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II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on the approximation of provisions laid down by law, regulation or administrative action relating to the implementation of Good Clinical Practice in the conduct of clinical trials on medicinal products for human use' [1]

(98/C 95/01)

On 4 December 1997 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned 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 6 January 1998. The rapporteur was Mr Colombo.

At its 351st plenary session (meeting of 28 January 1998), the Economic and Social Committee adopted the following opinion by 82 votes to four, with one abstention.

1. **Introduction**

1.1. The proposal is based on Article 100a. It is designed to align the principles and guidelines concerning clinical trials of medicinal products for human use. The aim is to reinforce existing practice and align procedures for the commencement of clinical trials on human subjects, through consistent application of the guidelines of the International Conference on Harmonization (ICH) [2].

1.2. The matter has been codified at Community level since 1990 in the European Union guideline on Good Clinical Practice (GCP), and was harmonized internationally in January 1997 by the ICH.

1.3. The GCP standards are used by the pharmaceutical industry when it undertakes clinical trials with a view to obtaining authorization to market a proprietary medicinal product, or with a view to confirming the therapeutic effect of proprietary products that have already been authorized.

1.4. The codified GCP guidelines only provide a yardstick at present and are not applied uniformly in the Member States, which have hitherto been responsible for legislation in this area.

1.5. This situation often causes serious delays in the start of clinical trials, both because of the red tape generated by differing procedures and the differences between Member States' requirements and practices.

1.6. A uniform procedure is becoming increasingly necessary in multi-centre clinical trials, so as to attain a sufficient number of cases for the statistical validation of the data collected.

1.7. These are the main reasons why it is desirable to convert the principles and guidelines into a binding piece of EU legislation, so as to regulate an activity which now involves a large number of trials centres, often in various Member States. This procedure will become much more important from 1 January 1998, when

[1] OJ C 306, 8.10.1997, p. 9.
[2] International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use.

the national procedure will be supplemented by the decentralized procedure for most marketing authorizations.

1.8. The main objectives of the proposal are as follows:

— protection of persons taking part in trials, based on the revised text of the Helsinki declaration and with reference to the Council of Europe Convention on the protection of human rights and dignity of the human being [1];

— maximum safety throughout the procedure, to be obtained inter alia by introducing an inspection system;

— a more rigorous role for ethics committees by making a proper distinction between the 'lead' ethics committee which issues the opinion on whether to authorize the trial, and the ethics committees of each site, which are responsible for the launch of the trial at their site;

— speeding-up of the administrative procedures needed to begin a trial, which must always be referred to an ethics committee for its opinion and notified to the competent authority of the Member State; this authority has 30 days to provide the sponsor with reasoned grounds for non-acceptance of an application;

— more thorough exchange of information between the Member States involved in the trial.

2. General comments

2.1. In its own-initiative opinion on the free movement of medicines in the European Union [2], the Committee emphasized the importance of having a pharmaceutical sector which draws its strength from the existence of a competitive, highly innovative industry within the EU.

2.1.1. The opinion pointed out that the availability of innovative, safe and effective medicines plays an important role in protecting public health and extending average life expectancy.

2.1.2. Trials on human subjects are essential for assessing whether new products are effective and safe. Such trials must be conducted according to scientific and ethical principles, while at the same time avoiding pointless and expensive studies which cover no new ground.

2.2. In assessing the proposal, the Committee feels it desirable to seek to strike a balance between the need to:

— simplify red tape;

— respect the deadlines for commencement of the clinical trial;

and the need to

— provide the utmost guarantees for trial subjects;

— coordinate findings so that the efficacy and safety of a new medicinal product can be rigorously assessed.

2.3. Article 1(3) of the proposal states that 'the principles and guidelines of Good Clinical Practice shall be adopted in the form of a directive'. The Committee sees this as a positive step forward, as it means that these principles and guidelines will be binding in all Member States. The proposal will approximate the national legislative provisions adopted recently in various Member States. Failure to harmonize these provisions would result in existing discrepancies remaining unaltered.

2.4. The Committee endorses the approximation of provisions, on condition that this does not in practice create further bureaucratic or administrative obstacles but promotes high-quality pharmacological research in the EU. The EU must remain a magnet for trials and innovation, as this will help to improve health protection.

2.5. In order to ensure that the principles and guidelines governing clinical trials are followed consistently, the provisions of the directive should also apply to independent research on new drugs conducted outside the industry (at universities, hospitals and research centres).

2.6. The Committee understands and endorses the cautious way in which the Commission intends to proceed towards the aim of a single procedure for the commencement of clinical trials, valid throughout the EU. It notes the Commission's statement (point 5 of the explanatory memorandum) regarding the inadequate cooperation at present between Member States and the difficulty of submitting a single application to the European Agency for the Evaluation of Medicinal Products (EMEA), as the agency is not yet properly equipped for this.

2.7. However, the Committee thinks that forms of cooperation should be encouraged for the purpose of gradually moving towards a single EU procedure. Use should be made here of the scientific skills and knowhow available at the EMEA, especially as regards 'orphan'

[1] Council of Europe, European Treaty Series No 164, Oviedo 4.4.1997.
[2] OJ C 97, 1.4.1996.

medicinal products and gene and cell therapy. The following opportunities could, for example, be explored:

— at some future stage, the EMEA could be made responsible for authorizing trials on products which have to be registered under the centralized procedure;

— the Committee for Proprietary Medicinal Products (CPMP) could act as the technical body for arbitration in the event of disagreement and/or differing interpretations between Member States.

2.8. In order to boost cooperation, it is essential that an EU database be provided as part of EudraNet (a telematic network linking the relevant national authorities, the EMEA and the Commission). This would be used to coordinate and circulate information between the Member States involved in a multi-centre international trial, with an access key to guarantee the utmost confidentiality and the safeguarding of industrial protection.

2.9. The goal must be a clear and simple legal framework which allows trials to be launched simultaneously in different countries. This presupposes respect for the deadlines laid down for the favourable opinion from the ethics committees and for the acceptance of any requests from the relevant authorities for modifications (these authorities have 30 days to notify their opinion to the sponsor). It is also essential that persons undergoing trials are guaranteed the best possible risks-benefits ratio.

2.10. A harmonized EU framework which is consistent with the documents of the International Conference on Harmonization, Good Clinical Practice, pharmacovigilance standards and Good Manufacturing Practice can ensure that studies carried out in the EU are fully consistent, making it easier to check and compare the data obtained.

2.11. To this end, the Commission must obtain greater guarantees regarding the participation of third countries in multi-centre trials. The sponsor should be asked to ascertain that third countries involved in trails on a particular medicinal product are familiar with the Community guidelines and are therefore able to apply them properly.

3. **Specific comments**

3.1. The Committee notes that various articles of the directive contain incorrect or incorrectly used terminology. It asks the Commission to align the terminology on that of the ICH, which has become a reference point for the international scientific community and to which the Commission has also actively contributed. In particular, it asks the Commission to check on the various translations of the term 'non-interventional clinical trials', as the present translations could give rise to misunderstandings.

3.2. *Article 2*

3.2.1. The definition of a 'serious adverse event or serious adverse reaction' should also mention the ICH provision on the advisability of seeking a medical opinion on other possible risks.

3.2.2. It would be helpful to include a definition of 'research coordinator', this being the person in charge of the clinicians involved in a multi-centre trial.

3.3. *Article 4*

3.3.1. The current wording does not make it clear that the opinion of the ethics committee is mandatory. This weakens the position of trial subjects. The Committee therefore suggests that Article 4(2) be amended to read '... must be delivered ...'.

3.4. *Article 7*

3.4.1. This is the central article of the proposal. The Committee feels that respect for GCP, the mandatory nature of the favourable opinion from the ethics committee, and the possibility for Member States to intervene, together provide sufficient guarantees for trial subjects and ensure a standard procedure in all Member States.

3.4.2. A special exemption from this procedure could be allowed for gene and cell therapy products, given the recognized sensitivity of these sectors. Since centralized registration is mandatory for such products, the Commission could, as of now, make the start of trials contingent on the opinion of the EMEA as the body in charge of the centralized authorization procedure for high-tech products.

3.4.3. In order to avoid unnecessary red tape, it should be made clear that the scientific data to be presented to the Member State and to the ethics committee are to be the same.

3.5. *Article 8*

3.5.1. Explicit provision should be made for rigorous respect for the confidentiality of data and the utmost discretion regarding research under way.

3.6. *Article 9*

3.6.1. In cases where a trial is suspended or prohibited, the Member State should inform not only the Commission and the other Member States, but also the sponsor, before taking any decision.

3.7. *Article 10*

3.7.1. For investigational medicinal products, it would seem best to use the provisions on Good Manufacturing Practice (Directive 91/356/EEC) [1].

3.8. *Article 13*

3.8.1. The Committee recommends that procedures and definitions be made consistent with the ICH text.

[1] OJ L 193, 17.7.1991.

Brussels, 28 January 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Observation Network'

(98/C 95/02)

On 18 November 1997 the Council decided to consult the Economic and Social Committee, under Article 130s of the Treaty establishing the European Community, on the above-mentioned 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 6 January 1998. The rapporteur, working without study group, was Mrs Sánchez Miguel.

At its 351st plenary session (meeting of 28 January 1998), the Economic and Social Committee adopted the following opinion by 109 votes, with three abstentions.

1. **Introduction**

1.1. In application of the principle of transparency in the budgetary workings of EU bodies, the Commission proposes to amend nine regulations covering the so-called 'second-generation' agencies which, when created, were given different budgetary rules to those in force for the 'first-generation' agencies.

1.2. The first-generation agencies [1] have a budget management and approval system under which the European Parliament grants discharge to the Management Board, after consulting the Council. In the second-generation agencies [2], on the other hand, the Management Board grants discharge to the Executive Director, who is responsible for implementing the budget.

1.3. After reviewing the operation of these second-generation agencies, once established in their functions,

[1] Bodies set up in 1975: CEDEFOP (Thessaloniki) and the European Foundation for the Improvement of Living and Working Conditions (Dublin).

[2] The European Environment Agency, the European Training Foundation, the European Monitoring Centre for Drugs and Drug Addiction, the European Agency for Safety and Health at Work, the Translation Centre for Bodies of the European Union, the Office for Harmonization in the Internal Market, the European Agency for the Evaluation of Medicinal Products, the Community Plant Variety Rights Office and the European Monitoring Centre on Racism and Xenophobia.

the Commission has concluded that the Regulations should be amended with regard to their budgetary discharge procedure.

2. **General comments**

2.1. The Commission points out that the Parliament has called for greater budgetary control over the second-generation bodies; the reason for this proposal is not however explained. It may consequently be understood as a measure to harmonize the two systems, with a view to the Parliament gaining the power of discharge.

2.2. The proposed amendments relate to:

2.2.1. The power of discharge, to follow the procedure laid down in Treaty Article 206, under which the Parliament, after consulting the Council, grants discharge to the Management Board.

2.2.1.1. A variant is introduced into the procedure for bodies which are entirely or largely self-financing from their own resources [1], to the effect that the Management Board grants discharge, on the recommendation of the Parliament.

2.2.2. The Commission envisages regulating agencies' own resources by integrating them with the Community's own resources, having noted that some agencies are entirely or largely financed from their own resources.

2.2.2.1. The difficulty lies in the fact that not all agencies with own resources obtain them in the same way: they may come from provision of consultation services, sale of publications or fees, etc. Nevertheless, as they are not profit-making bodies, they could set up reserves of these resources, provided that they do not exceed certain limits and that the Management Board, with the prior consent and approval of the Parliament, enters them in its accounts as such.

2.2.3. It is proposed that the Commission's Financial Controller should perform the budgetary control function for these agencies, thus complying with the principle of accounting independence and objectivity.

3. **Specific comments**

3.1. The amendment to Regulation 1210/90 affects Article 13(2) and (4). The current system corresponds to the second-generation agency model, in which the Management Board grants discharge to the Executive Director and appoints the Financial Controller.

3.2. The proposal introduces the system of a single discharge granted by the Parliament to the Executive Director on the recommendation of the Management Board. The ESC endorses the amendment insofar as it increases the objective nature of budgetary control, without the Management Board thereby losing any decision-making powers.

3.3. Paragraph 2 is amended to the effect that the Commission's Financial Controller is to be responsible for the control of the budget and expenditure. It should be pointed out that the European Environment Agency has already been doing this on a voluntary basis: in practice, therefore, there will be no change. The Agency's willingness to submit its annual accounts for external control is thereby confirmed.

3.4. To conclude, the ESC considers that any measure which further improves the current system and enables budgetary controls to be objective will help the proper functioning of Community bodies.

[1] The Office for Harmonization in the Internal Market, the European Agency for the Evaluation of Medicinal Products and the Community Plant Variety Rights Office.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council and the Parliament: the European Union and space: fostering applications, markets and industrial competitiveness'

(98/C 95/03)

On 30 July 1997, the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

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 January 1998. The rapporteur was Mr Sepi.

At its 351st plenary session (meeting of 29 January 1998) the Economic and Social Committee adopted the following opinion by 75 votes to 3, with 5 abstentions.

1. Introduction

1.1. Between December 1996 and September 1997, EU institutions produced three documents of vital importance to European space policy [1].

1.2. The first was a Communication from the Commission to the Council and the European Parliament [2], providing an in-depth analysis of the situation and defining the Commission's role in this area.

The Communication ends by suggesting that work programmes be devised, with concrete suggestions for various market spin-offs from space activity.

1.3. The second reference document, drawn up in March 1997, is one of these work programmes, and deals with the link between space policy and the information society.

1.4. In September 1997, the Council of Ministers issued a number of conclusions (third document) endorsing the key principles underpinning the December 1996 Communication, and instructed the Commission to launch its political and regulatory work in the various sectors.

2. The Commission communication

2.1. The Commission highlights the growing importance of the space component, not just from a scientific point of view, but also from an economic standpoint, given the large number of spin-offs and the significant markets they open up.

2.2. The Communication notes that, although space expenditure is much higher in the USA, the EU is at the forefront as regards market access and services in particular, which may represent more than ten times the total budget for satellite launchers.

2.3. On the strength of this, the Commission goes on to define its own area of intervention, i.e. to optimize both national and European Space Agency (ESA) efforts within the framework of Community policies such as R&D, human resources, training, external cooperation, industrial development, especially for SMEs, and also transport, telecommunications, intelligent use of 'sustainable resources', etc.

2.4. The Commission will have to act in an environment conditioned by:

a) the new geopolitical scenario, which is very different from that which — basically for military and national prestige reasons — boosted the sector over the last two decades;

b) increased globalization and an international marketplace which is open to new competitors;

c) technological development and the transition to a global information society.

2.5. In this new context, the Commission aims to use the instruments at its disposal to create an environment which streamlines investment in industrial structures, by encouraging the European space industry to improve both its competitiveness and quality.

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[1] COM(96) 617 final — Communication from the Commission to the Council and the European Parliament — The European Union and space: fostering applications, markets and industrial competitiveness; COM(97) 91 final — Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — EU Action Plan: satellite communications in the information society; The European Union and space — Council conclusions of 22-23 September 1997 (10746/97 — Press 276 — G).

[2] COM(96) 617 final.

2.6. A vital question is the attitude of the Member States, who need to recognize that this sector requires permanent joint action at European level in this new climate.

2.7. As for the Commission, its task would be to improve coordination of European R&D policies, and cooperation with the ESA and National Agencies, as well as to help secure a common European policy in international arenas.

2.8. The Commission document goes on to look at the areas in which space policy can be applied, focusing particularly on telecommunications, tracking and observation of the earth from space.

2.9. Four types of intervention — albeit of varying scope — are proposed for these sectors:

— a harmonized, regulatory framework to encourage standardization;

— support for R&D to deduct non-recurrent expenses;

— coordination in international forums;

— incentive to extend the markets to other countries.

2.10. The document aims to maintain Europe's position on the world market as a provider of satellite launch systems, with a framework of international rules designed to secure fair competition in the sector, and a broader range of launch vehicles.

2.11. The EU needs to adopt a coordinated approach to international cooperation, both in order to be able to speak with authority in dealings with the more advanced countries, and to develop a policy of cooperation and provision of services to eastern European countries, the new independent states and developing countries.

2.12. Commission instruments should be deployed to provide space project funding problems with firm support, both strategically — with regard to the sectors which are of particular importance to the European Community (telecommunications, transport, mobility, the environment) — and operationally, by promoting use of the relevant financial guarantee mechanisms available under the EIB (European Investment Bank) and the European Investment Fund, given the prospect of secure financial returns.

2.13. There is still a natural interplay of responsibilities and interests between the players, i.e. the individual Member States, their space agencies, the ESA, individual businesses etc.; the Commission intends to set up discussion forums and cooperation agreements, notably with the ESA and as provided for under Article 130m, and moots the establishment of European Economic Interest Groupings in the various fields of application.

3. General comments

3.1. The Communication appears at a time of fundamental importance in the history of the space industry: the transition from a largely prestige sector, in terms of military technology, to the civil sector which is more commercial and has an extensive services network.

3.2. The transition is already under way and it is very important that the EU play a pioneer role from the outset. The Commission and the Member States must act together to redouble their efforts to boost Europe's industrial standing.

3.3. The Committee welcomes the conclusions of the Council of Ministers of 23 September 1997, in which the Member States express their willingness to cooperate, and entrust the Community with the task of stimulating this cooperation. It is therefore necessary to examine further, and put into practice, points 2 and 4 of the conclusions.

3.4. The ESC welcomes the opportunity to highlight these conclusions, but would point out that the Commission's analysis would require much more credible timescales and intervention instruments. Moreover, it is not just a matter of R&D policy action: a credible, downstream European industrial and commercial policy action should also be promoted in the sector. To this end the governments should commit themselves to forging a more prominent common identity on the international political scene.

3.5. It should be pointed out that demand — except in some sectors where private investors are increasingly showing interest — is still basically from the public sector, with funding (and not just for R&D) coming from the public coffers. It is, however, feasible that there will be a speedy shift towards a more market-oriented (i.e. private) policy. Community policies on competition, public procurement and deregulation of services must take this into account.

3.6. The key players in space policy are the Member States and the ESA, followed by the national agencies. An over-nationalistic space policy can lead to confusion as to who does what, duplication of effort, poor

synergies and dangerous competition. In the wake of the above-mentioned Council conclusions, the Commission's action plans need to include an effective coordination project for European space industry policy.

3.7. All Member States will therefore have to agree to coordinate their space policies. This is the only way to achieve an effective industrial policy in terms of the market, and optimum use of resources. In this respect, even closer cooperation between the Commission and the ESA is needed.

3.8. The ESC wishes to point out that the space industry has a substantial impact on the European economy as a whole: it boosts competitiveness, encourages new ventures and provides greater development potential. Advancement of the space industry is thus of strategic value. All instruments and procedures must focus on this objective. If progress is not forthcoming, there could be a case for implementing the Amsterdam Treaty's 'reinforced cooperation' procedures in this sector.

3.9. In the international negotiations on the allocation of radio frequencies and ITU standards, the rules for competition and market share, the EU needs a common position and a sole negotiator if it is to have sufficient political clout with its negotiating partners.

3.10. The Committee welcomes the Commission's move to set up discussion forums, but feels that more powerful, formal and regulatory coordination machinery is needed, particularly in view of fiercer international competition.

3.11. In intervening in downstream space activity applications, the Commission does not sufficiently emphasize launch applications, which remain the main catalyst for the industry. The ESC calls for incentive and coordination activities to be deployed in this sector too, in order to guarantee Europe the requisite autonomy with regard to space launching systems.

3.12. The Commission has not sufficiently highlighted one of the fundamental problems for the future of this industry, i.e. the relationship between R&D and industrial and commercial spin-offs. This would require either a downstream expansion of the ESA's remit (currently non-market-oriented), the creation of an EU Authority, or at least a liaison body to harness potential synergies. Clearly, the potential impact of any single body or change to the ESA's role would have to be assessed thoroughly in order to improve cost efficiency.

3.13. The creation of an association of space industries should be encouraged, along the lines of that for the defence industry, in order to align the differing stands of national industries and move towards an increasingly united industrial policy.

3.14. The Commission should pay more attention to the vital importance of continuous training for the human resources needed to develop this sector (although this is referred to elsewhere in the document).

3.15. The Commission's detailed analysis of all the potential applications of space systems is proof not just of the strategic validity of the sector, but also of its diversity, and of the synergies to be had from using satellites in the broad range of ways suggested here. The corollary is that multi-functional satellite or satellite network production (new generation) is likely to outstrip that of the single-function satellites which currently dominate the market, as will launch systems which are more suited to the various requirements of the new satellite systems.

3.16. The ESC would once again stress the complexity of the sector, and the need for an overview of all possible applications. Consequently, it would emphasize its call for coordination of the space sector's various decision-making bodies.

4. Specific comments

4.1. It is essential to promote training and technological know-how campaigns, both for users and for SMEs, in order to encourage investment and market demand; the campaigns should be such as to create a self-perpetuating dynamism in loco. SME participation is needed to cut production costs, raise the profile of new technologies, and boost employment and provision of services.

4.2. As thorough a review as possible of current European R&D is needed so that the Commission and the relevant national agencies can, by common consent, cut down on any superfluous elements and identify non-profitable sectors more easily, and so that research can translate rapidly into industrial applications, with the emphasis on harnessing economic/employment

returns to the full, from a European, rather than purely national perspective. The space industry must be seen as a catalyst of these 'returns'.

4.3. It is essential that R&D streamlining should be backed by timely, efficient mechanisms for funding by European central bodies in the application stages too, (e.g. project funding), in order to stimulate private investment in particular.

4.4. In view of Europe's considerable commitment to the International Space Station, and the lack of any specific European regulatory practice governing commercial rights for 'proprietary' technologies which are applied and/or developed in space, it is essential to make such provision within the framework of Patents and Licences. Such provision already exists in the USA and is currently being amended in Japan and Russia. Eventually, common international standards will have to be determined, to regulate specific aspects of the WTO TRIPS negotiations.

5. **Suggestions for the action plans and potential applications**

The examples aim to illustrate the importance of space applications in terms of the EU economy and European society. Not all of these applications necessarily require specific intervention from the Commission.

5.1. *Agriculture*

Space applications are particularly useful for the global monitoring of this sector, and for identifying which crops are best suited to the chemical and physical make-up of specific geographical areas. Moreover, satellites can be used to assess pollution caused by human activity, and prevent damage caused by swarms of insects and other parasites.

5.2. *Meteorology*

Space has played, and can play, a vital role in weather observation, analysis and forecasting, particularly over extensive areas; to this end satellite technology should be updated, to provide satellites with more efficient sensors and better data processing and distribution capability.

5.3. *Fisheries*

Satellite observation of the seas could be a boon to the fishing industry, providing useful information on catch sizes and movements, thus making sustainable fishing possible.

5.4. *Science*

Science is one of the cornerstones of the space industry. The Commission has emphasized the importance of exclusively commercial objectives, without paying sufficient attention to the spin-offs from exclusively scientific objectives, which have — thus far — been left to the ESA to deal with. It thus wastes the opportunity to make the most of the limited human and financial resources to enhance the long-term outlook of this sector, and give it a more flexible, industrial slant. In this respect, European industry should be encouraged to participate in the International Space Station, in order to reap the benefits of both its industrial spin-offs (metallurgy, biochemistry, pharmacology, microelectronics, telecommunications) and scientific innovation.

5.5. *Disaster prevention and operations management*

The potential, in some cases, for prevention and subsequent monitoring of the impact of disasters on infrastructure illustrates the key role space systems can play in providing observation and communication services for efficient operations management on the ground.

5.6. *Combating fraud*

Despite their effectiveness, satellites have not yet been sufficiently exploited in the fight against fraud and organized crime (e.g. flouting of regulations, illegal toxic waste dumps, illegal immigration, drug production and trafficking, deforestation, illegal or dangerous industrial plant, etc.).

5.7. *Environment*

Over the coming years, satellite observation of the earth will play a vital part in improving the environment:

a) more accurate mapping;

b) policing of sources of pollution in densely populated areas;

c) wide-range monitoring of water conditions;

d) monitoring climate change (greenhouse effect, desertification, deforestation, etc.).

5.8. *Mobility*

As is widely known, dedicated, multimodal and multi-functional satellite systems are extremely useful in traffic (air, sea and land) monitoring and management, providing consistent services across continents or even globally. Such a project, given the current lack of adequate positioning, communications and security services, could provide a valid, pan-European industrial and technological alternative to US supremacy. Clear regulation (radio frequencies, standards, user terminal compatibility and inter-operability), will — at least at Community level — help to boost industrial development and services, not just for sea and air navigation, but also for surface transport. Its relative output potential is decidedly high, particularly as regards user terminals and value added services. This is also an important feature of the ESC opinion on the aviation sector.

5.9. *Telecommunications*

Thanks to their specific ability to provide broadband telecommunications services (multimedia platforms) transmitting high-density information throughout the footprint area (at continent level), they are able to reach the individual user where terrestrial networks fail. In particular, mobile rädio communication services can be provided much more efficiently via satellite than via terrestrial cellular networks.

5.9.1. Moreover, satellites are a quintessentially 'supranational' medium which facilitate connection between users in different countries, irrespective of how the individual terrestrial networks are managed.

5.10. *Launch services*

With reference to more efficient coordination at EU level, it is important to emphasize the need to press ahead with the drive to maintain European industry's current share of the market. It is also advisable to broaden the range of launches in the light of market prospects for re-useable and medium-small launchers, to meet the growing need for single launches of small and medium-sized, specific-purpose satellites.

5.11. *Dual use products*

It is important to put the large volume of findings of military (e.g. WEU and NATO) studies to non-military use, wherever they provided for efficient observation, monitoring and multimodal communications programmes and systems.

Brussels, 29 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — "The European aerospace industry: meeting the global challenge"'

(98/C 95/04)

On 30 September 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

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 January 1998. The rapporteur was Mr Sepi.

At its 351st plenary session (meeting of 28 January 1998), the Economic and Social Committee adopted the following opinion by 112 votes for and four abstentions.

1. Introduction

1.1. With this document, the Commission is launching a wide-ranging debate on the European aerospace industry, with a view to boosting its competitiveness and its world role.

1.2. The fundamental importance of this sector emerges clearly, as does the need for a political commitment on the part of Member State governments to the key role it must play on the EU industrial scene.

1.3. The communication is timely and follows on logically from those on the defence-related industry and the space industry.

1.4. In the current climate, the aerospace industry must face up to radical internal and international changes extending to funding, company restructuring, production structures and technological innovation [1].

1.5. As the ESC has already expressed its views on the defence [2] and space [3] industries, in the present opinion it will focus on the problems of the aeronautics industry [4]. However, it is worth noting that these three sectors are intimately linked, as the companies and technological development involved are largely the same, and all three are going through a period of profound change.

1.6. The Commission provides an up-to-date picture of the world situation facing the aeronautical sector, which is of increasing concern as a result of:

a) fiercer international competition;

b) cut-backs in public funding;

c) technological innovation and market dynamism.

1.7. An adequate institutional response by Member States and the European Union is needed in order to help companies to overcome the current difficulties and make the sector the economic driving force it was in the last decades.

1.8. In this regard, the Committee warmly welcomes the December 1997 declaration committing the European Airbus industries to present a coherent reorganization plan by the end of April 1998. The Committee views this as an initial expression of the governments' political will, which should be extended to other industries and sectors.

2. The Commission communication

2.1. The Commission starts by recognizing that the present structure of the market 'will only allow for a small number of world-class prime contractors to sustain competitiveness and commercial success'.

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[1] On 12 November 1997 the Commission adopted an action plan on the defence industry, which will also affect the sector in question here.

[2] ESC opinion on the Communication from the Commission 'The challenges facing the European defence-related industry, a contribution for action at European level' (OJ C 158, 26.5.1997, p. 32).

[3] ESC opinion on the Communication from the Commission 'The European Union and space: fostering applications, markets and industrial competitiveness'.

[4] The term aeronautics industry is used to mean fixed-wing aircraft and helicopter production.

2.2. The current division of the world market in large aircraft is something of a duopoly, with Boeing-McDonnell Douglas accounting for 70 % of the market and Airbus 30 %.

2.3. The communication highlights the increasing complexity of aeronautical products and the consequent growth in costs and financial commitment, severely limiting the number of companies which can face these with the necessary credibility. The result is that no single Member State is in a position to meet this challenge.

2.4. A similar analysis has led to a series of major company mergers in the USA, with the industry focusing on three main contenders: Lockheed Martin, Boeing-McDonnell Douglas, and Raytheon.

2.5. These mergers, as well as bringing about a necessary simplification of managerial options and providing financial solidity, enable companies to ride out the cyclical fluctuations typical of the civil aircraft market and to maximize synergies between the various subsectors.

2.6. Against this backdrop, the Commission lists the advantages of the American approach compared with the European one:

a) the use of defence expenditure for civil purposes, particularly for dual-use products and RTD;

b) a single regulatory framework and a fully integrated single market;

c) political and commercial support on the world market.

2.7. Faced with this situation and with the emergence of new third country competitors (Brazil, Japan, China and so on), the European industry remains compartmentalized and fragmented, with far smaller structures unable to respond to the rationalization and concentration processes under way, particularly in the USA.

2.8. Having emphasized the importance of the industry for Europe's economic, technological and employment outlook, the Commission proposes a number of measures considered necessary to tackle the situation.

2.9. The Commission stresses that the collaborative approaches thus far adopted, or likely future international initiatives, are quite inadequate to the task of making the European industry a competitive, independent world-leader in the new climate, and that national solutions are not feasible.

2.10. It therefore suggests European groupings, which — as the Airbus experience shows — is the only way of achieving a certain degree of competitiveness. Here, the Commission raises the question of whether overall concentration of all multi-sectoral groupings is the most realistic and promising solution.

2.11. The Commission seems to incline towards the solution of grouping by technological sector, not because it is unaware of the benefits of an overall solution, but because under current conditions this is the most realistic approach and is reasonably effective.

2.12. Even this solution, however, will demand a considerable restructuring effort to which the Member States and the European Union must lend the greatest possible support in terms of RTD funding, by creating a favourable interinstitutional and regulatory framework.

2.13. Lastly, specific action is needed at EU level to support the European industry's commercial activity around the world.

3. General comments

3.1. The ESC welcomes this document, which comes at a highly sensitive time for the aeronautics sector. The Committee considers that the national industries are not generally capable, on their own, of standing up to world competition.

3.2. It must however point out that even before the Boeing-McDonnell Douglas merger, the European industry needed to overcome its fragmentation between Member States and, within them, between different companies.

3.3. The communication is both succinct and courageous, and identifies specific industrial policy options with a clarity rare in other Commission documents.

3.4. The present communication ties in neatly with the earlier ones concerning the defence and space industries, rightly drawing attention to the close links between the three areas.

3.5. The Committee wishes to highlight these links, which must be maintained in order to support the aircraft industry, as its commercial market is subject to strong cyclical fluctuations.

3.6. However, the Committee must point out that the production of fighter aircraft cannot, in the long term, completely fulfil this traditional role, and that given its small size, the space sector cannot be expected to replace it. It is therefore particularly important to

create industrial structures that are large enough to absorb the ups and downs of production cycles.

3.7. The ESC agrees on the need for concentration and encouragement for the creation of a European aerospace industry, for the all reasons set out in the communication, and also because the sector has an important role to play in maintaining and boosting the high-quality employment which is vital to social balance and European economic competitiveness.

3.8. The Commission's communication overlooks the need to back up industrial projects with vigorous action on uniform and Europe-wide vocational training. The structural funds should support a wide range of training activities for both young people who are to enter the aeronautics industry and retraining for those already employed in it.

3.9. Harmonization, on a European scale, of the level of aeronautical engineering degree courses will be equally important: 'thematic networks' might be useful here, as they have been in other sectors.

3.10. The restructuring process is bound to have important social repercussions, which may extend to some disadvantaged regions. The European Union must be prepared to make a commitment, through the structural funds, to facilitating re-employment and retraining of workers.

3.11. The use of existing or new EU instruments to fund restructuring processes could have a decisive impact at this stage, especially in view of the support received by companies from the sector in other countries (such as in the USA, where it is estimated that only 20 % of restructuring would have taken place without government support, and in Japan).

3.12. The Commission should provide an ever-greater stimulus to the definition of both common technical requirements and rules for the management and safety of air navigation. The rules in use internationally (Europe — United States — third countries) should also be harmonized at an early opportunity. Reciprocal development of shared technical standards by Europe and the United States would clearly reduce workloads and prevent unnecessary duplication.

3.13. A more efficient commercial policy involves affirming a European identity internationally, not only in the defence industry, but also in the aeronautics, space and other industries.

3.14. The ESC lends its full support to a new strategic planning approach, agreed through dialogue with the industry and invested with new European level management functions for RTD. This is one of the key issues for the aerospace industry (civil and military aircraft, space).

3.15. The ESC would stress — as it has already done in its opinions on the defence-related and space industries — that a new impetus in these sectors can only come about if the Member States make a serious and joint commitment, agreeing to shared economic objectives and pooling their means for achieving them.

3.16. Given the prospect of enlargement, the problems and opportunities which may arise from the accession of new (eastern European) countries must also be addressed.

4. **Specific comments**

4.1. The need for unified industrial structures emerges clearly from the Commission document, and from the American and Airbus experiences. This necessarily entails mergers as the ultimate objective. At present, however, mergers between European companies from different countries are extremely difficult. Introduction of the European Company Statute is thus of great importance to the sector, despite the problems involved.

4.2. An industrial structure based on three major groupings (aircraft, engines and equipment) offers many advantages, but has the effect of singling out a 'European champion' for each grouping; this could introduce rigidity into the process of change, together with an excessively vertical structure. Such a step does, however, appear to be essential in order to create an industry capable of competing on the global market.

4.3. In order to inject flexibility into the system and boost employment, preference should therefore be given to developing a network of small and medium-sized European businesses, which would trigger decentralization of a significant share of production and provide a technological spin-off for other sectors. The need to provide proper support for the high-tech SME sector was highlighted at the recent employment summit in Luxembourg, at which appropriate funding measures were also planned.

4.3.1. The harnessing of relevant synergies, inter alia through universities and research centres, could be decisive here.

4.4. A constant concern of the transition process will be to achieve high levels of efficiency and competitiveness vis-à-vis major competitors by means of early restructuring, identifying common trade objectives and policies.

4.5. The EU institutions and the individual Member States must give vigorous backing to the establishment of a European air safety authority and of an integrated air traffic control system, as well as a level of ground infrastructures which also reflects future demands.

4.6. Special attention should be focused on environmental policy action, particularly regarding airports and their surrounding areas, by developing technologies capable of cutting air and noise pollution.

4.7. The resources thus far available to specific RTD programmes will need to be expanded: in particular, this should be implemented under the Fifth framework programme. Technology transfer from the military to the civil sector and vice versa, supporting research on dual-use products, will be a decisive factor in this respect. The launching of joint research programmes, coordinated at European level and harnessing the resources of individual national programmes, will be of similar importance, and will presuppose further EU intervention instruments.

4.8. Moreover, in order to support recently restructured European industries, the European Union should envisage funding joint programmes such as an integrated supervision/monitoring system (on an interdisciplinary sea-land-air-space basis) for safety in Europe as a whole, a military/civilian air transport system (FLA), or a satellite navigation system.

4.9. Lastly, taking the three sectors as a whole (defence, space and aeronautics), the ESC believes that to match the American industrial policy system in sectors requiring significant institutional and financial support, the EU must adopt instruments for funding and for adjusting public expenditure at European level. This will require a quantum jump in the EU political integration process.

4.10. It is in any case essential to secure a more efficient opening up of public procurement, so that the European aerospace industry can take advantage of new outlets.

4.11. The Committee welcomes the referral from the Commission for an opinion on the new defence-related industry document [1], and asks to be consulted on the progress of the initiatives supporting the aerospace industry.

[1] Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions 'Implementing European Union strategy on defence-related industries' (COM(97)583 final).

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Monetary Institute and the Economic and Social Committee: "Boosting customers' confidence in electronic means of payment in the single market"'

(98/C 95/05)

On 4 August 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

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 January 1998. The rapporteur was Mr Burani.

At its 351st plenary session (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 118 votes to two with two abstentions.

1. Foreword

1.1. The rapid development of technology and of its application to economic activities has brought about radical changes in all fields, especially that of systems and means of payment. There are open systems like Internet, and a multitude of closed systems, often structured in such a way as to be interoperable with other existing or future systems. The global communications network, which offers links at ever decreasing cost, has long since overcome the barriers between states: the 'global market' is a practical reality even before becoming the subject of international agreements.

1.2. The Commission is following these trends with interest: particularly in the last few years it has shown a praiseworthy sensitivity to social and market problems, with the aim of encouraging the rapid growth of the information society as a harmonious and coordinated whole. Bearing in mind that some third countries — Japan and above all the United States — enjoy an advantage in terms of research, industrial production and sometimes applications [1], the Commission intends to create the regulatory conditions for Europe to develop its own policy, so as to bring it to the leading position which befits it.

1.3. In the specific field of applied techniques the Commission has published a highly important document, the communication on 'A European initiative in electronic commerce' [2], which sets out the strategic and regulatory course of action to enable European commerce to benefit from the 'new' technologies. This document establishes a link between electronic commerce and payment systems: the Commission rightly regards the latter as being among the 'key sectors' of global interoperability [3].

1.4. Payments of whatever kind and type constitute as a whole an independent system, separated from others in that it covers a range of products and solutions linked not only to commerce but to other sectors (capital and foreign exchange markets, securities markets). The individual markets, differing in their features and purposes, have one common feature: they require a high level of protection for the public, which is the final user. The task of monitoring the soundness of the system and of individual financial operators is entrusted to the central banks and other public bodies; but there must also be a check on the behaviour of individual operators in relation to consumers. On this last aspect, the Commission's activity is especially sustained; the present communication is evidence of this.

1.5. The communication shows the development of the Commission's thinking on means and systems of electronic payment, especially as regards relations between issuers and users of electronic means of payment. It concludes with a recommendation, which updates and applies to new products the provisions of an earlier recommendation [4] enshrining principles which have stood the test of time.

2. Introduction

2.1. Ten years have passed since the initial communication of January 1987 [5]: a relatively short period

(1) See Commission communication on 'The competitiveness of the European information and communications technologies (ICT) industries', COM(97) 152 final of 16 April 1997, and ESC opinion OJ C 19, 21.1.1998, p. 1.

