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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Directive on the right of residence for students [1]

(93/C 304/01)

On 30 June 1993 the Council decided to consult the Economic and Social Committee, under Article 7(2) 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 10 September 1993. The Rapporteur was Mr van Dijk.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. This Directive concerns the right of residence for students within the EC. It is a new version of Directive 90/366/EEC on the right of residence for students. This was proposed by the Commission in 1989, along with two other Directives on the right of residence. The Economic and Social Committee issued its Opinion on 18 October 1989 [2]. The European Parliament also gave its views on this Directive [3]. This Directive was based on Treaty Articles 7 and 128. The Council did not agree with this and decided to change the legal basis to Article 235. The Directive was finally adopted on this basis [4]. The influence of the European Parliament was seriously restricted by this change of legal basis.

1.2. The European Parliament disputed this change of legal basis and initiated proceedings in the Court of Justice. In its ruling of 7 July 1992 [5] the Court of Justice declared that the Council had been wrong to change the legal basis and that Directive 90/366/EEC was therefore invalid. The Commission would have to submit a new Directive with a different legal basis from that adopted by the Council.

1.3. Most of the Member States have already implemented this Directive in national law. Only Belgium, Germany, France and the United Kingdom have not yet implemented it. In its Judgment the Court of Justice ruled that the old Directive would remain in force in those countries which had implemented it until the new Directive was implemented.

1.4. The Commission has submitted a new proposal with a legal basis in line with the Court of Justice ruling. Article 1 of the Directive has also been amended and contains a reference to the non-discrimination principle.

2. General comments

2.1. The ESC agrees with the legal basis now chosen by the Commission.

2.2. As the content has not changed and the ESC has already issued an Opinion on the old Directive, the Committee would merely refer to this Opinion.

2.3. The Committee would, however, draw attention to certain issues which have arisen in those Member

(1) OJ No C 166, 17. 6. 1993, p. 16.
(2) OJ No C 329, 30. 12. 1989, p. 25.
(3) OJ No C 175, 16. 7. 1990, p. 100.
(4) OJ No L 180, 13. 7. 1990, p. 30.
(5) C 295-90.

States which have implemented the Directive. Many of the problems of studying abroad have not been solved by this Directive, e.g. the non-transferability of study finance to another country.

2.4. Eight Member States have already implemented this Directive. As a decision was taken on the subject in 1990, the ESC assumes that the Directive will very soon be implemented in the other countries. It considers this important.

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive amending for the fourteenth time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations [1]

(93/C 304/02)

On 17 May 1993 the Council decided to consult the Economic and Social Committee, under Article 100 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for 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 9 July 1993. The Rapporteur was Mr Beltrami.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion unanimously.

1. The Committee approves the proposal to amend for the fourteenth time Annex I to Directive 76/769/EEC.

2. The Committee endorses the purpose of the amendment, which is to harmonize restrictions on the marketing and use of certain personal items containing nickel, thus avoiding the creation of barriers to trade and ensuring a high level of consumer protection.

3. The aim is to ensure that people who come into 'direct and prolonged contact' with articles of jewellery and other personal items containing nickel do not become sensitized to nickel and suffer allergic reactions.

4. The Committee notes with approval that the test methods for checking conformity with the essential requirements [being drawn up by the European Committee for Standardisation (CEN)] will be the subject of a European standard which is to be incorporated in an annex to the proposed Directive. This should ensure that checks and evaluations are uniform.

5. Since test methods already exist for points 1 and 2 of Annex I but not for point 3, the Committee recommends that Member States should not be required to apply the provisions of point 3 until the CEN has devised an appropriate test method. This should take the form of a European standard based on the experience acquired in certain Member States and on dermatologists' findings.

[1] OJ No C 116, 27. 4. 1993, p. 18.

6. Lastly, the Committee calls on the Member States to take steps to ensure that the Directive's provisions are respected by all links in the distribution chain, including the importer and retailer, and that consumers are properly informed about the risks of sensitization.

Done at Brussels, 22 September 1993.

The Chairman
of the Economic and Social Committee
Susanne TIEMANN

Opinion on the proposal for a Council Decision concerning the conclusion of an Agreement relating to scientific and technical cooperation between the European Economic Community and Australia [1]

(93/C 304/03)

On 15 July 1993 the Council decided to consult the Economic and Social Committee, under Article 130 Q (2) of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Energy, Nuclear Questions and Research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 9 September 1993. The Rapporteur was Mr Gardner.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. Cooperation with Australia in Science and Technology was initiated in 1986 with the signing of an Arrangement which provides for the exchange of non-confidential information arising from research in a limited number of fields: telecommunications and information technologies, agriculture, biotechnology, materials and energy.

1.2. The present Agreement seeks to define a formal framework for developing further scientific and technical cooperation between the European Community and Australia including the scope, supervision, funding and intellectual property rights. It is the first of its kind concluded with a non-European country. As such it is the prototype for similar future Agreements with other industrialized countries outside Europe.

1.3. The entry into force of the Agreement will allow, on the one hand, the participation of Australian persons and legal entities in Community research projects. On the other hand, persons and legal entities of the Member States will be allowed to participate in publicly-funded research projects in Australia. However, cooperation will be restricted to activities listed in Article 4.2 of the Agreement, though these restrictions can be amended as provided for in Article 11.

2. General comments

2.1. Australia is both very advanced and very well organized in scientific and technical research, both at academic and at applied levels. It has no less than 39 cooperative research centres distributed throughout all the States of the Commonwealth of Australia.

2.2. In its Communication of 19 June 1990 on scientific and technical cooperation with third countries

[1] OJ No C 181, 3. 7. 1993, p. 9.

[doc. COM(90) 256 final], the Commission itself stressed that Australia had 'centres of scientific excellence' which justified developing a partnership and identified a number of fields of interest.

2.3. The Committee considers that scientific and technical cooperation will be of benefit to both Parties and therefore thoroughly approves the proposal, subject to the following comments and changes.

3. Specific comments on the Agreement

3.1. *Article 4.2: Scope*

3.1.1. Article 4.2 restricts cooperation to only six fields. Such limitation seems neither necessary nor sensible and is not found in any of the Agreements relating to scientific and technical cooperation with European countries outside the Community. Australia is particularly advanced in a number of fields, not in the present list. These include research in food and agriculture, mining methods, energy.

3.1.2. It would be wrong to deprive the Community of the benefits of cooperative research in these fields. This limitation should therefore be deleted.

3.2. *Article 7: Funding*

3.2.1. It is right that both sides should pay the costs incurred by their own participants in cooperative activities. However, it would be better to have some flexibility and there should be provision for a contribution to costs in cases where this is beneficial and where both sides agree to it.

3.3. *Article 8: Entry of personnel and equipment*

3.3.1. Entry of personnel from outside the European Community is in practice under the control of the Member States and this Article should therefore be modified as follows:

'Each party and the Member States of the European Community shall take all reasonable steps (...).'

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the Report (1992) by the Commission to the Council and Parliament on the application of the Act of Accession of Spain and Portugal in the fisheries sector

(93/C 304/04)

On 29 January 1993 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the Report (1992) by the Commission to the Council and Parliament on the application of the Act of Accession of Spain and Portugal in the fisheries sector.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 3 September 1993. The Rapporteur was Mr Silva.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee unanimously adopted the following Opinion.

1. Introduction

1.1. The Accession Treaties [1] for Spain and Portugal (Articles 162 and 350) stipulated that the Commission was to present a report on possible adjustments to the transition period for the fisheries sector by 31 December 1992.

1.2. In the present report the Commission sets out to analyze trends in this sector in these two Member States in relation to the other ten EC Member States, taking account of the arrangements set out in the Act of Accession (AA) and the way that the Common Fisheries Policy (CFP) [2] has actually evolved.

1.3. To do this, the Commission should not lose track of the various factors affecting the fisheries sector, which, at both Community and international level—e.g. creation of the 200 mile economic exclusion zones (EEZ) and the scarcity of fish stocks in an expanding market—determine developments in the Common Fisheries Policy and underline the arrangements written into the AA.

1.4. The need to put a stop to the overfishing of marine resources and to protect certain species has inspired international trends towards the conservation of fish stocks. The adoption in 1982 of the United Nations Convention on the Law of the Sea constituted a first significant step in this direction, establishing a genuine new international order in the exploitation and management of marine resources. Community laws also took those principles on board.

1.5. Thus, the need for rationalization—aimed at balanced, durable exploitation of fishery resources—required changes in the structure and underlying assumptions of the CFP, as defined in Regulation (EEC) No 170/83 and other legislation in this sphere.

1.6. These changes highlighted the need for a global approach to management which could facilitate the reestablishment of a balance between a) fish stocks, b) fishing effort and c) coherent, integrated management of fisheries structures.

1.7. One of the main reasons for the imbalance was the limited resources and therefore limited catch, combined with the system of free access operating in the fisheries sector up until that time.

1.8. The new approach set out in the Regulation on fisheries and aquaculture [3] advocates a) regulating the conditions governing access to fishing and the practice thereof, b) managing the fishing effort by means of a licensing system, c) introducing back-up measures for fisheries activities and d) new arrangements for monitoring regulated activities.

2. The new Regulation stipulates that the 'acquis communautaire' of the CFP is to be maintained until 31 December 2002, namely:

— reserved access to a 12-mile coastal zone,

— the principle of relative stability.

2.1. The derogation from free access in the 12-mile zone until the year 2002 reflects recognition of the rights (and responsibilities) of local fisheries and the fundamental role of fishing in some regions which are particularly dependent on this activity.

2.2. The Committee reiterates that, in order to maintain the balance of the CFP itself and to take account of the specific needs of local populations and many

[1] OJ No L 302, 15. 11. 1985.

[2] Regulation (EEC) No 3760/92 on the Community system for fisheries and aquaculture and the Regulation on the monitoring system for the CFP.

[3] Regulation (EEC) No 3760/92 on the Community system for fisheries and aquaculture.

regions in the Community, the arrangements for the 12-mile zone should be extended beyond the year 2002.

2.3. One matter to which the Committee has always attached particular importance is the objective of economic and social cohesion.

2.4. Professionals in this sector do have legitimate concerns as to how the CFP, in its current form—and even more so in the future when its principal feature will be free access—will take account of the interests of local communities whose livelihood is fishing, and safeguard the economic and social fabric of those regions most dependent on fishing, particularly the most remote and vulnerable regions or those where there is a high concentration of socio-economic risk factors.

3. The Act of Accession of Spain and Portugal

3.1. *General comments*

3.2. As noted in the Commission Report: 'the general arrangements in the AA, as regards the conditions of access to fishing by Spanish and Portuguese fleets in the waters of the « Ten » and vice versa, remain in force until 31 December 2002'.

3.3. Acceptance of a number of fundamental principles by the three parties concerned was consolidated in the Act of Accession, namely:

— recognition by all parties that historical rights no longer apply in another's territorial waters (12-mile zone) [1],

— limited access in the EEZs, in terms of number of vessels, areas, period of fishing activity and type of fishing,

— principle of reciprocity.

3.4. These principles governing the conditions of access and fishing should not be changed.

4. Possible adjustments to the AA arrangements

4.1. *Conditions for access to Community waters and resources*

4.1.1. Adjustments which, under the terms of the AA, will be possible as of 1 January 1996, must not involve an increase in the fishing effort. This is necessary for consistency's sake and must be borne in mind when seeking solutions.

4.1.2. In general, current fish stocks do not appear to allow an increase in fishing, given that technological progress will mean a constant increase in the efficiency of fishing equipment at an estimated rate of 2% per annum.

4.1.3. Moreover, faced with a deterioration in some stocks, the Council [2] plans to establish, by 1 January 1994, the objectives and arrangements for restructuring the sector with a view to achieving a lasting balance between fish stocks and fishing activity. In view of the changes to the way the Structural Funds operate, structural measures in the fisheries sector will now integrate these funds under the Financial Instrument for Fisheries Guidance (FIFG). The Committee [3] reiterates its demand that genuine account be taken of the economic and social consequences of these adjustments and of the specific characteristics of different fishing regions [4].

4.1.4. Any changes must aim, in overall terms, to simplify arrangements further, improve efficiency and facilitate management, in response to requests from those working in the sector regarding a number of genuine problems which, under the Accession Treaties a) unnecessarily restrict and hamper fishermen's and shipowners' activities, b) aggravate existing difficulties inherent in rendering vessels profitable and c) make supervision itself difficult.

4.2. *Irish box*

4.2.1. Under the AA, the ban is raised on the Portuguese and Spanish fleets' access to the zone corresponding to the Irish box.

4.3. *Tuna fish*

4.3.1. Under Article 351, restrictions on fishing for albacore and tropical tuna in the International Council for the Exploration of the Sea (ICES) X and the Fishery Committee for the Eastern Central Atlantic (CECAF) zones will cease on 31 December 1995. Under new mechanisms for managing fishing, stipulated in Regulation (EEC) No 3760/92, when it is defining conditions governing access to and the practice of fishing, the Council will have to take account of a series of parameters which hallmark fishing in these regions, *inter alia* the need not to exceed current fishing levels.

4.3.2. As part of a more socio-economic oriented approach, it should not be forgotten that fishing is particularly important for the islands of the Azores and Madeira, which are outlying regions of the Community and particularly disadvantaged economically.

4.4. *Zones located in the ICES Vb, VI, VII, VIII a, b and d divisions*

4.4.1. So as to simplify and facilitate management, as set out in point 4.1.4, some adjustments should be possible in these zones.

[1] For Spain and Portugal, this exception refers to local transfrontier agreements for the Minho and the Guadiana areas.

[2] Article 11, Regulation (EEC) No 3760/92.

[3] OJ No C 201, 26. 7. 1993, p. 52.

