out the establishment of a monitoring system, backed by a mechanism to safeguard EC production if the internal market becomes disturbed.

3.5. Since a consolidated quota obtained under GATT could not be altered, any fall in demand below the level of the additional quota might cause EC and ACP bananas to lose ground to dollar bananas.

3.6. There seems to be an imbalance on the proposed ad hoc committee between producers on the one hand and processors, traders, distributors and consumers on the other.

3.7. The arrangements for establishing the average EC price need further clarification to avoid ambiguity.

3.8. The term 'importer' (Articles 18 and 19) is imprecise. A list of importers must be drawn up.

3.9. The Committee strongly regrets that the Regulation for ACP bananas has not yet been published and urges that the Commission issue this immediately.

3.10. Article 15 sets 1990 imports as the base figure for calculating ACP imports (a year when several ACP countries were hit by a hurricane) while Article 12 calculates EC production on a much higher base. Both quotas should be calculated on the same basis, preferably the average annual sales in the EC for the last three years.

3.11. The global figure for 'traditional ACP bananas' must be supplemented by a quantitative breakdown of the amount for each supplier in the base year or base years, as has been done for Community producers in Article 12. Unless this is done, there is a danger that the ACP quota will gradually be taken over by the potentially efficient mainland producers at the expense of the disadvantaged island producers.

4. Conclusion

4.1. The follow-up to the proposals, in particular by the Council, will need careful monitoring.

4.2. Any delay will hinder the establishment of the single market on 1 January 1993. Work in GATT must thus be speeded up and brought to a rapid conclusion.

4.2.1. If it proves impossible to introduce the common market organization by 1 January 1993, the Commission will have to apply effective transitional measures to ensure that the Community banana market does not operate to the detriment of EC and ACP producers.

4.3. Without delaying the approval of the draft, the Commission should clarify such points as the guarantee to maintain the current overall consumer price level.

4.4. The Committee approves the substance of the proposal subject to reservations on certain matters which have not yet been referred to it, such as the proposals for structural aid and compensatory aid for ACP producers.

4.5. In particular the Committee would ask that

a) EC banana producers' incomes be guaranteed on a more permanent basis (compensatory aid, offsetting of losses in revenue caused by grubbing-up of plantations), in the light of their special production conditions (high costs, etc.);

b) the basic quota be set at a level which affords protection to Community and traditional ACP producers.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, tabled in accordance with Article 40 of the Rules of Procedure, were defeated during the discussion:

The whole of the Section Opinion is to be replaced by the following text. The first chapter is more or less the same as in the Section Opinion. The amendments to this chapter are simply designed to set the text out more systematically and make it more logical.

'1. **Content of the Commission document**

1.1. Completion of the single market by 1 January 1993 means that an internal market must be established for the banana sector, with—in particular—common arrangements for the import of bananas into the EC.

1.2. For this reason the Commission has presented the Council with a proposal for a Regulation on the common organization of the market in bananas.

1.3. The Explanatory Memorandum states that the aim of the proposal is to introduce Community-wide arrangements for bananas to coincide with the establishment of the internal market. These Community arrangements must also replace the divergent national arrangements in existence at the moment.

The Explanatory Memorandum also states that the Commission wishes to take account of the need to:

— continue with banana production in the EC;

— comply with the Lomé Conventions;

— respect the GATT agreements;

— maintain third-country imports;

— supply consumers at reasonable prices.

1.4. The proposed arrangements for the banana sector are based on the following considerations:

a) an overall quota for banana imports from third countries, comprising a basic quota of 2 million tonnes to be consolidated in GATT and a separate additional quota (Art. 17);

b) the establishment of « partnership arrangements » covering 30 % of the overall quota, in order to promote the sale of Community bananas and traditional ACP imports;

c) a compensatory aid scheme to offset any income losses suffered by EC and ACP producers; unlike the scheme opted for under the CAP reform (payment of a premium per hectare), a scheme for subsidizing the differences in income between EC and third-country banana producers is to be introduced;

d) a structural aid scheme for modernizing production systems (Art. 10);

e) a safeguard clause to trigger appropriate measures at EC frontiers in the event of a serious market disturbance;

f) the establishment of quality standards for bananas;

g) the formation of producers' organizations and associations to draw up Community programmes so that the management of Community banana sales can be improved. Article 8 specifies that the provisions to be adopted are to include the possibility of making the rules binding on non-members, too;

h) financial support from the EC for the implementation of these instruments.

2. **General comments**

2.1. The Committee has taken note of the proposal and wishes to make the following comments.

2.2. The Committee thinks that in view of the internal market's forthcoming completion a new policy approach is required. The different regimes applicable in the Member States—liberal import rules, a percentage ad valorem duty, quota arrangements, Community preference—should be replaced by a Community scheme.

2.3. The Committee wonders, however, whether this sector's problems should be solved by going as far as the Commission does with its proposed market regime.

2.4. At the moment EC producers supply approximately 18 % of Community consumption. This figure rises to 35 % if production from traditional ACP countries is included. The vast majority of the market—i.e. more or less two-thirds—is supplied by third countries.

2.5. The Committee endorses the fact that programmes to improve production structures are to be developed for EC producers and that a universally acceptable solution is to be found to the problem of how the principle of Community preference which is enshrined in the CAP is to be applied satisfactorily.

2.6. The Committee also draws attention to the commitments which the Community has entered into with the ACP States regarding the banana sector under Article 1 of Protocol 5 of the Lomé Convention.

2.7. The proposed scheme establishes a rigid quota system and a complicated system of market management, but this does not fit in with the new farm policy approach based on the extension of the market mechanism and openness vis-à-vis third countries.

2.8. EC producers' share of the Community's banana market does not justify the proposed organization of this market around these producers throughout the Community. A recent World Bank report by two World Bank officials refers to the adverse consequences which the Regulation's implementation will have for the various parties. In particular, consumer prices will suffer. Apart from a 60-100 % rise in prices, a fall in consumption is expected is those countries where the market is free and consumption is 30-50 % higher than in countries with a more strictly regulated market.

2.9. In the Committee's view, the proposed quota system does not square with the general trend towards greater openness in world trade now being sought in the GATT negotiations. GATT approval for the proposal is considered—inter alia by the Commission—to be necessary, but is not likely to be forthcoming.

2.10. The partnership arrangements which are to apply to 30 % of the overall quota conflict not only with the provisions of the EEC Treaty—in particular Articles 39 to 43 and the Articles on competition—but also with general law: prohibition of tying agreements. The European Court of Justice has rejected such a procedure in tying cases (requirement to add skimmed milk powder to feedingstuffs).

2.11. The Committee would draw attention to the proposal's competition aspects. The proposals with regard to the formation of producers' organizations and other associations designed to concentrate supplies should be examined for compliance with the EEC Treaty's provisions on competition. The encouragement of cartels does not accord with the letter and spirit of the EEC Treaty.

2.12. The Committee thinks that there is a better solution to the banana problem than the one proposed by the Commission. This could consist of a Community-wide ad valorem import duty on third-country bananas which could be based initially on the 20 % duty already in force in a number of Member States but would have to be reviewed after a five-year period in the light of the situation obtaining then. Presumably, the positive effects of the structural support for EC production areas would be sufficiently visible by then. ACP countries should be exempt from such an import duty.

Such a scheme, taken in conjunction with the support for improving EC production structures, would also go far enough to ensure that the principle of Community preference is applied. However, it would also prevent new problems from being created in the GATT discussions, and would safeguard supplies and reasonable prices for consumers.

3. **Specific comments**

3.1. *Article 2—quality standards*

Although the establishment of quality standards per se is to be welcomed, the Committee wonders about the criteria which are to apply. Given the heterogeneous nature of supplies, it will be extremely difficult if not impossible to establish the sort of quality standards that will help to improve the quality of the bananas offered to the consumer. The last thing the consumer wants is quality standards that are in fact nothing more than trade requirements.

3.2. *Article 8—restriction of competition*

The Committee would ask whether the restrictions on competition proposed in Article 8(2) are not in conflict with the EEC Treaty's rules on competition.

3.3. *Article 17—quotas*

The proposed basic quota of 2 million tonnes is much lower than the present level of consumption. It is also expected that the link between the basic quota and the sale of Community and ACP bananas will cause many problems. The system of import certificates will acquire a life of its own and in all events will lead to a rise in costs.

4. In the light of the above, the Committee strongly urges the Commission to withdraw its proposal as currently worded and to submit a revised version which takes account of the recommendations made in the present Opinion.'

Reasons

There are many reasons for opposing the Commission's proposal to establish a 'traditional' cumbersome common market organization for the banana sector, based on Articles 42 and 43 of the EEC Treaty, in 1992. Some of these are mentioned in the Section Opinion, but it is wrong to conclude that the Commission proposal is to be endorsed. The main reasons for opposing the proposal are as follows:

The Commission proposal is totally at odds with the new approach to agricultural policy, where the experience of the last few decades has brought about a more market-oriented policy. In order to protect a relatively small production area, the entire Community is to be saddled with a market organization in which production and marketing are subjected to a tight straitjacket of rules and in which trade with third countries will be regulated by a very restrictive quota system and certificates to guarantee outlets for EC bananas.

The Commission proposal clashes with existing GATT rules and it is undesirable that, at a time when efforts are being made to further liberalize world trade, the EC should submit proposals which actually increase protectionism.

It is generally agreed that a Community policy on the banana sector is needed within the framework of the internal market, but in the interests of both EC banana producers and the Community as a whole, the Commission should revise its proposal.

In the long term, the proposed protection of EC banana production is not in the interests of the producers concerned. For the Community as a whole, banana prices would almost double. All parties would be far better served by a scheme in which application of an import duty gave a certain preference to domestic production (Community preference)—a benefit which should also be extended to ACP States. The level of the import duty could be negotiated.

There is no sense in further burdening the internal market with a lot of red tape which can only harm the operation of a market economy.

Voting

For: 35, against: 93, abstentions: 12.

Add a new point after 3.7:

'The compensatory aid (Article 12) should be limited in time and should be degressive just as that proposed for ACP bananas in a parallel proposal. Further there must be a detailed plan for helping to make both Community and ACP producers competitive without indefinite product-related subsidies.'

Reasons

The CAP is slowly being reformed so as to reduce product-related subsidies. This proposal is an anomaly both in that it starts a new CAP regime and in that payment is by the quantity of bananas produced. In the long run therefore EEC producers must be helped to become competitive without such subsidies and stand on their own feet.

Since the Section discussed this Opinion, the ACP proposal has been published. For ACP bananas it provides for aid but on a degressive basis. This seems reasonable in the interests of the Community as a whole, but to be fare and equitable, aid for Community production must be on the same basis.

Voting

For: 40, against: 68, abstentions: 7.

Add a new point 3.11:

'Eligibility for compensatory payment should be conditional on producer organizations or, where applicable, individual producers limiting their marketing to predetermined quantities, preferably their average sales in the last three years.'

Reasons

To ensure that CAP expenditure is contained and the interests of EC, ACP and dollar-banana producers are reconciled, it is necessary to ensure that EC marketings are stabilized. Although compensation payments will only apply to quota amounts, the relatively high returns on these could make it profitable to sell extra output at the much lower prices which will rule on EC markets.

Voting

For: 36, against: 77, abstentions: 9.

Opinion on the proposal for a Council Decision concerning Supplementary Financing of the Third Framework Programme of Community Activities in the field of Research and Technological development (1990-1994) [1]

(93/C 19/27)

On 18 August 1992, the Council decided to consult the Economic and Social Committee, under Article 130Q(1) of the Treaty establishing the European Economic Community, on the abovementioned proposal.

In view of the deadline set by the Council, the Economic and Social Committee decided to appoint Mr Roseingrave as Rapporteur-General, with the task of preparing its work on the subject.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee adopted by a unanimous vote the following Opinion.

1. Introduction

1.1. The Third Framework Programme of Community activities in the field of research and technological development (R&TD), covering the period 1990-1994, was adopted by a Decision of the Council on 23 April 1990 [2]. The Committee had delivered its Opinion on the Commission's proposal on 15 November 1989 [3].

1.2. In accordance with Article 130i of the EEC Treaty, the Framework programme encompasses all the activities undertaken by the Community, as a complement to those undertaken by the Member States, in pursuing the objectives assigned to it in the field of R&TD, and which are listed in Article 130f of the same Treaty.

1.3. The Framework Programme lays down the scientific and technical objectives to be achieved during the reference period, 'define(s) their respective priorities, set(s) out the main lines of the activities envisaged and fix(es) the amount deemed necessary, the detailed rules for financial participation by the Community in the programme as a whole and the breakdown of this amount between the various activities envisaged' [Article 130i(1) of the EEC Treaty].