(2) COM(97) 157 of 16 April 1997, OJ L 208, 2.8.1997, points 47-49 and ESC opinion of 29 October 1997, OJ C 19, 21.1.1998.

(3) See the communication mentioned in footnote 1, Summary, para. II, and the communication cited in point 1.3.

(4) Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems, and in particular the relationship between card-holder and card issuer, OJ L 317, 24.11.1988.

(5) 'Europe could play an ace: the new payment cards', COM(86) 754 final.

which has seen a far-reaching development of the products then regarded as 'new' (credit and cash cards) and the introduction of others (home banking, pre-paid cards) which initially did not exist or were at an experimental stage. Means of payment other than cash have now come into daily use by the majority of citizens and of commercial operators, and even by 1995 they made up 13,5 % of total payments as a European average — but with significantly higher percentages in some countries.

2.2. The Commission document divides into two distinct categories the innovative products which have been gradually introduced in this period:

— 'bank-account-access' products: this category includes instruments that provide for remote access to accounts held at financial institutions; this category includes home-banking and phone-banking applications [1], as well as the traditional payment cards;

— 'electronic money' products: instruments on which electronic value is stored — either magnetic stripe or micro-circuit cards (prepaid cards) or computer memories ('cyber-money').

2.3. The Economic and Social Committee takes the view that this classification — important for the purposes of regulation — is inadequate in that it does not specify in which of the two categories prepaid bank issue cards should be placed. They allow remote access to a bank account, even if such access is limited to the value-storage stage: in that respect, they would belong to the category of 'bank-account-access' products. However, these cards do not allow any further access to the account in their use stage.

2.4. On access to the account, the ESC would point out that only once — with reference to the classification mentioned in point 2.2 above — does the Commission document refer to 'accounts held at financial institutions' [2]. On all of the many occasions when the subject is referred to subsequently, and the recommendation itself, the reference is simply to an 'account' which is not further specified. Since the collection of deposits, and hence the opening of accounts, is limited to properly authorized financial institutions [3], clarification is needed as to whether the omission is deliberate or whether 'accounts' is always meant to refer to those opened with financial institutions. The clarification is essential for understanding whether, when the document refers to cards which allow access to the account, it means cards issued by banks, or cards which may be issued by non-banking institutions as well. Given that it is, at least for the moment, illegal for the latter to raise funds, the ESC holds to the first of the two interpretations.

2.5. The Commission points out that by the end of the next decade a significant proportion of retail trade will be carried on through Internet, causing competitive pressure on financial operators to offer ever simpler, safer and more efficient means of payment. The ESC points out that, if Europe wishes to meet the American challenge as stated in the communication on electronic commerce, the development of traffic on Internet etc. must take place long before the end of the next decade. In terms of security, a decisive step forward was taken by adopting the SET (Secure Electronic Transactions) system; other innovations are in progress or planned. Moreover, means of payment must also become gradually more economic as a result of competition not only among financial operators but also among network service providers.

3. Aim and contents

3.1. As already mentioned in point 1.3 above, the Commission makes a link between means of payment and electronic commerce, stressing that the existence of secure, transparent systems will facilitate inter alia the transition to the single currency. In this connection, the ESC points out that, in its opinion on the Green Paper on the practical arrangements for the introduction of the single currency [4], it had asked the Commission to encourage the use of cards, stating that they were 'simpler and more flexible than other payment systems'. This request still applies: it is necessary to avoid costs and/or red tape becoming an obstacle to or a brake on the use of such products by consumers.

3.2. The Commission then identifies four main areas of action in the field of payment systems: defining the framework for supervision of issuers, ensuring the confidence of users, applying clear competition rules, and countering fraud by improving security. The second of these subjects is developed in the recommendation included in the communication; the others form part of short-term programmes which should supplement the regulatory framework of payment systems, at least until current and future developments made it necessary to review them.

3.3. The first area of action is the definition of a supervisory framework appropriate for the issuance of

(1) 'home-banking': access to the account through a terminal of the personal computer type (or Minitel in France); 'phone-banking': access by telephone.
(2) COM(97) 353 final, Introduction, p. 2.
(3) 1st and 2nd Banking Directives, 77/780/EEC and 89/646/EEC.
(4) Opinion of 26 October 1995, point 5.4.3.3, OJ C 18, 22.1.1996.

electronic money so as to ensure the stability and soundness of issuers. A draft directive along these lines will be presented by the end of 1997. The ESC does not intend to go into the substance of the matter, at least until the proposal is known; but it feels it must stress at this stage that the directive must be based on the principle that in this area consumer protection must take priority over any other consideration. Confidence in the money issued by the state is absolute; it must be the same in the case of electronic or virtual money. The soundness of issuers, their ability to meet the commitments they make to consumers and acceptors, and the effectiveness of checks must not be put in doubt in any way.

3.4. Another area is clear application of the Community's competition rules, so as to achieve an appropriate balance between interoperability and sound and vigorous competition. Interoperability between different means of payment depends on their technical and operational compatibility, which in turn depends on agreements between operators. The Commission will present a document in 1998, which will be a guide for financial institutions, acceptors and consumers. The ESC would draw attention to Article 85(3) of the Treaty, which especially in this matter must be a guide to the approach to be adopted: every agreement must be assessed according to the benefit which the market gains from it, whether in terms of technical progress or in terms of lower costs and greater security for the consumer.

3.5. A further field of action consists of the means to be used to tackle the risks of fraudulent use and counterfeiting, by improving security. The Commission draws attention to the need for electronic means of payment to be as secure as possible. No incentives to this end are needed, since fraud is the most worrying problem for issuers. Despite the sizeable investments in research and in practical solutions, revealed by the balance-sheets, their annual losses amount to hundreds of millions of dollars. Although issuers must not lower their guard, the solution should be looked for elsewhere.

3.6. The ESC has given its views on the subject in the past: intrinsic security is limited by cost and by the fact that criminal organizations have effective ways of getting round security measures; their aim is not only to profit from fraud, but also to recycle the money derived from illegal activities. The objective is therefore not intrinsic security — which is already adequate — but rather combating criminal organizations.

3.7. In its opinion on the Green Paper on the practical arrangements for the introduction of the single currency [1], the ESC stressed the need for fraud carried out through hard money and through its alternatives to be the subject of a 'completely new approach': not so much the fight against counterfeiting or fraud as the fight against organized crime. The same idea — and the same suggestion to the Commission — were repeated in a later opinion [2].

3.8. The European Council in Amsterdam adopted an action plan against organized crime [3], asking the Commission and the Council to take initiatives — by the end of 1998 — on means of payment, including electronic means [4]; the ESC is pleased to note that the approach it suggested is the one adopted by the Council, but wonders whether a year and a half is really needed to draw up a draft proposal. The Commission accepted the Council's request, saying that it would ascertain the need for initiatives in this area: too cautious a tone, which hardly suits the obvious — and urgent — need for adequate legislation.

3.9. Finally, the Commission announces that consideration is being given to a possible revision of an earlier recommendation [5] concerning mainly relations between issuers and acceptors of means of payment. A revision could become necessary in the light of recent and likely future trends.

4. A guide for issuers and users

4.1. The Commission has felt it necessary to review the 1988 recommendation in order to take account of the new situation. It bases its review on the principle of boosting the confidence of the consumer in electronic means of payment through a fair distribution of obligations between issuers and users. The aspects of most interest to consumers are first and foremost liability in the event of theft or loss, the burden of proof, full provision of information and redress procedures.

4.2. The Communication also refers to the development, from 1988 up to now, of the new generation of 'electronic money products', meaning prepaid cards and

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[1] Opinion of 26 October 1995, points 7.11 to 7.14, OJ C 18, 22.1.1996.

[2] Opinion of 31 October 1996 on 'Market implications of the legislation and regulations required for the transition to the single currency', OJ C 56, 24.2.1997, points 5.2.1 to 5.2.5.

[3] OJ C 97, 28.4.1997; OJ C 251, 15.8.1997.

[4] OJ C 97, 28.4.1997; OJ C 251, 15.8.1997, Chapter VI.

[5] Commission Recommendation 87/598/EEC of 8 December 1987 on a European code of conduct relating to electronic payment (relations between financial institutions, traders and service establishments, and consumers), OJ L 365, 24.12.1987.

electronic value stored in a computer memory. It is, however, pointed out that in the present stage of relatively recent development of these products it is necessary to avoid imposing excessive bureaucratic burdens, so as not to create barriers to growth and innovation in this field. The 1988 recommendation (which already covered traditional and electronic payment cards, home banking and phone banking — the latter not mentioned explicitly) has therefore been extended to reloadable electronic money products which may be linked with the account: in practice, at least up to now, bank-type prepaid cards. The recommendation's scope therefore excludes single-use and non-reloadable prepaid cards such as telephone cards, motorway toll cards etc.

4.3. Bearing in mind the explicit need to allow the development of prepaid cards without any red tape, the Commission preferred to limit the scope of the rules to those of direct interest to consumers, especially prior information, certain (limited) obligations as regards issuer's liability, and redress procedures. An invitation is also extended to issuers to decide voluntarily to adopt in addition the rules from which they are exempted.

4.4. The ESC agrees with the approach described in points 4.2 and 4.3 above. However, it feels that it would be of some interest to the consumer to know more about the possible reasons — in addition to those given — for excluding from the scope of the recommendation non-reloadable prepaid cards. Such cards are very popular with consumers; their features are low unit value, which makes loss or theft a financially tolerable event, anonymity in use, transferability (no PIN required), and low cost, made possible by the use of off-line devices. Even when possible disadvantages (e.g. demagnetization of the strip) or certain abuses (e.g. date of expiry of the card and non-reimbursability) are taken into account, the Commission clearly considers that the practicality of the instrument and the low values involved mean that no regulation is required.

4.5. The ESC accepts this approach, but calls upon the European and national authorities and consumers' organizations to take care to ensure that any disadvantages and abuses are eliminated on a case-by-case basis. It calls upon the Commission to monitor the development of the market, deciding in good time whether or not to intervene with regulatory provisions.

4.6. The communication ends with an invitation to issuers to comply with the recommendation's requirements by 31 December 1998, and to the Member States to monitor the setting up of appropriate redress procedures to regulate disputes between users and issuers. However, the recommendation (Articles 10 and 11 — see point 5.13 below) adopts a different approach.

5. **The Recommendation**

5.1. Since the recommendation has already been adopted by the Commission, on 30 July 1997 [1], the ESC will confine its comments to the problems which in its view are worth reconsidering with a view to possible future revision of the document. Special attention is also given to the rules governing the new products included in the recommendation, namely electronic money products.

5.2. *Article 1(1)(a)*

According to the text, the recommendation applies to 'transfers of funds, other than those ordered and executed by financial institutions, effected by means of an electronic payment instrument'. This appears to include bank transfers, which in their cross-frontier applications are covered by a specific directive; but they could also include transfers arranged by a customer with his own bank by electronic means. The ESC takes the view that the definition is not clear enough.

5.3. As its stands, the definition includes all the financial transfers carried out using any electronic payment instrument: payment cards, prepaid cards, home banking and phone banking. In the case of the transfers mentioned in the previous point, given that such payments are ordered but not effected, one should conclude that they are excluded from the scope of the recommendation, and in any case these operations are covered by the relevant directive on bank transfers. However, this aspect should be better clarified to avoid problems of interpretation.

5.4. The ESC would also point out that in the same article there is an inconsistency in terms and meanings: in accordance with the title of the recommendation ('Commission Recommendation concerning transactions by electronic payment instruments ...'), the only transactions covered are transfers of funds effected by means of 'an electronic payment instrument'; in contrast, the third recital in the preamble notes that the scope covers non-electronic payment by means of a payment

[1] OJ L 208, 2.8.1997.

card. Neither the article in question nor the rest of the text mentions transactions other than electronic transactions. Thus there remains a doubt as to whether the rules applicable to 'paper' transactions are the current ones or those of the earlier Recommendation 88/590/EEC.

5.5. The Commission goes on to make it clear that the recommendation mentioned in point 5.4 above is to be replaced by the present one; the ESC notes this, but must point out that, if this is the case, the inconsistency becomes a serious omission. Making an effort at interpretation, one can allow that payment cards with access to the account are implicitly included. But, however one reads it, the text of Article 1(1), combined with the definitions in Article 2(a) and (b), excludes traditional non-bank-type cards, for which 'access to the account' does not exist, and those (whether electronic or not) issued by commercial bodies. In the last case, the consumer's possible advance amounts may constitute a 'deposit', but not an 'account' in the technical sense of the term.

5.5.1. The conclusion to be drawn from the above is that the definition of the recommendation's scope should be revised as soon as possible in order to fill the gaps which have been unintentionally created. The recommendation should include all payment instruments, whether electronic or not, no matter who issues them [without prejudice to the exclusions laid down in the last sentence of the third recital and the derogations under Article 1(2)]. If this is the Commission's intentions, a different, clearer wording for Article 1(1) will be needed.

5.6. *Article 1(2)*

By way of derogation from the article's paragraph 1, electronic money instruments (prepaid cards) are excluded from a number of provisions:

— Article 4(1): obligation to supply the holder with information on the transactions effected;

— Article 5(b), second and third indents: holder's obligation to notify the issuer of unauthorized transactions, errors or irregularities;

— Article 6: liabilities of the holder, and particularly the limitation of loss to ECU 150;

— Article 7(2)(c),(d) and (e)(first indent): obligation of the issuer to keep a record of transactions, and burden of proof upon the issuer;

— Article 8(1),(2) and (3): liability of the issuer for the non-execution or defective execution of the holder's transactions;

— Article 9(2): obligation of the issuer to take all reasonable action open to him to stop any further use of the instrument in the event of its theft, loss or fraudulent use.

5.6.1. Bearing in mind the operational characteristics of electronic money instruments, the ESC feels that these rules are realistically acceptable, subject to the reservations expressed in point 5.10 below.

5.7. The second sentence of Article 1(2) is somewhat baffling: it lays down that 'where the electronic money instrument [prepaid card] is used to load (and unload) value through remote access to the holder's account, this Recommendation is applicable in its entirety'. The first and second part of the paragraph both refer to the same instrument, the prepaid bank card, which always has access to the account: first it is exempted from certain obligations (first sentence — see point 5.5) then it is made subject to them (second sentence). The contradiction is obvious, but is probably due to incorrect drafting of a correct idea.

5.8. The principle which the Commission has explicitly followed is that protection of access to the account is important (recital (3) of the recommendation's preamble). However, as mentioned in point 2.3 above, the link with the account exists only in the loading (or unloading) phase of the card, whereas its subsequent use is free of any further link: at this point operation is identical for all types of prepaid cards, whether bank cards, phone cards or other types. The ESC agrees with this approach adopted in the recommendation.

5.9. *Article 4(2)*

This article lays down that the issuer of a prepaid card provides the holder with the possibility of verifying the last five transactions and the outstanding value stored on the card. Whereas this requirement causes no problems, indicating the last five transactions is technically impossible for most cards, which are used off-line without being authenticated with a code (PIN). The Committee suggests that the paragraph in question be worded more realistically, to limit the requirement to cases where the technical features of the system permit this. Systems of this type already exist or are being studied: they are based on more sophisticated, probably costlier, solutions, but through competition they allow for conscious choices by consumers.

5.10. *Article 5(b)*

The first indent lays down that the holder of an electronic payment instrument or of the authentication code (PIN) notifies the issuer of loss or theft, but it exempts prepaid cards (electronic money instruments) from the rules set

out in the second and third indents, covering the notification of unauthorized transactions and of errors or irregularities in the maintaining of the account. The technical features of prepaid cards have therefore been taken into account: further evidence of the need for better wording (see point 5.7) of the last part of Article 1(2).

5.11. *Article 6*

This article lays down — as in the earlier recommendation — the liabilities of the holder in the event of loss or theft of an electronic payment instrument. These rules do not apply to prepaid cards: the practical effect of this exemption is that the consumer will have to bear the consequences of their loss or theft. However, given the low maximum loadable value, in the worst case the loss will be limited to the amount still on the card, i.e. usually below ECU 150. The consumer is at all events protected against further attempts to reload the card from his account, on the basis of the combined provisions of Articles 7 and 8. To sum up, prepaid cards have advantages but also possible disadvantages: it is therefore necessary for the consumer to be clearly and fully informed of them in writing.

5.12. *Article 8(4)*

This article, specifically covering prepaid cards, lays down that the issuer is liable for the loss of the existing amount or for the defective execution of a transaction. It is impossible to apply for the versions — now predominant — which use off-line systems without an identification code, but remains valid for those systems (see point 5.9) whose technical features allow of it.

5.12.1. From the above follows, in the ESC's view, the need to lay down a maximum limit for the value which can be loaded onto a prepaid card, so as to avoid its loss causing its owner to be seriously out of pocket. The ECU 150 limit, already regarded as a reasonably acceptable loss for the consumer, should be seriously considered. It should also be borne in mind that electronic money instruments, with their potential for transferring value 'from card to card' without intermediaries, can be used to launder money. Such illegal use would be hindered by the limit on loadable value: thus defence against crime is added to consumer protection as a further valid justification.

5.13. *Article 11*

Contrary to what is stated in the communication (see point 4.6), the recommendation is addressed only to the Member States, inviting them to take the necessary measures to ensure that the issuers of electronic payment instruments comply with the provisions. The ESC warns the Commission against this type of approach, which could lead to diverging solutions in the various countries — a not unlikely outcome, given some significant uncertainties of interpretation.

5.14. The ESC feels the need to draw the Commission's attention to the fact that nowhere in the communication or the recommendation is it explained whether the previous Recommendation 88/590/EEC remains valid for non-electronic payment instruments, which are never mentioned in the document under consideration.

5.15. Finally, the ESC notes that the recommendation is based on classifications: electronic payment instruments, remote access instruments, electronic money instruments. The existing products are sometimes difficult to classify, but their differing characteristics require such — and so many — distinctions, exemptions and inclusions that a common regulation would be difficult to consult. The ESC wonders whether it would not be desirable to give greater cohesion and clarity to the whole matter, taking account of the specific nature of each type of instrument and drawing up separate rules for each of them. Given that each product has a name, it would be better to use it to identify it: the rules would thereby gain in clarity, to the advantage especially of the consumer, for whom technical terminology has very little meaning.

Brussels, 28 January 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on "Trans-European Rail Freight Freeways"'

(98/C 95/06)

On 3 June 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 1997. The rapporteur was Mr Kritz.

At its 351st plenary session of 28 and 29 January 1998 (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 119 votes for, two votes against and two abstentions.

1. Background

1.1. Since 1970 rail freight transport in Europe has declined by nearly a quarter, measured in tonne kilometres. At the same time the total freight transport market has increased by 70 %. This means that rail's market share has declined to about 15 % of the total freight carried by road, rail, inland waterways and pipelines in the European Union. If current trends continue over the next decade, rail's market share will fall to 9 %, while the market as a whole will expand by 30 %.

1.2. These are global figures and they may give too gloomy a picture of the performance of Europe's railways. Not all freight is suitable for carriage by rail; in fact, most of Europe's freight is carried over short distances (under 250 kilometres), and in small consignments, and is therefore not normally a relevant market for rail.

1.3. Transport of freight over long distances has increased, but rail transport has not always been able to offer competitive services in these markets. This is a major cause for concern, as long distance services with large volumes of freight are 'ideal' rail markets.

1.4. Freight transport over longer distances in Europe generally means crossing national borders. The national focus of the European railways has left them handicapped when dealing with border-crossing operations. They are to some extent lacking in technical interoperability. International timetables are often hard to reconcile with national timetable requirements. Not all railway undertakings show a sufficient commercial interest in international freight operations. They do not seem to know the requirements of the European market and to be organized to take advantage of opportunities.

1.5. In July 1996 the Commission published a White Paper on A strategy for revitalizing the Community's railways [1]. Its main objective was to halt the decline of rail freight and rail passenger transport in Europe. The strategy implies a 'new kind of railway' which is geared to be responsive to the needs of the customers. The plan to revitalize the railways includes the creation of a number of 'Trans-European Rail Freight Freeways' to tackle the specific problems of cross-border rail freight.

1.6. The origin of the Rail Freight Freeway concept came from an advisory group appointed by Commissioner Kinnock to look at the future role of rail in European transport. The group's report was published in June 1996 and high on the priority list was 'the establishment of a number of rail freight corridors where measures could readily be taken to improve the ability of rail to offer a competitive service' ('The future of rail transport in Europe', June 1996, p. 14). It should be added that the advisory group was composed of transport users, railway operators and workers, acting in a personal capacity.

2. The Commission document

2.1. 'Rail Freight Freeways' means designated corridors, or routes, for international rail freight transport. Existing lines are to be utilized, but in a more efficient way than today, through improved train paths (timetables) and reduced border crossing time.

2.2. The Freeway concept is focused on rail infrastructure, where cross-border rail paths have to be planned, allocated, operated and charged in a new and more efficient way.

2.3. The whole concept of Trans-European Rail Freight Freeways relies on voluntary implementation by infrastructure managers and Member States. The communication should be considered as a recommendation by the Commission on how freeways should be set up.

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[1] ESC opinion: OJ C 206, 7.7.1997, p. 23.

2.4. As to the operation on a freeway the Commission concludes that:

— a freeway should be open for fair, equal and non-discriminatory access to all train operators licensed in the Community;

— the criteria for licensing train operators to operate on a freeway should follow the same principles as laid down in Directive 95/18/EC [1];

— the criteria for the allocation of railway infrastructure capacity and the charging of infrastructure fees should be in compliance with Directive 95/19/EC [2];

— freeways should, subject to national regulations, be open to cabotage;

— freight terminals on a freeway will open for fair, equal and non-discriminatory access to all train, road haulage and waterway operators as appropriate.

2.5. A freeway is composed of two or more national infrastructure bodies. In order to facilitate and simplify the use of rail infrastructure, the Commission proposes the creation, by the relevant infrastructure bodies, of a 'One-Stop-Shop' (OSS) for each freeway. The main tasks of this single point of contact for train operators should be:

— to identify capacity on the freeway;

— to undertake path allocation;

— to charge train operators for their use of the freeway;

— to monitor and control performance of the freeway.

2.6. The train path allocation process for international rail freight is currently performed essentially on a national basis. Low international rail freight performance is frequently due to gaps between these national timetables. Furthermore, low priority is often given to freight traffic when allocating paths. Therefore, the Commission points out the important role for the OSSs to create train paths which are attractive to train operators and shippers, in particular with regard to journey times requested. It is also important to speed up train path allocation decisions. The target should be that for regular paths, a decision should be made within seven working days, and for one-off paths within one working day.

2.7. In most countries train operators have to pay charges for use of the infrastructure. The Commission underlines that the charging system must be non-discriminatory, transparent and simple. There should be a certain flexibility in charging levels, to ensure that charges can be competitive in relation to road freight transport.

2.8. The existence of the single European market means that there should be no reason for checks at internal physical borders. Member States should give commitments to suppress border checks for customs, safety and phytosanitary purposes where they still exist. There should be mutual recognition of checks which have been carried out in the originating state.

3. **Practical work under way**

3.1. The potential freeways should meet two basic criteria: they must first be commercially attractive from shippers' point of view, and second, they should have sufficient capacity. This implies that freeways are likely to be concentrated on the major international freight transport corridors which today are served by both road and rail operators.

3.2. Several corridors are considered for the creation of pilot freeways. The transport ministers of the Netherlands, Germany, Austria, Switzerland and Italy have agreed to develop freeways on the following routes:

(a) Rotterdam — Ruhr/Rhine — Basel — Milan — Genoa — Gioia Tauro (South Italy);

(b) Hamburg/Bremen — Nuremberg — Munich — Innsbruck — Brenner — Verona — Brindisi (Adriatic coast);

(c) Rotterdam/Hamburg/Bremen — Nuremberg — Passau — Vienna.

The Nordic railways will also be involved in these north-south pilot freeways.

Among other proposed freeways the following should be mentioned:

(d) London — Sopron (Hungary), with Sopron as a mega-hub to central and eastern Europe;

(e) Wolfsburg (Germany) — Barcelona;

(f) Muizen (Antwerp) — Luxembourg — Lyon.

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[1] Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27.6.1995, p. 70); ESC opinion on the relevant Commission proposal, OJ C 393, 31.12.1994, p. 56.

[2] Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees (OJ L 143, 27.6.1995, p. 75); ESC opinion on the relevant Commission proposal, OJ C 393, 31.12.1994, p 56.

The first pilot projects to start operation in 1998 will probably be (a), (b), (c) and (f) on the above list.

3.3. At the end of 1996 the Commission established a high-level group of personal representatives of the transport ministers. This group has been instrumental in shaping the freeway concept, and is active in the discussions on specific pilot projects.

3.4. The Community of European Railways (CER) represents railway companies of the EU, Norway and Switzerland. The CER has set up a number of working groups to look into practical issues raised by freeways and has regular discussions with the high-level group and the Commission. To identify the sort of technical problems to be overcome and to develop an understanding of the operation of a freeway, the CER performed a simulation on two corridors from Benelux to Italy. The results are presented in CER's report 'European Rail Freightways: Proposal to the European Commission' (published in April 1997).

3.5. Other organizations have also been involved in the practical work on the future development of freeways. The European Shippers' Council submitted to the Commission in April 1997 a paper on 'Developing successful rail freight freeways: A shippers' framework'. The Freight Leaders and Logistics Club, representing some of Europe's largest manufacturers and transport companies, have investigated potential freeway routes.

4. General comments

4.1. There is a need to radically change the way in which the European rail freight market functions, especially when it comes to border crossing traffic. For that reason the Economic and Social Committee welcomes this communication from the Commission, and sees the creation of freeways as an important step towards revitalizing the European railways.

4.2. In its Opinion on the White Paper on a strategy for revitalizing the Community's railways the Committee stressed that 'in view of the extremely difficult situation, there is an urgent need for action', and 'broadly speaking the Committee supports the creation of freeways' [1].

4.3. The freeways are a voluntary venture. Therefore, the Committee underlines that their success depends ultimately:

— on the willingness of Member States and of national infrastructure managers to co-operate on freeways;

— on the capability of railway undertakings to be responsive to the needs of customers; and

— on the readiness of Member States to provide train operators with the necessary managerial freedom.

4.4. The Committee has noted from the practical work under way that freeways could be operable early in 1998. This is due to the unique character of the freeways project, in the sense that:

— no changes to Community legislation are needed;

— no immediate infrastructure investments are needed, as existing infrastructure will be utilized;

— no immediate investments in rolling stock or equipment are needed as existing ones will be used;

— trains would continue to operate on the basis of existing but, where easily possible, simplified procedures.

4.5. The new regulatory framework contained in Directives 91/440 [2], 95/18 and 95/19, is intended to introduce a more commercial impetus into European rail freight transport. The Committee therefore recognizes that the freeways concept is not in itself a new market liberalization measure. It is a pragmatic approach to tie national rail freight transport operations together into trans-European rail freight networks.

4.6. Directive 91/440 sets out rights of access to railway infrastructure in the Community, and the other two directives establish requirements relating to licensing of railway undertakings (95/18) and to allocation of railway infrastructure capacity and the charging of infrastructure fees (95/19). These directives have not yet been completely transposed into national legislation. This is a problem for rail transport in general, but particularly for the freeways. As of 20 October 1997 the implementation of Article 10 in 91/440 (which provides the access rights) remains to be notified by Spain, Luxembourg and Italy. As regards directives 95/18 and 95/19 only Austria, Denmark, Finland, Germany and Sweden had, by 20 October 1997, notified the Commission of complete or partial transposition. These directives should have been transposed not later than 27 June 1997. This situation is unacceptable, and the Committee therefore urges Member States to immediately implement these three directives. The success of freeways must not be endangered because of a lack of

[1] ESC opinion: OJ C 206, 7.7.1997, p. 23.

[2] Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25); ESC opinion on the relevant Commission proposal: OJ C 225, 10.9.1990, p. 27.

the legal framework at Member State level. Ultimately, the Commission must take legal action against Member States that have not yet transposed these directives into national law.

4.7. Infrastructure managers and Member States seem to have had a large influence in the planning stage of the freeways. Even if the technical aspects on freeway operations are key issues, the Committee is of the opinion that shippers and railway undertakings must have a stronger voice in the current discussions on selecting corridors and performance criteria. They are much closer to the market than the infrastructure managers and Member States.

4.8. The Committee is pleased to see an early start of freeway operations. It has to be recognized, however, that the first freeways are designed to rely mainly on existing rail freight flows. Existing traffic will have shorter journey times and higher punctuality than before. This is the first step in the development of freeways, but the next step must be to increase rail's market share. Train operators have to set revenue targets in business plans, in close contact with existing and new customers. They also need to show evidence of an improved service offer to shippers.

4.9. With reference to the preceding point, the Committee notes that there is very little in the Commission document about the future markets for the freeways. In this connection the Committee finds it essential that the development of freeways accommodates the needs of conventional rail freight customers. As a concept it may seem less interesting than combined transport but transport by conventional rail wagon methods represents the dominant part of the railways' business, even if it is declining. Having said this, railway undertakings must attract new customers, for example by developing efficient intermodal systems. The transport user perceives road haulage as the benchmark for freight transport in Europe. Shippers are open-minded about their choice of mode of transport but need convincing that rail can provide the service they require regarding price, reliability and speed.

4.10. The likelihood of significantly higher volumes of goods and of many more freight trains running on individual lines raises the question of how much unused capacity is available in the main rail freight corridors. The Committee believes it is essential that the national infrastructure managers in cooperation with the OSSs do their utmost to identify unused rail freight capacity, to reduce the problem of bottlenecks, and to resolve conflicting freight and passenger demand for train paths. The possibility of establishing several parallel north-south and west-east freeways, of running longer trains, of making the traffic control systems more efficient and of achieving technical interoperability, should be explored. Sooner or later, with growing demand for freeway operations, it will be necessary to invest in improved or new rail infrastructure. It is important to clarify when this will occur, to allow infrastructure managers and train operators to plan for future investments.

4.11. A freeway will often be one part of an intermodal transport chain (road/rail; sea/rail). Terminals are many times weak links in intermodal systems, and can increase the cost of door-to-door transport services considerably, e.g. by unnecessary delays. In the view of the Committee, the key role of terminals for a successful development of rail freight transport on freeways has been underemphasized by the Commission in its communication. Improving train paths (timetables) is a necessary, but not sufficient, condition for better intermodal freight transport operations. The Committee therefore finds it essential that infrastructure managers, railway undertakings and shippers together develop efficient and well functioning terminals.

4.12. The Commission has stressed that freight terminals on a freeway should be open for fair, equal and non-discriminating access to all train, road haulage and waterway operators. It has probably underestimated that open access to freight terminals is a complicated issue, due to the different forms of ownership and different types of terminals. The Committee therefore proposes that further considerations should be given to the matter of open access to terminals.

4.13. Employment in the European railway sector has gone down over the latest decades, mainly because of declining traffic volumes and rationalization. The aim of the freeways project is to make European rail freight more competitive, in order to increase the volume of goods carried by rail and rail's market share. Successful development of the freeways would at least halt the decline in employment. In its opinion of June 1997, the Joint Committee on Railways stressed that the development of freeways needs personnel trained for different kinds of infrastructures, and that this could be done in a way similar to what was carried out successfully by the railways and their personnel for the Thalys and Eurostar services.

4.14. Where demand and commercial opportunities exist, freeways should be extended beyond the borders of the Community. It is probable that the largest potential is to be found on links with Hungary, the

Czech Republic and Poland. It is up to the Commission and the Member States to further explore how access by third countries to some pilot freeways could be made possible.

5. **Specific comments**

5.1. *Charging for the use of rail infrastructure*

5.1.1. The CER has estimated that the infrastructure charges amount to 20 to 50 % of the price that rail freight customers have to pay train operators. On some routes the infrastructure charges may be so high that freeway services cannot compete with road transport.

5.1.2. The charging systems vary considerably between Member States. In some countries train operators pay nothing when using the infrastructure, in others — like Germany — charges are high.

5.1.3. In the short term freeway charges are likely to be based on the existing infrastructure charging systems, which will mean they are the total of the national tariffs set by each individual infrastructure manager along a freeway.

5.1.4. In the light of these circumstances the Committee considers the present systems for infrastructure charges as being a very serious problem. In order to create favourable conditions for freeway operations, solutions need to be found along the following lines:

a) Member States must apply the same charging principles. The Commission is currently undertaking a study with the view of bringing the existing charging systems closer together. The Committee urges the Commission to give the highest priority to this study, and to involve not only railways but also shippers in this work.

b) Application of common charging principles does not mean harmonized charges. The level of charges should reflect the relevant costs.

c) The high level of infrastructure charges on some routes creates a risk that railway undertakings will not be able to compete successfully with road hauliers. In the view of the Committee, Member States should be aware of this fact and act accordingly.

d) Infrastructure charges must be transparent and non-discriminatory. They represent a — often substantial — part of the price railway undertakings offer their customers for using the freeways. The Committee is of the opinion that customers must know both the structure and the level of the infrastructure charges when negotiating transport prices with railway undertakings.

5.2. *Access rights*

5.2.1. Existing rights of access to railway infrastructure are set out in Directive 91/440. For railway undertakings operating international combined transport services, the directive provides a total right of access as well as the right to load and unload cargo (cabotage is excluded). For international groupings of railway undertakings, access rights are limited to the Member States in which they are established as well as a right of transit in other Member States, but loading and unloading in transit countries is not permitted.

5.2.2. The Committee agrees with the Commission that access to freeways should ideally be open to all licensed Community railway undertakings who meet the requirements in Directives 95/18 and 91/440. A number of Member States agree with this, but the Committee is aware of some Member States who prefer a more cautious approach.

5.2.3. The Commission points out that it is essential that railway undertakings can acquire business in a Member State other than the one in which they are licensed, and operate train services to and from that second Member State without being obliged to enter into a classical cooperation agreement with a railway undertaking from that State. If locomotives and drivers have to be provided, this could be done through normal commercial contracts between the two undertakings. The Committee endorses these Commission proposals.

5.3. *Freeways and competition law*

5.3.1. The Commission document is rather vague as to whether cooperative agreements for establishing the OSSs, and cooperation between railway undertakings on freeways, fall under the prohibition of Article 85(1) of the EC Treaty. This is understandable due to the complexity of EC competition rules.

5.3.2. When it comes to evaluating how competition is affected, the Committee is of the opinion that a clear distinction should be made between agreements required for the establishment of an OSS, and agreements between railway undertakings.

5.3.3. As to the former type of agreements, close cooperation between infrastructure managers is inherent in the freeway concept. Without agreements on planning, allocating and operating cross border rail paths, there

will be no freeways. Furthermore, rail infrastructure managers do not compete with each other in a market. In the view of the Committee, agreements between infrastructure managers in order to establish and operate freeways would not fall under Article 85(1).

5.3.4. As to the second type of cooperation, the situation is different with regard to competition. Railway undertakings operate in a market, and could combine in technical and commercial agreements. Whether or not this type of cooperation will prevent, restrict or distort competition within the common market has to be decided on the basis of a case-by-case assessment. The Committee considers it probable that Article 85(3) might apply in many cases, with individual exemptions as a result. A key issue in this connection must be to define the relevant market.

6. Summary and conclusions

6.1. The national focus of the European railways has left them handicapped when dealing with border-crossing transport of freight. Technical interoperability is to some extent lacking. International timetables are often hard to reconcile with national timetable requirements. Low priority is often given to freight traffic when allocating paths. Not all railway undertakings show a sufficient commercial interest in international freight operations.

6.2. There is a need to radically change the way in which the European rail freight markets function, especially when it comes to border-crossing traffic. Therefore, the Committee welcomes this communication from the Commission on Trans European Rail Freight Freeways. The creation of freeways will be an important step towards revitalizing the European railways. The freeways will offer important possibilities for increasing the railways' efficiency and competitiveness.

6.3. As freeways are a voluntary venture, the Committee underlines that their success ultimately depends:

— on the willingness of Member States and of national infrastructure managers to cooperate;

— on the capability of railway undertakings to be responsive to the needs of the customers; and

— on the readiness of Member States to provide railway undertakings with the necessary managerial freedom.

6.4. The new regulatory framework for rail transport in Europe, contained in Directives 91/440, 95/18 and 95/19, is intended to introduce a more commercial impetus into rail freight transport. These directives have not yet been completely transposed into national legislation. This situation is unacceptable, and the Committee therefore urges the negligent Member States to immediately implement these three directives. The success of freeways must not be endangered because of a lack of the legal framework at Member State level. Ultimately, the Commission must take legal action against Member States that have not yet transposed these directives into national law.

6.5. The first freeways (in 1998) are designed to rely mainly on existing rail freight flows, which should mean shorter journey times and higher punctuality than before. The next step for railway undertakings must be to attract new customers and to increase rail's market share. In this connection it is worth noting that transport users perceive road haulage as the benchmark for freight transport in Europe. Therefore, they need convincing that rail can provide the service they require regarding price, reliability and speed.

6.6. Terminals are often weak links in intermodal transport systems (road/rail; sea/rail), and can increase the cost of door-to-door transport considerably. In the view of the Committee, the key role of terminals for a successful development of rail freight transport on freeways has been underemphasized by the Commission, and particularly the problem of open access, as there are different forms of ownership of terminals.

6.7. Employment in the European railway sector has gone down over the latest decades. Successful development of the freeways would at least halt the decline in employment, as the aim of the freeways project is to make rail freight more competitive, in order to get more freight on rail.

6.8. The charging systems for the use of rail infrastructure vary considerably between Member States which, according to the Committee, constitutes a very serious problem for the development of the freeways. The Committee therefore asks the Commission to give the highest priority to complete its current study on common charging principles. Infrastructure charges must be non-discriminatory, cost-related and transparent. The Committee regrets that the high level of infrastructure charges on some routes creates a risk that railway undertakings will not be able to compete successfully with other modes of transport.