[4] Fisheries Council of 19/20 December 1992.

4.5. *Eskote triangle*

4.5.1. This zone was devised as a compromise between the respective rights of Spain and France [1] regarding their coastal waters. In this case, and for each Member State, the geographical zones of coastal waters and the species therein [2] are, in theory, guaranteed until 31 December 2002. However, if the parties concerned should so wish, an amendment could be drawn up to simplify fishing operations. Thus, the triangle located under Spanish jurisdiction in the south-west sector of zone VIIIb (map 2, Annex I) would be incorporated into the arrangements for zones ICES VIIIc.

4.6. *Article 349 of the AA*

4.6.1. In addition, the possibility of increasing the quantities of blue whiting and horse mackerel (3 000 tonnes allocated to Portugal each year) should be considered; otherwise it will be difficult for the Portuguese fleet's fishing operations to be profitable.

4.7. *Fishing agreements between Spain and Portugal*

4.7.1. In fixing the fishing possibilities for vessels from each country in the other's waters, account should be taken by the Council of the principle of relative stability. Current restrictions on the fishing effort for certain species and on the number of vessels and fishing gear should be maintained on a reciprocal basis.

4.8. *Catch limitations*

4.8.1. The Committee reiterates the comments made in previous Opinions regarding the need to maintain the Total Allowable Catches (TACs) and Quotas, although with improvements, with a view to conservation and sensible management of resources. Moreover, to take greater account of actual circumstances in the sector, it would highlight the possibility of establishing multi-species and multi-annual TACs and an annual carry-over system [3].

4.8.2. Special attention should be given to developing fisheries research using existing programmes. A Community information policy which made it easier for information to be passed on to interested parties about Community programmes for stepping up research into marine subjects in general, and fishing matters in particular, would be a welcome step.

4.9. *Limitation of fishing effort*

4.9.1. In analysing adjustments to be made to the accession arrangements from 1996 onwards, another question arising is whether other approaches are possible given the current state of both the sector and fish resources, notwithstanding adjustments already introduced to current fishing capabilities under structural policies.

4.9.2. It is important to know how Member States will have complied with the fleet restructuring arrangements imposed on them under the Multi-annual Guidance Programmes.

4.9.3. As acknowledged by the Commission itself in the 1992 report, it should not be forgotten on the other hand that Spain and Portugal previously had little or no access to technologies and gear for boosting efficiency.

4.9.4. As regards the award of special licences for vessels not included in the basic list and which are intended for non-demersal fishing, the instrument must cover not only the Spanish and Portuguese fleets as indicated in the report, but also the fleet of the 'Ten'. It should be pointed out that these are special licences for certain fishing grounds, species and gear.

4.10. *Monitoring*

4.10.1. As stated by the Committee on several occasions, it is vital to monitor regulated activities in order to secure an effective resource conservation policy.

4.10.2. The basis for this is a legal and logistical instrument varying considerably from one country to another. The new arrangements for monitoring application of the CFP, not yet approved, can provide the basis needed for more effective, consistent legal arrangements.

4.10.3. In many aspects, the solution to the monitoring problem depends on the response to a number of questions, inter alia on the harmonization of sanctions applicable by Member States, boosting the Commission's inspection powers, use of advanced technology, etc.

4.10.4. In this case it is vital that there be more cooperation between all Member States to achieve stricter application of the legal instrument.

4.10.5. A qualitative change, in the sense of substituting *ad hoc* regulations once the necessary guarantees are in place, such as the use of satellite monitoring, can

[1] OJ No L 302, 15. 11. 1985.
[2] Art. 3, Regulation (EEC) No 3760/92.
[3] OJ No C 223, 31. 8. 1992, p. 30.

be a step in the right direction. This must not, however, be discriminatory. Where the AA is concerned, new technologies must be applied to all vessels, whether Spanish, Portuguese or from the Ten.

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Regulation (EEC) laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1]

(93/C 304/05)

On 5 May 1993, 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 September 1993. The Rapporteur was Mr Gardner.

At its 308th Plenary Session (meeting of 22 September 1993) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. This proposal deals with the effects of mechanisms: import levies and export refunds.

1.1.1. When the EC exports its products it uses the 'refund' to make up the difference between the EC price and the international price; failure to align the two prices would exclude the EC from the world market.

1.1.2. The levies are a source of revenue for the EC budget, while the refunds come under expenditure.

1.2. The same rule applies to processed agricultural products; when calculating both the levy and the refund, account is taken of the quantity of basic agricultural product used in the processed product.

1.2.1. It should be borne in mind that in the case of processed products, external protection is normally provided both by the levy (a variable component) and by a customs duty designed to protect the EC processing industry (a fixed component).

1.2.2. It should also be noted that when processed products are exported on to third country markets, the refund is based solely on the quantity of basic agricultural product (cereals, sugar, milk, etc.) used in the processed product.

1.2.3. When the Community imports processed agricultural products from countries with whom it has concluded preferential agreements, the fixed component is almost always waived; hence the levy is based solely on the variable component.

1.2.4. Processed products today account for an important share of products for human consumption; suffice it to note that 75 % of agricultural production undergoes first or even second or third processing before it is consumed.

1.2.5. Hence the need to pay increasing attention to those products, which are regulated at EC level by Regulations (EEC) Nos 3033/80 (imports) and 3035/80 (exports).

1.3. Both Regulations have been amended many times by a Council procedure which is slow and

[1] OJ No C 126, 7. 5. 1993, p. 13.

laborious and the Commission now needs a specialized Management Committee to manage the frequent detailed changes, both routine ones and those arising out of the increasing number of preferential trade agreements. Examples include management of reduced levy quotas for processed foods under the East European agreements, the need to manage optional arrangements for agricultural price compensation under the forthcoming European Economic Area, management of any commitments of the General Agreement on Tariffs and Trade (GATT) for processed foods etc.

1.3.1. As a general point, both for existing Management Committees and this proposed one, there needs to be much more transparency. The fullest possible report should be made of deliberations and decisions.

2. General comments

2.1. The proposal introduces provisions to cover by a new Regulation all non-Annex II products in Tariff Chapters 1-24 which are processed from agricultural materials. This is coupled with provisions to recognize a specific agricultural component for all such products. It is a welcome step towards clarification and simplification of the existing complex system.

2.1.1. The proposal should also greatly speed up and simplify decisions and implementations in this area.

2.2. The Committee approves the proposal, subject, however, to some fundamental provisos which are given below.

2.2.1. The proposal is not very clear and needs to be made much more transparent. For instance the preambles mention Regulation (EEC) No 3033 (imports) but not Regulation (EEC) No 3035 (exports) though the explanatory memorandum clearly shows that the Commission wants to use the new procedure for exports as well. Indeed Chapter 2 covers exports.

2.2.2. The proposed management committee is both necessary and desirable. Many foods contain agricultural ingredients from several of the existing vertical management committees (e.g. biscuits, muesli mixes, filled pasta products, baby foods). The new European Economic area and Eastern Europe agreements treat finished foods in a different manner from agricultural products.

2.2.3. However the division between those matters which are best dealt with vertically and those matters which are most suited to horizontal decision must be distinguished.

2.2.4. While it is for the Commission and the Member States to determine the composition of the committee and only they can decide policy, the committee should be able to reflect the very wide range of experience needed to deal not only with problems arising within the common agricultural policy (CAP) but also those arising from such external matters as the protective mechanism of third countries, particularly in the food sector.

2.2.5. It would be best if the proposed committee had an overall management responsibility for trade issues affecting not only imports but also exports of non-Annex II products.

2.2.6. Finally for similar reasons, it is essential for the Commission to set up an Advisory Committee so as to have direct input from farmers, processors, consumers, commerce, etc. Such Committees exist to assist the work of the present Agricultural Management Committees and can provide a valuable forum for consultation and information. The Committee therefore strongly urges the Commission to follow its normal procedure and set up an active Advisory Committee which would more than justify the budgetary costs. In line with 1.3.1 there must be the maximum transparency in its operations.

3. Detailed comments

3.1. *Article 1*

Defines the scope which is for agricultural products and goods made containing these. Annex II which gives details of these also contains sponges and seaweed, agar agar etc. which are fishery products. Definition or Annex therefore needs revising.

3.2. *Article 3.1*

The Committee accepts the Commission assurance that the list of basic agricultural products in Annex A can be modified but only by a Council Procedure.

3.3. *Article 9*

This essentially consists of the first indent of Article 10 of the present Regulation (EEC) No 3033/80. For clarity the second indent also needs to be retained here. This stipulates that measures must 'take account of specific interests of the processing industries'.

3.4. *Article 11*

The 15th preamble stipulates the rule for inward processing but the wording in this Article is less clear. In line with the preamble, it should be stated explicitly that Regulation (EEC) No 1999/85 continues to apply to trade covered by this proposal.

3.5. *Article 20*

According to the Explanatory Memorandum this is the method the Commission wants to use for repealing Regulation (EEC) No 3035/80. That may be a mistake for Article 21 but even then the application to exports is one of the many obscurities in the proposal and the whole procedure for exports needs clarifying.

Done at Brussels, 22 September 1993.

The Chairman
of the Economic and Social Committee
Susanne TIEMANN

Opinion on the Working Document of the Commission on a Strategic Programme on the Internal Market

(93/C 304/06)

On 7 June 1993 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the Working Document of the Commission on a Strategic Programme on the Internal Market

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 September 1993. The Rapporteur was Mr Connellan and the Co-Rapporteur was Mr Schmitz.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion by a large majority with 4 abstentions.

1. Introduction

1.1. On 27 May 1993, the Economic and Social Committee adopted an initial Opinion on the Sutherland Report and the subsequent Commission Communication SEC(92) 2277 final which concentrated particularly on the ESC role in the implementation and further shaping of the Internal Market. At the time, the Committee decided to prepare an Additional Opinion which would focus on the detailed recommendations in the Communication and in the Sutherland Report.

On 2 June 1993 the Commission issued its Working Document on a Strategic Programme on the Internal Market contained in the Communication addressed to the Council and the Parliament [1]. This Communication incorporates the Commission's further and more comprehensive response to the Sutherland Report, and its views of the broader Strategic Development of the Internal Market.

The present Opinion takes account of this Working Document, the Communication from the Commission to the Council and the European Parliament on Reinforcing Effectiveness of the Internal Market [doc. COM(93) 256 final]. It develops the recommendations made in the first Opinion with regard to the Committee's role and also highlights the issues which the ESC considers are of greatest importance. The Committee will return to more detailed issues in the future.

[1] Doc. COM(93) 256 final

1.2. The Working Document on Reinforcing the Effectiveness of the Internal Market states that the objective of the Community is the improvement of the living conditions of its citizens and that the strategy for the management and development of the single market should ensure that the legislative framework becomes an integral part of the environment for the citizens, the economic operators and the administrations; three objectives are identified:

a) to respond to the expectations of the citizens in supporting job creation and economic growth, leading to improved social protection and working conditions;

b) to ensure a competitive environment for enterprise guaranteeing free movement, but limiting legislative interventions to domains in which mutual recognition cannot guarantee the protection of the essential requirements;

c) to ensure the single market's dynamic economic and social development bringing added value to the legislative acquis in acting on the factors which influence the dynamism of the market.

The Committee supports these objectives proposed by the Commission, since the success of the Internal Market ultimately depends on how much it contributes to increasing employment and prosperity throughout the Community.

1.3. The Committee considers it extremely important that the Internal Market should operate properly, as this can do much to ensure that the Internal Market's socio-economic objectives are achieved in a balanced way. In its Communication on Reinforcing Effectiveness of the Internal Market the Commission provides a clear and concise analysis of the objectives of the Community and the Internal Market and of the problems involved in completing the Internal Market.

1.4. The Committee subscribes to the view that the Community's main task is improving the living conditions of its citizens. The operation of the Internal Market should indeed be judged from that point of view. It was above all concerned about stubbornly high unemployment which in the 1980s provided the impetus for efforts to improve the competitiveness of European industry by establishing a real Internal Market.

The Internal Market is not yet complete and, partly as a result of this, optimistic expectations with regard to its impact on growth, jobs and technological innovation have been only partly fulfilled.

1.5. The Committee agrees with the Commission [1] that:

'the Internal Market is part of a global Community policy and in this respect cannot be appreciated independently of the other Community policies which allow the community space to function without internal frontiers:

— the free movement of persons is closely linked to the development of the concept of European citizenship and to the cooperation on internal and judicial affairs which is found at the heart of the Treaty on European Union, but also to the putting into effect the social charter,

— the free movement of goods, services and capital is not only linked to the development of economic and social cohesion and to the putting into effect of competition policy instruments but also to the establishment of economic and monetary union,

— the internal dimension of the Internal Market is itself closely linked to the strengthening of the external personality of the Community and its capacities for negotiation.'

1.6. The full implementation of the Internal Market will be a key factor in bringing economic growth and jobs. But the dramatically high level of unemployment will not be significantly reduced without additional economic and structural policy measures. The Committee therefore places great hopes in the White Paper on Competitiveness and Employment to be considered by the European Council at the end of the year.

1.7. Workers in particular are greatly disappointed at the shortcomings in labour and welfare policies at Community level. Without a more active social policy distrust on their part in the Internal Market process will increase so much that not all the advantages of the Internal Market will be enjoyed because of increasing social conflict.

1.8. In times of economic crisis there is an urgent need for Member States and the representatives of the social groups to find an appropriate balance between the various interests involved in the implementation of the different Community policies.

1.9. This Opinion comments on the preparation of the drafting of the Internal Market legislation, its transposition into national law and its subsequent application by the Member States. In particular, the Com-

[1] See Communication on Reinforcing the Effectiveness of the Internal Market: doc. COM(93) 256 final, point 6 'Collectively defining a strategic programme'.

mittee undertakes an analysis of the two Commission Communications and the Sutherland Report's recommendations on:

— confidence of consumers, workers and entrepreneurs in the Community legislative process,

— the transparency and consistency of the Community legislative system,

— administrative and legal cooperation between the Community and the Member States, and

— subsidiarity.