1.4. The Third Framework Programme provides for the carrying out of six Community R&TD activities which are defined in Annexes I and II of the Council Decision. Within these activities fifteen specific programmes are developed.

1.5. These specific programmes constitute the principal means of implementing the Framework Programme: each of them, in accordance with Article 130k, 'defines the detailed rules for implementing it, fixes its duration and provides for the means deemed necessary'.

1.6. In addition to these six activities, there is a further centralized activity relating to the dissemination and exploitation of knowledge resulting from the specific programmes of research and technological development of the Community. This activity was the subject of a Council Decision of 29 April 1992 [4].

1.7. Under the Council Decision of 23 April 1990 the amount deemed necessary for the implementation of the Third Framework Programme was set at ECU 5 700 million, to be met from the EC budget. The sum of ECU 2 500 million was earmarked for the years 1990-1992 and ECU 3 200 million for the years 1993-1994. Under Article 1(4) of the Council Decision the latter sum was to be used to finance activities which had been started during the period 1990-1992.

1.8. In adopting a new Framework Programme for the period 1990-1994, interlinked with the Second Framework Programme covering the period 1987-1991, the Council took on board the concept of 'rolling' programmes for Community R&TD activities, a concept which the Committee had endorsed in its Opinion.

1.8.1. The introduction of this concept was to make it possible to ensure the continuity which is essential to the carrying out of research work and also to redirect the priorities in the light of experience and changing requirements.

1.9. In accordance with this concept, the funds allocated to the Third Framework Programme were to be reduced in the period 1993-1994 as a Fourth Framework Programme was to be adopted and implemented covering the period 1993-1997.

2. Commission's justification of the proposal

2.1. For several reasons, the scenario described above has been called into question. These reasons include the lack of a new EC financial framework for the period

[1] OJ No C 225, 1. 9. 1992, p. 9.
[2] OJ No L 117, 8. 5. 1990, p. 28.
[3] OJ No C 56, 7. 3. 1990, p. 34.
[4] OJ No L 141, 23. 5. 1992, p. 1.

1993-1994, the cumbersome nature of the decision-making process in the field of research, and the uncertainties as regards the decision-making process leading to the adoption of the Fourth Framework Programme.

2.2. In its communication entitled 'Research after Maastricht: an assessment, a strategy' [SEC(92) 682 final of 9 April 1992] the Commission considers the questions of the reduction of the resources available for financing Community R&TD activities in 1993 and 1994 and draws attention to the risks inherent in such a reduction and the danger of discontinuity in research work.

2.3. After examining the progress made in the Third Framework Programme and making an appraisal of all specific programmes implemented under the Second Framework Programme 1987-1991, the Commission proposes an increase in the overall funding for the Third Framework Programme and a re-distribution of the additional resources between the various specific programmes.

2.4. At its meeting on 29 April 1992, the Council of Research Ministers decided, after taking into account the abovementioned Communication from the Commission, to invite the Commission 'to present to the Council as soon as possible its proposals concerning the Fourth Framework Programme, taking into account the evaluation of the Second Framework Programme, the need to ensure continuity of research activities and in the light of the discussions in the Council'.

2.5. In the Proposal for a Council Decision under review the Commission invokes for the first time the provisions of Article 130i(2) of the EEC Treaty which stipulate that 'the Framework Programme may be adapted or supplemented, as the situation changes'. In the sole Article of the Proposal for a Council Decision, the Commission proposes that the funding for the Third Framework Programme be increased by ECU 1 600 million and that this sum be allocated to the different research activities as indicates in the Annex to the Proposal.

2.6. At its meeting of 12 October 1992, the Research Council

'— agreed (...) that, in principle, some financial supplement to the third Framework Programme could be appropriate in order to ensure continuity of Community R&D activities, subject to the definition of the financial perspectives for 1993-1997;

— stressed the importance of maintaining continuity within the established objectives of the third Framework Programme and its specific programmes;

— noted the need to reflect as far as possible the existing proportional balance between activities established within the Framework Programme and agreed that further work was necessary before the December Council to identify those programmes of particular value which face specific funding problems.'

(See Press release 9036/92—Press 173)

3. General considerations

3.1. On several occasions, the Committee expressed its concern over the considerable amount of time taken to adopt and effectively implement the Framework Programme and stressed the risk of discontinuity in the implementation of the specific R&TD programmes which would be damaging to the whole EC research effort. It also underlined that certainty and continuity are in this respect vital if research is to flourish.

3.2. In its Opinion on the proposal for a Council Decision adapting the Second Framework Programme of Community activities in the field of R&TD, of 3 July 1991 [1], the Committee was of the view that it was not possible to rule out the recurrence in future of a situation to the one the proposal under consideration was at that time designed to resolve—i.e. delays in the adoption of the specific programmes under the Third Framework Programme and an insufficient funding of the second framework programme (1987-1991)—unless appropriate provision was made for the allocation deemed necessary each year for the implementation of the specific programmes.

3.3. The delay in the adoption of the Third Framework Programme and the specific programmes was a major factor in bringing about the situation in which the need for supplementary financing has arisen in the form presented. The Third Framework Programme was not adopted until April 1990, and the specific programmes were adopted slowly thereafter, with the one in the field of human capital and mobility adopted as late as March 1992.

3.4. It is unfortunately probable that the new legislative process in the field of R&TD provided for by the Treaty on Political Union, once entered into force, will lead to comparable delays in the adoption and implementation of the Fourth Framework Programme.

3.5. The Committee would have hoped that the adoption of the concept of 'rolling' framework pro-

[1] OJ C No 269, 14. 10. 1991, p. 24.

grammes would have helped to provide essential continuity of work and to reduce the time required to agree and implement the specific research programmes.

3.6. It notes with regret that this concept has developed very slowly although it is pleased with the Commission's statement that it has resulted 'in some major benefits'. The Committee looks forward to being informed about these major benefits.

3.7. The Committee stresses that the need for supplementary financing now proposed is also attributable to a large extent to the Decision taken by Council when adopting the Third Framework Programme to fix the aggregate appropriation at ECU 5 700 million instead of ECU 7 700 million, as proposed by the Commission. This proposal was endorsed by the Committee.

4. Response to the Commission's proposal

4.1. The Committee approves the reinforcing of the existing research and technological development activities under the Third Framework Programme and it recommends that the Council adopts the Commission's proposal concerning supplementary financing.

4.2. This approval is consistent with the views expressed by the Committee, notably in its Opinion on the Commission's proposal concerning the Third Framework Programme (see footnote 3, page 106), and is also subject to the comments hereafter relating to the choice made by the Commission to increase the resources allocated to the specific programmes in a modular, rather than a linear manner in order to achieve the accepted objectives of each individual programme (see Appendix I).

4.2.1. The Committee accepts the reason given not to provide for a supplementary financing of the specific programmes on (1) Measurement and Testing and (2) Human Capital and Mobility—i.e. the fact that implementation is just beginning.

4.2.2. Similarly, the Committee accepts that supplementary financing is not proposed for the specific programme in the field of biomedical and health research, since the selection process, following the first call for proposals of October 1991, has not yet finalised.

4.2.3. The specific programme in the field of the life sciences and technologies for the developing countries appears to be at an early stage, but the Commission anticipates 'pressure' due to the substantial increase in proposals originating from scientists in developing countries.

4.2.3.1. The ECU 45 million per year which the Commission says could be added in the context of the 'promotion, support and monitoring activities' (APAS) and considered as providing other possibilities of action in that field of research may, because of their terms of reference, incompletely match the needs.

4.2.3.2. The Committee recommends consideration of supplementary financing which might proportionately be very small, but could be vital to maintaining the momentum and continuity of a growing programme, and which otherwise may be seriously affected by a shortfall before the Fourth Framework Programme is adopted and implemented.

4.2.3.3. The impact of this shortfall would have particularly serious consequences for the scientists of the developing countries.

4.2.4. A similar recommendation is made in regard to the Marine Science and Technology Programme for which the Commission does not foresee any increase in funding. This is not consistent with the Commission's statement that 'only 37 % of the good and excellent proposals could be funded' (paragraph 19 of the explanatory memorandum) after the two previous calls for proposals.

4.2.5. The proportionately high supplementary financing proposed for research activities in the field of Energy, and in particular the non-nuclear energies programme, is consistent with the views expressed by the Committee in a number of its Opinions.

4.2.6. The Committee also regards as acceptable the proposed increase for the Environment programme.

5. Additional comments

5.1. In putting forward its proposals the Commission states that it is taking account not only of the progress made in implementing the various research activities, but also of a number of strategic guidelines which are to provide the basis for its future action in the field of R&TD. These strategic guidelines will underlie the Commission's Proposal for a Fourth Framework Programme, covering the period 1994-1998, which it intends to submit at the beginning of 1993.

5.2. The Commission appears to be giving to its Communication 'Research after Maastricht: an assessment, a strategy', referred to under paragraph 2.2 above, the status of accepted Community policy, which the Committee considers to be premature.

5.3. The Committee would stress that the present proposal should not lead to substantial changes in the

balance between the various lines of action covered by the Third Framework Programme and as approved by the Committee.

5.3.1. The Committee would therefore approve the conclusion reached by the Research Council at its meeting of 12 October 1992 to invite 'the Presidency to seek agreement to a distribution which respects this balance more closely whilst taking due account of areas of particular need'. (See Press release 9036/92 — Press 173)

5.4. In addition the Committee's endorsement of the Commission's proposal concerning supplementary financing ought not to be construed as an approval of guidelines for or content of the next Framework Programme which has not yet been considered by the Committee.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

APPENDIX I

Framework Programme of Community activities in the field of the research and technological development (1990-1994)
Breakdown of the amount deemed necessary between the various activities envisaged

(in millions of ECU)

	1	2	Total	3
I. ENABLING TECHNOLOGIES				
1. Information and communications technologies	2 221	625	2 846	28
— Information technologies	1 352	430	1 782	32
— Communications technologies	489	77	566	16
— Development of telematics systems of general interest	380	118	498	31
2. Industrial and materials technologies	888	281	1 169	32
— Industrial and materials technologies	748	281	1 029	38
— Measurement and testing	140	0	140	0
II. MANAGEMENT OF NATURAL RESOURCES				
3. Environment	518	136	654	26
— Environment	414	136	550	33
— Marine sciences and technologies	104	0	104	0
4. Life sciences and technologies	741	148	889	20
— Biotechnology	164	55	219	33
— Agricultural and agro-industrial research	333	93	426	30
— Biomedical and health research	133	0	133	0
— Life sciences and technologies for developing countries	111	0	111	0
5. Energy	814	410	1 224	50
— Non-nuclear energies	157	180	337	115
— Nuclear fission safety	199	60	259	30
— Controlled nuclear fusion	458	170	628	37
III. MANAGEMENT OF INTELLECTUAL RESOURCES				
6. Human capital and mobility	518	0	518	0
— Human capital and mobility				
Total	5 700	1 600	7 300	28

(1) Decision 90/221/Euratom, EEC, 23. 04. 1990, OJ No L 117, 18. 05. 1990, p. 28
(2) Supplementary financing proposed
(3) Increase in %

APPENDIX II

to the Opinion of the Economic and Social Committee

The following amendment to the Draft Opinion, tabled in accordance with the Rules of Procedure, was defeated in the course of the debate:

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Insert the following paragraph:

'4.2.7. The ESC calls on the Commission to make the granting of financial aid more linear and less selective, with a maximum deviation downwards from the average ideal linear distribution of the order of 15 %, except where an activity of the 3rd Framework Programme has begun so recently that expenditure has been small: that is « Measurement and Testing » and « Human Capital and Mobility ».'

Reasons

The distribution proposed by the Commission is extremely selective, and this will give rise to legal problems during the procedure for the approval of the appropriations, particularly in cases where there is no unanimity among the Member States.

Voting

For: 26; against: 29; abstentions: 8.

Opinion on the proposal for a Council Directive on the protection of consumers in respect of contracts negotiated at a distance (distance selling) [1]

(93/C 19/28)

On 10 June 1992 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 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 November 1992. The Rapporteur was Mr Bonvicini.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion by a large majority with five abstentions.

1. Background

1.1. The proposal forms part of consumer protection policy, and is the result of lengthy consultations with consumer associations and sectoral organizations (Consumers' Consultative Council, Committee on Commerce and Distribution).

1.2. Following these discussions, the Commission has presented a framework directive laying down minimum protection rules, accompanied by a Recommendation [2] which calls on the trade organizations to draw up codes of practice supplementing the minimum rules on specific points.