6.9. Freeway operations mean cooperative agreements between infrastructure managers, and might include cooperation between railway undertakings. The Committee is of the opinion that a clear distinction should be made between agreements required for the establishment of an OSS, and agreements between

railway undertakings. The former type of agreements should not, in the view of the Committee, fall under the prohibition of Article 85 (1) of the EC Treaty. As to cooperation between railway undertakings, the situation is different with regard to competition. Whether or not this type of cooperation will prevent, restrict or distort competition within the common market has to be decided on the basis of a case-by-case assessment.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 2299/89 on a Code of Conduct for Computerized Reservation Systems (CRSs)' [1]

(98/C 95/07)

On 5 August 1997 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 January 1998. The rapporteur was Mr Moreland.

At its 351st plenary session of 28 and 29 January 1998 (meeting of 28 January 1998), the Economic and Social Committee adopted the following opinion by 112 votes for, 2 votes against and 3 abstentions.

1. **Introduction**

1.1. Airline computer reservation systems (CRSs) are extremely powerful marketing tools. They enable travel agents to access the schedules, fares, etc. of the vast majority of scheduled airlines throughout the world. Bookings, even for obscure routings, can be confirmed instantaneously and tickets priced and issued. CRSs have undoubtedly brought major benefits for airlines, travel agents and consumers.

1.2. However, they are also open to abuse. Modern CRSs were developed initially in the United States by individual airlines. They were invariably biased in favour of the owning carrier. Because of the impact of such bias on fair competition the US government introduced regulations governing the use of CRSs in 1984. The EU followed with its own, more detailed rules in 1989 [2], which were revised in 1993 [3].

1.3. Regulation of CRSs has been a success. The original bias, which caused so much concern, especially for smaller airlines, has been removed. Many major airlines no longer see any benefit in owning part of a CRS and have sold all or part of their shareholdings.

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[1] OJ C 267, 3.9.1997, p. 67.

[2] Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems (OJ L 220, 29.7.1989, p. 1); ESC opinion: OJ C 56, 6.3.1989, p. 32.

[3] Council Regulation (EEC) No 3089/93 of 29 October 1993 amending Regulation (EEC) No 2299/89 on a code of conduct for computerized reservation systems (OJ L 278, 11.11.1993, p. 1); ESC opinion: OJ C 108, 19.4.1993, p. 16.

There has been substantial concentration among the CRSs themselves. All are now global systems operating in many parts of the world.

1.4. It was always recognized that with so much at stake, and with technology developing so rapidly, the CRS Code of Conduct would require frequent updating. As already noted, the current proposal is the second revision to the original regulation.

1.5. The Commission's proposal to revise the CRS regulation is in two parts: a report on the operation of the current regulation; and a new regulation containing detailed amendments. Below we examine each of these parts in turn.

2. **Report on the Application of the Code of Conduct**

2.1. The report details the waivers granted, the complaints received and the requests made for guidance on the interpretation of the code, as well as covering various technical issues. The general impression given is that while there have been numerous problems associated with the code, they have been settled to everyone's satisfaction. It is evident, however, that not everyone involved shares the Commission's general satisfaction. In particular, there have been many complaints from airlines.

2.2. One particular cause for concern highlighted in the Commission's report involves the display by CRSs of code share flights. The current code requires CRSs to ensure that no flight option should be displayed more than once unless there is a joint venture or other contractual arrangement (such as a code share) requiring two or more carriers to assume separate responsibility for the offer and sale of air transport products, in which case each carrier, up to a maximum of two, can have a separate display.

2.3. The Commission notes that the selection of the two flights to be displayed is technically complex and cannot be carried out by the CRS in isolation. In particular airlines need to cooperate with CRS companies. As a first step, airline agreement on an industry-wide standard is desirable. It is evident that such an agreement has been difficult to achieve and that while some progress has now been made, the implementation of this aspect of the code still leaves much to be desired.

2.4. Restrictions ön the display of code share flights have been key elements in the CRS code from the beginning. (The 1993 revision to the code actually relaxed the restrictions somewhat). It is a pity that the rules have still not been fully implemented. It is not obvious that the Commission has pursued this issue as thoroughly as it might, nor given it the priority that it deserves.

2.5. *Recommendation*

The Committee welcomes the fact that the Commission has produced a report on the operation of the CRS Code of Conduct, which of necessity involves complex and technical issues, but which nevertheless is of critical importance for consumers and competition in the air transport industry. It recommends that similar reports are produced periodically, for example every three years, even when amendments to the regulation are not being proposed.

3. **Proposed amendments to the code**

The Commission proposes numerous amendments to the current CRS code. These are outlined below.

3.1. *Subscriber obligations* (proposed Article 9a and Annex II)

3.1.1. The current rules require information provided by CRSs to be accurate and comprehensive. However, this is rendered ineffective if the same information is not passed on to the customer by the travel agent, who may be in receipt of additional commission payments to favour certain airlines. The current rules do place certain obligations on travel agents, but it has long been recognized that enforcement is very difficult.

3.1.2. The revised code provides that in the absence of a specific request from a customer, a travel agent is required to use a neutral display. Furthermore, the travel agent should not manipulate the information provided by a CRS in a manner that would lead to inaccurate, misleading or discriminatory presentation of information to the customer, who should also be provided with full information on a number of key features of the flight. Finally, the customer should be provided, on request, with a print-out of the CRS display so that he/she has access to the same information available to the travel agent. Most of these provisions are contained in the current code, but are given more prominence in the revised regulation.

3.1.3. Recommendation

The Committee welcomes these changes, which it believes represent a move in the right direction. However, it is concerned about the enforcement of these important provisions. The Commission should provide further information about how it intends to ensure that travel agents meet the requirements of the code in order to safeguard the interests of consumers.

3.1.4. Travel agents have also been criticised for making unnecessary bookings, for example in order to achieve certain productivity targets, which result in airlines paying higher reservation fees. To remove this problem the new code requires a travel agent to make reservations and issue tickets in conformity with the information contained in the CRS used and, where possible, carry out reservation and ticketing operations in the same CRS. Duplicate bookings for the same journey are banned.

3.1.5. Recommendation

This is a highly technical subject. The proposed amendments to the code, contained especially in Annex II, again appear to be a move in the right direction, but only time will tell whether they are sufficient to solve the problems. The Commission should be required to monitor the effectiveness of the new rules with airline and travel agency representatives.

3.2. *Inclusion of rail services* (proposed Articles 2(r), 2(s), 2(t) and 21b)

3.2.1. Increasingly shorter air services are in direct competition with high speed rail services. The Commission recognizes the consumer benefits of displaying such air and rail options together on a CRS screen. It therefore proposes that for the purposes of the code rail services should be treated in the same way as air services if they are included in the CRS display.

3.2.2. Recommendation

This would seem to be unobjectionable. However, because of the practical complexities involved the Commission does not specify the conditions governing the inclusion of rail services in CRS displays. This is a surprising omission, especially since the Commission financed a consultants' report on the practicality of the display of rail products in airline CRSs. The Commission appears to expect airlines, railways and CRSs to get together to set standards. It would be better, in the Committee's view, if the code itself specified precisely the obligations of all the parties involved. The present proposal is a prescription for argument and delay. Clearly any additional costs should be kept to a minimum, should be borne by those responsible for them and should not lead to higher charges for passengers.

In particular, the Commission proposal discriminates against rail as it makes no distinction between airline stops and rail stops although rail stops are usually much shorter. The ESC proposes that the distinction of non-stop services and services with intermediate stops be removed in the case of stops totalling less than 10 minutes.

3.3. *Charging policy* (Articles 3a and 10.1)

3.3.1. The current code states that 'any fee charged by a system vendor shall be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service.' There has been a number of complaints from European airlines about CRS charging policies. Essentially the problem is that while many airlines regard themselves as captive customers of the CRSs, there is intense competition among CRSs to have their systems installed in travel agency offices. In some cases travel agents are effectively paid to use a particular CRS, which increases the booking fees charged to airlines.

3.3.2. The Commission, despite an earlier inconclusive consultants' report, has not supported the airlines' case. Instead, it accepts the CRSs' assertion that incentives paid to travel agents can legitimately be regarded as distribution costs and therefore be included in the booking fee calculation. This logic is unlikely to satisfy the airlines.

3.3.3. The Commission proposes that Article 10.1 of the existing code relating to fee levels, and quoted above, should in future apply only to fees charged to participating carriers. A new, identical article is added covering fees charged to travel agents for equipment, etc. Effectively, therefore, there would no longer be any control over the level of so-called distribution fees paid to travel agents. Finally, the Commission proposes a revision to the current code to clarify a possible ambiguity where an airline which is an owner of a CRS is required to accept a booking from another airline in accordance with Article 3.a.1.(a). The clarification is designed to ensure that excessive fees are not charged for such a booking.

3.3.4. Recommendation

The Committee regards the splitting of travel agency charges between equipment fees and distribution fees as being artificial. It comes nowhere near to satisfying the airlines' complaints, which appear to have some merit. In 1995, the Commission stated that in order to remove the incentive to create unnecessary passive bookings, productivity pricing schemes should be operated on a 'tickets issued' rather than a 'bookings made' basis. In other words, only those bookings resulting in the issue of a ticket should be included in the calculation of an incentive award. It is not clear why the Commission decided not to pursue this policy, which had previously received widespread support.

3.4. *Display of Code Share Flights* (Annex, paragraph 10)

3.4.1. As already explained, CRSs have encountered difficulties in applying the current rule, which allows up to two airlines with a code share arrangement to have separate displays using their own designator codes. Only one CRS has put in place a satisfactory procedure to enable carriers to comply with this provision, although three others have announced their intention to implement the rule but have identified several practical problems.

3.4.2. The Commission rejects either allowing all code share options to be displayed or limiting the display to a single code share option, as required under the original CRS code. It proposes to keep the current rule, but where a CRS is unable to apply it because of inadequate information provided by the airlines, to permit the CRS to select on a non-discriminatory basis which code share flights should be displayed.

3.4.3. Recommendation

The Committee recognizes the difficulties faced by CRSs and airlines in implementing the current rules dealing with the display of code share flights. However, it remains concerned that the proposed approach, in leaving some discretion in the hands of the CRSs, might be open to abuse. Early experience with CRSs, especially in the US, showed that what might appear superficially to be a non-discriminatory selection process, might in fact be highly discriminatory. It is recommended that the option for CRSs to be able to choose which code share flights to display should be removed. The code should state specifically and clearly the display criteria to be used by CRSs. In addition, the Commission should consider giving greater prominence in the code to ensuring that a would-be passenger has full information about which airline will actually operate a service, what aircraft will be used, etc.

3.5. *Inclusion of Information Systems* (Article 2.1 and proposed Articles 21 and 21c)

3.5.1. The Commission points out that at present it is difficult to assess with any accuracy the developments that will take place in the methods of electronic distribution of air transport products. Already bookings can be made through the Internet. Currently, however, the Internet acts only as a sophisticated communications link between information providers, such as an airline or a CRS, and their subscribers and does not appear to fall within the definitions of a system vendor or CRS.

3.5.2. The Commission proposes to extend Article 21 of the code so that airlines can offer information about their air transport products via the Internet without being subject to the provisions of Article 5 and 9(5), just as airline sales offices are not covered by the code. However, CRS services that are provided electronically directly to the user should be covered by the code. The Commission therefore proposes that the definition of a subscriber should be amended to ensure that such CRS services are caught.

3.5.3. Recommendation

The Commission is right to be cautious about Internet developments in the provision of airline booking services. It is very difficult to forecast accurately what will happen in the future. Nevertheless, this is an area that the Commission should be watching carefully with a view to making proposals to avoid abuse.

3.6. *Ranking of flights* (Annex, paragraph 1)

3.6.1. The major innovation introduced by the European CRS Code of Conduct compared with its US equivalent was to specify in detail the order in which flights should be displayed. Reflecting consumer preference, all non-stop flights appear first, followed by through-flights involving an intermediate stop and finally all flights requiring a change of aircraft en-route. The Commission asserts that 'with the increase in the use of hub and spoke arrangements by carriers, the service provided by indirect flights can now be of an equivalent level to that offered on other direct flights involving stops at intermediate points.' Consequently it

is proposed that the display ranking criteria should be amended so that in future preference would be given only to non-stop flights. Flights involving a stop but no change of aircraft would no longer have a priority over change of aircraft flights.

3.6.2. No evidence is provided by the Commission to justify this change. There is no suggestion that the current rule has not worked satisfactorily, nor that there have been any complaints about it. It is particularly odd that the Commission should be seeking to change the display priority now when after many years of resistance the US is showing signs of moving towards the European approach.

3.6.3. Recommendation

There is no justification for changing the current rules in this respect, which have worked well to the benefit of consumers and airline competition. The Commission should instead be encouraging others, especially the United States, to follow Europe's lead.

3.7. *Other changes*

3.7.1. A number of other changes to the current code are proposed under the headings Scope of Audit, Ticketing Arrangements for Flights Carrying the Same Flight Number Operated by the Same Carrier, Security Package, Right of a Defendant to be Heard, Inclusion of Information Systems within the Scope of the Code, Obligations of Third Parties and Billing Information on Magnetic Media. Essentially these deal with technical issues and are unlikely to be controversial.

4. Conclusion

The Code of Conduct for airline CRSs has been a successful European initiative. It has removed a major problem in airline competition and helped to establish an effective internal aviation market. The subject can be technically complex and it is not surprising that problems have arisen. These problems have probably been exacerbated by the substantial commercial interests at stake among the parties involved.

On the whole, the Committee welcomes the Commission's proposed amendments to the code. However, on a number of detailed, but important points the Committee believes additional changes are required. In particular:

— the Commission should produce regular reports on the operation of the CRS code;

— the development of Internet in relation to booking services should be watched carefully, with a view to making proposals to avoid abuse;

— the Commission should provide further information about how it intends to ensure that travel agents meet the requirements of the code in order to safeguard the interests of consumers;

— the Commission should monitor the effectiveness of the new rules dealing with unnecessary bookings, in cooperation with airline and travel agency representatives;

— the code should specify precisely the obligations of all the parties involved in the display of rail services in order to avoid argument and delay;

— the Commission should revert to its earlier proposal that in order to remove the incentive to create unnecessary passive bookings productivity pricing schemes should be operated on a 'tickets issued' rather than a 'bookings made' basis;

— CRSs should have no discretion in how code share flights are displayed;

— the code should give greater prominence to ensuring that a would-be passenger has full information about which airline will actually operate a service, which aircraft will be used, etc.;

— the current rules specifying the order in which flights are displayed in CRSs should be maintained.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers are registered'

(98/C 95/08)

On 5 August 1997 the European Commission decided to consult the Economic and Social Committee, under Article 75 of the Treaty, on the above-mentioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 1997. The rapporteur was Mr García Alonso.

At its 351st plenary session of (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 111 votes to one, with three abstentions.

1. Introduction

1.1. Free movement of persons and free movement of goods are fundamental rights of the European Union enshrined in the Treaties.

2. The Commission proposal

2.1. Community law contains a range of provisions enabling motor vehicles to be driven freely throughout Community territory.

2.2. However, other provisions under the Vienna Convention on road traffic [1], still apply in some Member States.

2.3. The aim of the proposal is to ensure that Member States, which under the provisions of Article 37 of the Vienna Convention, require vehicles registered in another Member State to display a distinguishing registration sign when being driven in their territory, also recognize a distinguishing sign which meets the provisions laid down in the annex to the regulation.

3. Conclusion

3.1. The Committee wholeheartedly supports the Commission proposal insofar as it assists road traffic and the free movement of persons within the Community and, by the same token, facilitates the completion of the single market.

[1] Convention on road traffic, Vienna, 8 November 1968, comprising the amendments which entered into force on 3 September 1993 — United Nations Economic Commission for Europe.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Draft Council Regulation (EC) on statistical returns in respect of carriage of goods by road' [1]

(98/C 95/09)

On 2 October 1997 the Council of the European Union decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned draft regulation.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 1997. The rapporteur was Mr de Norre.

At its 351st plenary session (meeting of 28 January 1998), the Committee adopted the following opinion by 82 votes to two.

1. Content and scope of the draft

1.1. This draft regulation is the culmination of six years of discussions within the European Commission and Eurostat (task force set up at the suggestion of the Coordinating Committee on Transport Statistics) and consultations with certain relevant professional organizations.

1.2. According to the Commission, the draft should contribute towards the production of harmonized statistics at EU level on the carriage of goods by road 'and ensure the availability of information necessary for the framing, monitoring, controlling and evaluation of the common policy' in the field of transport.

1.3.1. For this purpose, the draft obliges Member States' statistical offices to supply Eurostat with the results of statistical surveys by specified deadlines. These surveys will cover firms operating commercial vehicles with a maximum permissible laden weight of at least 6 tonnes and a payload of at least 3,5 tonnes, since smaller vehicles 'are not crucial to the common transport policy.'

1.3.2. This draft therefore involves national offices liaising with Eurostat.

1.3.3. Nevertheless, the obligations which it imposes will also have an effect on the content of the statistical information which the firms in question are required to supply.

1.3.4. This being so, the Commission is anxious not to impose an additional administrative burden on these firms.

1.4.1. It also states at various points in the draft that the directives in force which govern statistical information about the transport operations in question [78/546/EEC [2], as amended by 89/462/EEC [3]] do not permit the collection of information required for the quantification of certain activities, in particular:

— the rates of utilization of the vehicles performing the transport operations, and

— domestic transport operations performed by non-residents (cabotage), which were not authorized at the time of these directives' entry into force but which will be completely liberalized as of 1 July 1998,

and supply different information for domestic and international transport.

1.4.2. The Commission also stresses the need for reliable information on:

— transport operations between member states and third countries,

— interregional transport operations within the EU,

— the journeys made by the vehicles performing these transport operations,

— the types of vehicle used for these transport operations,

— the nature and type of risk resulting from the transport of products subject to the Agreement concerning the international carriage of dangerous goods by road (ADR).

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[1] OJ C 341, 11.11.1997, p. 9.

[2] Council Directive of 12 June 1978 on statistical returns in respect of carriage of goods by road, as part of regional statistics (OJ L 168, 26.6.1978, p. 29); ESC opinion: OJ C 181, 31.7.1978, p. 27.

[3] Council Directive of 18 July 1989 amending Directive 78/546/EEC on statistical returns in respect of carriage of goods by road, as part of regional statistics (OJ L 226, 3.8.1989, p. 8).

2. **General considerations**

2.1.1. Economic operators, scientific bodies and public authorities constantly need reliable statistical information, comparable over time and space, which enable trends in transport and goods movements to be gauged.

2.1.2. To answer this need, it is necessary to take account of:

— the international dimension of the relevant markets, which are no longer broken up into separate national markets;

— the need to limit the administrative workload and cost involved in collecting and processing the data, by aiming for an optimum cost-benefit ratio.

2.1.3. It is also vital to:

— quantify the transport operations performed within the EU's territory by vehicles registered in third countries; this will involve the exchange of data between Member States on the transport operations performed by vehicles passing through their territory in transit. The Committee therefore thinks provisions regulating the exchange of data between statistical offices must be adopted on the basis of Council Regulation (EC) No 322/97 [1];

— use in connection with the processing of statistics — apart from the tonne-kilometre — other parameters for appraising the space taken up by consignments, the compactness of loads and their value.

2.1.4. The Committee approves the Commission's decision to replace the existing directives with a regulation which will be directly applicable in all Member States and which will therefore not permit any divergences in interpretation.

2.2.1. The European Commission seems above all to be anxious to set up statistical machinery in support of the common transport policy which should help to observe the markets, traffic flows and level of activity in the transport-for-hire-or-reward sector. The Committee welcomes the Commission's decision to create within Eurostat a unit specializing in the processing of transport statistics.

2.2.2. The Committee thinks that it should be possible to make use as soon as possible of the statistics collected. Therefore the 5- and 8-month deadlines indicated in Article 7(3) should be the maximum deadlines, bearing in mind the technology available.

2.2.3. In the Committee's opinion, the approach chosen must also tally more and more with the trend towards intermodality and the integrated logistical management of goods movements. This trend requires a 'functional' approach to transport activity, in support of trade in a global economy.

A distinction should also be made between road transport for hire or reward and own-account road transport, especially in vehicle registration records.

3. **Specific comments**

3.1. With regard to the decision in Article 1 to compile Community statistics on motor vehicles, the Committee would refer to its comment 2.1.1 in its opinion on the amendment to Directive 78/546/EEC [2], viz. that this decision could have the serious drawback of not taking the whole of a multimodal transport operation into account when the traction unit does not accompany the trailer unit on the non-road leg of a journey.

3.2. Article 2 and Annex A1 give definitions for statistical purposes of various technical terms and types of vehicles used in applying the regulation. The Committee would ask that care be taken to align these definitions on the ones already applied, especially in the directives harmonizing vehicle weights and dimensions.

3.3. Article 2(2) lays down derogations which may or must be applied to certain categories of vehicles, according to their technical characteristics or use.

3.3.1. As regards vehicles whose permitted weights or dimensions exceed the 'normal permitted limits', in other words special convoys, the Committee would note that these transport operations are of considerable value for the EU economy in terms of trade.

3.3.1.1. Their exclusion would therefore be regrettable, insofar as it is necessary to assess and pinpoint the trend in demand in this area, which is rather misconstrued by the authorities and public opinion. This trend will determine the need to adjust routes.

[1] Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics (OJ L 52, 22.2.1997, p. 1).

[2] ESC opinion: OJ C 134, 24.5.1988, p. 7.

3.3.2. There is also no reason to exclude vehicles used by 'public services'. The transport operations performed by these vehicles are part of the general economic activity of EU Member States. They are responsible for goods movements which may be in competition with transport operations covered by the draft regulation.

3.3.3. On the other hand, the Committee approves the option to exclude vehicles with a payload of less than 3,5 tonnes or a maximum permissible laden weight of less than 6 tonnes.

3.3.3.1. However, there are grounds for asking whether the maximum permissible laden weight should not be 3,5 tonnes, in keeping with the limit chosen by the Council of Transport Ministers on 9 October 1997 in the common position on the new directive on admission to the occupation of road transport operator [1] and the limit applicable to class C driving licences. This choice should be based on a cost/benefit analysis, bearing in mind the extra administrative workload for the firms in question.

3.4. Article 10 of the regulation makes provision for a financial contribution from the Community towards Member States' costs. The Economic and Social Committee would query whether the Community budget ought to bear Member States' administrative costs.

3.5. The Committee would like the relevant socio-economic interest groups in each Member State to be closely involved in the consultations on how to implement the regulation.

4. Conclusions

In the light of the above comments, the Committee would recommend that:

— the objective of the regulation should be to improve the reliability in time and space of the data collected and their comparability with the data for other transport modes;

— attempts to achieve this objective should be based on a 'functional' intermodal approach to goods transport;

— socio-economic interests in the Member States should be consulted on how to implement the regulation;

— the data which road haulage firms are asked to provide should be limited to the data which are necessary and apposite for attaining the objective set, namely to ensure the availability of information necessary for the framing, monitoring, controlling and evaluation of the common transport policy.

[1] ESC opinion: OJ C 287, 22.9.1997, p. 21.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Role of middlemen — from production to consumption — in the setting of food prices'

(98/C 95/10)

On 20 March 1997 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its rules of procedure, decided to draw up an opinion on the 'Role of middlemen — from production to consumption — in the setting of food prices'.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 December 1997. The rapporteur was Mr Kienle.

At its 351st plenary session (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 75 votes to one with three abstentions.

1. Introduction

1.1. The share of individual market participants in the final price of goods, and the question of trade margins, have always been the subject of lively debate. The discussion is often conducted with particular passion in the food sector. For example, in its Opinion on the 1997/1998 farm price proposals the Economic and Social Committee called for the effects on both farmers' incomes and consumer prices to be investigated. The opinion sets out to help make a complex market process comprehensible, to dispel unfounded prejudices, to highlight distortions, but above all to promote a constructive dialogue between producers, processors, trade and consumers.

1.1.1. Over the last few years agricultural producer prices in the EU have tended to put downward pressure on food prices. The proportion of consumer spending on food relating to agricultural producer prices has declined markedly. At the same time the proportion of spending relating to the selling, transport, processing and packing of foodstuffs has risen. The final consumer has benefited from productivity gains at the producer stage and tough competition in selling. This is graphically illustrated by the fact that in no EU Member State does the average four-person household spend more than 20 % of its income on food. Moreover, the work involved for consumers in preparing meals has been significantly reduced (convenience). The products thus have a higher service content.

1.2. Agriculture has traditionally been dominated by small production units which on their own have little or no influence on the pricing of their products. But prices determine revenue and thus farmers' incomes.

1.2.1. Because of the complexity of the subject the opinion concentrates on fresh farm products, particularly fruit and vegetables. A study of trade margins is particularly revealing in the case of fresh fruit and vegetables, as the market for these products is undergoing radical change and is subject to sharp demand and price fluctuations. This is less true of processed fruit and vegetable products (juices, preserves, deep-frozen products), and so these products will not be discussed in detail here.

1.2.2. Opportunities for stabilizing prices via market regulations are limited in the case of perishable products. Indeed the proportion of EAGGF expenditure going on the common market organization for fruit and vegetables (cf. ESC opinion of 19 March 1996) is, at 5 %, much lower than these products' share of total final agricultural production (ca. 16 %). And with the implementation of the reform of the common market organization for fruit and vegetables the intervention instrument, which applies only to some types of fruit and vegetables, will diminish further in importance.

1.2.3. Fresh products like fruit and vegetables are generally ready for consumption and require no further processing. Producers and many consumers do not therefore understand why there should be such a large difference between producer and consumer prices.

1.3. Agriculture competes with other sectors of the economy for consumers' purchasing power. High margins thus weaken the sector's competitive position. Where trade margins contain fixed components, fluctuations in supply and demand weigh more heavily on the producer price than on the consumer price. In other words, the producer's price risk increases.

1.4. In the case of fresh products like fruit and vegetables short-term changes in trade margins are of great importance. If a supply-induced fall in producer prices is not matched by a reduction in consumer prices, the necessary stimulation of consumption will not occur, and surplus production will remain unharvested or will have to be destroyed. A serious problem of this kind occurred in the first half of 1997. EU apple stocks could not be cleared sufficiently quickly, as drastic price reductions at producer level were not passed on, or not sufficiently, to the consumer by the retail trade.

1.4.1. If sharp rises in producer prices resulting from supply shortages are cushioned at consumer price level by reduced trade margins, the market balance will also be upset. Goods will sell out and some consumers will go home empty-handed. If prices are deprived of their role as a market balancing mechanism in times of shortage, other distribution mechanisms (e.g. personal contacts, market power) will come into play.

1.5. Distributors have a considerable influence not only on price formation but also on the composition of supply. Concentration in European food retailing and in purchasing by firms accentuates the danger of distribution becoming a 'filter'. Anyone who is not an accredited supplier to the leading food retailers will have to be content with a small niche market. For many producers supplying the major food retailers is a matter of survival.

2. The functions of distribution

2.1. Distributors play a major part in ensuring that the economy is supplied as efficiently as possible. A distinction is usually made between the following functions:

— geographical function (e.g. bringing together trading partners, transport of goods);

— timing function (e.g. bridging the timing gap between production and consumption);

— quantity function (e.g. combining or dividing up quantities of goods);

— quality function (e.g. sorting, blending, establishment of product ranges);

— advertising and publicity function (e.g. advertising the product).

2.1.1. The geographical function often includes the transport of goods. In the fruit and vegetables sector many specialized wholesalers have concentrated on bridging geographical distance, including transport, in producer areas (distribution). The free and unfettered movement of goods is therefore of great importance to the Community market in fruit and vegetables. In order to balance supply and demand in terms of timing distributors maintain warehouses. In the case of fruit and vegetables storage time is usually limited; in extreme cases (asparagus, soft fruits) it is only a few days. Consignments of various products have to be assembled or divided up, depending on the requirements of the next link in the distribution chain. Assembling suitable ranges of products is an important geographical function of wholesale distribution. At consumer level this function is performed by the food retailers.

2.1.2. Reparcelling goods may also involve combining small quantities. This quantity function usually also involves a quality function. In European food retailing there is a rising demand for larger consignments and homogeneous quality. As individual producers are usually unable to offer sufficiently large quantities, supply of comparable quality from several producers has to be combined, usually on the basis of measurable quality characteristics. Packing thus has quantitative as well as qualitative aspects.

2.1.3. The communication function of distributors is often referred to, i.e. the mediation of market knowledge between producers and the demand side. If market signals are lost in the 'filter' of the distributive trades, it becomes more difficult to balance supply and demand, resulting in misallocation and economic waste.

2.2. The distribution functions need not be carried out by wholesalers or retailers. Many of the above tasks are also carried out by producer associations, and in some cases by individual producers. In the long term, services will be provided by the market participant who can offer them at the lowest price. Government regulation (e.g. tax laws, EU common market organizations) have a major influence on these costs.

3. The development of sales outlets for fresh fruit and vegetables

3.1. *Retail level*

3.1.1. The dominant trend in food retailing in the EU is one of concentration. Thus between 1970 and 1990 the number of food retailing outlets in the Community of twelve fell by more than a quarter to 490 000. In 1995 there were 540 000 food retailing outlets registered in the Community of fifteen. This figure is forecast to fall to 400 000 by 2005. Aggregate turnover has however risen steadily. In some areas of the Community this process of concentration is assuming threatening dimensions. Thus, the British government has complained that some rural areas — and also some inner city areas — have become 'food deserts', where suppliers of fresh food are not everywhere guaranteed to all sections of the community.

3.1.2. Within the EU there is a clear north-south divide. Whilst in 1995 the five biggest Scandinavian retailers accounted for well over 70 % of the sector's overall turnover, the corresponding figures for Italy and Greece were around a third, or less. In Central and Western Europe the proportion varies between 50 and 70 %.

3.1.3. The process of concentration can also be observed within firms. Whilst firms' purchasing of dry foodstuffs has for some time been centralized nationally, purchasing of fresh fruit and vegetables was until

recently done mainly on a regional basis. This too is increasingly done nationally. In many cases only supplementary purchases to cover short-term needs are still handled regionally. The number of decision-makers has thus been considerably reduced.

3.1.4. The trends observed in European food retailing as a whole generally also apply to fresh products like fruit and vegetables. In Germany in 1994, the five leading distributors accounted for 72 % of household consumption of fresh vegetables. In 1996, according to data from the household panel of the society for consumption and market and sales research (GFK) 80 % of fruit and vegetables for home consumption were bought at supermarkets, hypermarkets or discount stores. The corresponding figure for the Netherlands is 63 %, France 56 % and Spain 35 %. In 1995 in Northern Italy, supermarkets and discount stores accounted for 55 % of sales; the corresponding figure for Southern Italy was only 20 %. The big food retailers' share of sales of fruit and vegetables for home consumption has increased in all the Member States: in France it increased from 41 % to 56 % between 1987 and 1995; in the Netherlands from 50 % to 63 % between 1990 and 1995; and in Spain from 22 % to 35 % between 1989 and 1995. This is clear from the results of the various European household panels.

3.1.5. Traditional smaller retailers and specialist shops have lost ground throughout Europe, as have weekly markets in some countries. In Italy and Spain specialist shops and small food retailers still account for more than 30 % of sales of fresh fruit and vegetables. In the Benelux countries and the United Kingdom too, specialist greengrocers still play a major part in the retailing of fruit and vegetables, with a market share well in excess of 10 %. In Germany the small greengrocer's shop has virtually disappeared.

3.1.6. In Germany weekly markets are still an important sales outlet, with between 12 and 15 % of sales. In Germany markets have maintained their share of sales over the last decade. In France weekly markets' share of sales fell from 24,6 % in 1988 to 21,7 % in 1995. But here too there is recent evidence of stabilization. In Southern Europe markets account for about 25 % of sales.

3.1.7. In recent years consumers have shown greater interest in direct purchasing from the producer (from field or farm, or in some cases from farm shops). Direct purchasing may account for a significant proportion of sales of some products such as strawberries and asparagus. Direct sales probably account for between 2 and 7 % of the total; in Austria the proportion is even higher. The proportion of direct sales of organic fruit and vegetables, for which demand is growing, is traditionally very high; half of production is probably sold direct to the consumer.

3.1.8. There are many reasons for increasing concentration in food retailing and the growing share of supermarkets, hypermarkets and discounters in sales of fruit and vegetables. The advantageous conditions offered by these retailers are often quoted as a reason for this continuing trend. Another important reason for the rise of large-scale retailing is the tendency to shop for fresh products less frequently. Job and other commitments mean that many consumers are no longer willing to shop for fresh products daily, in addition to the weekly or twice weekly trip to the supermarket.

3.1.9. Interestingly, consumer polls paint a different picture of purchasing habits. In general, consumers considerably overestimate the importance of weekly markets. A high proportion of consumers claim that they prefer to do their food shopping at the market. Other food outlets are regarded far less favourably. But the preferences expressed are clearly not reflected in actual shopping behaviour. Most consumers are unwilling to invest the necessary time in doing their shopping at the market. This is clear from studies carried out in France (Ctifl, 1996) and Germany (CMA, 1997).

3.1.10. The advantages ascribed to supermarkets and hypermarkets are, unsurprisingly, the time saving (ability to combine food shopping with other purchases), the ability to select one's own purchases, and lower prices. The wide selection of fresh fruit and vegetables on offer is seen as a particular advantage of hypermarkets. Weekly markets, on the other hand, are praised for their better quality, fresh goods, wide choice, reliability and human contact. The consumer claims to prefer the weekly market, but actually, for the sake of convenience, goes to the supermarket or discount store.

3.1.11. The above findings apply exclusively to home consumption. Non-domestic (large-scale) consumption accounts for a smaller proportion of sales of fresh fruit and vegetables than of other foodstuffs, although this market segment is growing rapidly in importance.

3.2. *The early links in the distribution chain*

3.2.1. The changes in food retailing are a main cause of adjustments in the upstream activities. There has also been enormous structural change in the wholesaling of fruit and vegetables. Suppliers to the major retailers must be able to offer larger quantities. Many medium-sized fruit and vegetable wholesalers have lost traditional customers — the regional purchasing centres — mainly as a result of the centralization of purchasing by firms. Also, many large European retailers attempt to buy as directly as possible from the producer. Wholesalers will in future be needed only as suppliers of logistic services or as an emergency source of supply. The smaller wholesalers specialize in supplying either major consumers (restaurants, canteens) or the ever shrinking specialized retailer and weekly market sector.

3.2.2. Wholesale markets have lost ground in recent years. The big chains are hardly represented there any more as permanent customers. In Great Britain the wholesale market is even used by chains to dispose of surpluses. This accentuates price fluctuations on the wholesale markets. In Germany only about 30 % of fresh fruit and vegetables by volume passes through the wholesale markets. In France, and particularly in the Southern European countries, the percentage is markedly higher. In 1996, according to Mercasa data, wholesale markets in Spain accounted for 60 % of national fruit and vegetable sales.

3.2.3. Within the European Union there are differences in the distribution of trade functions. Thus, in southern Europe channels of distribution are often very long and complex; in Great Britain on the other hand they are very short. In all countries the trend is towards shorter channels of distribution. Operators not providing any real service are eliminated from the sales chain. Unnecessary activities, such as the repacking of goods, are avoided as producers or producer associations supply the goods in the desired packaging.

3.2.4. The structure of producer organizations and associations has also changed. The size and average turnover of producer associations has increased. This concentration process is not however to be compared with that in the retail trade. The Netherlands' association of producer organizations (Verenigde Tuinbouwveilingen Nederland — VTN) is to some extent an exception (1996). The main function of producer organizations is to combine supply into sufficiently large lots. The retail trade often wants quantities sufficient for nationwide sales. Most producer organizations cannot achieve this scale however.

3.2.5. There also are producer organizations which are not in direct contact with the major retailers. The retailers are then supplied by specialized wholesalers, who sometimes supply the same customers. In this way the real objective of combining supply is only partly achieved.

3.2.6. The strengthening of producer organizations has for some time been a main objective of the common market organization for fruit and vegetables. By making resources available to the operating funds the EAGGF also supports efforts by recognized producer organizations to supply the retail trade directly. The proportion of production marketed by producer organizations has so far increased only in some countries. In Great Britain, the Netherlands, Denmark and Belgium it has actually fallen. In Germany the proportion has probably remained stable. Only in Denmark, the Netherlands and Belgium does the producer organizations' share of fruit and vegetable sales exceed 50 %. According to the Commission report on the situation of agriculture in the European Union in 1995, the marketing share is particularly low with respect to vegetables, usually below 20 %.

3.2.7. The distributive trades are in some cases critical of the financial support which the new market organization provides for producer organizations. The fear is that these subsidies could enable producer organizations to offer services more cheaply than the distributive trades.

4. The influence of distributors on the supply of fruit and vegetables

4.1. *The product range*

4.1.1. All participants in the marketing chain — producer, distributor and consumer — influence the composition of supply. The influence of distributors is often viewed more critically than that of the other participants. Consumers accuse distributors of favouring certain products which are not what the consumer wants. A classic example of this was Dutch tomatoes sold on the German market in the 1980s, where the wholesalers' preferences in terms of origin clearly differed from those of consumers. This also showed however that in the long run clear consumer preferences cannot be ignored.

4.1.2. The dangers of consumers' wishes being ignored over an extended period is much greater if there is only a limited number of alternative sales outlets. This affects countries with a high level of concentration in food retailing, where purchasing by firms is mainly centralized and where specialized retailers, markets and small independent shops have a negligible market share.

4.1.3. There are many examples of the influence of retailing on trends in the consumption of individual types of fruit and vegetables. Discount stores carry only a very limited range of fresh products. The rise in German consumption of bananas after 1983 and radishes towards the end of the 1980s can for example be attributed to the adoption of these products into the discount stores' range. In Great Britain the English Mushroom Board ascribes the rise in consumption of fresh mushrooms to the pricing and advertising strategy of the major retailing multiples. On the other hand, consumption of products which are difficult to sell in supermarkets (e.g. cherries, soft fruits) is stagnating.

4.1.4. Increasingly national purchasing by food retailers also threatens the survival of regional product ranges. If the production of a particular area is not enough to supply a national purchasing programme, the product will be obtained from another, distant producer area.

4.1.5. Firms wishing to become accredited suppliers to the retail trade must sometimes invest heavily.

Moreover, fees of various kinds are often levied in the form of discounts or contributions to advertising costs. These practices are more pronounced in Germany than in other Member States; there is also evidence that they occur in France. In Britain on the other hand, rigorous quality and hygiene requirements and conditions, set by retailers and varying from firm to firm have to be met before a supplier is accepted.