1.10. Furthermore, the Opinion deals with other issues in the Sutherland Report, and the Working Document which comprises:

— administration of the Community area, including achievement of the single market, managing Community rules, supervising the operation of the single market, organization of partnership with the Member States, and transparency of Community measures,

— developing the single market including a barrier-free environment, an active policy on standardization, a policy in the area of quality, measures to assist small and medium-sized enterprises (SMEs), and external policy,

— Trans-European Networks.

2. General remarks

2.1. The Communication on 'Reinforcing Effectiveness of the Internal Market' provides a clear and concise analysis of the objectives of the Community and the Internal Market and of the problems involved in completing the Internal Market. In addition, it sets out clearly the various initiatives needed for the Internal Market to function properly.

2.2. The Committee considers that the effective involvement of the citizens of the Community from the various categories of economic and social activity through their representative organizations is essential to the achievement of the objectives outlined in paragraph 1.2 above. It draws attention to the views of the Committee expressed in previous Opinions [1]. In particular, the Committee wishes to emphasize the need for effective monitoring, for the organization of a cooperative partnership between the Commission and the economic and social interest groups, and the means to ensure transparency in the application of Community legislation.

2.3. The Committee notes the broader perspective of the second Commission Communication which includes issues not addressed in the Sutherland Report such as the free movement of persons, the further development of the internal market and the establishment of Trans-European Networks. It regrets that the Commission does not give sufficient attention to the general political, economic and social climate. The formulation of a 'strategic programme on the internal market' is not primarily a technocratic problem. The need is to develop a political strategy based on contemporary economic and social challenges. To this extent the working programme does not fulfil the requirements. In this respect the White Paper on a Medium-Term Strategy for Growth, Competitiveness and Employment is particularly important.

2.4. Little account is taken of points of contact with the Internal Market's immediate environment, e.g. as regards:

— the establishment of the European Economic Area, through which non-EC Member States will be involved in the management and development of the Internal Market,

— the European Monetary System (EMS) and the Economic and Monetary Union (EMU): the Internal Market will only be truly complete when there is a single currency,

— competition policy, which above all requires stricter supervision of national aids to industry,

— shaping social legislation,

— regional policy.

2.5. In a Resolution on the 1992 Internal Market programme, the European Parliament suggested to the Council that the ESC should constitute a forum for future development of a Community action plan and periodically analyze and study its progress and implications for the various categories of economic and social activity represented in the ESC.

In its Working Document the Commission develops this resolution. It states that in relation to supervising the operation of the single market and evaluating the effectiveness of Community rules 'as regard contacts with the economic and social groups concerned, the Commission is prepared to work through the Economic and Social Committee, which consists of representatives of all of these groups and thus combines technical knowledge with the political sensitivity for an assessment of this kind'.

2.6. The Committee welcomes this commitment by the Commission and intends to contribute to a very full extent to the task of evaluating the effectiveness of Community rules. In doing so, it is essential that the

[1] Consumer Protection and the Completion of the Internal market, OJ No C 339, 31. 12. 1991, p. 16; The Consumer and the Internal Market, OJ No C 19, 25. 1. 1993, p. 9.

Committee has access to adequate means and resources to fulfil the function.

The active involvement of the ESC in the total process of evaluating the effectiveness of Community rules from preparation to national implementation is necessary.

2.7. An omission in the Commission's Communication and Working Document is a significant statement about the role of governments in opening up the Community to its citizens. Nothing would do more to make the Community intelligible to its citizens than the positive promotion of its ideals, achievements and opportunities by the governments of its Member States.

3. Specific comments

3.1. *Preparation of EC legislative instruments*

3.1.1. The ESC acknowledges the Commission's response to the Sutherland Report's recommendations on the reasons and criteria for intervention—in particular, on the need for action, effectiveness, proportionality, consistency and communication in relation to the action to be taken. It calls upon the Commission to work out a method for developing legislative proposals on the basis of these criteria. It did not give an adequate answer in its Working Document.

3.1.2. The Committee awaits the publication of the Commission's proposals for coordination of the legislative work in order to ensure more consistency and avoid fragmentation. The Community must also fulfil its objective of simplification and avoid the imposition of any undue administrative burdens on business, in particular on SMEs. This is also in the interests of consumers and employees.

3.1.3. The Committee notes the Commission's intention to undertake wider consultation than in the past. In its first Opinion, the Committee has urged that it be more involved in the preparatory stages of proposals before a Commission proposal is adopted. The Commission's intention regarding a legislative proposal should be notified to the Committee and referred for consultation and opinion with respect to the subject matter of appropriate items of envisaged legislation analyzed under each of the five criteria of need, effectiveness, proportionality, consistency and communication recommended in the Sutherland Report. Such referral and consultation should precede the detailed preparation by the Commission of a proposal for legislation. The publication of background analyses, and discussion papers will be essential in making this process effective. This should be more possible in future, as following the plethora of legislative measures necessary to meet the 1992 deadline the number of legal measures are likely to be fewer but more substantive.

3.1.4. The Committee repeats the views expressed in its initial Opinion (CES 602/93, point 5.2.2) that:

— where important issues are concerned the relevant interest groups should be informed and invited to attend public hearings, well in advance of a Commission decision,

— as far as possible the Council working groups should only start examining the proposed legislation after publication of the ESC Opinion,

— specific advisory committees should only be consulted if the ESC is not suitable, owing to the special technical nature of the subject.

3.1.5. One big shortcoming in the preparation of EC legislation is that the most important legislator, the Council, generally meets in secret. This is unacceptable for democratic reasons and makes it harder for consumers, workers and entrepreneurs to understand the legislative process. The ESC therefore calls upon the Council to meet in public when it adopts legislation.

3.2. *Application of Community Law*

3.2.1. In its first Opinion, the Committee stressed that while the Council had adopted 95 % of the legislation set out in the Internal Market White Paper, it was not clear to what extent this legislation had been transposed into national law and actually applied in all Member States.

Today only 49 % Council adoptions which require national implementing measures have been implemented in all 12 Member States. Some Member States [1] have transposed a higher proportion than others. However the overall picture remains most unsatisfactory in certain sensitive areas, especially public procurement.

3.2.2. Having regard to the statistics concerning the transposition of Community to national law, the Committee considers that the relationship between the Commission and the Member State in this respect needs to

[1] B: 89 %; DK: 94 %; D: 79 %; EL: 75 %; E: 81 %; F: 84 %; IRL: 80 %; I: 89 %; L: 83 %; NL: 82 %; P: 84 %; UK: 90 % (EC Commission data).

be improved. It welcomes the increased use of regular exchanges of information and experience between the Commission and the Member State.

3.2.3. The Committee considers that the Commission has a role, in cooperation with the Member States, in promoting the transparency of Community legislation. For example, Directives allow some scope for variations in national legislation. The Commission has a role in promoting the awareness in each Member State of the transposition legislation adopted in the other Member States. While the Info. 92 Data Base provides general information on the 2 000 pieces of legislation resulting from the transposition of Community Directives into national law, the provisions of detailed information is a more complex process and requires cooperation between the Commission and Member States, and the increased involvement of the Council.

Systematic action is necessary to promote awareness of transposition legislation among consumers, workers and business; and in giving publicity to inspection, monitoring and certification measures. The publication of the practical guide to the 'new approach' for eliminating technical barriers to trade in the near future which will be followed by regular updates is a step in the right direction, and should concentrate on achieving simplicity in presentation.

3.2.4. The Committee welcomes the Commission's indication that it will strengthen the partnership arrangements with Member States by improved administrative arrangements particularly through the establishment of a permanent network of contact points which will handle infringements of Community law; lay down operational guidelines; deal with urgent problems; and will be jointly funded by Member States and the Commission.

3.2.5. The Commission has indicated that it will adopt an approach comprising:

— notification by Member States of implementing measures in respect of Community Acts including the administrative implementing rules,

— definition of objectives and procedures for administrative cooperation at the implementation stage for each area of Community legislation,

— drawing up guidelines for administrative cooperation,

— the preparation by the Commission of a support programme for administrative cooperation,

— a report to the Council and Parliament on the position with regard to cooperation between authorities, accompanied by supplementary proposals as required.

The Committee awaits the publication of the Commission's guidelines on administrative cooperation later this year and looks forward to commenting on their adequacy and effectiveness particularly from the point of view of consumers, employers and employees.

3.2.6. First the Committee underlines the need to check the effectiveness of national systems for monitoring the observance of Community legislation, especially in the fields of public procurement, social provisions and environmental, consumer and worker protection. The purpose of this is to ensure uniform application, thereby helping inter alia to put competition on an equal footing. The strengthening of Community skills-training and exchange programmes would also be useful in this context.

3.2.7. As regards the adequacy of the administrative cooperation arrangements, the Committee is prepared to conduct periodic investigations into perceptions and experiences of the organizations representing economic and social activity, including consumers.

3.2.8. In addition, the Committee insists that as the representative of the various economic and social categories in the Community, especially of consumers, employers and employees, it should be involved in the application of Community law.

3.2.9. As a first step in the process, it intends, at appropriate intervals, to hold ESC hearings to which a number of EC representative organizations will be invited to present their experiences of the operation of Internal Market legislation to date.

It will also request submissions by appropriate means, from recognized interest groups representing consumers, employees, employers and other categories of economic and social activity throughout the Community regarding their complaints and suggestions in respect of Community legislative process. Such submissions could be made through the relevant national organizations represented on the ESC. Submissions may also be made directly. These suggestions could then be taken into account by the ESC in its Opinions when it is dealing with the Commission's regular progress reports on implementation of legislation, and in special discussions on topics linked to the operation of the Internal Market.

3.2.10. Differences in the operation of single market legislation are possible because of the scope for interpretation provided for in Directives. Such variations are more easily perceived in border regions where consumers and participants in social and economic activity are most aware. It is also noteworthy that 77 % of the 1 545 complaints regarding the application of Community law in 1992 were made by private individuals or firms. The Committee, therefore, recommends that the Commission should undertake a series of pilot projects on each side of borders between selected Member States in order to identify differences in application of legislation (for example the Euregio Rhein-Maas and Saar-Lor-Lux), and their possible effects on economic and social developments.

3.2.11. The Committee is pleased that the Treaty on European Union will create an Ombudsman to receive complaints from any citizen of the Union concerning maladministration of Community Institutions or bodies, including the application of the Internal Market. The ESC trusts that the Ombudsman will be allocated the staff and organizational facilities in the Member States to fulfil the function properly [1].

3.3. *Access to Justice and Judicial Cooperation*

3.3.1. The Commission agrees that the provision of information on ways of seeking legal redress is a matter primarily for Member States, in accordance with the principle of subsidiarity, and it therefore concentrates its efforts on keeping firms, consumers and individuals informed through its publications.

However, the Committee notes that the Title VI of the Treaty on European Union gives the Commission a right of initiative in dealing with judicial cooperation between Member States. It recognizes that this is an issue of some sensitivity.

3.3.2. The Committee welcomes the Commission's initiatives to consider proposals on how to improve access to justice, and judicial cooperation. The European Court has reinforced its case law by allowing a plaintiff compensation for damage resulting from the non transposition of a Community directive.

The Committee looks forward to commenting on the Green Paper to be published later this year on the subject of improving access to justice.

3.3.3. The Committee supports the proposal to ensure greater conformity in the interpretation of Community law, similar access to justice, and greater judicial cooperation. Additional training should be made available on a voluntary basis for judges and lawyers on the transnational application of Community legislation, where possible within existing training structures. The Committee welcomes the Commission's willingness to support such programmes. In many Member States training in European law for legal and tax professionals is elective rather than obligatory. It is essential that all professionals, including officials, likely to be involved in the monitoring and application of Internal Market legislation are trained accordingly.

3.4. *Improvements in Quality of Existing Legislative Instruments*

3.4.1. The Commission defines its legislative role as ensuring the implementation of provisions relating to free movement and the functioning of the Internal Market. However, it states that legislative interventions must be limited to those domains in which mutual recognition cannot guarantee the protection of essential requirements.

3.4.2. The Committee welcomes the Commission's proposals for legislative consolidation contained in the programme in February 1993, and notes also the need for equivalent and transparent consolidation at national level.

3.4.3. The Committee considers that there is need for substantial progress in improving certification and testing systems so as to ensure that all products marketed throughout the Community meet acceptable safety standards. Some Member States are a long way behind in catching up with safety, testing and certification procedures.

3.4.4. The Committee is broadly supportive of the recommendation contained in the Sutherland Report that the approach to Community legislation should comprise in the first instance:

> 'the use of Directives as a means of harmonizing national laws, taking account of their particular characteristics; and subsequently, where progress over several years has enabled a satisfactory degree of approximation to be achieved, to convert these Directives into directly applicable regulations thereby giving consumers, businesses and enforcement authorities a single point of reference for Community legislation.'

3.4.4.1. However flexibility is essential depending on the nature of the legislation. The use in particular circumstances of regulations rather than Directives is

[1] See More democracy for Europe and its institutions; better information for citizens and socio-economic operators; role of the European Parliament's Ombudsman (CES 534/93, 8. 6. 1993).

more appropriate to strictly technical provisions rather than in those cases where for cultural and other reasons there are wide variations in legislation between Member States.

3.4.4.2. The wider use of regulations has advantages in ensuring greater transparency. Often interested parties do not know whether their legal rights can be enforced on the basis of European or national law, especially in cases where transposition may not involve national Parliaments. It is vitally important that the introduction of regulations is subject to democratic accountability. The extended areas of legislative competence for the European Parliament incorporated in the Treaty on European Union will be of considerable assistance in this regard.