1.3. The Commission has thus chosen a middle path, leaving as a voluntary matter the regulation of sensitive points (solicitation to buy, protection of consumer privacy, sales promotion methods, financial guarantee, right of withdrawal and reimbursement of any advance payments), but guaranteeing a regulatory reference framework to protect the consumer.

[1] OJ No C 156, 23. 6. 1992, p. 14.
[2] OJ No L 156, 10. 6. 1992.

2. Features of the sector

2.1. The Commission's explanatory memorandum contains a detailed analysis of the distance selling sector—which is particularly well developed in the Federal Republic of Germany, France and the United Kingdom—and charts the legislation adopted since 1987.

2.2. The sector is relatively new but is expanding rapidly thanks to use of new communications technologies. Its distinctive features set it apart from traditional types of selling such as door-to-door or mail-order sales which already have a significant turnover in their own right.

2.3. Taking advantage of the flexibility offered by new forms of communication, even quite small firms with no overseas offices can target consumers in other Member States more directly, thus extending consumer choice.

2.4. Hence the sector is already a significant one. The expansion of electronic selling techniques, which are now open to a large number of manufacturing and service companies, is likely to give it a further boost.

3. General comments

3.1. Rules to make distance selling more reliable are not only in the interests of the consumer—who wants to be protected—but also of the firms concerned, since it can only enhance their credibility and thus help them to boost their turnover.

3.2. Moreover, new communications technologies make the sector particularly well-suited for transnational development. It can widen consumer choice, but the consumer must also be guaranteed optimum protection. The piecemeal legislation in this field runs counter to the operation of the single market and justifies the use of Article 100a as the legal basis.

3.3. EC harmonization of protection measures is particularly welcome, since national rules cannot cover all the problems faced by consumers in transnational negotiations. More favourable protection provisions should be safeguarded by making it clear that the Directive is setting minimum harmonization standards.

3.4. Financial guarantees are a particularly delicate point, and national rules differ. Belgium, the Netherlands and Portugal prohibit demands for advance payment either in full or in part, while for advertisements appearing in the press the UK has guarantee funds financed by businesses in the sector. Other options involve insurance, tied deposits and penalties to protect the parties.

3.5. These penalties should always be based on the size of the deposit, and could involve either a deduction or an increase at an agreed percentage, depending on who is the injured party.

3.6. In conclusion, the diversity of practices and customs may make it difficult to decide what is the best common instrument, and advisable to leave regulation of the problem for the moment to voluntary codes of practice; but it is nevertheless necessary to safeguard the principle of the financial security of the contracting parties.

3.7. Accordingly, the Committee considers that a Directive defining minimum rules for consumer protection is the most appropriate instrument. However it suggests that certain principles enshrined in the Recommendation be mentioned in the preamble. It is thinking in particular of the principle that the consumer should be protected against the financial risks ensuing from failure to fulfil the contract, and against fraudulent practices that are damaging to both the consumer and the sector as a whole.

3.8. It is also clear that if the Directive operates in tandem with a Recommendation on codes of practice, the consumer should be guaranteed appropriate information on the content of codes drawn up by the professional associations. Consumer organizations could help here.

3.9. Article 11 deals with the right of withdrawal, operative during the cooling-off period accorded unconditionally to the consumer by distance-selling contracts. This right should be kept distinct from the possibility

of rescinding the contract after the cooling-off period in cases of fraud or failure to comply with the contract.

3.10. In the event of the latter, legislation on unfair trade practices and misleading advertising will obviously come into play. The obligation to be fair means that the nature of the product being sold (if it is moveable) and its origin, quality and quantity must correspond with those declared or stipulated. If the product is a foodstuff, it must be wholesome. Lastly, the obligation must cover the name, brand name or distinctive marks of the product which must not mislead the consumer as to the origin or quality of the good or service.

3.11. The specific problems of the products and services sold, and the various sales techniques used, can be dealt with in the codes of conduct.

4. Specific comments

4.1. The definitions set out in Article 2 should specify that the only contracts involved are those which originate in a 'solicitation', whether or not accompanied by advertising. Contracts originating in a request from an individual consumer for the supply of a good or service (a common practice in the retail trade) should be excluded.

4.2. The definition of a consumer as someone who acts in a personal capacity, i.e. 'for purposes .... outside his trade or profession', is useful.

4.3. Respect for consumer privacy (Article 4) is very important, especially in the case of the elderly and minors as they are more vulnerable to improper forms of solicitation. A consumer should not receive solicitations if he has expressed a wish not to. Some Member States already operate safeguards such as 'prior consent' or 'statement of refusal' (the UK Mail Preference Service and France's Stop Publicité).

4.4. The information to be supplied to the consumer when his custom is solicited (Article 6) could usefully include details of any guarantee arrangements, especially the existence of any 'clause' for failure or delay in fulfilling the contract.

4.5. Article 8 states that 'failure to reply shall not constitute consent'. This is vital if abuses are to be avoided. However, it would be even more watertight to state that any statement to the contrary (i.e. that failure to reply equals consent) is invalid.

4.6. The information to be supplied by the time of delivery (Article 10) should explicitly mention the guarantee conditions. The information should also be supplied in a language with which the purchaser is fully familiar. The proposed arrangement—that the information should be in the same language as the contract solicitation—might not protect the consumer adequately.

4.7. The seven-day minimum deadline for right of withdrawal (Article 11) is shorter than the cooling-off period in Germany and the UK, the countries with the greatest experience of distance selling. Ideally, national legislations should draw on their experience. A standard method should also be used for calculating the number of days (inclusion or exclusion of non-working days).

4.8. The Committee appreciates the recognition in Article 13(2), in accordance with national legislation, of the right of trade and consumer organizations to take legal action. It also welcomes the consumer protection afforded by the binding nature of the rights conferred by the present Directive (Article 14).

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on economic and social organizations in the countries of Central and Eastern Europe —consultative mechanisms

(93/C 19/29)

In a letter dated 2 June 1992, Mrs Vasso Papandreou invited the Economic and Social Committee on behalf of the Commission to draw up an Opinion on Economic and Social Organizations in the Countries of Central and Eastern Europe: Consultative Mechanisms.

The Section for External Relations, Trade and Development Policy, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 5 November 1992. The Rapporteur was Mr Masucci, the Co-Rapporteur Mr Pompen.

At its 301st Plenary Session (meeting of 25 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. Early in 1992, the Committee—through its Chairman—wrote to the Commission reminding it of the recommendation (in point 4.9 of its Additional Opinion of 26 September 1991 on EC relations with the countries of Central and Eastern Europe) that a consultative committee be set up within the institutional framework ... consisting of members of the Economic and Social Committee and members of similar bodies in the associated countries.

1.1.1. The Commission subsequently responded —through Commissioners Andriessen and Papandreou—to the Committee's letter, taking note of it 'with interest' (Letter from Mr Andriessen dated 26 June 1992) and agreeing with the proposal to set up 'a consultative mechanism which will also have to be officially provided for in future agreements still to be negotiated' (Letter from Mrs Papandreou dated 23 June 1992). Such a consultative body—by analogy with the composition of the EC's Economic and Social Committee—will have to be representative of all the economic and social organizations.

1.2. The Commission also asked the Committee to draw up an Opinion this autumn on the 'potential opportunities for strengthening structured relations between representatives of employers and workers' (Letter from Mrs Papandreou dated 2 June 1992).

1.3. In order to do so in full knowledge of the facts, the Committee has:

a) sketched out the main aspects of the social and economic situation in the countries in question, partly on the basis of the replies given by their social partners and sectoral associations to a questionnaire (the analysis can be found in the Report attached to this Opinion);

b) hosted a two-day hearing of representatives of the social partners and interest groups of Bulgaria, Czechoslovakia, Poland, Romania and Hungary.

1.4. The hearing, held at the ESC building on 29 and 30 September 1992, was attended by about 35 representatives of socio-economic organizations from the five countries, diplomatic representatives of those countries, and representatives of many European and international organizations.

1.5. They were asked a number of specific questions, relevant to the Draft Opinion, and useful for forming as realistic a picture of the situation as possible.

2. General comments

2.1. The analysis in the attached Report—based on the available data, on the replies of the socio-economic organizations to the questionnaire and on the hearing of the economic and social interest groups from the CEEC (Central and Eastern European Countries) on 29 and 30 September 1992—confirms certain misgivings about the process of constructing a market economy in the CEEC and its social repercussions, and uncertainties as to the type of society which is establishing itself. However, the process varies from one country to another. It is therefore difficult to draw conclusions which can apply exactly to each of the countries concerned.

2.2. The shock therapies and short deadlines for establishing a market economy, apart from intensifying the recession and disappointing expectations aroused by the return to democracy, turned out to be unrealistic, because the reform will take a long time and is charac-

terized by a lack of ability to cope with the serious social repercussions. This point, however, must not be confused with the positions of people in leading positions in industry and politics—coming from the ranks of members of the former Communist parties and managers of state-owned enterprises—who, for different reasons, seek to hinder the economic reforms and exploit popular discontent. The transition from a command to a market economy has proved to be far slower and more difficult than forecast. It has now reached a critical point, manifesting itself in a decline in Gross Domestic Product (GDP), a deterioration in agricultural production, industrial output and the trade balance, a consumer price explosion, decreases in real wages and living standards, and increases in gross foreign debt and unemployment.

2.3. The privatization of state-owned enterprises and the consequent restructuring processes have hardly begun, while the legal foundations for some of the key elements of a market economy—private property, trade and labour relations—are still inadequate.

2.4. The data which we have collected show that the social dimension has not been given its due importance: economic restructuring has priority, and the authorities of the countries concerned see industrial relations and cooperation between the social partners as a possible drag on economic reform.

2.4.1. The Community, in the European Agreements, has not questioned this approach, and one cannot avoid the impression that its social and institutional system, which is closely linked to the social dimension, does not exercise the same attraction as its political and economic system.

2.5. Title VI of the association agreements (concerned with economic cooperation) covers many subjects, including industry, agriculture, training, the environment, regional development, small and medium-sized enterprises (SMEs) and social questions. But the social dimension is hardly mentioned being confined to the free movement of workers, training and education. Nor is there a 'social clause' explicitly referring to Conventions of the International Labour Organization (ILO), and particularly No 87 on the right of organization and No 98 on the right of collective bargaining.

2.5.1. Although the disparities between the Community and the CEEC are noted, social convergence is not cited as an objective alongside economic cooperation. Nor is there any reference to the Community Charter of the Fundamental Social Rights of Workers, to workers' and employers' organizations or to industrial relations.

2.5.2. Yet the aims of the agreements include the desire to ensure the economic integration of the CEEC in order to safeguard peace and stability, whilst the target of Political Union is also hinted at.

2.5.3. As the basis of this integration, a series of basic principles are reaffirmed: pluralist democracy, the rule of law, human rights, basic freedoms, social justice and the principles of the market economy.

2.5.4. Moreover, the Conclusions of the European Council which took place in Lisbon on 26 and 27 June 1992 state that cooperation will aim systematically 'to assist them in their preparations for accession to the Union'.

2.5.5. These Conclusions do not give prominence to an important passage of the European Commission's report on the criteria and conditions for the accession of new Member States to the Community, submitted to the Lisbon European Council, which states that the prospect—albeit not in the short term—of the accession of CEEC countries to the Community raises the problem of updating the social-dimension and regional-policy aspects of association agreements (when they come up for review).

2.6. Partly with a view to their future accession to the Community, the Committee regards it as important to update the agreements with Poland, the CSFR and Hungary on the aspects proposed by the Commission —as well as on some aspects of commercial policy— and to take these aspects into account from the start in negotiating the agreements with Bulgaria and Romania.

2.6.1. The Committee puts forward below some suggestions on the practical implementation of the agreements and assistance programmes, the participation of the economic and social organizations in the democratization of society and the economy, and the promotion of an advanced system of industrial relations —the essential complement to a social market economy.

3. Participation and consultation of the economic and social organizations

3.1. As regards the implementation of the European Agreements and the assistance programmes (Phare, Tempus), the present almost total absence of information and involvement of the social forces in the countries concerned and at Community level must be

overcome. It is for this purpose that the Committee, in its Additional Opinion of 26 September 1991, proposes the setting-up of a consultative committee, consisting of members of the Economic and Social Committee and members of similar bodies in the associated countries. The tasks of this body are described as follows: it 'would be consulted by the Association Council on economic and social questions which relate to the European Agreements and are of common interest. The consultative committee should also be given the right of initiative so that its members could, on their own initiative, take up urgent social and economic issues associated with pan-European integration and put forward constructive proposals'. The hearing of 29 and 30 September showed that this proposal has the unanimous support of the CEEC social partners and interest groups. Such a committee will perform its function well if its members are representatives of autonomous, free, democratic organizations—i.e. they meet the ILO criteria.