4.1.6. As it is the declared objective of the retailing majors to have only a few suppliers, producers are obliged to work with accredited suppliers. Such suppliers may be producer organizations, wholesalers or even major individual producers. The latter case is common in Great Britain.

4.1.7. On the subject of quality: the taste of many types of fruit and vegetable is satisfactory only if they are harvested when ripe. Most consumers do not recognize this quality characteristic. Ripe products have to be handled carefully and sold rapidly. This means higher logistical costs for producers and distributors. Unless such goods command a higher price there is no incentive to offer them for sale. The dilemma is clear: consumers are willing to pay more only if better quality is guaranteed; and suppliers are willing to supply the desired quality only if they are properly rewarded. Italian peach producers drew attention to this dilemma. The same applies to consumers' wish for environment-friendly production.

4.1.8. In the case of other foodstuffs this situation has led to the development of labels. And labels are gaining in importance in relation to fruit and vegetables too. In Great Britain in particular fresh fruit and vegetables are often sold labelled, with detailed production guidelines. Over the last two years almost all Germany's major food retailers have introduced their own labels. Producers view this development with mixed feelings, as these labels compete with efforts by individual producers or producers' associations to differentiate their own products. Government can help here by introducing quality guarantee certificates.

4.1.9. But recently British supermarkets seem to have changed their thinking and no longer to be insisting on the anonymity of products. On the contrary, the aim is now to improve the image of the product by revealing the name of the producer. 'Very few producers would put their name on a bad product', said a representative of one chain which sells onions from named producers. Market research from other countries points in the same direction. In 1996 59 % of consumers interviewed said that they would have bought more fresh fruit and vegetables if they had known the name of the producer. In 1989 this was true of only 46 % of respondents.

4.2. *Pricing*

4.2.1. This study cannot carry out a comprehensive survey of trade margins for fresh fruit and vegetables in the individual EU Member States. The following data are largely based on studies carried out in France, Germany and Great Britain. The comments refer to the total margin (the difference between producer and consumer prices), as in most cases it is not possible to break this down into wholesale and retail margins. It may be assumed however that the retail margin is by far the more significant component. (For example, in Germany the wholesale margin accounts for only 20 % of the total margin; in France the corresponding figure for vegetables is between 20 and 35 %). The margin is calculated as a mark-up in both percentage and absolute terms.

4.2.2. The different sources and variable quality of the data make it very difficult to draw a comparison between the various EU Member States. Systematic differences can, however, be detected. It can thus be assumed that in countries where discount stores have a large market share (e.g. Germany) margins tend to be lower.

4.2.3. In general terms, it can be said that margins rise with the intensity of product handling and with the degree of attention to quality (e.g. the major retailing multiples in Great Britain, which are often regarded as exemplary in this respect).

4.2.4. For high-value products (asparagus, strawberries etc.) relatively low percentage mark-ups of 50 to 70 % are the rule. In absolute terms, however, the mark-up is greater than for lower-value goods. These products usually have a short shelf life. This entails high distribution costs.

4.2.5. Margins on low-value products (apples, cabbages etc.) are often well above 100 %, and in the case of particularly cheap products (carrots, onions etc.) well above 200 %. The absolute margins are however lower than on higher-value products. This group of products usually has a relatively long shelf life.

4.2.6. This means that the producer's share of the consumer price is high in the case of high-value products (e.g. 60 % for asparagus in Germany) and low in the case of low-value products (just 20 % for white cabbage in Germany).

4.2.7. Margins on the same product may vary from one Member State to another where the popularity of the product varies greatly. Thus the total margin on chicory is lower in France than in Germany, as sales of chicory in France are at least ten times those in Germany.

4.2.8. Over the longer term the producer's share of the consumer price has fallen markedly. Whilst at the beginning of the 1950s the producer's share of the consumer price of white cabbage was still above 50 %, by the 1970s it had fallen to 33 %. It has since fallen further to 18 %.

4.2.9. Short-term margin trends are particularly significant for fresh products with large price fluctuations.

4.2.10. For some products the price of which fluctuates greatly, e.g. cauliflower and asparagus, there is a close correlation between producer and consumer prices. Other products do not exhibit this relationship however.

4.2.11. Unfavourable weather conditions or natural disasters may cause prices to rise to such an extent that the absolute trade margin actually has to be reduced. This occurred in the case of leeks during the cold snap in Northern Europe at Christmas 1996.

4.2.12. On the other hand, the state of stocks may cause a significant widening of trade margins. European stocks of apples were unexpectedly high in January 1997. Attempts were therefore made to boost sales by cutting producer prices. This merely resulted in a price war, however, and did nothing to boost demand. Although local producer prices had fallen sharply since the middle of January, retail prices did not move.

4.2.13. In the case of products, like apples, which are relatively resistant to consumer price changes, consumer demand cannot thus in the short term react to changed supply conditions. The result is increased price pressure upstream, and higher margins, and thus profits, for the retailers. The retail trade's resistance to price cuts and the pressure exerted by it on producers have increased in recent years and are likely to increase further.

4.2.14. It appears that frequent fluctuations in the price of fruit and vegetables at auction are becoming an increasing irritant to the buyers of the major retailers. Large retailers are therefore tending to enter into longer-term price agreements. In some cases they insist on seasonal average prices, based on production costs plus a 'normal' mark-up ('cost price plus').

4.3. *The demands of food retailers in setting prices*

4.3.1. Leading retailers demand ever greater price stability and certainty from their suppliers. Auction systems are subject to critical scrutiny, and weekly or longer-term price agreements, or even seasonal average prices, are gaining in importance.

4.3.2. The degree of price fluctuation at auctions differs, depending on whether the product can be stored to some extent or is highly perishable. In the case of perishable products price fluctuations usually result from changing availability, whilst in the case of more durable products speculation plays a greater part.

4.3.3. In general terms, auctions require greater flexibility of the retail trade. It is difficult to enter into long-term fixed price agreements for products, the availability of which varies greatly.

4.3.4. Firm price agreements with supermarket chains lead to reduced market transparency, as individual customers are granted different prices and conditions on the basis of their market strength.

4.3.5. It may be assumed that the distributive trades are normally better informed of the market situation than producers and their associations. Market information (harvest forecasts, stocks, demand trends etc.) is thus very important to producers in enabling them to conduct successful sales negotiations. The organization and financing of market information systems for producers differ greatly from one Member State to another. Thus, in France information of this kind is collated and disseminated by a department of the agriculture ministry. In Germany producers have to finance the system themselves. In some Member States there are no market intelligence organizations.

5. **Outlook and conclusions**

5.1. The Committee, like the Commission in its Green Paper on Commerce, realistically believes that an irreversible concentration is taking place in European food retailing. It is to be expected that European food retailing will become even more concentrated and that price agreements will become still more prevalent. Supermarkets, hypermarkets and discount stores will continue to increase their share of sales of fresh fruit and vegetables in all European countries, although the pace of change will differ from one Member State to another.

5.2. The Committee considers that policy measures are needed to contain the process of concentration in the retail trade within reasonable bounds. The producers' position vis-à-vis the major retailing organizations must also be further strengthened, for example by helping them to help themselves. Only in this way can manifest market failure and socially undesirable developments and abuses, such as extremely long payment deadlines or 'listing fees', be prevented, and can it be ensured that all kinds of retail outlet continue to offer consumers a broad range of fruit and vegetables.

5.3. The Committee is concerned that major retailers are not adjusting the prices of perishable products like fruit and vegetables, or not adjusting them quickly

enough, to changing supply and demand conditions. This may result in unsaleable stock or severe loss of income for producers.

5.4. The Committee points out that there is a danger that increasing concentration of purchasing within the leading distributive organizations will diminish the range of fruit and vegetables available and lead to regional specialities disappearing from shelves, to the detriment of local producers and consumers. This would give a further impetus to the standardization of products on the basis of their external appearance, and shelf life, at the expense of their organoleptic qualities. Specialist outlets and weekly markets can be expected to offer regional ranges increasingly alongside their international products, but the sale of regional products should not be restricted to these outlets. It is unacceptable that products should be withheld from the consumer because quantities sufficient for a national programme cannot be assembled or because of 'listing fees'.

5.5. The EU market organizations have for some time, rightly in the Committee's view, required national origin to be clearly indicated; this requirement should be retained without qualification. Information should also be provided on the time of harvesting. It is however not certain that these rules are being properly enforced by means of checks and sanctions The fact that this desirable labelling is not required for many other foodstuffs may play a part here. The Commission's initiatives on protected labels of origin and geographical denominations are to be welcomed. However, it is striking that these programmes have been slow to get off the ground and that labels of origin and local denominations are insufficiently well known. In some Member States these Community protection systems have so far been a failure.

5.6. The Committee is concerned that there could be a loss of market transparency, particularly in the case of fresh products like fruit and vegetables. This would weaken the position of producers. In this field the Commission has so far undertaken only to collect information needed for the management of the market. The possibility of making market information available to market participants should also be looked at, for example in the increasingly important area of organic products; attention should be paid here to balanced cost allocation.

5.7. The Committee acknowledges that with the reform of the market organization for fruit and vegetables steps have been taken towards strengthening the position of producers and their organizations. In view of the concentration of demand, combining supply via producer organizations is more urgent than ever. The operational funds and programmes should be used to boost the competitiveness of producer organizations and thus of their products.

5.8. The Committee points out that margins will in future depend to a very great extent on product quality and on the quality programmes operated by producers/traders. Food labelling and the novel food regulation [1], as well as quality standards for fruit and vegetables are particularly important here. A universal approach to quality maintenance needs to be developed, particularly within the distribution organizations. Only in this way can it be ensured that 'higher' quality reaches the consumer and is appropriately rewarded.

5.9. Finally, the Committee urges that consumers be made more aware of their — considerable — opportunities for influencing supply and prices. Preferences expressed only in non-binding polls have absolutely no effect on the market and may actually be counterproductive. But consumers can exercise effective influence through their buying behaviour and choice of outlet. Consumers should also be informed as to production methods and the quality and health characteristics of products. Young consumers are a particularly important target group here. Increased initial and further training of sales staff and improved information, for example on regional products and food quality, are of course in the interests of both producers and consumers.

[1] Regulation (EC) No 258/97 of 27 January 1997.

Brussels, 28 January 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC, Euratom) amending Regulation (EC, Euratom) No 58/97 concerning structural business statistics' [1]

(98/C 95/11)

On 6 October 1997, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Economic, Financial and Monetary Questions, which was responsible for the preparatory work, adopted its opinion on 8 January 1998. The rapporteur was Mr Kenneth Walker.

At its 351st plenary session of 28 and 29 January 1998 (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 83 votes to three with two abstentions.

1. Introduction

1.1. The general purpose of the regulation is to require Member States to provide Eurostat with comparable and harmonized statistical data relating to the structure, activity, competitiveness and performance of businesses in the insurance sector at European level.

1.2. The Member States are responsible for the actual data collection and the methods finally applied. The regulation lays down the norms, standards and definitions necessary for compiling, transmitting and evaluating insurance statistics within the European Union. It is mainly based on existing EU legislation (such as Directive 91/674/EEC of 20 December 1991, Directive 92/49/EEC of 18 June 1992 and Directive 92/96/EEC of 10 November 1992) setting up measures to harmonize the annual and consolidated accounts of insurance undertakings or opening-up the Internal Market to direct life and non-life insurance. Many characteristics are also included in the enterprises' returns for supervisory purposes. Therefore in this regard, and also in respect of Article 6 of Regulation No 58/97, the draft regulation does not define the actual collection methods to be used.

1.3. All Member States are currently collecting statistics on the authorized population of insurance enterprises (based on the published accounts or the returns used for supervisory purposes). With the support of Member States, Eurostat started, in 1994, the collection of a voluntary base of mostly non-harmonized data on insurance enterprises. The draft regulation is largely based on the existing data circuits. It will entail the collection of a modest amount of additional data for a limited number of Member States only.

1.4. The Commission believes that a legal base is now required to ensure an improvement in both the quality and reliability of the insurance data to be collected, compiled and transmitted.

1.5. The Commission also feels that the step-by-step completion of the Internal Market in insurance services and the setting-up of the Internal Market Action Plan have significantly increased the need for reliable Community statistics on the sector.

2. The Commission's proposals

2.1. The Commission has three objectives.

2.2. Firstly, to establish a common framework for the collection, transmission and evaluation of Community statistics on the structure, activity and performance of the insurance services industry. The statistics to be compiled aim at improving the knowledge of the national, Community and international development of the insurance sector. This statistical system is intended to meet the information requirements of the Commission, Member State governments, the insurance industry itself (with its enterprises and clients) and a wide range of other users.

2.2.1. Secondly, to continue the strengthening of the development of the Community statistical system by incorporating into the production of insurance statistics the Community statistical tools such as the classification of activities (NACE Rev. 1 — Council Regulation No 761/93 of 24 March 1993) and the classification of products by activities (CPA Council Regulation No 3696/93 of 29 October 1993).

2.2.2. Thirdly, to provide flexibility to allow minor changes, notably to the list of indicators to be collected in the future (use of Council Decision 87/373 of 13 July 1987 on 'Comitology'). In the framework of the comitology procedure, as laid down in Article 13 of

[1] OJ C 310, 10.10.1997, p. 5.

Regulation No 58/97, Article 12 of the same framework regulation [in its indent (i)] provides the flexibility, under certain conditions, to update the list of characteristics.

2.3. The draft regulation was submitted to the Insurance Committee in April 1996 and to the Statistical Programme Committee on 17 March 1997. Both committees support the legislation.

2.3.1. However, reservations have been expressed by some Member States concerning the extension of the reporting requirements being placed on the insurance businesses. Additional form-filling burdens on enterprises and processing burdens for the national administrations concerned would be unwelcome.

2.4. For the data to be collected (published data or data delivered within the framework of the financial supervision of insurance enterprises), the population of enterprises concerned is the total population. For the data which is not yet part of existing data collections and not available from other sources, Member States are free to use sampling techniques and methods of statistical inference, as laid down in Article 6 of Regulation No 58/97.

2.4.1. Where small and medium-sized enterprises are included in the sampling process, the possibility of not surveying those entities is open to Member States, who would then need to use statistical inference methods to compile the full list of variables for the population under review.

2.5. In the context of the ongoing cooperation with the European Monetary Institute, the Commission sees a requirement for the insurance services statistics in the larger framework of the statistics needed for Economic and Monetary Union.

3. General Comments

3.1. The ESC has constantly reiterated its support for all measures designed to improve the operation of the single market and remove the remaining obstacles to its completion. It acknowledges the progress which has been made in building a European single market in insurance services by the second generation of life and non-life insurance directives [1] at the beginning of the 1990s and the third generation of these directives [2], which came into force on 1 July 1994.

3.2. The efficient monitoring of this market will require the existence of accurate, reliable, regular, timely, harmonized and comparable statistical data. It therefore supports in principle the Commission's present proposals.

3.3. However, the collection, compilation and transmission of this data imposes a double burden; firstly, on the enterprises which have to provide the raw data relating to their own activities and, secondly, on the national administrative authorities within each Member State, which are responsible for aggregating the data provided and transmitting it to Eurostat.

3.3.1. The ESC therefore shares the concerns that have been expressed that these burdens should not be unnecessarily increased.

3.3.2. As in all such cases, it is necessary to strike a balance between the needs of the information users and the burdens imposed on the information suppliers. Information, like any other commodity, must be cost-effective; in other words, the value of the information produced must exceed the cost of obtaining it.

3.3.3. For these reasons, the ESC considers that it would be advisable for this element of the statistical system to be made the subject of a project under the SLIM initiative.

3.4. The ESC considers it unlikely that the statistics produced would be of much benefit to insurance enterprises, their clients or other private-sector users because of the delay in publishing them. Typically, market-research information on the insurance sector generated by private-sector organisations is produced on a quarterly basis and is available within one month of the end of each quarter. National statistics are produced annually and, unavoidably, there is a further delay in compiling Eurostat returns. This would vitiate their viability for commercial usage. This does not, of course, mean that they are not important for macro-economic management.

3.5. True comparability of statistics is not attainable unless the insurance markets are also comparable. Subsisting differences between the nature and the operation of the insurance markets in different Member States are likely to make this difficult to achieve.

3.6. The ESC notes that Member States will be free to organize statistical surveys at their discretion and may elect to exempt SMEs from participation in these surveys, filling the data by the use of statistical inference methods. While it approves of the aim of thereby lightening the burden on SMEs, it would point out that differences in the way in which Member States choose to exercise this option could further undermine the comparability of the statistical information produced.

4. Conclusions

On balance, the ESC approves the Commission's proposal for a regulation, with the abovementioned reservations, but considers that it should be made the subject

(1) Council Directive of 8 November 1990 (90/619/EEC), life Council Directive of 22 June 1988 (88/357/EEC), non-life.
(2) Council Directive of 10 November 1992 (92/96/EEC), life Council Directive of 18 June 1992 (92/49/EEC), non-life.

of a SLIM initiative project in order to determine whether the benefits are commensurate with the additional costs being imposed on enterprises and governmental administrations.

Brussels, 28 January 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission "Promoting Apprenticeship Training in Europe"'

(98/C 95/12)

On 23 June 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 January 1998. The rapporteur was Mr Dantin and the co-rapporteur Mr Rodríguez García Caro.

At its 351st plenary session (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 105 votes to two with five abstentions.

1. **Introduction**

1.1. The Florence European Council of 21 and 22 June 1996 called on the Commission to undertake a study on the role of apprenticeship in enhancing job creation.

1.2. This request highlighted the commitment of the heads of state and government to fight, through education and training, youth unemployment, notably young people under the age of 25, which is currently close to 20 %.

1.3. The study shows that greater promotion of apprenticeship responds to their concern. Indeed, the study shows that apprenticeship training enhances job prospects to the extent that unemployment among young people who have successfully finished apprenticeship training is below average.

1.4. The Commission communication submitted for the ESC's opinion takes account of this study and makes proposals for action set out in five keys.

1.4.1. The communication draws on the report, which is based on various sources of data and information, and looks at conditions and significant trends in the various Member States, highlighting the characteristics and objectives of apprenticeship training:

— narrow the gap between schools and the workplace;

— get closer to market needs;

— promote job flexibility and mobility;

— fight social exclusion;

— raise the educational level of apprentice diplomas;

— give apprentices access to higher education.

1.4.2. As regards the areas for action, the Commission proposes the following five keys:

— expand and develop new forms of apprenticeship training;

— raise the quality of training;

— encourage the mobility of apprentices;

— involve the social partners;

— towards real strategies for apprenticeship training.

2. **General comments**

2.1. The Committee welcomes the initiative taken by the Florence European Council which has resulted in the Commission communication.

2.1.1. The Committee notes with interest the innovative nature of the communication which rightly highlights this concept and which follows the line already traced by the Commission in its White Paper on education and training: Teaching and learning — Towards the learning society, which the Committee supported [1].

2.2. The Committee feels that apprenticeship training is a way of acquiring qualifications which, in both quantitative and qualitative terms, can contribute effectively to integration into employment. This means all models of vocational training where enterprises take an active part in the education. It is a contribution to the vocational training of young people and the fact that it raises skill levels is an argument for promoting its development. It should be pointed out however that vocational educational and training policy cannot replace an active employment and labour market policy, although it can support it, particularly in the framework of an active apprenticeship training policy and particularly where this responds to young people's aptitudes and aspirations.

2.3. Apprenticeship training brings together a firm and an educational establishment in a process of alternate training. The originality of apprenticeship training, in contrast to other forms of sandwich course, lies in the primary role assigned to the firm. In this way, it can, particularly in craft industries, foster an entrepreneurial spirit.

2.4. The Committee endorses the content of the communication subject to the comments made above and the comments and suggestions which follow.

3. Specific comments

3.1. In the communication, particularly in chapter 2, the Commission quotes and spells out a number of reforms currently being carried out by the Member States to make apprenticeship training more effective.

The Committee has the following comments on this chapter:

3.1.1. Narrowing the gap between schools and the workplace

This is necessary to reduce the gap which may exist between theoretical education and practical application, between training and available jobs, between supply and demand.

Narrowing the gap between schools and the workplace is a step towards getting closer to market needs, and is a condition for achieving this.

However, one particular feature is that the training pathway, which brings together a firm and/or sector and an educational institution, must be drawn up in such a way that conditions for future progress are taken into account in good time and that apprenticeship training constitutes the basis of an apprentice's qualifications throughout his working life.

3.1.2. Promoting job flexibility and mobility

Choosing broadly based training, avoiding narrow specialization, will enable individuals to develop and adapt.

Backing, e.g. financial and legal, is needed for European mobility.

3.1.3. Fighting social exclusion

As the communication shows apprenticeship training can help the fight against social exclusion by encouraging social integration, via the specific training offered.

But another aspect of apprenticeship training is also worth mentioning. This form of training can reduce the school drop-out rate at various levels. Training which judiciously combines the practical and the theoretical, i.e. associates theoretical explanation with practical application, will also appeal to young people who are not attracted by mainly theoretical education. By illustrating theory through practice, apprenticeship training makes it possible to keep in education young people for whom the dispensing of general, theoretical knowledge would not have guaranteed success. In order to bolster the chances of success of this approach, it must be backed up by an effective system for observing and guiding young people.

3.1.4. Raising the educational level of apprentice diplomas

The Committee agrees that apprenticeship training should be integrated more into the general training system and extended to training up to higher educational level, for example engineering degrees, whilst taking account of the vocational training system of the various Member States.

There are several reasons for this:

— restricting apprenticeship training to lower-level skills is damaging to its image. This makes it more

[1] See White Paper on education and training: Teaching and learning — Towards the learning society, particularly point IIA (COM(95) 590 final) (OJ C 295, 7.10.1996).

difficult to expand this method of skills acquisition, reducing its impact on social integration and thus employment;

— constantly accelerating changes in production and services require an ever more skilled workforce. Apprenticeship training must respond to these needs, making these skills available to the largest possible number through methods of learning which transcend traditional teaching and permit lifelong learning.

3.2. *Five keys to more effective apprenticeship training*

3.2.1. Expanding and developing new forms of apprenticeship training

3.2.1.1. The communication under discussion indicates that apprenticeship training is generally over-represented in sectors with relatively poor growth prospects.

It seems inappropriate to talk of over-representation. It would be more accurate to speak of an imbalance in apprenticeship training's penetration of the various sectors of the economy.

Having said that, this imbalance is detrimental to the image of apprenticeship training.

Extension of apprenticeship training to vocations which traditionally rely less on this form of training would correct this imbalance and offer development opportunities geared to market demand.

There may be a number of reasons for the relatively poor image of apprenticeship training in some Member States. Economic, social and sectoral trends make it necessary to seek new forms and methods of apprenticeship training.

It is necessary to:

— improve its existing forms, for example by disseminating good practice;

— develop new forms, taking account of national and sectoral specificities in seeking to make it attractive;

— extend it to other economic sectors and skill levels.

The costs of apprenticeship training could in some cases be reduced by redesigning the curriculum and reducing the duration of training. Having said that, the Commission particularly stresses that this must not prejudice the objective of offering the broadest possible and high-quality basic training.

Costs can be kept down by ensuring that apprentices are not obliged to repeat training already received. This will necessitate information on knowledge already acquired by the apprentice, when training begins.

The opportunities for social advancement offered by apprenticeship training are part of its attraction, and this is inextricably linked with the image of vocational training in general. In order to ensure that apprenticeships enjoy equal status with other forms of training, it is necessary to improve the image of vocational training across the board.

The Committee thinks that the development of apprenticeship training and its extension to other vocations can be fully achieved only if this is not an end in itself. Apprenticeship training, once completed, should open the way, via systems of access, to further studies, e.g. university education. It is therefore necessary to define and then establish on-going relations between apprenticeship training and other forms of training. This is essential to improve the image of apprenticeship training and to make it an attractive form of training.

3.2.1.2.

— Continuing, or increasing, financial incentives to firms, particularly the financing of training costs and with particular emphasis on SMEs in the high technology and developing sectors and/or sectors where supply of apprenticeship training exceeds demand, can have a snowball effect. However, procedures for evaluating the results obtained would aid the process.

— There is a need for greater flexibility, in the sense of on-going adaptation, in the structure of training; this must apply, however, to the quality of training and must not call into question the arrangements for the protection of apprentices. The Member States should therefore promote measures to make training less onerous by giving credit for knowledge acquired.

— Apprenticeship training should be extended to all economic sectors, to those where it has not traditionally been used and to emerging sectors.

— The growing importance of the use of multimedia tools and new teaching methods merits greater teaching input, particularly as regards the necessary relationship between teaching staff and apprentices. This should not however prejudice the principle of alternation between classroom and workplace.

— The Committee welcomes the Commission's decision to undertake a study of the quality of apprenticeship training. However, apart from the qualitative aspects (identifying good practice, innovations, factors contributing to an increase in the number of training posts etc.), it would also be worthwhile measuring the impact of apprenticeship training on social integration and employment.

3.2.2. Raising the quality of training

3.2.2.1. Sandwich courses, such as apprenticeship training, derive their strength from regular exchanges between the training institution, the firm and the apprentice, as well as from their content.

The preparation of the participants, the planning of encounters and regular evaluation of the progress of training all contribute to the quality of training.

The communication should specifically stress the essential links between:

— the apprentice and his family on the one hand, and the apprentice's workplace supervisor and teacher on the other, with a view, inter alia, to allowing the apprentice to influence the organization of his own training;

— the workplace supervisor and the teacher so that they can assess the apprentice's progress and any difficulties encountered, continuing, modifying and coordinating the practical and theoretical teaching in order to achieve the best possible result. This is necessary in order to achieve permanent synergies and cooperation agreements in order to help create a climate of confidence and quality.

As the role of the workplace supervisor is central to this method of skills acquisition, his status needs to be defined, as do his role, the knowledge required for the job and ways of preparing for it, his rights and his obligations.

3.2.2.2. Apprenticeship training must combine general and vocational education designed for sandwich course-type teaching, i.e. teaching closely geared to the workplace (preventive action, health and safety). In this way training is neither excessively specialized nor rigid. It encourages involvement in society, teamwork, self-reliance and curiosity.

3.2.2.3. Practical workplace training needs to be continuous as well as of high academic quality. In particular it must be ensured that apprentices are not assigned to menial tasks unrelated to the training which they are supposed to be receiving. Particular attention needs to be paid to the permanent training of training staff, not only from a technical but also from a pedagogical point of view.

Moreover, the quality guarantee applied to this system of education would make it possible to carry out an ongoing assessment with a view to making the necessary improvements.

3.2.3. Encouraging the mobility of apprentices

3.2.3.1. Giving apprentices the opportunity to train in another EU Member State will both enhance the training itself and help reinforce the idea of European citizenship.

Mobility is at present restricted by the lack of a Community framework.

— The Committee awaits with interest the draft instrument intended to lead to the drawing up of a common legal framework with a view to promoting apprenticeship training in Europe. A common legal framework of this kind should lay down guarantees with regard to working and training time, material conditions (lodging, meals, tuition, quality criteria) and social and legal cover. More generally, the legal framework should mitigate or even eliminate altogether the various difficulties in relation to intra-Community training pinpointed by the ESC in its Opinion on the Commission Green Paper on education, training and research — the obstacles to transnational mobility [1].

  Particular attention should also be paid to the recognition of intra-Community diplomas awarded in connection with apprenticeship training, particularly in relation to new sectors, as the Committee indicated in its above mentioned opinion.

— The programme to increase the mobility of apprentices reflects a concern and will contribute to the progress of apprenticeship training and to its qualitative enrichment.

— Holding a 'trade fair' for firms offering apprenticeships would make the development of apprentice mobility more credible. It would make it easier to organize exchanges. Moreover, the implementation of this mobility would become more visible and

[1] CES 239/97 of 27 February 1977 — OJ C 133, 28.4.1997.

effective if initially pilot projects were set up bringing together two or more Member States and/or vocations.

In addition to geographical mobility, thought needs to be given to:

— professional mobility;

— the mobility of both public-sector and company training staff;

— some projects within the Leonardo programme are already set up in order to promote apprentice mobility. These programmes need to be studied in order to draw experience from them and for them to serve as good examples.

3.2.4. Involving the social partners

3.2.4.1. The participation of firms in apprenticeship training justifies the involvement of all the social partners (employers and workers) in shaping and managing the system. Via their respective representative bodies they have the opportunity to influence apprenticeship training positively, and to help identify needs and provide support to young people in the workplace.

3.2.4.2. Pilot project networks can prepare the way for moving into new vocations and the development of a balanced sense of commitment from the social partners, as is already being done — with success — in some Member States.

The Commission and the Member States should encourage the social partners (employers and workers) to share responsibility for apprenticeship training, e.g.: on training bodies. Indeed, the social partners, given their knowledge of the business environment and the world of work have a vital role to play in the organization, curriculum and qualitative and quantitative development of apprenticeship training, whether at firm or sectoral level.

However, a specific action should be carried out for firms on the quantitative development of apprenticeship training to make it attractive to firms.

This depends ultimately on the will and/or capacity of firms to increase the number of apprenticeship training places. Overall, it is often SMEs and craft enterprises which are responsible for the continuation and growth in volume terms of apprenticeship training, in contrast to larger companies and sectors which have little tradition of apprenticeship training.

To achieve this, initiatives and incentives need to be put in place removing the obstacles which may be at the root of the lack of interest in creating apprenticeship training places, in particular those linked with costs and legal conditions.

In France and Denmark a flat-rate contribution system has been established, which is of interest to all firms. Identical arrangements are being discussed, with different views at present being expressed, in Germany and Austria. These provisions can be embodied in a collective agreement between the social partners; tax implications, which will vary from one Member State to another, cannot be neglected.

3.2.5. Towards real strategies for apprenticeship training

3.2.5.1. The objective of involving all parties to apprenticeship training in producing and disseminating information prepares the ground for a common culture.

If there is to be a coherent strategy it is essential that the data be uniform. It is perhaps not so much differences in programmes and terminology as the diversity of social policies for young people which is the source of problems. The weight of apprenticeship training and its image in a country also depend on other measures relating to access to training and employment.

— Regular stocktaking, country by country, could form a basis for a common strategy for the development of apprenticeship training.

— The system of standardization needs to be fleshed out. What exactly is being standardized and to what end?

3.2.5.2. The Committee feels that the Commission should be in a position to provide detailed information on the launching, operation and content of the qualitative survey, to which the Committee could contribute its analysis of the questions raised.

The survey may be expected to lead to the establishment of 'reference values' or minimum criteria serving as a framework for the adaptation and improvement of apprenticeship training systems, with due regard to national and sectoral situations. The purpose of this survey should be to identify the main features of a European apprenticeship training model and to sketch the outline of this in order to encourage the development of apprenticeship training in Europe, whilst enabling full account to be taken of the specific features of the education and training systems of each of the Member States.

Among the minimum criteria which could be discussed are: the legal, regulatory or contractual basis of the apprenticeship training framework, the rights and obligations of training staff and apprentice, the general provisions of the apprenticeship training contract, its application and operation, the degree of intervention by

the social partners, the form and extent of integration and cooperation between school and workplace, training programmes, examination arrangements, recognition of qualifications etc.

3.2.5.3. The Committee suggests that the Commission and the Member States initiate information and awareness campaigns for young people and parents in order to improve the image of apprenticeship training. The campaigns should also be aimed at teachers, supervisors, careers advice centres and the social partners, who are the prime movers in the development of apprenticeship training, both in qualitative and quantitative terms.

In the framework of campaigns of this kind, and bearing in mind that apprenticeship training is mainly offered in male dominated sectors, the information should also stress the fact that apprenticeship training can also be developed by facilitating access for girls to all the vocational sectors, including access following the completion of training. Careers guidance in schools should stress the fact that apprenticeship training can give young women access to the career of their choice.

3.2.5.4. The Committee also notes that the communication makes no reference to CEDEFOP. The Committee would like emphasis placed on CEDEFOP's role in training in general and apprenticeship training in particular, and on the contribution it could increasingly make in the future to the dissemination of information and the comparison and exploitation of practices developed in the various Member States.

4. **Conclusions**

4.1. The Committee welcomes the Florence European Council's initiative.

4.2. The Committee endorses the Commission communication, subject to a number of comments and suggestions. The Committee notes with interest the innovative aspect of the communication which rightly highlights the positive role which apprenticeship training can play in contributing to young people's integration into employment.

4.3. However, the Committee puts forward the following main comments and suggestions:

4.3.1. However, a specific action should be carried out for firms on the quantitative development of apprenticeship training. This depends ultimately on the will and/or capacity of firms to increase the number of apprenticeship training places.

4.3.2. The Commission and the Member States should initiate information and awareness campaigns for young people, parents, teachers, careers advice centres and the social partners in order to improve the image of apprenticeship training. To this end the role of CEDEFOP should be reinforced.

4.3.3. Practical workplace training needs to be continuous. In particular it must be ensured that apprentices are not assigned to menial tasks unrelated to the training which they are supposed to be receiving.

4.3.4. The development of apprenticeship training and its extension to other vocations can be fully achieved only if this is not an end in itself. Apprenticeship training should open the way to further studies, in particular offering ways of transferring to higher or university education, whilst taking account of the vocational training systems of the various Member States.

4.3.5. Emphasis should be placed on the essential links between:

— the apprentice and his family on the one hand, and the apprentice's supervisor and teacher on the other, with a view, inter alia, to allowing the apprentice to influence the organization of his own training;

— the workplace supervisor (whose status should be spelt out, and role defined, knowledge required for the job and ways of preparing for it, and rights and his obligations) and the teacher.

4.3.6. The European Union should encourage the shared responsibility of the social partners (employers and workers) for the operation of apprenticeship training, e.g. on training bodies.

4.3.7. The Committee would like to see a quality survey launched. This should set out reference values or minimum criteria with a view to identifying the essential features of a European apprenticeship training model. It would also be useful to measure the impact of apprenticeship training on labour market integration and employment.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on the financing of the common agricultural policy'

(98/C 95/13)

On 17 December 1997 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Economic and Social Committee decided to appoint Mr Mengozzi as rapporteur-general for its opinion.

At its 351st plenary session (meeting of 28 January 1998), the Economic and Social Committee adopted the following opinion with 74 votes in favour and five abstentions.

1. The Committee approves the Commission proposal to consolidate the regulations governing the financing of the CAP.

2. The proposed single instrument incorporates the basic regulation (EEC) No 729/70 and the numerous amendments made over the years. The exercise does not involve any changes of substance; it merely makes formal adjustments required by consolidation.

3. The Committee has frequently called for the consolidation of Community regulations, as it considers this vital for making the common agricultural policy accessible and comprehensible to people working in the sector.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions regarding the information society and development: the role of the European Union'

(98/C 95/14)

On 16 July 1997 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for External Relations, Trade and Development Policy, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 December 1997. The rapporteur was Mr Lindmark.

At its 351st plenary session on 28 and 29 January 1998 (meeting of 29 January), the Economic and Social Committee adopted the following opinion by 70 votes in favour, with 15 dissenting votes and 20 abstentions.

1. Introduction

1.1. The Commission has presented a communication concerning a programme of the role of the European Union in the information society. The communication is accompanied by a proposal for adopting a programme of Community action in its relations with developing countries. The Commission underlines that recent trends towards the information society concern most human activities, including learning, communication, work and leisure. This applies equally to the developing countries. The communication presents a number of guidelines and mechanisms to encourage the participation of developing countries in the information society, not only as consumers but also in an active role.

1.2. The Commission refers to the G7 Conference on the information society held in Brussels in 1995 that expressed concern about the need to avoid further widening of the gap separating the industrial countries from the developing countries and called for 'a shared vision of human enrichment'. 'Our action must contribute to the integration of all countries into a global effort'. The conference on the information society and development organized in Midrand in 1996 also focused on the specific needs of the developing countries and highlighted the potential of the new technologies.

1.3. The EU has embarked upon redefining and modernizing its relationship with each of the main developing regions, providing an opportunity to take account of the information society concept in relations with them. The Community strives for coordination with the activities of the Member States and of the international organizations concerned. The Commission stresses that the message for external partners should be realistic and it should draw their attention to what is at stake in the current upheavals and to the efforts they have to make.

1.4. The Committee notes that development is a complex process in which ICT play a key — but not exclusive — role. Despite the rapid urban population growth in the developing countries, these countries are often mainly agricultural communities where rural development is fundamental both to ensure food supply and to alleviate strain on urban infrastructure, which often leaves much to be desired. Infrastructure per se is a priority area; here telecom infrastructure is one component. Modern ICT provide broad scope for improving telecommunications and should be channelled to promote overall development and to reduce, rather than exacerbate, existing disparities.

1.5. The Committee would point out that the very scale of the task is clearly formidable. Already the provision and modernizing of the basic telecommunications infrastructure call for investments on a scale difficult to finance from government budgets alone. Active commitment and financing from the business community is often a sheer necessity. Moreover, it is a crucial condition to ensure that the most cost-effective solutions are put into the most productive use thereby enabling the telecom sector to get into a positive spiral of increasing degree of self-financing out of market acceptance and current cash-flow derived. Accordingly, in order to enable the necessary investments, it is of the utmost importance that developing countries eliminate any remaining barriers or limits to foreign ownership. This is particularly necessary as the major developing countries unfortunately cut back their aid from US$ 56 billion to US$ 41 billion between 1990 and 1996, while private investment in the developing countries shot up over the same period (though this investment was undoubtedly spread in a very uneven fashion between the countries in question).

1.6. The Economic and Social Committee thinks that the report — rightfully — underlines the importance of speedy and full implementation of the WTO agreement.

Liberalization and the opening up of national as well as international markets for telecom services are crucial conditions if technological advances are to come into productive use, enhancing quality of life and economic growth by offering freedom of choice at all levels.

But freedom of choice implies financial resources, which is precisely what most citizens in developing countries lack. This means that, even after liberalization of the markets, they will still be of no interest, economically speaking. There is therefore a need for political initiatives, along the lines of those implemented at European level, to ensure the various regions within the developing countries are provided with equal access.

The Committee underlines that the Commission's foremost task is, on the one hand, to increase awareness among developing countries of the benefits and the necessity of being part of the information society and on the other hand to convince European industry to be a part of this development.

The Committee agrees with the Commission that community actions should be included in other programmes already discussed in the Committee. The Committee also notes that no further funds will be available and, if necessary, existing funds will be reallocated.