3.4.5. It is understood that the Commission is planning to introduce a system of notification by Member States where recognition for their products has been refused on the basis of technical requirements and will publish its first report on the outcome of these notifications later this year.

The Committee will also incorporate an assessment of difficulties encountered regarding mutual recognition in the submission and hearing process referred to in the above paragraph.

3.4.6. The Committee also intends to comment periodically on the overall operation of the Internal Market to ensure that the objectives of strengthening the international competitiveness of European business, the improvement of living standards and of economic and social cohesion are being achieved. It proposes to carry out an initial examination in 1994 through a process of hearings and to update the analysis annually.

Initially these hearings will concentrate on examining the manner in which Community legislation is applied. The Committee notes the Council Resolution which recognized that the impact of the Internal Market legislation cannot be assessed accurately for some years and has asked for an initial economic assessment to be postponed until 1996.

3.5. *Information and Communication*

3.5.1. The Committee strongly supports the view of the Sutherland Committee that the Commission needs to develop a communication strategy to ensure that the consumers, workers and businesses are properly informed about the legal rights and duties, and notes the recent Communication which the Commission has addressed to the Council, the Parliament, and the ESC on transparency within the Community [1].

3.5.2. The Committee will comment on the Annual Report to be prepared by the Commission as recommended by the Sutherland Committee and will make specific recommendations on how the communication strategy might be improved.

4. Sections B and C

4.1. For Section B of the Commission Working Document, the Committee is in broad agreement with the Commission's views and refers for more detailed information to its previous Opinion on the several subjects concerned. But it regrets that not enough has been said about the interaction with other Community policies, with the result that the measures suggested concerning the full implementation of the Internal Market appear insufficient (see paragraph 1.3).

4.1.1. The Internal Market also has a social dimension which should be shaped partly by the Community and partly by governments and the social partners. The Committee finds no reference to the social dimension in the strategic programme. A fully developed social dimension will, however, contribute to the Internal Market. A vigorous Community labour market policy is important here. In its strategic programme the Commission ought to spell out its views on the link between the proposals contained in the Action Programme for the implementation of the Community Charter of basic social rights of workers on the one hand and the effective operation of the Internal Market on the other.

4.2. The Committee is concerned about the inadequacy of the approach to Trans- European Networks outlined in the Commission's Working Document. There is insufficient emphasis on the adoption of an integrated approach as consideration of interoperability has been restricted to interconnection; the decision making process is fragmented by sector and by region and does not take sufficiently into account the requirements of global Community policy as recommended previously by the Committee [2]. Furthermore, the finance required does not take account of Member States' contribution although the Working Document states that 'initial ... estimates, put investment costs at ECU 20 billion a year'.

5. Working procedures

5.1. In accordance with its Opinion of 27 May 1993 (5.26), the Committee recommends that the Commission and the Council should conclude an agreement with the Committee on the working procedures. The agreement should:

— settle technical aspects of document submission arrangements, and the timing and coordination of the consultation procedure with Parliament and the Council,

[1] Doc. COM(93) 258, 2. 6. 1993.

[2] OJ No C 14, 20. 1. 1992.

— provide for possible consultation before the Commission finalizes its decision, and

— lay down criteria for consideration of the Committee's proposals by the Commission and the Council.

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the Commission Green Paper on pluralism and media concentration in the internal market - an assessment of the need for Community action

(93/C 304/07)

On 15 February 1993, the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the Commission Green Paper on pluralism and media concentration in the internal market - an assessment of the need for Community action.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 7 July 1993. The Rapporteur was Mr Flum.

At its 308th Plenary Session (meeting of 22 September 1993) the Economic and Social Committee adopted the following Opinion by a majority with seven votes against and 15 abstentions.

The Committee welcomes the publication of the Green Paper, and particularly appreciates the comprehensive picture it provides of the existing legal situation in the Member States.

The Committee also welcomes the form taken by the Green Paper which, instead of making precipitate statements, paves the way for extensive dialogue between the various groups in society.

1. Introduction

1.1. The ESC has played a constructive part in the formulation of Community options for the electronic media during and since the preparation of the Council Directive of 3 October 1989 [1] on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (the television without frontiers Directive). It made a direct contribution to the drafting of that Directive by proposing important elements.

1.2. In view of the discussion in the Green Paper, it seems necessary to restate the basic principles of ESC media policy to date. Thus, in its Opinion of 25 September 1985 [2] on the Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable [3], the Committee stated that it was not the task of the Community to interfere with the media structure of individual Member States. The licensing of television and radio organizations should remain the sole responsibility of the Member State concerned, although care had to be taken to ensure there was no threat to the pluralism of information and opinions in the Community. In the same Opinion, the Committee called on the Commission to examine to what extent new proposals were needed to align national provisions on programme content in order to ensure uniform terms of competition; in this connection, it made particular reference to the following areas:

[1] OJ No L 298, 10. 1989.

[2] OJ No C 303, 25. 11. 1985, p. 13.

[3] Doc. COM(84) 300 final.

protecting minors, right of reply, copyright for authors, performers and producers, television advertising. From the present standpoint, it was also particularly important to examine in greater detail the influence of television advertising and the independence and completeness of information broadcasts and the influence of advertising agencies on the trade in programmes. In its Resolution on media concentration and diversity of opinions of 16 September 1992 ([1]), the European Parliament expressed concern 'at increasing concentration in the advertising business and its substantial influence on programming and media content'; the Commission also intends to investigate the situation with regard to advertising.

1.3. In its Opinion of 1 July 1987 ([2]) on the Proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities ([3]) the Committee expressed the view that the national legislative and administrative measures to be taken in broadcasting must steer clear of any arrangements which might tend to create a dominant opinion-former. In its Additional Opinion of 27 April 1989 ([4]) the Committee again stressed the need to prevent any acts which could promote the creation of a dominant position and thereby restrict pluralism and freedom of information. The Committee is extremely encouraged to note that the television Directive adopted by the Council contains a section regulating the right of reply of all natural and legal persons whose lawful interests are damaged by false statements on television. The Economic and Social Committee was the first Community body to demand this right in the course of the drafting process, being subsequently followed by Parliament, the Commission and the Council. Full account has also been taken of the Committee's comments on copyright, the protection of children and minors and advertising, with the latter being banned in the case of tobacco products and prescription drugs for medical treatment.

1.4. In its Opinion of 20 December 1989 ([5]) on a fresh boost for culture in the European Community ([6]), the Committee noted that the development of huge European media corporations was hallmarked by globalization, interlinking and the establishment of conglomerates. Appropriate anti-trust measures were therefore needed. The Committee urged the Commission to consider setting down more clearly the limits to cross-holdings and media monopolization, notably through measures requiring transparency of financial transactions and the full disclosure of international holdings. It also proposed the creation of a European Media Observatory in order to monitor and, where appropriate, curb such economic concentrations, and to help promote and ensure freedom of information and cultural pluralism.

1.5. The Committee also called for back-up EC measures to guarantee minimum protection for professional standards, ethics, editorial autonomy and freedom of conscience for all media journalists and employees. Likewise, EC instruments were needed in order to ensure basic collective contractual rights and social insurance cover for employees involved in the media, and to ensure that transnational corporations respected acquired rights and international labour conventions.

1.6. Lastly, in its Opinion of 20 September 1990 ([7]) on the Commission Communication to the Council accompanied by two proposals for Council Decisions relating to an action programme to promote the development of the European audiovisual industry — 'Media' 1991-1995 ([8]), the Committee adopted the following stance: 'Different kinds of programme-makers with varying legal status, i.e. both public- and private-sector suppliers, can coexist in democratic and socially responsible ways, thereby laying the foundation for cultural pluralism. However, it must be ensured that all such entities of whatever kind respect the principle of free expression of opinion for all social groups. All available means must be used to combat the development of monopoly-type structures in the record, cassette and film distribution business which hinder or even prevent free trade in these media articles'.

1.7. In parallel to the Committee's own observations, the European Parliament's Resolution A3-0153/92 corr. on media concentration and diversity of opinions of 16 September 1992 makes important proposals on the need for Community action. In particular, the Committee would endorse the calls for:

— the drafting of a charter for European non-profit-making broadcasting organizations, i.e. public broadcasting organizations, broadcasting cooperatives and public-access channels;

— the protection and safeguarding of Europe's cultural heritage and cultural output;

— the regulation of short reporting on events of general interest, with a corresponding right of news access;

— the formulation of a Media Code designed to maintain professional ethics (see Point 5);

([1]) OJ No C 284, 2. 11. 1992, p. 44.
([2]) OJ No C 232, 31. 8. 1987, p. 29.
([3]) OJ No C 179, 17. 7. 1986, p. 4.
([4]) OJ No C 159, 26. 6. 1989, p. 67.
([5]) OJ No C 62, 12. 3. 1990, p. 26.
([6]) OJ No C 175, 4. 7. 1988.
([7]) OJ No C 332, 31. 12. 1990, p. 174.
([8]) OJ No C 127, 23. 5. 1990, p. 13.

— a Commission proposal for a European framework Directive safeguarding journalistic and editorial independence in all media;

— a proposal for effective measures to combat or restrict concentration in the media; and

— the establishment of an independent European Media Council.

2. Gist of the Commission Green Paper

2.1. In the light of the basic approach adopted in the EEC Treaty and, consequently, in the Green Paper, the Commission's concentration on the creation of a smoothly functioning internal market for radio and television is understandable. Nevertheless, in view of the fact that the audiovisual media and the information policy associated with their use constitute important bases for Europe's social and democratic development, the Committee thinks that the safeguarding of pluralism and of the freedom and variety of the opinions expressed in those media should receive at least the same degree of attention. Moreover, no account is taken of the role of the press in this context—either as a corrective or stimulant to concentration processes in the audiovisual sector. As long as media-policy decisions —at either national or Community level—entail the risk of the creation of opinion-forming cartels, European development could be threatened. The Committee would stress the importance of safeguarding basic rights in the Community as the Community organs, especially the Court of Justice, have repeatedly recognized.

2.2. The Green Paper makes specific reference to European Parliament Resolutions and to the work of the Council of Europe. However, the Committee, too, has already adopted a stance on the problem of concentration in the media, particularly in its Opinions on television without frontiers. The failure to take note of ESC comments on this subject is a fundamental shortcoming of the Green Paper; the final version of the Commission document should take account of the Committee's extensive preparatory work, proposals and ideas on this topic.

2.3. The Commission's purpose in publishing the Green Paper is to present an initial assessment of the need for Community action on concentration in the media (television, radio, press) and of various approaches which the Commission might adopt once it has ascertained the views of the parties concerned.

2.4. On the basis of its analysis of the different national regulations and measures governing pluralism and media concentration, the Commission has reached the following conclusions:

2.4.1. Protection of pluralism as such is primarily a matter for the Member States. In working towards its objectives and exercising its powers, the Community must, however, ensure that pluralism is not adversely affected by its activities and the way it exercise its powers. In this respect, the Commission sees no need for special action at Community level to safeguard pluralism, since national arrangements for protecting pluralism can, in principle, also be applied to situations with a Community dimension.

2.4.2. This capacity of the Member States to safeguard pluralism through a national regulatory framework for mergers may, however, lead to discrepancies within the frontier-free area constituted by the Community. This is particularly true in the case of national provisions which are designed either to limit maximum holdings in media companies or to prevent control of, or holdings in, several media companies.

2.4.3. Such national regulations may, at least potentially, impact upon the functioning of the frontier-free single market:

— a Member State could possibly restrict the freedom to broadcast of radio stations in the event of genuine circumvention of one of these laws,

— the establishment of media companies in another Member State could be limited,

— restrictions and distortions of competition could be introduced,

— uncertainty as to the law, harmful to the competitiveness of companies, could result from diverging views on what constitutes 'circumvention',

— such legal provisions limit access to the activities and to the ownership of the media, instead of facilitating access so as to permit the establishment of a single market and give media companies that competitiveness which pluralism requires.

2.4.4. Ownership restrictions causing such effects are not necessarily incompatible with Community law because they help to guarantee or safeguard pluralism. Consequently, they cannot be replaced just by applying general competition law and in particular, at Community level, the merger control regulation.

2.4.5. The Commission proposes the three following options for possible Community action:

I. Doing nothing

II. Proposing a recommendation to enhance transparency;

III. Proposing the harmonization of national restrictions on media ownership by

a) a Council Directive, or

b) a Council Regulation, or

c) a directive or a regulation together with an independent committee.

The Commission does not currently have a particular preference for any one of these options and remains open to alternative suggestions.