3.1.1. The Committee therefore reaffirms the need to set up this joint consultative committee in the near future, with adequate funds to enable it to operate properly.

3.1.2. This joint consultative committee could also have the following tasks:

— receiving information and expressing views on the operation and the application of the European Agreements;

— providing information on the development of the social dialogue and the consultative procedure at Member State and Community level;

— exchanging experience and, on request, making relevant skills of its members or constituent interest groups available;

— serving as an intermediary to provide skills which are not directly available to it;

— on request, studying problems which fall generally within its terms of reference.

3.1.3. It would be logical to insert a provision for such a joint consultative committee of social interest groups under Title IX, which lists the institutions for operating the association agreements to be concluded with Bulgaria and Romania. Article 107 of the agreements with Poland and Czechoslovakia and Article 109 of the agreement with Hungary can be used to this end, until these agreements can be renegotiated. In order to improve the flow of information between the Community institutions and economic and social interest groups, it would also be very useful to appoint economic and social attachés for the Commission delegations to those countries.

3.1.4. This model will also be useful for any other future association agreements.

3.1.5. It is clear that for such a body to function properly it is essential for the economic and social organizations in the CEEC to be informed, consulted and involved in the implementation of the association agreements and assistance programmes, either directly or through the existing tripartite bodies or new consultative institutions.

3.1.6. In view of the specific problems of individual Central and Eastern European countries, intensive preliminary contacts on a bilateral basis appear to be necessary.

3.1.7. The Committee therefore undertakes to instruct its Sections—each within its terms of reference —to evaluate themes of common interest to the Community countries and the CEEC, in order to lay a practical foundation for dialogue between the socio-economic interest groups of the two areas at further meetings and within the joint consultative committee proposed in this Opinion.

3.2. In the last few years international bodies such as the ILO and the Organization for Economic Co-operation and Development (OECD) have laid considerable stress on tripartism, and the setting-up of bodies which include the social interest groups in the CEEC from the start of implementation of the economic reforms.

3.2.1. The International Confederation of Free Trade Unions (ICFTU) and the IOE reached the same conclusions in a joint document on eastern Europe in April 1992. As the countries concerned have ratified a large number of ILO Conventions, the application of which is jeopardized by the restructuring policies, the Committee would like to see Convention No 144 on tripartite consultation also ratified by them, and the spirit of it respected.

3.2.2. The Committee reaffirms the importance of consultation and of the institutionalized involvement of the social partners. At the same time it stresses that there are no preconstituted models and that each of the countries concerned will have to define and develop the form and content of the social dialogue and consultative procedures to be followed.

3.2.3. The old communist regimes allotted an inappropriate role to the trade unions, but also—through its centralized control of all aspects of the economy and society—destroyed the social fabric—so rich and varied in western societies—where it already existed, or prevented its development.

3.2.4. While some organizations—such as those representing workers and employers—are seeking to define their role and function more clearly, other sectoral associations are being formed or are as yet insufficiently developed.

3.2.5. The democratization process must reconstruct that fabric in the longer term. It is precisely for that reason that due value must be accorded to the main interest groups which are being or will be organized (consumers, ecologists, cooperatives, artisans, farmers etc.).

3.2.6. It is therefore important for those interests to be represented in institutional fora alongside the traditional two sides of industry.

3.2.7. The Committee therefore regards it as useful to set up consultative bodies analogous to the economic and social councils which exist in nearly all the Community countries.

3.2.8. However, it should also be stressed that tripartite cooperation and consultation do not provide an answer to all problems of social polemics, either in the Community or in the CEEC.

3.2.9. On the contrary, the first signs that we now see confirm what we already knew: that such a model can function well only if it is based on autonomous, well identified, organized forces which have developed freely.

4. A structured industrial relations system

4.1. The development of industrial relations between autonomous social partners therefore takes on fundamental significance in safeguarding the role and the responsibilities of the public authorities.

4.1.1. The trade unions and employers' organizations must prepare to tackle the difficult transitional situation as independent actors, capable of understanding all the aspects of a complex economic and social scenario.

4.2. The difficulties which the new trade unions must face in this transitional phase are enormous: from overcoming the climate of disaffection and distrust, to the long-standing lack of a workers' participatory culture; from having to operate under particularly alarming economic conditions, to a certain lack of experience and training in a collective bargaining culture.

4.3. Even greater are the difficulties on the employers' side. The handful of organizations representing private entrepreneurs are flanked by the much more numerous representative bodies of public enterprise managers. The entrepreneurial class, whether public or private, faces the problems of the absence of a true managerial culture, and lack of experience and of decision-making autonomy.

4.4. Development of a sophisticated collective bargaining system—structured at both the national (intersectoral and sectoral) and the enterprise levels, and essential for building a rational, efficient industrial relations framework and a labour market regulated by social consensus—is thus part of the transitional phase.

4.5. A legal framework is a necessary but not a sufficient prerequisite for achievement of this aim. An essential precondition is the achievement of a high degree of autonomy, through democracy within the organizations, totally voluntary membership and genuinely wide representation. Next in importance comes an adequate knowledge of the characteristics and problems of a market-orientated economy, with particular reference to:

— privatization policies and policies for restructuring enterprises;

— basic principles and technique of collective bargaining, and workers' representation systems;

— organization of the labour market and an active employment policy;

— education and vocational training;

— environment, and health and safety at work;

— social protection and security.

4.6. The ILO and its education programme have an important role in support of central and eastern European workers' and employers' organizations. The

same applies to the activities of the ICFTU, the World Confederation of Labour (WCL), the Trade Union Advisory Committee (TUAC) and the European Trade Union Confederation and their affiliated national organizations. The employers' organizations, both international [IOE, Business and Industry Advisory Committee to OECD (BIAC), Union of Industries of the European Community (UNICE) and UEAPME] and national, also exchange information to assist the new employers' organizations in the CEEC. The Committee takes the view that the social dimension must be an integral part of the association agreements, which should specifically refer to the development of industrial relations as an essential complement to the market economy, under the subject headings of paragraph 4.5.

4.6.1. In this context the Committee stresses its support for the request made by the European Trade Union Confederation (ETUC) to the European Parliament for the insertion of a new budget heading under Chapter 4000 for the promotion of the social dialogue in the CEEC. This appropriation of ECU 500,000 should be jointly managed by the European socio-economic interest groups.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the Community Structural Policies—Assessment and Outlook

(93/C 19/30)

On 28 April 1992, the Bureau of the Economic and Social Committee, acting under the third paragraph of Article 20 of its Rules of Procedure, decided to draw up an Opinion on the Community Structural Policies—Assessment and Outlook

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 13 October 1992. The Rapporteur was Mr Christie.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. In its Communication the Commission presents a 'mid-term' assessment of the impact that Community structural policies have had over the period since their reform in 1989. As such this document is complementary to the Annual Report of the Implementation of the Reform of the Structural Funds (1990)—COM(91) 400—on which the Committee recently passed an Opinion [1]. The present Communication focuses in detail on the results which the reformed structural funds have had in the regions in receipt of assistance over the period since 1989.

1.2. The Commission Communication has been presented as an integral part of the Delors II proposals for the development of the Community's Finances over the next five years, on which the Committee has passed an Opinion [2].

1.3. The Committee decided to draw up an Additional Opinion in order to give its views on the guidelines for future reform.

[1] OJ No C 106, 27. 4. 1992, p. 20.

[2] OJ No C 169, 6. 7. 1992, p. 34.

2. **Basic Facts on the framework of a future reform of the funds**

2.1. The following points made in the Communications of the Commission are pertinent as they constitute the framework of a future reform of the funds.

2.2. *Disparities and Structural Handicaps*

2.2.1. Despite the favourable growth climate that the Community enjoyed during the late 1980s, regional disparities improved only slightly. In 1989, the last year for which data has been presented and the year that the reforms were implemented, the top 10 regions had an income per head more than three times higher than the bottom 10 regions.

2.2.2. Regional disparities in unemployment were more pronounced than regional income disparities, although once more the improved economic conditions generally after 1986 reduced regional unemployment disparities somewhat. Particularly significant was the fact that the incidence of unemployment was most acute among young people, especially in the lagging regions where an unemployment rate of 32.3 % was recorded in April 1990. Also significant in terms of the prospects for reducing unemployment was the fact that half of the total unemployed had been out of work for longer than one year making it all the more difficult to reabsorb them into the active labour force.

2.2.3. Regional income disparities are closely linked to disparities in factors determining regional competitiveness—economic infrastructure (transport, telecommunications, energy, etc.), capital stock and research and technological development capacity. Regional disparities in income and employment follow a similar pattern to regional disparities in these three elements of competitiveness.

2.3. *Impact of National and Community Policies*

2.3.1. The Commission reports the impact of the Structural Funds as favourable and contributing to the aim of greater economic and social cohesion. It is estimated that the greatest benefit is being felt in those countries in receipt of assistance under Objective 1. Between 1989 and 1993 the Commission estimates that economic growth will be higher than for the Community as a whole and that this can be attributed to the structural funds. The contribution to faster growth from the Structural Funds is expected to be largest in Portugal (0.7 % per year) and Greece (0.5 %) while for the other Objective 1 countries and regions it should be about 0.3 % per year. The Commission claims that between 1989 and 1993 Community assistance should lead to the creation of some 500,000 new jobs.

2.3.2. In the case of the Objective 2 regions the Commission has not been able to provide any quantitative details on the impact of the structural funds, although a leverage effect attributable to the impact of the funds can be detected. Community funding is mainly directed towards the creation of jobs and support for new productive investment rather than towards infrastructure which is generally well developed in these areas. The Commission also reports favourably on the spread of technological innovations in some Objective 2 regions, this being particularly significant from the perspective of industrial restructuring and improving the potential for indigenous economic growth.

2.3.3. Although Objectives 3 and 4 have assisted long-term and young unemployed persons, national rather than Community measures are the main instrument here.

2.3.4. The Commission reports that measures undertaken under Objective 5(a) have contributed to retaining population in the countryside, protecting the environment and to rural development. Assistance has largely been directed to farmers with low incomes and to small farms.

2.3.5. As implementation of Objective 5(b) did not start until 1990 it is too early to analyze its socio-economic impact, although initial results suggest that the measures are in line with needs and will contribute to developing the potential of the rural areas.

2.3.6. No assessment has yet been carried out on the measures for fisheries negotiated in the Community Support Frameworks (CSFs).

2.3.7. The implementation of the reformed Structural Funds is having a positive impact on the Community as a whole. It is estimated that, of every hundred ECUs invested in Portugal, ECU 46 will be returned to its Community partners in the form of imports. When this is taken in conjunction with other developments—for example liberalizing public procurement and other market-opening policies—then the Community as a whole will gain significantly from the increased economic activity created by structural fund assistance measures.

2.4. *Implementation of Structural Policies*

2.4.1. The Commission notes that although the objective of integration has been achieved in some cases, the required synergy has not been delivered due to the prevailing distribution of competences among both the Community departments and the national authorities, and because of the time constraints imposed on deciding on assistance.

2.4.2. The loan activities of both the European Investment Bank (EIB) and the European Coal and Steel Community (ECSC) to date have not been sufficiently integrated with the reformed funds. For maximum impact it is necessary that all Community grant and loan instruments observe the principles of concentration, partnership and programming.

2.4.3. Partnership has been an important innovation in the reformed structural policy and has facilitated a high degree of decentralization of the responsibility for implementing Community assistance. However, the involvement of the social partners in the programming and monitoring process has often been unsatisfactory.

2.4.4. The procedures for implementing structural assistance are still too complicated.

2.4.5. The maximum level of assistance permitted for Objective 1 under the reformed funds—75 % of the total costs—has not been reached and this has contributed to difficulties encountered in certain Member States in ensuring the national co-financing of Community intervention. A similar pattern can be seen with respect to other Objectives where average rates of assistance are below the maximum permitted by the regulation.

2.5. *The Commission's Orientation for Reform*

2.5.1. The Commission recognizes that completion of the internal market is bound to increase the competitive pressures on the lagging regions. Consequently Community assistance should continue to be concentrated in those areas although adjustments will be required to facilitate structural industrial change, to improve competitiveness, to tackle the problems of migration and to respond to the needs of rural development. If the lagging regions are to catch up with the richer regions they will need to move away from low wage, low technology industries and appropriate a higher share of the high technology, high value-added activities.