1.7. However, technology per se does not constitute an information society. Education is necessary in order to make full and productive use of the new opportunities and so is the freedom in providing information and content. Many remaining restrictions have to be reviewed if the full benefits are to be reaped.

1.8. There are customs regulations in most countries — not to forget the EU countries themselves. It is of course crucial that liberalization of all EU markets, due 1 January 1998, is rapidly and fully implemented. Otherwise any worldwide mission such as implementing the WTO agreement will not get the credibility needed.

1.9. Fortunately, new technologies offer the developing countries important opportunities to leapfrog into state-of-the-art levels. One example is that not only satellites but also terrestrial radio systems can be rapidly deployed providing coverage of large areas. The costs for providing national infrastructures can hence be kept far lower compared to traditional wire-bound networks. On international routes optical fibre provides dramatic capacity increases at rapidly falling costs. Given the rate of dramatic technological progress, it is no longer feasible to rely on traditional long-term plans where deployment of network capacity was specified years ahead. Rather, it has to be a market and customer-led development where a number of operators and entrepreneurs risk their investments to reach new customers by launching new applications based on new technologies.

1.10. Sweden, and some of the other Scandinavian countries, are cases in point. Competition between three, and soon four nationwide mobile operators in Sweden has led to a penetration above 30/100 pop, which translates to about every household. What started as an exclusive service for the business sector has rapidly transformed into services within reach of most citizens.

1.11. Among the criteria used for measuring liberalization are:

— full liberalization of tele- and data services:

— full liberalization of mobile services (two or more operators);

— use of alternative infrastructure to provide services (railways, energy companies);

— independent regulation (clear separation from dominant operators);

— licensing regime (clarity of rules, licensing conditions);

— rules on combined transport (clarity, licensing conditions);

— access to markets, including the dismantling of barriers to foreign ownership;

— number portability;

— public service criteria taking heed of each country's specific economic, social, human and geographical data; so as to ensure practical implementation of the right to communication.

2. The challenge of integrating the developing countries into the global information society

2.1. Like the Commission, the Economic and Social Committee emphasizes that the information society profoundly alters the organization of work, education and society at large. It presents a panoply of new tools with unparalleled capacities enabling the developing countries to make some great leaps forward in tech-

nology by cutting out certain stages in development through which the industrialized countries have gone.

2.2. The Economic and Social Committee shares the view that countries that shut themselves off from these changes isolating themselves from international trade network and investment flows and from networks of scientific and cultural creativity, would risk being marginalized.

2.3. The new information technology has caused wide-ranging changes in the business world, both nationally and internationally. It is like 'starting all over again'. Production, organization management and stakeholders' relations are being re-designed. Dramatic changes are also happening among consumers. Computers are entering the domestic domain. Some observers claim that digitalization will give rise to changes that are even more radical and visible than those in the business world. Interactive technology, it is predicted, will change the way we communicate or do our shopping, how we manage our financial affairs and provide information. The importance of being a part of the information society is well documented in several of the Commission reports, e.g. the report on electronic commerce, as well as in earlier ESC comments.

3. IT contribution to development

3.1. In technological terms, the moves towards the information society mobilize a panoply of new tools which are spreading throughout the developing countries. Many of the new technologies are less capital-intensive and better adapted to remote regions and sparsely populated areas. The EU should support activities that make new technologies available to the developing countries.

3.2. The Internet and WWW provide a platform for integrating other technologies, including ISDN lines and ATM servers. Teleports serve as 'reception centres' for teleworking, in particular for highly labour-intensive types of services such as statistics, accounting, software production and airline reservation systems.

3.3. Industrial cooperation is one important strand in the drive to provide the developing countries with the benefits of ICT in the context of action to promote economic development.

Cooperation in such an advanced sector as information technology and telecommunications should not be confined to the traditional 'outsourcing' approach to local production or subcontracting where the goal is to take advantage of lower labour costs and cheaper local services.

European firms in developing countries should instead focus on genuinely forward-looking cooperation aiming to create and subsequently utilize local software and technical know-how.

Dramatic advances in microelectronics bring in their wake a steady decline in manual labour. The use of sophisticated and efficient industrial robots in production has cut manufacturing costs so radically that developing countries find it hard to compete by offering their traditional cheap labour. Further, increased involvement on other markets is heavily influenced by firms' attempts to secure advantageous terms of competition on these markets. Obviously the EU as a whole stands to benefit from the success of EU firms on this front.

4. Priority areas of action

4.1. The Commission rightfully stresses the importance that ICT have for the SMEs. Through information society applications, new opportunities present themselves for the developing countries with advantages comparable to those accruing in the industrialized countries, e.g. more efficient management for SMEs and access to economic information, training, interactive user/server networks and international markets, and also enhanced efficiency for governments and administrations.

4.2. The Committee underlines that the new technologies for education and training (in particular distance learning), as an adjunct to traditional methods, open up enormous possibilities for the developing countries. Tele-education, which is increasingly used within the business community enables employees to use the new skills in the daily work and saves the need to spend long periods away from the daily duties. The Swedish experience is that this is especially important for small- and medium-size companies as any absence is particularly difficult for them to handle, irrespective of being located in a remote area or not. This combines learning and practical implementation.

4.3. This is in line with the Commission's report on lifelong learning and has the support of the Committee, which stresses the vital importance of human resources. Relatively simple and cheap solutions, such as PC video used in conjunction with the Internet could prove effective for certain forms of access to the network. Rapidly falling costs (for international transmission too) will make the benefits — including access to international experts — more widely available. The EU can support

this in various ways, e.g. by making experts available and by supporting demonstration projects, hence providing active assistance in the shape of cooperation as opposed to exploitation.

4.4. The Economic and Social Committee proposes that European governments move ahead with ambitious and long-term programmes to bring the information society revolution to the classrooms both within the EU and in the developing countries. Governments and industry should collaborate in providing educational material and equipment. Governments should create conditions conducive to ensuring close association of industry with educational institutes so as to train up experts in information technology.

4.5. The Economic and Social Committee supports the proposal from the European Ministerial Conference held in Bonn on 6-8 July 1997 that European global players together with governments and international organizations should constitute a 'Global Information Superhighschool' for global sustainability as a new concept for education in the 21st century. The Commission report should reflect this initiative.

4.6. An important field that is not mentioned in the Commission report is the possibilities ITC opens for women to participate in cultural, social activities, working life and education. The Committee calls for this aspect to be heeded and highlighted — with particular emphasis on an equal gender balance — as a basic feature of an operational information society. ICT can be a major component in the drive to end the isolation of women, especially in rural areas.

4.7. In the field of 'telemedicine', according to the Commission report, ICT again play an almost revolutionary role dealing with all kinds of challenges in the field of health care and medicine. ICT open up a large range of possibilities for the industrialized countries to assist developing countries via telemedicine. ICT provide access to medical expertise through teleconsultation and medical advice in connection with surgeries, etc.

4.8. The Committee considers it important to understand that telemedicine can no longer be perceived as a substitute for 'the real thing', or be of importance in remote areas only. On the contrary, the Swedish experience is that some of the more successful uses of telemedicine can now be found in the major cities. Among the cases in point are transmission of ECG and other vital data by radio from the ambulances to the hospital thereby greatly shortening the time needed for treatment and hence also the longer-term consequences of a heart-attack. Less dramatic, but equally important, is that security alarm systems enable patients to stay at their own home with full access to acute treatment should the need arise. The possibility of stressing the humanitarian aspects of ICT use, not only in existing hospital structures but also, and above all, in the promotion of primary health services and health protection should be considered by the Commission in its programmes.

4.9. In industry and international trade, ICT, as indicated in the Commission report, play a decisive role in improving competitiveness by raising production quality or by integrating production in a complex process and generally participating in commerce, especially in public commerce as most public procurement will be handled by electronic commerce in the near future.

4.10. Like the Commission, the Committee believes that ICT play an extremely important role in the domain of research. In most fields ICT enable researchers in the developing countries to have the necessary information at their disposal and get access to documents only available on electronic media.

4.11. The Commission mentions — rightly, in the Committee's view — that the emergence in many developing countries of a new independent press and the explosive growth of the Internet contributes to strengthening civilian society and consolidating the democratization process.

4.12. The Committee asks the Commission to assist the developing countries in boosting consumer protection in the ICT sphere. Rules are needed to regulate Internet and other transactions as regards matters of close concern to consumers (contract validity, liability, protection of human dignity).

4.13. The Committee feels that ICT constitute an essential tool for strengthening democracy in most parts of the world provided that censorship is curbed. ICT can also contribute in developing and fostering an understanding of the multicultural society.

5. **ICT facilitate structural changes**

5.1. The Commission stresses that ICT are not the sole instrument to give an impetus to structural development. These instruments can only be used with optimum efficiency if the societies where they are applied manage to master them properly. The Committee emphasizes that there must always be an understanding of economic, social, cultural, and religious differences, not only between developed and developing countries, but also between developing countries.

5.2. The Committee believes that there is no need to hide that the very transformation into the information society, that is mentioned in the Commission report, necessitates some difficult political decisions in every country. In order to reap the full benefits of the market mechanisms as well as of any aid programmes, it is important for developing countries to deal with aid and trade as separate matters. A case in point is given by the rates for international telecom traffic, which should be seen as a pure trade matter, not a vehicle for conveying financial aid.

5.3. One example is that international telecommunication services have been priced far above costs in most countries, whereas other parts of the network, especially the local loop, have been underpriced or even heavily subsidized. This was possible under monopoly conditions, but will prove disastrous with the new technologies now being deployed. Prices not related to costs of provisioning is an overgenerous invitation card for competitors to cream-skim on the over-lucrative routes, leaving lesser and lesser revenues left to pay subsidies in other segments. With Internet soon carrying not only data but voice, radically lower rates for long-haul and international communications will be offered. That distance no longer counts is good news, not only for the business community, but for society at large.

5.4. Still, the transition also proved difficult in many EU Member States until all customers saw that their total telecom bill had dropped. It is therefore important that the Commission actively highlight the price savings achieved in certain countries (e.g. the UK and Sweden) due to the opening up of their markets.

6. **The challenges facing the developing countries**

6.1. According to the Commission report, the level of telecommunication infrastructure in the developing countries is highly diverse, but mostly far behind from that in the industrialized countries. Using teledensity as an indicator (number of mainlines per 100 inhabitants), the figure for the industrialized countries is over 48, that for middle-income countries around 10 while the least advanced countries are about 1,5 and the world average is 11,5. The infrastructures fail to meet local demand and cannot guarantee access to global communication networks.

6.2. However, there are, in the Committee's view, a large number of growth factors. There is a significant pent-up demand which manifests itself and in practice is often covered by services that, in some countries, are regarded as illegal. This explains why in many countries there has been a sustained growth in telecommunications. The drop in the cost of technologies and competition from new global operators using call-back procedures and the like have led to a decrease in traditional revenue from international communication causing concern to the developing countries and raising their awareness of current changes.

6.3. The Committee considers it important that governments and private operators cooperate to control any irregularities in an appropriate way. There must be agreements that revenues from international communications should be used for investments in ICT and not used for irrelevant purposes.

7. **PC density**

7.1. For the other information infrastructures, the Commission report shows clearly that the PC ratio per 100 inhabitants reflects the informatics gap, ranging from 18 for high-income countries, to 2,3 for medium-income and 0,01 for low-income countries. In terms of the market share in information technology, the United States account for 35 %, Europe for 29 %, Japan for 15 % and the rest of the world only for 21 %. The PC market is dynamic and could follow in the footsteps of television which is now wide-spread in low-income countries, with 46 % of homes having a TV set. Considerable inequalities between countries still exist, however, both in Europe and in the developing countries.

7.2. The Committee believes that people's desire and need for communication even in the developing world will increase. This need will be enhanced by the fact that PCs will gradually become increasingly user-friendly, inexpensive and available everywhere. This trend will also facilitate realization of the Commission's premise that the PC market is following in the footsteps of TV even if the differences between a 'passive' medium (TV) and an active one (PC) should not be underestimated. Internet will be a strong force. The Commission should recognize and support this development.

8. **Investment demand**

8.1. According to the World Bank, the annual investment necessary for the growth of telecommunications in the developing countries over the next five years amounts to US $60 billion. Financing in the form of international public aid would not exceed US$ 2,3 billion and most countries cannot make up the difference. This extensive demand necessitates a call for national and foreign private investment and the establishment of international cooperation.

8.2. In view of the pent-up demand, people's desire and need to be a part of the information society, the Committee believes that the private sector will recognize the market potential and also mobilize private investors. Governments and international organizations must, however, push for a legislative and regulatory framework to enable such investments and establish stable, predictable and basis for rational economic decisions among private investors. In the general interest, systems guaranteeing fair competition must also exist (for instance along the lines of EU competition rules preventing abuse of dominant position). Governments must also ensure that all private persons and firms have access to adequate and reasonably-priced communications services. The developing countries must be convinced of the need for a set of rules offering security and easy access to markets to mobilize the private sector to participate in new costly and risky investments. The Commission should convince developing countries that this is in their best interest.

8.3. The Committee wants the Union to push harder and intensify its efforts for market access and regulatory principles within the framework of the WTO negotiations. Both by convincing more countries to join WTO as members and by facilitating market access for basic telecom services. Such activities will enhance investors' interest in these countries.

9. **Human resources**

9.1. The Committee fully endorses the Commission's view that human resources are decisive in coping with change. This includes technical staff in telecommunication and computing and, above all, in the software sector, offering prospects for new jobs. This sector is particularly well suited to cooperation between developing and industrialized countries.

9.2. The Committee asks for a concrete training program for people in developing countries working within the information field, from teachers to professional managers. Experts' working conditions in the developing countries must also be taken into account. The Committee finds it important to inform the public that the information society does not only create new opportunities and new jobs in the field of information technology, but also in related service sectors. The right environment will attract outsourcing.

COMMUNITY ACTION

10. **The European Union's contribution to promoting the information society in the developing countries**

10.1. European Union action on cooperation in telecommunications and information technologies has progressively increased over the years. New cooperation agreements have been signed with developing non-member countries including formal provisions on the information society and associated technologies.

10.2. Economic, financial and technical cooperation has led to significant activities in the various partner regions of the Union. The Commission lists different activities including the Member States' bilateral programmes.

11. **Giving a new impetus to Community action for developing countries**

11.1. The Commission thinks that there has been increasing awareness in the Community and in the recipient countries of the strategic character of the integration of the developing countries in the information society. The information society dimension should, with the agreement of the partner countries, be systematically incorporated in the existing programmes, re-channelling the funds made available. Promoting the establishment of an economic and regulatory framework remains a first priority target, mobilizing local and international capital to ensure access for the developing countries to ICT for their benefit. The second target is to put technology at the service of development.

11.2. The Committee underlines that regulations should be as light-handed and flexible as possible. Legal rules applicable to global information networks and to business transactions carried out on networks should be consistent across the borders. Telecommunication markets should be opened up rapidly to effective competition thereby reducing national and cross border telecommunication costs. Conditions must be created, on the basis of which industry can have confidence in the security, privacy, and the authenticity of transactions to its consumers. There must be a pragmatical approach to global technical standards. Discriminatory taxes should not be imposed on the use of networks. A high level of intellectual property protection is necessary for the creation, storage and distribution of content and software protection. Satisfactory regulation of personal data is also needed so as, for instance, to avoid cross-border communication being impeded by discrepancies in such rules. It is also important that oppor-

tunities for becoming computer literate should be available to people of all ages and from across the social spectrum which makes education essential for the use of global information networks.

11.3. In order to account for the specific economic, political and cultural characteristics of the developing countries and their requirements, the action contemplated should be modulated according to the particular features specific for each major region and the nature of the dialogue the Community conducts with each one of these.

12. **Conclusions**

12.1. The overall task for the European Union is to convince not only the less advanced countries, but also Member States that the information society is here. Everything we wish to do in the field of communications is now technically feasible through modern electronics. The only restrictions are of financial, legal and political nature. Those countries wanting to participate in the economic development must increase their awareness of this development, otherwise the gap will widen further. Considering the huge potential the developing countries offer, the private sector must have the opportunity to involve itself in the wide field of necessary actions that information technology requires, bearing in mind differences in economic, political, social, cultural and religious development.

12.2. The Committee emphasizes that the rapid access to the information society requires specific actions, both in the Union and the developing countries. Over the past 12 to 18 months, the Commission has passed a whole range of Directives aimed at achieving its 1998 objectives. However, merely passing the legislation is not enough: enforcing it is the real issue. For the mutual benefit of both the developing countries and EU countries, the Commission should emphasize the dual challenge of bringing the developing countries into the information society and promote participation of European industry in this development.

Brussels, 29 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on:

— **the 'Proposal for a Council Regulation (EC) amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector', and**

— **the 'Proposal for a Council Regulation (EC) on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the sector of air transport between the Community and third countries'** [1]

(98/C 95/15)

On 6 June 1997 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 January 1998. The rapporteur was Mr Decaillon.

At its 351st plenary session held on 28 and 29 January 1998 (meeting of 28 January), the Economic and Social Committee adopted the following opinion by 79 votes to two.

1. The Commission proposal

1.1. Council Regulation (EEC) No 3975/87 [2], as amended by Council Regulations (EEC) Nos 2410/92 [3] and 1284/91 [4], restricts the scope of the Commission's remit to ensure compliance with the rules of competition to air transport within the Community.

1.1.1. In EU-third country air transport the Commission has no power to grant exemptions under Article 85(3). Neither can it use normal procedures to rule on abuses of dominant position under Article 86: it relies on Article 89 to introduce such procedures indirectly, thereby generating a legal uncertainty which is damaging to air carriers.

1.1.2. For this reason the Commission is submitting a new draft regulation to delete the provisions limiting the scope of Regulation (EEC) No 3975/87 to intra-Community air transport, so that EU-third country routes would also be covered by the regulation.

1.2. With respect to the amendment of Regulation (EEC) No 3976/87 [5], it should be noted that the regulation confers upon the Commission the power to adopt a certain number of block exemptions for a limited period, so as to enable air carriers to adapt gradually to a more competitive environment.

1.2.1. Experience shows that block exemptions satisfy a genuine need for legal certainty on the part of air carriers and other market operators.

1.2.2. The Commission consequently proposes that the Council adopt a regulation so that, without prejudice to the application of Regulation (EEC) No 3975/87 and in accordance with Article 85(3) of the Treaty, the Commission may, by regulation, declare that Article 85(1) does not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices on international air routes between the Community and one or more third countries.

1.2.3. The Commission would, in particular, be able to adopt such regulations in respect of agreements, decisions or concerted practices which have as their object any of the following:

a) joint planning of, and coordination of capacity and timetables on, a scheduled air service;

b) sharing of revenue from a scheduled air service;

c) holding of consultations on tariffs for the carriage of passengers with their accompanying baggage;

d) joint operation of a scheduled air service on a new or less busy route;

e) slot allocation at airports and airport scheduling; the Commission shall take care to ensure the consistency of these rules with the Code of Conduct adopted by the Council.

[1] OJ C 165, 31.5.1997, p. 13-14.
[2] OJ L 374, 31.12.1987, p. 1.
[3] OJ L 240, 24.8.1992, p. 18.
[4] OJ L 122, 17.5.1991, p. 2.
[5] OJ L 374, 31.12.1987, p. 9.

2. **General comments**

2.1. Air transport is currently undergoing extensive deregulation across the world: it is therefore important to establish common competition rules to be applied by both the European Union and third countries to the links between the two sides. Trends in international air transport are leading airlines to forge alliances and agreements which have important repercussions for competition. Where such alliances and agreements are between Community and third country carriers, a climate of consistency would seem necessary to guarantee a sufficient level of legal certainty throughout the EU.

2.2. The Committee notes the Commission proposals designed to extend the scope of Regulation (EEC) No 3975/87, and enabling the Commission to take exemption measures under Article 85(3) for air transport. Nevertheless, it wonders why the Commission did not specify in its explanatory memorandum (point 17) that the new list of block exemptions was longer than the earlier list included in Council Regulation (EEC) No 3976/87 as amended by Council Regulation (EEC) No 2411/92.

2.3. This extension of the existing list to cover the new fields of revenue sharing and coordination of capacity should bring about effective and uniform checks on the rules of competition which do not yet exist for routes between the European Union and third countries.

2.4. Community law does not currently allow effective and uniform checks on the rules of competition governing air transport links between Member States and third countries.

2.4.1. In practice, in the absence of a Council regulation under Article 87, the rules of competition apply under Treaty Articles 88 and 89, which can produce clashes of jurisdiction between the Commission and Member State authorities, in turn giving rise to serious legal uncertainty among European air carriers.

2.4.2. This is illustrated in particular by the recent disagreements between the Commission and the competition authorities of certain Member States in their appraisal of alliances between airlines.

2.5. For this reason, the Commission should be provided with the means necessary to fulfil its task of supervising the rules of competition in the same way as it does in other sectors. The capacity to carry out effective and uniform European-level checks on infringements of competition is most important as it is only at this level that any influence can be brought to bear in the context of expanding world trade.

2.6. It is therefore essential that the European competition authority is able to make its voice heard on an equal footing with, for example, its American counterpart (as recently illustrated by the Boeing-McDonnell Douglas merger). The same powers should therefore be feasible in the field of air transport.

2.7. In line with its earlier opinions [1], the Committee repeats its call for the application of the rules of competition to be accompanied by social demands. There is still no European social policy for airline and airport employees. An assessment of employment trends is becoming necessary. The Committee, which is currently drawing up an opinion on sectors and activities excluded from the working time directive [2], emphasizes the need to look, at the same time, into concomitant questions such as restricting flying time and taking account of safety and quality criteria in air transport, with particular reference to applying minimum training and qualification standards.

2.8. The Committee reiterates its various proposals on making provision for consultation on socio-economic repercussions, so that the social implications of commercial agreements are taken into account.

2.9. In order to encourage development in the regions and remote islands, and although reference is made to this in the Amsterdam Treaty, the Committee would welcome the Commission building upon the concept of public interest service in the air transport sector, in accordance with the third package rules, if appropriate under the new Article 7d of the Amsterdam Treaty and its interaction with the existing regulations.

2.9.1. Historically, however, the liberalization of Community airspace has always been accompanied by an extension of the Commission's powers concerning application of the rules of competition in the European Union; the Council adopted Regulation (EEC) No 3975/87 at the same time as the first package of

(1) OJ C 77, 21.3.1983, p. 20; OJ C 303, 25.11.1985, p. 31; OJ C 169, 6.7.1992, p. 15.
(2) SOC/348.

measures liberalizing Community airspace was implemented; the extension of liberalization to domestic flights through the third package in 1992 was backed by Regulation (EEC) No 2410/92.

2.10. It would, in principle, be desirable for liberalization in this sector to be accompanied by arrangements for the application of competition rules.

2.11. The Committee therefore favours extending the scope of Directive 3975/87 to all links with third countries as proposed and accompanying this extension of the remit to apply competition rules by correspondingly authorizing the Commission to grant block exemptions for these links, as part of a coherent European Union external policy in this field.

2.11.1. Consequently, in the context of future developments, the Commission could receive from the Council a mandate to negotiate on these same links with third countries, in accordance with terms duly defined on the basis of consultations between the Commission, the Member States and the air transport industry. Negotiating briefs of this kind could be granted in several stages, to provide for transitional periods. This approach would offer the best guarantee of uniform terms of competition for the various carriers operating between the EU and third countries.

2.11.2. In the same way that the current uncertainty surrounding the application of the rules of competition to air transport agreements between the EU and third countries may jeopardize the introduction of consistent and uniform rules within the European Union, independent, bilateral Member State negotiations with third countries may, where they result in open sky agreements, generate discrepancies in the conditions under which different European carriers operate.

2.11.3. Moreover, extending the Commission's powers in applying the rules governing competition between the European Union and third countries would strengthen its negotiating position vis-à-vis such countries on behalf of the Member States, and would facilitate tying in harmonization of the rules on competition with third countries with liberalization agreements.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission: Review of reactions to the White Paper "Teaching and learning: towards the learning society"'

(98/C 95/16)

On 3 June 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

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 18 December 1997. The rapporteur was Mr Koryfidis.

At its 351st plenary session (meeting of 28 January 1998), the Economic and Social Committee adopted the following opinion by 53 votes in favour, one against and one abstention.

1. Introduction

1.1. The document under discussion here sets out to distil the main policy signals received by the Commission last summer, as a result of the debates following publication of the White Paper on education and training 'teaching and learning — towards the learning society'.

1.2. According to the Commission, the discussions — which involved the Community institutions, the Member States, experts, trade unions and employers' organizations, university and other educational institutions, and other NGOs — identified the following general points:

— the need for an awareness among European citizens that they must update their knowledge and their occupational skills throughout life;

— the connection between individuals' knowledge and occupational skills and their access to employment and, beyond this, their integration into social life and the exercise of their rights as citizens;

— the link between the learning society and Europe's future competitiveness, and its future awareness of itself and its values;

— the necessary groundwork for highlighting education and training as 'the key to a blueprint for society': this constitutes the White Paper's greatest political contribution to Europe's present and future.

2. General comments

2.1. In its opinion on the White Paper on education and training, the Committee:

— described the White Paper as 'being of the greatest importance as a starting point for discussion and examination of problems relating to the current situation in Europe and the outlook for the future';

— it also said that it 'provides an accurate picture of European social and economic developments, as well as of what is needed to bring about a smooth transition from the present situation to the learning society of the future';

— lastly, the Committee stressed that 'the aim of achieving a learning society cannot be reached by the Member States pursuing separate paths or strategies, or by summit-level discussion, investigations or choices. The only way to bring this about is a comprehensive and consciously systematic social effort. This social effort must possess a common and acceptable vehicle for coordination, common and acceptable procedures for reconciling opposing views and common, clear and acceptable subordinate objectives. Only the EU and its bodies, particularly the Commission, can coordinate this social effort to bring about a learning society'.

2.2. The ESC welcomes the fact that:

— the Commission has presented a communication reviewing and providing information on the White Paper and the measures ensuing from it, something which it has not generally done and for which it deserves particular credit;

— the results of the discussions confirm the general, and many of the specific, points and positions expressed in its opinion.

2.3. At the same time, the ESC:

— feels that not enough time has elapsed since the communication on the White Paper was presented for final conclusions to be drawn;

— but continues to insist on the need to open up the dialogue to ever broader sections of society — at all times under the Commission's responsibility and with practical measures being taken by groups who have already been made aware of these issues.

2.4. The Committee believes that the climate and conditions in the Member States are now favourable in this respect. Groups and individuals who took part in the dialogue already look to the White Paper as a reference, and view it as a source of ideas and arguments to back up views and investigations relating to the future of education and training, or for mapping out the path to the information society. This state of affairs must be turned to full and immediate advantage by the Commission.

2.5. The Committee agrees with the Commission's view, expressed in the document, that the main themes and aims of the White Paper were confirmed during the discussion. It agrees with the economic dimensions and effects of the links between education, training and employment, and with the need for equal status for the purely educational, affective, moral, spiritual and cultural dimension of education and training when drawing up syllabi and programmes.

2.6. The Committee would again stress the risks inherent in the transition to a new world where there will be unlimited access to knowledge, unimaginably fast dissemination of information and completely different conditions and means of communication.

2.6.1. The emergence and growth of new and deeper divisions, both within societies and internationally, between information haves and have-nots is the most likely outcome unless efforts are immediately stepped up to involve, if possible, all Europeans in every aspect of change.

2.6.2. This is also the reason why the ESC places such emphasis on the need for policies to be formulated immediately to prevent the marginalization of large sections of the population, in particular of high-risk groups which for various reasons do not have access to new technologies and thus to new knowledge.

2.6.3. These preventive policies include developing the concept of lifelong learning in practice and in its widest possible sense, ensuring that all European citizens have the opportunity to use and benefit from new information and communication technologies, and, in general, creating an environment in which the learning society can be actively achieved, step by step, by the citizens.

2.6.4. For these major policies to be developed successfully, the ESC feels that there must be cooperation between the centre and the regions (EU, Member States and local government), between individuals and society, and between the public and private sectors.

2.6.5. It also feels that the Commission and the other EU institutions should become the driving force in instituting and completing the processes that will lead to the creation of a learning society in the European Union.

2.7. As regards securing the resources needed to develop programmes leading to the learning society, the ESC would emphasize the following:

2.7.1. It believes that expressing the political will to fund and develop programmes leading to a learning society represents the most important policy option currently facing the European Union, Member States and regional authorities.

2.7.2. For this policy option to become reality, it is essential that all the organized social forces of the EU be asked to play their own important role. The public and private sectors, social partners (trade unions and employers' organizations), businesses and experts, educators and NGOs concerned with these issues each have an opportunity to contribute their views and efforts to the process of transition.

3. **Specific comments**

The ESC has the following comments on the experiments provided for in the White Paper, with reference to points made in the Commission communication under consideration:

3.1. *Objective I: accreditation of skills and the principle of the 'personal skills card'*

3.1.1. The first general objective of the white paper is entitled 'Encourage the acquisition of new knowledge', for which the following support actions are proposed:

— recognition of skills

— mobility;

— multimedia educational software.

3.1.2. In its opinion on the White Paper and with reference inter alia to the first general objective, the ESC makes the following points:

— it agrees with the Commission that the advent of the learning society calls for measures to promote the acquisition of new skills;

— it sees open horizons for the European dimension in education and its role in complementing the education systems of Member States, and regards as serious and acceptable the Commission's efforts to urge Member States to provide resources for learning, open up new methods of recognizing skills, support mobility and introduce new communications technologies in education.

In its opinion, the ESC makes the following comments on the actions proposed by the Commission at European level:

— it agrees that a different (simple and modern) approach to skills recognition is needed, among other things, and supports the proposal to establish a European skills recognition procedure. But it notes that care should be taken to ensure that the basis of certified knowledge and skills is genuine and substantive, and points to the role that the social partners can play in achieving this;

— it observes how students have benefited from the mobility created under the Erasmus programme, and suggests that existing funding be increased and used more rationally with a view to boosting the number of students taking part in such programmes. At the same time, the ESC proposes that a special mobility programme be developed for students and instructors in vocational training and apprenticeships;

— as regards 'multimedia educational software', the ESC highlights the need for the Community as a whole to overcome existing obstacles and take decisions on acquiring European educational multimedia and training educators in the new technologies, so that they can use them and teach other people how to use them.

3.1.3. In the Commission communication on the review of reactions to the White Paper, Objective I is limited to the accreditation of skills and establishing the principle of the 'personal skills card'. But even within this limited scope of the White Paper's first general objective, the debate has evinced reservations and disagreement regarding the accreditation of skills outside the education system, especially by means of the automated validation process using computerized multimedia techniques. However, the ESC is interested to note the Commission's experiments with skills accreditation for basic subjects such as mathematics, natural sciences, languages, etc., for technical and professional skills such as banking, law, IT, etc., and for 'key skills' or transferable skills.

3.1.4. The ESC recalls that it agrees in principle with the Commission's views on skills recognition, but again would draw the Commission's attention to the way in which this concept is promoted. In this respect, it considers as positive the Commission's observation in the communication that 'the accreditation of skills is not intended to take the place of the traditional formal qualifications nor to devalue the recognition of qualifications issued by the school system, and certainly not to install a new tier of European bureaucracy'. It proposes that the dialogue should be pursued in order to dispel any misunderstandings that have arisen, and to seek a consensus and specifically a system of skills accreditation that is acceptable to those concerned who require it. In addition, it proposes that the dialogue should be opened up to include broader sections of society so that the whole process, by virtue of its actual substance and transparency, gains acceptance in society. This acceptance is needed to allay any minor disagreements existing between the various interest groups, but also to progressively find solutions that are acceptable to all parties.

3.2. *Objective II: bringing schools and the business sector closer together and developing apprenticeships*

3.2.1. The second general objective of the white paper is entitled 'Bringing schools and the business sector closer together'. This objective is a function of the now pressing need to establish links between schools and businesses based on their complementary roles with respect to learning and employment.

The White Paper lists the following as conditions for bringing schools and the business sector closer together:

— opening up education to the world of work;

— involving companies in training ventures, not only for workers but also for young people and adults;

— developing cooperation between schools and firms.

The White Paper identifies the following bases for reinforcing the links between schools and the business sector:

— apprenticeships;

— vocational training.

3.2.2. In its opinion on the white paper the ESC points to the importance of links between schools and the world of work to achieving the learning society. It stresses that these links must benefit both parties — businesses and schools — and specifically calls on SMEs to 'see the importance of high-quality education for the range, quality and competitiveness of their products' and consequently 'the need to invest in education in general', and especially in schools in their area.

3.2.3. The Commission communication mentions inter alia the following preliminary conclusions from discussions of the White Paper:

— recognition of the need to bring schools and the world of work closer together, but not in a way that would result in 'gearing education to the sole requirements of the business sector as a matter of course';

— acceptance of the idea of establishing a European framework for apprentices as a reference instrument to smooth the way for mobility and emphasize the need for high-quality apprenticeships;

— the need to further strengthen and define the conditions for the success of the education partnership based on apprenticeship arrangements.

The Commission has taken the following action to achieve Objective II:

— developing transnational programmes, in particular for young people (workers, trainees and students);

— supporting the development of apprenticeships and sandwich training at the level of tertiary education;

— enabling 500 teachers to do in-company placements specifically to strengthen links between general education and the world of work.

3.2.4. Among the specific positions stated in its opinion on the white paper on enhancing vocational training, and encouraging, modernizing and promoting apprenticeships and sandwich training, the ESC considers that a change in the way both the business sector and schools see their relationship will be a key factor in bringing the two closer together. It therefore also supports all decisions and measures taken by the Commission that aim to change prevailing attitudes and reward action on both sides to promote links, on the basis of constructive dialogue.

The ESC agrees that the European dimension of vocational training and apprenticeships can facilitate mutual recognition of skills and help develop mobility and improve the overall quality of apprenticeships, provided that it complements, and does not conflict with, the relevant national systems and also offers programmes with the scope to really meet existing needs. The ESC notes that to date very little has been done in practice to develop apprenticeships at the European level, and considers the budget appropriations earmarked for this purpose to be very small.

Finally, the ESC observes that the purpose of enhancing vocational training and promoting apprenticeships and sandwich training at the European level is to improve Europe's ability to respond to the challenge of continuous growth and competitiveness, and to improve the ability of Europeans to meet the demands of the nascent learning society. The ESC underscores the importance and significance of this goal for Europe's future as a whole, and asks the Commission to step up its efforts to abandon any dogmatic positions with respect to the goal itself or to how it should be achieved. To this end, its analysis that 'there is no single model of apprenticeship which should be considered as the only channel leading to vocational training' is certainly constructive.

3.3. *Objective III: combating exclusion through education and training*

3.3.1. The third general objective of the white paper is entitled 'Combat exclusion'. The Commission's rationale for identifying and pursuing this objective is the fact that many sections of the population are excluded from the labour market and consequently marginalized. The Commission reports that many important measures are being taken to combat these problems, both by the Member States and by the EU, and proposes the following supplementary measures:

— 'second chance' schools [1];

— European voluntary service.

3.3.2. The ESC makes the following points on the third general objective in its opinion on the White Paper:

— it agrees that a second chance of social integration should be given to young people who have been, or are likely to be, excluded from the education system,

[1] The Committee wishes to point out that 'second chance' education and training is a more suitable expression.

and it considers the Commission's proposal to set up 'second chance' schools to be a 'desirable and acceptable solution';

— it points out that the education system must be flexible so as to also provide a 'second chance' to adults with a low level of education, thereby removing the risk of their being socially excluded on these grounds alone;

— it considers 'second chance' schools to be only a stopgap solution, and points to the importance of strengthening 'first chance' schooling;

— it refers to its opinion with detailed positions on 'European voluntary work for young people'.

3.3.3. The Commission Communication states that 'everything must be done to fight against exclusion', and again refers to the concept of the second-chance schools as an experimental project. It also explains that this project has not been set up because of any doubt that ordinary schools can cater for all children, or indeed because of the need to 'improve the quality of initial education and training systems in order to forestall failure'. The aim of these schools is to socially and economically reintegrate young people facing major difficulties after school-leaving age, an undertaking that demands partnership at local level between all those concerned with young people's problems and, of course, publicand private-sector companies.

The Committee believes that the relevance of this initiative will be illustrated through setting up and using a wide network of contacts to make the most of the experience gained in the Member States.

3.3.4. The ESC has the following comments on the third objective (combating exclusion through education and training):

— It considers the Commission's consideration of 'second-chance schools' — the people concerned and how such schools fit into the educational system — to be important. However, it sees problems with the aspect of the programme referring to cooperation between these schools and the social partners, and therefore asks the Commission to ensure that the whole system involves the social partners and that they share responsibility for it on a transparent basis and through recognized and accepted procedures.

— Even though, thanks to the Commission's efforts, the programme has been accepted by those bodies that are already involved in it, the ESC considers the pace of development of the programme to be unsatisfactory.

— In any event, although it is not against the development of second-chance schools, the ESC considers that intervention on such a limited scale (in terms of number of schools and cost) does not amount to a campaign to combat social exclusion through education and training. Combating exclusion through education and training can only be effective if education systems are modernized and generally upgraded, and by ensuring that they function pre-emptively to prevent the marginalization of individuals and social groups. The Commission must continue to play its own important role in achieving this.

— Finally, the ESC is surprised that the communication does not report at all on European voluntary service for young people.

3.4. *Objective IV: proficiency in three Community languages and awarding a European quality label*

3.4.1. The fourth general objective of the White Paper is entitled 'Proficiency in three Community languages'.

According to this objective, Europe's citizens must be proficient in several Community languages if they are to benefit from the professional and personal opportunities afforded by the large, border-free internal market. To this end, the Commission proposes that people should learn two Community languages in addition to their mother tongue. It is desirable to begin learning the first foreign language at pre-school level, and then for it to be taught systematically in primary education. Teaching of the second foreign language should begin at secondary school, and on completing his or her initial training, every European will have to have completed the cycle of study in two Community languages in addition to their mother tongue.

The following support measures at European level are proposed to achieve this objective:

— defining a 'European quality label';

— support for exchanges of language training materials geared to different categories of learners

— encouraging early teaching of Community languages, notably through the exchange of teaching materials and experience.