3. **General comments**

3.1. The Committee thinks that the Commission should take account of the following points in the course of further discussion:

a) The Green Paper's analysis of the situation in the Member States concludes that the existence of disparate anti-trust provisions in respect of the media impedes the operation of the single market in this sector and that Community action is therefore necessary. The Committee recognizes that the obstacles to the operation of the single market created by different national provisions (restriction/distortion of competition, limitation of the freedom to provide services and the right of establishment, legal uncertainty) must be removed so as to enable enterprises to enjoy both the benefits of the single market and equal opportunities for development within the EC. But the Commission sees no need for Community legislation to safeguard pluralism and the freedom of opinion since, on the one hand, the EC Treaty makes the Member States responsible for ensuring pluralism and, on the other, the different national rules on this subject ostensibly provide adequate guarantees.

b) For the Committee, this conclusion represents an oversimplification. The Commission itself acknowledges that, whilst EC competition law can help in maintaining pluralism, it is not the appropriate instrument for this task. Moreover, the mere removal of legal restrictions during the approval procedure for broadcasters could reduce pluralism. The safeguarding of pluralism and freedom of opinion in programmes essentially depends on rules designed to prevent media concentration processes which could lead to monopoly-type mergers. The more certain large media extend their dominance over European countries, the fewer the opportunities for smaller suppliers to maintain alternative programme production.

c) Even if the Community's power is limited to the establishment of the internal market, there can be no doubt that, in the case of the media, such market mechanisms have a major influence on the safeguarding of pluralism in the supply of programmes —and, consequently, the freedom and variety of opinions. The Committee therefore feels it would be wrong for the Community to avoid taking action to maintain pluralism. Such action should, accordingly, define the limits to media concentration so as to protect pluralism in the EC against media companies which dominate entire sectors of opinion-forming activity in certain regions. Whilst the economic health and competitiveness of businesses may be preconditions for pluralism, they do not automatically increase it and may even lead to a reduction if the market is controlled by a single company.

d) Rules on national and trans-national media companies which achieve monopoly-type dominance of broad sectors in certain countries are considered by the Committee to be necessary; the EC Directive cannot concentrate exclusively on the removal of barriers to market access — Community legislation must also set precise limits to media-specific concentration. The same applies to State-run television and radio organizations which dominate the market by virtue of the size. On the other hand, public broadcasting companies, whose independence from government interference is guaranteed by the public bodies controlling them, can significantly help to safeguard the freedom of opinion and information and thus to ensure pluralism.

e) It is necessary to introduce legislation governing access to satellite frequencies which allow unrestricted broadcasting to Europe.

f) A media committee made up of members of the European Parliament and the ESC and including independent experts and representatives of interested social groupings should be set up to advise the Commission.

g) The Committee thinks that pluralism should also be safeguarded by legal provisions in other areas. Requirements must therefore be laid down in respect of minimum democratic standards in European television and radio stations and the press (safeguarding of 'internal' broadcasting and press freedom through cooperation, participation and the prohibition of censures). Thus, in its Milan Declaration of 5 March 1993, the European Group of the International Federation of Journalists (IFJ) stated: 'But apart from measures aimed at safeguarding pluralism in the media in general, there is a need for securing pluralism inside the publishing houses and broadcasting stations There is the need to secure editorial independence. The editorial staff detains (sic) the moral and intellectual capital of publishing houses and broadcasting stations'. The Milan Declaration also sets out minimum standards of editorial independence for all European media.

3.2. The Committee therefore urges the Commission to take steps to ensure that ownership conditions in the press and electronic media sector are made completely public by requiring transparency in financial transactions and full disclosure of worldwide company holdings, cross-holdings and concealed third-party holdings. Such transparency must be compelled by specific Community legislative provisions as a precondition of legal protection for freedom of opinion and information.

3.3. In view of the importance of the media for a democratic, pluralistic social order in the Community, it is not sufficient to monitor concentration processes and take action to prevent any adverse consequences for freedom of information and cultural diversity. Consideration should therefore be given to the creation of a European Media Council as a self-regulatory body for the sector, which could deal with such developments and suggestions for improving European media policy.

3.4. The ESC would point to the pre-eminent importance attaching to Community regulations, while paying due regard to the subsidiarity principle. It is, however, essential that—in view of the technological possibilities (satellite broadcasting)—the Community's basic media rules should also be applied in non-member countries. The Commission should initiate negotiations on such cooperation without delay.

4. ESC answers to the Commission's questions

4.1. *Question 1*

How great is the need for action, in particular with regard to:

— restrictions on ownership;

— restrictive effects;

— specific restrictions in respect of multi-media and mono-media aspects?

There are sufficient well-known cases which establish the need for action. Legal provisions governing approval conditions have not always been adequately observed; thus, the simultaneous ownership of television stations, TV and radio weeklies and newspapers —which is prohibited in the US, for example—has been exploited by media enterprises to attack or marginalize rival programme producers and gain competitive advantages. The trade in exclusive rights to information is expanding and could ultimately pose a threat to freedom of information. There is also a need to prevent restrictions on pluralism arising from international agreements with third countries which occupy channels and frequencies that have already been assigned to local and regional TV stations in the Community, thereby limiting or reducing their scope for broadcasting.

4.2. *Question 2*

Are the needs identified of sufficient importance, in the light of Community objectives, to require action in the media industry and, if so, when should such action be taken?

'Action in the media sector' that is designed to eliminate 'restrictive effects ... which might affect the implementation of the single market in the media industry' must also take account of the impact of unrestricted market dominance on pluralism and the variety of opinions and provide for specific Community rules covering the transparency of media companies and limiting media concentration. The Committee therefore proposes rapid Community action with the aim of:

— defining standard EC-wide concentration rules for the print and electronic media,

— setting minimum democratic standards to ensure 'internal' broadcasting and press freedom in the interests of safeguarding the variety of opinions and freedom of information. The right to report on cultural and sporting events (even of a commercial nature) must also be guaranteed—and must preclude unjustified interference by commercial interests;

— making public the advertising revenue of all broadcasters.

4.3. *Question 3*

How effective, in the light of Community objectives, would action taken solely at Member State level be?

Whilst national measures may be appropriate, Community action is essential to prevent further media concentration and safeguard pluralism.

4.4. *Question 4*

What are the views of interested parties on the content of a possible harmonization instrument as envisaged above, and in particular on the two variants for its scope, on the use of the real audience as a basis for setting thresholds, on the demarcation of distribution areas, on any other possible references, and on ways of defining the concept of controller?

4.4.1. As regards the scope of the Green Paper (Chapter V, 1, C), the Committee agrees that restrictions deriving from pluralism rules cannot relate to programme content. Whilst provisions designed to ensure variety of opinions and freedom of information

in broadcasting are indispensable, their codification and monitoring must continue to be regulated nationally. Yet, even if their partial effectiveness were established, there would be no guarantee of genuine pluralism since the lifting of national restrictions on media ownership in the internal market would favour further expansion by international media corporations whose interests and programme policies are not guided by pluralist ideals. There is now sufficient evidence to show that, far from increasing pluralism, commercially-orientated broadcasting policy simply leads to more of the same, i.e. merely the plural rather than pluralism.

4.4.2. The Committee therefore welcomes the Green Paper's consideration of the balance to be struck between ensuring diversity and facilitating market access when harmonizing national legislation in the internal market and would again stress the need for anti-concentration rules for media enterprises above a certain size.

It would make the following specific proposals:

— In view of the existence of international multi-media corporations, ownership restrictions must also be introduced in respect of the press.

— Neither media nor non-media enterprises must be allowed to dominate the market in several media sectors (television, radio, press) in one or more national markets; similarly, no such enterprise that already controls a national media sector must be allowed to extend its market dominance.

— Media or non-media companies already dominating the market in one national media sector should not be allowed to acquire a majority holding in media companies elsewhere in the Community.

— Before a media company that is already active in one media sector is allowed to operate in another media sector, all its holdings and cross-ownership arrangements must be disclosed in full.

4.5. *Question 5*

What would be the advantage of action to promote transparency which would be separate from a harmonization instrument?

For the reasons already stated, the Committee sees little point in measures to ensure the transparency of all media companies in the absence of action to control media concentration and pluralism.

4.6. *Question 6*

How desirable would it be, regardless of the 'procedural' aspects of a possible harmonization instrument, to set up a body with competence for media concentration?

In accordance with the European Parliament's Resolution of 16 September 1992, it seems advisable to set up a European Media Council or media arbitration centre composed of independent experts and representatives of relevant social and cultural interest groups. This would have the task of analyzing concentration processes and advising Parliament and the Commission on all EC media questions.

4.7. *Options*

I. No specific action:

The Committee shares the views of the European Parliament with regard to media concentration, and also finds the Green Paper's objections to this approach more convincing. Moreover, the policies pursued by supranational media concerns can no longer be adequately influenced by national legislation. The Committee therefore cannot endorse Option I.

II. Action relating to transparency:

The Committee regards such an isolated Commission proposal to the Member States, which would be independent of action to harmonize national restrictions on media holdings, as inadequate (see 4.5) and consequently rejects it.

III. Action to harmonize laws:

Bearing in mind, in particular, the comments on Question 4 concerning the consequences for pluralism, the ESC endorses, in principle, the introduction of legal provisions by means of a directive and thinks that approximation on the basis of a regulation would be comparatively inflexible. Sub-option C, on the other hand, would appear to be both reasonable and effective.

5. Foundations of a media code

5.1. The problems of growing media concentration and the increasing commercialization and violence of many TV programmes, which are becoming apparent in the context of the Green Paper's topic and are not confined to Europe, require more fundamental discussion. All interested parties should therefore consider the establishment of a European media code which, in

addition to the control of media company power, should provide for the analysis of consumer requirements, bearing in mind, in particular, the maintenance and safeguarding of the freedom of information and opinions, the protection of minors against violent and pornographic programmes and their restriction on grounds of human—particularly female—dignity and the prohibition of the glorification of war.

5.2. The Committee has already laid the foundations for such a European media code in earlier Opinions:

'The increase in the range of media now coming on to the market necessitates consumer-policy measures if the consumer is not unwittingly to become the plaything of those who exercise a direct influence on the media and on the information disseminated thereby. Consumer education can help the consumer make responsible use of media services. Consideration should be given to whether consumer organizations might not themselves be able to help directly in this task via their own consumer education programmes.'

(ESC Opinion of 25 September 1985 on the Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable.)

'There is therefore a possible danger that an ever-increasing proportion of so-called popular programmes (feature films, variety programmes, games) will be offered to the public once the common broadcasting market, as advocated by the Green Paper, has been established. Because of the high audience ratings they command, such programmes are particularly profitable from a commercial point of view. The result might well be standardization incompatible with the objectives of the Green Paper rather than a genuine diversification of programmes.' (ibidem 4.4.)

'Hence the case for setting limits to the free play of competition in radio and television broadcasting through the imposition of European-wide quality standards. For the time being, however, existing national quality standards should be retained and supported.' (ibidem 4.5.2.)

'In the field of 'public order' the Community should introduce provisions to harmonize the necessary basic measures in the interests of:

— protecting minors in particular against pornography and the glorification of violence and armed conflict,

— protecting individuals against misrepresentation (right of reply).' (ibidem 5.4.)

'The Committee endorses the provisions with regard to the protection of children and young persons. It considers that the rules of conduct for this purpose should be accompanied and supported by systematic consumer education at national level so that young people constantly exposed to broadcasting may learn to develop a critical awareness of both programmes and advertisements.'

(ESC Opinion of 1 July 1987 on the proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities -Article 15, 2.25.)

5.3. In October 1989, the Council adopted the Directive on Television without Frontiers, which set out important guidelines. In it, the Council:

— affirmed the importance of broadcasting for the development of culture and the free formation of opinions in conditions safeguarding pluralism and equality of opportunity,

— recognized the need to consolidate the common broad framework of regulation, notably as regards the responsibilities of the broadcaster not to present indecent, violent or racist material; to reserve for European works a majority proportion of their transmission time; to abide by general standards on the duration, presentation, form and insertion of advertisements; to monitor the content and quality of advertising, with particular reference to information, education and consumer protection.

5.4. In its Additional Opinion on 20 December 1989 on a fresh boost for culture in the European Community, the ESC commented on the Convention as follows:

'Culture is seen as a dynamic, evolutive enrichment of daily life. The European Community dimension has and can continue significantly to contribute to this, not in any perceived 'identikit' fashion, but through the harmony upon which diversity thrives, through increased contact, comparison and mixing, and the identification both of different cultural traditions and of common uniting principles, of mutual understanding and the elimination of prejudices between peoples. The European 'cultural model' is not all-exclusive, still less a 'melting pot' but rather a multi-various, multi-ethnical plurality of culture, the sum total of which enriches each individual culture. The European 'cultural model' serves not as a 'fortress' but as an open springboard towards other cultures both throughout the Community and throughout the world.' (1.4.2.)

5.5. The following sections of this Opinion contain a detailed examination of the 'cultural aspects of media policy'. In a further Opinion of 20 September 1990 on an action programme to promote the development of the European audiovisual industry—'Media' 1991-1995, the ESC noted:

> 'In relation to people media policy has a variety of effects, responsibilities and democratic, social and cultural duties. We are talking not only of a constantly expanding market with turnover measured in thousands of millions and hundreds of thousands of employees, but more importantly about the maintenance and promotion of Europe's historical identity.' (3.7.3.)

> 'Different kinds of programme makers with varying legal status, i.e. both public and private sector suppliers, can coexist in democratic and socially responsible ways, thereby laying the foundation for cultural pluralism. However, it must be ensured that all such entities of whatever kind respect the principle of free expression of opinion for all social groups.' (3.7.4.)

6. Conclusion

The Commission is asked to consider the foregoing points and proposals with a view to ensuring that human dignity in a free, democratic society is the focal point of future developments in the European media market.

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the public sector in Europe

(93/C 304/08)

On 24 March 1992 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its Rules of Procedure, decided to draw up an Opinion on the public sector in Europe.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 7 July 1993. The Rapporteur was Mr de Knegt.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion by 54 votes to 22, with 10 abstentions.

1. Introduction

1.1. *Significance of the internal market*

1.1.1. It is intended that, from 1 January 1993 onwards, the Community should develop further into an area without internal frontiers in which the free movement of people, goods, services and capital is guaranteed. This Community must also embrace the principles of equal opportunities, mutual recognition of professional qualifications and diplomas and equal treatment as regards social protection, social security and education. The EEC Treaty leaves one in no doubt about this.

1.1.2. The aim of the internal market is, among other things, to improve working and living conditions by strengthening the European Community as a whole. That means creating an economically healthy infrastructure, enhancing the quality of products and services provided and developing qualitative employment opportunities. This is all the more important as unemployment is now rising, and is expected to reach 11 % by the end of 1993.