2.5.1.1. To be effective assistance should be more flexible. Partnership should be strengthened and procedures for implementing policy simplified. The Commission recommends extending the scope of Community assistance, introducing greater differentiation in rates of assistance and giving a greater role to Community initiatives.

2.5.2. The Commission presents data reflecting the scale of the problem confronting the lagging regions. To achieve an improvement of 20 percentage points so that a region's per capita Gross Domestic Product (GDP) can rise from 50 % of the Community average to 70 % will require a difference in annual growth rates of 1.75 % over 20 years or 2.25 % over 15 years—equivalent to 5.25 % per capita growth over 15 years or 4.75 % per capita over 20 years.

2.5.3. Equality of opportunity is far from being realized. The technological and capital endowments in the lagging regions do not enable these regions to compete with the richer regions. The Objective 1 regions require:

— greater investment in transport infrastructure;

— greater investment in telecommunications;

— greater investment in energy infrastructure.

2.5.4. Although the lagging regions in particular will find the adjustment to achieve convergence ahead of monetary union a painful process, this will improve the macro-economic context and encourage greater economic growth in these regions. Moreover the process of adjustment will be handicapped by the loss of the exchange rate as an instrument of economic policy. It will therefore be necessary for markets in these regions to become more flexible to assist the adjustment process.

2.5.5. The gradual harmonization of social and environmental policies throughout the Community will impact on the lagging regions to the extent that part of their competitive advantage to date has derived from lower standards in both respects. These regions will need to raise productivity significantly to compensate for higher social and environmental standards.

2.5.6. As trade liberalization proceeds further with respect to Eastern Europe, the rest of the Mediterranean area and the third world regions in the Community dependent upon low wage industries for employment and income will experience an intensification in competition.

2.5.7. Whilst the principles underpinning the 1988 reforms are not to be altered, the Commission does set out a number of proposals for adjusting the Structural Funds—in all cases a greater degree of flexibility in implementation will be required—given the present and future context as described:

— A greater and more sustained effort to further the development of the Objective 1 regions.

— Greater discretion in selecting regions eligible for Objective 2 assistance by including other factors—for example the anticipated impact of industrial change and development in systems of production—alongside conventional indicators (unemployment and industrial employment) in the selection of eligible regions.

— Changes in Objectives 3 and 4 to take account of the revised Article 123 with increased emphasis on transforming training systems and assisting workers to adapt to industrial change.

— Concentration of the Community's structural measures for rural development to concentrate on priorities—diversifying the economic base of rural communities, increased assistance under Objective 5(b), assistance to Objective 5(a) regions to be implemented through programming and partnership and measures to encourage local rural development to be strengthened.

— Consideration to be given to adding a sixth Objective to the structural policies relating to regions dependent on fisheries.

— Changing the existing rules and procedures on implementing the Structural Funds to (i) strengthen partnership, (ii) simplify decision-making, (iii) reinforce assessment and broaden the scope of Community assistance, (iv) provide for greater differentiation in rates of Community assistance and, (v) a greater role to be played by Community initiatives. The Commission document identifies a number of measures that can be taken to achieve these five aims.

2.5.8. The Commission draws attention to the need to achieve both convergence and cohesion. Convergence is necessary to establish a framework for sustainable economic growth for the Community as a whole. This will assist the developmental prospects of the lagging regions. Similarly, cohesion will accelerate convergence as it will promote the type of structural changes that are required if the lagging regions are to effect the transition to an indigenous economic base sufficiently dynamic to deliver higher rates of economic growth. The proposed Cohesion Fund will be crucial in this respect.

3. General Observations

3.1. *Participation and Subsidiarity*

3.1.1. When the operating instructions for the Structural Funds were being prepared following restructuring, a key objective was to obtain greater participation at local and regional levels. This objective has only partly been achieved.

3.1.2. The Committee suggests that a great deal more attention needs to be given to the matter of delivering the structural policies. The Committee wholeheartedly endorses the Commission's recommendation that regional and local authorities are given a greater role in the preparation of plans, and that the social partners are more closely involved in the programming procedures. One of the main improvements claimed for the 1988 reforms was that while overall priorities for the Structural Funds are set at the Community level, regional differences are accommodated through the implementation procedures. There is evidence that this potential advantage is being undermined by a lack of involvement of 'local partners'. If it is to be successful, local economic development relies considerably upon accurate information concerning the indigenous development potential of a region which involves the type of detailed local knowledge that is unlikely to be present at the national level. Moreover, policy must be relatively flexible in order that adjustments can speedily be made in response to unforeseen contingencies. This too is suggestive of a high degree of local autonomy over the formulation and application of policy. The social partners are crucial in this regard as they are likely to have an unrivalled understanding of local economic needs and development strategies.

3.1.3. The Committee believes that new ways whereby representatives from the local economy are included

in the procedures governing the implementation of the Community's structural policies must be explored. Under the present regulations, this depends entirely upon national practice. The regulations should be amended in respect of the formulation of operational programmes such that regional and local authorities, including the social partners, must be represented in the formulation of operational programmes. For example they should be given a right to be formally consulted on all proposals at the same time as national governments and could conclude regional agreements in connection with the implementation of CSFs. The Committee considers that this is the only means of ensuring that the principle of subsidiarity is fully respected while enhancing the prospects of success on the part of the structural policies.

3.1.4. Regional agreements of the social partners to back-up CSFs would be a desirable way to give the social partners responsibility in the implementation of the Funds. The Committee therefore welcomes the Commission's proposal that resources be devoted to assisting local interests in their preparation of economic development plans.

3.1.5. The Committee endorses the Commission's proposals for simplifying the process. The Committee is, however, concerned that the proposals could result in the inefficient use of resources and it therefore suggests that the European Court of Auditors, working together with the national audit offices, should help to ensure effective scrutiny of the way in which the resources of the Structural Fund are used.

3.2. *Objective 1*

3.2.1. The Committee takes this opportunity to stress the importance for the Objective 1 regions of achieving self-perpetuating economic growth. To this end, the structural programmes must continue to support the determinants of economic growth in these areas—enhancing the skills of the local labour force, improving the infrastructure in what are often highly peripheral regions of the Community, assisting with the identification and exploitation of opportunities for local production in high value-added activities, and promoting partnership at all levels.

3.2.2. The Commission must strive to devise policies that properly take account of the geographical peripherality of many of the Community's least developed regions, especially as it is likely that an increasing share of economic activity will concentrate around the core of the Community.

3.2.3. The Committee recommends that the five new German Länder are included in the calculations for determining the average Community GDP. However, including these Länder will lower the average of per capita Community GDP which is one measure used to determine the eligibility for Community assistance under the reformed Structural Funds. Consequently, the Committee recommends that regions presently in receipt of Community funds due to a per capita GDP of less than 75 % of the Community average should not lose this assistance if the relative improvement in per capita GDP is the result solely of the new Länder statistically lowering the Community average.

3.2.4. The Committee holds that a strict application of the criteria to select the Objective 1 regions may prove counter-productive over the longer period. Regions that have enjoyed an increase in per capita incomes to take them above 75 % of the EC average over the past five years are not necessarily able to sustain this position unaided. Moreover, just as the regulations should incorporate a degree of flexibility to maintain the economic performance in those regions graduating out of Objective 1 status, the Committee would recommend that similar flexibility is required to reverse the economic conditions in those regions that are suffering a reduction in per capita GDP towards the 75 % threshold. The Committee recommends that an intermediate band of between 75 % and 80 % of Community average per capita GDP is established within the framework of the Structural Funds such that regions with per capita GDP within 75-80 % of the EC average, and which record an above average level of unemployment, will be eligible for assistance.

3.2.5. The Committee reiterates its general support for the financial provisions on Structural Funds contained in the Delors II package as these refer to the volume of assistance to be allocated to Objective 1 regions.

3.3. *Objective 2*

3.3.1. The Committee welcomes the Commission's proposal that other factors should be taken into account when determining the selection of areas eligible for assistance under Objective 2. Further, the anticipated impact of industrial change along with development in systems of production are both sensible 'forward-looking' supplementary indicators. It makes a great deal of sense for Community structural policy to be able to respond to emerging problems rather than coming into effect only after sometimes intractable industrial problems have arisen. However, the concentration of resources and continuity in the implementation of policies in the presently designated Objective 2 regions must remain the priority of Community structural policy.

3.3.2. The Committee is concerned that the present two-year planning period for CSF's is too short for satisfactory implementation of development planning and recommends that a five-year programming horizon be adopted under Objective 2 of the Structural Funds. This would improve the planning and implementation of programmes, and would bring the programmes into alignment with those in Objectives 1 and 5(b) regions.

3.3.3. The Committee re-states its support for the increase in financial resources allocated to Objective 2 being proportionately the same as that which the Delors II financial perspective suggests should be assigned under Objective 1, excluding the proposed Cohesion Fund.

3.4. *Objectives 3 and 4*

3.4.1. The Committee supports the objective to better assist workers in adapting to industrial change and developments in production systems by means of vocational training and retraining. Human capital plays a key part in determining the competitiveness of Community industry in global markets. It is vital that increased resources are devoted to measures that improve and enhance the skill and the general quality of the labour force in Member States.

3.4.2. The Committee expects this aspect of the social dialogue to receive greater attention on the sectoral level and recommends that training agreements, especially on the sectoral level, take into account the regional dimension.

3.4.3. Since the problem of long-term unemployment is one that has become worse over the past decade, it is important that measures to combat long-term unemployment continue to attract significant Community funding to complement national measures, although the Committee recognizes that the latter must always take the leading role in this policy area.

3.5. *Objective 5(b)*

3.5.1. The Committee agrees that a greater effort is needed to diversify the economy of the rural areas. But considerable sensitivity is required in this respect. Rural economies can only survive if they can achieve a reasonable balance between industry, agriculture and tourism. Rural areas differ in terms of cultural values, social conventions and developmental objectives. Policy with respect to these areas, as elsewhere, must reflect local objectives and capabilities.

3.5.2. The Committee recommends that consideration is given to extending the geographic coverage of Objective 5(b) to ensure that all peripheral rural areas are covered by the Structural Funds as provided for under Article 11 of the Framework Regulation.

3.5.3. In implementing rural development policy under Objective 5(b), the Commission should consider ways of ensuring that local representation is effective in formulating programmes. One of the greatest problems confronting economic development in rural areas is selective out-migration. Policy should be geared to stemming the outflow of the highly skilled and younger work force from these areas as this will leave the region much less able to achieve self-perpetuating economic growth. Necessarily this will require that a greater role is given to local communities in the process of economic planning.

3.5.4. Transport infrastructure remains one of the single most important barriers to economic development in the rural areas of the Community. Resources must continue to be made available to improving road, rail, air and sea links between the Objective 5(b) areas and the core of the Community.

3.6. *Objective 6*

3.6.1. The Committee believes that the case for introducing a sixth Objective region to the structural policies covering structural measures relating to the fisheries sector has not been substantiated. Although recognizing the severe problems confronting the localities associated with the Community's fishing industry, the Committee is concerned lest the addition of another Objective reduces the resources presently available to the other Objective regions. Instead, the problems of this sector may be more adequately addressed through a Community 'own initiative'.

4. Specific Comments

4.1. *General*

4.1.1. The Committee endorses the proposition by the Commission that the objectives defined in the 1988 reform are valid and that these funds should continue to operate beyond 1994 very much as they have done so to date. Further, the apparent success of the structural policies points to the desirability of increasing the funding available over the next five years in line with the Delors II proposal. The changes that are likely to over-

take the Community within this time period are set to exacerbate rather than reduce present regional economic disparities. Unless the funds are strengthened there is a risk that some of the real gains achieved to date will be lost and the limited progress made towards economic and social cohesion will be reversed. The Committee re-states its general opinion that the Community Heads of State and Government should accept the financial provisions of the Delors II package for Structural Funds as initially proposed within the proposed time limit.

4.2. *Macroeconomic Policy*

4.2.1. The Committee is concerned that the Commission gives insufficient attention to the possible consequences for economic and social cohesion that will result from the introduction of economic policies geared to achieving convergence in some Community countries, especially the poorer Member States and those with a high level of public debt. The Committee regrets that the Commission has so far not undertaken an assessment of all Community policies, in terms of their effect on cohesion within the Community, as the Committee had called for [1]. The Committee urges that in subsequent reviews of the impact of the structural policies, and especially in relation to the Protocol on Economic and Social Cohesion agreed in Maastricht, the Commission incorporates a detailed commentary on the consequences for the Objective regions of changes in other aspects of Community policy.