3.4.2. In its opinion on the white paper, the ESC mentions the need to address Europe's communication/language problem, but also points to the inestimable value, cultural and otherwise, of linguistic diversity in Europe.

In this context, the ESC agrees with — but considers ambitious — the objective of enabling every European to communicate in two Community languages other than his or her mother tongue, while at the same time combining protection of European linguistic diversity with promotion of the idea that certain subjects at secondary school should be taught in the first foreign language learned.

3.4.3. The Commission communication stresses the importance of every European citizen being able to communicate in two Community languages other than their mother tongue, as a way of promoting European citizenship and access to jobs. But it also mentions misgivings expressed during the debate that the whole undertaking might compromise the need for people to have a thorough grounding in their mother tongue. There were also misgivings that the European quality label might ultimately perpetuate rather than attenuate existing disparities.

The above reservations led the Commission to propose that the label be awarded only to innovative language-learning initiatives, a proposal that was approved by the Council at its meeting of 6 March 1996.

In addition to the above-mentioned issues, the debate identified a series of problems relating to teachers, learners (young and old) and the tools for teaching foreign languages — especially new information technologies. The Commission is addressing — or is going to address — these issues on account of their importance and far-reaching implications.

3.4.4. The ESC has the following comments on the outcome of discussions and the Commission's action on the fourth objective, in addition to those made in its opinion on the White Paper:

— Firstly, it considers that the major linguistic problem facing all European citizens is learning to express themselves correctly (orally and in writing) in their mother tongue. Knowledge of their mother tongue, among other things, enables people to express and communicate cultural values, i.e. the product of highly complex human activities, intellectual and otherwise. A good knowledge of one's mother tongue is thus a prerequisite for effective communication with other people, but it is also essential to understanding the codes underlying any system. Given the challenges presented by the advent of the learning society, the Commission thus has the task of examining and identifying the difficulties faced by a large number of Europeans when it comes to learning their mother tongue. The Commission must also investigate the reasons for this problem, and the ways in which it can be addressed. It goes without saying that having a good knowledge of one's mother tongue makes it easier to learn to communicate in other languages.

— As the ESC has noted, the White Paper's objective of enabling every European to communicate in two European languages in addition to their mother tongue is significant but also very ambitious. The ESC's observation does not mean that it rejects this objective, but simply that a lot of work and a major effort — which must always be coordinated — will be needed to achieve it.

— One thing that has to be done is to understand the problem, which means pinpointing and identifying its various aspects. Defining terms, e.g. language knowledge, or statistics, such as the number of Europeans who know a second or third Community language, are aspects of the problem that the Commission must explore and report on.

— Another task is that of incorporating the teaching of foreign languages into national education systems, which can be further promoted through bilateral exchange agreements between Member States in which different languages are spoken. These types of agreements protect the linguistic and cultural diversity of Europe, while creating the conditions for better access to employment and promoting a European identity.

3.5. *Objective V: putting tangible investment and training investment on an equal footing*

3.5.1. The rationale for the fifth general objective of the White Paper, entitled 'treat capital investment and investment in training on an equal basis', is the need for education and training to be treated as an investment and not as operating expenditure. This would mean that education and training would not depend so heavily on the evolutions and fluctuations of the economic cycle.

With this aim in mind, and recognizing that investment in skills is crucial to competitiveness and employability the Commission proposes:

— consolidating the levels of funding granted from all sources in connection with education and training — which implies measuring them — developing direct and indirect incentives to promote investment in human resources and improving accounting and expenditure monitoring arrangements;

— adapting accounting and fiscal approaches to training expenditure.

3.5.2. In its opinion on the White Paper, the ESC makes the following points, inter alia, on the fifth objective:

— it considers motivating and supporting people (young and old, whether employed or not) to constantly invest in knowledge and skills to be an essential responsibility of the Member States, and also of the EU;

— it also believes that businesses have a large responsibility, for the sake of their own future and the competitiveness of their products, to review the question of investment in research, knowledge and skills;

— it agrees with the Commission's proposal to consolidate funding levels in connection with education and training, while considering the role of the EU, and in particular that of the Commission, to be crucial to realizing the fifth general objective.

3.5.3. The Commission Communication 'Review of reactions to the White Paper' sets out the following initial conclusions arising from discussions on the fifth objective:

— the objective is endorsed, but there are calls for new policies of investment in knowledge and skills;

— expenditure should be redistributed between the different players and a new relationship should be developed between tangible investment and training investment;

— there must be a change in approach, behaviour and even mentality, particularly for companies and those who determine public and private investment, in order to redress the balance towards intangible investment, a factor which plays an increasingly central role in modern economies.

The Commission notes with regard to implementing this objective that:

— an important step has been made with the agreement between Member States to take part in a first publication offering a comparative approach to funding the different levels of education;

— an inventory should be drawn up of the fiscal and accounting practices and arrangements used by Member States to encourage investment in training;

— a cost-effectiveness assessment should be carried out of incentives to promote training.

3.5.4. In its opinion on the white paper the ESC described the fifth objective ('Putting tangible investment and training investment on an equal footing') as the most distant and least accessible objective, since it associates this objective with attitudes and mentalities that have prevailed over centuries and which do not favour a policy of generous investment in education and training.

Having stated its position, the ESC is satisfied with the results of discussions on the above objective. It is a good sign for the future of education and training that this goal has been accepted and that positive views have been expressed on:

— cost-sharing between the various players

— the development of a new relationship between capital and labour

— the need for changes in method, attitudes, and mentality, in order to achieve a balanced approach to intangible investment.

The ESC also believes that the Commission has followed the right course in highlighting the need to achieve this goal.

The fact that the Member States have accepted its proposal to carry out a comparative study on funding for various levels of education is undoubtedly a significant step forward and will give new impetus to education. The same applies to the work of compiling a digest of fiscal and accounting practices and provisions used by the Member States to encourage investment in training, and to the cost-effectiveness assessment of incentives to promote investment in training.

The ESC feels that the above developments could provide the basis for a different policy of investment in education and training: a policy that will not make spending on education and training dependent on the

economic cycle; a policy that will put investment in education and training on an equal footing with other productive investment; a policy, finally, that will make Europe and its citizens more competitive and at the same time more aware of their history, values and prospects for the future.

Brussels, 28 January 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products' [1]

(98/C 95/17)

On 30 October 1997, the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned 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 6 January 1998. The rapporteur was Mr Hernández Bataller.

At its 351st plenary session (meeting of 29 January 1998) the Economic and Social Committee adopted the following opinion by 99 votes to 14 with 7 abstentions.

1. **Introduction**

1.1. Council Directive 85/374/EEC of 25 July 1985, on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [2], excluded primary agricultural products and game from the scope of its definition of 'product'. For this purpose, primary agricultural products were defined as products of the soil, of stock-farming and of fisheries, excluding products which had undergone initial processing.

1.2. The initial proposal for the directive drafted by the Commission did not include the exclusion: this was inserted during the negotiation process, at the request of the European Parliament.

1.3. Directive 85/374/EEC introduces a framework for producer liability for defective products along the following basic lines:

— liability without fault is established. Consequently, the injured person is required to prove the damage, the defect and the causal relationship between defect and damage, without having to prove fault;

— a product is deemed defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including: the presentation of the product, the use to which it could reasonably be expected that the product would be put and the time when the product was put into circulation; a product is not considered defective for the sole reason that a better product is subsequently put into circulation;

— 'damage' is taken to mean damage caused by death or by personal injuries, and damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of ECU 500;

[1] OJ C 337, 7.11.1997, p. 54.
[2] OJ L 210, 7.8.1985.

— a limitation period of three years is applied to proceedings for the recovery of damages, from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer; the rights conferred upon the injured person pursuant to this directive are extinguished upon the expiry of a period of ten years from the date on which the producer put into circulation the actual product which caused the damage;

— the liability of the producer arising from this directive may not, in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability;

— a number of grounds for exemption from liability are listed ('producer's defence')

— any Member State may provide that a producer's total liability for damage resulting from a death or personal injury and caused by identical items with the same defect shall be limited to an amount which may not be less than ECU 70 million;

— every five years the Council, acting on a proposal from the Commission, is to examine and, if need be, revise the amounts in this directive, such as compensatory limit and threshold, in the light of economic and monetary trends in the Community.

1.4. As early as 1991, the Economic and Social Committee, in its opinion on consumer protection and completion of the internal market [1], was expressing the view that 'the internal market can only operate effectively if the consumer has confidence in the safety of the products on offer. To this end it is important to pursue a consistent product safety policy, one aspect of which is liability for defective products. The Committee therefore asks the Commission to start work on extending the scope of the product liability directive to include agricultural food products and development risks. The principle of the free movement of products further requires the setting-up of a Community fund to compensate the victims of defective products'.

1.4.1. The ESC's opinion on bovine spongiform encephalopathy (BSE) [2] restated the need to look at the effectiveness of Directive 92/59/EEC on general product safety and to review Directive 85/374/EEC on liability for defective products, so as to broaden its scope to include agricultural products and the risks associated with them.

1.5. The European Parliament, in its resolution of 19 February 1997 on the results of the Temporary Committee of Inquiry into BSE [3], asked the Commission to follow up the recommendations contained in the Temporary Committee's report and to ensure that the appropriate legislative, administrative and staff-related steps were taken without delay.

1.5.1. One of the legislative steps which the European Parliament asked the Commission to take was the request for a proposal, by September 1997 at the latest, for Community legislation on product liability to be amended to include primary products.

1.5.2. Partly in response to this resolution, the Commission published a Green Paper on the General principles of food law in the European Union [4], which set out several basic goals for Community food law. The regulatory approach should cover the whole food chain 'from the stable to the table', thereby raising a series of questions, including the issue of the principle of producers' civil liability for defective products, as laid out in Directive 85/374/EEC, being made obligatory for primary agricultural production.

1.5.3. The green paper mentioned the possibility of amending the scope of the product liability directive to cover unprocessed primary agricultural products; this was not, however, seen as an alternative to the development of appropriate product-safety regulations and effective official control systems, but as an additional measure in its own right.

1.5.4. The Committee, in its opinion on the green paper [5], once again showed itself to be in favour of unprocessed primary agricultural products being covered by Directive 85/374/EEC.

2. The Commission's proposal

2.1. The proposal's objectives are to increase the level of consumer protection against damage caused to their health and property by a defective product and to further the approximation of national laws concerning civil liability for defective products.

2.1.1. These objectives form part of the strategic target of delivering a single market for the benefit of all citizens, as set out by the Commission in its action plan for the single market [6].

[1] OJ C 339, 31.12.1991 — point 5.3.4.
[2] OJ C 295, 7.10.1996.
[3] OJ C 85, 17.3.1997.
[4] COM(97) 176 final.
[5] OJ C 19, 21.1.1998.
[6] CSE (97) 1 final, 4.6.1997.

2.1.2. Furthermore, the proposed measure is suitable for raising consumer confidence in all products sold in the single market and is one of the areas where the Community enjoys exclusive competence, i.e. the establishment and functioning of the single market.

2.2. The Commission's proposal deletes the exception regarding 'primary agricultural products and game' from Article 2 of Directive 85/374/EEC. The term 'agricultural products' is taken from Article 38(1) of the EC Treaty and covers those products listed in Annex II to the Treaty.

2.2.1. All of the rules of Directive 85/374/EEC will thereby apply to agricultural producers: the injured person's burden of proof of damage, defect and causal relationship; joint and several liability; where more than one person is liable; the notion of defect; the reasons for exemption from liability under Article 7 ([1]); the damage covered; the time limits for proceedings for recovery of damages; the fact that liability may not voluntarily be limited or excluded; and the fact that other rules of the law of contractual or non-contractual liability are not affected.

2.3. The new rules are to apply to agricultural products and game put into circulation from the date on which the directive enters into force, i.e. the directive will not have retroactive effect.

3. **General comments**

3.1. The Committee welcomes the Commission's proposal for a directive, which is consistent with the Committee's repeated calls, voiced in several opinions, for primary agricultural products and game to be included within the scope of Directive 85/374/EEC.

3.2. The Committee shares the Commission's view that greater health protection at every stage of the food chain is one of the European public's main expectations, and considers the adoption of measures, such as the present draft directive, intended to boost consumer confidence, to be a priority.

3.2.1. In attaining the objectives of the common agricultural policy, account must be taken of requirements in the general interest, such as the protection of consumers or of human health and life, with which the Community institutions must comply when exercising their powers.

3.2.2. The creation of a genuine single market requires that adequate safeguards be established in the field of public health, backed up by adequate quality controls. Moreover, paying heed to public health issues is not just about the need to raise or, in this particular case, restore consumer confidence so that the market functions properly. Ultimately it derives from the overriding requirement to protect citizens' rights, the foundation of the entire Community legal system.

3.2.3. The proposed directive should allow a higher level of protection of public health, which is one of the explicitly mentioned objectives of the Treaty.

3.2.4. The Committee deems the application of the prevention principle to be a health protection priority.

3.3. The application of the principle of free movement of goods must entail meeting those requirements that are especially vital for the protection of human health and life. On occasion, this may mean the adoption of appropriate measures aimed at ensuring an acceptable level of public health. In particular, the Committee is in favour of rules requiring producers to place on the market only such products as are safe and of making producers liable for repairing any damage caused by defective products.

3.4. The proposed directive would be a further step towards the harmonization of the single market and obviate distortions of competition between producers who are subject to different arrangements depending on where their product is placed on the market. The Committee is, therefore, in favour of eliminating such discrimination between Community producers.

3.5. The extension of the scope of Directive 85/374/EEC proposed by the Commission could lead to a higher level of consumer protection by:

— offering consumers justified grounds for redress for liability without fault previously denied to them, which will strengthen their legal position when it comes to safeguarding their legitimate interests, defending their rights as customers and securing compensation for damage caused by defective products;

— encouraging compliance with the general obligation to produce safer products, as it would apply through the entire food chain, from primary production to the final point of retail to the consumer;

— making it easier to trace the party responsible for putting a defective primary agricultural product into circulation ('product traceability'), since, if this

([1]) Including, under (d) if 'the defect is due to compliance of the product with mandatory regulations issued by the public authorities'.

producer cannot be identified, each supplier of the product can be treated as its producer.

3.6. The Committee is also of the opinion that the proposed directive should not impose additional burdens on the producers involved. Furthermore, experience with the working of Directive 85/374/EEC suggests that the proposal is unlikely to lead to a substantial rise in either the number of complaints or the level of insurance premiums.

3.6.1. The Committee urges the Commission to ensure, when drawing Community legislation in the field of insurance, that new risks arising from market developments (such as genetically modified organisms) can be insured.

3.7. The Committee is of the opinion that, following the adoption of this proposal, there ought to be an overall examination of the system set out in Directive 85/374/EEC in the light of the current state of Community law and the reports on its implementation.

3.7.1. The overall examination should take the form of a green paper, so that representatives of social and economic activity may be consulted.

3.7.2. The examination should focus especially on the burden of proof, development risks, economic ceilings, and time limits for certain products.

Brussels, 29 January 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on 'Consumers in the insurance market'

(98/C 95/18)

On 20 March 1997 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'Consumers in the insurance 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 7 January 1998. The rapporteur was Mr Ataíde Ferreira.

At its 351st plenary session (meeting of 29 January 1998), the Economic and Social Committee adopted the following opinion by 77 votes in favour and three abstentions.

1. Introduction: scope of the opinion

1.1. The importance of insurance in general economic activity in the single market is well recognized; it accounts for a substantial proportion of the volume of trade in financial services and a very high percentage of employment in the sector.

1.2. Furthermore, in today's world where technological progress entails an inevitable increase in risks and changes in the concept of fault for the definition of third party liability, the insurance industry is playing an increasingly important role in society. Moreover, in the insurance sector the introduction of the euro is inevitably leading to new developments, marked in particular by greater transparency and easier subscription of cross-border contracts.

1.3. The demographic explosion associated with an ageing population, combined with the need for security which goes hand in hand with the inherently vulnerable nature of human existence, serves to intensify growing concern about the future. From this viewpoint, insurance constitutes an undeniable instrument for redistributing and spreading risks across society; it is moreover a

consequence of freer competition and the growing role of private initiative in the economy.

1.4. There are many different types of insurance which are of special interest to consumers, either as policyholders or insured parties, or as third parties potentially entitled to compensation in the event of a claim (third party/beneficiary or third party/victim). Prominent within these two categories are health and life insurance, insurance for personal accident, comprehensive household insurance, car insurance, legal protection insurance and third party liability insurance [1].

1.5. Under the plan to build the single market, the thrust of Community legislation has been to grant more and more freedom of establishment to insurance companies, with their legal regulation being based on the supervision of solvency, accounting harmonization, and the principles of home-country control, mutual recognition, minimum harmonization and the 'passive' freedom to provide services.

1.6. On the other hand, harmonization of substantive insurance law (principally the standardization of policies' general conditions) and policyholders' freedom of choice (the 'active' freedom of provision of services) has not received the same attention.

1.7. Even after the third generation directives [2] and the introduction of the 'single authorization' system abolishing prior approval of policies' general conditions by Member States' supervisory bodies, consumers are not therefore guaranteed non-discriminatory access to insurance in Member States other than the one in which they reside or of which they are nationals. Nor has there been any harmonization of policies' standard conditions or of insurers' practices in order to guarantee clear information, extensive choice and the creation of a genuine single market in this field, as pointed out in a number of Commission and Committee documents [3].

1.8. A key aspect here is the diversity of tax systems, which has exercised decisive influence in splitting up the single market along national lines and in distorting competition between insurance companies, as explicitly recognized and highlighted in the Action Plan for the Single Market recently presented by the Commission [4].

1.9. On the other hand, as explained in detail below, studies have revealed that insurance companies engage a whole host of practices which, it is claimed, are frequently the result of technical requirements imposed by international reinsurance companies; these run counter to consumers' interests and legitimate expectations and in some cases may even infringe legal provisions, particularly in the area of unfair terms in contracts.

1.9.1. It should however be noted that insurance companies also implement agreements which are advantageous to consumers: e.g. to facilitate rapid settlement of claims or to guarantee collective risks beyond the capacity of an individual insurer (e.g. insurance pool to cover natural disaster or nuclear risks).

Furthermore, it should not be overlooked that many insurance companies are mutual or cooperative societies. These companies have helped devise new insurance formulae and they should continue in future to play a major role in promoting both consumer interests and a dialogue with policyholders.

1.9.2. The Commission's DG XXIV has recorded more than 240 rulings by courts and other competent bodies for the 1976-1996 period condemning unlawful contractual practices by insurance companies in ten Member States which were detrimental to consumers' interests.

1.10. The explicit exclusion of insurance contracts covering risks situated within the territory of European Union Member States from the scope of the Rome Convention on the law applying to contractual obligations, together with the ambiguous wording of the rules governing conflicts and the protection of 'the public interest' set out in the Community's second and

(1) Other areas such as reinsurance or supplementary retirement pensions, which are either of only indirect concern to consumers, or have been discussed in specific ESC opinions or studies, are not covered by the present opinion. The same applies, for the same reasons, to the effects of introducing the euro as a means of payment.

(2) Directives 92/49/EEC of 18 June 1992 (OJ L 228, 11.8.1992) and 92/96/EEC of 10 November 1992 (OJ L 360, 9.12.1992).

(3) Cf. SEC(96) 2378 of 16December 1996, the preparatory document for COM(96) 520 final on the impact and effectiveness of the single market, and COM(97) 184 final on the Draft Action Plan for the single market, together with the ESC opinions on these documents (OJ C 206, 7.7.1997 and OJ C 287, 22.9.1997); see also the ESC opinions on the Commission reports to the Council and European Parliament on the single market in 1994 (COM (94) 51 final) and 1995 (COM(96) 51 final).

(4) Cf. CSE(97)1 final of 4 June 1997, Strategic target 3, Action 1: Break down the barriers in service markets.

third directives on non-life insurance [1], makes the provision of these services within the internal market an extremely complex and hazy affair, especially in the event of a dispute between insurers and insured parties or insurance beneficiaries. This is particularly so where the latter are private non-professional consumers, who have no basic information, no specialist technical knowledge and no specific legal support.

1.11. This own-initiative opinion takes up an earlier concern of the ESC, voiced in several documents, to consider the right conditions and propose and recommend appropriate measures for the shaping of the single market so as to achieve the early, effective removal of the main distortions of competition and increase consumer confidence in the reliability and quality of goods and services.

Cf. inter alia: Green Paper — financial services: meeting consumers' expectations — COM(96) 209 final [2]; Single market and consumer protection: opportunities and obstacles [3]; Consumer protection and completion of the internal market [4]; The consumer and the internal market [5]; Supplier-consumer dialogue [6]; Communication from the Commission: Priorities for consumer policy (1996-1998) [7]; Proposal for a European Parliament and Council Directive on the supplementary supervision of insurance undertakings in an insurance group — COM(95)406 final [8]; Proposal for a Council Decision on the conclusion of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance — COM(89)436 final [9]; Proposal for a Council Regulation (EEC) on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector [10]; Proposal for a third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC [11]; Proposal for a third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC [12]; Proposal for a Council Directive setting up an insurance committee [12]; Draft Action Plan for the single market — COM(97)184 final [13]; Communication from the Commission to the European Parliament and the Council on the impact and effectiveness of the single market — COM(96)520 final [14].

1.12. Referring more particularly to the financial services sector and specifically to insurance, the ESC — in line with its stance on the Commission's Green Paper on financial services: meeting consumers' expectations [15] — emphasizes the need to identify consumers' main concerns (the right to information, to legal protection and to access to legal remedy), along with the necessary means of guaranteeing a suitable response to such needs and concerns in keeping with its earlier recommendations [16].

At the same time, the Committee remains attentive to the insurance industry's complaints about frequent attempts at fraud by policyholders, either by making false declarations when taking out policies, or making inflated claims for loss or damage.

1.13. This opinion also aims to encourage dialogue between consumers and insurance companies in order to reconcile their positions and establish conciliation, mediation and arbitration procedures to deal with any disputes, in keeping with the Communication from the

[1] Directives 88/357/EEC of 22 June 1988 (OJ L 172, 4.7.1988) and 92/49/EEC of 18 June 1992 (OJ L 228, 11.8.1992).
[2] OJ C 56, 24.2.1997.
[3] OJ C 39, 12.2.1996.
[4] OJ C 339, 31.12.1991.
[5] OJ C 19, 25.1.1993.
[6] OJ C 34, 2.2.1994.
[7] OJ C 295, 7.10.1996.
[8] OJ C 174,17.6.1996.
[9] OJ C 56, 7.3.1990.
[10] OJ C 182, 23.7.1990.
[11] OJ C 14, 20.1.1992.
[12] OJ C 102, 18.4.1991.
[13] OJ C 287, 22.9.1997.
[14] OJ C 206, 7.7.1997.
[15] COM(96) 209 final of 22 May 1996 — OJ C 56, 24.2.1997; a Eurobarometer survey of 27May 1997 reveals that the financial services sector is the one in which consumers feel least protected, at both Community level, particularly in view of the development of the new technologies (96 %), and Member State level (average 58 %, rising to 67 % in Italy and 66 % in Germany). The full results are available on the DG XXIV home page, http://europa.eu.int/en/comm/spc/spc.html.
[16] Cf., for example, the ESC additional Opinion on the consumer and the internal market (OJ C 19, 25.1.1993, point 4.11.5); ESC Opinion on consumer protection and completion of the internal market (OJ C 339, 31.12.1991); and the comments made in the Opinion on the Annual Report on the functioning of the internal market (OJ C 393, 31.12.1994, point 5.2.1).

Commission on the follow-up to the Green Paper on financial services: meeting consumers' expectations [1].

The Committee therefore welcomes and supports the Commission's recent initiative in launching a dialogue between representatives of consumers and financial services, with the specific aim of reaching voluntary agreements on transparency, consumer information and resolution of disputes.

1.14. The Committee seeks, against the backdrop of the dialogue mentioned above, to urge insurance companies to take the initiative in drawing up codes of conduct and appointing ombudsmen, thus lending greater transparency to their activities and boosting consumer confidence in the services they provide.

2. **Outline of the Community directives**

2.1. *Existing legislation*

2.1.1. The basic principles of the single insurance market are laid out in the Treaty of Rome: freedom of establishment (Article 52) and freedom to provide services (Article 59). It has, however, to be recognized that neither the 1985 White Paper on completion of the internal market, nor the Single Act of 1986, nor, more recently, the Maastricht Treaty has succeeded in enabling economic operators or consumers to draw the full benefits and advantages they might justifiably expect.

2.1.2. Nevertheless, there are now some thirty Community instruments which attempt to regulate the insurance sector. They may be grouped as follows:

a) general Directives, laying down the basic principles of access to and exercise of the two main branches of the insurance business, namely life and non-life;

b) two competition Regulations concerning insurance;

c) specific Directives regulating, in particular, certain branches such as vehicle insurance, tourist assistance, credit and guarantees and legal protection, or certain activities such as co-insurance, reinsurance and retrosurance;

d) Directives on accounting rules specific to insurance companies;

e) one Directive and one Recommendation specifically regulating the insurance broking business;

f) a Directive setting up an Insurance Committee to provide coordination and technical support for the Commission in its dealings with national control and supervisory authorities.

2.1.3. In addition to establishing the basic principle of a specialized life insurance branch and harmonizing a number of fundamental financial rules (mathematical provisions, solvency margins, minimum guarantee funds), the first generation directives for the life and non-life branches regulated freedom of establishment, abolishing any form of discrimination on the basis of nationality while retaining twin control by the home state and the host state.

2.1.4. Nine years later, in the wake of the White Paper and the Single European Act and, more specifically, in response to four major Court of Justice judgments of 4 December 1986 [2], the second generation directives attempted to take the some initial steps towards the freedom to provide services (FPS), although still with major limitations arising, in particular, from the following:

a) the distinction, in non-life insurance, between 'major risks' or insurance for companies, and 'small risks' or insurance for private consumers, with the FPS principle applying only to the former;

b) the distinction, in life insurance, between active FPS (at the insurer's initiative) and passive FPS (at the insured party's initiative), with the FPS principle applying only in the second case.

In other words, for small risks and active FPS, the freedom to provide services remained conditional upon official authorization from the country in which the risk

[1] COM(97) 309 final of 26 June 1997. In this regard, cf. the report by MEP Elena Marinucci of 17 February 1997 (document A4-0048/97). At the Commission's initiative, significant steps have recently been taken in this direction, by holding meetings between financial service providers and consumers' representatives on 14 July, 15 September and 24 November 1997. Nevertheless, the insurance sector's reservations concerning possible compulsory application by its members of codes of conduct should be noted.

[2] Commission versus Germany, Commission versus Denmark, Commission versus Ireland and Commission versus France, in European Court Reports 1986, p. 3663.

was situated, while certain other types of insurance — such as vehicle insurance — were entirely excluded .

2.1.5. The guiding principles of the third generation directives were — as subsequently in other financial services sectors — the following:

a) the introduction of a single authorization system ('European passport'), enabling any insurer based and authorized in any of the 17 Member States of the European Economic Area, to offer its services throughout Europe either through agencies, subsidiaries or branches, or directly under FPS, on the basis of such authorization and in accordance with the technical rules and home country financial control, for any type of life or non-life insurance;

b) mutual recognition of the authorization and control systems of each Member State by all the others;

c) abolition of prior approval of contract conditions for policies and premiums, replaced by solvency checks and accounting rules for insurance companies.

2.1.6. The third generation directives, with consumer protection as their basic aim, have established a number of important rules concerning:

a) compulsory minimum contractual information, limited in the case of non-life insurance, but broader in the case of life insurance;

b) determination of the law applicable to insurance contracts, varying in accordance with the type of insurance, the size of the risk or the location of the insured party or object;

c) concept of general good, as an exception providing grounds for binding national regulations derogating from the principles of freedom of establishment and freedom to provide services.

2.1.7. An aspect meriting particular emphasis in Community rules is competition, it being the explicit aim of Articles 85 and 86 of the Treaty of Rome that agreements between economic operators which distort competition or lead to abuse of a dominant position should be prohibited.

However, given the specific nature of the insurance sector, the Commission decided in two regulations of May 1991 and December 1992 to allow — with some flexibility — certain types of cooperation agreements or concerted practices between insurance companies. These applied to the following areas:

a) joint fixing of risk premiums;

b) determination of standard conditions;

c) joint cover of certain types of risks in the form of co-insurance or re-insurance;

d) testing and acceptance of security devices.

Article 7 and the second indent of Article 17 of the 1992 regulation, however, impose major restrictions on such agreements, either in relation to the specific content of certain general contractual clauses or concerning any creation 'to the detriment of the policyholder, [of] a significant imbalance between the rights and obligations arising from the contract'.

2.1.8. Despite its key importance to the operation of the insurance sector on the internal market, insurance broking is covered by only a single directive from 1976, which did not regulate aspects such as professional liability, financial guarantees, registers and other business conditions. These still come under national legislation. A 1991 recommendation on these aspects was not followed by the Member States, due to a clear lack of political will.

2.1.9. A number of important draft directives were submitted by the Commission over the years but failed, at the time, to secure the necessary agreement and political backing for adoption as legislation.

These were:

a) the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts [1], which sets out essentially to harmonize a number of basic rules of direct insurance contract law;

[1] COM(79) 355 final, OJ C 190, 28.7.1979, as amended by COM(80) 854 final, OJ C 355, 31.12.1980; the relevant ESC and EP opinions are, OJ C 146, 16.6.1980 and C 265, 13.10.1980 respectively.

b) the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to the compulsory winding up of direct insurance undertakings [1];

c) the amended proposal for a Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision [2].

It would not appear that the Commission intends to return to any of these topics in the near future, even though it is the prevailing opinion among both insurance operators and consumer organizations that a whole series of obstacles hampering completion of the single market in this field can be traced back to the absence of Community legislation on insurance contracts (a minimum level of harmonization of substantive law).

2.1.10. At the same time, there are no plans for any Community legislation whatsoever on major parts of the insurance business as it affects both economic operators and consumers. The non-harmonization of tax arrangements for insurance, for example, directly influences the terms of competition conditions in the internal market. Not only are there variations in national tax levels and bases (including those for parafiscal charges), and in the exemptions and administrative requirements of national authorities, but also the tax exemptions and benefits applied to insured parties differ territorially. In both areas clear disparities are apparent between the different Member States.

The recent Wielockx case in which the Court of Justice decided — contrary to the Bachmann v. Belgium case — that a Belgian citizen was entitled to enjoy, in Belgium, the tax advantages of an insurance policy concluded in Holland, cannot really be interpreted as a significant shift in the Court's position in this area given the specific character of the case, arising from an agreement for avoiding double taxation.

It should, however, be noted that the Svensson judgment (14 November 1995) placed a further limit to the precedent created by the Bachmann case by forbidding a Member State (in this case, Luxembourg) from invoking 'the integrity of the fiscal regime' to justify a national measure restricting the freedom to provide services, since there was in this case no direct link whatsoever between the benefit provided by the measure (in this case, an interest rate subsidy for a housing loan) and the financing of this benefit by means of the profit tax on financial establishments officially recognized in the State in question.

For further details and a balanced approach to the issue, see e.g. J.M. Binon, 'Avantages fiscaux en assurance de personnes et droit européen. Après les arrêts Schumacker, Wielockx et Svensson, quelle place rest-t-il pour la jurisprudence Bachmann?' ('Personal insurance fiscal advantages and European law. After the Schumacker, Wielockx and Svensson judgments, what role for the Bachmann ruling?'), *Revue du Marché Unique Européen*, 1996, p. 129-144.

2.2. *Future law*

2.2.1. It is reported that the Commission is preparing a number of initiatives, some of a general or specific legislative nature, others 'interpretative', in order to deal with some of the difficulties mentioned. These are highly relevant to the present Opinion.

On a general level, a proposal for a European Parliament and Council Directive on the supplementary supervision of insurance undertakings in an insurance group has already appeared, being presented by the Commission on 20 October 1995 [3].

In the specific area of credit insurance, a proposal for a Council Directive on harmonization of the main provisions concerning export credit insurance for transactions with medium- and long-term cover [4] has recently been under discussion at the Commission (4 June 1997); at the same time, a draft Communication from the Commission to the Member States on distortions to competition caused by short-term export credit insurance has been distributed.

2.2.2. More generally — but of the greatest relevance to the insurance sector — a proposal for a Directive has been announced aimed directly at protecting consumers in distance financial services contracts. This is a matter which is known to have been excluded from the scope of Directive 97/7/EC of 17 February 1997. It is important that whatever is adopted with regard to distance selling does not frustrate the development of the single market for insurance services.

2.2.3. Elsewhere, the anxiously-awaited Directive 97/5/EC of 27 January 1997 replacing Recommendation 90/109/EEC on the transparency of banking conditions relating to cross-border financial transactions was finally adopted, with the aim of regulating important aspects such as minimum transparency requirements and the rights and obligations of the parties with respect to

[1] COM(86) 768 final as amended by COM(89) 394 final of 6 October 1989 inOJ C 253; the relevant ESC and EP opinions are in OJ C 319, 30.11.1987 and C 96, 17.4.1989 respectively.
[2] COM(93) 237 final, OJ C 171, 22.6.1993.
[3] COM(95) 406 final: OJ C 341, 19.12.1995; Opinion ESC: OJ C 174, 17.6.1996.
[4] CABII/160/97.

certain distance contracts [1]. More recently still a communication from the Commission of 9 July 1997 on boosting customers' confidence in electronic means of payment within the single market included a new recommendation, supplementing and superseding the recommendation of November 1988 on the same subject. In particular it covers the relationship between issuers and holders and sets out detailed transparency requirements, as well as defining the rights and responsibilities of each party and calling for new means of redress [2]. The Commission has announced that it will be closely monitoring progress in this area up to the end of 1998 and that, if it judges the results unsatisfactory, it may propose a Directive.

2.2.4. The possible publication of the promised draft Directive on insurance brokers is also, naturally, awaited with interest, as this is an essential element in the proper functioning of the internal insurance market.

2.2.5. On 15 October 1997, the Commission proposed a fourth specific Directive on vehicle insurance, for the purpose of giving the victims of traffic accidents outside their own countries the right to take direct action with respect to the insurer of the opposing party which caused the physical or material loss while using a vehicle registered and insured in a Member State other than that of the victim's residence.

In order to significantly reduce the time victims have to await compensation, the draft Directive stipulates that the opposing party's insurer must submit a proposal for compensation within three months of the date on which the victim lodges a claim for compensation with the appropriate representative.

2.2.6. The Commission has also announced that a communication interpreting the concept of the general good as applied to insurance, similar to its recent work in connection with the banking sector [3], is at an advanced stage of preparation.

The draft Communication was published on 10 October 1997 (SEC(97) 1824 final), and represents an important step towards clarifying the scope, range and meaning of a number of basic concepts in this sphere, particularly regarding the freedom to provide services and the general good.

Given that the Commission, rather than immediately issuing a final document, has very wisely decided to open the subject to public debate in order to hear the views of the various sectors, and that the Committee will draw up an Opinion on the document in due course, it suffices at this point to highlight the importance, necessity and timeliness of the document and point out that the concerns it voices are in keeping with those contained in the present Opinion.

2.2.7. Lastly, a carefully-prepared Commission report to the Insurance Committee points to the Commission's current concerns regarding the need for better harmonization of insurance companies' solvency margins [4] — the importance of which for effective consumer protection hardly needs underlining.

2.3. *Main difficulties and obstacles in the effective implementation of the single insurance market*

2.3.1. There are a number of recognized general obstacles of various types. Some of the main ones are set out below, though the list is by no means exhaustive:

2.3.1.1. Legislative obstacles at Community level

2.3.1.1.1. The first of these is, of course, the total lack of harmonization at the level of substantive law, in other words, a minimum level of regulation on insurance contract law in the European Union.

2.3.1.1.2. This lack of legislative focus at Community level and the way in which Directives are successively amended and partially revoked, make legislation difficult to understand and implement. Consolidation is necessary [5].

The result is that the three generations of Directives complement, parallel and supersede each other, generating major difficulties for both market operators and consumers. Consolidation of insurance law in the form of a coherent code could contribute to a more even application of Community law.

(1) OJ L 43, 14.2.1997.
(2) COM(97) 353 final.
(3) SEC(97) 1193 final, 20.6.1997.
(4) COM(97) 398 final, 24.7.1997.
(5) The outstanding Consolidation of Community Insurance Law produced by the European Insurance Committee is particularly worthy of note, as is the recent publication of two important works on the single market in life assurance and insurance other than life assurance, which were used extensively in drawing up this opinion.

2.3.1.1.3. The absence of minimum harmonization in insurance distribution and of real freedom for insurance brokers to provide services — insofar as there is no single licence system for distribution — explains why insurance intermediaries face artificial barriers when operating on the Community market.

2.3.1.2. Difficulties in interpretation

2.3.1.2.1. The first difficulty naturally concerns the precise distinction between freedom of establishment and freedom to provide services, and the concepts of 'temporality', 'regularity', 'periodicity', 'continuity' and 'frequency' which are involved in defining them, in accordance with Court of Justice jurisprudence [1].

2.3.1.2.2. The second relates to the concept of the 'general good', and arises from the widely varying interpretations as a result of which each Member State has been able to justify a range of derogations from the right to provide services which are quite simply distortions of competition, of no benefit to consumers and of no help to operators. It is important that 'general good' should not be mistaken for 'national interest' as defined by each Member State, but should be understood exclusively as the real interest of citizens as a whole, which is not the same thing.

2.3.1.2.3. The third, but equally important, difficulty in interpreting and applying Community insurance law relates to the identification and interpretation of the law applicable to insurance contracts, whenever there is more than one connecting link which may be subject to different legal systems.

Having apparently abandoned the idea of harmonizing insurance contract law, and since the Rome Convention of 19 June 1980 [2] on the law applicable to contractual obligations still does not apply 'to contracts of insurance which cover risks situated in the territories of the Member States of the European Economic Community' [Article 1(3)], the Directives opted — without allowing the parties any say in the decisive roles allotted to them — to get embroiled in a new complex set of rules on the subject of competence and referral. This has had the effect of turning straightforward determination of the law applicable (conflict of laws) and, consequently, of the competent court (conflict of jurisdiction) into an impenetrable labyrinth, particularly given that one of the determining elements also involves the 'general good enigma' [3].