1.1.3. Social factors and other important aspects such as education, training, labour market policy and openness in financial policy can play an important part in improving economic conditions. It is acknowledged (as stated in the Sutherland Report) that the Community market calls for coordination and cooperation between the Member States to ensure proper operation of the internal market, so as to improve the position of the Community as a whole.

1.1.4. An efficient and effective public service and a good supporting infrastructure are important for the further development of the internal market. The lack of a European policy for coordination and cooperation between the public services jeopardizes the achievement of an active internal market and hinders constructive measures to reduce unemployment in the Community.

1.2. *Economic system*

1.2.1. The economies of the Member States can be described as market economies in a mixed economy. This approach accepts the need for corrections to the market mechanism to achieve the main task of the economic system — better development of the welfare of the whole population.

1.2.2. In practical terms, this means that alongside a private sector, there is a public sector where factors other than the market mechanism operate.

1.2.3. Since the Second World War the public sector has tended to operate increasingly in the socio-economic field as well. In addition to the development of an economic policy, this has also led in a number of cases to the setting up of state-owned firms. In the meantime, conditions and attitudes in all EC countries have changed considerably in some respects.

1.2.4. State-owned enterprises owe their creation (and continuance) mainly to the fact that the functions they perform are considered necessary for the common good. The market is judged not to perform these functions adequately or at all. These may include:

— objectives of public interest, such as provision of basic goods and services, under socially acceptable conditions,

— sustainable, long-term provision of goods and services,

— initiative for maintenance and renewal of the industrial sector,

— giving special consideration to the environment and the social aspects thereof.

1.2.5. As regards maintaining public enterprises in operation, the same assumptions must apply in principle and in practice as in the private sector, where

positive results are one of the conditions for being able to hold one's own. Due regard should be given to the functions mentioned in 1.2.4.

1.2.6. In a number of fields ownership structure varies from one Member State to another, for example in:

— airlines,

— aircraft building,

— motor vehicle production,

— public supplies such as water, gas, electricity,

— telecommunications,

— railways.

1.2.7. There are also considerable differences in the extent to which governments of all Member States provide services directly at all levels, or contract these services out. The starting-point here must be that the Community and the Member States are not allowed to discriminate between the private and public sectors in applying the competition rules.

1.2.8. The economic and social importance of the public sector is illustrated by the fact that it is estimated to employ almost 25 million people, that is about 15 % of the active population, in welfare and public health, transport, energy and water supplies, posts and telecommunications, science and education, finance, environmental protection, police and justice or administration.

1.2.9. It is realised that concepts such as the public sector, public services and civil/public servants sometimes have different meanings and connotations in the Community languages. More precise definitions are desirable and sometimes even necessary. However, the basic assumption in all EC countries is that the public sector is not an indivisible whole and can be roughly sub-divided into four areas:

a) The departments of the civil service which assist the national government in its administrative tasks. The work of these departments includes administration, advice and technical support on political decision-making, finances, legal matters, foreign policy, defence policy, European affairs, environment policy and management, public health and low cost housing;

b) Services provided by the government, such as health, social services, education, research, welfare, information, etc.;

c) Regional and local government, which among other things implement a number of the services listed under a), b) and d);

d) Industrial and commercial state enterprises or enterprises operated on behalf of the state in fields such as air and railway transport, posts and telecommunications, energy and water supply, etc.

1.2.10. It will be clear that, in all four of the above sectors, services form an important task at all levels, and that a greater degree of uniformity must be aimed at in carrying it out, in order to be sure that Community legislation will be implemented in the same way and with the same effect everywhere.

1.2.11. This calls for closer cooperation than hitherto between the Member States' public services, since there must be much more systematic exchange of information within a short period of time. To that end, Member States' information systems will have to be made compatible.

1.2.12. It is to be expected that more and more transnational administrations, such as Europol, will be set up. The creation of a frontier-free area therefore calls for trans-European networks and infrastructures, e.g. in the transport, telecommunications, energy and vocational training sectors [1]. The Committee stresses that these supranational and intergovernmental administrations should be accountable to the public.

2. The purpose of the Opinion

2.1. The Opinion is intended, among other things, to encourage the development in all Member States of an efficient, high-quality provision of public services.

2.2. There has so far been no survey of the public sector workers' position in the European Community context. As a result there has so far been no specific consultation between the public authorities as employers and the public sector unions at European Community level. Similarly, there is no mention of a social dialogue on European matters between public sector employers and trade unions in most Member States.

2.3. This is in sharp contrast to the private sector, where there is properly structured consultation between employers' and workers' organizations. Moreover, there is a proposal for a Directive on a European Works Council, involving information, consultation and a certain form of participation by workers, where cross-frontier cooperation between enterprises is planned. It can be noted as well that increasingly agreements on the establishment of European Works Councils are being concluded between employers and trade unions in transnational companies.

[1] OJ No C 14, 20. 1. 1992.

2.4. The survey referred to above is intended to help improve the quality of the activities carried out by the public services at Member State level, in keeping with the proper development and operation of the internal market.

2.5. However, a particularly important problem is that there are hardly any formal structures at EC level for consultation between employers and workers. No formal consultation takes place either with regard to the transnational activities of public services, or as regards the effects of the European integration process. Only a small number of sectors—such as the railways and telecommunications services—have a specific consultation procedure.

2.6. It would be desirable to develop such structures for the public sector at EC level—since it is clear that the form, working methods and management of the public sector in the Member States vary considerably. Moreover, the perception of the public sector differs from one Member State to another, and this is reflected in the social dialogue on the public sector at national level. An essential precondition for creating consultative structures for employers and workers and stimulating social dialogue is that these national differences should be recognized and that the importance of the subsidiarity principle in Community legal provisions on the public sector should be laid down.

2.7. One of the aims of the Opinion is to stimulate discussion of the role of the public sector in the process of European integration.

2.8. A dialogue on the public sector would also be very constructive, and could help to increase the efficiency of this sector as the internal market develops.

2.9. In the longer term efforts must be made to ascertain convergence of those public services having a complementary supportive role to the benefit of the internal market. Initiatives for cooperation and coordination between public administrations and enterprises should be encouraged and extended.

2.10. In legislation on the public sector account must, of course, be taken of the social traditions and differing administrative forms in the Member States, as well as the degrees of autonomy of the different levels of government.

3. The position of public sector workers

3.1. Public sector workers are encountering the effects of the completion of the European internal market. One must therefore consider what effects the measures taken in the framework of European integration will have on the public sector and what they will entail for the position of workers, the provision of services and other matters connected with the proper functioning of the public sector.

3.2. In the Community there is a need for a legal framework through which acquired and individual rights of workers are protected. Then it is not just a matter of clarifying questions relating to the position of workers, but also of transferring workers' existing rights in relation to pensions and other relevant arrangements. At Community level efforts must be made to ensure better, transparent coordination in this field [1].

3.3. Every worker, including those in public service, must have the opportunity to move into a job in another Member State, in accordance with the European Court of Justice's judgements on the matter, and without having to fear any loss of benefits arising from an occupational pension scheme already acquired. The worker must also have the opportunity to go on acquiring similar benefits in the new employment, in accordance with the non-discrimination principle.

3.4. High quality public services, responsive to the needs of users, are a precondition for achieving the strengthening of economic and social cohesion within the Community envisaged in Article 130a of the EEC Treaty. In the revised formulation of this Article agreed at Maastricht, this is expressed in a stronger form. After all, the economic strength of a region depends to a decisive extent on efficient public sector workers with adequate resources at their disposal.

4. The consequences for the position of workers

4.1. If it is assumed that within ten years a large amount of the economic (and probably also the fiscal and social) legislation applicable by the Member States will be Community legislation, then it is clear that national authorities will have to start thinking in Community terms, i.e. that they will have to take the European dimension of problems into account in carrying out their policies.

4.2. For many workers in the public sector the realisation of the European Single Market will therefore have direct consequences for their activities — for customs officials and those in posts and telecommunications. The consequences for those in the energy sector and elsewhere will be more indirect.

[1] OJ No C 223, 31. 8. 1992, point 1.2.

4.3. Thus legal provisions of the Community and EC programmes at the national level must be converted into national provisions by national and regional public bodies. The effectiveness of this process depends on the extent of public sector workers' knowledge. For example, labour inspection officials or foods standards inspectors must be aware of the content of the relevant EC standards and must have comparable powers, so that these standards can be applied effectively throughout the Community.

4.4. For a large number of customs agents the completion of the Single Market will have extreme consequences. Thus a survey has shown that 63,100 of the 239,000 jobs in this sector will be lost. To limit the individual effects to a minimum, there will be a social assistance and redeployment plan in which the Member States also have an important part to play [1].

4.5. In this connection it is very important to know whether similar problems are likely to arise in the public sector itself, and, if so, what solutions will be offered to cope with these effects.

4.6. With the further development of the internal market, it must be borne in mind that adaptations will have to be made in certain sectors. Although the Single Market may not lead to an overall shrinkage of the public sector, the convergence criteria which Member States have to fulfil in the framework of the Economic and Monetary Union may lead to a decrease in public expenditure.

5. Mobility of workers in the public sector

5.1. As stated earlier, the Community must become an area without internal frontiers in which the free movement of goods, persons, services and capital is guaranteed. In such a Citizens' Europe, everyone must be free to move around in the Community, to stay and work in the country of their choice or to establish themselves there. This must also apply to citizens working in the public sector (see Information Report of the ESC Sub-Committee on the Citizens' Europe — CES 955/91 fin).

5.2. Under the case-law of the European Court of Justice and the 'systematic' initiatives of the European Commission, the EC Member States are obliged to open certain services in the public sector to applicants from other EC Member States. The free movement of workers in the public sector is a fundamental premise and should therefore be regarded as a part of the future Single Market in which the citizens of Europe will operate.

5.3. The possibility for citizens of EC Member States to have access to the public service will certainly increase the opportunities for migrant workers, who in many cases are already second or third generation residents of another EC Member State.

5.4. Since a number of policy areas are acquiring a European character, the public authorities must also adopt an increasingly European approach. Through the exchange of different experiences at the administrative level in the Community, the innovative capacity of the public service could also be increased.

6. Quality of public service

6.1. Various studies have been published by the Organization for Economic Cooperation and Development (OECD) on the consumer's position in the public sector. In addition, the European Foundation for the Improvement of Working and Living Conditions (an EC body) is setting up an investigation of ways to make the public services more accessible and user-friendly.

6.2. For the consumer, the Single Market must mean a wider choice of quality goods, not least because Community law will apply. However, the consumer needs to be sure that the goods offered on the internal market are safe to use. Thus the public services have a monitoring task to perform.

6.3. For industry, the Single Market means access to all markets in the Community. Industry is entitled to expect that no new obstacles will arise in this respect.

6.4. Consumers and industry must know how the public services are organized, what their own rights are and where to direct their enquiries, if they are to make optimal use of the opportunities available on the internal market. This is undoubtedly of great importance to small and medium-sized enterprises.

6.5. For consumers, that means simplification of procedures, decentralization and the setting-up of efficient and transparent complaints procedures. Brochures, manuals, databases etc. can provide support for this.

[1] OJ No C 19, 25. 1. 1993.

6.6. To consumers the successful and efficient delivery of both private and public services is what counts. Improvements in the quality and standards of both the product and the delivery are therefore important. Information about the service, frequency and reliability of the service, physical access to the service, and equal opportunities in the use of the services, are prominent wishes of consumers with regard to public services in all Community countries.

6.7. In the Committee's view, the same consumer protection rules must apply in the Member States for national, regional and other public enterprises as for private firms, independently of whether services are provided directly or through state enterprises or franchise-holders [1].

6.8. In setting the level of the quality of the public service, factors such as the management and organization of the service, resources and staffing, training of the workers, safe working conditions and pay and conditions of service play an important role.

6.9. Other factors which are important for the quality of the public services are the social contacts between workers in the public services and the users, as well as the accountability and democratic control of public services.

6.10. The involvement of both the users and the providers (the workers and their representatives) of the services in the discussions on improving the quality of the public services is crucial not only with regard to the local or national level, but also at European level.

6.11. The Commission should play a leading part in this, given the Community nature of the question. It should stimulate the debate about the role of the public services and their quality because, as is pointed out elsewhere, these are factors contributing to the strengthening of the economies of the European Community.

6.12. Cooperation, coordination and dialogue are necessary to reach a convergence in levels of quality of the public services to the benefit of users and workers in the Community. The Commission should urge the Member States to take the measures needed to make the internal market operate well in this field also.

6.13. It is realised that the form the service takes in the end is a balance between resources, political objectives, needs of the users and the quality of the service, at local, regional, national and European levels.

[1] OJ No C 339, 31. 12. 1991, point 1.2.2.4.

7. **Training and access to public service**

7.1. It is clear that the public sector plays an important part in the execution of national legislation. It is also responsible for the implementation of EC legislation. This responsibility is vested not only in the national government, but also, to an increasing extent, in regional and local authorities. The provision of a Committee of the Regions included in the Treaty on European Union is in part a recognition of the important role which these other levels of government play in implementing EC legislation. Indeed, this role should be stressed even more by incorporating the concept of subsidiarity, as formulated by the European Council in Edinburgh, into the Treaty.

7.2. The increasing importance given to the concept of subsidiarity shows the need to ensure that the public sector is in a position both to contribute to, and benefit from, EC legislation.

7.3. It is clear that at present EC standards are transposed into national legal provisions in very divergent ways in the various Member States. The result can be that information on the content, significance and interpretation of provisions is not always identical. This can lead to distortions of competition, but can also bring disadvantages for the consumer among others.

7.4. It can be assumed that changes are also occurring within the public service, leading to it being run in a different way from that which has prevailed hitherto. Technical progress, the increasingly cross-frontier nature of all links and the higher quality demands which will be placed on the public service bring its management into question. 'Strategic policy control' will therefore have to be developed as a concept within the public service.