4.2.2. The Commission should be more forthcoming with its views concerning the Community's macroeconomic environment. The economic and social prospects for the Objective regions would be greatly enhanced if the Community was to enter a period of sustained economic growth. Considerable emphasis has been given to the importance for Community structural policies to create conditions in which the Objective regions enjoy an 'equality of opportunity' with the more developed regions in terms of economic development potential. However potential in the Objective regions will remain unrealised in a climate of modest economic activity. If investment is to be attracted to the less prosperous regions, or if indigenous economic development is to occur, a buoyant macroeconomic environment throughout the Community is a prerequisite.

4.2.3. The recent turbulence in the Community's currency markets suggests that a greater real economic convergence is essential if progress to monetary union is to be maintained. This requires a closer degree of cooperation and compromise between economic policies conducted in individual Member States than is presently the case. Real economic convergence, and so progress to monetary union, will be easier to achieve to the extent that the Community collectively renews its economic strategy geared to generating economic growth and employment.

4.3. *Convergence and Cohesion*

4.3.1. Considerable importance has been given to achieving 'convergence' within the context of moving to economic and monetary union on the part of the lagging regions. The Committee supports the view that it would not be acceptable for convergence in narrow fiscal or budgetary terms in the lagging regions to be achieved at the cost of reducing the supply of those public goods necessary for development with which they are presently poorly endowed as this would make the development effort all the more difficult.

4.3.2. The Committee is firmly convinced that on the basis of fixed exchange rates, the ensuing problems cannot and must not be solved via a specific low wages policy. Comparatively low wages and salaries in the poorer regions tend to attract only labour intensive industries and services as long as the skills of the workforce remain low. Consequently low wage employment could substitute for unemployment but will not necessarily achieve a significant long term narrowing in the gaps between the Community's rich and poor regions. Self-sustaining growth in the lagging regions will only be achieved if it is possible to attract a reasonable volume of high value-added industries and services. This conclusion is reinforced to the extent that high-technology, high value-added industry clusters around the Community's core regions [Cf. COM(92) 84.III. 2. Economic and monetary union].

4.4. *Infrastructure*

4.4.1. Presently the overwhelming share of the Community's structural policies is being devoted to infrastructural programmes. The Committee would stress that the thrust of regional assistance in the most backward parts of the Community should continue to be on developing the infrastructure as this is the key that will unlock economic development in many peripheral regions. The impact of improvements in transport infrastructure is extremely important as poor infrastructure remains a significant barrier to private investment.

[1] OJ No C 98, 21. 4. 1992, p. 50.

4.4.2. The Committee recalls its detailed recommendations concerning the requirements for support frameworks which allow for a complementary development of human resources, infrastructure and private investments in agriculture, industry and the service sector, and the important role which the trans-European networks will play in this context [1].

4.5. *Modulation*

4.5.1. The Committee endorses the Commission proposal that Community rates of assistance should be adjusted to reflect more closely the financing capabilities of the Member State in question. But this should be achieved by increasing the resources devoted to the structural policies and not by concentrating to an even greater degree the resources available at present or under the proposed Delors II package.

4.6. *Own Initiatives*

4.6.1. The Committee has already in principle expressed its support for an increase in the resources available for Community initiatives [2]. It feels however that the Commission has—as of yet—failed to present sufficient details to explain fully the proposal that 15 % of the resources allocated to the Structural Funds should be earmarked for Community initiatives. Such a significant departure from present practice warrants further details, particularly in the light of the Commission's observations elsewhere that the applications for assistance under the present arrangements greatly exceed the financial capacity of the Structural Funds, and that an increase in the rate of assistance is required.

4.6.2. The Committee endorses the proposal to streamline the Community's 'own-initiative' programme, in order to increase the resources available for individual initiatives. It is rightly accepted that the sheer number of programmes that have developed under the 'own-initiative' umbrella requires that both applicants and the Commission spend considerable time presenting and evaluating proposals, but this should be set against the advantages that accrue from the present arrangements whereby applicants can select from the variety of programmes available that combination that most adequately reflects their particular needs. A second advantage of the present regime is that the Commission can 'take the lead' in responding to a specific problem and provide the impetus for Member States to follow suit. A risk attached to the Commission's proposal is that it could force a wedge between what is needed in particular areas of the Community and what the Commission is able to respond to within the more restrictive framework that a streamlined 'own-initiative' programme would imply.

4.7. *Rates of Assistance*

4.7.1. The Commission should consider as part of the present review the possibility of raising the maximum rate of assistance in both the Objective 1 and Objective 2 regions [cf. COM(92)84 — II.4.5].

4.8. The Committee calls upon the Council and in particular the Presidency to urgently address the implementation of the overall Delors II package [3].

[1] OJ No C 14, 20. 1. 1992.
[2] OJ No C 98, 21. 4. 1992.
[3] OJ No C 169, 6. 7. 1992, p. 34.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive on the application of Open Network Provision (ONP) to voice telephony [1]

(93/C 19/31)

On 15 September 1992 the Council of the European Communities 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 18 November 1992. The Rapporteur was Mr Green.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. The proposal follows on from the earlier framework directive on ONP, 90/387/EEC, which lays down that proposals shall be put forward for Council directives on ONP for leased lines and voice telephony, together with recommendations on packet-switched data services and the ISDN. The directive on rented circuits and the recommendations were adopted by the Council on 5 June 1992.

1.2. The proposal deals with unhindered and harmonized access for users—including other providers of services—to the voice telephony service, in the form of the current ONP trilogy: technical interfaces, conditions of delivery and use, and tariff principles. In addition it urges the establishment of a number of international services within the Community, whereas up to now these have only been available at the national level.

1.3. The proposed directive is in principle independent of the technology used and covers for example both analogue and digital services, including the ISDN when used for voice telephony. It neither deals with nor presupposes a specific degree of liberalization for voice telephony. With particular reference to linking a number of networks or a network with service providers who have special requirements, the proposal lays down general guidelines for access to obtaining such links, which differ from the connection offered to the ordinary user.

1.4. The proposal deals in a similar way with unhindered harmonized access to the same linked public network as an infrastructure which can be used for purposes other than voice telephony. Here too the proposal is independent of the technology involved.

1.5. Finally, the proposal lays down that public telephone call boxes shall be provided in sufficient numbers and geographical coverage, and initiates harmonization of telephone pre-payment cards, so that they can be used in call boxes throughout the Community.

2. General comments

2.1. There is clearly a great need to implement principles on ONP in the field of voice telephony. The Community's telephone services and linked network diverge technically at a number of points—often arbitrary and arising from traditional practice—to the great inconvenience of users and to the detriment of developments in both the terminal market and the telephone services market in the Community.

2.2. The service is operated in most Member States as a public service. Conditions for users have often been linked to requirements in respect of guaranteeing a service for users in the context of national land-use planning. The definition, implementation and interpretation of the ONP measures should be related to the costs involved. ONP measures must take account of the real nature of demand, bearing in mind economic and social viability, technical feasibility and initial and operating costs. Any move towards basing tariffs on costs should be gradual and should be linked to measures to ensure that low-traffic users, and consumers in general, enjoy tariff reductions—as business subscribers do—and measures to encourage the connecting to the network of households which could not otherwise be connected. Tariff principles must guarantee the financial viability of public operators, which is essential to the maintenance of the present networks,

[1] OJ No C 263, 12. 10. 1992, p. 20.

their development and the guaranteed provision of a universal service.

2.3. The proposal aims to change this situation as regards voice telephony and the linked network itself, and therefore deserves the Committee's general support.

2.4. As laid down in the framework Directive, ONP as applied to voice telephony is a response to the existence of exclusive and special rights. Its role is to replace market mechanisms when the general interest makes it necessary to impose restrictions on the market. When market forces determine relations between users and suppliers, regulations must be the same for all competitors, especially when ONP conditions are defined. Users are entitled to receive the same minimum level of quality from all major telecommunications operators. In addition, the integrity and quality of the telecommunications infrastructure as a whole depends on maintaining adequate quality levels for all these operators.

2.5. The provisions on non-discrimination in telephone companies' use of the network for services which can also be offered by others are hardly sufficient. As long as provisions do not exist on access to 'co-location' of equipment (cf. preamble clause 17), access to the subscriber line ought to be given instead to other service providers on the same technical and economic conditions as to the telephone company itself, regardless of the fact that this access might involve extra costs.

2.6. The Committee also feels that efforts should be made to achieve the maximum transparency in commercial relations among the suppliers of services to the public.

Done at Brussels, 25 November 1992.

3. **Specific comments**

3.1. The provisions of the Directive should establish the non-discrimination principle in all relevant fields —economic, technical, and in relation to services, operational aspects and access to information.

3.2. Article 10(1): National regulatory authorities are to be consulted before any rejection of an application for interconnection with other service providers' networks. It should be explicitly stated in the text that the requesting party shall have the opportunity to present his case to the regulatory authorities before the decision is taken.

3.2.1. The interconnection point must be well specified in order to safeguard the network integrity and efficiency of both interconnected networks.

3.3. Article 16: It is recommended that the Commission be instructed to initiate standardization work on operating conditions and facilities for public telephone call boxes, in addition to the provision mentioned in 1.5. above concerning prepaid telephone cards (Article 17), with a view to ensuring consistency.

3.4. Article 25(4)(b) seems to provide for national regulatory authorities to be consulted in cases being dealt with by the relevant working group. It is preferable that the hearing should not include the regulatory authorities of countries which are not involved, and the text ought to be amended to state clearly that only the national regulatory authorities involved shall be heard, together with the complainant and the telephone companies concerned.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendment to the Section Opinion, tabled in accordance with the Rules of Procedure, was defeated in the course of the debate:

'Point 2.2.

Amend the last two sentences of this point to read as follows:

« Any move towards basing tariffs on costs should be gradual and should be linked to measures to ensure that all users enjoy advantages in the shape of cost reductions on an equal footing with business subscribers, and measures to encourage the connecting to the network of households which could not otherwise be connected. Tariff principles must not destroy the financial viability of public operators, which is essential to the maintenance and development of the present networks and the guaranteed provision of a universal service. »'

Voting

For: 24, against: 42, abstentions: 21.

Opinion on the proposal for a Council Directive on the Conditions for granting and using authorizations for the prospection, exploration and extraction of hydrocarbons [1]

(93/C 19/32)

On 26 May 1992, the Council decided to consult the Economic and Social Committee under Articles 57(2) and 100A 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 30 October 1992. The Rapporteur was Mr Sala.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee adopted the following Opinion by a large majority, with two abstentions.

1. Introduction

1.1. *The current situation*

1.1.1. Community hydrocarbon resources fall far short of total internal needs. Internal production is not, in general, on the increase. While not entirely to be ruled out, the outlook for new major discoveries is not very encouraging. Significant technological progress continues to be achieved, however, in prospection and exploration techniques and instruments: new sources may therefore yet be found even in previously prospected and marginal zones.

1.1.2. The number of primary and qualified operators remains low, as a result of the high level of technical know-how and financial support required for hydrocarbons exploration. A number of industrial concerns have recently come onto the exploration market, however, partly by cooperating with highly specialist sub-sectors. Nevertheless, relatively small numbers of primary and secondary (specialist sub-contractor) operators are involved.

[1] OJ No C 139, 2. 6. 1992, p. 12.

1.2. *The background to the draft Directive*

1.2.1. On 27 March 1984 the Economic and Social Committee instructed the Section for Energy, Nuclear Questions and Research to draw up an Information Report on the prospection and exploitation of hydrocarbons. The report was adopted by the Energy Section on 11 January 1985 (CES 834/84 fin.). The report's conclusions pointed to the need for the Community to play a discreet but vigorous stimulating role. It called upon the Community to take measures in the field of technological research into prospecting and drilling, together with security of supply (reserves and gas pipelines).

1.2.2. On 16 September 1986, the Council of Ministers adopted a resolution (Council Resolution concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States) [1] establishing greater integration, free from barriers to trade, of the internal energy market as a Community energy policy objective.

1.2.3. In 1989 the Commission proposed a legal analysis of constraints on the completion of the internal energy market, upstream and downstream of the hydrocarbons industry, drawn up by outside consultants (contract XVII/7080/ETD/89-20). In brief, the report emphasized the wide variety of existing situations and concluded by recommending a Directive to render the market open and non-discriminatory in a way that could not be reversed by individual States in emergencies. Many of the recommendations contained in the report have been incorporated into the draft Directive under consideration.

1.3. *The current legal situation in the Community*

1.3.1. Prospection, exploration and extraction activities within specified geographical areas are currently 'authorized' (through licenses, authorizations and concessions) by the Member States under a wide range of national procedures, reflecting the different basic legal approaches and geological and productive conditions. In the absence of a Community directive for this area, the individual Member States are in a position to amend their domestic legislation, particularly when crises or emergencies arise.

1.3.2. Apart from initial prospecting activities, which are not generally authorized on an exclusive basis, subsequent operations, which are now of an industrial scale and nature, are authorized on an exclusive basis, for relatively lengthy periods of time. Authorization includes an obligation upon the licensee to carry out specific operations in accordance with a specified timetable, laid down in advance by the State in line with local geographical circumstances.

1.3.3. Unextracted hydrocarbons are generally owned by individual States. They are usually transferred, in part or in whole, to the entity which has located the hydrocarbons, and is extracting them in line with conditions previously set by the State.

1.3.4. The 'authorization' procedure seen as a whole and as applied to the operator carrying out prospection, exploration and extraction activities, bears many similarities to the legal instrument generally known as a 'concession', insofar as the operator carries out all the necessary operations at his own risk, shouldering all the costs and deriving an economic return from the possible future exploitation of the investment made. Nevertheless, the multiplicity and diversity of 'authorization' procedures among the various States does not allow the 'concession' label to be applied in all cases.

1.3.5. The draft Directive sets out to establish some basic criteria to be applied in all the Member States in order to ensure open, transparent authorization procedures and to remove any de facto discriminatory procedures or restrictions. The Member States are at liberty to follow their own production planning policies and their own methods of sharing out production proceeds between operators and the State.

1.4. *Link between the draft Directive and Directive 90/531/EEC* [2] *(public sector contracts)*

1.4.1. Directive 90/531/EEC stipulates that hydrocarbon exploration operators, as 'authorized' entities, nearly always on an exclusive basis for a given geographical area, must observe open, non-discriminatory procedures when procuring goods, works or services.

1.4.2. Article 13 of the draft Directive amends certain Articles of Directive 90/531/EEC: provided authorization has been granted on open, non-discriminatory terms, the rules governing selection of suppliers of goods, works and services, to be observed by the operator, are less rigid.

1.5. *The legal basis of the draft Directive*

1.5.1. The draft Directive's ultimate and main aim is to extend the principle of opening up Community

[1] OJ No C 241, 25. 9. 1986.

[2] OJ No C 297, 29. 10. 1990.

markets to competition to the hydrocarbons prospection, exploration and extraction sector.

1.5.2. The draft Directive indicates that an open market, transparency in authorization award procedures and the abolition of discriminatory provisions would stimulate interest among sector operators. It would thus trigger an increase—albeit probably a modest one—in Community hydrocarbon production.

1.5.3. The draft Directive is based on Articles 57(2) and 100a of the Treaty (point 30 of the Explanatory Memorandum).

2. **General comments**

2.1. *Authorization publicity and award procedures*

2.1.1. The Committee agrees that new prospection, exploration and extraction authorizations should be subject to a universal set of rules making competitive tendering and decision-making on areas compulsory, free of discriminatory conditions. Such rules should guarantee fixed and stable operating conditions throughout the Community, even in times of crisis.

2.1.2. The Committee agrees that use of authorizations must be subject only to conditions proven to be technically or economically necessary for the more rational exploitation of deposits.

2.2. *Community production prospects*

2.2.1. The Commission's comments on the draft Directive indicate that:

— the Community's own resources are limited,

— the bulk of these are probably located in areas for which authorizations already exist and where extraction is under way,

— large-scale discoveries in unassigned areas are not anticipated, except possibly in deep-sea zones.

2.2.1.1. This tallies with the findings of the Information Report referred to in paragraph 1.2.1.

2.2.2. The Committee would emphasize the significance and scope of the new prospection and production technologies, which may justify increased activity even in areas for which authorizations already exist.

2.2.2.1. In view of the new (particularly three dimensional seismic) prospection technologies, a highly detailed, accurate survey of geological conditions in both current prospection zones and areas previously prospected with less accurate means should now be carried out. Major deposits may not be found, but at least small fields which had previously escaped detection could be identified.

2.2.2.2. The new extraction technologies allow drilling at greater depths and in more geologically complex and/or difficult zones.

2.2.2.3. Technological progress is also being made in the area of secondary and tertiary recovery of hydrocarbons and the use of exhausted fields as natural gas storage reservoirs.

2.2.2.4. As a consequence of the three points above, the introduction of new technologies and the resulting identification, during the prospection and extraction phases, of new data often means that the original programmes require slight readjustment. The parties involved therefore need repeatedly to amend the authorization period. This is already standard practice: the Directive should make proper formal provision for it.

2.2.3. The Committee is of the view that even relatively small deposits should, provided they are economically justifiable, be accorded strategic importance, in view of their importance in terms of security of supply and reduced environmental risk.

2.2.4. The Committee agrees that the Member States should retain sovereignty over their hydrocarbon resources, management rights, responsibility for compliance with environmental regulations and health protection, and decision-making powers in the area of national defence (as provided under Article 3 in particular).

2.3. *Duration and extension of authorizations*

2.3.1. The Committee agrees that new authorizations should, as indicated in Article 5b), be of sufficient duration to offer operators the prospect of profitable exploitation, but without being excessively long. In any case, it is important that the length of new authorizations should be spelt out when award procedures are published.

2.3.1.1. The Committee also agrees that duration may be extended when agreed programmes are delayed by unforeseen circumstances [as stated in Article 5(b)].

2.3.1.2. In many cases, as described in paragraphs 2.2.2.1. to 2.2.2.4., it may be appropriate to adjust the original time limits set, where this is in the general interest, as a result of circumstances which, although theoretically predictable, were not accurately quantifiable or identifiable when the authorization was granted. The Committee feels that, in cases were exploration and drilling programmes have been substantially implemented in accordance with contract provisions which are already in force when this Directive takes effect on 1 January 1993 (or at a later date), these contracts should remain valid until their date of expiry. In cases where authorizations have been granted by legislation without indication of expiration time, the procedures outlined by Article 8 of the proposed Directive should be applied with the modifications hereafter proposed.

2.3.1.3. A case in point would be where minor or highly specific additions or amendments to an original programme would not warrant a new authorization procedure, and should be considered to flow naturally from the original programme.

2.3.1.4. The Directive should therefore contain a clause allowing for limited extensions of original time limits, in defined cases, without recourse to new authorization procedures. This is the case in other recent Community directives, such as those on public-sector works and services contracts.

2.3.1.5. In such cases steps should be taken to determine general criteria, and whether it is inappropriate to launch a new authorization procedure for additional activities (on a small scale and/or where to do so can be shown to be uneconomic and/or likely to cause significant operating delays).

2.3.2. The Committee agrees that authorization areas should be rigorously defined. It believes that if a find extends into a bordering area not yet subject to an authorization, the operator making the discovery could be granted priority status in the authorization procedure for that area, on a competitive basis.

2.4. *Relinquishment of unexploited areas (Article 8)*

2.4.1. As a result of varying national legislation, certain areas are currently reserved by law or official authorization for a particular operator indefinitely, with no prior element of competition. In some cases, the authorized operators have a majority State holding.

2.4.1.1. The Committee agrees that in such cases, except where exploratory drilling or extraction of hydrocarbons would be interrupted, those parts of authorizations concerning zones as yet unexploited should be reviewed and possibly the areas opened up to new, competitive authorization procedures. This would be in the interests of renewed competitiveness and of boosting future hydrocarbon production on Community territory.

2.4.2. The Committee hopes that relinquishment of unexploited areas will be carried out in such a way as to minimize litigation and without interrupting prospection and production. In particular, operators should be guaranteed continued access not only to existing production areas, but also to those for which they can produce geological data pointing to likely finds in the near future and undertake to implement a short-/medium-term drilling programme.

2.4.2.1. Where the current authorization does not include time limits for the completion of specific prospection phases, Article 8(2) of the Directive provides for relinquishment of those sectors of geographical areas where extraction has not begun within 5 years after the granting of the authorization.

2.4.2.1.1. The Committee believes this clause could be made more flexible in order to accommodate the points made above.

2.4.2.2. Where authorization has been granted by statute, Article 8(2) stipulates that those parts of geo-

graphical areas shall be relinquished which have not been explored or for which extraction has not begun within the period fixed by the legislation. This clause does not make clear provision for cases in which legislation still in force does not stipulate a period.

2.4.2.2.1. There should be a clear definition of what is meant by 'explored areas' and, in any case, of the procedures and periods under which existing authorizations should be relinquished. The principle of leaving explored areas which may be considered to hold out reasonable discovery prospects to existing operators should again apply here, accompanied of course by a specific undertaking to proceed to the drilling phase in the near future.

2.4.2.3. As explained above, if 'unexploited areas' are to be relinquished, they must firstly be defined: legally complex procedures are to be expected. Litigation could also be generated over expropriation and/or compensation procedures. This could have the undesirable effect of slowing down prospection and production. The Committee hopes that the relinquishment process will only take place after a reasonable period of analysis and discussion and that the entry into force of the Directive will not therefore immediately require drastic unilateral restructuring of vulnerable authorizations.

2.4.2.4. The Committee therefore feels that Member States and operators concerned should, within a reasonably short period of time, draw up 'relinquishment plans' for unexploited areas. Areas where extraction or drilling are already under way would be left to existing operators. Areas for which operators can produce geological data suggesting a good chance of finds and for which they undertake to carry out early drilling programmes could also be kept by them. Other parts should be put up for authorization, with existing operators retaining the right to take part in the relevant procedures.

2.4.2.5. The Committee endorses the principle that operators should be compensated for relinquished areas. Such compensation should be set on the basis of local legislation and legal precedent. No further provisions need to be made, contrary to Article 8(4). This would avoid unnecessary legal difficulties in specific Member States.

2.4.2.6. The relinquishment plans described in 2.4.2.4. should be made public and submitted to the Community for the appropriate registration and/or decision.

2.4.3. The Committee would highlight the need for a clause in the Directive stating that specific periods and methods shall be laid down for the relinquishment of unexploited areas, and that these shall be explicitly included in both authorization publicity and decisions. This is, in fact, already standard practice.

2.4.4. The general principle of relinquishment of unexploited areas is already enshrined in authorization agreements in a number of third countries, with methods and legal instruments varying from place to place.

2.4.4.1. The Committee notes that given the Community's considerable clout the draft Directive could have an impact in third countries, the scale of which is hard to predict. It therefore urges that instruments should be adopted under the Directive such as the relinquishment plans outlined above or similar: these instruments should not be based exclusively on unilateral legal action.

2.5. *Practical arrangements for authorization procedures*

2.5.1. The Committee endorses the arrangements for the publication and conduct of authorization procedures, together with the basic criteria for the granting of authorizations.

2.5.2. Where authorizations are granted under competitive, non-discriminatory procedures, authorized companies must not be bound by specific requirements concerning acquisition of works, goods or services on the same regulatory footing as companies operating on the basis of exclusive concessions such as those responsible for water, electricity or public transport.

2.5.2.1. The Committee endorses the incorporation of this principle in the draft Directive, with the consequent derogation from and amendment of certain Articles of Directive EEC/90/531.

2.6. *Third countries*

2.6.1. Article 9 of the draft Directive contains a number of provisions on equality and reciprocity concerning access for Community entities in prospecting, exploring and producing hydrocarbons in third countries.

2.6.1.1. Provision is made for negotiations in the event of difficulties: if these prove fruitless, access for

companies from the country concerned to similar procedures in the Community may be refused.

2.6.1.2. The Committee endorses the principle underlying these arrangements, which may be applied with a degree of flexibility ordained by the Council of Ministers. It should, however, be borne in mind that there is little likelihood of substantial prospection and exploration programmes on Community territory by companies not yet established in the Community involving major operations by Community companies.

2.6.2. The Directive as a whole will, in any case, serve as a model for third countries needing to update their current legislation in this field. Although the Committee sees no specific grounds for concern from this point of view in the draft Directive, other than those pointed out above, it nevertheless recommends that Article 2(2) be redrafted in more general terms, perhaps by subsuming its practical effects into Article 3(1).

2.7. *Final remarks*

2.7.1. The Committee welcomes the Directive's provisions on steps to open up markets and make procedures competitive.

2.7.2. The new award criteria could stimulate the market and perhaps trigger a probably modest increase in production.

2.7.3. However, the Committee notes that a significant proportion of the Community's hydrocarbon requirements is imported from third countries. Any major EEC legislation on hydrocarbon production, such as the draft Directive, should be carefully scrutinized in view of its potential knock-on effect on legislation in third countries supplying the EC.

2.7.4. The most sensitive aspects of the draft Directive from this point of view are, firstly, the principle of reciprocity of access, as indicated in paragraph 2.6.1.2. above and, secondly, the principle of relinquishment of areas not yet exploited and authorized under procedures which are not strictly competitive.

2.7.4.1. The Committee is particularly concerned about the second principle, and therefore emphasizes that relinquishment of unexploited areas should be brought about through relinquishment plans rather than unilateral legal action.

2.7.5. Lastly, the Committee hopes that Community energy policy will be increasingly integrated both internally and externally, in order to ensure that the measures progressively opening up the various sectors of the European energy market are compatible with those concerning the establishment of rational and harmonious relations with producer countries.

Done at Brussels, 24 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive to Limit Carbon Dioxide Emissions by Improving Energy Efficiency (proposal presented under the SAVE programme) [1]

(93/C 19/33)

On 16 July 1992 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 Energy, Nuclear Questions and Research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 30 October 1992. The Rapporteur was Mr Flum.

At its 301st Plenary Session (meeting of 25 November 1992) the Economic and Social Committee adopted the following Opinion unanimously.

1. Preliminary remark

1.1. On 26 June 1992 the Commission submitted a Proposal for a Council Directive to limit carbon dioxide emissions by improving energy efficiency (presented under the SAVE programme) [1]. A programme to improve energy efficiency is needed to counter the wasteful use of natural energy resources, particularly in the industrialized countries (input side of the economy), and to mitigate the direct and indirect damage to the environment which flows therefrom (output side of the economy). The Commission's Draft Directive is therefore in principle most welcome and is a step in the right direction.

2. Remarks on the content of the Directive

2.1. Since prices on world energy markets are influenced by a large number of factors and so do not reflect any potential scarcity of energy resources, the market mechanism fails to perform its function since it is unable, via the price regulator, to provide short or medium-term incentives to use energy in a less profligate manner. Hence the need for a package of measures to improve energy efficiency and reduce CO_2 emissions and thereby make a substantial contribution to easing the pressure on the environment.

2.2. This is where the present Commission proposal comes into play as part of the SAVE programme. Launched in 1991, this programme is intended to run for 5 years and to assist Member States in further developing and coordinating their national programmes to promote the more efficient use of energy. The SAVE programme [2] itself is an integral part of other Community energy-saving measures.

3. Essential measures to be taken under the Directive

3.1. To achieve the Community's CO_2 stabilization target, a package of seven measures has been proposed, in keeping with Article 130r of the EEC Treaty, as part of the policy to improve energy efficiency:

— the energy certification of buildings;

— the billing of heating, air-conditioning and hot water costs on the basis of actual consumption;

— the promotion of third-party financing of energy-efficiency investment in the public sector;

— the thermal insulation of new buildings;

— the regular inspection of boilers;

— the regular inspection of cars;

— energy audits of businesses.

3.2. The programme excludes power stations which are covered under separate EC research and demonstration projects.

4. Comments on the Explanatory Memorandum of the draft Directive

4.1. In connection with the Introduction to the Explanatory Memorandum, we would add that between 1987 (the reference year for national energy-policy thinking) and 1991 energy-related CO_2 emissions in Germany fell by about 9 % even though CO_2 emissions stemming from the use of oil and gas rose slightly during the same period. The Draft Directive raises the question of switching from one fossil fuel to another but fails to address the problems of security of supply, the expected lifespan of the various fossil fuels and the

[1] OJ No C 179, 16. 7. 1992, p. 8.
[2] OJ No L 307, 8. 11. 1992.

possibility of the CO_2 problem being replaced by a methane problem. It should also be pointed out that over the next few years at least, rationalization measures will result in a significant reduction in CO_2 emissions from coal-burning. (First report of the Committee of Enquiry on Protection of the Earth's Atmosphere, Bundestag, Doc. 12-2400 of 31 March 1992)

4.2. The Commission's statement that, according to estimates, the full implementation of the SAVE programme within the deadlines set might well reduce the growth in CO_2 emissions by about 3 percentage points, i.e. from 12 % to 9 %, requires some clarification.

4.3. It is also interesting to pinpoint what Community savings of 3 % represent on a world scale. According to the figures given in the final report of the Committee of Enquiry on Precautionary Measures to Protect the Earth's Atmosphere, CO_2 emissions in the Community, including the former GDR, totalled 3,187 million tonnes in 1986. This figure represents 15.9 % of the world's energy-related CO_2 emissions of 20,055 million tonnes. EC savings of 3 % thus amount to 95.61 million tonnes which seems substantial but is in fact equivalent to no more than 0.48 % of worldwide emissions.

4.4. The Intergovernmental Panel on Climate Change (IPCC) has reached the conclusion that a stabilization of 'Greenhouse' gas concentrations at 1990 levels requires worldwide reductions of at least 60 % in the case of carbon dioxide, 75-100 % in the case of fully halogenated CFCs, 15-20 % in the case of methane and 70-80 % in the case of dinitrogen monoxide. Against this background, 0.48 % is insignificant. The figure would therefore seem to be grossly out of proportion to the associated macro-economic and employment policy costs which are completely ignored in the draft Directive. The draft Directive is however part and parcel of an overall plan to reduce CO_2 emissions so individual figures should also be seen against this general background.

4.5. In the context of implementation of the measures it is quite right to mention the principle of subsidiarity which governs relations between the EC and the Member States. Care must therefore be taken to ensure that this principle is enforced to the letter when a Community initiative is launched.

5. General comments

5.1. The proposal to limit carbon dioxide emissions by improving energy efficiency is by and large welcome and deserves to be approved. It is very useful in terms of its specific contribution to energy and environmental policies. First and foremost, however, it constitutes a further plank of the Community's energy-saving strategy. It falls within a comprehensive range of EC energy measures designed to bring about energy savings, protect the environment and safeguard the natural world.

5.2. The presentation of problems and of some aspects of the Directive is still incomplete and requires some fleshing out. In the various proposals and suggestions which it makes in this Opinion the Committee will be endeavouring to ensure that the Directive is transposed more effectively into national law.

5.3. The Draft Directive is based on a package of seven key measures which Member States will be expected to accommodate in their energy-saving policies and implement at national level. A welcome feature of the Draft Directive is that whilst the content of the measures has been fixed in advance, Member States are at liberty to decide how the measures will be implemented.

5.4. Much important action has already been taken at both EC-level and by the individual Member States in respect of the measures proposed in the Draft Directive. A number of Member States have already introduced strict legislation on thermal insulation, the inspection of boilers and the regular inspection of motor vehicles in the interests of achieving optimum energy consumption and the reduction of pollutant emissions.

5.5. State-of-the-art technology is an important factor when it comes to implementing the proposed measures. There is a need to ensure ongoing technological progress. It is also essential that the inspection equipment and testing methods used in the Member States be comparable.

5.6. The Committee would have been pleased if the experiences of, and conclusions drawn from, the research and demonstration projects for power stations had been reported in the Directive, together with any beneficial effects on the environment.

5.7. In the interests of efficiency, the exchange of information between Member States is very important; such an exchange is already provided for in the SAVE programme.

5.8. Internal resources are an essential part of the energy-supply market. The fact that the EC is working to establish an internal energy market will not lessen its dependence on imports from third countries. The introduction of new technology makes it possible, for example, to use fuels such as coal without damaging the environment. For example, 90 % of the lignite and coal-fired power stations in the Federal Republic of Germany use approved technology. The remaining 10 % are to be decommissioned by the end of 1993.

5.9. Efforts must be made to ensure that the proposed package of measures does not have an adverse

effect on the competitiveness of enterprises, which means that the different sections of the proposed programme have to be implemented at the same level in all Member States.

5.10. Member States have to provide the Commission with two types of information:

— they are required to send the Commission the verbatim version of national legislation adopted in furtherance of the Directive;

— they are required to send the Commission a two-yearly progress report on the measures taken to implement this particular Directive.

6. Specific comments on individual Articles

6.1. *Article 2 (Energy certification of buildings)*

6.1.1. The Commission's energy certification proposal is by and large welcomed.

6.1.2. The proposed derogations (rendered as 'amendments' in the first indent of Article 2 of the English version) must be defined in detail to obviate deliberate misinterpretation.

6.1.3. The gradual introduction of energy certification for buildings owned by the public authorities (at a rate of at least 5 % of the existing stock per year) is unacceptable. The public authorities should be the first to show a good example. The proposed special treatment for public-sector buildings (as opposed to private dwellings and business premises) is also unwarranted.

6.2. *Article 3*

6.2.1. Owners and tenants will have a different approach to energy-saving investment. This will generally cause problems.

6.2.2. A framework for removing such obstacles must therefore be created. This would include favourable loan repayment conditions for owners as well as hardship allowances for socially underprivileged tenants unable to shoulder the burden of investment costs being incorporated into their rent.

6.2.3. In determining energy costs, account should also be taken of the condition of each particular dwelling.

6.2.4. The Committee presumes that the Member States make allowances for the specific circumstances obtaining in individual buildings, as well as possible exceptions.

6.3. *Article 4*

6.3.1. The proposed 'third-party financing' is an important step in the implementation of this Directive. Proper proof must be provided that third-party financing has actually taken place. Care must also be taken to ensure that contracts are only awarded to general contractors (a standard practice in the case of third-party financing) if the costs are lower than they would otherwise have been had the contract been split into separate lots, and if small and medium-sized companies are not put at a disadvantage. In this connection the Committee would also draw attention to the Directive on the award of public contracts. [1]

6.4. *Article 5*

6.4.1. Exchanging information on experiences is essential if Member State measures to thermally insulate new buildings are to be as effective as possible. Consideration should be given to how the Commission can assist the Member States with technical data and relevant research. Experiences already available in the Member States should also be taken into account.

6.4.2. The results should also be harnessed to achieve greater heat savings for the entire building stock. In the Committee's view, steps should be taken to ensure that only materials free of health risks are used for heat insulation purposes.

6.5. *Articles 6 and 7*

6.5.1. Member States are to ensure that regular inspections of heating installations and motor vehicles are carried out in order to optimize conditions of energy consumption and ensure minimum emissions of pollutants. A high standard of inspection is to be achieved in line with that already prevailing in a number of Member States, be it as a result of specific legislation or EC standards.

6.5.2. A high level of technology must be deployed in such inspections; inspection equipment and testing methods must be comparable and the relevant provisions on the limitation of emissions must be observed.

6.5.3. The Commission should look at what steps can be taken if Member States fail to implement these guidelines properly. This also applies generally to all the provisions of the Directive.

6.6. *Article 8*

6.6.1. The Committee warmly applauds and endorses the Commission's efforts to ensure, through energy audits, that energy-saving schemes are also introduced into industrial undertakings. If such audits are to be comparable and standardized, a single audit framework should be used by all the Member States. Energy audits are also provided for under the terms of the draft Regulation on the Community's eco-audit scheme. [2]

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[1] OJ No L 297, 29. 10. 1992.
[2] OJ No C 76, 27. 3. 1992.

6.7. *Articles 9 and 10*

6.7.1. We welcome the statement that conclusions from the two-yearly progress reports will only be drawn after consulting the European Parliament and the Economic and Social Committee.

6.7.2. Such a procedure will ensure that any adjustments to the Directive dictated by environmental requirements can be taken in good time.

6.7.3. The Committee warmly welcomes the Commission's proposal that the qualified majority voting system be used when amending the Directive.

6.8. *Articles 11 and 12*

6.8.1. The Directive should be adopted as soon as possible as a further major step towards improving the environment.

Done at Brussels, 25 November 1992.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

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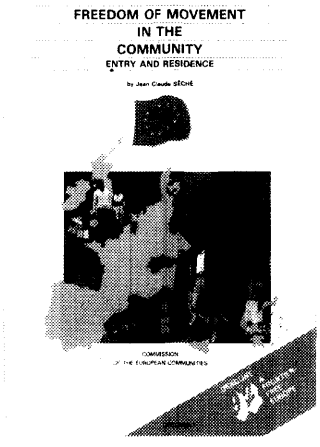

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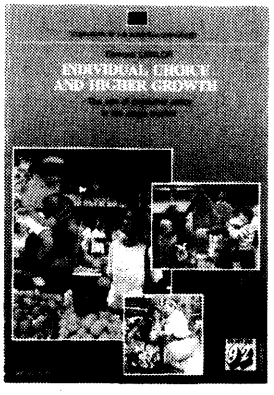

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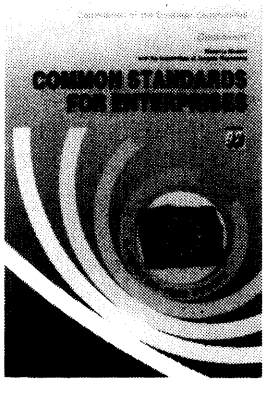

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