2.3.1.3. Difficulties at Member State level

2.3.1.3.1. Some supervisory bodies do not clearly indicate which criteria they use in complying with the principle of non-discrimination and do not inform all operators working within their territory about the tax arrangements and regulations applying to the sector.

2.3.1.3.2. National legislation is sometimes obscure and vague, and operators from other countries providing services experience difficulty in obtaining legal texts: there is a pressing need for an up-to-date database of the national legislation applicable in the Member States of the European Union. Such national databases should be consolidated at Union level and incorporated into the Commission's system. The Commission should define the requirements for communication and release of information and means of access.

2.3.1.3.3. Cases have also been reported of late, incomplete or incorrect transposition of Directives on the part of some Member States, or of certain branches of insurance, particularly agricultural insurance and pension funds in certain countries, being exempt from the need to comply with Directives.

2.3.1.3.4. The diversity of tax systems, mentioned earlier, naturally has an impact on the prices applied by certain operators and also gives rise to discrimination between nationals and non-nationals, generating serious distortions of competition as well as constituting effective 'technical' barriers to the single market.

2.3.1.3.5. Lastly, although it would not be reasonable to expect rapid harmonization of insurance law, there are a number of aspects which constitute real obstacles to the completion of the single market, such as the differences in the legal maximum duration of insurance policies.

2.3.2. A number of barriers specific to certain markets or branches of insurance were also identified and reported. Among these the following should be mentioned:

2.3.2.1. Some markets have not abolished prior control of contracts, as stipulated in the third coordinating

(1) See cases 33/74 Van Bingsbergen, 31.12.1974, Reports 1974, 1299; cases 286/82 and 26/83, Luisi and Carbone, Reports 1983, 377; case C 148/91, 3.2.1993, Reports 1993, 1487; case C55/94 Gebhard, Reports 1995, I, 4195.

(2) OJ L 266, 9.10.1980 (80/934/EEC).

(3) See B. Dubuisson, 'Transparence et sécurité dans les contrats d'assurance en Europe' (13th International Legal Colloquium of the European Insurance Committee, Dresden, October 1995).

directive, so that contractual amendments and new clauses must still be notified to the supervisory bodies prior to commercialization.

2.3.2.2. Some supervisory bodies, particularly where 'compulsory' insurance is concerned, require compliance with specific contractual clauses which are apparently unfair, or prohibit the use of other clauses which have never been acknowledged by courts as being unlawful.

2.3.2.3. Some countries infringe the provisions of the third Directive as regards the requirement that existing insurance companies should be obliged to communicate new contractual conditions, or that this condition must be met by a company before it starts in business [1].

2.3.2.4. The differences in classification of insurance products on national markets (e.g. the distinction between pension savings and life insurance, or between these and certain investment funds), together with the uncontrolled emergence of new products lead to lack of transparency and hamper the application of the principle of mutual recognition with regard to the equivalence of classes of life assurance and non-life insurance, and the classification of risks.

2.3.2.5. Some countries still require insurance brokers from other Member States, intending to work in that country under FPS arrangements, to seek prior authorization [2].

2.3.2.6. Lastly, in exercising their perfectly legitimate right to demand the establishment of a 'fiscal representative' in relation to FPS, some Member States lay down a series of administrative and financial requirements which are real obstacles to competition and constitute discrimination towards insurance companies from other Member States.

2.3.3. Two difficulties should be mentioned at this point. The first concerns some Member States' requirement that insurance companies join national professional bodies in order to be able to be a party to the agreements for the rapid settlement of claims, which bans insurance companies operating under FPS from being a party to such agreements.

The second difficulty lies in the fact that in some countries where official arbitration systems have been set up, only policyholders from that country may use such arrangements: access is denied to policyholders with companies not from the country in question, even if the claim has occurred within its territory, or if the policy has been concluded in a country other than that in which the policyholder is resident.

3. Contractual insurance relations — policies

3.1. The position of consumers merits particular attention and special protection because of the specific form of contractual relations, embracing the range of reciprocal rights and obligations flowing from the conclusion of the contract — the insurance policy [3].

This is, of course, a classic example of what is known as a 'standard form contract', the contents of which are pre-established and non-negotiable and characterized in legal theory by the economic superiority of one of the parties, who is in a position to dictate the contract clauses to the other, the unilateral nature of the clauses, drawn up specifically in the interests of the stronger party, and the invariability of the contract text, which offers the weaker party a 'take it or leave it' option.

3.2. The particular nature of these contracts finally led to the adoption, after a lengthy period of preparation, of Directive 93/13/EC of 5 April 1993 [4] the main purpose of which is to prevent the use of general contractual clauses in which 'contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer', and to allow them to be declared null and void when included in standard contracts.

The Directive, already transposed in most Member States, automatically applies to insurance contracts.

The specific nature of insurance activity does however justify individual agreements, allowed by EEC Regulation No 3932/92 of 21 December 1992, in the area of standard conditions for direct insurance, provided the restrictions imposed by Articles 7 and 17, and the

[1] This practice by France was recently the subject of a 'reasoned opinion' sent by the Commission to the French Government.

[2] This occurs in Spain, and gave rise to the Commission's recent 'reasoned opinion'.

[3] In this connection, see the Judgment of the Court of Justice of 4 December 1986 (case 205/84, Commission v. Germany).

[4] OJ L 95, 21.04.1993.

fundamental principle of contractual balance, are observed.

Although, as will be seen below, a degree of similarity may often be observed in the way insurance companies in the different Member States use general contractual clauses, sometimes as a result of national rules, and which might, under Community law, be deemed unfair, there is no record of the Commission ever having investigated or reported such occurrences as an infringement of the Regulation's provisions, or having recommended that Member States amend their national rules.

3.3. With the exception of Directive 92/96 (life assurance), the specific insurance Directives referred to above make only incidental reference, in separate provisions, to:

— minimum information to be supplied to policyholders/insured parties (Articles 12(5), 31 and 43 of Directive 92/49 and Articles 11 and 18(2) of Directive 92/96);

— publicity (Article 41 of Directive 92/49 and Directive 92/96);

— special rights enshrined in the legal expenses insurance Directive (Directive 87/344).

Directive 92/96 (life assurance) is the only one to draw up a list (in Article 31 and Annex 2) of information relating to the insurance company and to the content of the contract which must be communicated to policyholders/insured parties both before the contract is concluded and at the time the contract is signed .

3.4. There is no legal framework at Community level defining rules for a minimum level of transparency in insurance contracts in general, including non-life insurance or, more specifically, describing unfair general contractual clauses in insurance, or even laying down general principles of good faith or contract balance in the field of insurance.

3.5. In some Member States, on the other hand, the legislator has striven to establish, in general terms, the form and minimum content of the pre-contractual and contractual information to be given to policyholders/insured parties in both the life and non-life sectors, together with some rules on insurance publicity and on the content of certain clauses. The French insurance code is a case in point.

In other countries, spontaneous dialogue and consultation between insurance companies and consumers has led to freely adopted codes of practice in such important areas as joint information to be provided to consumers, product transparency, prohibition of unfair clauses and access to legal redress. One instance is the 1994 Protocol of Agreement in Italy between ADICONSUM and ANIA.

In this respect, it is worth highlighting the UK's experience on account of its traditional approach, deeply-rooted in the country's legal and cultural principles, and its results in terms of pre-contract information, negotiation and implementation of insurance contracts and the settlement of disputes via the Ombudsman and the Personal Investment Authority. All parties seem to find this approach satisfactory [1].

3.6. Consumers do however share a number of concerns with regard to the embryonic single insurance market, ranging from disparities in contract content to means of achieving judicial or extra-judicial redress, from the quality of information to the quality of insurance distribution, from the lack of a specific regulatory framework for cross-border insurance sales to the scope of the 'general good' clause and from the effects of tax aspects to the impossibility of comparing prices.

3.6.1. The different ways in which each Member State has regulated these questions — or, alternatively, the lack of regulation — leaves an entire market, where competition is far from perfect and those acting for one side tend to work together to the detriment of the other, to its own devices. This means that a huge number of different solutions exist to what are identical situations within the single market, particularly with regard to cross-border transactions, which are becoming ever simpler with the arrival of the information society.

3.6.2. Even in cases where procedures based on national codes of practice appear to achieve meaningful results in the countries where they exist, their 'temporal' nature, in addition to their dependence on specific cultural factors, means that they cannot be considered for adoption as an overall solution.

[1] Although the PIA is the competent authority for settling disputes, it is always the PIA ombudsman who acts as an independent judge in disputes between consumers and life assurance companies. Further ombudsmen exist in the UK who also act as independent judges for other insurance sectors and are not affiliated to the PIA.

3.6.3. The results of the work under way at the Commission, as part of the discussions with the relevant trade and consumer organizations, are therefore awaited with interest since a proper balance must be struck between regulation by the authorities, codes of good conduct, and contractual freedom.

3.7. It is possible, even within each Member State and in the light of their own legal systems, to detect insurance contractual relations which are less than proper and fair.

Both research in this area and decisions by judicial or administrative bodies with jurisdiction in the field have revealed contractual practices and conditions which are less than clear or less than intelligible, even though in legal terms they might not be unfair, immoral or unlawful [1].

Some of the main points arising from such initiatives, which have an impact on contractual relations in the insurance sector, are given below.

3.7.1. Pre-contractual advertising and information

3.7.1.1. With regard to the general advertising of insurance products, mention was made of such practices as: intrusive advertising, involving persistent telephone calls to people at home, encouraging them to take out insurance policies; direct mailing, serving the same objective and, in some cases, offering gifts (such as mobile phones) to people taking out certain policies; and direct insurance advertising, indicating rates ('the cheapest') or cover which subsequently prove false.

3.7.1.2. Most of the complaints, however, concern the lack of correct and complete or, at least, proper pre-contractual information regarding the essential aspects of a contract — cover, exclusions, definition of loss, conditions and deadlines for compensation, insured party's obligations, real cost of premiums.

This was regarded as particularly bad in situations where credit institutions, as opposed to legally authorized insurance brokers, advertise policies from companies with which they have links, making these policies 'obligatory' for people seeking finance (e.g. life or fire insurance for people wishing to take out a mortgage).

The practice of 'clandestine' insurance was also condemned: this is insurance connected, for example, to a bank account or a credit card. Insufficient information about the insurance is given to the insured person; as a result, they frequently fail to take advantage of the inherent benefits which they are unaware of but pay for.

Also highlighted was the need to make a clear distinction between genuine insurance products and financial, savings or investment products, whether insurance-linked or not, which come under banking and not insurance legislation and must be regarded as such, regardless of who sells them.

3.7.1.3. Special mention should be made of 'distance' insurance communication techniques and in particular the use of modern means of communication such as the Internet and the appearance of new prospecting and marketing technologies and sophisticated 'non-material' distribution techniques, for which there is no legal framework at Community level and hardly any in most Member States.

The Commission's forthcoming draft Directive, intended to establish a genuine single market in this field and to provide consumers with adequate protection while ensuring the development of electronic commerce, is eagerly awaited.

3.7.2. Negotiation of insurance contracts

3.7.2.1. The offer, negotiation and signing of insurance contracts raises the following main questions:

a) the nature, quantity and reliability of the information provided beforehand to clients, involving the need to:

   — guarantee simple and comprehensible information about the main features of the contracts, outlawing the use of 'technical' or ambiguous jargon, without compromising technical and legal accuracy;

   — permit the information to be comparable, avoiding the use of identical terms for different types of cover;

   — demand clarification of the wording of the clauses in contracts, thereby reversing the burden of proof;

   — ensure the precise indication of the level of the premiums, how they are made up and what criteria are used to fix them;

[1] In this respect, see the reports of the important European insurer/consumer dialogues, organized by the EIC under the aegis of the Commission on 17 December 1996 and 16 April 1997.

b) obligation always to provide, prior to the signing of a contract, the full text of the general and special conditions, written in a legible and comprehensible manner;

c) the need to guarantee generally (and not only for life assurance policies) a cooling-off period for the insured party, after which the contract is considered to be applicable retroactively from the date on which the insurer's proposal was accepted, with express mention of the provisions applicable in the intervening period in the event of a claim and possible entitlement to the premium;

d) clear definition of the role of the initial 'questionnaire' and the consequences of the insured party's 'declarations', as regards not only the penalties in the event of false information or failure to divulge information but also the protection and confidentiality of personal data, in accordance with the appropriate Directive [1];

e) suitability of the insurance product for the real needs of the insured party, so as not to sell unwanted products or products which do not cater for needs;

f) as regards the special case of 'distance' contracts (e.g. via the Internet), the need to:

— guarantee precise knowledge of all the terms of the contracts;

— define the legal value of 'electronic signatures' and the legislation applicable to these new methods of 'distance' marketing;

— guarantee, without prejudice to special cases such as policies with immediate effect, a cooling-off period without penalty or requirement to give reasons;

— clarify the system of compensation applicable in the event of a claim between the date of 'signature' of the contract and the date of its confirmation in writing;

— protect consumers who do not wish to be contacted by distance communication methods;

— define the principles for implementing the services provided for in distance contracts;

— guarantee the confidentiality of personal data;

— identify the law applicable and the means of redress available.

3.7.2.2. An extremely important question in this context is the role played by insurance brokers and other middlemen in the marketing of products and provision of after-sales services.

3.7.2.2.1. Reference was made to the significant differences between the provisions in force in the different Member States, leading to the call for a possible Directive establishing a Community framework. This would address the recognized ineffectiveness of Recommendation 92/48/EEC of 18 December 1991 [2] and the outmoded content of Directive 77/92/EEC of 13 December 1976 [3].

3.7.2.2.2. Emphasis was also placed on the need to ensure that insurance brokers had the technical training needed to perform their important task, so as to guarantee a quality service. Credit institutions and similar bodies were also criticized for acting wrongfully more and more as insurance brokers in some Member States without having any specific qualifications to do so. They have been giving wrong information and not providing any after-sales assistance, especially when claims are submitted, and occasionally made their financial services subject to the signing of an insurance contract.

3.7.3. General, special and particular conditions of contracts

3.7.3.1. As a standard form of contract, an insurance policy is drafted in advance for acceptance by the insured parties. It normally consists of a general part — the general conditions — and a series of equally standard options — the special conditions.

The particular conditions set out the real content of the contract, listing the contracting parties and the risks covered and excluded and specifying the premium and how it is to be paid.

In general insurance contracts for private individuals, it is practically impossible to amend or obtain a derogation from any general or specific condition, except within the highly restricted framework of the above-mentioned particular conditions.

3.7.3.2. Studies carried out in various Member States and, in particular, a study commissioned by the Commission and coordinated by the Consumer Law Centre at Montpellier University [4] on unfair clauses in certain motor vehicle (third-party and fully-comprehensive) and house (multi-risk) insurance contracts in the then twelve Member States revealed the existence of numerous clauses which infringed the provisions of Directive 93/13/EC.

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[1] Directive 95/46/EC, OJ L 281, 23.11.1995.

[2] OJ L 19, 28.1.1992.

[3] OJ L 26, 31.1.1977.

[4] Contract AO-2600/93/009263: summary report prepared by Anne d'Hauteville and Kristian Vandenhoudt (July 1995).

The study identified 23 types of unfair clauses used by insurance companies in the various Member States in the specified fields.

Because of its relevance to the present opinion, it is worth mentioning that these clauses were considered to be unfair for the following reasons:

a) Formal reasons: ambiguity, imprecision or use of subjective concepts; reference to legal principles or rules not to be found in the contract;

b) Content: the contractual guarantee is incomplete; the insured party is required to provide evidence of negative facts or ones that are virtually impossible to prove; the insurer is entitled to alter or suspend the guarantee unilaterally;

c) Execution of the contract: the insured party is required to act within very short deadlines, or to take 'immediate' action with no specified deadline; the policy may be rescinded because the insured party fails, for reasons which are not his or her fault, to fulfil minor or secondary obligations; the insured party is obliged to accept an expert assessment of arbitration, against his or her will; the insurer is allowed excessively long deadlines to pay out compensation; the insured party is obliged to use the services of a particular lawyer or to follow certain judicial procedures;

d) Termination of the contract: the insurer is granted special rights to rescind the contract; the insurer is entitled to rescind the contract unilaterally without stating why; the insurer is entitled to rescind the contract following the first claim; the insurer is entitled to terminate the contract at very short notice, while the insured party is required to give much longer notice; a penalty clause entitles the insurer to retain part of the premium on termination of the contract;

e) Legal redress: any legal action must be taken within a very short deadline; the use of arbitration is obligatory; the jurisdiction clause (only the laws of the country where the insurer's head office is located apply).

3.7.3.3. Case law and the competent authorities in most Member States have often censured unfair clauses in insurance policies. DG XXIV has collated a set of decisions showing the main types of contract clause considered unfair by the relevant judicial, administrative or other authorities of the Member States.

Because of its relevance to the present opinion, it is worth mentioning that these clauses were considered to be unfair for the following reasons:

a) Clauses which restrict cover by using unclear, imprecise or ambiguous terms, such as: particularly dangerous or reckless behaviour (000175); vandalism (000085); drunkenness (000129); safety rules (000206); exceptional weather conditions (000311); vehicle wear or defect or poor maintenance (000312).

b) Clauses which show lack of good faith or abuse of rights: refusal of the insurer to pay compensation following the non-payment of the premium, without any forewarning, when a fire occurs the day after the deadline for payment of the premium (000176); demand by the insurer for payment of various outstanding annual premiums, after the guarantee has been suspended owing to failure to pay the premium, when this failure is due to an intentional delay in collection of the premium by the insurer (000193); refusal of the insurer to pay compensation because the premiums were paid to a broker when the policy states that they must be paid directly to the insurer (000201); automatic reduction of the insurance sum, following the first claim, for the rest of the insurance period, while the premium remains unchanged (000314); amount of compensation agreed between the insurer and the insured party, preventing the latter from taking any action against the third party who is the reason for the claim (000327); limited liability clauses which were not expressly accepted by the insured party and which are not indicated clearly in the policy (000031); clause requiring the insured party to notify the insurer within 48 hours, failing which compensation will not be paid (000232); clause allowing the insurer to terminate the policy unilaterally after the first claim (000152); clause allowing the insurer to alter the terms of the policy unilaterally at the end of the year, assuming tacit acceptance of the new terms by the insured party if he or she does not respond within a given deadline (000160); clause allowing the policy to be rescinded in the case of non-repayment of excess by the insured party (000298); clause waiving insurer liability if a motor vehicle transports, free of

charge, more passengers than stipulated in the log book (000305); clause restricting insurer liability if a motor vehicle is not driven by the insured party, or if the driver is not authorized to drive it or does not have a driving licence (000306); clause freeing the company of liability for a burglary when the insured party has not locked all doors, windows and other possible entry points (000133).

c) Clauses which contain subjective concepts or concepts whose interpretation is left to the insurers: the company reserves the right to refuse defence (...) when it considers that the demands of the insured party are indefensible (000178); incapacity to work, infirmity, invalidity, acute or chronic illness or restriction of pathological activity (000169); any false statement (even if not intentional) makes the contract null and void (000170).

d) Clauses not respecting the balance of the contract: motor-vehicle insurance with a ten-year term (000002); increase in premiums (in health insurance) because of factors which depend solely on the will of the insurance company (000301); non-provision of third party motor vehicle cover where accidents involve the insured party's spouse or relatives, despite the absence of effective proof of fraud (000303); possibility for the insurance company to make it necessary to obtain an expert assessment, even without the agreement of the insured party, with the costs being borne by both parties (000274); possibility for the insurance company to make it necessary to obtain an expert assessment, as a condition for the insured party being able to go to court (000144); non-repayment of part of the premium in the event of an insurance contract being rescinded before its date of expiry when the premium had been paid in full in advance and no claim has been made (000300); non-specification of the period within which a claim is to be settled or compensation paid by the insurance company, or specification of a period without indicating the date on which this is to start or leaving this to the discretion of the insurance company (000304).

The figures in brackets refer to the case numbers catalogued by DG XXIV, which the rapporteur was able to consult.

3.7.4. The premiums and their payment

3.7.4.1. The premium is the price paid for the service, as agreed on by the parties.

However, insurance is a mathematically based activity based on rigorous commercial principles, meaning that the 'commercial premium' consists of the 'pure premium' plus loadings.

In accordance with good actuarial practice, the 'pure premium' must cover the statistical cost of the risk and the aim of the tariff rules is to ensure this balance as a function, in particular, of the capital insured, the nature of the risks and the duration of the guarantee. Apart from taxes, the loadings cover a proportional share of the administrative and acquisition costs (general expenditure, financial charges, cost of collection and commissions).

3.7.4.2. A first point to be noted is the enormous difference between the insurance premiums charged in different EU countries to cover similar risks [1].

In addition, as already stated, when insurance companies in some Member States negotiate contracts with clients, they fail to give any precise information about the exact level of the premiums, and how they relate to the risks covered. Such information would be useful for making comparisons.

3.7.4.3. Equally, some insurance companies fail in their duty to inform clients that they can adjust the amounts covered. Nor do they freely adjust these amounts when this may be to their disadvantage. In the event of a claim, they usually apply the 'proportional rule' so as to reduce the compensation they pay without, however, returning any of the excess premium.

3.7.4.4. It was also found that, in many cases where insurance contracts are reduced in value, or rescinded before their normal date of expiry, some companies do not refund the corresponding part of the pure premium.

3.7.4.5. It was also pointed out that some companies which accept the payment of premiums in instalments charge above the market rates for common consumer credit.

3.7.4.6. Finally, it was discovered that vastly differing arrangements apply when premiums are not paid on time, especially as regards the renewal of contracts and irrespective of whether national legislation addresses the consequences. In particular, the following matters are affected:

— the immediate effects — termination or suspension of cover and for what period;

— the additional deadlines for the respective payment, if any;

[1] A recent study carried out by BEUC/Test Achats for the motor-vehicle sector revealed differences in the premiums for similar risks of up to 1 to 4; the increases in premiums as a result of accidents (bonus-malus system) also diverge between Member States by 0 to 67 % and in some cases, 100 %.

— the consequences of a claim arising in the meantime;

— the possibility of demanding the premiums due, despite the suspension of the insurance, for an indefinite period (several years).

3.7.5. Verification of claims and compensation

3.7.5.1. More often than not, insurance policies fail to lay down precise deadlines for the settlement of claims, using vague and ambiguous expressions such as 'the utmost care' and 'the utmost effort'.

Because of this failure, it has been known to take more than 120 days to settle claims and thereafter about a year to pay the compensation. Some companies take more than two months to simply recognize who is (ir)responsible.

3.7.5.2. In some Member States where legal proceedings are known to be lengthy (between two and four years to obtain a declaratory judgement in a court of first instance), it is customary for insurance companies to refuse systematically to accept an amicable settlement or deliberately to offer less than they are required to pay. This is because of what they gain by paying later, despite the costs of going to court. In addition, a large number of claimants never even go to court (because of their reluctance or lack of money) especially if the court is not in the country of which they are a national or their country of residence or if the law applicable is not the law of the country of which they are a national or if the proceedings are likely to be slow or have an uncertain outcome.

3.7.5.3. The non-judicial avenues available, in turn, vary considerably from Member State to Member State. In many cases, not enough is known about them by citizens of other countries, which creates added problems in the case of cross-frontier disputes.

It was also mentioned that some systems are not impartial and do not even provide consumers and insurance companies with identical guarantees of protection. They may discriminate on grounds of nationality, especially in cases where complaints are assessed by professional bodies or bodies within the insurance companies themselves.

An exception here seems to be when a case goes to independent arbitration or when an equally independent ombudsman mediates (as in the UK).

3.7.5.4. It is necessary to underline the disparities between damage assessment criteria especially for physical or mental suffering and the differences in the compensation paid for the same type of damage, as a result of the practice of applying the law at the place of the accident. This is a cause of injustice. The Commission's suggestion that the 'lex loci delicti' be changed into the 'lex damni' or the law of the claimant's country has not been given the favourable response it merits.

3.8. The ESC thinks that all the aforementioned factors should be given close consideration by the Commission and the Member States and, in particular, by insurance supervisory bodies and the representatives of consumers' interests at both national and EU level. The aim should be to contribute towards the desired establishment of the single market in insurance, in accordance with the legitimate hopes of customers.

The ESC is, however, aware that in the short term it will not be possible to make any significant changes to many of these aspects and to others which are directly or indirectly linked thereto and are the subject of other studies or opinions.

Therefore, the conclusions which follow list only urgent, priority measures, as defined within the framework of this Opinion without prejudice to subsequent developments in this or other contexts.

4. Conclusion and recommendations

4.1. Show support for current Commission initiatives on:

4.1.1. establishment of a right for victims of accidents abroad to take direct action against the insurer of the opposing party (proposal in the fourth motor-vehicle insurance Directive);

4.1.2. Community regulation on the liberalization of insurance broking and the freedom to provide insurance broking services in any Member State;

4.1.3. regulation of the essential requirements with regard to the offer, negotiation and signing of financial service contracts, including those concluded at a distance, particularly via Internet, covering aspects such as:

4.1.3.1. the minimum amount of information with which consumers must be provided;

4.1.3.2. the principles governing the implementation of the services provided for in the contract;

4.1.3.3. consumers' right to terminate contracts or change their mind;

4.1.3.4. arrangements for settling disputes out of court;

4.1.3.5. prohibition on supplying unsolicited services that could lead to premium increases;

4.1.3.6. restrictions on the use of certain distance communications techniques;

4.1.4. supplementary supervision of insurance companies in an insurance group [1];

4.1.5. precise definition of the concept of 'general good' and what it entails for insurance;

4.1.6. close consideration of questions linked to supplementary pensions [2];

4.1.7. establishment of a working group to study the improvements to be made to existing legislation on insurance companies' solvency margins [3].

4.2. Call on the Commission to begin work on:

4.2.1. the definition of specific Community-level rules for cross-border insurance advertising, especially via Internet, to serve as minimum requirements to protect the general good at Community level;

4.2.2. the possibility of harmonizing tax arrangements for insurance, either in terms of the system applied to insurance companies or tax incentives for policy holders;

4.2.3. the applicability of the Rome Convention to insurance;

4.2.4. a special legislative initiative for the out-of-court settlement of cross-border insurance disputes;

4.2.5. creation of an observatory to deal with complaints about insurance at Community level;

4.2.6. consolidation of insurance-related legislation in a single intelligible text which is easy to consult and circulate.

4.3. Direct the attention of the Commission and the Member States to the following in particular:

4.3.1. the need to improve pre-contract information on insurance, requiring (i) better training for insurance company staff, agents and other intermediaries, and (ii) availability of adequate, accurate means of information;

4.3.2. the desirability of arrangements to settle disputes by arbitration, or the appointment of insurance ombudsmen independent of insurance companies;

4.3.3. the advisability of setting up a rapid system for provisional compensation in cases of third party liability, acting before liability is apportioned between insurance companies, even where cases go to court;

4.3.4. the need to continue research and discussion with a view to setting up a guarantee fund on a harmonized basis for compensation to victims of certain risks in default of appropriate insurance;

4.3.5. the need for a clear ban on 'obligatory' and 'linked' insurance policies;

4.3.6. the advisability of re-examining the Commission's 1979 draft Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts [4] in the light of the principle of subsidiarity and of progress made in the meantime with the third generation Directives and the recent Treaty amendments agreed at Amsterdam, particularly the new wording of Article 129a of the Maastricht Treaty;

4.3.7. the need to assess the effectiveness of the mechanisms provided for in EEC Regulation (EC) Nos 1534/91 of 31 May 1991 and (EC)3932/92 of 21 December 1992, with a view to monitoring effectively the unfair nature of some of the general clauses contained in insurance policies;

4.3.8. the case for strengthening the powers of the Insurance Committee so that it can play an effective part in harmonizing the coordinating practices of the various national regulators in the field of insurance;

4.3.9. the need to set up national databases of existing insurance law and regulations in each country and coordinate them at Community level, and to draw up rules on access to, and disclosure of, their content.

4.4. Prompt trade organizations from the insurance sector and consumer organizations to engage in dialogue and concentrate their efforts on regulating their working practices in accordance with codes of good conduct and

(1) OJ C 341, 19.12.1995.
(2) Green Paper on supplementary pensions in the single market, COM(97) 283 final; OJ C 19, 21.1.1998, p. 45.
(3) COM(97) 398 final, 24.7.1997.
(4) OJ C 190, 28.7.1979.

finding the best solutions for settling disputes out of court.

4.5. Urge the Commission to spare no effort in defining Community-level common minimum requirements for insurance contracts (draft directive), involving:

4.5.1. minimum pre-contract information modelled, for example, on the French insurance code (Articles 112 and 132);

4.5.2. a list of key terms and their meanings;

4.5.3. a list of typical unfair terms in insurance contracts;

4.5.4. the minimum compulsory content of any insurance contract;

4.5.5. all the contractual obligations common to any insurance contract;

4.5.6. the basic principles and rules of any insurance contract;

4.5.7. a provisional compensation scheme for third party liability insurance;

4.5.8. compulsory link between premiums and the value of risks, in particular by means of automatic depreciation of insured objects in line with their age and a corresponding reduction in premiums;

4.5.9. establishment of harmonized minimum cooling-off periods within which consumers may withdraw from a contract;

4.5.10. requirement for policies to be legible and understandable and for the general and special conditions to be made available during the pre-contract stage and before signature.

4.6. Urge the Commission to continue its efforts to create a Community-wide systematic inventory and public register of unfair general terms in insurance contracts based on.

4.6.1. thorough research and assessment by the Commission services;

4.6.2. compilation and processing of decisions by the relevant Member State bodies;

4.6.3. publication of results;

4.6.4. access to information via Internet;

4.6.5. possible description of types of unfair terms and bans thereon through legislation, providing the appropriate Commission service with the necessary human and other resources.

4.7. Press the Member States to set up speedy, efficient systems for the condemnation and judicial, extrajudicial or administrative amendment of unfair terms in insurance contracts, particularly through class actions effective across the board, and suggest that the Commission launch support programmes for initiatives in this field.

Brussels, 29 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Commission Communication: Towards an urban agenda in the European Union'

(98/C 95/19)

On 13 May 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Regional Development and Town and Country Planning, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 January 1998. The rapporteur was Mr Vinay and the co-rapporteur was Mr Muller.

At its 351st plenary session (meeting of 28 January 1998), the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. Europe is the most urbanized continent in the world, and has been for at least three thousand years. The city paradigm is thus deeply ingrained in the culture, society and economy of Europe's peoples. Notwithstanding the specific problems which at certain periods — and especially today — have influenced city life, economic and cultural development is still determined primarily in cities. It is thus particularly pleasing to note that the EU institutions have adopted a number of initiatives which bear witness to their concern for all aspects of both the present and future situation of urban areas.

The Commission communication is the latest and particularly worthwhile demonstration of the EU institutions' growing interest in an issue of considerable economic and social importance.

The communication is divided into four main parts.

1.2. The first chapter looks at the challenges facing Europe's cities. The per capita economic contribution of the urban population to regional and national GDP is disproportionately high. But this is not reflected in employment rates.

1.2.1. The decline in the quality of the urban environment makes it necessary to overhaul urban planning policies in order to ensure that they support sustainable socio-economic development.

1.2.2. On the socio-political front, city dwellers' weakening sense of a shared identity is leading them to take less part in the local democratic process. City management is further complicated by the fragmentation of decision-making powers, which are spread over different tiers of authority — not only local, but also regional, national and EU.

1.3. The second chapter of the communication looks at current EU actions related to urban development. It thus examines policies for promoting competitiveness and employment, economic and social cohesion, the integration of cities into the trans-European networks, and sustainable development and quality of urban life.

1.3.1. As recipients of much of internal and external investment in the EU, cities must equip themselves to become 'capable of delivering top quality services' and to have 'good infrastructure endowments' (point 2.1). Cities' capacity to innovate is generally central to the economic success of their local region.

1.3.2. In recent years, much attention has been paid to the socio-economic problems of urban areas. The Commission mentions the urban pilot projects (Article 10 of the ERDF), the success of which spurred it to launch the Urban initiative in 1994. This initiative, financed by the Structural Funds, involves establishing partnership-based integrated development programmes in deprived urban districts. The Integra scheme, launched more recently, is part of the ESF's 'Employment' Community initiative.

1.3.3. Trans-European networks and metropolitan and urban transport links are closely connected, and are essential for remedying the imbalances in the general urban system and in individual urban areas.

1.3.4. All this has also to be viewed from the angle of sustainable development, which is recognized as 'a determinant aspect of the quality of life for the present and future generations'. The communication mentions important developments in the last few years, such as the 1990 green paper on the urban environment, and the sustainable cities project which was launched in 1993. Environment policy — with the 'greening' of the Structural Funds — and R&D policy are specifically targeted to sustainable development.

1.4. The third chapter of the communication looks at the way ahead. The Commission stresses that 'the

starting point for future urban development must be to recognize the role of the cities as motors for regional, national and European economic progress' (point 3).

1.4.1. The Commission argues that from now on, 'the various actions at the EU level should be assessed from the viewpoint of a coherent and sustainable development of cities'. It thus affirms the need for EU policies to have an urban perspective.

1.4.2. The Commission recognizes the crucial role played by the Structural Funds, and recommends that local authorities participate in the preparation and implementation of regional development programmes.

1.5. Lastly, the communication attaches particular importance to the transfer and dissemination of good practice. An 'urban audit' of the strengths and weaknesses of European cities is to be launched by the Commission.

1.6. In the fourth part of the communication, the Commission proposes that a debate on urban issues be engaged with the Council, the European Parliament, the Economic and Social Committee, the Committee of the Regions, local authorities and other interested parties. This debate will culminate with an Urban Forum which the Commission intends to convene in 1998.

2. **General comments**

2.1. Various Committee opinions have recommended that more attention be devoted to the urban effects of EU policies, on the grounds that the socio-economic development of cities should be one of the main objectives pursued by Community funds.

2.1.1. In its opinion on the Europe 2000+ report the Committee, while recognizing that 'there is still no EU strategy for improving urban balance' [1], argued that 'the EU's high level of urbanization obliges it to devote special attention to problems and trends in urban areas'. This should be a priority concern of the EU debate on urban matters.

2.1.1.1. With this in mind, the Committee suggested that the European Spatial Development Perspective (ESDP) should offer 'pointers for possible measures of Community interest to decentralize over-congested areas, diversify urban economies according to regional needs, enhance urban growth points in disadvantaged areas, stimulate and develop multi-centred urban networks, control urban sprawl and promote a new partnership between town and country' [2].

2.1.1.2. These recommendations added up to a complex and significant programme which was to come together in an EU urban policy.

2.1.2. The Committee has also drawn up an own-initiative opinion on the role of the EU in urban matters. This opinion stressed that urban policies have a 'European dimension' because they 'concern principles, factors and conditions which are of strategic importance for the development prospects of the EU and for the quality of life of the European public' [3].

2.1.2.1. The opinion put forward a number of practical proposals, such as increasing the EU's commitment to urban pilot projects (innovative measures under ERDF Article 10), gearing the Structural Funds more to urban development, examining the spatial and urban impact of all schemes that concern cities, encouraging forward-looking urban partnership schemes, and establishing a forum of EU, national, regional and local authorities, the socio-economic partners and other interested parties to prepare EU strategies for urban areas.

2.1.2.2. A precondition for this policy of increased EU attention for urban issues is that the Commission 'give a stronger lead (...). In particular, it would be helpful for the Commission to draw up a set of guidelines for the EU urban system' [4].

2.1.2.3. The Committee's thinking on this is that the urban environment should 'reflect the new perception of cities as a key element in making development policy fully consistent with policies designed to achieve economic excellence and social equity' [5].

2.1.2.4. The opinion concluded that 'the issues raised in this consideration of the EU's role in urban matters are so important for EU development and quality of life that they exceed the confines of an opinion. They require constant and careful attention.'

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[1] Opinion on Europe 2000+ — Cooperation for European territorial development (additional opinion), OJ C 301, 13.11.1995, point 2.2.6.

[2] OJ C 301, 13.11.1995, point 2.6.6.4.

[3] Opinion on the role of the EU in urban matters, OJ C 30, 30.1.1997, point 3.3.1.

[4] OJ C 30, 30.1.1997, point 5.3 (ii).

[5] OJ C 30, 30.1.1997, point 6.3.5.

2.2. The Commission communication is wide-ranging and represents a quantum jump in the approach to urban issues, which are now recognized as a central consideration in the planning of future Community policies.

2.2.1. It is also pleasing to note that the Dutch Presidency's conclusions at the informal council of regional policy and spatial planning ministers, held in Noordwijk in June 1997, include the statement that 'cities are at the heart of the European model of society as places of solidarity and social integration. Cities are the motors of economic growth, competitiveness and employment creation. They need to be places where jobs and economic growth are created for a wider economy and labour market. They should contribute to a balanced development of the urban system in Europe, and thereby reduce the opportunity gap between the various localities of the Union'.

2.2.2. The mainstreaming of urban issues is also extremely timely in wider policy terms, because it shows the public the practical ways in which EU decisions can improve the quality of life. This is especially important at the present stage of the EU integration process, which is as delicate and demanding as it has ever been. The first merit of the communication is thus that it places urban issues among the priorities of the Community agenda.

2.2.3. The Committee appreciates the close link which the communication makes from the outset between cities and socio-economic/cultural trends. This line of thought, which underpins the whole communication, offers a practical and highly effective approach to the issues under discussion.

2.2.4. The first three paragraphs are a case in point. Their highlighting of the imbalances caused by economic and technological change — which has brought great opportunities but has also created large pockets of unemployment and alienation — bears witness to the social sensitivity which informs the whole communication.

2.2.5. The Committee also endorses the description (point 1.5) of city dwellers' weakening sense of identity and identification — 'often demonstrated by the low level of participation in the local democratic process'.

2.2.6. The detailed description of current EU action related to urban development (chapter 2 of the communication) gives an effective portrayal of the Community policies which, in different ways and to varying degrees, have an impact on urban issues. Here it is worth highlighting the attention paid to the promotion of sustainable development 'as a determinant aspect of the quality of life for the present and future generations' (point 2.4). This fits in well with the objective of improving social cohesion in cities.

2.2.7. In its earlier opinion, the Committee stressed the need for an integrated, focused approach and called for 'urban development schemes that establish the practical, economic, administrative and technical prerequisites for an improvement in social cohesion' [1].

2.2.8. The second European conference on sustainable cities, held in Lisbon in October 1996, assessed the impact of the 'Aalborg charter' signed in May 1994, in which over 300 European cities undertook to adopt concerted measures in support of sustainable development. The Commission initiative thus confirms the choice made with the launch of the sustainable cities project in 1993. This project sought to fuel discussions on the sustainability of Europe's urban areas, promote pooling of experience, and disseminate best practice on sustainable local development. The major UN conference on human settlements (Habitat II) also deserves mention here.

2.2.9. The Commission proposals are neatly encapsulated in the statement that 'the various actions at the EU level should be assessed from the viewpoint of a coherent and sustainable development of cities'. This gives the gist of the communication in a nutshell. If its recommendations are heeded, Community policy decisions can take on a practical and immediately tangible nature calculated to make the European public more receptive to, and more involved in, the work of the Union.

2.2.10. The Committee endorses the view that the starting point for the future is 'to recognize the role of the cities as motors for regional, national and European economic progress'.

2.2.11. The communication asks for comments on four points of key importance for the future of the EU's cities:

— the need for an urban perspective in EU policies;

— services of public interest and urban development;

— the contribution of the Structural Funds;

[1] OJ C 30, 30.1.1997, point 4.6.2.

— information on and promotion of experience-pooling between cities.

3. **A Europe of the cities: EU policies and urban development**

3.1. While the Community's interest in urban issues is relatively recent, considerable progress was made between the first informal council of spatial planning ministers — held in Nantes in 1989 — and the June 1997 meeting in Noordwijk. Similar headway has been made since the first studies on Europe 2000, culminating in the publication of the first official draft of the European Spatial Development Perspective (ESDP) and the present communication.

3.2. A number of Commission papers and studies have pressed for appropriate policies. They range over spatial planning, regional development, economic and social cohesion, sustainable urban development, research and development, conservation, transport, communications and the information society, employment and vocational training, the role of small businesses, the fight against crime, social exclusion, and other issues. They also demonstrate the urgent need for an urban policy that is coordinated both horizontally (as regards ways and means) and vertically (as regards remits and subsidiarity).

3.3. It is against this background that the Committee has assessed the communication, which undoubtedly fills a gap and represents the first practical attempt to put forward a systematic EU policy for urban matters.

3.4. To facilitate discussions, it would be helpful to define some priorities which are valid for the EU urban system in general and for the cities of certain regions in particular. These priorities will be especially relevant to the forum on urban issues which the Commission plans to hold in 1998.

3.5. A scale of priorities would help to guide decisions and clarify objectives. In financial terms too, pinpointing the most urgent needs would make it easier to plan efficiently and assess the subsequent results.

3.6. The Commission has done much useful work in the last few years, but its work needs to be taken a step further. This will also involve the Member States.

3.7. There is no doubt that action on urban issues must be based on subsidiarity. The role of the EU is to strengthen and develop, inter alia by providing appropriate funding, but the prime responsibility rests with the Member States and the local authorities.

3.7.1. The communication rightly states that 'Member States have primary responsibility in developing the urban policy for the next century', adding that 'it will be essential to engage all levels (...) within a framework of interlinking relationships and shared responsibility and achieve better policy integration'.

3.8. The EU's main role here is to provide encouragement and set out broad guidelines which can be used by the Member States.

3.9. The Commission must thus take further steps to prepare itself to meet these new needs and responsibilities. The Committee therefore welcomes the Commission's decision to 'examine how it can adapt its internal coordination to contribute to urban development' in the light of the response to the communication.

3.10. Assessing the impact on urban areas must be a constant concern when coordinating EU policies on economic development and employment, infrastructure, energy and networks, the environment, social exclusion and crime. This approach will focus the policies in question and ensure that they meet the real needs of local residents more closely.

3.11. Such coordination has hitherto been sporadic rather than strategic. Future action should combine an EU strategic approach with the 'bottom-up' approach which is vital for a policy that impacts on daily life and local government. Here it is worth pointing out that the subsidiarity principle should also apply to relations between the national and local authorities.

3.12. Within this framework, the individual EU policies (networks, environment, employment, the fight against exclusion, etc.) must — as the Commission rightly notes — have 'clear targets for improvement of the urban environment with specified time scales' and must be 'aimed at sustainable development', because each of them has a direct influence on urban development and quality of life.

3.12.1. These targets and time scales could provide a full-scale 'EU urban agenda' that sets out in detail the overall strategy, priority measures, resources, anticipated results, and assessment criteria.

3.12.2. Here the Committee thinks that it would be useful to upgrade, redeploy, revamp and/or strengthen such instruments as:

— the spatial planning observatory;

— the EU project-centres for the spatial planning of major internal and border regions, both urban and rural, in the Member States;

— the adoption of appropriate practices for experience-swapping and assessment of results.

3.13. The Committee also thinks it appropriate that the fifth R&D framework programme (1998-2002) should include among its basic objectives the solution of urban development problems; the actions regarding the 'city of tomorrow' and 'Europe's cultural and architectural heritage' are particularly relevant. These measures must be closely linked with those of the Structural Funds and the Cohesion Fund [1].

4. A city designed for city dwellers: services, quality of life and participation

4.1. Because of its special features, the EU urban system can effectively combine economic development with environmental sustainability and social solidarity. European cities have always been firmly anchored in their particular region and marked by a strong sense of local identity, concern for social cohesion and a balance between city and countryside. The rich economic, social and cultural urban heritage offers enormous potential for enhancing economic, social and environmental balance across the Union.

4.2. However, the process of change brings serious dangers. The physical face of cities is constantly changing, whether as a result of continual growth or because of deteriorations which produce slow but steady changes.

4.2.1. Global competition drives economic changes which have a major spatial, social and environmental impact. Innovation and technologies have boosted cities' cultural assets, further enriching them and offering new job opportunities.

4.3. There have been many studies of urban decay and of the resultant social problems, and an equally large number of diagnoses and proposed remedies.

4.3.1. The Committee would recall its statement, in the opinion on the role of the EU in urban matters, that 'refurbishment of buildings and urban renovation are clearly not enough (...). The aim must be to alter the social, economic, employment and cultural causes of social and urban marginalization' [2].

4.4. The Committee argued that it was necessary to shift attention from the symptoms (run-down buildings and neighbourhoods, unemployment, social marginalization) to the causes (lack of job opportunities, weak cultural models, low incomes, etc.). This would mean 'reshaping urban development mechanisms and mechanisms for distributing the benefits of services, infrastructure, transport and so on' [3].

4.5. Such an approach requires an assessment of the urban implications of EU sectoral policies; it also raises the question of the type of services offered to city dwellers by the public and private sector.

4.5.1. The Committee stresses the vital role which public services play in urban development, for instance for the production of socially useful products and services and in strengthening social cohesion [4].

4.6. It is the city which forms the interface with the citizen, as the quality of life and sustainability of development are determined by the services provided there: transport, energy distribution, telematics networks, parks and gardens, childcare, services for the disabled, leisure facilities (cinemas, theatres, concert halls, sports centres).

4.7. A major change is needed in the planning, implementation and management of infrastructure and services, whether they be the responsibility of the local authority or of other public or private bodies. Infrastructure, for example, cannot be viewed simply as a service or as a generator of employment. It should also be used as an instrument for reorganizing the urban neighbourhood, in order to boost opportunities for local residents, and provide a better economic framework for local business.

4.8. To this end, more attention should be paid to the contribution which the public and the organizations

[1] OJ C 355, 21.11.1997.

[2] Opinion on the role of the EU in urban matters, OJ C 30, 30.1.1997, point 6.3.2.

[3] Opinion on the role of the EU in urban matters, OJ C 30, 30.1.1997, point 6.3.3.

[4] OJ C 287, 22.9.1997.

of civil society can make to urban planning. This will mean abandoning the entrenched practices which have restricted management functions to central and local authorities and a few experts chosen by them.

4.9. It is important that local democracy should work synergically with the various strands of civil society (universities, associations and cultural centres, social groupings, and so on).

4.10. Encouragement should be provided for forward-looking partnerships which bring together the various public authorities — with the support of socio-economic organizations, groups set up by the communities directly concerned, and private financial, organizational and professional resources — in schemes designed to meet the needs of local residents.

Such partnerships can do much to promote social cohesion, and can also help to make the procedures of the local administrative authorities more efficient and more transparent.

4.11. Deciding on priorities for infrastructure and services is an important aspect of urban and spatial administration, as disagreement is likely between different interest groups.

4.11.1. When deciding priorities, the prime aim must be to further the public interest. In tandem with this, it will be necessary to established precise 'rules of the game' and to make arrangements for hearings, consultations and decision-making, so as to reconcile the various interests as efficiently and transparently as possible.

4.12. It must also be ensured that services are accessible to all. The role of the EU can be crucial here. As the Commission states, 'although Member States are free to define their own policies in this matter and (although the Commission) has no interest in who specifically provides the services, it is clear that the services must serve society as a whole, ensuring continuity, equality of access, universality and transparency' (point 3.2 of the communication).

4.13. *Improvement of urban balance*

Another complex problem for urban areas is how to improve the balance between city centre and suburbs.

4.13.1. Countless analyses have been made, and a variety of approaches adopted. A large number of worthwhile schemes are also now being undertaken for the renovation of inner cities and outer suburbs.

4.13.2. Urban regeneration, involving the economic and functional improvement of rundown public and private buildings in city centres, provides a major opportunity to create new jobs and boost local development.

4.13.3. Regeneration schemes should focus on the restoration, maintenance, protection and safeguarding of heritage sites, beauty spots and the housing stock in general. Such schemes should be included in integrated urban regeneration programmes.

4.13.4. At the very least, steps must be taken to safeguard the social and cultural fabric and historical identity of areas that have a long-established residential population and a mix of small businesses and shops. Above all, this means maintaining a vital balance, with its profound socio-cultural implications that determine the very identity of the city, so as to ensure that regeneration does not drive out current residents. Such a balance will also serve to strengthen city dwellers' sense of belonging.

4.14. Outer suburbs pose a different problem. They are often neglected or treated merely as dormitories. In some particularly rundown neighbourhoods, disparities are so blatant that they are a constant threat to basic citizens' rights. This can deeply wound urban communities.

4.15. It is therefore important that urban policy-makers make the renewal of rundown areas a key objective, and that they allocate human and financial resources to this.

4.15.1. Intervention should address not only the physical aspects of urban decay (architectural, urban planning, environmental) but also the key social problems of unemployment and exclusion. Neighbourhoods and suburbs must be viewed as parts of a single and distinctive whole, and these parts must be interlinked using appropriate instruments and criteria.

4.15.2. When revitalizing inner cities and upgrading suburbs, a 'bottom-up' approach should be adopted, with close involvement of local residents, the organizations of civil society, the social partners and cultural entities.

4.15.3. Local centres — scattered across the metropolitan area but linked by an efficient transport and communications network — can provide a location for prestigious activities relocated from the inner cities, at the same time helping to upgrade outer suburbs and easing congestion in city centres.

4.15.4. The ultimate aim should be for each neighbourhood to become 'a miniature city' with distinguishing features which give its residents a sense of belonging, a clear social identity, and a generalized feeling of solidarity [1]. To this end, encouragement should be given to neighbourhood regeneration schemes which, although self-sufficient, also intrinsically support urban development in general.

5. Cities as an instrument for cohesion: the role of the Structural Funds

5.1. The Structural Funds can play an important role in a policy for urban areas.

5.1.1. With a view to ensuring that funds are used more effectively to help urban areas, it is necessary to adopt 'an integrated strategy between actions in urban areas and in their wider regions, as well as in terms of economic and human resource development'.

5.2. Socio-economic cohesion — the fundamental objective of the funds — is a particular problem in urban areas, given the scale of the difficulties and their immediate social impact.

5.2.1. Significant economic assistance is needed to address a number of pressing problems, such as youth unemployment, the exclusion which threatens certain social groups and entire neighbourhoods, the new poverty, the needs of the elderly and the disabled, the rise in crime, and environmental decay.

5.2.2. The Commission [2] estimates that 40 % of ERDF financing (objectives 1 and 2) and between 50 % and 80 % of Cohesion Fund financing are currently used in urban areas. This adds up to a considerable proportion of structural support.

5.2.3. The Community has undoubtedly done much in recent years to help cities tackle their most serious problems. However, the results have not always lived up to expectations, chiefly because the lack of an overall strategy has meant piecemeal assistance and a 'top-down' approach to the selection of objectives.

5.2.4. The Committee thinks that the reform of the Structural Funds provides an ideal opportunity for a radical change of direction.

5.3. Some 80 % of the population lives and works in urban areas. Hence measures to tackle urban problems have a wide validity which entitles them to preferential allocation of funds. Urban considerations should also be a key plank of structural policies in general.

5.3.1. Selection of objectives should be 'bottom-up', directly involving the communities concerned and the relevant local government officials.

5.3.2. The Commission is moving in this direction when it states that 'it is important that local authorities participate closely in the preparation and implementation of regional development programmes'. However, this assumes that the local authorities have the requisite powers.

5.4. The reformed Structural Funds must target resources directly at urban areas, coordinate and integrate this support with funding for the regions, and closely involve local residents, the social partners and the local authorities.

5.4.1. The Committee appreciates the Commission's new approach to urban areas, as apparent in the reform of the Structural Funds.

5.4.2. In chapter II.2 of Agenda 2000, the Commission states that the new objective 2 will also fund measures for 'areas undergoing economic change', and that the programmes to support new objective 2 areas will also support 'urban areas in difficulty'.

5.4.2.1. The Commission goes on to mention 'urban areas in difficulties' with reference to social exclusion, concluding that 'the development of rural areas should build better links between the countryside and local towns. This should facilitate the diversification of industrial, craft, cultural and service activities'.

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[1] For a more detailed illustration of this thesis, see R. Camagni, European cities and global competition: the economic challenge — report presented at the 2nd biennial conference of cities and urban planners in Europe, held in Rome on 8 to 13 September 1997, pages 10 to 13.

[2] See Annex III: Estimate of the financial impact of the European Regional Development Fund and the Cohesion Fund on cities, in communication COM(97) 197 final.

5.4.2.2. The Committee nevertheless considers, for the reasons mentioned above, and in view of the scale and urgency of the problems facing urban areas, that more details should be given on the political weight and role which towns and cities should assume in project planning, and of expenditure priorities ensuing from the reform of the Structural Funds envisaged in Agenda 2000. Similarly, it would be appropriate to build on the fundamental role of the partnership at all stages of Structural Fund procedures, from planning to final evaluation [1]. It would be expedient to show how the urban dimension can be integrated into Objective 1 regional programmes, bearing in mind that an EU urban policy cannot ignore lagging regions beset by serious deficiencies in terms of income, production structures and employment.

5.4.3. The Committee also supports the communication's intention to:

— concentrate Structural Fund expenditure on pockets of high unemployment in inner cities;

— mainstream the experience gained in the Urban and Integra initiatives;

— transfer urban development experience and best practices.

Aside from the outlook presented in Agenda 2000, however, the Committee thinks that the approach adopted in Urban should be continued, as it has already yielded positive results and been politically important, and has addressed the problems facing the less prosperous urban areas in an integrated manner.

Furthermore, it is in both the general interest and that of the socio-economic partners to call for a substantial upgrading of the programmes coming under ERDF Article 10, so as to develop flexible operational instruments that can be tailored to differing local circumstances and changing conditions.

The Committee also asks the Commission to consider the possibility of inserting EIB and EIF assistance more specifically in coordinated national and EU schemes.

5.4.4. When allocating resources, it must be borne in mind that cities are increasingly becoming centres of development and are crucial for a region's competitiveness, but that they also face the greatest concentration of economic and social problems.

5.4.5. Hence, making urban areas a priority target for the Structural Funds will help to directly address some particularly pressing social and economic problems, such as youth and long-term unemployment, new forms of poverty, and new social exclusion of immigrants.

5.5. The Structural Funds must be used to finance integrated measures; to set up businesses; to improve infrastructure and the environment; to provide training and social services; and to promote equal opportunities and employment.

5.5.1. Cities can become nodal points for local development. Here mention should be made of the welcome decision to monitor the progress of the territorial employment pacts, as these can be an instrument for relaunching and enhancing local development. Such instruments often focus on the city and its unemployment and exclusion problems. Moreover, this is the type of measures which the public feels to be closest to their needs.

6. The city network: information, exchange and transfer of innovation

6.1. Exchange and replication of successful experience, good practices and innovation should be stepped up.

6.2. The Committee takes this opportunity to note that several points of the first official draft of the ESDP mention the desirability of giving the document a wide airing at European level before taking any operational decisions.

The Committee hopes that the debate will be as wide and thorough as possible, involving not only the national and EU institutions but also the social partners, and non-governmental organizations and associations.

6.3. An 'urban audit to assess strengths and weaknesses of European cities' has been proposed by the Commission. Such an audit will greatly assist the formulation of a new EU policy approach to urban issues. The audit should extend beyond the EU to cover a few carefully chosen cities in non-member countries, so that a comparative analysis can be made of urban trends within and outside the EU.

6.4. The audit will be 'bottom-up' with direct involvement of the local authorities. It will provide a broad and detailed picture of the 'sustainability' of urban development, and the resultant instruments and information will be extremely useful for guiding EU policies in the years ahead.

[1] See the Opinion on the involvement of the economic and social partners in Community regional policy (OJ C 127, 7.5.1994).

6.5. These decisions go in the direction already advocated by the Committee when it spoke of 'the case for systematic EU monitoring of the state of the EU's cities and of the integrated urban development programmes and their results' [1] and called for these results to be made available. The Committee therefore welcomes the proposed audit.

6.6. Alongside this important instrument for information-gathering and discussion at EU level, networks and experience-swapping and cooperation between Europe's cities should also be reinforced. Civil society, universities and researchers, town planners and socio-economic development specialists should take part in these exercises alongside the local authorities.

6.6.1. Mention may be made of the biennial conference of cities and urban planners, which brings together large numbers of academics and experts from all over Europe and has produced extremely fruitful discussions. The conference was launched in Lyon in 1995, and met again in Rome in September 1997.

6.7. It is therefore important to step up transnational exchanges of experience between cities, with the objective of amassing all useful and relevant experience in urban regeneration and sustainable development.

The Commission should also draw on the work and experience of organizations and networks such as the sustainable cities campaign.

6.7.1. More opportunities should be created for city mayors and administrators from different countries to meet and debate together, focusing on various shared problems, the solutions to be adopted, and the results achieved.

6.8. The Committee supports the Commission's thoughts on the co-financing of programmes for networks related to economic development, SMEs, technology, environmental improvement and equal opportunities.

Such networking must be established and strengthened, as it brings people closer together and enables them to compare their experience and establish a practice of cooperation and experience-pooling functioning as a key pillar of a Europe of cities and citizens.

7. **Final considerations**

7.1. *Preliminary remark*

7.1.1. The Committee would stress the political importance of cities. As has already been pointed out, 80 % of the EU population lives in urban areas, and it is their democratic support which gives the Union the strength and authority to ensure the success of its policies and to achieve its fundamental objectives.

7.1.2. The Committee therefore considers it desirable, inter alia with an eye to the important discussions soon to be held on urban policy, that a redoubled commitment be made to cooperation with the European Parliament, which is already working very seriously in this sphere and may well decide to set up a specific body on the subject.

7.2. *Conclusions*

7.2.1. Firstly, the Committee feels that some priorities for the urban agenda — relating to competitiveness and employment, economic and social cohesion and sustainable development — should be spelt out in more explicit terms than is done in the Commission communication.

7.2.2. Conservation and management of the urban cultural heritage should be paramount. This is the first 'policy option' highlighted by the Noordwijk draft of the ESDP, and it is also of great symbolic importance. The historic and artistic heritage of Europe's cities is part of our global heritage, as well as being an important economic resource which needs to be safeguarded and properly exploited.

7.2.3. It follows that there must be a serious commitment to the regeneration, restoration and conservation of the centres of major historic cities and of smaller towns with a strong cultural identity that must be preserved and strengthened.

7.2.4. Secondly, sustainable and integrated development also presupposes a commitment to improving outer suburbs. In the large metropolitan areas in particular, this could provide an opportunity for multi-centred development. This would help to relieve pressure on inner cities, and would give a precise role and socio-economic identity to neighbourhoods which are currently in decline.

7.2.5. The problem of how to enhance the quality of city life should also be tackled by boosting new telecommunication and transport technologies to link cities with the rest of their metropolitan area.

7.2.5.1. The Committee stresses the need to pay careful attention to the problems faced by cities in remote regions, which are at a disadvantage in terms of overall competitiveness. This problem should be recognized, and redistribution policies adopted to encourage cohesion and regional integration.

7.2.6. The role which cities are able to play in the new global economy will depend partly on the ability of

[1] Opinion on the role of the EU in urban matters, OJ C 30, 30.1.1997, point 6.3.6.

the individual administrations to organize strategies for development and competitive — in the positive sense — provision of infrastructure and services.

At all events, coordination policies will be needed in order to ensure that the pursuit of economic excellence does not prejudice the objectives of social equity and quality of life. Competitiveness should help to find practical solutions to a number of pressing social problems such as youth unemployment and the integration of immigrants and the socially excluded.

Special attention should be paid to the structural problem posed by the situation and role of the elderly, whose numbers are set to grow in the next few years throughout the EU.

In conclusion, a new 'sense of citizenship' must be forged, based on participation and social solidarity.

7.2.7. All possible steps must be taken to encourage the dissemination of good practices. The urban audit planned by the Commission can be an excellent exercise and should be repeated periodically.

7.2.8. The Committee reiterates how important it is to take account of the urban dimension when framing Community policies, in particular as regards competitiveness, employment, social cohesion and sustainable development.

7.2.9. The Committee also thinks that the local authorities should be given the powers needed to devise and implement development programmes.

7.2.10. The Commission communication undoubtedly represents a quantum jump in the approach to urban issues, as it views them as a key yardstick for future Community policies. This commitment would be strengthened if, following the success of the Noordwijk meeting, Council meetings on urban policies could be formally included in the annual schedule, so that the work becomes a fully structured part of the Council programme.

7.2.11. Urban policy — with due respect for the subsidiarity principle — can provide an important interface for Community strategies on economic development and employment, infrastructure and networks, environment protection, exclusion and crime.

7.2.12. The Committee would again stress the urgent need to tackle the social and economic roots of the most acute problems in urban areas by reshaping urban development mechanisms and the machinery for gaining access to the opportunities offered by the system as a whole.

7.2.13. The Committee draws attention to the need to use integrated, finely targeted methods when conducting urban development schemes. It also stresses the need to involve local communities in the choice of objectives, and to use partnership arrangements when pursuing these objectives.

7.2.14. Conserving the specific cultural features of each city is also important. This heritage must be respected and upgraded in order to reaffirm city identity and its residents' sense of belonging, as well as to strengthen their involvement in city life.

7.2.15. Turning to the resources to be allocated to cities, the Committee emphasizes the important role of the Structural Funds and appreciates the Commission's intention to use them for urban problems. It would however urge the Commission to target the funds more precisely to urban development goals, and not to neglect the experience gained during the Urban initiative.

7.2.16. Lastly, the Committee hopes that the measures envisaged in the Commission communication and the decisions taken at the forum to be held in 1998 will effectively strengthen the locomotive role that cities play in the EU's economic, social and cultural development.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on 'Voluntary Organizations and Foundations in Europe'

(98/C 95/20)

On 17 September 1997, the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on 'Voluntary Organizations and Foundations in Europe'.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 January 1998. The rapporteur was Jan Olsson.

At its 351st plenary session (meeting of 28 January 1998) the Economic and Social Committee adopted the following opinion by 79 votes in favour, one against and five abstentions.

1. Introduction

1.1. In its Communication on Voluntary Organizations and Foundations in Europe [1], the Commission outlines the specific features, role and importance of the sector in Europe. The Commission emphasizes that voluntary organizations and foundations are playing an important role in almost every field of social activity. They contribute to employment creation, active citizenship, and democracy. They provide a wide range of services, represent citizens' interests to public authorities, and promote and safeguard human rights, as well as playing a crucial role in development policies. The Communication also describes the problems and challenges facing the sector. Finally, the Commission puts forward a series of recommendations for initiatives at voluntary sector, national and EU level.

Three specific categories, viz: political parties, religious societies and the social partners, are not touched upon either in the Communication or, consequently, in this opinion.

1.2. At its December plenary session, the Economic and Social Committee adopted an own-initiative opinion on 'charitable associations in the field of social welfare'. The present opinion is more comprehensive, and covers the general activity of voluntary organizations and foundations.

2. General considerations

2.1. The Economic and Social Committee, which represents European citizens' organizations, welcomes the long-awaited Communication and appreciates the Commission's positive approach to voluntary organizations and foundations.

2.2. The Committee feels the Communication should be followed up with concrete measures.

2.3. When discussing voluntary organizations, the Member States use different expressions and have different concepts of what the sector comprises. These differences are also reflected in the differing legislation. The Communication uses the term 'social economy' — which, however, also includes cooperatives and mutual societies. In some countries, there is no dividing line between the economic activity carried out by voluntary organizations and by cooperatives.

Most voluntary organizations are small and have limited economic resources. A large proportion of the voluntary sector is made up of organizations which are motivated by idealism, and which are of great importance to people's daily lives.

On the other hand, a significant number of voluntary organizations operate extensive economic activities. A feature of these organizations is the fact that they respect market forces, yet remain outside the market.

2.4. Notwithstanding the differences in terminology and legislation, the Committee would emphasize the common principles which apply to the voluntary sector and the social economy, and which distinguish it from other forms of activity.

The essential criteria are that they should be democratically structured, contribute to the public good or the good of their members, and be non-profit-making. This opinion only deals with voluntary organizations which fulfil these basic criteria.

2.5. The foundations covered by the Communication are independent, and administered according to their own judgement and in the public interest.

Since these foundations work in the same spirit as voluntary organizations, the Committee feels that cooperation is necessary.

2.6. There are some 100 000 [2] foundations in Europe which dispose of large resources to be used for the public

[1] COM(97) 241 final.

[2] Source: European Foundation Centre, 1997.

good, and to fund voluntary organizations and their operational activities in particular.

2.7. In the run-up to the IGC, voluntary organizations had high hopes of an explicit reference to the sector's role being enshrined in the Treaty. The Committee regrets this did not happen, as it would have provided political recognition for the activities of the voluntary sector. The sector is, however, affected by the declarations adopted in Amsterdam on voluntary service activities [1] and sport [2].

2.8. The new Treaty introduced the transparency principle with regard to citizen access to EU official documents. The Committee would emphasize the role of the voluntary sector in enabling citizens to take full advantage of this right, and hopes for a speedy practical application of the transparency principle.

2.9. The Communication shows clearly that voluntary organizations and foundations are needed to implement EU policies in most areas.

The Committee therefore believes it is vital that the various EU institutions and other bodies should cooperate with and support voluntary organizations and foundations.

2.10. In the run-up to EU enlargement, the Committee would call on the Commission to ensure that accession negotiations take account of the situation of voluntary organizations and foundations in the applicant countries, both in terms of legislation and other opportunities for full participation in European cooperation.

2.11. Given the lack of information on the sector, the Committee believes it is essential to carry out regular surveys in order to be able to assess the development of voluntary organizations and foundations in all EU countries.

3. **Democracy and welfare**

3.1. The Committee would particularly emphasize the importance of voluntary organizations in bolstering democracy in Europe. They provide individuals with an outlet for their ideas, and an opportunity to work towards the goals they believe in; they can carry out meaningful tasks and find a place in society; they can make themselves heard, and influence and achieve change.

By organizing themselves, citizens provide themselves with a more effective means of impressing their views on different society-related issues on political decision-makers.

Strengthening non-parliamentary democratic structures is a way of giving substance and meaning to the concept of a Citizens' Europe.

The Committee supports the framing of a European Citizens' Charter, as proposed by, inter alia, the Permanent Forum of Civil Society.

Citizens regard party political and parliamentary work with increasing scepticism. Together with other organizations, voluntary organizations can help to offset this, and help boost democracy and parliamentary input.

3.2. The globalization of the economy and politics is giving rise to a situation whereby decisions are frequently being taken further and further away from the persons concerned by these decisions.

3.3. In this respect, thanks to their strong grass roots connections, voluntary organizations provide an increasingly important means of defending local democracy.

4. **Employment**

4.1. Employment opportunities within the European voluntary sector have mushroomed over the last few years [3].

Many voluntary organizations and foundations have embarked on projects aiming to fight unemployment and to integrate the weaker groups in society.

4.2. Several Committee opinions have highlighted the role both the social partners and other specific interest organizations can play in boosting employment [4].

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[1] No 38: The Conference recognizes the important contribution made by voluntary service activities to developing social solidarity. The Community will encourage the European dimension of voluntary organizations with particular emphasis on the exchange of information and experiences as well as on the participation of the young and the elderly in voluntary work.

[2] No 29: The Conference emphasizes the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport.

[3] A study carried out by the John Hopkins University puts the number of people employed in the voluntary sector in 1990 in four EU Member States (United Kingdom, Germany, Italy and France) at 3 million.

[4] Cf. ESC opinion on the European Council on Employment, OJ C 355, 21.11.1997, p. 64.

4.3. The Committee welcomes the employment summit's confirmation of the role of the social economy. The Member States, within the framework of corporate development, undertake to investigate measures to take advantage of the social economy's employment creation potential at local level, and in areas in which the market does not satisfy demand.

In this connection, and without obligation, the Member States are also to examine ways of reshaping taxation systems and employers' contributions; this could be an important measure to boost employment in the voluntary sector.

4.4. With this in mind, the Committee would call on the Member States to involve voluntary organizations and foundations in the fight against unemployment.

5. **Specific comments — the Member States**

5.1. In the Committee's view the subsidiarity principle should continue to be applied to legislation governing voluntary organizations and foundations. At the same time, the Committee would call on the Member States to review their regulations, to remove any obstacles to the variety and development of such bodies.

5.2. The Committee calls on the Member States and voluntary organizations and foundations to cooperate on measures to raise the profile of the latter and use the Commission Communication as a basis for discussion of their role and development. The measures and their impact should be the object of a special Commission report to be published by the year 2000 at the latest.

The Committee would also point out the need to implement long-term national research programmes, to be framed in consultation between voluntary organizations/foundations and research institutes and responsible authorities, and funded jointly by foundations and the public sector.

It is vital that the results of research should be disseminated widely. Initiatives from the sector itself can be of considerable assistance here.

5.3. The Commission recommends that the Member States should review the relationship between public authorities and voluntary organizations, in consideration of the enhanced role of the latter.

The Committee is, however, firmly opposed to the public sector shifting its responsibility for basic welfare onto voluntary organizations. Such a shift presupposes a partnership which satisfies the objectives and conditions of both parties. Voluntary organizations must be involved in the planning stage, so that they can play an active part and influence the content of any measures they agree to implement.

5.4. The Committee would emphasize the need for allowances and income from services and assignments to be underpinned by long-term agreements between voluntary organizations and foundations.

5.5. Since voluntary organizations and foundations differ from traditional economic sectors, and aim to work for the public good, they are often taxed differently. Taxation rules vary from country to country and are complicated. The Committee believes that a guiding principle in the ongoing revision of Member States' tax legislation should be that voluntary organizations and foundations must not be put at a disadvantage.

5.6. The Committee feels that voluntary organizations should enhance their financial independence by boosting income from their membership — e.g. by recruiting new members, increasing membership fees, and selling goods and services to their members — and from external sources, such as the general public and business.

5.7. The Commission feels that voluntary organizations and foundations should have better access to Structural Fund resources.

In line with the subsidiarity principle, several avenues exist for achieving this at national level.

6. **Specific comments — voluntary sector and foundations level**

6.1. The Committee believes that voluntary organizations and foundations would benefit from increased cooperation at national level, in order to be able to speak with one voice on common, sector-specific issues.

6.2. The Committee would also point out the need for voluntary organizations and foundations to cooperate with business and organizations representing business interests, and with trades union organizations. This should be underpinned by mutual trust and exchanges of experience in areas such as the environment, culture, education, health and social protection.

6.3. The Committee calls on European networks and organizations to raise their profile both with EU institutions and in the Member States. The Committee calls on networks and organizations to ensure they are represented in all Member States, press for an increase in their membership, and cooperate in an effort to be more representative.

6.4. The Committee shares the Communication's view that voluntary organizations and foundations need to be encouraged to cooperate more at European level, and that they should, in conjunction with the Commission, find suitable measures for such initiatives.

6.5. The Committee calls on voluntary organizations and foundations to harness various EU-funded education and skill development programmes. These programmes should not be restricted to employees, but should also be extended to board members.

6.6. The Committee calls on voluntary organizations and foundations to harness the recently adopted European Voluntary Service programme, in order to offer volunteer posts in their organizations to under 26 year olds. At the same time, their own young members can work in peer organizations in other Member States.

The Committee believes that this programme should provide a blueprint for a similar programme open to all employees and volunteer workers in voluntary organizations and foundations.

7. **Specific comments — Community level**

7.1. The Committee would refer to its opinions on the Commission proposal on European voluntary organizations [1] and on a statute for a European company [2], and would call on the Commission and the Member States to come to a swift agreement on this matter.

7.2. The Committee notes that, for the moment, the Commission is looking into the possibility of putting the existing consultative committee for cooperatives, mutual societies, associations and foundations (CMAF) on a permanent footing, in order to further improve channels of communication with the whole sector in matters of general interest. Voluntary organizations and foundations in all Member States and in all sectors should therefore be actively involved in the committee's work.

7.3. In sector-specific issues, it is important for the Commission to establish useful dialogue with established, representative European networks and organizations.

The Committee calls on the Commission to undertake a systematic review of existing consultative and management committees within the EU system to assess whether voluntary organizations and foundations should be represented. The results of this review should be reported to the CMAF before the end of 1998.

7.4. The Committee advocates that the Commission, after consultation with voluntary organizations and foundations, devise practical plans showing how the Communication's objectives can be translated into practice in the day-to-day activities of all DGs. The result of this consultation should be reported according to the procedure recommended in point 7.3 above.

7.5. In the Committee's view, the debate on the future of the European welfare model between the social partners and voluntary organizations and foundations should be developed in greater detail, inter alia, within the framework of the European Social Forum, scheduled for June 1998.

7.6. Voluntary organizations also play a major role as employers. The Committee notes with interest the ongoing discussions between social economy representatives and the European Trade Union Confederation concerning the introduction of 'voluntary' social dialogue to back up social dialogue between the traditional social partners in the labour market.

7.7. The Commission is considering proclaiming a special 'European year of voluntary organizations and European citizenship'. The Committee is very sceptical about the proposal. It should only go ahead if it can enlist the support of representatives of the sector, and give them ample opportunity to take part in planning the activities at both national and European level.

Whether a 'voluntary organizations year' is proclaimed or not, voluntary organizations should be given ample opportunity to play an active part in other 'European Years'.

7.8. The Committee assumes that voluntary organizations and foundations will have access to all EU programmes open to private sector players.

In this connection, the Committee would, however, highlight some new initiatives which should be taken into consideration:

— promotion of exchanges between voluntary organizations and foundations in the Member States and the applicant countries, in order to create a broad, democratic process;

— presentation of programmes to combat unemployment, poverty and social exclusion within the framework of the new Treaty provisions on employment;

— creation of a risk capital fund for the social economy through, inter alia, cooperation between foundations and the European Social Fund;

— opening up EU twinning programmes to the voluntary sector;

[1] OJ C 223, 31.8.1992.
[2] OJ C 19, 21.1.1998, p. 116.

7.9. The Committee expects the Commission to put forward its promised programme on cooperatives, mutual societies, voluntary organizations and foundations in the near future.

7.10. The Committee would stress the need for the Commission to encourage voluntary organizations and foundations to engage in wider European cooperation. This should also be extended to applicant countries.

In order to provide a stable, long-term environment, support should be guided by the fundamental principle that European cooperation is necessary.

The Committee therefore endorses the proposal to set up a special fund to facilitate European cooperation for voluntary organizations and foundations. The fund should be run by a management committee which safeguards their influence over the use of funds. Appropriations — in addition to basic support — could also be used for preparatory studies for transnational projects, microprojects, networking seminars, exchange visits and other, highly innovative, initiatives.

7.11. The Committee would stress that the EU Commission generally allows organizations to pay in kind the contribution they are often required to make to EU projects. This is consistent with Commissioner Gradin's answer to a question tabled in the European Parliament in April 1997.

7.12. With reference to how voluntary organizations and foundations stand in relation to competition rules, the Committee would refer to its opinion [1] on the 24th report on competition policy, which states that 'more particularly, voluntary and social activities in support of marginalized groups might be allowed to benefit from state aid and specific legislative concessions.' A ruling recently handed down by the European Court of Justice states that every Member State is free to promote activities in this sector, rather than in profit-making companies [2].

7.13. The Commission has announced proposals for Community rules on VAT and certain other taxes. This could impact considerably on voluntary organizations and foundations.

The Committee calls on the Commission to set up a study group — to include representatives from the voluntary sector and foundations, and from the Member States — in order to arrive at suitable solutions.

7.14. The Communication recommends, on the one hand, setting up a special observatory, and on the other, placing existing bodies such as BC-Net and Europartenariat — subject to certain changes — at the disposal of voluntary organizations and foundations which are looking for cooperation partners for European projects.

The Committee feels, however, that it would be more useful to support voluntary organizations' and foundations' own initiatives by concluding a special agreement with representative European organizations, with a view to establishing an independent body linked up to the social economy. This would be able to provide an overview of existing research in the area, commission research, collate and publish annual, updated statistics relating to the scope, activities, economy etc. of voluntary organizations and foundations. An important task would be to publish a sector-specific glossary, with the terminology and definitions used in relation to voluntary organizations and foundations and their activities.

7.15. The Committee calls on the Commission to share responsibility with the Member States and voluntary organizations and foundations for ensuring that the Communication's declared objectives are implemented. A progress report should be submitted by the year 2000 at the latest, and forwarded to the Economic and Social Committee.

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[1] OJ C 39, 12.2.1996.

[2] Case C 70/97 Sodemare/Regione Lombardia.

Brussels, 28 January 1998.

The President

of the Economic and Social Committee

Tom JENKINS