7.5. In an economy which is becoming freer and more comprehensive, the demands of the public service must be reconciled with those of competition.

7.6. It is therefore important that, in close consultation with the Member States, and separately from specific measures in the context of reorganizations, etc., a programme for public services should be developed which at least:

— includes management training for senior staff,

— provides for information to be given on the content of directives and regulations adopted, and the way in which these should be converted into national provisions,

— provides for the information to be given in the nine working languages of the Community,

— covers activities for retraining (including vocational retraining) and refresher courses,

— includes a wide-ranging action plan for exchanges of officials (a programme which would be similar to the Matthaeus and Matthaeus-Tax Programmes but would cover other vocational groups as well as customs officials).

7.7. It can be expected that the Commission will also make an important contribution to the financing of a programme of this kind.

7.8. In planning and deciding the content of such a programme it is important to consult with the representative European public sector trade union organizations.

7.9. Following the Commission proposal of 30 October 1991, the Council adopted on 22 September 1992 an action plan for the exchange between Member State administrations of national officials who are engaged in the implementation of Community legislation required to achieve the internal market (Council Decision 92/481/EEC) [1]. This exchange programme came into force on 1 January 1993 and is known as the 'Karolus Programme'.

7.10. The ESC has given a favourable Opinion [2] on this programme, but has asked for an increase in the number of participants, since at present only a limited number of officials (1,900 over 5 years) can take part.

7.11. Although it is important for this programme to be carried out, this has no connection with the organization of social dialogue between public sector employers and representative European public sector trade union organisations.

8. A properly functioning public service

8.1. The public service is not only there to translate political decisions into administrative action, but also as a necessary link between the various sectors of industrial life. In the EC context this structural policy task of the public service has not yet been fulfilled. Consideration must therefore be given also at Community level to possible restructuring of the public service, in order to ensure in this way a convergent development of services by the Member States in the European Community. It is clear that only a properly functioning public service is capable of taking initiatives, and in addition of providing good, substantive services.

8.2. This is important mainly in connection with the growing need for cross-frontier cooperation between public bodies, as regards, among other things, environmental protection policy, transport policy, waterways policy, regional policy and waste processing and disposal.

8.3. It is already becoming clear that as a result of European integration the public service will take on not only new tasks but also new, European, administrative structures. The Committee thinks that, for this reason, continuous efficiency controls will be necessary.

8.4. Thus, external and internal security is also recognized by the Member States' Interior Ministers as a sector where not only is more intensive cooperation necessary, but the creation of Europe-wide structures is now seen as a necessity.

9. The public sector and privatization

9.1. In nearly all the Community countries there is talk of reducing the scope of government. The reasons given are that the market economy is in danger of suffocating, that the boundaries of government activity have been reached and that more reliance must be placed on the citizen's individual responsibility. It is also argued that the financing of the public sector must be earned.

9.2. That increasingly leads to the introduction of market mechanisms in public services and public enterprises. Further, governments resort to privatisation of certain public services and public enterprises with the aim of improving their efficiency and quality.

9.3. The Committee notes these developments. It further refers to the 1991 World Development Report of the World Bank, which notes, for example: 'But markets cannot operate in a vacuum. They require a legal and regulatory framework that only governments can provide. And there are many other tasks in which markets sometimes prove inadequate or fail altogether. That is why governments must, for example, invest in infrastructure and provide essential services to the poor. It is not a question of State or market: each has a large and irreplaceable role'.

9.4. The Committee supports the view that economic stimuli are necessary to make the Community stronger to face competition from third countries. To this end cooperation between the private and the public sector is necessary.

9.5. The necessary economic stimuli must be found

[1] OJ No L 286, 1. 10. 1992.
[2] OJ No C 98, 21. 4. 1992.

in the creation of a European industrial policy. This policy should include the promotion of:

— development of new technologies,

— marketing of advanced new products,

— setting up trans-European networks,

— opening up new markets,

— setting up and running relevant education and training programmes to increase skills at all levels (see Committee Opinion on European industrial policy) (1).

9.6. The public sector has its own part to play in strengthening the Community, as indicated under the various headings.

9.7. There are examples of public services being provided solely by the government, by the private sector or by a combination of the two. In practice there are many examples of cooperation, e.g.:

— joint ventures,

— concessions for provision of services, granted by the government to the private sector,

— concessionary agreements on financing, design and construction (if relevant) and/or provision of services, where final ownership remains in the government's hands,

— public-benefit enterprises with control bodies manned by people from the private sector.

9.8. Possible forms of consultation at various levels between the private and public sectors should be examined.

9.9. It is also important to ascertain whether it would be possible to hold joint training and education programmes, and to arrange exchanges of employees from the private and public sectors promoted by the Commission.

9.10. To obtain a full picture of the privatization of public services, a detailed inventory should be made. That inventory should include:

— a statistical survey of employment in the Member States' services before and after privatization,

— the structure of the public sector in the Member States and the existing forms of consultation,

(1) OJ No C 40, 17. 2. 1992.

10. **Approach to public service problems at the EC level**

10.1. The activities of the Commission and Council for completing the internal market must be accompanied by a developing vision of the public sector's place in it. As stated earlier in the Opinion, the Community cannot achieve its aims without coordination and cooperation with the public service. For this, a dialogue between management and providers of services is needed.

10.2. There has so far been no specific social dialogue in the public sector at European level. It is mainly due to the fact that, with the exception of the CEEP (2), the national authorities (Member States, regions and municipalities) have not yet grouped together in a European association of public sector employers.

10.3. In order to tackle adequately the problems of public service at the EC level, studies must be made and appropriate consultation and negotiation procedures developed. In practice this means that:

— The Commission, in close consultation with the Member States, in the context of completing the Single Market, must investigate in which sectors of the public services positive or negative staff changes are likely to be made, and what appropriate measures will be applied. This is very important, since uncertainty over jobs can have a bad effect on the balanced development of the internal market,

— The Commission must create a department to deal with the specific interests of the public sector,

— For the public service too, the aim must be sectoral consultation between public authorities as employers and public employees' staff organizations. This could cover questions such as social integration, working conditions and policy relating to them, education and training. In this connection it is above all necessary for the authorities in their role as employer to adopt organizational provisions, at EC level,

— Another aim must be to establish regular joint consultation between public authorities, trade unions, consumers' organizations and both private companies and enterprises with State participation. This is important for mutual information on questions of interest to all parties, and for keeping public and private sectors in step as far as possible,

(2) CEEP = *Centre Européen des Entreprises Publiques* (European Centre of Public Enterprises): together with the Union of Industries of the European Community (UNICE) the CEEP is a recognized social partner and takes part in the central social dialogue held with the ETUC (European Trade Union Confederation).

— to maintain and extend the participation of workers in the public sector, joint committees must be set up,

— within the future European authorities, European service committees should be set up on the lines of the European Works Council,

— national and Community manuals should be drawn up to serve as a reference framework for executive tasks,

— questions such as those mentioned in point 9.10 above must be investigated.

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the proposal for a Council Directive to amend Council Directive 86/662/EEC on the limitation of noise emitted by earthmoving machinery [1]

(93/C 304/09)

On 11 June 1993 the Council decided to consult the Economic and Social Committee, under Article 100 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 September 1993. The Rapporteur was Mr Pearson.

At its 308th Plenary Session (meeting of 22 September 1993) the Economic and Social Committee unanimously adopted the following Opinion.

1. General comments

1.1. The Committee welcomes the Commission's proposal that there should be further amendment to Directive 86/662/EEC agreeing that further reduction in noise levels of earthmoving machinery is necessary. The Commission's concern that the present Directive should not lapse is valid: it would be a retrograde backward step were there no effective Community standard due to the lack of an amending Directive providing for an extension of current limits. The Committee however would point to the following points arising in the details of the Commission's proposal which need attention.

1.2. The Committee is well aware of the nuisance caused by machinery on building and other sites but feels that the Commission in the Explanatory Memorandum overstated the problem. The overall noise level on an urban site assumes more importance than on a rural site, nevertheless effective Community standards are essential if the noise level is to meet general acceptability.

1.3. The mathematical (logarithmic) element involved in arriving at a decibel level is not always understood. The proposed levels in the draft Directive are significantly lower and will require considerable application to be attained. A balance between viable production of such machines and the social impact on society has to be struck.

1.4. It is accepted that the proposal's simulated testing procedures do attempt to envisage the working conditions of the machines.

[1] OJ No C 157, 9. 6. 1993, p. 7.

1.5. The Directive 86/662/EEC provided for a two-and-a-half year period between the Council Decision and the operative date. The Committee believes that it is very important that this time scale be maintained. The Commission's proposed operational dates are considered to be practical provided the Council Decision is made at an early date, as until the precise levels, as decided upon by Council, are known, no redesign and manufacture can commence. The validity of existing type approvals must be extended in line with the introduction point of the new test method and noise limits.

1.6. There must be close coordination between the main manufacturer/assembler and the suppliers of the 'bought in' parts, these being a high percentage of the whole. Some such components, such as the engines, may be subject to requirements of other Community Directives so that proper liaison will be essential to achieve the programme schedule. The noise level of many 'bought-in' components will need to be reduced.

1.7. The expert group referred to in new Article 8(a) that advises the Commission is composed of those with a wider mandate than a specifically technical industrial expertise. With this in mind the Committee stresses the importance of the practical production advisors and of the effect that changes will have for the benefit of those working with, or in the vicinity of, the machinery.

1.8. Whilst the operators of the machinery are covered by other Community Directives concerning noise, there should be a close relationship to all the relevant Directives.

1.9. The Commission accepts that the proposals will have the effect of increased costs: it is likely to vary between 3 % and 5 % depending on the category of machinery. New technological and production advance in Europe is such that commercial advantage can result while at the same time social and environmental aspects also benefit, although the total annual cost to consumers in the Community is seen as between ECU 126 and 210 million.

1.10. The Committee is concerned that the provisions being proposed in Article 3.1(c) subsequent to 1999 might not be realistic. The very high percentage of machines to be redesigned (80 % of wheeled machines and 50 % of others) and the lack of experience of the dynamic procedure for testing noise levels should counsel great care and monitoring before they are enacted in the Directive. The Committee wonders whether it is wise at this time to set limits for the year 2000 without assessing the experience relative to the 1995 deadline as laid down in stage 2 of Directive 86/662/EEC. The Committee recognizes that further reductions in noise levels will be necessary but feels that the proposed levels should be seen as indicative rather than definitive at this time.

1.11. The Committee believes that the Consultation process, as set out in the Commission Impact Assessment, has not been truly reflected in the text. It is not fair to describe the 'attitude of the representatives of industry as ambivalent' as the manufacturers agree that an amendment to Directive 86/662/EEC is urgently necessary.

2. Specific comments

2.1. *New Article 1*

2.1.1. The tabled proposal for amendments to 86/662/EEC (as amended by 89/514/EEC) is to be subject to Article 100A. Heretofore it has been under Article 100. The Explanatory Memorandum gives no reason for this change although a statement is included in the 'Whereas' section of the document. The Committee agrees Article 100A should be used in this case.

2.1.2. New Article 1, paragraph 1, concerning Article 3.1 (c)

This should be deleted in accordance with our comment in 1.10 above.

2.1.3. New Article 1, paragraph 3

It is agreed that Article 4 of the 86/662/EEC Directive be deleted.

2.1.4. New Article 1, paragraph 4

The Committee believes that this amendment is unjustified: the current Article 5 in Directive 86/662/EEC is satisfactory and should not be changed.

2.1.5. Article 1, paragraph 5

This replaces the previous Article 7. Whilst the Committee does not disagree with the aim of economic incentives to place on the market new machines in accordance with the proposals, it would point out that fiscal and economic measures are the prerogatives of the individual Member States. That paragraph should not be retained and the existing Article 7 should also be deleted as it becomes obsolete with the new amending Directive.

2.1.6. New Article 1, paragraph 7

This replaces the previous Article 9. In line with comments in 1.10. and 2.1.1. the existing Article is satisfactory and should not be changed. The amendment should be deleted.

2.2. *New Article 2*

This should be redrafted to state that the Member States enact the laws, regulations and administrative provisions so that two and a half years is retained for the operative date as from the Council Decision.

3. After due consideration the Committee believes that the minimum noise levels in Article 3(1)(b) should be changed to bases at:

— Tracked machines (except excavators)
$L_{wa} = 87 + 11 \log P$ (above 107 dB)

— Wheeled dozers, loaders, excavator-loaders
$L_{wa} = 86 + 11 \log P$ (above 106 dB)

— Excavators
$L_{wa} = 85 + 11 \log P$ (above 99 dB)

Upper limits should not be included as these will inhibit the development of very large machines which do not have a big effect on noise nuisance for the following reasons:

a) they are physically of considerable size and bulk operating on large projects away from urban areas (such as dam construction);

b) for safety reasons no-one works close to such machines;

c) due to the logarithmic formula for evaluating noise limits the noise level does not increase dramatically with machine size—for example between 1 000 KW and 2 000 KW the noise level will increase by the same amount only as between 100 KW and 200 KW (3,3 dBA).

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

Opinion on the Future of Community Initiatives under the Structural Funds

(93/C 304/10)

In paragraph 8 of the Green Paper The Future of Community Initiatives under the Structural Funds [doc. COM(93) 282 final], the Commission calls for consultation of the Committee. On 25 May 1993, the Bureau of the Economic and Social Committee instructed the Section for Regional Development and Town and Country Planning to prepare the Opinion.

The Section for Regional Development and Town and Country Planning adopted its Opinion on 14 September 1993. The Rapporteur was Mr Christie.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion by a majority with one abstention.

1. Introduction

1.1. The Green Paper presented by the Commission represents the first occasion on which the principles and practices of the Community initiative programme have been subject to a comprehensive review. The Commission is using the introduction of the next phase in the Community structural policies—set to begin in January 1994—as the appropriate time at which to adjust the Community initiative scheme that has been in place since 1989. On 20 July 1993, in adopting the revised Regulations [1] governing the Structural Funds, the Council confirmed the Community initiatives and fixed some financial and administrative provisions.

1.2. The Committee has, on a number of occasions since 1989, expressed an opinion concerning the operation of Community initiatives. However, these have typically been made within the general context of the Community's structural programme as a whole, rather than as detailed comment on the operation of the Community initiative scheme itself.

2. General comments

2.1. The Committee welcomes the Commission Green Paper on reform of Community initiatives, and takes this opportunity of fully supporting the principle of Community initiatives. Community initiatives constitute an important instrument of economic and social cohesion. It is essential that the independent and innovative nature of Community initiatives is retained. Community initiatives should continue to be available to the Community to use in direct response to the emergence of unexpected economic and social problems. They are a highly visible aspect of EC cohesion policies, allow the adoption of a common approach to resolving economic and social problems throughout the Community, and provide a framework for encouraging transnational cooperation and the pooling of know-how in areas of shared concern. Through Community initiatives best practice can be transferred throughout the Community and this might well be one of the key functions of initiatives.

2.2. The Committee acknowledges that the strengths of the Community initiatives lie in the flexibility of the instruments; the capacity for initiatives to address problems that are not adequately dealt with under the structural funds, such as the problems of border regions; the innovative nature of many of the programmes which implement Community initiatives; and the immediate relevance of the programmes to Community citizens.

2.2.1. The Commission might consider incorporating successful innovative Community initiatives which have general applicability to economic and social cohesion into other structural instruments thus releasing resources for the further development of new Community initiatives.

2.3. At the same time, the Committee has in the past expressed a view that there are too many Community programmes with the result that the principle of concentration in the application of structural policies is being neglected. Whilst welcoming the Commission's proposal that the number of Community initiatives should be reduced, we nonetheless consider it to be important that Community initiatives retain a degree of flexibility to enable policy to respond speedily to unexpected problems. At a time of deep recession in the European Community, and during a period when the pace of structural change is increasing and bringing with it a rise in long term unemployment, it is important that the Community has such a facility at its disposal.

[1] Regulations (EEC) Nos 2081/93 and 2082/93.

2.4. The Committee regrets that the Commission has been unable at this time to present a comprehensive evaluation of Community initiatives. Whilst accepting that evaluating such programmes is difficult—particularly for those which involve relatively small sums of money—nevertheless it is extremely difficult for this Committee to offer detailed comments on the future shape of Community initiatives in the absence of such an evaluation. The Committee proposes that Member States include evaluation procedures in respect of Community initiatives when submitting plans for assistance under the Structural Funds.

In the case of new and innovative Community initiatives the Commission should speedily evaluate their contribution to economic and social cohesion so that best practice measures can be incorporated into the general application of Structural Funds.

2.5. The Commission proposes that Community initiatives should concentrate on five general priorities:

— cross-border, transnational and inter-regional cooperation and networks,

— rural development,

— outermost regions,

— employment and the development of human resources,

— the management of industrial change.

2.6. The Committee agrees that these general objective should guide the design and implementation of Community initiatives during the period 1994-1999. They conform closely to, and complement the aims and objectives of, the reforms that have been proposed to the operation of the Structural Funds generally. It is also important to stress that these general objectives provide for support for all areas of economic development in the targeted areas, including support for the service sector and for small and medium-sized enterprises (SMEs).

2.7. Further, together these objectives for action under Community initiatives will enable the retention of those current initiatives which are widely acknowledged to contribute positively to cohesion. Consequently, the Committee endorses the general framework of operation for Community initiatives as proposed by the Commission.

2.8. The Committee considers that Community initiatives are a most suitable instrument for encouraging 'partnership' in all the stages of the preparation and planning of activities [Article 4 of the new Coordinating Regulation (EEC) No 2081/93]. Accordingly, the Committee would stress that any reform to the Community initiative scheme must seek ways of clearly improving the involvement of local participants, including the economic and social partners, in both devising and implementing programmes. Community initiatives must reflect a 'bottom-up' approach to economic development and must not be subject to excessive centralization at a national level.

3. Specific comments

3.1. *Programming Community initiatives*

The Commission proposes that up to three-quarters of the funds available to Community initiatives be allocated to the five broad priorities of Community initiatives before any of the CSFs are adopted, leaving one-quarter of the available fund in reserve for later allocation in response to unforeseen problems. It is essential that some degree of flexibility in Community initiatives is retained as there is every likelihood that sectors not specifically mentioned in the past or present initiatives (e.g. services) will experience adjustment difficulties in the future and require the kind of support possible through Community initiatives.

3.1.1. If implemented, these reforms are likely to improve the coherence between Community initiatives and the structural funds, and ease the administrative burden which these programmes impose on local administrations—both of which are desirable. However, these benefits have to be set against the costs of introducing an approach which is less sensitive to the changing economic circumstances in many of the regions eligible for Community assistance. This risk of inflexibility is increased by the Commission proposal that certain—though not all—Community initiatives should be operational for the full six-year period of the reformed structural funds.

3.1.2. The Commission has deliberately avoided proposing a specific division of funding between the five general objectives for action within the programme of Community initiatives. Clearly, a significant part of the funds assigned over the period 1994-1999 will be influenced by the current configuration of Community initiatives. The Committee considers that, as a guiding principle in allocating Community initiative expenditure, funds should be assigned to those programmes that deliver the greatest benefit to the Community's disadvantaged and restructuring regions.

3.2. *Geographic eligibility*

The Committee supports the Commission proposal that a limited amount of resources available under Com-

munity initiatives should be spent outside eligible areas. This is especially important for infrastructural programmes targeted at border or rural areas where some areas are eligible and others are not. Further, it should be possible within the regulations governing Community initiatives for assistance to be given to areas suffering adverse consequences from an unexpected change in economic circumstances.

3.2.1. However, it remains the case that Member State governments themselves must accept the principal burden of responsibility for addressing problems in these areas. In the past this Committee has expressed, and reiterates here, the view that the principle of concentration of Community structural policies must be strictly observed. Care must be exercised to ensure that the potential effectiveness of Community initiatives in the Community's handicapped regions is not undermined by over-extending geographic eligibility. Where eligibility is extended, it should be incumbent upon the Commission to establish the particular added-value to the Community's handicapped and restructuring regions that is expected to accrue from the implementation of a Community initiative.

3.3. The Committee notes the Council's decision to assign 9% of the Structural Funds to Community initiatives over the period 1994-1999. Whilst the Committee recognizes that this decision may be regarded as a success for those seeking to renationalize structural activities, it would point out that a fund allocation of 9% is below that obtaining in 1989-1993 and below the minimum threshold of 10% called for by the ESC and the European Parliament.

3.4. *Priority actions*

The Commission identifies five objectives or themes that are to be eligible for assistance within the Community initiative framework.

3.5. *Cross-border, transnational and inter-regional cooperation and networks*

The Committee acknowledges the importance of Community initiatives under this priority, and endorses the Commission's proposal to extend the Interreg programme accordingly. Further, we accept the Commission's arguments for a limited extension of eligibility for assistance to ensure the coherence of measures aimed at promoting economic development in all border regions. However, it is particularly important that measures adopted under this priority are coordinated with the other structural policies, in particular those to which many border regions are eligible.

The Committee believes that the Interreg programme could promote a regional transnational cooperation that would go beyond geographic contiguity. One objective of this cooperation would be to promote the diffusion of best practice production technologies and encourage diversification, in order to raise productivity in the less favoured regions thereby contributing to economic and social cohesion.

3.5.1. The Committee notes the reservations recorded by the Commission concerning extending Interreg to internal border areas separated by the sea. Whilst accepting that including all sea borders would not be possible within the financial provisions of the Community initiatives scheme, we consider the general rule that maritime borders do not qualify to be inappropriate. At the very least adjacent regions (for example, areas of the Atlantic Arc and the Mediterranean) separated by maritime borders should be eligible for assistance to undertake exploratory research concerning the possibilities for improving transport links.

3.5.2. The Committee endorses the Commission proposal to support inter-regional and transnational cooperation and the establishment of networks that link poorer regions and areas to more prosperous areas and regions, both within the EC as well as between Community regions and areas of neighbouring non-Member States (including Central and Eastern Europe and the Mediterranean countries). In particular, the Committee considers that support should be given to cooperation between regions and areas which have common structural features (e.g. upland areas, major conurbations, areas of particular environmental interest). In this way public policy would assist the functioning of the private sector by identifying mutually beneficial opportunities for collaboration.

3.6. *Rural development*

Here there is widespread agreement that impending policy changes will require that new approaches to the problems of the rural regions of the Community need to be found. The Commission's proposals in this respect are particularly welcomed by this Committee which produced an Opinion on rural areas outlining a range of proposals for action [1].

3.6.1. More so than in other aspects of economic development, it is vital in the matter of rural development that a 'bottom-up' approach to policy formulation and implementation is adopted. Consequently, we urge the Commission to consider new ways of involving all the partners—in local, national and Community level

[1] OJ No C 161, 14. 6. 1993, p. 39.

organizations—representing the diverse range of interests represented in rural areas within the policy process.

3.7. *Outermost areas*

As many studies have demonstrated, geographic peripherality constitutes one of the most intractable barriers to economic development and, consequently, to the objective of achieving economic and social cohesion. The Committee believes that the principal responsibility for promoting economic developing in peripheral areas lies with national authorities. However, the Committee welcomes the emphasis that is now being given to the matter of peripherality in Community structural programmes, and fully endorses the Commission proposal that outermost regions should be a priority for assistance under Community initiatives. These programmes should emphasize measures which encourage sustainable economic development in peripheral regions. As in the case of development within rural areas, it is essential that programmes addressed to peripheral areas are devised and implemented with the maximum local involvement. When defining outermost areas it is important to include within the definition, outlying Island territories linked to Member States.

3.8. *Employment and the development of human resources*

This is a broad priority for action which has already been elaborated in the proposed reform to the Structural Funds under the aegis of the revised Objective 4. It is, therefore, appropriate that this priority also finds expression within the Community initiative framework. Further, action under this priority is likely to reinforce and facilitate Community initiatives designed to facilitate inter-regional business cooperation.

3.8.1. The Committee agrees with the Commission's analysis that economic growth alone will not provide sufficient jobs to reduce unemployment over the next decade. Consequently, the Committee welcomes the proposal to create a single framework human resource initiative to address the problem of unemployment.

3.8.2. A key element in the Commission's proposal is the importance it gives to devising programmes which assist disadvantaged groups to become active participants in the Community labour force. The focus is on the acquisition of skills, introducing measures to encourage women into the labour force, and promoting technology transfer. The Committee welcomes this not only as it will contribute to the wealth generating capacity of the Community economy, but also as it will promote economic and social cohesion. However, it is important that sufficient attention is given to the requirements of business when devising Community policy. Consequently, mechanisms should be established which ensure an adequate representation of the economic and social partners prior to specific policies being formulated.

3.9. *The management of industrial change*

The Commission proposals amount to collecting under one heading a number of Community initiatives that are targeted at assisting the process of structural change that is a consequence of the continued run-down of traditional industries (steel, shipbuilding, textiles, coal). The Committee acknowledges that there is an on-going need for such programmes to encourage economic diversification within the regions affected.

3.9.1. In addition to providing a reactive function for regions dependent upon traditional industrial sectors, the Commission proposes that Community initiatives are available to assist the broad process of economic diversification in handicapped and restructuring regions. The aim would be to reduce the dependence of regions on specific activities that may be susceptible to industrial change, and broaden the productive base of the local economy. The Commission also proposes that assistance would be extended to areas outside eligible areas.

3.9.2. The Committee endorses the proposal that Community initiatives are directed at encouraging regional economic diversification. Employment in many handicapped and restructuring regions is dependent on a narrow range of economic activities, or relies on local firms which operate solely as sub-contractors to large international companies. Initiatives which facilitate local employers to broaden the scope of their activities, and to extend their markets, will contribute to protecting employment. The Committee is, however, less convinced of the case for extending these initiatives beyond eligible areas, other than in those cases where it can be demonstrated that so doing will contribute to the development of the handicapped or restructuring regions, or where, in the absence of Community assistance, the region concerned would be subject to substantial economic dislocation.

3.9.3. The Committee proposes that criteria are developed which determine eligibility for Community initiatives designed to promote regional economic diversification. These would include, *inter alia*, indi-

cators of sectoral employment dependence in regions; indicators of independent research and development capability at the local level; concentration of marketing and sales by local firms. Strict operating criteria would need to be established to ensure that there was genuine public benefit from the application of public resources.

3.9.4. The Committee does acknowledge that developing corporate networks, promoting technology transfer and assisting in the provision of high quality business services are essential prerequisites for economic development particularly in SMEs in the Community's less favoured regions and supports the development of Community initiatives in these fields.

3.9.5. The Committee takes the view that there should be explicit provision for reinforcing the Stride programme, which has yielded good results over the recent implementation period and is intended precisely to promote the spread of technology and the capacity for innovation and technological development in the Community's weaker regions.

3.10. Finally, the Committee repeats its call for a Community programme on upland areas.

4. Conclusion

4.1. The Committee welcomes the Commission Green Paper as offering a constructive and pragmatic contribution to the continued development of structural policies. The general principles elucidated and the operational reforms proposed in the Green Paper are consistent with the proposed reforms to the structural funds and are, therefore, to be welcomed.

Done at Brussels, 22 September 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN