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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'European Company Statute'

(98/C 129/01)

On July 8 1997 the Economic and Social Committee, acting under Rule 23(2) of its rules of procedure, decided to draw up an opinion on the 'European Company Statute'.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 November 1997. The rapporteur was Mr Boussat and the co-rapporteur Mr Schmitz.

At its 350th plenary session of 10 and 11 December 1997 (meeting of 11 December) the Economic and Social Committee adopted the following opinion by a majority with 116 votes in favour, 3 against and 11 abstentions.

1. **Background**

1.1. The European company statute has been the subject of successive proposals over a period of more than two decades. The statute should facilitate cooperation between firms in the Member States with a view to the development of the EU market. It must therefore be attractive to the business world whilst taking account of the significant differences which may exist between Member States.

2. **Structure of instruments**

2.1. The draft European company statute is based on a regulation and a directive.

2.2. Three dimensions are dealt with: the statute's place in company law, the tax provisions and worker participation.

2.3. This constitutes a coherent whole. The basic link between the two instruments is very clear.

2.3.1. Certain provisions of the regulation regarding the powers of the European company's decision-making bodies need to be examined.

2.3.2. The same is true of actions requiring the authorization of the supervisory board or discussion by the board of management [Article 72 of the proposal of 16 May 1991 ([1])]. The list of these actions will affect the level of worker participation in the European company.

2.4. The tax provisions need to be clarified, particularly with regard to double taxation and tax consolidation. At all events the Committee will be asked to issue an additional opinion on the whole of the European company statute (regulation and directive). The opinion will look, inter alia, at competition problems.

2.5. To sum up:

2.5.1. The provisions currently envisaged or to be spelt out in detail in the regulation render some of the

([1]) OJ C 176, 8.7.1991, p. 40.

provisions destined to appear in the other instrument, the directive, rather uncertain. The provisions currently envisaged or to be spelt out in detail in the regulation render some of the provisions destined to appear in the other instrument, the directive, rather uncertain. The text of the Luxembourg Presidency's proposed compromise for the proposal for a directive, which is based on the Davignon report, thus has to be approached with some caution in view of the uncertainties inherent in the draft regulation.

2.6. In more general terms, the European company statute's social dimension is inseparable from the economic and legal dimensions dealt with in the regulation. This would be contrary to the spirit of the Treaty's provisions on economic and social cohesion.

2.7. It is with these reservations in mind that we embark on discussion of the proposed Luxembourg compromise.

3. **General comments**

3.1. The proposed compromise based on the Davignon report is a good basis for relaunching the stalled discussions on the worker participation provisions of the European company statute.

3.2. There is thus some merit in the view of the Davignon group and the Luxembourg Presidency that the establishment of a European company should be authorized only for trans-frontier reasons, (establishment of a European company via restructuring must be banned. There is a danger that a European company which was the product of a merger might be able to evade its participation obligations).

3.3. The aim is not to transpose the particular participation model of only one or a few Member States to the rest of the Community. At the same time it must not be possible to circumvent worker participation in the event of merger with the aid of a Community legal instrument. Workers in a Member State with a participation system should not suffer a loss of rights deriving from Europe's inability to provide for involvement at a level beyond that of mere information and consultation [1].

3.4. An approach based on consensus emphasizing negotiation is to be welcomed, providing that it respects the autonomy of the social partners.

3.5. It is important that there be free agreement on the solutions best suited to the needs of firms and their employees in the light of their socio-economic culture. A significant harmonization process is incompatible with very diverse national practices based on different decision-making systems.

3.6. The Committee welcomes the proposal of the Davignon group that the arrangements for worker participation should be arrived at by negotiation. The Committee also feels that there should be a reference provision in the event that negotiations fail. One problem, however, is that it is very difficult to take account of all the diverse practices existing in the majority of Member States.

3.7. Imposing excessively demanding reference provisions on companies which in many Member States do not practise worker participation runs the risk of deterring companies from opting for the European company statute. Consequently they would not benefit from the statute's legal and fiscal provisions, and at the same time workers would be deprived of the opportunity possibly to obtain by negotiation the development of social relations with regard to their involvement in companies' strategic decisions. Companies would be receiving unequal treatment compared with other companies from those countries where worker participation is an established part of the local culture.

3.8. The reference in the Presidency's draft to Directive 94/95 is generally welcomed.

3.8.1. The Committee points out however that this directive deals with worker information and consultation, whilst the European company compromise deals with information, consultation and participation. Moreover the directive on the European works council covers large companies with more than 1000 employees, whilst the compromise concerns all companies regardless of their size.

3.8.2. The fact that the Presidency's proposed compromise sets out to regulate both participation and information and consultation questions appears problematic. The Committee would like to see a clear separation between these two areas. For this reason thought needs to be given to the possibility of treating the questions of information and consultation of the European company works council separately, in the reference provisions.

3.9. The problem of SMEs thus needs further study. Bearing in mind the specific characteristics and the size of SMEs, the procedures will have to be simplified in their case. Another subject requiring thought is the application of the statute to other forms of European enterprise, such as associations, cooperatives and mutual societies. Committee opinion 698/96 [2] advocated a separate decision for these enterprises. The Committee draws the Council's attention to the need to draw up a special statute for these firms rapidly; examination of this special statute should proceed in parallel with that of the proposed European company statute.

[1] ESC opinion: OJ C 212, 22.7.1996, p. 36.

[2] OJ C 212, 22.7.1996, p. 40.

4. **Negotiation**

4.1. In the light of the above, thought needs to be given to the negotiation arrangements. The principle of negotiation needs to be reinforced.

4.2. The Luxembourg presidency's proposals on the negotiating arrangements are inadequate. The Committee doubts whether the negotiating rules proposed by the Luxembourg Presidency will be sufficient to ensure that real negotiations take place. There is a danger that one or other of the parties to the negotiation might from the outset have no interest in any other solution than that proposed by the reference provisions.

4.2.1. The reference to the directive on works councils, which, with regard to both the timetable and the negotiating procedure could compromise the progress of the negotiations is inappropriate.

4.3. Social conditions, which are particularly complex in some Member States, make it necessary to consider other approaches taking greater account of local social customs. This, applies both to firms with a strong tradition of participation and to countries without any tradition of this kind. The Committee stresses in this context that the participation arrangements must not be limited to representation on the management or supervisory board.

4.4. In order to reinforce the negotiation procedure the Committee proposes that:

4.4.1. In accordance with national practices not only worker representatives from firms, but also the representative trade unions from the firm in question and the relevant European trade union associations should have the right to negotiate on behalf of workers. For the purposes of implementing the directive the procedure for appointing the members of this specific negotiating body would be established under national law whilst respecting the autonomy of the social partners.

4.4.2. If negotiations threaten to break down an arbitration procedure may be brought into play. The purpose of arbitration would be to propose a solution based as far as possible on rules applying in the firms in question. An arrangement of this kind has the virtue of flexibility and the advantage of facilitating more appropriate solutions in individual cases than would be achieved by simply applying the reference provisions. The autonomy of the negotiating partners would be unaffected by the arbitration procedure. The arbitrator would be chosen by companies' social partners.

5. **Reference provisions**

5.1. The Luxembourg Presidency's draft compromise proposes that in the event of a breakdown of negotiations reference provisions be applied concerning the establishment within the firm of a system of participation.

5.2. Doubts have been expressed in the Committee as to the reference provisions and two schools of thought are discernible, as follows:

— Those coming from countries where participation or similar systems (bipolar decision-making in firms, Scandinavian board model with legal representation of workers) are the rule feel that the proposed optional European company statute system could offer companies a way of circumventing the rule. They are thus in favour of the reference provisions put forward in the proposed compromise. Some even favour a stronger participation system than that proposed.

— Those coming from countries where worker involvement is based to a greater or lesser extent on the provision of information to, and consultation of, workers (unitary decision-making in firms) feel that the draft European company statute must as far as possible respect the pluralism of national social practices.

5.3. The Committee feels that maximum account can be taken of these two schools of thought by ensuring as far as possible, via introduction of the additional guarantees proposed in point 4.4, that the reference provisions are not resorted to too hastily.

6. **Conclusion**

6.1. Worker participation is a sensitive subject. Every effort must therefore be made to ensure that solutions are not imposed on the parties concerned against their will. The Economic and Social Committee feels that, with the help of the proposals contained in this opinion, the Luxembourg compromise proposal's emphasis on negotiated solutions can be reinforced.

6.2. The information and consultation procedure is a communications process. Participation is more delicate. It requires the involvement of all partners. This cannot be done by decree. This will require examination of the detailed arrangements for the negotiation and reference provisions contained in the appendix.

6.3. However, the ESC assumes that the bipolar and unitary systems are not by definition immutable. The ESC considers that the introduction of the European company statute could be an opportunity to develop new synergies by negotiation.

Brussels, 11 December 1997.

The President
of the Economic and Social Committee
Tom JENKINS

APPENDIX

to the opinion of the Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was defeated in the course of the debates.

Point 5.2

Replace the first line with:

'The reference provisions have been approached by the Committee from different starting points:'

Then start the first and second indent with the words:

'— Some members coming from'

and delete the text between brackets in the first indent '(bipolar ... workers)'; and in the second indent '(unitary decision-making in firms)'; and in the first indent change the words 'participation or similar systems' into 'participation via workers' seats in the management or supervisory board'.

Reason

The present text seems too strong in suggesting 'block' positions of the members based on their national background; it seems more prudent to speak about 'some' members.

The text between brackets is confusing: the differences lay not so much in the monistic or dualistic board systems existing in different Member States, and present as an option in the proposed European Company Statute, but in the difference whether the system of participation makes use of workers' seats in the respective management or supervisory bodies or not. This is better formulated by the text proposed for the first indent, and by deleting the text between brackets.

Result of the vote

For: 34, against: 67, abstentions: 16.

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat and amending Directive 70/156/EEC'

(98/C 129/02)

On 13 November 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 Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 February 1998. The rapporteur was Mr Bagliano.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion with 81 votes in favour and four abstentions.

1. Introduction

1.1. The proposal amends the framework directive regulating the type-approval of motor vehicles in the EU (Directive 70/156/EEC), in order to include special provisions for the type-approval of buses and coaches (category M2 and 3) [1].

EU type-approval makes it possible to sell and use, in all Member States, a vehicle which has been type approved in one Member State. This type-approval currently only applies to cars (category M1), for which all the necessary specific directives (45 of them) have been adopted.

For buses and coaches, the directive on technical construction characteristics and fitting-out is still to be adopted.

The present proposal for such a directive is based on UN-ECE Regulations R36, R52 and R66 [2] — which have already been adopted in some Member States and in a number of other European and non-European countries — and on the UN-ECE draft regulation on double-decker vehicles.

1.2. The Commission proposal seeks to set minimum technical prescriptions to protect passenger safety and to facilitate the transport of passengers with reduced mobility.

The prescriptions concern:

— subdivision into classes;

— definition of a low-floor vehicle;

— distribution of passenger and baggage mass on the axles;

— minimum surface area available for standing passengers and maximum number of passengers accommodated;

— stability;

— protection against fire risks;

— exits (service doors, emergency doors, escape hatches and emergency windows): number, location, access and technical specifications;

— access steps incorporated in the vehicles;

— seating and space for seated passengers;

— handrails and handholds for passengers;

— the strength of the superstructure;

— transport of passengers with reduced mobility and aids for boarding;

— double-decker vehicles.

2. Comments

2.1. *Classes of vehicle*

2.1.1. Introduction

The classification is based on that used in UN-ECE regulations. It is designed to provide differing prescriptions, and hence different fittings, for vehicles which carry both seated and standing passengers (Classes I and II) and those which only carry seated passengers (Class III). A similar course is followed for small vehicles that carry fewer than 22 passengers (Class A with provision for standing passengers, and ClassB only designed for seated passengers).

Annex I provides definitions of:

— Class I and Class A vehicles, which are designed mainly to carry standing passengers, and are hence for journeys involving frequent stops with short distances between them;

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[1] Category M2: Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum weight not exceeding 5 metric tons; Category M3: Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum weight exceeding 5 metric tons.

[2] Regulation 36 — large passenger vehicles (more than 22 passengers); Regulation 52 — small-capacity public service vehicles (fewer than 22 passengers); Regulation 66 — strength of superstructure.

— Class II vehicles, which are designed mainly to carry seated passengers, and hence for long journeys with infrequent stops;

— Class III and Class B vehicles, which are not designed to carry standing passengers.

2.1.2. The technical annexes are based on this subdivision into classes according to the purpose of the vehicle, while still offering an equivalent level of safety. As one of the recitals to the directive states, 'the principal aim ... is to guarantee the safety of passengers'.

One safety objective, for instance, is to carry as few standing passengers as possible if a vehicle is used on long journeys. Another important safety consideration is how quickly the vehicle can be evacuated. This dictates that each seated and standing passenger should have a minimum amount of space, depending on the 'class' of vehicle.

2.1.3. The Committee endorses this approach, as it provides for a reasonable balance between costs and objectives without compromising the achievement of an equivalent safety level. The approach is also in keeping with the UN-ECE regulations, which are constantly developing.

2.2. *Protection against fire risks*

The prescriptions contained in the proposal (Annex I, point 7.5) supplement those of the specific directive on burning behaviour (95/28/EC). Strictly speaking, they should therefore be incorporated in this latter directive, as they cover the same ground. A similar step is already being taken regarding obligatory seatbelts on Class II and Class III vehicles, and regarding seat resistance.

2.3. *Steps*

The proposal (Annex I, point 7.7.7.1) lays down a maximum height of 32 cm for the first step from the ground on Class I, II and A vehicles.

However, the Committee points out that for all classes of vehicle which have to negotiate a variety of gradients (even in urban areas), and in particular for Class II vehicles — which are designed for use on long journeys (at a steady speed) — it is not possible to reduce the distance from the ground of the first step to less than a certain limit.

The maximum height of the first step from the ground should therefore be aligned with the prescriptions of UN-ECE Regulations R36 and R52, which stipulate a height of 36 cm for Class I and Class A vehicles, and 40 cm for Class II, Class III and Class B vehicles.

2.4. *Strength of superstructure* (Annex IV)

The proposal provides for a 'survival space' (residual space) for the passenger compartment if the vehicle rolls over.

The Committee considers that the residual space should also be extended to the driver's compartment, and that the problem of the overall safety of the driver should be dealt with in an ad hoc directive forthwith.

2.5. The Committee would like the directive to specify adequate emergency exits, and not just to go into detail on operational matters such as the number of service doors.

2.6. *Carriage of passengers with reduced mobility* (Annex I, point 7.12) *and boarding aids* (Annex VII)

The proposal gives detailed and comprehensive consideration to the problems involved in the carriage of passengers with reduced mobility, including wheelchair users.

The Committee fully supports this, and is pleased that the Commission intends to undertake additional studies with a view to constantly improving vehicle access for persons with reduced mobility. The Committee requests that the directive should cover the Commission's commitment to continue examining the issue of accessibility, in close cooperation with disability organizations.

However, the Committee thinks that the problem must be tackled realistically if effective results are to be achieved within a reasonable time-frame. To this end, and in accordance with the subsidiarity principle and with differing local and national circumstances, the Member States could undertake to establish a minimum quota of buses equipped with boarding aids for passengers with reduced mobility.

The Committee notes that one of the recitals to the directive states that 'appropriate technical solutions' have to be evaluated at a later stage for non-Class I vehicles, 'if necessary, on the basis of a report by the Commission'.

2.7. *Article 3 — Basic type-approval, and type-approval consistent with derogations*

The proposal provides for a two-tier system of type-approval: a basic type-approval, and a type-approval tied to derogations (Article 3), specified in certain 'bis' paragraphs of Annexes I and VIII. The 'bis' type-approval — for which some fundamental prescriptions also differ from the basic type approval — is

designed to provide EU type-approval for vehicles with special characteristics, as found in some Member States. The other Member States do, however, have the option of refusing such type-approval. The Committee understands the reasons which have prompted the proposed two-tier system of type-approval. It agrees that the two-tier system should be given temporary status under Article 3(3), which states that a review may be conducted in the year 2003.

2.8. *Article 4(1)*

2.8.1. Article 4(1) refers to Class I vehicles, which are 'designed to provide scheduled urban and interurban services' and which must:

a) meet the technical prescriptions set out in parts B and C of Annex I;

b) be equipped with at least one of the boarding aids for reduced mobility passengers specified in Annex VII.

2.8.1.1. Whilst it is right that the technical prescriptions should apply to Class I vehicles designed for urban services, it seems inconsistent with the categorization in classes to also speak of Class I vehicles designed for interurban services. The safety prescriptions for Class I vehicles are not suitable for long journeys (see point 2.1.1).

The use of Class I vehicles for scheduled interurban services is thus unacceptable on safety grounds, because of the higher number of standing passengers and the reduced space for seated passengers. Article 4(1) should therefore be amended, at the very least by deleting the words 'and interurban'.

2.8.1.2. Turning to the obligation to equip all Class I vehicles with boarding aids for reduced mobility passengers, the Committee refers back to its comments in point 2.6 above.

Brussels, 25 February 1998.

In the interests of consistency, the prescriptions contained in points 7.12 and 7.13 of Annex I should be transferred to Annex VII (technical boarding aids) and should therefore not be obligatory for all vehicles.

2.9. *Article 7 — Advisory committee on adaptation to technical progress*

The Committee has already called on other occasions for retention of the decision-making powers of the committee on adaptation to technical progress (CATP), in accordance with Articles 12 and 13 of the framework Directive 70/156/EEC.

Whilst the Committee understands the need to speed up the procedure for adapting the directive to technical progress, it cannot endorse the provisions of Article 7, which give the CATP a purely advisory role.

3. **Conclusions**

The Committee supports the aims of the directive, in terms of both improving passenger safety and facilitating access for people with reduced mobility. The Committee therefore asks that:

— in the interests of consistency with the entire rationale of the annexes, which is based on the subdivision into classes, account should be taken of the (critical) comments made in points 2.2 to 2.9 above;

— more particularly, in the interests of consistency with the mention, in the preamble to the proposal, of the need for a flexible and concrete approach, account should also be taken of the (constructive) comment made in point 2.6 above.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on 'Promoting innovation through patents: Green Paper on the Community patent and the patent system in Europe'

(98/C 129/03)

On 25 June 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on 'Promoting innovation through patents: Green Paper on the Community patent and the patent system in Europe'.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 February 1998. The rapporteur was Mr Bernabei.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion by 128 votes to one with one abstention.

1. The Economic and Social Committee

Whereas:

1.1. patents are an essential instrument for stimulating investment in the research and technology sector. Consistent and efficient European law on patents therefore represents an essential element for ensuring the competitiveness of enterprises in the European Union;

1.2. a fully integrated European innovation market requires a unitary European system for protecting industrial property, with a Community patent accessible particularly for small and medium sized enterprises which are innovative in high-technology terms or 'precursors' as stressed in the Committee opinion (CES 986/97 of 1 and 2 October 1997) on the impact on SMEs of the steady reduction in funds allocated to RTD in the European Union;

1.3. the Community patent system covered by the 1975 Luxembourg Convention and by the 1989 Agreement relating to Community patents which have never come into operation, no longer seems adequate to achieve such unitary protection;

1.4. there is an urgent need to give the Community patent problem maximum priority, because of its economic aspects and implications for competitiveness and technological and industrial development in a global market;

1.5. there is therefore an urgent need to review the patent system and relaunch it on a basis which would enable it to take off effectively before the European Union is further enlarged;

Recommends to the Council, the Commission and the European Parliament that:

1.6. The Community patent be adopted on the basis of a Community regulation, to be adopted under Article 235 of the Treaty.

1.7. The Community patent must have a unitary character and must therefore cover the whole Community, whereas an à la carte or variable geometry Community patent would be unacceptable because it conflicts with the requirements of the single market.

1.8. The Community patent system must co-exist with national patents and the European patent. An applicant for a European patent must — in the stage before the granting of the patent — have the opportunity to convert his Community patent application into a European patent application.

1.9. The Community patent must involve accessible costs which make it comparable to a European patent requested for a limited number of countries. In particular, the initial costs should be reduced.

1.10. With a view to containing costs, the problem of translations should be tackled on the basis of the 'global solution' evaluated by the EPO, as follows:

1.10.1. the patent application can be deposited in any of the EU languages, but with an obligation for it to be translated into one of the working languages (English, French or German);

1.10.2. the EPO prepares and publishes a detailed technical summary of the application in the language of the procedure, at the same time as the application is published. The EPO should arrange translation into the other two official languages and publish the text in the three aforementioned languages via Internet. In addition, the EPO should promptly forward these texts to the Commission departments (DG XIII) responsible for exploiting and disseminating research findings, to be translated into all the other Community languages and published through the CORDIS databank. The cost of translation would be borne by the EU as a cost of exploitation and dissemination of research findings. In any case, the Commission will need in future to make a general assessment of the cost of the language

arrangements adopted in the context of an enlarged European Union.

1.10.3. when the patent is granted, the applicant should ensure translation of patent claims at his own expense;

1.10.4. prior to any legal action, the patent holder should arrange for the translation of the whole patent, again at his own expense.

1.11. The system of jurisdiction should be based on a limited number of national courts of first instance, competent to hear infringement cases and counterclaims for revocation, but with the limited power of declaring the patent non-opposable to the (alleged) infringer as regards that specific type of (alleged) infringement (purely 'inter partes' effect). As an alternative, it could be laid down that national courts — competent to judge in the matter of infringements — can declare a Community patent invalid (when subject to a counterclaim for revocation) subject to the condition that the revocation would be suspended until confirmed by an appeal court.

1.11.1. The power to revoke a patent with 'erga omnes' effect should be reserved even in the first instance to the EPO's cancellation division, or preferably a new court to be set up (subject to the remarks on the previous alternative).

1.11.2. A specialized chamber of the Court of First Instance of the EC should operate as court of second instance.

1.12. In the matter of fees, SMEs, universities and non-profit-making research bodies should enjoy preferential conditions; in addition, an active policy in favour of SMEs should be adopted, by setting up patent consultancy units attached to the representative organizations.

1.13. Consideration should be given to harmonization of the right of prior use.

1.14. Article 52(2)(c) of the European Patent Convention should be amended to make it possible to patent computer programmes.

2. Introduction — summary of the Commission document

2.1. The Green Paper on the Community patent and the patent system in Europe forms part of the action to promote innovation in Europe on which the ESC has issued opinions on a number of occasions [1].

2.2. The Commission recognizes the role played by patents in protecting innovation, while drawing attention to the complexity and disadvantages of a system such as that currently prevailing in Europe, which involves the coexistence of 'national patents', the 'European patent' (i.e. the unified system for the deposit and granting of patents which then gives rise to a range of national patents) and (but only on paper) the 'Community patent' (i.e. a patent which would not only be deposited and examined centrally, like the European patent, but would give rise to a single protection document covering the whole area of the European Union).

2.3. The green paper is in five parts: the first is an introduction dealing in general terms with the relationship between innovation and patents; the second gives the history of the European patent and the Community patent and explains the reasons why this could be a good time for a new Community initiative on the Community patent, also with a view to future enlargements; the third part analyses the Community patent system in terms of the opportunities which it offers but also in terms of the excessive costs and other disadvantages which it can involve; the fourth part is a discussion of whether it is desirable to harmonize at Community levels certain aspects of substantive law (particularly as regards the patentability of computer programs and software-related inventions), and certain aspects of procedural law; finally, the fifth part discusses certain questions relating to the current system of the European patent and its sensitive aspects, particularly in terms of costs.

2.4. The green paper takes as its starting point a consideration of the advantages and limitations of a European patent system based on the 1973 Munich Convention (EPC).

This system has undoubtedly meant considerable progress for protection of patents in Europe, setting up a centralized procedure (in Munich) for deposit and examination of patent applications, thus enabling users to protect their inventions, through a single application and a single procedure, in one or more of the countries which are party to the EPC.

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[1] Opinion CES 700/96 on the Green Paper on Innovation, 1.5 — OJ C 212, 22.7.1996; Opinion CES 987/97, 1.10.1997 on the Commission Working Paper: Towards the fifth framework programme — scientific and technological objectives — OJ C 355, 21.11.1997; Opinion CES 986/97, 2.10.1997 on the Impact on SMEs of the steady, widespread reduction in funds allocated to research and technological development in the EU — OJ C 355, 21.11.1997.

Moreover, under this system the patent issued by the European Patent Office (EPO) corresponds to a range of national patents, each of which requires a translation into the language of the country concerned, logically limiting the scope of its protection to that country; moreover, each of these patents can be the subject of legal action only before the national courts.

2.5. The characteristics of the Community patent would be quite different: this form of patent, created by the Luxembourg Convention (CPC) of 1975, and modified and updated by the Agreement relating to Community patents (ARCP), signed in Luxembourg in 1989, would enable the applicant, through a centralized procedure for deposit of applications, to obtain uniform protection throughout the European Union and to refer — at least to some extent — to central legal bodies responsible for deciding on the interpretation and validity of the patent.

2.6. The green paper acknowledges (at least implicitly) that the main problem preventing the 'take-off' of the Community patent (for which the agreement of 1989 has not yet been ratified) is the very high cost of translation into the national languages which the system would involve.

The green paper suggests a range of possible solutions to this problem.

2.7. The green paper identifies another important obstacle to the attractiveness of the Community patent, in the system of jurisdiction set up for it and in particular in the fact that revocation of the patent (with effect throughout the EU) could be decided not only by a central body (EPO) but also by national courts, when considering a counterclaim for revocation submitted by an alleged infringer called before the national courts.

The green paper also proposes some possible alternative solutions to the problem of the system of jurisdiction.

2.8. The green paper goes on to examine the problem of the level of fees relating to the Community patent and the possibility of providing for/perfecting a system of transition from the Community patent to the European patent (and possibly vice versa).

2.9. On the question of possible further harmonization of patent law at Community level, the green paper raises above all the question of whether it would be desirable to modify a system set up by the EPC [Article 52(2)(c)] on the basis of which computer programs as such cannot be patented.

Other subjects covered are possible harmonization as regards inventions by employees, and formalities and recognition of qualifications for the profession of patent consultant.

2.10. Finally, the green paper considers some possible improvements which (apart from the Community patent) could be made to the existing system for the European patent, particularly as regards fees and cost of translations.

3. **Innovation and patents — Europe, USA and Japan**

3.1. Comparing the European (EU) system with the systems of its main competitors, the USA and Japan, Europe is clearly at a disadvantage.

3.2. Whereas in the USA and Japan enterprises can take advantage of a system which makes possible the unitary protection of technological innovations, throughout the territory concerned and at limited cost, in Europe protection is still fragmented and the costs are higher.

3.3. Indeed, a European firm which, through the European patent system, wishes to obtain patent protection in eight Member States — i.e. for a market broadly comparable to that of the USA — has to pay about DM 36 000, as against a cost equivalent to DM 3 000 for the USA and DM 2 200 for Japan [1].

3.4. If one compares the cost of obtaining a European patent (covering eight Member States as above) and maintaining it throughout its duration with the cost of a USA patent, Europe comes off even worse [2].

3.5. Moreover, SMEs do not enjoy any particular concession in Europe, whereas in the USA SMEs benefit from a 50 % reduction in fees, under Section 41(h)(1) of the US Patent Act [1]. The above could explain, at least in part, the fact that about two-thirds of innovative European SMEs (of which there are about 170 000) do not deposit patents [3], and as stressed in Opinion CES 986/97 [4] the trend is strongly accentuated by a new

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[1] J. Straus 'The present state of the patent system in the European Union', EC, 1997.

[2] In the case of the European patent this cost is calculated at US $120 000, in the case of the United States at only US$ 13 000. Cf. J. Straus, ibidem.

[3] Estimate in EC, Green Paper on innovation, 1995.

[4] Opinion CES 700/96 on the Green Paper on Innovation, 1.5 — OJ C 212, 22.7.1996; Opinion CES 987/97, 1.10.1997 on the Commission Working Paper: Towards the fifth framework programme — scientific and technological objectives — OJ C 355, 21.11.1997; Opinion CES 986/97, 2.10.1997 on the Impact on SMEs of the steady, widespread reduction in funds allocated to research and technological development in the EU — OJ C 355, 21.11.1997.

approach which would draw a distinction between small technology-intensive enterprises or 'precursors' which have unused applied research capacity on the one hand, and on the other the majority of enterprises which simply make use of the 'final products' of RTD.

4. Basic questions raised by the green paper

The green paper raises a number of questions; the most important of these are listed below. An attempt will be made to answer these and other questions in part 5 and the following parts of this opinion:

a) Is it really necessary to get the 'Community patent' off the ground?

b) How can the problem of languages and translations be solved?

c) Is it possible to envisage a 'variable geometry' or 'à la carte' Community patent?

d) Is it necessary to provide for the possibility of transfer from the Community patent to the European patent (and vice versa)?

e) Is it possible and desirable to deprive national judges of the opportunity to revoke a Community patent?

f) Is it necessary for the operator of the Community patent system to be totally self-financed through patent fees?

5. General comments

In approaching the problems raised by the Commission green paper and the fundamental questions involved, it is thought necessary to adopt the following general criteria:

5.1. *Patents and single internal market*

The Committee has repeatedly stressed the need to harmonize patent law in the European Union in order to consolidate the single internal market [1].

However, even harmonization of certain substantive provisions of national law on patents is not sufficient to complete the single market. It appears to be necessary to introduce a single patent protection title, namely the Community patent.

5.2. *Completeness and consistency of the system*

The Community patent would be one of the three Community pillars for protection of industrial property, namely:

— the Community patent;

— the Community mark, already up and running [2];

— the Community design, which is in preparation [3].

A simple harmonization of national laws could add the utility model [4] to these three pillars.

5.3. *Community patent and competitiveness of Community industry*

5.3.1. Launching a European patent system which includes the Community patent is essential if research findings and new technical and scientific knowledge are to be transformed into industrial and commercial successes, thereby putting an end to the 'European innovation paradox' and providing an incentive for private investment in RTD, which is currently much lower in the EU than in the USA and Japan.

5.3.2. The rules for the Community patent should be seen in the light of the fourth indent of the first paragraph of Treaty Art. 130, under which the aim of Community and Member State action to ensure competitiveness of Community industry is 'fostering better exploitation of the industrial potential of policies of innovation, research and technological development' [5].

5.4. *Community patent and innovation monitoring*

It is acknowledged that patenting is an important indicator of R&D capacity [6].

Thus, if the Community patent system becomes operational and efficient at low cost, its use by Community

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[1] Legal protection for biotechnological inventions (see Conclusions 5) — OJ C 295, 7.10.1996.

[2] Council Regulation No 40/94/EC, 20.12.1993.

[3] Proposal for a European Parliament and Council Regulation on Community designs and models (COM(93) 342 final) in OJ C 29, 30.1.1994.

[4] Green Paper — utility models in the single market — OJ C 174, 17.6.1996.

[5] Green Paper on innovation, 1.5. — OJ C 212, 22.7.1996.

[6] Cf. Z. Griliches and others, 'R&D patents and productivity', Chicago, 1984.

firms will also be a yardstick for their productivity in terms of innovation and valid R&D results.

5.5. *Need for competitive costs*

It is clear from the above data that European enterprises, especially SMEs, are at a cost disadvantage in protecting their innovations on their 'domestic' market (the EU), as compared with enterprises of the main competitive countries (USA and Japan) on their respective domestic markets [1].

One of the essential requirements for the Community patent is therefore the containment of costs.

5.6. *Need for early proposals*

Apart from the economic and competition considerations mentioned in 5.1 and 5.3.1 above, the Committee would stress the importance of issuing a draft regulation on the Community patent by spring 1999, in order to provide the EU with a competition instrument before going on to future enlargement.

6. **Specific comments**

In the light of the above criteria, the ESC has the following comments on the basic questions raised by the green paper and set out above:

6.1. *Need for the Community patent*

According to some circles, the present system, based partly on national patents and partly on the centralized system for deposit and patent granting (European patent) has so far worked quite well: however, the needs of the single market appear to make it essential also to have a Community patent.

Comparison with the main competitors (USA and Japan — see point 3 above) also brings out the strangeness of a 'Europe system' which, while preparing to introduce a single currency, does not yet have a unitary system for protecting inventions.

One can also take account of the current success of the Community mark, which goes beyond the most optimistic expectations. This success (while remembering the very different characteristics of mark and patent) suggests that, if a protection right with Community validity existed, enterprises would be prepared to adopt it.

It is thus necessary to have a Community patent, while maintaining the national and European options.

The Community patent could be created (or revived) by adopting a Community Regulation under Article 235 of the EC Treaty.

It is important for SMEs, and especially for those which operate solely on the domestic market, that the national patent offices should continue. In view of the rapid spread of technology these offices make a valuable contribution and are necessary to preserve national patent expertise.

6.2. *Language problem*

In tackling this crucial problem (perhaps the central problem for the Community patent) the following points should be borne in mind:

6.2.1. It is legitimate for the Member States to be reluctant a priori to give up using their national languages, but the dual nature of the patent should be borne in mind: on the one hand, an instrument of information on the state of the art, and on the other, a technical/legal instrument for protecting inventions.

6.2.2. Whereas it may be regarded as essential to have the patent in the national language when it functions as a legal instrument, other solutions are possible for its function as an information instrument on the state of the art.

6.2.3. According to reliable assessments, only a small percentage (1-3 %) of translations of patents issued by the European Patents Office are in fact consulted [2].

6.2.4. The problem of translations into the national languages also has political significance which justifies decisions at political level.

6.2.5. Among the solutions presented in the green paper, further attention should be given to the Package Solution presented by the EPO and mentioned by the Commission in the green paper, which in the Committee's view could be adapted as follows:

6.2.5.1. In accordance with the arrangements for the European patent [3], applications for Community patents should be deposited in one of the three official languages of the procedure (English, French or German), or there is the option as before of depositing them in the language of the Member State of the EU in which the applicant is established, with an obligation to send the translation in one of the aforementioned three official languages

[1] See Section 3 above.

[2] Information provided by the president of the EPO, I. Kober, at the Epidos Annual Conference 1996, and recorded in the proceedings of the conference.

[3] EPC, Article 14.

of the procedure, by the deadline laid down in the regulation [1].

6.2.5.2. The European Patent Office should prepare in the language of the procedure, a clear technical summary (enhanced abstract) of the patent application. This summary should be published simultaneously with the publication of the application. The EPO should see to the translation of the abstract into the other two official languages as well and publish it in the three languages via Internet. The EPO should forward these texts promptly to the Commission departments responsible for exploitation and dissemination of research results (DG XIII), for translation into all the other Community languages and publication through the CORDIS databank, so that they will be an effective, rapid instrument for dissemination of technical progress.

6.2.5.3. Given the usefulness for dissemination of technical and scientific knowledge which translation of the abstract into the national languages would have, the translation costs would not be borne by the applicant for the patent, but by the EU, as a cost of exploitation and dissemination of research results.

6.2.5.4. When the patent is granted, a translation should be made into the national languages of the Member States of the patent claims alone. These translations would be arranged and paid for by the applicants.

6.2.5.5. Before any legal action which the patent holder wished to bring to safeguard his rights, the whole patent file should be translated in the country concerned. This translation would also be the responsibility of the patent holder and at his expense.

6.2.6. Entrusting the preparation of the enhanced abstract to the EPO would have the advantage that uniform criteria would be used.

However, it would also be possible for the EPO to entrust translation of this summary into the national languages, under its own responsibility, to the national patent offices — if they were willing and able; in such cases the national patent offices responsible for translation should forward the translations to the Commission departments mentioned in point 6.2.5.2 above for dissemination.

6.2.7. In future, in view of European union enlargement, the Commission could look for other solutions — in the more general context of the Community's language arrangements — especially as regards the impact on relative costs and the competitiveness of European industry.

6.3. *Unacceptability of 'à la carte' Community patent*

6.3.1. The 'à la carte' Community patent solution is favoured by certain business and professional circles, where the need for a 'flexible' system is emphasized.

6.3.2. In reality — while the applicant for a Community patent would retain the option of choosing a European patent at a certain stage of the procedure (see point 6.4 below) — the 'à la carte' Community patent solution appears to contradict fundamental requirements of the single market. It should therefore be firmly rejected.

6.4. *Option of converting a Community patent application into a European patent application*

6.4.1. As noted above, this problem should be distinguished from the 'à la carte' Community patent hypothesis, although in certain ways the practical effects could be similar.

6.4.2. In the context of a Community which is preparing for further enlargement, it seems reasonable to allow the applicant for a Community patent to be able to transform his application — before completion of the granting procedure — into a European patent application which, if successful, would give rise to a set of national patents for the countries concerned.

6.4.3. However, for reasons similar to those given in the preceding points on the 'à la carte' Community patent, it does not appear to be compatible with the requirements of the single market to allow a Community patent once granted to be transformed into a European patent, i.e. into a set of national patents.

6.4.4. Nor does it appear realistic to allow a European patent application to be transformed into a Community patent application, except in the case of a European patent covering all the Member States of the EU.

6.4.5. The ESC can therefore endorse the possibility of transforming a Community patent application into a European patent application if the request for transformation is presented before the patent is granted.

6.5. *Legal questions*

On the delicate question of the respective jurisdictions of national courts and Community bodies, it seems reasonable to take as a starting point the system laid down by the Regulation on the Community mark with regard to forgery and validity of the Community marks [2].

[1] Cf. 'Implementing Regulations to the European Patent Convention', Chapter 1.

[2] Regulation No 40/954/EC, Article 91 and following.

A similar system could be provided for the Community patent, with certain correctives to take account of the specific nature of the Community patent, and in particular of the high level of legal and technical qualifications required of a body which would be competent to declare such a patent invalid with effect throughout the EU's territory.

In the light of this, the following is a possible solution:

6.5.1. Each Member State designates for its own territory a small number of national courts — with a maximum of five for each state [1] — which are competent to judge in the first instance:

6.5.1.1. all actions relating to infringement of Community patents;

6.5.1.2. actions to determine non-infringement of Community patents;

6.5.1.3. counterclaims for revocation of the validity of a Community patent presented by the (alleged) infringer in the course of an infringement case.

For the type of case mentioned in point 6.5.1.3, two alternative solutions are set out below, both of them based on the need to allow the judge in an infringement case to pronounce also on the question of validity, and at the same time to limit the effect of the decision (so as to avoid irreparable consequences in the event of a faulty decision).

In the first solution, any decision unfavourable to the validity of a Community patent would not have the effect of declaring it null and void with general application ('erga omnes'). On the contrary, such an unfavourable decision would simply have the effect of declaring the patent in question non-opposable to the alleged infringer, with limited reference to that judgement and that particular type of (alleged) infringement. (This first solution would have the advantage of clarifying the validity or invalidity of the patent at once, but as it would have only inter partes effect, it could cause further disputes on the same patent vis-à-vis other parties.)

As an alternative, the national courts selected in accordance with 6.5.1 above could be empowered to revoke a Community patent (subject to a counterclaim for revocation) with 'erga omnes' effect, but with a stipulation that revocation would be suspended until confirmed in an appeal court. (This second possibility would have the advantage of avoiding a proliferation of court cases — precisely because the decision would have 'erga omnes' effect — but would have the disadvantage of not coming into effect immediately, as the result of an appeal would be awaited.)

6.5.2. The aforementioned national courts would therefore have no competence as regards *erga omnes* cancellation of Community patents (unless of course the alternative in point 6.5.1.3 above was chosen). Such competence would lie exclusively with:

6.5.2.1. In the first instance, an appropriate cancellation division of the EPO or preferably a new specialized ad hoc court.

6.5.2.2. In the second instance, a specialized chamber of the Court of First Instance of the European Communities (CFI).

6.5.3. The specialized chamber of the CFI would also operate as a court of second instance for cases of infringement brought before the national courts.

6.5.4. Against decisions of the specialized chamber of the CFI a final appeal would be possible — solely for questions of law — to the Court of Justice of the European Communities.

6.5.5. In all cases, the national courts competent under point 6.5.1 above would have the power to take urgent decisions in favour of the patent holder, should it be deemed appropriate, applicable throughout the territory of the EU.

6.6. *The role of the national patent offices*

6.6.1. In the overall system envisaged, the national offices would continue to play their present role with regard to national patents and European patents.

6.6.2. They should also play an active role in disseminating and promoting patents as such and patent knowledge, including Community patents, especially with SMEs, professional associations, consultancies and independent inventors. In the case of SMEs, the action taken should include strengthening general cooperation with the organizations representing SMEs, micro-businesses and craft enterprises in the Member States.

6.6.3. For this function of diffusion and promotion, they should receive appropriate contributions from the Community Patent Office. These could take the form of a share of the maintenance fees for the Community patents.

6.7. *Tax-related questions*

6.7.1. In a Community patents system, based on a Community Regulation [2], there would be no sense in dividing up fees among the Member States, although

[1] The suggested number of five is of course to some extent arbitrary. However, it is still preferable to indicate the precise number (however arbitrary) rather than resorting to the generic formulation of Article 91 of the Community Mark Regulation, namely a number as small as possible. The idea of designating in each Member State a single court of first instance appears above all to penalize the SMEs, whose connections with the regional environment are still very strong.

[2] See Point 6.1 above.

this is envisaged by the Community patent convention and the Community patent agreement [1].

6.7.2. On the contrary, in principle the fees paid by users of this system should go to the manager of the system, namely the EPO, saving payment by EPO to the national patents offices of an appropriate contribution for the activities indicated in point 6.6 above.

6.7.3. To make the Community patent system attractive, there is a need to make the fees for its maintenance significantly lower than the fees for maintaining in force European patents covering the whole Community.

6.8. *Favourable conditions for the SMEs*

6.8.1. In line with what is done in the USA, SMEs (to be defined as laid down in Commission Recommendation 96/280 of 3 April 1996), universities and non-profit research bodies should enjoy suitably reduced fees in the Community patent system (e.g. reduced by 50 %).

6.8.2. Specifically as regards SMEs, micro-businesses and craft enterprises, a pro-active policy needs to be launched for the purpose of maintaining and strengthening their innovation capacity. To this end, in addition to reducing fees, it is necessary, within the representative organizations (trade associations, chambers of commerce etc.), to train advisers for the task of briefing enterprises directly and providing them with assistance in the innovation process right up to the patenting and marketing stage. Such a measure could be covered by the Fifth framework programme for research and technological development.

[1] Cf. Article 20 of the Community patent agreement, on financial costs and benefits.

6.9. *Other possible harmonizations at Community level*

6.9.1. The patentability of computer programs

6.9.1.1. The Committee would point out in general terms that protection of computer programs through copyright is provided by Directive 91/250 [2].

6.9.1.2. Moreover, the Committee thinks it desirable to amend Article 52(2)(c) of the European Patent Convention, which excludes computer programs from patentable inventions, but would stress that 'software inventions', to be patentable, should nonetheless constitute a 'solution to a technical problem'.

6.9.2. The right of prior use

The desirability of harmonizing the right of prior use should also be considered.

6.9.2.1. This would mean defining, in appropriate and harmonized terms, to what extent a third party which has begun to use the invention in good faith (or has made serious effective preparations to use it on a commercial scale) could continue such use despite the granting of the Community patent to another party.

6.9.3. Inventions of employees

6.9.3.1. It is not thought that the existing differences in the laws of the Member States with regard to the inventions of employees justify harmonization at Community level.

6.9.3.2. In accordance with the principle of subsidiarity, the matter should continue to be regulated by the various national laws.

6.9.4. The need for harmonization in the field of biotechnology

There is an urgent need to issue the directive on harmonization of patent law in the field of biotechnology, in order to avoid European enterprises being seriously disadvantaged in competition with their non-European rivals (particularly in the USA).

[2] Council Directive No 91/250/EEC, 14.5.1991 on legal protection of computer programs.

Brussels, 25 February 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 on the legal protection of services based on, or consisting of, conditional access' [1]

(98/C 129/04)

On 20 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 Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 February 1998. The rapporteur was Mr Hernández Bataller.

At its 352nd plenary session held on 25 and 26 February 1998 (meeting of 25 February), the Economic and Social Committee adopted the following opinion by 120 votes for, with no votes against and two abstentions.

1. Introduction

1.1. This proposal for a directive on the legal protection of services based on, or consisting of, conditional access, which the Commission has referred to the Committee for an opinion, is a direct outcome of discussions arising from the debate on the Green Paper on the legal protection of encrypted services in the internal market [2].

1.2. The Committee adopted an opinion on this green paper on 25 September 1996 [3].

1.3. The need to ensure legal protection of encrypted services against illicit receipt had already been established in the strategic programme for the internal market [4] and in the relevant green paper announced in the Commission communication 'Europe's way to the information society: an action plan' of 19 June 1994 [5].

1.4. More recently, the Commission communication 'A European initiative in electronic commerce' [6] notes in paragraph 55 that: 'A secure distribution of services will require adequate legal protection of conditional access services across the Single Market. Many services will use some form of encryption or other conditional access system to ensure proper remuneration. Service providers will need to be protected against the piracy of their services by illicit decoders, smart cards or other piracy devices.'

1.5. An opinion on this communication has already been adopted (CES 1191/97) [7].

1.6. In its opinion on the green paper [3] the Committee drew the following conclusions:

1.6.1. In general it is absolutely essential to encrypt messages in order to prevent any unauthorized person from gaining access to them or changing them.

1.6.2. Effective protective measures must be provided for in all Member States, and this objective can be effectively achieved only on the basis of Community harmonization.

1.6.3. The appropriate legal instrument for this harmonization is a Council regulation.

1.6.4. Its scope should be extended to cover all encrypted services.

1.6.5. The scope of the harmonization instrument should include the fully informed possession by private individuals of unauthorized decoding devices.

1.6.6. This legal instrument should permit claims for damages, establish preventive or precautionary civil measures against specific preparatory activities that facilitate pirating, and provide for sanctions in the case of illicit receipt and redistribution of encrypted services.

1.6.7. The Committee also asked the Commission to address this question and all its implications at international level, particularly in the framework of bilateral agreements and of WTO activities, and to establish the right conditions for technical standardization of decoding devices.

2. Evaluation of the Commission's proposal

2.1. *Legal instrument*

2.1.1. The first thing that is apparent from the Commission's proposal is that it has opted for a directive rather than a regulation.

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[1] OJ C 314, 16.10.1997, p. 7.
[2] COM(96) 76 final.
[3] OJ C 30, 30.1.1997.
[4] COM(93) 632 final.
[5] COM(94) 347 final.
[6] COM(97) 157 final.
[7] OJ C 19, 21.1.1998, p. 72.

2.1.1.1. The Commission considers this option to ensure an 'equivalent level of protection' in different Member States, leaving to their discretion the 'means to achieve such objectives'. Thus the Member States have been left responsibility for:

a) defining the measures necessary to prohibit on their territory activities that the proposal for a directive considers illicit;

b) the sanctions to be imposed on the infringing party, which must be:

— effective,

— deterrent,

— and proportional to the potential impact of the infringing activity.

2.2. *Scope*

2.2.1. The Directive is limited in scope to services protected by conditional access, insofar as the purpose of authorization for access to services is to ensure payment for the following services:

— 'television broadcasting', as defined in Article 1 (a) of Directive 89/552/EEC [1],

— 'radio broadcasting', which includes not just sound signals but also data signals transmitted via the same channel.

Neither definition covers the provision of services on individual demand.

— 'Information Society services', defined as 'any service provided at a distance, by electronic means and on the individual request of a service receiver'.

2.3. *Purpose of the proposal for a directive*

2.3.1. The purpose of the proposal for a directive is to prohibit the following activities in the territory of the European Union:

a) the manufacture, import, sale or possession for commercial purposes of illicit devices.

b) the installation, maintenance or replacement for commercial purposes of an illicit device.

The term 'illicit device' denotes any IT program or equipment designed or adapted to allow unauthorized access to a protected service.

c) the use of commercial communications to promote illicit devices.

2.3.1.1. 'Commercial communication' denotes any type of communication whose aim is to promote the services, products or image of a company or organization with end-users or distributors.

2.3.1.2. However, 'commercial communication' is not defined in Article 1.

2.3.2. The Commission's proposal focuses on the manufacture and sale of illicit decoders.

2.3.2.1. The scope of the proposal does not include:

a) matters relating to unauthorized receipt of any of the services referred to, or the private possession or acquisition of any illicit device, unless for commercial ends;

b) rights relating to the content of information transmitted via illicit devices;

c) industrial property rights relating to decoders, which will be covered by another proposal that is in preparation;

d) finally, matters relating to the protection of privacy rights and security of commercial transactions, unless they are based on payment for an encrypted communication service.

3. **General comments**

3.1. The Committee welcomes the Commission's proposal for a directive, which takes account of its opinion on the green paper.

3.2. The Committee nevertheless feels that given the current omissions and the distortion of competition that such omissions produce, the appropriate legal instrument should be a regulation rather than a directive, since this would:

— ensure more effective harmonization, since provisions would be directly applicable in the Member States;

— avoid a long process of transposing the proposed measures into national law.

3.3. The scope of the proposed directive should be extended to include the provision of professional services, such as telemedicine.

[1] OJ L 298, 17.10.1989, p. 23.

3.4. The purpose of Article 2 is to ensure free circulation of protected services, associated services and conditional access devices; however, paragraph 2 may prove to be superfluous, since it merely reiterates generally applicable and self-evident principles of the Treaty.

3.5. With respect to infringing activities, it would make sense to add 'associated services' to Article 3 (c), since these include the installation, maintenance and replacement of conditional access devices, as well as the provision of commercial communication services associated with protected services or devices, or other associated services.

3.6. Paragraph 1 of Article 4 could be replaced by a provision establishing the illicit nature of the activities described in Article 3.

3.7. Paragraph 2 of Article 4 should widen the right to institute proceedings, so that anybody who can prove a 'direct interest' is able to bring an action for damages or apply to the courts for an injunction.

3.8. Article 5 should include an obligation on the Member States to inform the Commission of the sanction provisions applicable, since these cannot be incorporated into the legal transposition texts.

4. **Specific comments**

4.1. The Committee feels that better protection should be provided for consumers who take out contracts for conditional access services, especially when it comes to dealing with: complaints and any compensation requests; quality of the service and proof thereof; aspects of payment and possible payment arrangements not covered by Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts.

4.2. The Committee considers that the introduction of conditional access services in society must in all cases be accompanied by protection of citizens' privacy and confidentiality.

4.3. Complementary sanctions should be adopted for customs, similar to those contained in Regulation (EC) 3295/94 of 22 December 1994, which lays down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods.

4.3.1. If sanctions are adopted for customs, it would make sense to set up a committee in the Commission similar to the committee provided for in Regulation (EC) 3295/94 of 22 December 1994.

Brussels, 25 February 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) establishing new rules on aid to shipbuilding'

(98/C 129/05)

On 20 October 1997 the European 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 Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 February 1998. The rapporteur was Mr Simpson.

At its 352nd plenary session (meeting of 25 February 1998) the Economic and Social Committee adopted the following opinion by 110 votes to three with seven abstentions.

Since the proposals for a new aid regime should be seen within the context of wider shipbuilding policy and, in particular, the Commission's parallel Communication [1] final outlining new orientations aimed at improving the competitiveness of the sector (point 1.5 of the Regulation Explanatory Memorandum), the Committee refers itself to the opinion it has given on that Communication.

As a reminder, the main conclusions of said opinion are:

— The ESC has, in its earlier opinion [2], endorsed the objectives which were agreed in the proposed OECD Agreement on shipbuilding. The failure by the United States to ratify that Agreement is regretted. Whilst the Committee would still wish to see the OECD Agreement ratified, the proposed new regulation has, in principle, the support of the ESC as it seeks to encourage the development of a stronger and competitive EU shipbuilding industry.

— The ESC commends the efforts of the Commission to create a consistent and mutually reinforcing set of maritime policies ranging from the promotion of research and innovation, encouraging industry-wide cooperation and, more recently, encouraging the development of short sea shipping as a contribution to wider problems of freight movement around the Community and in a wider context.

— Recent events in financial markets and exchange rates in the Far East have created an uncertain environment for a number of industries, including shipbuilding. The Committee recognizes that the Commission will need to monitor events and, if necessary, take appropriate action if there is a prospect that the shipbuilding industry will be adversely affected.

— Whilst the removal of operating aid, and its replacement by more selective measures lie at the core of the proposed regulation, the ESC would be reluctant to support the removal of operating aid if the prospects for competitive success were considered too low and if the alternative measures do not offer an equivalent effect.

— The Committee suggests that a further comparison to establish the relative competitive position of the main producers should be undertaken before a final date for the removal of operating aid is decided.

— The Committee welcomes the assurance that at the end of 1999 (one year before the deadline) the Commission will monitor the market situation and, if anti-competitive practices are established, will consider introducing appropriate measures.

— Difficulties might occur if the scope of the new regulation was not broadened to cover critical aspects of ship repair activities and the Committee welcomes this more logical approach to the range of shipbuilding, ship conversion and ship repair activities.

— The proposals relating to export credits, contract aid, closure aid, restructuring aid and investment aid are supported. However, the ESC would be concerned if the consequence of the changes was to increase the level of official expenditure on shipbuilding whereas the effect is supposed to be the opposite; i.e. the reduction and removal of aid.

— The Commission should monitor the impact of the arrangements and, in particular, the impact of the different types of support.

— The Commission should avoid any measures which could result in an international 'subsidy race' and should continue its endeavours to control, and ultimately phase out, subsidies to shipbuilding through an overall agreement within the philosophy of the OECD Agreement. This should be established as a basic principle in order to avoid the building of

[1] COM(97) 470.
[2] OJ C 30, 30.1.1997.

vessels for which there is no economic justification and where the consequences may be to unfairly distort activity in the shipbuilding sector and seriously damage the economics of the shipping industry.

Brussels, 25 February 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission on the social and labour market dimension of the information society "People First — The Next Steps"'

(98/C 129/06)

On 29 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 Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 February 1998. The rapporteur was Mr Pellarini.

At its 352nd plenary session (meeting of 26 February 1998), the Economic and Social Committee adopted the following opinion by 97 votes to 9.

1. Introduction

1.1. Further to its task of monitoring, analysing and providing guidance on the impact and problems of the information society, the Commission has published a new document focusing principally on its social dimension and effects on the labour market.

1.2. The starting points are the 1994 Action Plan on Europe's way to the information society and the 1996 Green Paper on Living and working in the information society: People first.

Following the path set out in this basic document the Communication sets the following main purposes:

— to increase awareness of the implications of the information society;

— to build an information society dimension into social policies and actions;

— to identify specific actions to maximize the contribution of the information society to promoting employment and social inclusion.

1.3. In an initial section, the Commission emphasizes the need to facilitate access to the information society, which 'must be based on the principles of equal opportunities, participation and integration of all'.

Infrastructures and services 'should be available at affordable prices'; the concepts of 'universal service' and 'public access' need to be examined in greater detail and looked at dynamically; software and hardware must be increasingly user-friendly; social groups which are largely uninvolved and uninformed must be made aware of the opportunities offered by the new technologies, bringing them into an on-going learning process.

1.4. Implementing the information society in public services can sustain and develop democratic life by encouraging participation and open government. In this regard, the Commission announces that it is preparing a Green Paper on Access to and exploitation of public sector information.

1.5. Significant results may be achieved even in purely social areas such as policies for equal opportunities or enhancing the quality of life and employment opportunities for people with disabilities.

1.6. A second section focuses on changes in the organization of work and the labour market. With the 'People First' Green Paper, the Commission had already called for an in-depth debate on the modernization of working life.

Far-reaching changes in working methods have occurred in recent years and are continuing, mostly affecting the balance between flexibility and security.

1.7. On the one hand, new ways of organizing work can contribute significantly to making the economy more competitive, as shown in the Green Paper on Partnership for a new organization of work: this is of fundamental importance in preparing Europe to take an active part in the growing globalization of production and markets.

1.8. On the other, the Commission's consultation process has shown that 'employees and trade unions are concerned that the introduction of ICT (information and communications technologies) and new forms of work organization might result in greater job insecurity and lower labour standards' [1].

1.9. Special attention is given to forms of teleworking, which is still not as widespread as expected, despite a broadly-based expression of interest on the part of workers.

1.10. The social dialogue too is affected by the new technologies, since 'the social partners no longer operate within traditional collective bargaining systems', as a result of the increasing flexibility of the organization of work and the globalization of markets and production [2].

1.11. Lastly, a further section deals with the opportunities, in terms of jobs, that ICT can offer.

1.12. The telecommunications liberalization process may generate new jobs, which 'will depend on the pace of that process and on the speed of diffusion of the technologies' (paragraph 42).

Most new jobs in Europe are created by software and computer service SMEs. However, problems exist regarding inadequate skill levels and the need for on-going and prompt renewal of know-how.

1.13. Regional and local authorities have an important part to play in supporting SMEs, helping them to maximize their potential.

1.14. The social economy may also fulfil a significant role, using the new technologies to assist particularly disadvantaged groups to break down social exclusion.

1.15. Lastly, public employment services will find ICT the most efficient and fastest means of matching job seekers with vacancies.

1.16. The conclusion reached in the document is that the social dimension should be closely integrated into Member States' information society development strategies.

2. General comments

2.1. In its opinion on the Communication from the Commission on Europe at the forefront of the global information society: rolling action plan, the Committee welcomed 'the sustained efforts undertaken by the Commission and all the EU bodies' [3].

2.2. Given the complex nature of the questions and problems raised, the present Communication unquestionably confirms the objective importance of the new technological revolution, which is bringing far-reaching changes to all aspects of economic, social and cultural life.

2.3. The scale of the opportunities is matched by the risks of exclusion for major sectors of the population.

2.4. This is the not the first time that the Commission has raised the question of the social, and in particular employment, effects of the information society, but the present Communication certainly represents a qualitative leap forward in its approach to complex issues of social cohesion and the relationship between employment and the new technologies.

2.5. Firstly, it is to be welcomed that instead of proposing individual measures which might be effective to varying degrees on different aspects, a genuine strategy is put forward committing the Union over the coming years not only at the purely financial level, but also at the level of more general economic, social and cultural policy options.

2.6. The Committee also pointed this out in its above-mentioned opinion on the rolling action plan, concluding that the process of building the information

(1) Communication on the Social and Labour Market Dimension of the Information Society, COM(97)390 final, point 26.

(2) Communication on the Social and Labour Market Dimension of the Information Society, COM(97) 390 final, point 32.

(3) OJ C 296, 29.9.1997, p. 13.

society 'will involve decisions that will have to be taken as part of the overall blueprint rather than separately, bearing in mind their legal, organizational, economic, social and cultural implications' [1].

2.7. The 'People First' dimension of this document is clearly visible in that the Communication not only 'sets out the Commission's strategy to further develop the social dimension of the information society', but specific proposals are made at the end of each point discussed. Checks will, of course, have to be made on their actual implementation, but they already represent a valuable framework for Commission commitments over the next few years.

2.8. Each section of the Communication, dealing with the major individual aspects of the information society in social terms, lists official procedures, research and analysis documents, and specific actions to promote debate or disseminate information.

2.9. More substantial questions, however, are also discussed. It is, for example, significant that the Commission declares its wish to 'review', by means of the appropriate checks and adjustments, fundamental choices such as the question of the 'scope, quality, level and affordability of universal service by January 1st, 1998', with a view to ensuring accessibility for all.

2.10. At the level of promoting democratic participation, the Commission thus accepts the European Parliament's proposal to draw up a communication and information strategy to facilitate access to the institutions for the public and organizations.

2.11. Turning to the problem of employment, which is the central core of the Communication, there is clearly an awareness that the profound changes caused by ICT must be closely monitored and analysed, so as to ensure, firstly, enhanced company performance and secondly, respect for workers' rights.

2.12. The decision to develop a European network to boost RTD and disseminate good practice in new forms of work and production organization is therefore to be welcomed. Research and studies are also to be carried out under the framework programmes for research and technological development and the Action Plan for innovation.

2.13. Regarding teleworking in particular, there is a willingness to tackle the question of its legal definition and to launch consultations with the social partners on the advisability of Community action to protect teleworkers.

2.14. Equally important is the Commission's insistence on the need for employment, the relation between flexibility and social security and working conditions to be considered among the future priorities for social dialogue, which it will be possible to carry forward thanks, in part, to the opportunities provided by ICT.

2.15. Concerning the potential for new jobs, the various aspects of the 'dematerialization' of the economy need to be looked at more closely. The Commission wishes to do this under the Fifth RTD Framework Programme, also monitoring real trends and studying Eurostat and ESIS statistical data on them.

2.16. Special attention focuses on the future contribution to job creation of the dissemination of the new technologies in local development. As the Committee has pointed out on several occasions, this is one of the economic sectors which should be most exploited in coming years, as it constitutes a major source of new employment. Implementing the new technologies can strengthen and accelerate this possibility.

2.17. The structural problem of the gap between the demand by business for high-level and up-to-date qualifications and largely inadequate vocational training must, however, be faced. A survey quoted in the Communication reveals that 52 % of job seekers have no vocational qualifications whatsoever, of whom only a very small minority are offered real opportunities for training.

2.18. The Commission therefore declares that it 'will maintain, in the context of the Agenda 2000 proposals, a strong commitment to improving human resource development systems so as to anticipate economic and social change, maintain employability and harness the employment potential of the information society' (paragraph 48).

3. **Universal service**

3.1. The Committee considers the Commission's work in defining the general information society strategy to be well directed, but feels that it could be further developed in greater detail, particularly regarding the universal service issue.

3.2. In this document, the Commission displays a new and more problematic attitude concerning the question of universal service. The Committee has repeatedly expressed its disquiet at an overly laissez-faire approach to this delicate and fundamental issue. The Commission's caution appears to bear out the Committee's approach and its repeated requests.

[1] OJ C 296, 29.9.1997, p. 13.

3.3. Several aspects are to be considered:

— the real possibility that access of public interest to the information society will be guaranteed;

— the guarantee of no exclusions or restrictions for those living in remote and rural areas or for social disadvantaged groups;

— mass dissemination of information society technologies and know-how.

3.4. The primary question is that of public interest access. The Committee agrees with the Commission when it urges Member States 'to ensure that access is a key objective of their information society objectives', and would also draw attention to the recommendation of the High Level Expert Group to the effect that, in order to avoid exclusion and preserve regional cohesion, the existing concept of universal service should be shifted in the direction of the 'obligation of universality to the educational, cultural, medical, social and economic institutions of local communities' [1].

3.5. In this regard, the Committee would repeat its views as expressed in the recent opinion on cohesion and the information society [2] and, in particular, calls upon the Commission to:

— spell out which services should be covered by the concept of universal service: obviously, this can no longer be limited simply to the telephone service, but must include more developed services such as Internet access;

— identify the locations and public institutions where such services should be available to all;

— specify funding and pricing methods providing effective access; for example, a universal service fund with contributions from companies managing telecom services.

3.6. These problems are of special importance for remote and rural areas and, more generally, for less developed regions.

The Commission is concerned that all the indicators for network and service installation [3] unambiguously show that although progress is undoubtedly being made, the technology gap could widen over the next few years.

The Member States and the Commission will need to take great care that the liberalization process does not lead to greater penalization, in view of the higher costs and lower profits which might discourage private operators from investing in these areas.

The new concept of a universal service obligation should provide access for all, at affordable prices, to advanced telecom services.

3.7. The Committee supports the Commission's efforts to increase the use of these new services by SMEs in disadvantaged areas, since this boosts economic and social cohesion, stimulates job creation and enhances the overall competitiveness of the regions concerned.

The WOLF pilot projects and Implace and Marsource initiatives should be reinforced and extended.

3.8. It would also be advisable for the Commission to carry out annual surveys of information society developments in Europe from the economic and social viewpoint, so as to increase awareness and provide a basis for assessment [4].

4. **Education and continuing training**

4.1. A real information society for all means widespread use of new services and universal 'literacy', as part of a shift from the information to the learning society.

4.2. Schools must take a leading role here.

The Committee would repeat its comments in an earlier opinion [5] that information and communications technologies should be built into all teaching systems and stages of education.

4.3. Governments in a number of Member States have set up large-scale information plans at every stage of education, or are in the process of doing so.

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(1) Final policy report of the HLEG (High Level Expert Group) 'Building the European information society for us all', April 1997, Recommendation 10a.

(2) OJ C 355, 21.1.1997, opinion on cohesion and the information society (rapporteur: Dame Jocelyn Barrow), 1 October 1997.

(3) See the statistical annex to the Communication on cohesion and the information society, *op. cit.*

(4) The only research presently available is the study drawn up by Nexus *et al* in late 1995: this data must be considered to be largely out of date, since changes in the information society sphere are faster than in any other field of technology. The document may therefore provide a picture which no longer reflects a rapidly-changing situation.

(5) Opinion on the Green Paper on living and working in the information society (rapporteur: Mr Burnel), OJ C 206, 7.7.1997.

The target of 'a computer in every classroom' should be pursued by all Member States, and the Commission must work to this end via programmes and initiatives supporting and encouraging government efforts, educational experiments and exchanges of experience.

Special attention should be given to training and refresher courses for teachers, offering them the opportunity to bring the use of the new ICT into their teaching.

4.4. The establishment of a network connecting schools in all the Member States might be of great value in encouraging this type of cultural movement, thereby creating a 'learning network'.

4.5. The Committee would take up the HLEG's proposal to create a European Learning Agency and Network (ELAN) to promote and disseminate know-how on leading-edge ICT applications in sectors of particular interest for education and training throughout Europe.

4.6. A real commitment to bringing the information society into schools would also boost its introduction among families.

4.7. While access to the information society is, for the younger generations, virtually taken for granted, adults — and particularly the elderly — may be largely excluded.

The HLEG argues that 'it is essential to view the information society as a learning society' and that 'in Europe the incentives to invest in such lifelong learning activities are insufficient' [1].

4.8. The Committee backs the Commission's plan to promote awareness-building initiatives for those sectors of the adult population currently furthest removed from the information society, or most at risk of being excluded from it, such as the unemployed, women and the elderly.

4.9. The risk of obsolescence has spread from machines to cover qualifications and people too. Many individuals are thrown out of the employment cycle and unable to get back into the labour market because they cannot keep up with technological changes and the necessary skills, which demand much greater flexibility and capacity for change than in the past.

Public and private training systems must therefore provide people with opportunities to update their knowledge and qualifications on the basis of closer knowledge of ICT, which now affect all production and commercial sectors.

4.10. The Committee supports the Commission's intention to confirm the feasibility of cognitive resource centres, where people at risk of exclusion can have access to basic 'literacy' and information society technologies in order to acquire the necessary skills.

4.11. The push for genuine access for all to the information society must be one of the priorities in developing a European information society model. One of the features of such a model should be the ability to lessen social exclusion and create new opportunities for disadvantaged groups. This is of special importance at a point in time when the welfare systems of all the Member States are experiencing radical change.

5. **Democracy and public services**

5.1. An information society for all will also have an important impact on democratic life, as it will provide new opportunities for citizens to be informed and to participate, and enable administrative procedures to be better monitored and more transparent.

5.2. The Committee welcomes the Commission's intention to draw up a communication on an information strategy facilitating access to institutions by the general public and organizations.

The Committee believes that the use of ICT should be developed in the Member States: one reason would be to serve as a means of consulting citizens on issues of common concern, particularly in local communities (e.g. quality of life in cities, government planning priorities, economic and tax options, transport, opening hours of public institutions and private companies, social and cultural issues, etc.).

ICT could provide a direct and permanent link between the public authorities and the general public, enabling an intense exchange of information to take place.

5.3. The Committee also calls on the Commission to envisage energetic awareness-building measures for Member State citizens and central and local authorities concerning sources of telematic information (via Internet) on the European institutions. National or regional databases and Internet sites on European questions could be particularly valuable, contributing to greater involvement of all in European aid and financing and all other Community initiatives.

5.4. The public authorities, together with schools, could become the driving force behind the information

[1] HLEG policy report, *op. cit*; the report also quotes the Delors report 'Learning: The Treasure Within', Report to UNESCO of the International Commission on Education for the Twenty-First Century, UNESCO, 1996.

society for all by providing opportunities to gain the necessary know-how and put it into practice.

5.5. The Committee plans to assess the matter in more detail, partly on the basis of a communication to be issued by the Commission in the forthcoming months subsequent to the debate on the Green Paper on exploiting Europe's public sector information.

5.6. In the meantime, the Committee emphasizes that greater use of ICT in the public services would also have a significant effect on the quality of the services themselves, particularly by providing remote access — this cuts waiting times and enables people with mobility difficulties to have independent access.

The public authorities could offer new opportunities to citizens in many fields, from registry office and certification services to health or cultural departments, through ICT.

5.7. The Committee particularly appreciates the Commission's guidelines for promoting awareness of the potential of ICT to improve health systems and its plan to develop a Community-side network for sharing epidemiological data and disseminating European public health programmes.

6. **Disabled people**

6.1. An information society which is genuinely for all must also deliver a better quality of life and new employment opportunities to the disabled.

ICT make available technologies and ways of using the various services capable of satisfying these demands.

6.2. The Committee calls, as does the Commission, for the problems of disabled people in accessing the information society to be included among the future priorities of the universal service review, specifically by determining which services should be defined as universal.

6.3. The Committee also feels that the Commission should alert the Member States to the need to assist in equipping disabled people with basic and advanced services.

The Commission could sponsor, or possibly finance, pilot ICT training programmes specifically aimed at the disabled.

6.4. The spread of telework should facilitate job seeking, particularly for people with serious motor disabilities, although it should not be allowed to lead to isolation.

6.5. Lastly, closer cooperation between industry and associations for the disabled should be sought, in order to increase hardware accessibility and initiate pilot software projects aimed primarily at individuals who have difficulty communicating.

7. **Telework**

7.1. Telework merits particular attention: over recent years, it has come to be seen — although with widely differing judgements — as one of the most important options arising from the new information society.

7.2. The way work is now organized in all the more advanced countries allows for many flexible work approaches, including teleworking.

This might be seen as a further opportunity for workers, or as putting them in a substantially weaker, insecure situation.

7.3. Quite apart from technical and organizational assessments, the social security, legal and health and safety aspects are of special importance and should be examined in greater depth if fresh solutions are to be found.

7.4. The status of such workers is currently under discussion in virtually all Member States, but there also needs to be a Community input into the definition of this status.

No Member State presently possesses any specific and coherently structured legislation in this field.

It is appropriate that in point III.3 of the Communication the Commission specifically addresses this point, with a view to creating an adequate framework for teleworking.

7.5. The Committee welcomes the Commission's initiative of consulting with the social partners to examine the possibility of Community action on the legal and social protection of teleworkers.

The Committee will certainly take part in this debate, in whatever form the appropriate authorities ultimately decide.

As suggested by the HLEG, the convention and recommendation on the protection of homeworkers, adopted by the 1995 International Labour Conference, along with the EU Commission's proposed directive on atypical work [1], could serve as European guidelines.

7.6. The Committee proposes that the Commission encourage the Member State social partners to include specific clauses on teleworking in new national employment category agreements.

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[1] COM(90) 228 final — SYN 280 and SYN 281.

The Commission could also record and make known good collective bargaining practices and hands-on experience and offer these to the social partners as part of the social dialogue.

7.7. Lastly, the Committee suggests that 'telecottage' initiatives, or community teleservice centres, be taken up on a widespread basis. They could also serve as a focal point for training and information activities.

As well as helping those at serious risk of exclusion — such as the long-term unemployed, who have no income to invest in hardware — to find jobs in teleworking, telecottages also stimulate greater socialization, averting the danger of isolation inherent in telework.

8. Conclusions and proposals

8.1. The Committee supports the Commission's strategy to facilitate access to the information society.

This strategy should be based on the principles of equality of opportunities and the participation and inclusion of all.

8.2. In practice, this means building an information society dimension into policies and social initiatives, promoting employment and social inclusion.

More specifically, the Committee recommends that all currently planned or future actions should, as the Commission itself envisages, provide 'a real opportunity to promote gender equality' [1], with the active involvement of women in producing information and in communication.

8.3. The Committee calls on the Commission to consider how to extend universal service to cover more advanced services (such as Internet), with easy access and at moderate cost, as well as the basic service.

8.4. The Committee would draw attention to the proposals of the HLEG to the effect that in order to avoid exclusion and preserve regional cohesion, universal service should include facilitated access to the information society for the educational, cultural, medical, social and economic institutions of local communities.

8.5. The Committee stresses that ICT should be built into all teaching systems and stages of education.

Special attention should be given to training and refresher courses for teachers, offering them the opportunity to bring the use of the new ICT into their teaching.

8.6. The Committee backs the Commission's plan to promote awareness-building initiatives, as part of a continuing training approach, for those sectors of the adult population currently furthest removed from the information society, or most at risk of being excluded from it, such as the unemployed, women and the elderly.

8.7. The Committee believes that the central and local public authorities, together with schools, could become the driving force behind the information society. Greater use of ICT in the public services would also have a significant effect on the quality of the services themselves, offering new opportunities and services to citizens, including in the sphere of employment.

8.8. An information society which is genuinely for all must offer an enhanced quality of life and new employment opportunities for people with disabilities too.

The Committee endorses the Commission's approach of including the problems of disabled people in accessing the information society among the priorities of the universal service review.

8.9. The Committee welcomes the Commission's initiative of consulting with the social partners to examine the possibility of Community action on the legal and social protection of teleworkers providing a clearer definition of health and safety issues in particular.

8.10. The actions mentioned above are intended to furnish a practical response to the problems posed by ICT and to spread the potential offered by the information society as widely as possible.

A fundamental question remains, which the Commission document and all its predecessors touch upon only indirectly, but which the Committee is convinced must be tackled through specific actions: how to change the information society's image.

8.11. Since its first appearance on the production and commercial scene, the information society has been seen by many as a factor in job losses.

But in recent years, while millions of jobs have certainly vanished as a result of automation and telecommunications, others have been created in hardware and software production and the new openings provided by ICT in different production and commercial sectors.

8.12. A positive image of the information society is, however, slow in making headway.

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[1] COM(97) 390 final, point 18.

The Commission's action via recent documents [1] has undoubtedly helped to shift the debate towards the positive aspects of the information society, including employment.

This Communication with its 'people first' and labour market dimension themes clearly follows in this direction, and should be fully exploited.

8.13. The Committee therefore supports the Commission's efforts to include the social dimension when implementing information society policies, and wishes to take positive steps itself in this direction.

These information initiatives should be targeted principally at young people, the long-term unemployed and women: in many regions, it is they who experience the unemployment crisis most directly.

8.14. Lastly, the Committee believes that this strategy of focusing on the social dimension and implementing practical actions to make the most of the employment and social integration opportunities may help create a more positive image of the information society.

[1] From the White Paper on Growth, Competitiveness,, Employment, *op. cit,* to those on cohesion in the information society, people first, etc.

Brussels, 26 February 1998.

The President
of the Economic and Social Committee
Tom JENKINS

APPENDIX

to the opinion of the Economic and Social Committee

The following amendment, while receiving more than a quarter of the votes cast, was rejected during the course of the discussion.

Point 7.5

Delete last sentence giving a reference to the convention and recommendation on the protection of homeworkers, adopted by the 1995 ILO Conference, as a potential model for European guidelines.

Reason

The concept of 'Homeworkers' is limited to the place where you perform your work. Telework is much broader.

The employers opposed as a group a convention on homework and didn't participate in the discussions. Few governments have ratified the convention. The reference should therefore be deleted.

Result of the vote

For: 34, against: 71, abstentions: 3.

Opinion of the Economic and Social Committee on the 'Management of fish stocks in the Mediterranean'

(98/C 129/07)

On 10 July 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 'Management of fish stocks in the Mediterranean'.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 1998. The rapporteur was Mr Muñiz Guardado.

At its 352nd plenary session of 25 and 26 February 1998 (meeting of 25 February), the Economic and Social Committee adopted the following opinion by 118 votes for with one abstention.

1. Introduction

1.1. The present opinion addresses the management of fish stocks in the Mediterranean, a clearly complex and delicate issue of great importance whose particular features demand a specific approach.

1.2. Different fishing fleets operate in the Mediterranean: EU vessels, those from the other countries of the Mediterranean basin, and third country vessels. While the EU fleet is subject to strict rules (Community and national, in some cases), arrangements vary for each of the other Mediterranean countries and third country fleets, concentrating on migratory species (tuna and swordfish), operate with virtually unrestricted freedom. This is creating an increasingly untenable and discriminatory situation for all the Mediterranean countries, the EU ones in particular.

1.3. There is a need for real, comprehensive harmonization: it is difficult for EU fishermen to understand why they must obey (national/EU) laws which are not harmonized with those of the other fleets present in the Mediterranean.

1.4. EU fishermen acknowledge that fishing grounds which are at risk of being wiped out must be protected and regulated, but they cannot accept that such protection should benefit other, unregulated fleets at their expense.

1.5. Representatives of the 88 Mediterranean fishermen's associations met in Ibiza (Spain) on 7 and 8 June 1997. The urgent need for comprehensive arrangements, efficient management and controls on the fleets of other Mediterranean and third countries, together with vessels operating under flags of convenience, was once again emphasized, so as to combat the over-fishing to which most Mediterranean species are subject.

1.6. The far-reaching importance of this question has already given rise to two diplomatic conferences: one in Crete (Greece) in 1994, the other in Venice (Italy) in 1996. At both conferences aspirations for the future of the Mediterranean were discussed and numerous declarations made, but since then the sector has seen that these intentions have failed to lead to practical measures going any way towards solving the problems.

1.7. The competent bodies must make faster and more effective progress. An extremely serious situation is being met with rather too much calm, and there is little sense of realism or ambition in seeking solutions, although some national measures have been adopted over recent months (replacement of drifting gill nets in Italy using EU loans, establishment of a protected zone in Spain).

1.8. Other widely advocated steps, however, have not yet been discussed. Among these, the Committee would highlight trade measures against countries not complying with rules for conserving resources.

1.9. Although Community law provides for many of these restrictions, it also contains derogations for specific fishing fleets from a number of countries. There are also specific derogations for other countries.

1.10. The fact that these restrictions continue to be flouted contributes to the exhaustion of all resources. Recovery of fishing grounds should therefore be the guiding principle of all fishery policies: Council Regulation (EC) No 1626/94 of 27 June 1994 [1] represented a first step in this direction.

1.11. Even Regulation (EC) No 1626/94 lacks realism and ambition in solving the very real problems existing in the Mediterranean.

1.12. The regulation has still failed to produce real, effective harmonization and the Mediterranean continues to lack a regulation system capable of halting the deterioration of resources, the crisis affecting fleets, job losses and market distortion. The Committee therefore advocates:

— safeguards for the conservation of Mediterranean fishery resources;

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[1] OJ L 171, 6.7.1994, p. 1; ESC opinion: OJ C 201, 26.7.1993.

— consideration of the views and advice of those working in the sector on whatever measures are adopted, underpinning their implementation;

— responsible marketing, to make responsible fishing both possible and sustainable;

— effective checks on third country fleets practising unregulated industrial fishing at the expense of traditional fishing.

2. General comments

2.1. 'Mediterranean' means 'surrounded by land': it is a small sea compared to others around the world, but is unique in giving its name to a clearly defined type of climate. It is home to a wide range of economically valuable species. Hake, monkfish, mullet, sole, bream, shrimp and prawn are of particular importance among demersal species: the pelagic species divide into the smaller varieties, such as sardine, anchovy, scad and mackerel, and the larger, which include bluefin tuna and swordfish.

2.1.1. These resources basically live and reproduce within the continental shelf area (to a depth of 180 metres). The shelf is narrow, and distributed unevenly along its shoreline. This can be seen from the following table, which also shows territorial waters in nautical miles.

Country	Shelf (km^2)	Territorial waters (naut. miles)
Albania	5 450	15
Algeria	10 700	12 (1)
Cyprus	2 500	12
Egypt	29 200	12
France	20 450	12
Greece	57 000	6
Israel	3 250	6
Italy	120 740	12
Lebanon	1 450	12
Libya	55 000	12
Malta	5 460	12
Morocco	4 480	12
Spain	44 100	12 (1)
Syria	1 160	36
Tunisia	77 300	12
Turkey (Mediterranean)	26 100	6-12 (1)
Former Yugoslavia	43 500	12
Total	511 140	

(1) Algeria extended its territorial waters unilaterally in 1996. Spain has declared a protected fisheries zone between the Cabo de Gata and the French border. Both Spain and Algeria have decided to supervise fishing activities up to the territorial limit permitted by the Convention of the Sea. Turkey applies a 6 mile limit in the Aegean and 12 miles along the rest of its coast.

2.2. The following figures outline the make-up of the EU fleets operating in the Mediterranean zone:

Country	Vessels	KWt	Personnel	GRT
Spain	5 668	477 828	15 053	101 256
France	2 365	183 000	3 611	17 458
Italy	16 801	1 524 977	47 587	270 179
Greece	20 792	674 310	39 397	146 147
EU total	45 626		105 648	

2.2.1. Appendix I describes the characteristics of the EU Mediterranean fishing fleet, as defined in the 1990 working document on guidelines for a common fisheries system in the Mediterranean.

2.2.2. These figures reflect the small size of undertakings, which are of a predominantly non-industrial character. The proximity of fishing grounds to fishing communities and ease of access to markets (at least in the Community countries) have produced a highly fragmented sector. The size of each country's fleet depends chiefly on the size of its continental shelf area. The following table illustrates the concentration of fishing vessels in each 1 000 km^2 of shelf for each EU country:

Country	Vessels	KWt	Personnel	GRT
Spain	129	10 835	341	2 296
France	116	8 949	177	854
Italy	139	12 630	394	2 238
Greece	365	11 830	691	2 564

2.3. The Mediterranean is also a major centre for the consumption of fisheries products. It has a strong tradition of seafood consumption, a densely populated coastline and a fragmented but very fluid market on which fishery produce prices are often considerably higher than on other markets. Against this backdrop, it is difficult to check on the size of catches landed — a difficulty compounded by at least two further factors: the geographic dispersal of potential landing places, and budget constraints preventing the authorities from stepping up checks (sea and land surveillance).

2.4. Inspection systems, which are the responsibility of the national authorities, should, as far as possible, involve fishing communities themselves and their organizations, based on clear, transparent and fair rules. Fishery resources have long been exploited in the Mediterranean, sometimes under self-regulating ar-

rangements put in place by fishing communities. However, technological change, the increased mobility of the world's fleets, and market globalization have finally affected the stability of Mediterranean resources.

2.4.1. As long ago as 1972, the General Fisheries Council for the Mediterranean (GFCM) [1] set up a working party on pollution in the Mediterranean. Due to the localized nature of many resources, however, countries have generally made little headway in international cooperation, the GFCM being restricted to a basically consultative role.

2.4.2. Nevertheless, the entry of Greece and Spain into the Community in the 1980s, together with the weight of the common fisheries policy in the Atlantic (withdrawal prices, aid for modernization, etc.) led the member states to begin a joint follow-up effort for Mediterranean fisheries.

2.5. In the mid-1990s the European Commission's services presented a working document on guidelines for a common fisheries system for the Mediterranean, a first step in discussing the problems and solutions to them. At this stage, it became evident that a Community policy for the conservation and management of fishery resources in the region was needed , in order to maintain fisheries assets and encourage their exploitation for the benefit of the coastal population. A series of measures was introduced to achieve these objectives, establishing a timetable and the means by which a common fisheries policy for the Mediterranean would be set up. Seven years after publication of the document, an analysis can be made of how these guidelines have evolved in the legislative, political, technical, socio-economic and international cooperation spheres.

2.5.1. It was made clear in the legislative sphere that, although many of the provisions of the common fisheries policy were fully applicable to Mediterranean fisheries, they had to be introduced in stages and taking constant care to protect elements peculiar to Mediterranean fishing. To this end, it was proposed to:

— establish a Community basis at the highest level, reflecting the general principles deriving from the UN Convention on the Law of the Sea and existing laws on technical conservation and management standards;

— introduce or strengthen cooperation between Member States in the field of scientific research;

— ensure improved coordination of scientific and technical research, so as to obtain optimum use of specialist bodies' operating budgets;

— organize systematic dissemination of basic scientific data and results of work.

2.5.1.1. The adoption of Council Regulation (EC) No 1626/94 of 27 June 1994 represented a significant step forward, harmonizing a number of technical measures in force in the Mediterranean. The Committee issued an opinion on this regulation on 6 May 1993, making a number of general comments which were not, unfortunately, fully taken on board in the regulation as finally adopted. Appendix II provides a table of the derogations under Regulation 1626/94, drawn up by the Commission's DG XIV.

2.5.1.2. Despite the advances made in the legislative field, real and effective harmonization is far from being achieved in the Mediterranean. This will only be possible by gradually removing all current derogations, when not scientifically justified, and applying the same technical measures to all fleets. The aim is to ensure a minimum, non-discriminatory reference framework for all Member States. If the proposal in its current form should prove unacceptable to any country, the relevant aspects of the regulation should be revised so that it is the same for all the countries upon which it is binding. In this regard, it is not acceptable for draft regulations to be consolidated which, even if for a transitional and limited period, constitute a serious precedent which could jeopardize efforts to secure a more structured fisheries conservation policy in the Mediterranean, as argued in the ESC's opinion [2].

2.5.1.3. To summarize, progress is possible in terms of stricter legislation, based on a Community framework of minimum requirements which countries, regions or fishing communities can supplement. However, it will be equitable to Community fishermen, who are in constant competition with each other, only if the framework of minimum obligatory requirements is the same for all. Clearly, a prerequisite for the social acceptance of legislation is that it be seen as equitable: effective enforcement is impossible without social acceptance in such a highly dispersed, fluid and complex environment as the Mediterranean.

[1] An intergovernmental organization set up in 1949 within the UN's Food and Agriculture Organization (FAO). The convention establishing the GFCM came into force on 20 February 1952.

[2] OJ C 30, 30.1.1997.

2.5.2. A series of indicators were laid down in the political sphere, which may be broadly described as follows:

— concerted action between the Member States concerned with a view to establishing fishery jurisdiction zones beyond territorial waters;

— contacts with other Mediterranean countries, also fostering scientific cooperation;

— intensified international cooperation within existing organizations.

2.5.2.1. Here, progress has basically been made at national level. The case of Spain should be noted, with its recent Royal Decree 1315/97 setting up a protected fishery zone in the Mediterranean from the Cabo de Gata to the border with France. Within this zone, Spain retains sovereign rights for the purposes of conserving living marine resources and for fishery management and control (Article 2). All, of course, without prejudice to any past of future EU measures for the protection and conservation of resources .

2.5.2.2. The Spanish government's intention with this measure is basically to protect populations of large pelagic species (particularly tuna), and to keep a labour-intensive, non-industrial fleet in the zone, oriented towards high-quality fishery products.

2.5.2.3. A significant increase in the fishing effort of non-Mediterranean industrial vessels has occurred over recent years (there are estimated to be more than 100 such vessels, some using flags of convenience). These vessels frequently operate without supervision and very close to the 12-mile coastal zones, flouting the recommendations of the International Convention for the conservation of Atlantic tunas (ICCAT). This uncontrolled exploitation over the last few years has reduced fish stocks to critical levels.

2.5.2.4. Uncontrolled exploitation further highlights the need to establish effective arrangements for controlling the fishing effort in the Mediterranean. A key objective in this regard is to strengthen the position of the GFCM as a major regional fisheries organization. To this end a number of important decisions (a scientific committee, autonomous budget, etc.) were taken at the GFCM's meeting in Rome on 13-16 October 1997. At the same time it was decided to amend the GFCM's statutes and rules of procedure so as to allow the Community to become a member which will help to increase the EU's importance in the organization.

2.5.3. In the technical sphere, the need has been acknowledged for a specific Mediterranean model for resource conservation. For the reasons listed above, this model is based on supervising the fishing effort (placing restrictions on fishing gear, on the number of vessels, etc.) rather than on limiting catches. Mediterranean fisheries are such that general application of supervisory arrangements based on fixing TACs are impracticable, on account of the multi-species nature of catches and dispersal of fleets. Special importance has therefore been given to technical regulations, focusing on the following:

— technical research into selectivity of nets;

— progressive reduction in the use of nets damaging to the marine environment, especially drifting gill nets;

— drawing up of Community legislation defining characteristics and conditions for the use of different types of net;

— conversion of fleets in order to secure systematic use of selective nets.

2.5.3.1. Results in this field have also been scarce. Progress has been made in certain secondary aspects (establishment of a Community fleet census), but the core of the problem has only been tackled by Regulation 1626. However, the adoption of this Council regulation on 27 June 1994, harmonizing a number of technical measures in force in the Mediterranean, did not represent a major advance on the points referred to above, since:

— the regulation made no provision for prohibiting drifting gill nets;

— comparative discrimination is created with respect to pelagic, semi-pelagic and pair trawling gear, since it is left to the Member States to establish restrictions involving technical characteristics (Article 5).

2.5.3.2. Progress may, however, be made on the problem of drifting gill nets following the adoption of a Council Decision on a specific measure to encourage Italian fishermen to diversity out of certain fishery activities [1], at the Fisheries Ministers Council held in Luxembourg on 14 and 15 April 1997.

2.5.3.3. Various scientific studies have been produced, but although they have increased knowledge of the problem, they have not been taken into sufficient consideration so as to underpin the regulations so far adopted. They do however represent a considerable step forward in terms of research, which must be pursued

[1] OJ L 121, 13.5.1997, p. 20-22.

in every possible forum, particularly those bringing together countries whose fleets are active in the Mediterranean.

2.5.3.4. The GFCM should be the primary body involved, without however underestimating the role of scientific cooperation between countries (such as the FAO's COPEMED project, etc.).

2.5.3.5. In conclusion, progress is being made in the technical field, but it is extremely slow. This means it still has little practical impact in terms of effectively regulating Community fishing at a stable, non-conflictual level.

2.5.4. In the socio-economic sphere, it was necessary to involve the sector in implementing the common fisheries policy . In view of the nature of Mediterranean fisheries (dispersal, small size of vessels, etc.), it was essential to secure the support of those working in the sector for the obligations inevitably involved in making the common fisheries policy viable. It was proposed, in this connection, to strengthen the sector's structures so as to create an active centre of collective responsibility to be consulted on questions of resource and market management.

2.5.4.1. The producers' organizations targeted in the common organization of the market have not been strengthened in the Mediterranean because of the existing socio-economic structure and the way in which products are marketed. Regulation of the fishing effort could be strengthened by introducing mechanisms for the territorialization of the coastal waters. Official recognition of fishermen's organizations in countries such as France and Spain, where they are firmly established, could be put on a qualitatively higher level. The effective supervision exercised by fishing communities in certain parts of the Mediterranean could be studied, and should lead to legal recognition and the delegation of powers by the state, allowing them a degree of participation in managing the resources of their local waters. Such recognition already exists for the coastal fisheries of Japan and the coastal lagoon of Valencia. The restrictive character of such a scheme could result in stronger safeguards for resources.

2.5.4.2. Action in this sphere has so far been restricted to consultation initiatives, including two in which the sector participated:

— the seminar held by the Commission and the European Parliament in Ancona, Italy, on 22 and 23 June 1995 discussed Mediterranean resource conservation policy. Following the seminar, a meeting was held on 24 June attended by representatives of fishermen's organizations. The meeting tackled questions concerning harmonization, Community-level technical measures, international cooperation, structural policy, and the involvement of occupational organizations. A specific point was contacts with third country fishermen;

— the First meeting of professional fishermen from the countries of the Mediterranean seaboard, organized by the Commission, was held in Naples, Italy, on 28 September 1996.

2.5.5. Lastly, the international cooperation sphere was considered to constitute the second stage in constructing a comprehensive policy for the conservation and rational management of resources. After Community harmonization, fishing in the Mediterranean as a whole would need to be tackled: measures agreed with the coastal states should be binding upon all.

2.5.5.1. The most appropriate way proposed was to hold a diplomatic conference charged with laying the foundations for an international coordinating structure. The assumption was that such coordination should safeguard the common policy's successes in resource management and conservation, secured during the first stage, and should be underpinned by an independent scientific body which would do the groundwork for an evaluation of the state of stocks.

2.5.5.2. Matters have not yet moved beyond consultation in this area. Two diplomatic conferences have been held (Crete, Greece, 1994 and Venice, Italy, 1996) but no operational measures have yet been adopted to provide a practical solution to the problems.

2.5.5.3. A further major issue raised since 1990 has been the revitalization of the GFCM as an institutional framework which brings together all the Mediterranean countries. No substantial progress has been made here either. The GFCM's work has not been significantly stepped up (this may be assumed to be due to lack of resources, which should basically be provided by the EU). The EU's membership has been approved (although it awaits Council ratification in order to take legal effect). The CGPM's activity may change in view of the results obtained at its most recent meeting, held in Rome in October 1997.

2.5.5.4. Many EU and non-EU countries — such as Spain, Greece, Morocco, Algeria, etc. — are generally involved in small-scale, non-industrial fishing. In contrast, an industrial-type fleet, flying the Japanese or Korean flag, or flags of convenience (Panama, Honduras, Belize, etc.), continues to operate, unsupervised, outside the 12-mile limit. This fleet consists of over 100 large vessels, fishing industrially with large-scale gear, concentrating on massive catches of bluefin tuna and swordfish.

2.5.5.5. The state of stocks is such that they cannot withstand pressure of this kind indefinitely. The situation must be regulated and brought under control in the near future. Small-scale fishing should, in any event, always have priority over industrial fishing, and the interests of Mediterranean countries over those of outside countries.

3. **Conclusions**

3.1. The Mediterranean displays a number of specific features to which management systems must be geared if they are to be effective.

3.2. The efficacy of management systems will also depend on their fairness, thus preventing discrimination.

3.3. Scientific research funding must be stepped up still further, giving greater dynamism to the GFCM and making it the leading body, but without neglecting scientific cooperation through joint studies by Mediterranean countries.

3.4. Situations clearly differ, requiring real and comprehensive harmonization of Mediterranean fisheries. Harmonization will only be possible following the gradual removal of all the derogations contained in Regulation (EC) No 1626/94, when not scientifically justified, with the same technical measures applying to all fleets.

3.5. The Committee would urge that fishermen be consulted on the proposed legislation, thereby involving them in its application. This would give greater force to the proposal made by the EU within the GFCM concerning the creation of a committee on which fishermen would be directly represented.

3.6. Appropriate steps must be taken against producers who infringe resource conservation rules. Responsible trade must be encouraged so as to prevent the current unfair competition, particularly with regard to third country fleets.

3.7. The establishment of protected fishery zones in the Mediterranean is the type of measure capable of ensuring that resource protection and conservation measures are effective.

3.8. The diplomatic conferences must do more than issue declarations of intent. There must be closer cooperation between all the countries, working together at an early stage to prepare conclusions which can be put into practice immediately.

3.9. Small-scale fishing must have priority over its industrial counterpart in the transition to sustainable fishing in the Mediterranean. The interests of the Mediterranean countries should come before those of other countries.

Brussels, 25 February 1998.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX I

to the opinion of the Economic and Social Committee

Characteristics of the EU Mediterranean fishing fleet

The EU Mediterranean fishing fleet may be described in general terms as follows:

— it comprises a large number of vessels (some 47 000), which are small in size and underpowered;

— both the vessels and their on-board fishing, conservation and processing equipment are out-dated;

— on-board health and safety standards are often low.

Following an analysis of the socio-economics models for the exploitation of fishery resources, the situation in the four Member States concerned may be summarized as follows:

— Non-industrial coastalfishing is carried out using vessels with no superstructure, less than nine metres in length between perpendiculars and usually with no engine. Most vessels are family-operated and fishing provides many but low-paid jobs. Moreover, given its traditional social structures, the sector is somewhat resistant to outside obligations (legislation, supervision) and technological progress. This is compounded by socio-economic structures encouraging individualism.

— The medium-sized non-industrial fishing fleet comprises vessels of between 9 and 18 metres in length between perpendiculars, which are generally out-dated and obsolete. Their activities are easier to supervise as there are fewer of them than of the above type, and because their size obliges them to land their catches in port. Some of the activities of this part of the Mediterranean fleet are subject to strict regulation, such as bans on fishing or building new vessels, aimed at controlling access to resources (advance authorization for construction, commissioning permits, licences, etc.).

— Deep-sea fishing is carried out by relatively modern and efficient vessels, operating in zones generally lying outside territorial waters. Of particular note here is the fleet specializing in tuna and other large migratory species, which competes directly the fleets of non-Mediterranean countries.

Source: COM(90) 1136 fin — Annex I — pp.13-14

APPENDIX II

to the opinion of the Economic and Social Committee

Exceptions under Regulation (EC) No 1626/94

Country	Fishery	Accepted exceptions	Time limit and conditions	Comments
Italy	Trawling for restocking fish (Gobiidae, Atherinidae) for human consumption (Upper Adriatic)	Exceptions to 40 mm mesh size (Article 6, Annex III)	31.12.1998 Authorized 2 months per annum	Exceptions granted for meshes used in accordance with national law at 1.1.1994. Possible extension after 1998 if scientifically justified
Italy	Trawling (Mugilidae, Sparidae) for aquaculture (Upper Adriatic)	Exceptions to 40 mm mesh size (Article 6, Annex III)	31.12.1998	Exceptions granted for meshes used in accordance with national law at 1.1.1994. Possible extension after 1998 if scientifically justified
Italy	Restocking fish for consumption or aquaculture (Tyrrhenian Sea)	Exceptions to 14 mm mesh size for encircling nets (Article 6, Annex III)	31.12.1998	Exceptions granted for meshes used in accordance with national law at 1.1.1994. Possible extension after 1998 if scientifically justified
Italy	Trawls and seines for Atherinidae in the coastal zone	Use within 3 nautical miles or the 50 m isobath	31.12.1998	Exceptions granted for meshes used in accordance with national law at 1.1.1994. Possible extension after 1998 if scientifically justified
Italy	Dredges for shellfish	Dredging within 3 nautical miles or the 50 m isobath	Permanent, if > 90 % shellfish	
France	Pair trawls (above the Posidonian beds)	Exceptions to 40 mm mesh size (Article 6, Annex III)	31.12.1998	Exceptions granted for meshes used in accordance with national law at 1.1.1994. Possible extension after 1998 if scientifically justified
France	Shore seines	Use tolerated (with minimum mesh size)	1.1.2002	Possible extension after 2002, if scientifically justified
Greece	Shore seines	Use tolerated (with minimum mesh size)	1.1.2002	Possible extension after 2002, if scientifically justified
Greece	Seines and trawls in the coastal zone	Use within 3 nautical miles or the 50 m isobath	31.12.1998	Exceptions granted for meshes used in accordance with national law at 1.1.1994. Possible extension after 1998 if scientifically justified

Source: table prepared by the Commission for the 'Mediterranean' working party of the Advisory Committee on Fisheries, 1 March 1995 (agenda item 2.2).

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community'

(98/C 129/08)

On 24 February 1998 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 Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 1998. The rapporteur was Mr Joseph Ballé.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion nem. con. with two abstentions.

1. The proposal was submitted on 5 December 1997 by the Commission. The basic Directive has been amended — often quite substantially — on several occasions. Consequently, in the interests of clarity and simplification, it is appropriate to proceed with consolidation.

2. Since this is a proposal for formal consolidation, i.e. not involving any changes of substance, and carried out for reasons of clarity, the Committee approves use of the accelerated procedure adopted by the interinstitutional agreement dated 20 December 1994. The section endorses the Commission proposal.

Brussels, 25 February 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: Towards a new shipbuilding policy'

(98/C 129/09)

On 6 October 1997 the European 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 6 February 1998. The rapporteur was Mr Simpson.

At its 352nd plenary session (meeting of 25 February 1998) the Economic and Social Committee adopted the following opinion by 80 votes to one with two abstentions.

1. Preliminary comments

1.1. For many years, shipbuilders within the European Union have faced intense competition for new shipbuilding orders. Shipbuilding capacity has been increased, particularly in South Korea. Because of the nature of the competition, often perceived to be based on injurious pricing practices, shipbuilders in the Union have been permitted to receive State Aid within ceilings set under the terms of various shipbuilding directives of which the most recent was the Seventh Council Directive [1].

1.2. Late in 1996, the Seventh Directive was renewed and extended to be effective until the end of 1997. This extension had the support of the Economic and Social Committee (ESC) [2]. Then, in April 1997, an agreement in principle was made that would extend this provision until the end of 1998.

1.3. The main provision of the Seventh Directive is that shipbuilders may receive, from their national authorities, operating aid for shipbuilding and ship conversions (but not ship repair) up to a maximum of 9 percent (4,5 percent for smaller vessels and conversions) of the contract price. This level of assistance has been progressively reduced from a ceiling of 28 percent which was established in 1987. In the six year period from 1990 to 1995 (inclusive) a total of ECU 8,3 billion of State Aid to shipbuilding was notified to the Commission. Part of this aid, ECU 3,5 billion, was allocated to support the restructuring of firms in the industry. Operating aid totalled ECU 4,8 billion.

1.4. Since 1994 there has been an expectation that the OECD Agreement 'respecting normal competitive conditions in the commercial shipbuilding and repair industry', which was completed in December 1994, would secure a new regime in which all the main shipbuilding countries could cooperate. This agreement would have required the removal of most forms of state aid and, in parallel, would have introduced procedures designed to challenge any instances of injurious pricing. This agreement has not been ratified by the government of the United States and has not been implemented.

1.5. The present Commission communication is a response to the lack of progress on implementing the OECD Agreement. The need for alternative actions was anticipated in the earlier ESC opinion [2]. The ESC wishes to re-emphasize its continuing hope that the OECD Agreement might still be ratified by the United States administration thus allowing a more comprehensive arrangement to be implemented.

1.6. The Commission has presented proposals which provide that the extended Seventh Directive would lapse when the OECD Agreement enters into force as it would if the new Community regime is adopted.

2. Trends in the shipbuilding industry

2.1. Shipbuilding has, for at least two decades, been a difficult industry within which to operate profitably in the EU. Depressed demand, expanded building capacity in the Far East, and predatory pricing, have created very difficult trading conditions.

2.2. In the last twenty years, shipbuilding production in the EU has fallen by over 40 percent. In 1976, EU countries produced 27 percent of the world output, measured in 'compensated gross tonnage'. In 1986, this had fallen to 23 percent of a much reduced total, and in 1996 it had fallen again to 21 percent in a significantly increased global market. Production in Korea rose from just over one percent of world output in 1976 to 22 percent in 1996.

2.3. In the eight years, 1988 to 1996, world shipbuilding output has begun to recover from the large fall in the previous decade. World output, although still below

[1] OJ L 351, 31.12.1994.
[2] OJ C 30, 30.1.1997.

the levels reached in the mid-1970's, has nearly doubled. Production within the EU has increased only by just over 50 percent, but is still not up to the levels of the early 1980's.

2.4. Employment in building new ships in the EU totalled 65 600 in 1996. This contrasts with 96 100 in 1986, and 208 800 in 1975. This large reduction in direct employment has also meant a big reduction in indirect employment of even larger numbers of people in the industries which supply shipbuilders and in other sectors. The pattern of employment from 1988 to 1996 offers tentative evidence to suggest that employment numbers have nearly stabilized.

2.5. The Commission forecasts that, partly because of the need to replace older vessels, demand for new ships will remain at this higher level for the next few years before it falls again. Capacity is not adequately used and is still increasing so that in 2000 production will use not more than 70 percent of the available capacity.

2.6. Since the Commission Communication was written, currency fluctuations in the Far East have been dramatic. In particular, the devaluation of the 'won' in Korea will have serious implications for a number of sectors, particularly shipbuilding. This adds a new dimension to the prospects for the industry which cannot be fully assessed at present (January 1998) and may require some reassessment of the conclusions reached by the Commission.

3. **Commission proposals**

3.1. The aim of the Commission is that, during the next five years, from the end of 1998, shipbuilding policies should facilitate the improvement of the competitiveness of the industry. A new regulation would be adopted for five years, until the end of 2003, which should allow sufficient time for the new provisions to generate a structural change in shipbuilding and see evidence of a stronger competitive industry.

3.2. At the end of that period, shipbuilding would be subject to the same rules as all other industries. Shipbuilding in the EU is being challenged to improve its competitive position in the world market to the point where viability is established and employment can be maintained.

3.3. A number of areas of 'best practices' which would improve productivity, relative to competitors, have been identified by the Commission. These include:

a) strategic planning, focusing on ship types with growing demand;

b) structural changes, including consolidation of yards and closures of non-profitable ones;

c) formation of strategic alliances between yards;

d) better integration of ship owners and equipment manufacturers into production processes;

e) purchasing policies, including maximizing the benefits of subcontracting;

f) closer collaboration with other industries for innovation and technology transfer;

g) aggressive pro-active marketing;

h) more effective use of R&D in design of prototypes;

i) upgrading of production facilities;

j) investment in improving the quality and use of human resources.

3.4. In the application of these practices, the Commission proposes, as part of a new regulation which will be effective until 2003, that:

1) grant aid on contracts to build ships should end from 1 January 2001;

2) a series of measures designed to enhance productivity and competitiveness should be codified as a basis for bringing this industry into a similar competitive regime to other industries in the EU.

The detailed proposals are that:

— the permission to grant operating aid should end on 31 December 2000 (provided that the OECD Agreement has not been brought into force before that date. The OECD Agreement would have a broadly similar effect);

— export credits for ships should continue to be allowed under the 1981 OECD Understanding but subject to possible up-dating as envisaged in the 1994 OECD Understanding which is not yet in force and would allow not only export credit but also credit terms for ships for the home market;

— contract related aid granted as development assistance to developing countries should continue to be permitted;

— aid to finance the closure costs of structural adjustments, including social measures to mitigate the consequences of total or partial closure, should continue to be permitted;

— aid for restructuring a shipbuilding enterprise should be allowed on the same basis as the general Community guidelines for such aid in other sectors but

with the strict proviso applying the 'one time/last time' principle for financial restructuring;

— investment aid granted under regional aid schemes should be allowed provided the project is to improve the productivity of existing installations;

— investment aid for innovation would be allowed provided that the project relates to innovative products and processes that are not currently used by other EU operators in shipbuilding;

— aid for R&D should continue to be allowed on the conditions laid down in the Community framework;

— aid for environmental protection on Community guidelines should be allowed.

4. General comments

4.1. *Basic theme*

4.1.1. The basic theme of the Commission communication is that, with transitional assistance for five years, from 1998 to 2003, the shipbuilding industry in the European Union should, as a result of the actions of individual enterprises, overcome its structural disadvantages and be able to compete on world markets. As a caveat, the Commission acknowledges that this would also be subject to the existence, especially from non-EU competitors, of fair trading conditions on a global scale.

4.1.2. The ESC endorses this objective. Continuing efforts to create fair trading conditions will be needed. As a consequence, the ESC recommends that further decisions on shipbuilding should be made based on regular assessments of progress towards the end of this five-year period.

4.1.3. Of course, the competitiveness of shipbuilding in the EU varies from yard to yard and between different types of shipbuilding. There are, it is acknowledged, examples of highly competitive builders in certain market segments. However, in general, the industry still has difficulty in competing against other builders, some of whose pricing regimes are regarded as predatory.

4.2. *Motives for a policy change*

4.2.1. The Commission has recommended the ending of approval for operating aid for shipbuilding. The motivation is complex. Part of the motivation seems to be a concern that the present operating aid, financed by national governments, has not been accompanied by the desired level of restructuring in the industry. A further consideration is the lack of any strong incentive in the scheme to improve competitiveness. The ESC agrees with, and supports, this conclusion reached by the Commission.

4.2.2. Although some parts of the industry have become internationally competitive, the communication does not argue that the competitive position of the whole industry is now strong enough to justify this withdrawal. Indeed, it argues that State aid policy needs to be refocused to promote and underpin efforts to improve competitiveness. This leads into support for investment in innovation and R&D.

4.2.3. The case to remove operating aids can be made both because (i) it is now the only sector of manufacturing with this scale of direct aid and (ii) the Commission questions whether the expenditure represents a cost-effective use of public funds which may distort intra-EU competition as well as partially offsetting the disadvantages relative to non-EU competitors.

4.2.4. The ESC would be reluctant to support the removal of operating aid if the prospects for competitive success were considered too low and if the alternative measures do not offer an equivalent effect. However, the long-term aim should continue to be an industry which can compete with other world shipbuilders.

4.2.5. The Commission should avoid any measures which could result in an international 'subsidy race' and should continue its endeavours to control, and ultimately phase out, subsidies to shipbuilding through an overall agreement within the philosophy of the OECD Agreement. This should be established as a basic principle in order to avoid the building of vessels for which there is no economic justification and where the consequences may be to unfairly distort activity in the shipbuilding sector and seriously damage the economics of the shipping industry.

4.3. *Competitiveness*

4.3.1. The ESC is concerned to consider whether the adverse factors which have justified an approved but diminishing level of operating aid, have now been reduced to the point where competitive viability can reasonably be expected.

4.3.2. In earlier years the Commission has undertaken work to calculate a justifiable common maximum aid ceiling which was based on an estimate of the difference between the costs of the more competitive Community

shipbuilders and the prices being quoted by international competitors. This work was used in 1995 to justify the setting of the current 9 percent ceiling.

4.3.3. The last cost-price comparative study was undertaken in 1996/1997. This Commission study is not quoted in the Communication but is understood to have suggested that the competitive cost-price gap for certain types of ships had actually widened. No reliable forecasts for the next decade are practicable. However, the trends in market share do not suggest that the relative position has improved significantly. In addition there is now the added uncertainty of the effects of currency devaluations on the cost differences with producers in the Far East, which may make for more fundamental changes in the financial elements of competitiveness.

4.3.4. The Commission does note that 'many EU yards still lack competitiveness, (and) in particular lag behind their major Far East competitors in terms of productivity'. Also, it concludes that the market is likely to become even more competitive with total demand starting to soften in the next decade. These are not reassuring conclusions on which to justify the withdrawal of operating aid. The competitive position of EU yards varies between yards and especially for different types of ships. The ESC recognizes that, within the shipbuilding sector, the more successful EU yards will be likely to specialize in those vessels where expertise and skill inputs give some comparative advantage.

4.3.5. The ESC therefore would suggest that a further comparison to establish the relative competitive position of the main producers should be undertaken before a date for the removal of operating aid is decided. In particular, the Committee has reservations about the productivity comparisons quoted in the Commission communication since it is not clear that these have been corrected to allow for differences in the annual average working hours of shipbuilding employees in each country. This would affect a better understanding of the nature and scale of competitive differences.

4.3.6. The Commission should consider whether there is any evidence of continuing market distortion caused by injurious pricing from competitors. The ESC welcomes the assurance that at the end of 1999 (one year before the deadline) the Commission will monitor the market situation and, if anti-competitive practices are established, will consider introducing appropriate measures. This assurance would be more convincing if there was a commitment to introduce appropriate measures rather than 'consider' the possibility!

4.4. *Ship repair operations*

4.4.1. Although the Commission communication is not as specific as might be wished, the ESC assumes that, consistent with the draft preamble to the Regulation, the revised policies and types of assistance for shipbuilders will extend to allow the same principles to apply to investment and restructuring in ship repair and conversion activities. The Commission has confirmed that this is the intention. The ESC would foresee difficulties if the scope of the new regulation was not broadened to cover critical aspects of ship repair activities and welcomes this more logical approach to the range of shipbuilding, ship conversion and ship repair activities.

4.4.2. Including ship repair within the scope of the new Regulation attracts the possible criticism that it widens the range of activities which qualify for assistance. However, the ESC accepts that, in the new framework of policy measures, to artificially divide investment and technology activities separating (for example) ship conversion from ship repair may lead to other distortions within the structure of the shipbuilding industry.

4.5. *The wider links with shipping services, ship owners and ship repair operations*

4.5.1. Shipbuilding is a critical component in a spectrum of activities which contribute to the movement of people and freight by sea, lake and river. In this way, a competitive shipbuilding industry has an important part to play in the overall economic performance of the EU.

4.5.2. Some of the actions affecting other linked sectors of the economic chain have implications for shipbuilding. For example, policies which encourage the elimination of sub-standard ships and persuade ship owners to purchase new ships are critically important in determining new orders. If these policies include constraints which encourage the placing of new orders with European yards, through preferential taxation, finance guarantees or other fiscal measures, this can affect EU yards. However, such policies should take into account the existing Guidelines on State Aids to shipping. Policies to encourage the use of maritime transport, including the increasing emphasis on the development of short sea shipping (partly on environmental grounds) also have a potential to impact on the ship building industry.

4.5.3. Policies on ship safety standards may also be a significant influence. The introduction of more stringent specifications for different types of ship may be, first, a safety feature but, second, can influence replacement rates and the volume of business available to repair and conversion yards.

4.5.4. The ESC is aware that these linkages are of critical importance in the development of overall maritime policies and has participated each year in the consultative meetings of the Maritime Industries Forum.

4.5.5. The ESC commends the efforts of the Commission to create a consistent and mutually reinforcing set of maritime policies ranging from the promotion of research and innovation, encouraging industry wide cooperation and, more recently, encouraging the development of short sea shipping as a contribution to wider problems of freight movement around the Community and in a wider context.

5. **Specific comments**

5.1. *Capacity rationalization*

5.1.1. The Commission knows of 103 shipbuilding companies within the EU operating in 1997. The biggest five represent 36 percent of European output. This is a much lower level of concentration than Korea, where the biggest five account for 99 percent, and Japan, where they hold 44 percent. Fragmentation, the lack of economies of scale, differences in work methods, and the absence of large 'series orders' all contribute to lower productivity in European yards.

5.1.2. The case for capacity rationalization is not only a search for economies of scale by concentrating work load. Some yards in niche markets can be competitive simply because of the degree of specialization and this is not always a function of the size of the yard or enterprise.

5.1.3. An additional factor affecting capacity utilization is the reduction in the demand for naval vessels within countries of the EU. This also has possibly adverse implications for the availability and transfer of technology and innovative processes from one sector to the other.

5.1.4. These elements point to the logic of further efforts to increase productivity and rationalize capacity.

5.2. *Export Credits*

5.2.1. The Commission has drawn attention to the changes envisaged in the 1994 Understanding on Export Credits which has not yet been implemented. The revised understanding would up-date the 1981 agreement and forms one component of the OECD Agreement on the elimination of State aid.

5.2.2. The Commission sees the revisions as more closely reflecting market realities. The principal changes are, first, the introduction of the use of a Commercial Interest Reference Rate (CIRR) which is, in effect, an unsubsidized interest rate and, second, an extended period of officially supported guarantees, from 8,5 to 12 years, bringing ships into line with the terms permitted for large commercial aircraft.

5.3. *Contract aid for orders for developing countries*

5.3.1. Aid for orders from developing countries has not been subject to the present rules on the ceiling for operating aid to yards. The Commission proposes to allow this to continue.

5.3.2. There are possible distortions arising from this exemption. First, governments might be tempted to use these orders to place work in specified yards and thus avoid competitive bidding within the EU. The Commission is aware of these potential distortions and is acting to open up the possibility of competitive bids from other yards within the EU. Second, such orders might allow vessels to be used for a developing country in a manner which displaces other normal competitive shipping business.

5.3.3. The ESC is persuaded that a special provision of this type should be continued. The ESC also welcomes the assurance that the rules will be amended to open such contracts to competitive bidding from different yards in the EU and that monitoring procedures should ensure that there is no abuse of this concession.

5.3.4. Opening such contracts to bidding from different Member States does raise a difficult problem if the national governments offer different levels of aid to yards in their country. The ESC suggests that this issue should be clarified before the new regulation is introduced.

5.4. *Closure aid*

5.4.1. Assistance with the costs of closure, total or partial, is allowed under the present directive. The Commission proposes that this aid, including the social costs of readjustment for former employees, should continue to be permitted. The ESC welcomes this provision.

5.4.2. In a change in the application of this provision, the Commission proposes that where closure aid is paid, instead of there being a rule that the facilities must remain closed for five years together with a requirement for Commission approval for reopening in a further five years, the scheme should, in future, require that the facilities should not return to shipbuilding for a period of ten years and the prospect of a review after five years should be removed. The ESC accepts the logic of this change.

5.5. *Restructuring aid*

5.5.1. There are no detailed criteria for assessing restructuring aid in the Seventh Directive.

5.5.2. Since a component of improving the productivity and competitiveness of the shipbuilding industry will inevitably include the restructuring of some enterprises, the Commission is proposing a formal statement further defining the scope of potential restructuring aid. The basic principle is that shipbuilding enterprises should have the same rules as apply generally within the Community. Whether to allow capital injections, debt write-offs, subsidized loans or rescue aid, the proposal is to have strict rules using the 'one time/last time' principle backed up by assessment and monitoring of viability.

5.5.3. To qualify for restructuring aid, evidence must be available of the extent of capacity reductions which will follow. In a sensible change the Commission suggests that the determination of the capacity reduction should not be calculated on the notional capacity to be closed but, instead, the actual level of production in that yard in the preceding five years.

5.5.4. The ESC supports both the clarification of the scope for restructuring aid and the method to determine the amount of capacity to be removed.

5.6. *Investment aid*

5.6.1. As a critical component of the restructuring and strengthening of the shipbuilding sector, the Commission proposes that shipbuilders should be eligible for several types of investment aid. This includes regional investment aids for modernizing and upgrading facilities in disadvantaged regions as well as investment aid for innovation with the restriction that the innovation should be defined as bringing into use products or processes that are not currently used commercially by other EU shipbuilding operators. The ESC notes that investment aid, linked to competitive improvements, is not necessarily constrained by the search for capacity reductions in a modernized yard, although the overall thrust of Commission policy still needs to take account of surplus capacity within Member States.

5.6.2. Care must naturally be taken to ensure that investment aids, including regional aid, are not used to rescue ailing shipyards and one requirement must therefore be that those firms which receive investment aid are profitmaking or are assessed to be able to become profitmaking as a result of the new investment.

5.6.3. One of the most acute problems facing the shipbuilding industry worldwide, and hence also in the EU, is the substantial overcapacity. An effective EU policy must therefore consider how the EU can help in solving this problem. Current proposals offer no immediate action to curb overcapacity but the Commission should be urged to put forward suitable proposals on this matter. In the proposal at issue, care must be taken to ensure that the EU's own aid does not aggravate the problems of world overcapacity.

5.6.4. Aid for R&D and aid for environmental protection are to be permitted in terms similar to those available for other sectors in the Community.

5.6.5. The ESC acknowledges that these differing investment aids may usefully encourage the improvement in the competitive position of the firms in the industry. Since the new regulation will make these aids subject, potentially, to a five-year limit, or possibly a review after five years, the ESC expects that an assessment of their impact and effectiveness will be prepared before the end of the period so that an informed judgement can be made about the merits of continuing each element after 2003. The Committee would hope that, in particular, the Commission will assess whether any of the changes show distortions which are not consistent with the evolution of an EU-wide competitive industry.

5.7. *The overall impact of the new regulation*

5.7.1. Whilst operating aid can be granted for contracts signed before the end of 2000, and may be claimed in the following three-year period, and the industry will be encouraged to invest and innovate using the other provisions, the ESC has a concern that the consequence of the changes will be to increase the level of official expenditure on shipbuilding. The Commission has pointed to the limited commitment to completely new types of funding and estimates that the State aid bill should not increase significantly, even for a short period. The Committee believes that the effect of the changes should be to reduce the level of aid payments.

5.7.2. The ESC therefore calls for the regulation to include a provision specifying that total annual aid — operating, regional and other investment aids — to individual shipyards may not exceed a ceiling of 9 % of turnover averaged over any three-year period.

5.7.3. The ESC notes that State aids to shipbuilding, in particular, operating aid linked with the contract of the ship, are not clearly defined. In certain instances, this lack of clear cut definition may lead to confusion with the State aids to shipping and to cumulative application of the above two categories of aids. It, therefore, suggests that this issue be clarified in the proposed Regulation.

5.7.4. An important feature of the new regime for shipbuilding is that the Commission should monitor the impact of the new arrangements and, in particular, the impact of the different types of support which will be available.

5.7.5. Monitoring and transparency

5.7.5.1. The Commission mentions the need to ensure that aid be paid in accordance with the guidelines laid down by the Council and proposes that monitoring be carried out in the form of notification by the Member States to the Commission. It is not envisaged to give the Commission any independent responsibility for procuring information from aid recipients, local authorities or others. In the ESC's view, the Commission should have both the right and duty in co-operation with national governments to undertake on-the-spot checks of production, accounts, etc. so as to ensure that the above guidelines are observed.

5.7.5.2. On earlier occasions, in connection with the restructuring of certain shipyards, the Commission has been empowered to monitor compliance with the relevant guidelines. It should receive corresponding powers in respect of all forms of aid referred to in the regulation.

6. **Human resources**

6.1. The ESC noted that the proposed regulation makes no specific reference to the training needs of the people employed in the shipbuilding industry. Enhanced skill levels will be an important component of the drive to improved productivity and competitiveness. The expectation of the ESC is that the Commission will be prepared to use its influence and resources to encourage appropriate skill development by the firms and training agencies in each Member State.

7. **Conclusions**

7.1. The ESC has, in its earlier Opinion, endorsed the objectives which were agreed in the proposed OECD Agreement on shipbuilding. The failure by the United States to ratify that Agreement is regretted. Whilst the Committee would still wish to see the OECD Agreement ratified, the proposed new Regulation has, in principle, the support of the ESC as it seeks to encourage the development of a stronger and competitive EU shipbuilding industry.

7.2. The ESC commends the efforts of the Commission to create a consistent and mutually reinforcing set of maritime policies ranging from the promotion of research and innovation, encouraging industry-wide cooperation and, more recently, encouraging the development of short sea shipping as a contribution to wider problems of freight movement around the Community and in a wider context (point 4.5.5).

7.3. Recent events in financial markets and exchange rates in the Far East have created an uncertain environment for a number of industries, including shipbuilding. The Committee recognizes that the Commission will need to monitor events and, if necessary, take appropriate action if there is a prospect that the shipbuilding industry will be adversely affected.

7.4. Whilst the removal of operating aid, and its replacement by more selective measures lie at the core of the proposed regulation, the ESC would be reluctant to support the removal of operating aid if the prospects for competitive success were considered too low and if the alternative measures do not offer an equivalent effect (point 4.2.4).

7.5. The Committee suggests that a further comparison to establish the relative competitive position of the main producers should be undertaken before a final date for the removal of operating aid is decided (point 4.3.5).

7.6. The Committee welcomes the assurance that at the end of 1999 (one year before the deadline) the Commission will monitor the market situation and, if anti-competitive practices are established, will consider introducing appropriate measures (point 4.3.6).

7.7. Difficulties might occur if the scope of the new regulation was not broadened to cover critical aspects of ship repair activities and the Committee welcomes this more logical approach to the range of shipbuilding, ship conversion and ship repair activities (point 4.4.1).

7.8. The proposals relating to export credits, contract aid, closure aid, restructuring aid and investment aid are supported. However, the ESC would be concerned if the consequence of the changes was to increase the level of official expenditure on shipbuilding whereas the effect is supposed to be the opposite; i.e. the reduction and removal of aid (point 5.7.1).

7.9. The Commission should monitor the impact of the arrangements and, in particular, the impact of the different types of support (point 5.7.3).

7.10. The Commission should avoid any measures which could result in an international 'subsidy race' and should continue its endeavours to control, and ultimately phase out, subsidies to shipbuilding through an overall agreement within the philosophy of the OECD Agreement. This should be established as a basic principle in order to avoid the building of vessels for which there is no economic justification and where the consequences may be to unfairly distort activity in the shipbuilding sector and seriously damage the economics of the shipping industry (point 4.2.5).

Brussels, 25 February 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on end of life vehicles' [1]

(98/C 129/10)

On 2 December 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 3 February 1998. The rapporteur was Mr Colombo.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion by 85 votes to one with one abstention.

1. Outline of the proposal

1.1. This ambitious and innovative proposal has its legal basis in Treaty Article 130s. It follows the example of the directive on packaging waste in setting target figures, and will affect a sensitive sector of the European economy, namely the motor industry. It proposes the adoption of a preventive approach for a specific waste stream requiring intervention throughout the product's life-cycle right from the design and production stages, and strict adherence to a hierarchy of waste management principles favouring re-use and recycling (recovery of materials).

1.2. The 'producer responsibility' principle adopted in the new Community strategy for waste management [2] is to be put into practice by obliging all companies operating in the sector to set up an appropriate system for recovery and disposal, with re-use and recycling targets to be met within specified time-limits.

1.3. The system will be completed by a 'certificate of destruction', issued only by authorized treatment facilities, which will be required for deletion of vehicles from national registers (Article 5).

1.4. The vehicles to be scrapped will have to be handled in accordance with the general provisions laid down in Article 4 of Directive 75/442/EEC and the list of decontamination requirements and technical provisions in its Annex (Article 6). Progressively higher targets for the rates of re-use, recovery and recycling are to be reached by 2005, 2015 and a date beyond 2015 yet to be determined (Article 7). It will be the responsibility of vehicle producers to design and manufacture their products in ways that will make these targets easier to achieve.

1.5. To add legal weight to this switch in production, the Commission proposes [Article 7(4)] amending Direc-

(1) OJ C 337, 7.11.1997, p. 3.
(2) COM(96) 399 final; Council Resolution of 24.2.1997 in OJ C 76, 11.3.1997; ESC Opinion in OJ C 89, 19.3.1997.

tive 70/156/EEC so as to introduce re-usability and/or recyclability requirements for vehicles put on the market after 1 January 2005.

1.6. The Commission considers that although the voluntary agreements in operation in certain Member States show that such measures are feasible, they provide no legal certainty and leave the way open for unfair competition, encouraging the export of waste to areas with less stringent requirements. For this reason the Commission proposes a European directive, which combines regulatory instruments with the 'producer responsibility' principle.

2. General comments

2.1. In the light of its recent own-initiative opinion on voluntary environmental agreements [1] the Committee endorses the Commission's decision to opt for a directive, in order to ensure a harmonized reference framework that is valid in all Member States. The Committee also endorses the environmental objectives being pursued and the content of the proposal subject to the comments which follow.

2.1.1. The Committee also recommends close study of the many existing agreements, and of the regulations already in force in some Member States (notably Sweden), in order to make the most of the practical experience acquired and incorporate it in the legal provisions where possible. To ensure that the objectives are achieved, it will be necessary to draw on the voluntary agreements already reached in some Member States, in order to apply their positive results more widely and avoid any remaining shortcomings.

2.2. The combination of legal obligations, monitoring procedures and economic measures should be more clearly set out, to ensure that the flexibility granted to Member States does not create unfair competition in this key economic sector. At the same time, the responsibilities of the various parts of the chain need to be defined more clearly, distinguishing between prevention and final treatment.

2.3. In its opinion on the review of the Community strategy for waste management [2], the Committee singled out the directive on packaging waste as a good example of practical application of the producer responsibility principle, and called for this approach to be extended to other goods and other types of waste (points 2.13 and 2.14), identifying the priority waste streams. The Committee is aware that some Member States are still having difficulty in transposing the directive, but feels that the exercise has been worthwhile.

2.4. Waste from discarded vehicles differs from packaging waste, which comes from a variety of sources and involves materials (glass, paper, plastic etc.) that present differing treatment and recycling problems and are disposed of individually at the end-user stage, making it more difficult to determine responsibilities at each stage in the product life-cycle. End of life vehicles, in contrast, are a more homogeneous sector, within which solutions have to some extent already been found insofar as around 75 % of the vehicle in terms of weight (i.e. the metal parts) is already used as scrap metal for melting down; there remains the question of the risks caused by heavy metals and other hazardous substances such as halogen compounds which contaminate the scrap metal sent for recycling in the steel sector. For the remaining 25 % of the vehicle weight, which mainly consists of plastics and elastomers, a satisfactory solution still has to be found because only part of this waste flow is sent for recycling, and even then this is done in only a few countries. The bulk of this waste is still incinerated or landfilled, both of which damage the environment and waste raw materials and energy.

2.5. There are also organizational problems in the disassembly and demolition sector. The sector needs to be streamlined and modernized so that it can manage end materials in an environmentally responsible manner and ensure that the vehicle body is made safe and that the hazardous substances are disposed of properly. In many countries, this sector is made up of small and medium-sized firms; these must be safeguarded, and their professional standing improved. Pilot schemes have been conducted in a number of countries, with the assistance of the motor industry and in agreement with the public authorities, to modernize the sector in line with the new requirements. Such schemes should be extended, in accordance with the special circumstances in each Member State, by releasing the resources needed for training the staff involved and for adapting SMEs so that they meet environmental requirements.

2.5.1. In order for disassembly and demolition businesses to develop ecologically sound processing methods, in addition to ad hoc support and monitoring measures, there is also a need for specialized, suitably trained operators. Some crafts chambers (Saarland-Lorraine-Luxembourg) already provide training courses in this field; these could be used as a model for devising a European qualification which should be as uniform as possible.

2.6. Existing schemes have thus shown that the recovery and recycling objectives set out in the directive are pursuable provided that the need to reduce waste and increase recycling possibilities is catered for right from the vehicle design stage (though it goes without

[1] OJ C 287, 22.9.1997, p. 1.
[2] OJ C 89, 19.3.1997.

saying that safety features should not be compromised by this). This means designing the vehicle so that it is easier to dismantle and so that parts and materials can be more easily recovered, drawing up dismantling manuals, affixing a distinguishing mark to plastic components, and gradually reducing the amount of heavy metals and other hazardous substances. All this will also help to upgrade the work of demolition and scrap-metal yards by rationalizing and reorganizing the job of reclaiming and dismantling vehicles and separating their components.

2.7. Hence responsibilities have to be shared between design, production and end treatment, inter alia so as to ensure outlets for the recycled raw materials, part of which can be used by manufacturing industry.

2.8. In the interests of shared responsibility, equal attention must be given to the consumer. Information supplied by the producer, and perhaps incentives, could encourage prospective buyers to be more environmentally aware in their purchasing decisions. During the vehicle's life cycle, the owner should be encouraged to see that it is properly maintained inter alia with a view to its ultimate recovery. Lastly, at the end of the vehicle's life, the owner must be guaranteed access to effective and reasonably local demolition plants.

2.9. The possible 'negative market value' of an end of life vehicle is equal to the difference between the cost of end treatment, with due respect for environmental protection standards, and the proceeds from the reusable and recyclable materials. This value will depend not only on design (which the producer can gear more to recovery and recycling), but also on the care taken by its owners, and the ability of the scrap metal sector to make use of the re-usable parts and recyclable materials. Insofar as all the players involved take their fair share of responsibility, and the sector — as is already occurring — designs vehicles in a way which facilitates recovery and recycling, the problem of negative market value mentioned in Article 5(4) is then minimized. The establishment of a network of authorized treatment plants and the obligation to obtain a certificate of destruction will encourage the end treatment sector to modernize and extend its activity, making it more profitable.

2.10. It must also be recognized that calculating the negative value of an end-of-life vehicle is difficult because the value may vary according to the local markets and degree of development of the demolition, scrap metal and recovery sectors in the different Member States. Its worth as an incentive will also depend on whether it applies to vehicles which are already in circulation (and will reach end of life within the next eight to ten years) or to newly designed vehicles not yet on the market, whose design can be geared to recycling through the deployment of economic measures.

2.11. The Committee therefore thinks that the negative value problem needs to be addressed in greater detail, bearing in mind the variety of situations and causes. Measures should be based on the principle of shared responsibility and internalization of environmental costs, and should encourage the modernization of the end treatment sector and the achievement of higher objectives for the re-use, recycling and recovery of end of life vehicles, while also prevailing on producers to design recyclable vehicles.

2.12. Once the regulatory framework has been established, careful consideration will have to be given to the problems listed below, for instance by using voluntary instruments for sharing responsibility between the parties and by stepping up dialogue between producers' associations and final treatment plants, in order to:

— ensure that the financial responsibility placed on the producer really does stimulate a policy of prevention, so that the negative value is not simply transferred to the initial purchase price;

— ensure that recognition of the principle of negative value is not extended automatically to all vehicles, regardless of their actual recyclability;

— ensure that the sums received by treatment and demolition businesses to offset the negative value are used appropriately by them to modernize their activities and comply with the relevant provisions.

2.13. The Committee notes that while Article 11 provides for the transposition of the Directive by 31 March 1999, Article 5(4), regarding negative value, will not enter into force until 1 January 2003. However, this should give producers sufficient time to adjust the design of new models so that they meet the recycling objectives. It should also give the relevant economic players sufficient time to conclude voluntary agreements geared to these objectives. Nonetheless, a check should be made on the situation prior to application.

3. **Specific comments**

3.1. *Scope* (Article 3)

3.1.1. The exclusion of lorries and buses, and the derogations for two and three wheel motor vehicles, are understandable during an initial period, because the waste-related problems are less serious and more specific. However, their special status should be reviewed over the longer term, particularly as regards the treatment of

hazardous substances, as the risks of environmental pollution are the same as for other vehicles.

3.1.2. The Committee thinks that the derogations for two and three-wheel motor vehicles provided for in Article 3(3) should also apply to Article 5(4). The question should be addressed as to whether it is desirable for two-wheel motor vehicles which have a cylinder capacity of less than 50cc, or which may be used in the Member States on public highways without a number plate, to be exempted from the provisions of Article 5.

3.2. *Prevention* (Article 4)

3.2.1. The Committee has already supported the need to restrict and if possible outlaw the use of heavy metals and other toxic substances in production processes and products [1]. It therefore welcomes the preventive approach taken by the Commission.

3.2.2. As regards the absence of any reference to PVC, the Committee is pleased to note that the Commission intends (12th recital to the proposal) to conduct a general review of PVC in waste streams, with a view to formulating possible proposals. However, the Committee feels that the wording used by the Commission is too vague. It would prefer to see a more binding commitment to the tabling of specific proposals, as the Commission undertakes in connection with other aspects of the proposal.

3.2.3. Turning to the question of heavy metals and other hazardous substances, the Committee feels it insufficient to adopt requirements that only apply to the end treatment of vehicles and make no distinction between cars which are already in circulation and will remain so for several years, and those which will enter into circulation in the future and can thus be designed to meet higher environmental protection standards. A more appropriate approach could involve the following:

— for vehicles in circulation: measures for the final disposal of the waste remaining after the vehicle has been treated. These measures must ensure the same level of environmental protection as the measures applicable to all other waste containing heavy metals and hazardous substances;

— for vehicles designed after the directive enters into force, and which will be put in circulation in future: a phasing-out of heavy metals and other hazardous substances, with incremental provisions starting with substitute products that are already technically feasible (e.g. a substitute for lead in electronic circuits). Promotion of research and technological innovation is vital here.

3.3. *Collection* (Article 5)

3.3.1. The value of end of life vehicles may depend on a number of factors, in addition to the efficiency of the demolition and recovery sectors, and local markets. Bearing this in mind, the Committee thinks that the 'negative value' problem can be curbed by measures to promote efficient collection and recovery systems. Facilities should be close by and should be capable of achieving high recovery rates at reasonable cost.

3.3.2. In order to make the strategy of prevention, recovery and recycling effective, and to monitor the results achieved step-by-step, systems should be introduced for checking the efficiency of recovery plants and producers' progress in adapting design to recycling needs, pursuant to the measures mentioned in Article 4 (prevention)(1)(a) and (b).

3.4. *Treatment* (Article 6)

3.4.1. Obliging operators to obtain a permit will enable the public authorities to monitor compliance with the environmental requirements. As only authorized facilities will be able to issue the statutory certificate of destruction, there will inevitably be some restructuring of the sector. In Member States where firms tend to be small to medium-sized and the treatment system is less well developed, measures will be needed to encourage and help firms to modernize; use can be made of the incentive funds available at EU and national level to help SMEs adjust to environmental protection standards.

3.5. *Re-use and recovery* (Article 7)

3.5.1. The Committee feels that the proposed targets adequately reflect waste management priorities, and endorses them as they are graduated over time and leave room for flexibility and adjustments, allowing energy recovery where this is the only environmentally viable option.

3.5.2. The Committee points out that setting the objectives as a percentage of vehicle weight might conflict with the other ecological objective of reducing vehicle weight in order to reduce fuel consumption. The fact that metals are easier to recycle could lead producers to use more metal, rather than lighter plastics. To prevent this, the Committee recommends that appropriate steps be taken to mark materials and to plan with a view to recycling. At all events, the weight should not be calculated per vehicle, but according to general averages. Otherwise the checking operations will become too detailed and complex.

[1] Opinion on the review of the Community strategy for waste management, point 3.3.2, in OJ C 89, 19.3.1997, p. 2.

3.5.3. Article 7(4) states that Directive 70/156/EEC is to be amended in order to make the objectives for the year 2015 feasible. In this way, the guarantee of achieving higher objectives is to be contingent on a regulatory measure, while for the period up to the year 2005 the only instrument is to be the producer responsibility principle, using the negative value to encourage the taking of preventive action.

3.5.4. This mixed approach raises a number of questions. A distinction should also perhaps be drawn between vehicles produced before the entry into force of the present directive, on which negative value would be penalized retroactively, and vehicles produced after 1999. Here it is worth mentioning the provision adopted in Sweden, where producer responsibility applies only to new vehicles from the date of entry into force of the new legislation.

Brussels, 25 February 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 and the Economic and Social Committee on a Europe-Asia cooperation strategy in the field of environment'

(98/C 129/11)

On 14 October 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 External Relations, Trade and Development Policy, which was responsible for preparing the Committee's work on this matter, adopted its opinion on 10 February 1998. The rapporteur was Mr Koopman.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion by 92 votes in favour, six against and five abstentions.

1. **Background**

1.1. *State of the environment*

1.1.1. In its communication the Commission presents a gloomy picture of the environmental degradation the countries of South Asia, East Asia and South- East Asia are facing [1].

1.1.2. Water pollution is seen as Asia's most pressing environmental problem, accounting for substantial mortality and morbidity rates, especially among children. In large areas shortages of freshwater occur. Singapore already experiences chronic water scarcity [2], while India is heading that way.

Air pollution is also creating severe health problems. Emissions of particulate matter and SO_2 in Asian cities are among the highest in the world. Asia's share of world greenhouse gases' emissions amounted to 20 % in 1985 and is expected to rise to 25-30 % by the year 2000 [3].

[1] According to the usual EU-classification: South Asia: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. East Asia: China, (Hong Kong), Korea, Macao, Taiwan and Japan. South-East Asia: The Association of South East Asian Nations (ASEAN) consisting of: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam + candidate members: Cambodia, Laos and Myanmar.

[2] Less than 1 000 cubic metres per person per year. Such limited availability begins to hamper economic development and health.

[3] Of which Nepal and Bhutan consume less than 20 kg of oil equivalent per capita per year in contrast to China, Thailand, Malaysia and Singapore consuming more than 600 kg, compared with 4 000 kg for Europe and 8 000 for USA.

1.1.3. Waste management poses severe problems as well and will continue to present major health hazards to the (poor) population and to add to the bill of a future clean-up as economic growth and the rate of urbanization are expected to remain high.

Soil degradation is significant in the whole of Asia, largely due to farmers seeking to maintain food self-sufficiency.

Deforestation has reached such proportions that traditional exporters, such as the Philippines and Thailand have virtually exhausted their forests. India, which has been self-sufficient in the past has become a major importer. And, finally the loss of biodiversity has to be mentioned.

Biodiversity is seriously threatened in the forests of Sri Lanka, eastern Himalayas and (southern) India. The communication mentions that nearly three-quarters of the natural habitat in the region has been lost or irreversibly degraded.

1.2. *Causes*

1.2.1. The communication pinpoints three causes for this state of the environment: the lack of institutional capacity to cope with (environmental) problems, Asia's large and growing population and the pace of industrialization and urbanization in its wake.

Of its population of 2,8 billion, over half the world's population, 700 million live in absolute poverty, with a largest concentration in South Asia.

The population is expected to grow by almost two per cent per annum and double this figure in the big cities, which continue to attract the bulk of industrial development.

1.3. *Existing EU-Asia environmental cooperation*

1.3.1. At the level of the Community a number of agreements have been concluded with Asian countries. The Commission estimates its commitments in 1994 to amount to 130 MECU. 40 % of its funds were allocated to tropical forests, 30 % to land resources and about 8 % to both freshwater and institutional strengthening. Biodiversity, the urban environment and pollution control attracted together about 5 % of the available funds.

1.3.2. The EU supports a number of programmes for which particular channels and instruments are used. Mention may be made of: programmes under S&T cooperation (science and technology), the EU-China environmental management cooperation programme, economic cooperation through the European Business Information Centres (EBIC) which have been set up with local chambers of commerce and business associations of Member States, and through a technical window which is exclusively representing the environment (Regional Institute of Environmental Technology-RIET), the Asia-Invest Programme, the European Community Investment Partners' scheme (ECIP) in pursuance of foreign direct investment, the Community's scheme for Generalized Tariff Preferences (GSP) and finally the lending operations of the EIB which at present focus on energy and transport.

1.3.3. Mention should also be made of various initiatives aimed at fostering better relations and partnerships between the EU and groups of Asian nations. In 1996 the Commission presented its communication: creating a new dynamic in EU-ASEAN relations. [1] In the joint declaration of the 12th ASEAN -EU ministerial meeting of February 1997, reference is made to the decision to establish an informal working group on the environment. At the same venue, a day later, the first foreign ministers' meeting of ASEM [2] took place. In its conclusion reference was made to the progress made to establish the Asia-Europe environmental technology centre in Thailand, to which the heads of state had decided in their meeting in March 1996.

1.3.4. Member States of the EU maintain numerous bilateral environmental relations with Asian nations.

The following flows may be distinguished: public development aid, commercial promotion schemes, resources of major operators seeking to commercially enter environmental markets together with local partners and loans provided by European private banks.

The total flow of resources and programmes of individual Member States is not known, as there do not exist mechanisms to record such activities.

2. The communication's Europe-Asia environment cooperation strategy

2.1. The communication aims at enhancing: 'the efficiency and the impact of the overall cooperation between Europe and Asia in the field of the environ-

[1] COM(96) 314 final of 3.7.1996. In paragraph 3.1.4 mention is made of a number of areas in the field of the environment in which (more) cooperation is desired.

[2] Asia and EU Meeting. The first meeting of heads of states of ten Asian countries (ASEAN + China, Korea and Japan) and of the EU and its Member States took place in March 1996. The second meeting will be held in London in April 1998.

ment.' It proposes key measures which should serve as a reference for cooperation and pleads for voluntary coordination between all European actors in order to increase the impact of the resources that flow from Europe to Asia. The strategy covers 17 (developing) countries: The members and candidate members of ASEAN minus Brunei and Singapore [1], the (8) South Asian countries and China.

2.2. The communication lists four major reasons for launching this new strategy.

First of all it notes that (many) environmental problems are not limited to national borders, such as the effects of emissions of greenhouse gases, depletion of the ozone layer and the loss of biodiversity.

In the second place, poverty is directly influencing environmental degradation as viable sustainable alternatives for their use of the environment are not (sufficiently) available to the poor. Thirdly, the present level of environmental degradation and the continuing pressures on the environment begin to threaten economic development in these regions. And because of the global nature of the economies, their effects will also be felt in Europe [2]. Finally Asia's efforts to address their environmental problems provides opportunities for European business to make contributions to meeting these challenges, to mutual benefit.

2.3. The Commission's strategy and proposals are based on three pillars.

It calls for the mobilization of the private sector. This is not only necessary in order to attract sufficient funds — it mentions the need for 34 billion ECU a year by the year 2000, but also because a market driven approach 'could improve resource efficiency'.

Secondly, more emphasis should be placed on urban and industry related issues, pollution prevention and cleaner technologies as these problems rank among the most pressing to be solved, instead of the priority given to natural environment related issues.

The Commission furthermore believes in the prevalence of 'win-win' opportunities by taking off from European strengths such as: environment management capacity building, equipment and technologies to reduce and prevent pollution and innovation and research and development.

2.4. The Commission proposes to focus the cooperation on the three key areas of activities it has mentioned as European strengths and presents for each of these practical guidelines.

It suggests to pursue the environmental dialogue on the basis of strategies which have to be developed for each of the listed countries.

It pleads for synergy with Member States' programmes and calls for the allocation of sufficient resources.

2.5. The communication concludes with mentioning four criteria on the basis of which EU cooperation activities will be selected.

These are: mutual interest, complementarity with Member States' activities, synergy with multilateral agencies and sustainability.

3. General comments

3.1. The Committee welcomes this well-written communication and agrees with the basic principles upon which its proposals rest. It presents the problems, the need for action and the strategy for cooperation in a compact but compelling manner. Its logic is so convincing that one is almost tempted to overlook and underestimate the formidable obstacles and impasses which will lie ahead in the process and have to be overcome before culminating in the reaping of the fruits of the executed projects. These huge problems may also be illustrated by the deliberations and the commitments made at the Kyoto conference on climate change which was held in December 1997.

The Committee wishes to state once more in this context its strong commitment towards sustainability at all policy levels.

The growth pause which these countries have experienced in 1997 should provide an opportunity to integrate environmental protection and sustainable development criteria more fully into the new economic direction which these countries are going to have to take. EU cooperation and experience can play a major part in this strategy.

3.2. We understand that the reason for not addressing these obstacles is not because the Commission is not aware of them, or minimizes their importance, but because it believes the Community at large, Commission,

[1] These two countries have been excluded from the proposed strategy because their level of economic development far exceeds that of the other countries.

[2] The effects of faltering financial markets in a number of Asian countries, precipitating steep declines of their bourses last October on the stock exchanges in the 'western world' are a case in point.

governments of Member States and social partners in the broadest sense should first get their act together and reach agreement on the framework it proposes. Once the strategic level is defined by Europe, including agreement on the question in what fields we are strong, and thereafter also by Asia, the next stage will be to formulate objectives on the basis of which programmes and projects will be designed. In these stages attention is to be given to address these hindrances.

3.3. This is also why the Commission has not yet thought fit to informally consult other international agencies or individual Asian countries before it finalized this communication. The ESC can follow this line of reasoning, but wishes to observe that the logic also contains elements of a circular argument. For, agreement on this framework may be facilitated by a better understanding of its implications, of which, because of all the sensitivities involved, an inkling of the reactions of Asian countries towards the proposed cooperation approach would seem to be an obvious parameter.

3.4. The communication does not provide an insight into its follow-up. How does the Commission intend to proceed once the Council has reached agreement? The Committee urges the Commission to indicate in what manner it thinks to engage in these discussions with its Asian partners as well as the international organizations [1] which are also working in this field, as this will help them to formulate a position on the strategy.

3.5. The communication rightly mentions the need for more coordination of programmes and projects which are being carried out in the Member States for reasons of avoidance of duplication, putting in tune and possible synergies. Given the direct causal relationship between the protection of the environment and the fight against poverty, relevant programmes under the aegis of development cooperation should be incorporated in such schemes [2]. For, the Committee realizes that the poor are hardest hit by the environmental degradation and least able to defend themselves against or escape from the incidence of pollution. It must be admitted however that it is often, even at the national level, difficult to achieve the required coordination as different agencies are accustomed to follow their own patterns (networks, methodology) of cooperation. Moreover coordination may be seen to be interfering with own interests [3]. Therefore it will be necessary to develop mechanisms, such as the creation of expert groups, which will be conducive to fostering coordination and which will make visible the rewards such schemes may yield to the participants.

3.6. It has to be recognized that the seventeen countries which have been selected for the strategy are very different in nature. They do not belong to one particular partnership, nor do they entertain a common relationship with the EU. Although the communication correctly mentions the need for specific environment strategies for each Asian partner, it would be most unfortunate, if the EU would have to negotiate the cooperation strategy with each of the countries individually. It is true that ASEM is covering South-East and East Asia, but no such relationship exists as of yet with South Asia [4]. Perhaps ESCAP could become an important forum for the dialogue with Asia as it is fulfilling a respected role in environmental cooperation.

3.7. Although awareness of the ill effects of environmental degradation in a number of Asian countries on health and economic development is growing, an integral vision on sustainable development is often lacking. The institutional capacity to cope with these problems needs to be strengthened urgently in order to become more effective, also because of the relatively weak position of the newly created national environmental departments [5]. The Committee therefore fully agrees with the communication on the significance of the development of the environmental management capacity. It also agrees with the Commission that the Member States of the EU could make a vital contribution in this area [6].

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[1] E.g.: ESCAP (UN's Economic and Social Commission for Asia and the Pacific), World Bank and UNCTAD.

[2] At the level of the Commission this responsibility (for Asian countries) rests with Directorate General I (F) and I B (C).

[3] The success of the EU- interservice group on China proves that cooperation can be beneficial to the realization of the goals of the individual departments.

[4] Although the South Asian Agreement on Regional Cooperation (SAARC) may fulfil that function.

[5] The growth of environmental management capacity in industry is positively influenced by trade (with more developed countries) considerations. Management capacity may also increase through investments made by foreign firms. An example is the introduction of toxic waste management in the Philippines. Foreign firms desiring to set up production facilities ultimately may decide to take care of Toxic and Hazardous Waste themselves in the absence of government action because they could not 'afford' to be accused of being lax with respect to toxic waste on their premises.

[6] Mention should be made of the implementation of ISO 14000 series (environmental management systems) by developing countries which will help companies to better control the environmental impact of their activities. In many Asian countries a proactive approach has been taken. At the regional level, mention may be made of the establishment of a technical working group under the ASEAN Consultative Committee for Standards and Quality.

3.8. The Committee notes with pleasure the emphasis the communication places on the role of the private sector in meeting Asia's environmental challenges. It firmly believes that the social partners should be part of the strategy and their participation should be actively sought. Indeed, a wealth of literature supports the thesis that a larger involvement of private business and greater reliance on market-based solutions, conditioned and supported by an «enabling» environment, good governance (capacity building) are the most efficient vehicles for generating sustained development [1].

3.9. The Committee also notes with approval the chairman's statement of the Asia-Europe meeting in Bangkok of March 1996, which seems to endorse such an approach as well. It would like to observe however that this element of the strategy needs to be elaborated, in order to create transparent mechanisms for the private sector to play its role effectively.

3.10. It is for this reason that we hope that UNICE will raise this subject at the Europe Asia Business Forum which will precede ASEM II.

3.11. The Committee also endorses the third pillar of the Commission's strategy of strengthening environmental R&D. Indeed, technological development is one of Europe's strengths and could play a major role in the cooperation strategy to the mutual benefit of all the countries involved.

3.12. And finally the Committee agrees with the proposed shift of environmental priorities towards urban and industry related problems. It is indeed necessary, given the urgency of these issues, to increase the budget lines for technology transfer, urban environment and pollution control for which at present less than 10 % of the EU-funds for environmental projects are allocated notwithstanding the importance of continuing to contribute to the preservation of the natural habitat.

4. Specific comments

4.1. The Committee is of the opinion that the position of the SMEs in Asia deserves special attention. In many developing countries SMEs have a large participation in exports. In India for instance SMEs account for 90 % of the export of textiles and leather (products). These companies may need assistance to comply with high environmental standards that could prevail for their customers in overseas markets. There is evidence that SMEs make a relatively large contribution to industrial pollution, although there is a (great) potential for improving environmental management through better housekeeping practices provided the appropriate supporting infrastructure is in place [2].

4.2. The Committee notes the decision taken by the heads of state of ASEM to establish an Asia-Europe Environmental Technology Centre in Thailand. It wishes to signal however the existence of the Regional Institute for Environmental Technology (RIET) in Singapore which was established by the Community and Singapore jointly in 1993. As the communication rightly observes, RIET became, in its three years of operation, a centre of excellence in the transfer and exchange of environmental know-how and services between Europe and Asia.

The Committee thinks it would be beneficial for both the European and Asian ASEM partners if complementarity were to be pursued between this new environmental institute and RIET. As RIET is more business oriented, promoting best practices and business in environment, the new institute may be more involved in societal environmental issues, especially by providing views on policy, the institutional framework and institutional capacity in environmental management. The institute could also stimulate strategic thinking on environmental issues and to serve as a forum for consultation and dialogue.

4.3. The communication asserts that foreign firms are setting up production facilities in certain Asian countries in order to benefit from less stringent environmental measures. The Committee would like to observe that this is fortunately not taking place on a significant scale [3].

The Committee would obviously be even more opposed towards a migration of foreign firms if this were to be induced by a lowering of environmental standards in Asian countries. In this connection the Committee calls on the Commission, in the framework of multilateral negotiation rounds, such as the OECD negotiations on a multilateral agreement on investment (MAI) and the WTO, actively to support the 'non-lowering domestic standards' approach. These phenomena illustrate pre-

(1) For instance: The World Bank, The State in a changing world, 1997, part. pp. 163-165, United Nations, State of the environment in Asia and the Pacific, 1995, chapter 19, Social Economic Council (Netherlands), The role of the private sector in international cooperation (in Dutch), 1997.

(2) See also footnote 5, p. 51, and for instance: Unctad. TD/B/COM 1/EM.4/2 of 18 August 1997 (points 55-61).

(3) COM(96) 54 final of 28.2.1996, p. 5 and COM(96) 314 final of 3.7.1996. In paragraph 3.1.4 mention is made of a number of areas in the field of the environment in which (more) cooperation is desired.

cisely the need to encourage the Asian nations to improve their environmental performance and the relevance and timeliness of the proposed strategy.

4.4. The Committee would finally like to recommend that all parts of budget lines dealing with environmental aspects and cooperation for Asia are grouped together under a kind of Framework Programme comparable to the one for research and technological development referred to under Article 130i of the Treaty or the newly proposed Framework Programme for energy. Such an administrative rearrangement of budget lines would greatly increase the transparency of the environmental effort of the EU. Improved transparency will also provide the policy maker with a better insight into possible relationships between the various programmes that are being considered and with a simple tool to enhance the desired coordination and synergy of approved schemes.

Brussels, 25 February 1998.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX

to the opinion of the Economic and Social Committee

The following amendment attracted more than 25 % of the votes cast, but was rejected during the course of the deliberations:

Point 4.3

Replace the first two paragraphs with the following:

'The Committee notes with concern the Commission's assertion that foreign firms are setting up production facilities in certain Asian countries in order to benefit from less stringent environmental measures.

Promoting environmental standards to protect public health and encouraging sustainable development must be a permanent and major focus of the EU's cooperation strategy with the Asian countries. To this end, the Committee also calls on the Commission, to engage in a process leading to mutually accepted international standards and to defend vigorously in the framework of multilateral negotiations (OECD and possibly WTO), the principle of mutual recognition of basic environmental protection standards as well as the concept of non-lowering domestic standards.

The implementation of environmental standards is also linked with the political situation in each country. In this regard, the existence of real democratic transparency, of freedom of action for NGOs and of effective supervisory procedures are essential guarantees of the effectiveness of national and international standards. The possibility of deterrent sanctions and fair victim-compensation rules should also be explored.'

Reason

It is tempting to exploit less developed laws. Moreover, in some countries compensation arrangements for the victims of accidents are far less costly. We should not minimize this problem, as the report appears to do. We should not forget the Bhopal disaster in India and its tragic consequences for thousands of victims, who after years of legal proceedings have received only minimal compensation.

It is essential to promote universal basic standards and to improve national laws in line with experience and developing knowledge. Unless account is taken of the environmental dimension in trade and investment, the door will remain open to possible dumping in violation of fair competition. (Dumping contravenes WTO principles.)

Result of the vote

For: 41, against: 46, abstentions: 7.

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 93/74/EEC on feedingstuffs intended for particular nutritional purposes and amending Directives 74/63/EEC, 79/373/EEC and 82/471/EEC' [1]

(98/C 129/12)

On 6 November 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 Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 1998. The rapporteur was Mr Gardner.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion with 76 votes in favour, 5 votes against and 6 abstentions.

1. General comments

(i) This proposal introduces a new category of 'Nutritional Supplements for Animals' into Community legislation. These are concentrated mixtures of trace metals, vitamins etc., which are used in supplements with other feeds. This category adds further to the considerable corpus of existing EU law on the subject, which already has:

— Compound feedingstuffs

— Complementary feedingstuffs

— Premixed feedingstuffs

— Feedingstuffs for particular nutritional purposes

(ii) The nutritional supplements are widely used in Member States. They are permitted separately in some Member States for instance ANSA products in France (Apports Nutritionnels Spécifiques d'Adaptation) while in others there is no separate legislation but they appear to be accommodated within the existing categories of feed under the national interpretation of existing directives.

(iii) The Committee therefore is not completely convinced that the new category is needed at EU level. If it is introduced, the whole system will become even more complicated. Already it has to be made more transparent. A codification would be an early start towards transparency.

(iv) This opinion is subject to the comments above and the following paragraphs.

1.1. *Legal base*

1.1.1. The Commission has presented this proposal under Article 100a of the Treaty (Single Market) though the normal base for this type of legislation is Article 43 (Agriculture) since it concerns production and sale of Annex II products. The legal services of the Council have confirmed Article 43 as the proper base (Advice 11180/97, 10 October 1997).

1.1.2. The Committee understands the Commission's reasons for taking Article 100a as the legal base of this directive. It would, however, point out that these reasons are also accommodated by Article 43.

1.1.3. Therefore, in order to avoid the lengthy and complex procedure that Article 100a now entails,

[1] OJ C 298, 30.9.1997, p. 10.

it is proposed that the legal base be Article 43, which is already used as a legal base, for all agricultural matters. This will have to be reviewed when the new Article 129 of the Treaty of Amsterdam is in place.

1.2. *Definitions*

1.2.1. It is not clear from the definitions what current and prospective products are covered and the dividing line between stuffs for particular nutritional purposes, nutritional supplements, premixed feedingstuffs and other compound feedingstuffs. This is of great importance to ensure that there are no products which become illegal as the result of this proposal. It is also important owing to the interplay between this proposal and present and future additives legislation. For this aspect too there is the danger of a legal void unless all products are covered satisfactorily.

1.2.2. An illustrative list of 'nutritional supplements' would help greatly and should be included in any Directive. Appendix A gives such a list taken from practice in one Member State only.

1.2.3. Unfortunately an EU wide list is not available and the Commission therefore should establish one.

2. **Detailed Comments**

2.1. *Article 2*

2.1.1. The word 'temporary' is too vague for a legal instrument and should be deleted.

2.1.1.1. The Commission understands by 'temporary' a few days up to one week. However there are many current uses where supplements are needed for weeks or even months to be effective such as the use of trace element supplements where cattle are grazed on nutrient deficient pastures. Equally application such as weaning or 'training' for and recovery from exhaustion could take some weeks. For instance race horses are trained and raced over 6 months.

2.1.1.2. The following terms need clearer definition.

2.1.1.2.1. 'Special breeding and living conditions'.

The Commission is thinking of animals with disturbed physiology or metabolism such as chicken with heat stroke. However, many supplements are fed to normal healthy animals whose nutritional status would be compromised in the absence of their use.

2.1.1.2.2. 1(e) 'Particular nutritional purposes' appears to be the same as 'specific nutritional purposes' in 1(d). The same term should be used throughout. 'Temporarily' is used twice without any guide of what time scale is meant.

2.2. *Article 4*

Antibiotics, coccidiostats and other medicinal products must be specifically excluded from nutritional supplements.

2.3. *Article 7*

In many parts of this article there seems to be confusion between 'information' and 'claims'.

2.3.1. For instance 7.5, first indent should presumably read:

> '— does not make claims for the presence or the content of analytical constituents other than those that are provided for in point 1(d).'

2.3.2. As written at present this indent would prohibit consumer information concerning the analysis of the product. Similar changes are required elsewhere.

2.3.3. Article 7.5, third indent

2.3.3.1. This indent has to be clarified and should read 'does not refer to properties for the prevention, treatment or cure of a disease other than defined in Article 6.3'; however, ...

2.4. *Article 9*

This proposes dossiers not only for the new nutritional supplements but also for feedingstuffs for particular nutritional purposes. The latter have been regulated by an EEC Directive since 1993 without any need for such dossiers. The Explanatory Memorandum unfortunately is totally silent on this subject.

2.4.1. The word 'dossier' here is misleading as the term normally refers to the very detailed justification needed for pharmaceutical products or new additives.

2.4.2. The word 'dossier' should be replaced by 'The information set out in Annexes A and B with appropriate scientific justification'. This is the same as it is currently required for existing dietetic foods.

2.5. *Article 3* (at the end of Proposal)

2.5.1. These dates are totally unrealistic, especially with the legal base proposed by the Commission. They should be changed to:

'Two years from publication of the Directive'.

2.6. *Impact Statement*

2.6.1. This is missing. The impact on farms and other SMEs in particular should have been examined and given in the statement.

Brussels, 25 February 1998.

The President
of the Economic and Social Committee
Tom JENKINS

APPENDIX A

to the opinion of the Economic and Social Committee

Uses of Nutritional Supplements (ANSA = Apports Nutritionnels Spécifiques d'Adaptation) in one Member State

Use	Animal Species
Oestrus and mating	All species
Onset and peak lactation	All species
Weaning and critical growth phase	All species
Peak and end of egg laying. Fall in hatching rate	Egg laying and breeding poultry
Moulting	Egg laying hens
Synchronization of moulting	Egg laying hens
Improvement and maintenance of superficial body growth	All species
Training for and recovery from exertion	Horses and dogs
Optional use of fat rich diets	All species
Poorly assimilated concentrate-rich diets	All species
Grazing	Ruminants
Improved mineral metabolism	All species
Changes in diets, breeding conditions, living conditions, allotment and transport and unpredictable variations in climate or environment	All species
Variation in feeding behaviour (appetite loss)	All species
Vaccination, parasite treatment and convalescence	All species

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector' [1]

(98/C 129/13)

On 9 September 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 Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 1998. The rapporteur was Mr Gardner.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion with 83 votes in favour, two votes against and four abstentions.

1. General comments

1.1. This is a logical extension to nutritional supplements of the existing directive.

1.2. The Committee has the same comments as explained in points 1 and 1.1 of R/CES 1497/97.

2. Detailed comments

2.1. *Chapter I.2.(b), 6.2*

This requires every farmer and supplier to register the receipt, delivery date and exact quantity of any nutritional supplements used on the farm. This is excessively bureaucratic. The Commission or Council should look how these matters are currently handled in Member States.

Brussels, 25 February 1998.

The President

of the Economic and Social Committee

Tom JENKINS

[1] OJ C 300, 1.10.1997, p. 10.

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 Public-Private Partnerships in Trans-European Transport Network projects'

(98/C 129/14)

On 16 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 Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 February 1998. The rapporteur was Mr Kritz.

At its 352nd plenary session (meeting of 25 February 1998) the Economic and Social Committee adopted the following opinion by 76 votes for and one vote against.

1. Background

1.1. One of the main conclusions of the Commission's White Paper on Growth, competitiveness and employment, published in December 1993, was that efforts should be made to involve the private sector in financing and implementing Trans-European Networks' (TENs) projects. This was seen as a way to accelerating this type of investment and improving its efficiency.

1.2. At the European Council meeting of December 1994 in Essen, it was decided to give top priority to 14 large TEN transport projects. This followed the proposals put forward by a High-Level Group of personal representatives of Heads of State and Government, chaired by the Commission's vice-president, Mr Henning Christophersen.

1.3. The total investment costs of the 14 priority TEN transport projects selected by the Christophersen Group in 1994 were, at that time, estimated to amount to ECU 94 billion, of which ECU 40-45 billion had to be invested in the period 1995-1999. New calculations at the end of 1995 estimated the total investment costs to around ECU 99 billion.

1.4. The Commission's 1996 Annual Report on TENs stated that several of the largest priority projects (especially in the railway sector) are running behind schedule, and that it seems doubtful whether the expected investment levels of ECU 40-45 billion for the 14 projects by the year 1999 can now be achieved or even approached.

1.5. There are two main reasons why the implementation of several of the priority projects has been delayed. First, a general decline in public spending for infrastructure investments has occurred over the last few years, due to the need to reduce public budget deficits. Secondly, public-private partnership schemes (PPPs) as a means of accelerating priority projects, have been more difficult to realize than foreseen. Furthermore, administrative, legal or political obstacles have appeared in some cases, but the main reasons for the delays are of a financial nature.

2. The high-level group report (May 1997)

2.1. The High-Level Group on Public-Private Partnership Financing of Trans-European Transport Network Projects was set up at Commissioner Kinnock's initiative, and with the agreement of the Transport Council, in September 1996. Under the chairmanship of Commissioner Kinnock, the Group was composed of personal representatives of the 15 Transport Ministers of the European Union, together with representatives from the construction industry, the banking sector, the transport equipment industry and transport operators in their personal capacity. The Group's Report was published in May 1997, and included summaries of the reports from five sub-groups which were appointed by the Kinnock Group.

2.2. The aim of the High-Level Group was to see how Public-Private Partnerships (PPPs) can contribute to achieve the objective of accelerating the implementation of the Trans-European Transport network, which is vital for European competitiveness and growth.

2.3. The report emphasizes that the aim of PPPs is not simply to mobilize complementary financing sources in times of constraints on public finances. It is of equal importance to improve a project's financial viability by mixing private- and public-sector skills: the public-sector experience of infrastructure management, and the entrepreneurial spirit and commercial and financial skills of the private sector.

2.4. A PPP is a partnership between various public administrations and public bodies on the one hand and legal persons subject to private law on the other, for the purpose of designing, planning, constructing, financing

and/or operating an infrastructure project. It is, however, inappropriate to impose a rigid definition of what a PPP is or should be, as each project will lead to a specific partnership according to project needs and characteristics, and the way in which public authorities decide to involve the private sector in the different project phases.

2.5. An economically viable project is one which will produce socio-economic benefits for the society. A financially viable project is one which will generate enough revenues to cover all costs and produce an adequate rate of return for investors. The report emphasizes that the key problem that PPPs address is the shortage of public funds for subsidies to economically viable projects which are not financially viable, rather than a shortage of public or private loan finance for financially viable projects. PPPs can bring projects closer to financial viability.

2.6. The conclusions and recommendations of the High-Level Group can be summarized under three headings:

— General conclusions

— An environment that encourages PPPs

— Development of financing instruments.

2.7. The general conclusions include the following:

a) Public/private collaboration should start as early as possible in the life cycle of each particular project, so that private-sector, commercially-orientated input can be made in the conception and design stages of a project.

b) The public sector must, at an early stage, clearly define the aims of a project, and should leave sufficient flexibility in project design to allow appropriate private-sector input.

c) The creation of ad-hoc project companies is often the best approach — especially for large and cross-border projects — to provide a stable framework within which the various partners can establish a confident working relationship. The European Economic Interest Grouping (EEIG) statute is a good instrument in the early phases of a project, but it is not well adapted to the requirements of the construction and operation phases.

2.8. As to an environment that encourages PPPs the High-Level Group's recommendations deal with public procurement regulations and procedures, and with the application of EC competition rules to infrastructure projects in the railway sector. Clarification especially of the application of the 'Public Works' and 'Utilities' directives could greatly facilitate PPP infrastructure schemes. The Commission should therefore elaborate specific guidelines which would provide greater clarity in the procurement procedures to be followed for the award of transport infrastructure concessions.

2.9. The High-Level Group points out that during the early operational stage of a project, when its debt burden and debt service obligations are at their highest, the revenue generated by the project is at its lowest. The Group therefore recommended the development of structurally subordinated loans and early operational stage loans to alleviate risks caused by uncertainties in early operational stage cash-flow generation.

2.10. As to the development of financing instruments, the Group also recommended, as a new activity at EU-level, equity and, in particular, quasi-equity, where a targeted application of Community funds could help the emergence of a European mezzanine fund. This could play an important role to encourage institutional investors to become involved in the financing of TENs.

3. **The Communication from the Commission**

3.1. Several of the recommendations in the High-Level Group's Report are addressed to the Commission for consideration and action. The communication from the Commission, published in September 1997, sets out how it will follow up those recommendations in which it is directly involved. It also sets out a number of projects which the Commission has identified as being suitable for a PPP approach.

3.2. *Public procurement*

3.2.1. Private-sector concerns and specific points in EU procurement rules have been examined by the Commission in order to favour a regulatory framework where flexibility, publicity, negotiations and call for tender would be key issues. The Commission intends to present soon a communication on public procurement, forming the framework for guidelines on the application of the public procurement legislation to infrastructure projects.

3.2.2. In this connection the relationship and differences between the Public Works [93/37/EEC [1]] and

[1] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54); ESC Opinion on the relevant Commission proposal: OJ C 106, 27.4.1992, p. 11.

Utilities [93/38/EEC(1)] directives are of particular interest, as both directives are potentially relevant for larger transport infrastructure projects. The forthcoming guidelines will clarify which of these directives applies.

3.2.3. Another main issue of concern for the private sector was how to reconcile technical dialogue with the protection of intellectual property of the bidders in the conception and planning stages of a project. According to the Commission, innovative technical solutions in the conception phase can be protected by current European law on patents and design, combined with adequate clauses in tender documents. The same is not the case in a technical dialogue, which is by nature informal.

3.3. *Competition policy*

3.3.1. A separate document(2) which tries to clarify the existing guidelines to new rail infrastructure projects has been presented in parallel with the communication at hand. The Commission, however, emphasizes that each case has to be considered on its own merits, due to their complex and often very individual nature. Early consultation with the services of the Commission on application of competition rules is therefore advisable.

3.4. *Development of financing instruments*

3.4.1. Structurally subordinated loans are loans of equal priority to usual bank debt, but with extended maturities (20-30 years) and grace periods. This loan instrument would alleviate the burden of debt amortization by spreading it over a longer period of time. Early operational stage loans are non-amortising loans or revolving credits covering the early operational period of a project. The Commission invites the European Investment Bank (EIB) and the European Investment Fund (EIF), in direct cooperation with commercial bank debt providers, to increase the volume of structurally subordinated loans, and to develop early operational stage loans.

3.4.2. Mezzanine finance, i.e. subordinated debt, complements equity and fills the gap between equity and bank debt. It adds a risk cushion to equity, which helps the raising of bank debt for projects. The Commission, in consultation with the EIB and the EIF, intends to examine the setting up of a mezzanine fund focused on TENs. The fund should encourage institutional investors to participate in the financing of TENs and to contribute the majority of the capital.

3.5. *Ways of providing support at EU level*

3.5.1. The Commission points out that the prime responsibility for infrastructure development lies with the Member States. The Commission could, however, in two ways play a more active role: to catalyse the early involvement of the private sector in project design by bringing together the key participants, particularly in cross-border projects, and to ensure that support from the range of Community financial instruments is provided in a coordinated way.

3.5.2. The Commission will consider methodologies for assessing the network effects associated to TEN projects. Evaluating project benefits at a European level is supposed to help assessing the level of TEN funding. The Commission will also explore possibilities for the establishment of a European-wide PPP database on transport infrastructure projects, in order to provide an analysis of PPP experiences to date.

3.6. *Possible projects for PPPs*

3.6.1. The Commission has tried to identify some known TEN projects that are suitable for the PPP approach. It should be noted that the aim is not to draw up a new list of priority projects; potential PPPs are identified from within the existing priorities.

3.6.2. The possible projects are the following:

— the HST south: the Madrid-Barcelona section, and the Figueras-Perpignan section;

— the PBKAL, Dutch section;

— the Brenner tunnel;

— the new Berlin airport;

— the Semmering tunnel;

— the Piraeus-Athens rail connection.

For these projects the Commission intends, together with the EIB and the EIF, to make special efforts to support Member States on reaching early agreement on PPP structures and financing.

4. **General comments**

4.1. The Economic and Social Committee has on several occasions in earlier opinions stressed the impor-

(1) Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993, p. 84); ESC Opinion on the relevant Commission proposal: OJ C 106, 27.4.1992, p. 6.

(2) Clarification of the Commission Recommendations on the Application of the Competition Rules to New Infrastructure Projects (OJ C 298, 30.9.1997, p. 5).

tance of implementing TENs as a means to ensure that the internal market functions properly, competitiveness is strengthened, and economic growth and economic and social cohesion will be fostered.

4.2. The progress that has been made so far on the development of TENs has been slower than expected, because of persistent problems of funding, particularly as a result of constraints on public finances, but also of less than expected involvement of PPPs in TEN projects. This is unfortunate, as PPPs since the early 1990s have been considered an important means of accelerating the implementation of TENs.

4.3. This being the background, the Committee welcomes both the report from the High-Level Group and the communication from the Commission. The two documents form a whole, and should not be seen as separate parts. The Committee appreciates in particular that the Commission in such a short time has responded to the recommendations made by the High-Level Group for action by the Commission.

4.4. On 9 October 1997, the Transport Council held a comprehensive debate on the Commission Communication and adopted a number of conclusions on PPPs in the context of TEN projects. The Committee notes with satisfaction the Council's constructive and realistic conclusions supporting PPPs.

4.5. Traditionally, the state has carried out infrastructure projects when it has seen socio-economic benefits, and when it has had budgetary resources (i.e. money) for planning, construction and maintenance of such projects. The private sector has traditionally been involved mainly as a contractor, primarily in the construction phase.

4.6. Increased involvement of the private sector in large transport infrastructure projects would mean that it should act, alongside the public sector, not only as a contractor, but also as a promoter providing finance and management resources, and even operation responsibilities.

4.7. The Committee would like to emphasize that the role of the public sector remains vital, even in projects where large parts of the implementation of PPPs have been transferred to the private sector. Large transport infrastructure projects are not normally financially viable, unless the public sector shoulders some of the risks involved, and provides support in the form of grants and guarantees.

4.8. The key feature for a successful PPP is the allocation of a project's risk between the public and private sector. Risk allocation is important, as risks mean real costs. In principle, each party should bear the risks it is best able to control at each stage of a project. Commercial risks should normally fall to the private sector, whereas public risks ('political risks') should be borne by the public sector, i.e. the tax payer.

4.9. It is clear that the lack of sufficient national budget resources for TEN projects has caused increasing interest in PPPs. However, the Committee wants to underline that bringing in complementary financing should not be the overriding aim of PPPs. It is of equal importance to utilize the commercial, financial, technical and management skills of the private sector in order to improve cost-effectiveness when carrying out TEN projects.

4.10. In this connection the Committee cannot refrain from adding that there is a certain amount of over-optimism, in both the High-Level Group Report and in the Commission Communication, as to the potential for increased involvement of the private sector in TEN projects. The private sector invests in a project only when it gives an adequate return on investments.

4.11. According to the Committee there are some important prerequisites for successful implementation of PPPs, namely:

— a firm political commitment on the part of the Member States to complete the projects and to provide the necessary financial resources for implementing PPPs;

— private sector involvement as early as possible in projects, i.e. in the conception, design and planning phases;

— creation of dedicated project companies, responsible for carrying through a project, especially cross-border projects.

4.12. PPPs are usually associated with large TEN priority projects. However, the Committee would like to emphasize that PPPs could be used also for smaller and less spectacular projects. In fact, there are many examples of planned or completed PPP projects of a relatively modest nature, but of crucial importance in a local or regional setting (motorway projects, bridges, tunnels, airports).

4.13. The financing of transport infrastructure was one of the subjects dealt with at the Third Pan-European Transport Conference in Helsinki (June 1997). In the Declaration adopted by the Conference it was stated that 'more efforts should be made in order to increase public financing by the States and the European Union,

as well as to increase private financing, e.g. through public-private partnership' (paragraph IV.5). This was fully supported by the delegation of the Economic and Social Committee to the Conference.

5. **Specific comments**

5.1. *Public procurement*

5.1.1. The Committee strongly supports the High-Level Group's recommendation that the Commission should elaborate specific guidelines which would provide greater clarity with regards to public procurement procedures to be followed for the award of transport infrastructure contracts. Therefore, the Committee is looking forward to the guidelines which the Commission has promised to issue in the near future.

5.1.2. As has sometimes been suggested, an alternative to guidelines could be a specific directive on public procurement for transport infrastructure concessions, providing a legal framework designed especially for PPPs. According to the Committee, this kind of legislative change is not to be recommended. A specific PPP directive would be difficult to formulate and even harder to apply. Furthermore, it would be necessary to change the existing directives on public procurement and their applicability.

5.1.3. In the view of the Committee, the forthcoming guidelines from the Commission have to deal with the following issues:

— the relationship between the 'Public Works' and 'Utilities' directives when it comes to PPPs;

— ways to improve and facilitate procurement procedures, especially the pre-tendering phase, and the use of the negotiated procedure.

5.1.4. In its opinion on the Green Paper on 'Public Procurement in the European Union: exploring the way forward' [1], the Committee underlined that it is necessary to clarify the differences between a concession and a contract. The two concepts differ when it comes to the objective, the length of the contract/concession, terms for financing, and the extent of liability. The Committee now reiterates that a clarification is needed.

5.1.5. A Public-Private Partnership is a long term contract between various public administrations and public bodies on the one hand, and legal persons subject to private law on the other, for the purpose of designing, planning, financing, constructing, and/or operating an infrastructure project. It differs from public procurement by requiring investments of the private partner.

5.1.6. The Works Directive indicates that the concessionnaire can award its public works contracts to undertakings within the same group (consortium) (93/37, Article 3 (4). The Utilities Directive does not include a corresponding provision (cf. 93/38, Article 13). In the view of the Committee, a consortium which has obtained a concession should be able to allocate contracts between its members according to the Public Works rules, even if it is a question of Public Utilities.

5.1.7. The Works Directive is applicable to the construction of roads, bridges, railways, etc. (93/37, Annex II). In motorway projects, PPPs could include private sector responsibility also for the operation phase (using toll roads or shadow tolls). However, the Committee notes that highway network services are outside the scope of the Utilities Directive (93/38, Article 2 (2) c). Therefore, the forthcoming guidelines should solve this problem of inconsistency.

5.1.8. Tendering can occur in each phase of a project, depending on the public authorities' willingness to involve the private sector. It can be used for small service contracts in order to carry out feasibility studies, or for large concession contracts for building and/or operating an infrastructure project. The tender procedure is more flexible in the Utilities Directive than in the Works Directive, when it comes to the so called negotiated procedure. Utilities may use this procedure without restrictions (93/38, Article 20), but public contracting authorities may use the negotiated procedure only on certain exceptional grounds (93/37, Article 7). The Committee recommends that whenever formal bidding processes are considered, the use of negotiated procedure should be enlarged, and that legislative changes to 93/37 should be considered.

5.1.9. The Committee feels that tendering in the conception and design phases of a project might have some disadvantages for firms in the private sector. The protection of intellectual property of a bidder could be endangered if innovative technical solutions, presented in the tender document of this phase, are used by the project authority as criteria in the subsequent tendering phase. New ideas originating from one private firm would be of general benefit for all bidders, without benefiting the inventor.

5.1.10. As to the procurement process in its entirety, the Committee would like to use as an example a step by step guide, published by the Treasury in the UK in connection with the Private Finance Initiative, which can be summarized as follows:

— prequalification phase against explicit criteria;

[1] OJ C 287, 22.9.1997, p. 92.

— selection of a limited shortlist of three or four candidates;

— invitation to submit the tender against a detailed set of performance specifications and a suggested table of risk allocations;

— tenders having been received, detailed parallel negotiations with the shortlisted tenderers;

— a preferred tender is chosen.

5.2. *Competition policy*

5.2.1. The Committee welcomes the recently published (September 1997) clarification on the application of the competition rules to new transport infrastructure projects. It deals mainly with rail projects and, in particular, with access to new rail infrastructure and the possibilities of having infrastructure capacity reserved for some operators.

5.2.2. It could be argued, on the one hand, that an infrastructure manager should have the possibility to reserve at least part of the capacity for operators which contribute to the financing of the project. On the other hand, the reservation of capacity over a long period of time is contrary to the principles of freedom of access to infrastructure and of competition.

5.2.3. In order to clarify this issue, the Commission points out that capacity reservation agreements do not pose any difficulty under the competition rules as long as infrastructure is not congested, since no entry barrier is created. However, if there is congestion, an agreement reserving capacity that is essential for the effective operation of transport services may justify the granting of an exemption pursuant to Article 85 (3), where all the conditions laid down therein are fulfilled. The Committee considers this clarification of an important issue to be a constructive one.

5.2.4. The Committee recognizes that each transport infrastructure project has specific features which makes it more or less unique. Therefore, a case-by-case analysis is needed when applying the competition rules, and project promoters should consult the services of the Commission at an early stage of a project. In the view of the Committee, guidelines seeking to clarify the application of the competition rules are a necessary, but not a sufficient, means of eliminating uncertainty amongst PPP partners.

5.3. *Development of financing instruments*

5.3.1. The Committee agrees with the High-Level Group and the Commission that large transport infrastructure projects need balanced financing packages composed of equity, structurally subordinated loans, early operational stage loans, and bank debt.

5.3.2. Of these financing instruments the structurally subordinated loans play a key role by spreading the burden of debt amortization over a longer period (20-30 years) than for bank debt (up to 15 years). This type of loan has already, on a limited scale, been offered by the EIB in cooperation with the EIF. The Committee is pleased to note that the EIB will be more active within this field, and also for the development of early operational stage loans.

5.3.3. The Commission intends to examine the setting up of a mezzanine fund focused on TENs, with the EIB and institutional investors contributing the majority of the capital. The Committee is of the opinion that the market for this kind of financial instrument has to be developed in Europe, and the Commission should therefore increase its efforts to help creating a mezzanine fund.

6. **Summary and conclusions**

6.1. The High-Level Group on Public-Private Partnership Financing of Trans-European Transport Network Projects, chaired by Commissioner Kinnock, published its report in May 1997. The aim of the Group was to see how Public Private Partnerships (PPPs) could contribute to accelerating the implementation of the Trans-European Transport networks, which is vital for European competitiveness and growth.

6.2. Several of the recommendations from the High-Level Group were addressed to the Commission for consideration and action. The Commission responded in a communication, published in September 1997, which sets out how it will follow up those recommendations in which it is directly involved.

6.3. The Committee welcomes both the report from the High-Level Group and the communication from the Commission. The two documents form a whole, and should not be seen as separate parts.

6.4. The development of TENs has, so far, been slower than expected, because of persistent problems of funding, particularly as a result of constraints on public finances, but also of less than expected involvement of PPPs in TEN projects.

6.5. When the state has carried out large infrastructure projects, the private sector has traditionally been involved mainly as a contractor, primarily in the construction stage. Increased involvement of the private sector would mean that it should act, alongside the public sector, not only as a contractor, but also as a promoter providing finance and management resources, and even operation responsibilities.

6.6. The key feature for a successful PPP is the allocation of a project's risk between the public and the

private sector. In principle, each party should bear the risks it is best able to control at each stage of a project. Commercial risks should normally fall to the private sector, whereas public risks ('political risks') should be borne by the public sector.

6.7. It is clear that the lack of sufficient national budget resources for TEN projects has caused increasing interest in PPPs. The Committee emphasizes that bringing in complementary financing should not be the overriding aim of PPPs. It is of equal importance to utilize the commercial, financial, technical and management skills of the private sector in order to improve cost-effectiveness when carrying out TEN projects.

6.8. As to the possibility of increased involvement of the private sector in TEN projects, there seems to be a certain amount of overoptimism in both the High-Level Group report and in the Commission communication. The private sector invests in a project only when it gives an adequate return on investments.

6.9. According to the Committee there are some important prerequisites for successful implementation of PPPs, namely:

— a firm political commitment on the part of the Member States to use a PPP;

— private sector involvement as early as possible in projects, i.e. in the conception, design and planning phases;

— creation of dedicated project companies, responsible for carrying through a project, especially cross-border projects.

6.10. The Commission intends to issue, in the near future, specific guidelines providing greater clarity with regard to public procurement procedures to be followed for the award of transport infrastructure contracts. The Committee finds it essential that these guidelines deal with the following issues:

— the relationship between the 'Public Works' and 'Utilities' directives when it comes to PPPs;

— ways to improve and facilitate procurement procedures, especially the pre-tendering phase, and the use of the negotiated procedure.

6.11. The Committee welcomes the recently published (September 1997) clarification from the Commission on the application of the competition rules to new transport infrastructure projects, which deals mainly with access rights to rail infrastructure and the possibilities of having rail infrastructure capacity reserved for some operators. As each project is more or less unique, the Committee underlines that a case-by-case analysis is often needed.

6.12. Large transport infrastructure projects need balanced financing packages composed of equity, structurally subordinated loans, and bank debt. The Committee is pleased to note that the EIB will be more active in developing structurally subordinated loans and early operational stage loans. It also finds it essential that the Commission increases its efforts to help creating a mezzanine fund.

Brussels, 25 February 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 organization of a labour force sample survey in the Community'

(98/C 129/15)

On 25 February 1998 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 above-mentioned proposal.

The Economic and Social Committee appointed Mr Kenneth Walker as main rapporteur and asked him to prepare the work at hand.

At its 352nd plenary session (meeting of 25 February 1998), the Economic and Social Committee adopted the following opinion by 70 votes in favour, one against and one abstention.

1. Introduction

1.1. In order to carry out its tasks, in particular the monitoring of trends in employment and unemployment (Annual Report to the Council following the Essen Summit), to identify the regions most affected by unemployment (eligibility for the Structural Funds — Objective 2) and to analyze the situation of individuals and households on the labour market, the Commission wishes to have regular, comparable, recent and representative regional data on unemployment in the Member States.

1.2. The Community Labour Force Survey currently consists of putting together the national labour force surveys conducted in the Member States. Although formally harmonized [1], these surveys essentially retain their own specific features as adopted to meet national requirements.

1.2.1. Subsisting differences include the frequency of reporting, the definition of the reference period, the units observed, the survey coverage, the observation methods, the sample design, the extrapolation methods and the questionnaires. The country-to-country comparability of the data obtained, particularly on employment and unemployment, is therefore seriously impaired.

1.3. One of the obstacles to achieving more comparable survey methods is the inertia of large sample surveys; reforming a national labour force survey represents a considerable investment of resources in terms of sample design, organization of data processing and general survey infrastructure. It is not until a Member State has actually begun to overhaul its survey that there is any real chance of progress. For this reason, the proposed regulation defines a target while allowing the Member States the option of conducting only an annual survey in the Spring, for a transitional period.

1.4. Limiting the costs of implementing the continuous survey has been a major consideration; spreading data collection over the whole year should make for a more rational organization of the operations and more efficient use of computer resources; the accuracy levels set do not generally imply an excessive increase in the size of the annual sample; the requirement to use the household as the sampling unit has been dropped in order to accommodate those Member States which prefer to base their sample on individuals, on condition that the other requirements regarding households are met; and certain variables included in the current series of surveys have been dropped.

1.5. In line with the principle of subsidiarity, only data on the variables used to determine activity status and underemployment are required to be collected in direct personal interviews conducted according to very strict common guidelines, which are deemed to be essential for ensuring an acceptable degree of comparability of the results. For the remaining variables, the wording and sequence of the questions are not subject to Community guidelines but are left to the discretion of the Member State or the information required may be obtained from other sources.

1.5.1. Furthermore, the target structure does not require a sample rotation scheme so that Member States can use the survey plan which most effectively takes account of specific national features.

2. The Commission's proposals

2.1. Member States would be required to conduct a labour force survey each year.

2.1.1. The survey would be a continuous survey providing quarterly and annual results. However, those Member States which were unable to implement a continuous survey would be permitted to conduct an annual survey only, to be carried out in the Spring.

2.1.2. The information to be collected in the survey would relate generally to the situation during the course of the week (taken to run from Monday to Sunday) preceding the interview, known as the reference week.

[1] Council Regulation (EEC) 3711/91, 16.12.1991.

2.1.3. In the case of a continuous survey, the reference weeks would be spread uniformly throughout the year. The interview would normally take place in the week following the reference week. The reference week and the date of the interview would not be permitted to be more than five weeks apart, except in the third quarter. The reference quarters and years would be respectively groups of 13 and 52 weeks.

2.2. The survey would be carried out on a sample of those residing in the economic territory of each Member State at the time of the survey. The sample could be selected on the basis of either an individual or a household. Regardless of whether the sampling unit were an individual or a household, information would be collected in respect of all persons residing in the household but, where the sampling unit was an individual, the information required in respect of other members of the household would be reduced. A household is a physical concept, i.e. all persons residing in the same premises are deemed to constitute a household, regardless of their relationship to each other.

2.2.1. The principal scope of the survey would consist of persons residing in private households on the economic territory of each Member State; where possible, this main population would be supplemented by persons residing in collective households. The survey would not be limited to those of working age.

2.2.2. The variables used to determine labour status and underemployment would have to be obtained by interviewing the person concerned or, if this were not possible, another member of the same household. Other information could be obtained from alternative sources, including administrative records, provided that the data obtained were of equivalent quality.

2.3. The proposed regulation lays down certain reliability criteria to ensure the representativeness of the sample.

2.3.1. In order to ensure a reliable foundation for comparative analysis, at Community level as well as at the level of the Member State and of specific regions, the sampling plan would have to guarantee that for characteristics relating to 5 % of the population of working age the relative standard error for the estimation of annual averages (or of the Spring estimates in the case of an annual Spring survey) at NUTS II level did not exceed 8 %, assuming the design effect for the variable 'unemployment'.

2.3.1.1. Regions with less than 300 000 inhabitants would be exempt from this requirement.

2.3.2. In the case of a continuous survey, the sample design would have to guarantee that, for sub-populations which constituted about 5 % of the population of working age, the standard error at national level for the estimate of changes between two successive quarters did not exceed 2 % of the sub-population concerned.

2.3.2.1. For Member States with populations between one million and twenty million, this requirement would be relaxed to 3 %.

2.3.2.2. Member States with a population below one million would be exempt from these precision requirements concerning changes.

2.3.3. Where the survey was carried out only in the Spring, at least a quarter of the survey units would have to be taken from the previous survey and at least a quarter would have to form part of the following survey.

2.3.4. Where non-response to certain questions resulted in missing data, statistical imputation would normally be applied.

2.3.5. The weighting factors would be calculated taking into account the probability of selection and external data relating to the distribution of the population being surveyed by sex, age (in five-year age groups) and region (NUTS II level), where such external data were sufficiently reliable. The same weighting factor would be applied to all members of the same household.

2.3.5.1. Member States would have to provide Eurostat with whatever information it required concerning the organization and methodology of the survey and, in particular, would have to indicate the criteria adopted for the design and size of the sample.

2.4. The list of survey characteristics on which data would have to be collected is set out in Appendix 1. It is divided into 13 modules; which are sub-divided into a total of 85 questions. Where the sampling unit was an individual, the information required in respect of other members of the household would exclude modules g, h, i and j.

2.4.1. A further set of variables, known as 'ad hoc' modules might be added to the information required from time to time. These supplementary modules could cover such aspects as organization of work, accidents at work and the transition from education to work. The volume of an ad hoc module would not exceed the volume of module c.

2.4.1.1. A programme of ad hoc modules covering several years would be drawn up each year, not less that twelve months prior to the reference period for any module in the programme. The programme would specify for each ad hoc module the subject, the Member States and regions covered, the reference period, the sample size (equal to or less than the main sample) and the deadline for the transmission of results (which might be different from the deadline for the survey as a whole).

2.5. The Member States would be entitled to make it compulsory to reply to the survey.

2.6. The results would be required to be forwarded to Eurostat, duly checked, by each Member State for each person questioned (without indication of name or address) within twelve weeks of the end of the reference quarter in the case of a continuous survey and within nine months of the end of the reference period in the case of an annual Spring survey.

2.7. A report on the implementation of the Regulation would be submitted by the Commission to the Parliament and the Council every three years, commencing in the year 2000. The report would evaluate in particular the quality of the statistical methods employed by the Member States.

2.8. The Commission would be assisted by the Statistical Programme Committee set up under Decision (EEC, Euratom) No 89/382, acting within the framework of the 'regulatory committee' procedure. The Commission would adopt measures which would apply immediately. However, if these measures were not in accordance with the opinion of the Committee, the Commission would refer them to the Council forthwith and delay application of the measures. The Council, acting by a qualified majority, could decide to reject the measures within a period of three months, failing which the measures would be applied.

2.9. Regulation (EEC) No 3711/91 would be repealed.

3. **General Comments**

3.1. The ESC considers that the availability of reliable and detailed information on the characteristics of the labour market, including the characteristics of employment and the nature and extent of the unemployment situation in the various Member States, and on the different regions within individual Member States, is essential to the development of a coherent and coordinated strategy to reduce unemployment levels in the European Union. By the same token, it is obvious that such statistics need to be prepared on a comparable and consistent basis if they are to be of real value.

3.1.1. The Committee therefore welcomes the Commission's present proposal as constituting a positive step in this direction.

3.2. The ESC feels that the comparability of the statistics would be greatly enhanced if all Member States were to conduct the survey on a continuous basis, as is currently the case in a majority of Member States. The Committee therefore hopes that the transitional phase during which Member States would be given the option to conduct an annual survey in the Spring will be curtailed as much as possible and that within the reasonably near future there will be a situation in which every Member State conducts a continuous survey. This should not impose an undue burden, either on the administrative departments of the Member States or on the interviewees.

3.3. The accuracy of a sample survey is heavily dependent on the extent to which the sample is selected on a truly random basis. The ESC therefore endorses the proposition that Member States may be entitled to make it compulsory to reply to the survey, since non-response impairs the random nature of the sample. The sample should be selected on a common basis.

3.3.1. The ESC considers that on-going differences between the Member States in the content of the questionnaires and in the way in which the questionnaires are administered and interpreted constitute a weakness in the system which will vitiate the true comparability of the results obtained and it would like to see a greater degree of harmonization in this area.

3.3.2. The ESC feels that the harmonization of surveys should make it possible to calculate and publish unemployment rates in both the restricted and broad senses of the term as defined by the ILO. The ESC considers that the current practice of expressing the unemployment rate in the restricted sense does not allow a correct assessment of the unemployment problem and may make it difficult to compare data from different Member States, which is all the more serious when such data is then used by the Commission as the basis for its proposed schedule of Structural Fund distribution.

3.4. The ESC believes that these surveys can be of considerable use in determining the true level of unemployment by identifying, for example, those persons who have not registered as unemployed because they do not consider that there is any real prospect of obtaining work but who would, nevertheless, like to work if the opportunity were there. They could also provide interesting data on part-time working by distinguishing between those who work part-time because that is what they wish to do and those who do so because that is all that is available; to this end, questions should be directed at both the wish to extend and the wish to curtail working hours, with a view to providing reliable statistics on full-time equivalent employment. Other relevant elements on which to focus attention would be the various types of employment contract and the provision of differentiated data on temporary work.

3.4.1. The use of 'ad hoc' modules offers significant potential for obtaining detailed information on employment levels, specific aspects of the unemployment situation and contractual arrangements.

3.5. The ESC approves the proposal for the Commission to be assisted by the Statistical Programme Committee, acting within the 'regulatory committee' framework.

4. **Conclusion**

4.1. The Committee regrets that it was not consulted on the proposed regulation, obliging it to issue an own-initiative opinion.

4.2. The ESC approves the Commission's proposal for a Council Regulation on the organization of a labour force sample survey in the Community.

Brussels, 25 February 1998.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX

to the opinion of the Economic and Social Committee

Survey characteristics

1. Data shall be collected on:

   a) demographic background:

      — sequence number in the household
      — sex
      — year of birth
      — date of birth in relation to the end of the reference period
      — marital status
      — relationship to reference person
      — sequence number of spouse
      — sequence number of father
      — sequence number of mother
      — nationality
      — number of years of residence in the Member State
      — country of birth (optional)
      — nature of participation in the survey (direct participation or proxy through another member of the household)

   b) labour status:

      — labour status during the reference week
      — reason for not having worked though having a job
      — search for employment for person without employment
      — type of employment sought (self-employed or employee)
      — methods used to find a job
      — availability to start work

   c) employment characteristics of the main job:

      — professional status
      — economic activity of local unit
      — occupation
      — number of persons working at the local unit

— country of place of work
— region of place of work
— year and month when the person started working in the current employment
— permanency of the job (and reasons)
— duration of temporary job or work contract of limited duration
— full-time/part-time distinction (and reasons)
— working at home

d) hours worked:

— number of hours per week usually worked
— number of hours actually worked
— main reason for hours worked being different from person's usual hours

e) second job:

— existence of more than one job
— professional status
— economic activity of the local unit
— number of hours actually worked

f) visible underemployment:

— wish to work usually more than the current number of hours (optional in the case of an annual survey)
— looking for another job and reasons for doing so
— type of employment sought (as employee or otherwise)
— methods used to find another job
— reason why the person is not seeking another job (optional in the case of an annual survey)
— availability to start work
— number of hours of work wished for (optional in the case of an annual survey)

g) search for employment:

— type of employment sought (full-time or part-time)
— duration of search for employment
— situation of person immediately before starting to seek employment
— registration at public employment office and whether receiving benefits
— willingness to work for person not seeking employment
— reason why person has not sought work

h) education and training:

— participation in education or training during previous four weeks
— purpose
— level
— place
— total length
— total number of hours
— highest successfully completed level of education or training
— year when this highest level was successfully completed
— received vocational training within a dual system

i) previous work experience of person not in employment:

— existence of previous employment experience
— year and month in which the person last worked
— main reason for leaving last job or business
— professional status in last job
— economic activity of local unit in which person last worked
— occupation of last job

j) situation one year before the survey:

— main labour status
— professional status
— economic activity of local unit in which person was working
— country of residence
— region of residence

k) main labour status (optional)

l) income (optional)

m) technical items relating to the interview:

— year or survey
— reference week
— interview week
— member state
— region of household
— degree of urbanization
— serial number of household
— type of household
— type of institution
— weighting factor
— sub-sample in relation to the preceding survey (annual survey)
— sub-sample in relation to the following survey (annual survey)
— sequence number of the survey wave

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on the application of Articles 92 and 93 of the EC Treaty to certain categories of horizontal state aid'

(98/C 129/16)

On 7 October 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 proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 February 1998. The rapporteur was Mr van Dijk.

At its 352nd plenary session (meeting of 25 February 1998) the Economic and Social Committee adopted the following opinion with 70 votes in favour and four abstentions.

1. **Introduction**

1.1. The EC Treaty regards state aid as being generally incompatible with the common market. Articles 92 and 93 of the EC Treaty are devoted to this subject, and Article 94 specifies how decisions are to be reached on the measures to be taken.

1.2. The Treaty considers the following forms of aid to be compatible with the common market:

a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

b) aid to make good the damage caused by natural disasters or exceptional occurrences;

c) aid granted to the economy of certain areas of the Federal Republic of Germany.

1.3. In addition, the following forms of state aid may be considered to be compatible:

a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

b) aid to promote an important project of European interest or to remedy a serious disturbance in the economy of a Member State;

c) aid to stimulate certain economic activities or economic areas, where such aid does not adversely affect the common interest;

d) aid to promote culture and heritage conservation;

e) other aid agreed by the Council.

1.4. Article 93 specifies how the Commission is to check compliance with Article 92.

1.5. The Commission provides surveys of aid granted by Member States. In the initial surveys the Commission noted a drop in state aid. However, this was no longer the case in the fifth survey. However, it must be pointed out in this connection, as the Committee has already done in its opinion on the twenty-sixth competition policy report, that the high level of state aid for industry is due to the additional aid given to industry in the former East Germany. Aid for industry has stabilized around the ECU 43 million mark or ECU 1 400 per person employed in this sector. The Commission also concludes that regions in the richer Member States receive more aid than the cohesion countries. This is a matter of serious concern to the Commission [1].

1.6. The Commission expects that the supervision of state aid will have to be intensified in the years ahead. EMU, EU enlargement and rising unemployment strengthen the case for stricter controls. In order to give itself enough time and scope to act, the Commission intends to make its controls more effective.

1.7. Assessment criteria have already been determined for specific categories of state aid, such as horizontal aid, regional aid, export credit insurance and export credits.

1.7.1. The Commission has also issued guidelines for horizontal aid, such as aid for R&D, small and medium-sized enterprises, environmental protection and energy saving. Member States can act on the basis of these guidelines. Between 1992 and 1994, Member States awarded on average ECU 12,5 billion in horizontal aid. This is roughly 30 % of all state aid [2].

1.7.2. The Commission considers that this aid accounts for only a limited share of all aid. It intends to simplify the monitoring procedures, releasing more funds for assessing bigger and more distorting cases. Therefore, the Commission is proposing to grant a block exemption for certain categories of aid, which will then no longer have to be notified to it in advance.

1.7.3. However, there are two restrictions:

a) aid may not exceed a certain threshold, otherwise it will still have to be notified to the Commission in advance;

b) the Commission will continue to play a supervisory role, even with regard to the application of block exemptions.

1.7.4. The proposal merely defines the parameters. The actual figures and the objectives will be laid down in separate decisions.

2. Gist of the Commission proposal

2.1. The Commission aims in the near future to focus its efforts on more rigorous scrutiny of major cases of state aid which may seriously jeopardize competition, by simplifying and clarifying the existing rules.

2.2. This should take the form of an innovation in the monitoring of state aid, with block exemptions being granted — for the first time since the entry into force in 1958 of the Treaty of Rome — to a range of 'horizontal' aid measures, including aid for SMEs, R&D, environmental protection, education and training, employment and export credits. Essentially, the Commission takes the view that, as these aid measures generally meet the criteria laid down at Community level, the Member States should, in principle, no longer be required formally to notify it of their existence.

2.3. A first initiative towards the introduction of block exemptions was taken in November 1996, when the Commission submitted its orientations on the use of Article 94 of the EC Treaty to the Industry Council. Article 94 stipulates that 'the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 92 and 93 and may in particular determine the conditions in which Article 93(3) shall apply and the categories of aid exempted from this procedure'.

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[1] Report from the Commission — Fifth Survey on state aid in the European Union in the manufacturing and certain other sectors (COM(97) 170 final, p. 40).

[2] Own calculation based on the statistical annex to the fifth Survey, pages 62-73.

2.4. The introduction of block exemptions will lead to the creation of clear legislative texts with direct effect. This will increase transparency and predictability of state aid control. It will thus improve the possibility for additional state aid screening at national level by national administrations, national courts and national auditors. Moreover, citizens will be able to complain to national courts — just as they can at present — when they suspect that aid granted without notification does not fulfil the conditions for exemption laid down in the block exemption regulations.

2.5. The proposed regulation provides for the establishment of an advisory committee, to be consulted before the publication and adoption of a draft Commission regulation. It also provides for the consultation of interested parties. The Commission will inform the advisory committee of the views of interested parties when it consults this committee before adopting a regulation.

3. **ESC comments**

3.1. The ESC approves the Commission proposal. It thinks that the proposed approach complies with the subsidiary principle and would simplify the procedure. It also takes the view that implementation of the proposals would lead to a more efficient and transparent control of state aid than if individual notification in advance was to be required. The resources saved in this way could be better used to vet other forms of state aid.

3.1.1. The Committee believes that transparency and control are vital factors for a more efficient control of state aid. The criteria and thresholds of block exemption regulations should be defined as clearly as possible, in order to reduce the risk of abuse. Furthermore, according to the Committee, the mechanisms for control set out in Article 4 are adequate provided the Commission ensures an appropriate dissemination of information to interested third parties.

3.2. The ESC notes that the proposal is merely procedural. The Commission is simply proposing that another procedure be applied: it has not made any substantive changes.

3.3. Since the ESC represents socio-economic interests in the EU, it thinks that it, too, should be consulted on the evaluation report.

3.4. The ESC is concerned to ensure that:

— sufficient resources are deployed to ensure that the regulation can be effectively and equitably enforced in all Member States;

— an interim evaluation is undertaken within three years after the new system is introduced;

— information derived from the Member State reporting systems is effectively disseminated.

3.5. The ESC notes that the key to the evaluation of the proposals will lie in the answers to two questions:

— have the new exemption and de minimis systems operated in an effective, efficient and equitable manner?

— has the Commission, as a result of the new systems, been able to concentrate its state aid expertise and authority more effectively on the key cases where state aid produce significant distortions of the single market?

3.5.1. If the answer to these questions is in the negative, the ESC would query whether it is necessary to enact these measures.

Brussels, 25 February 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 (EC) No 1868/94 establishing a quota system in relation to the production of potato starch'

(98/C 129/17)

On 26 January 1998 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 Lerios as rapporteur-general for its opinion.

At its 352nd plenary session held on 25 and 26 February 1998 (meeting of 26 February) the Economic and Social Committee adopted the following opinion by 47 votes for, with no votes against and one abstention.

1. Gist of the Commission proposal

1.1. The aim of this proposal for a regulation is to allocate the three-yearly quota for the 1998/1999, 1999/2000 and 2000/2001 marketing years between potato starch producing Member States on the basis of the report from the Commission to the Council on the quota system for the production of potato starch, thus amending Regulation (EC) No 1868/94.

1.2. It is proposed that the present quotas be maintained for the next three years, on the understanding that the reserve quota of 104 554 tonnes for Germany be definitively included in its new quota.

1.3. If appropriate, account will be taken for each potato starch producer in each Member State of the amount by which the quota was exceeded in the marketing year 1997/1998, as provided for in Article 6 (2) of Regulation (EC) No 1868/94.

2. General comments

2.1. As indicated in point 1 above, only Article 2 of Regulation (EC) No 1868/94 has been changed; the quotas of the other Member States and the margin provided for in Article 6 (2) are not affected.

2.2. The Commission report shows that the provisions of Regulation (EC) No 1868/94 are being fully complied with, in terms both of Germany's use of its reserve and the maintaining of current quotas over three years.

3. Conclusion

The ESC endorses the present Commission proposal for a Council regulation.

Brussels, 26 February 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) laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (consolidated version)'

(98/C 129/18)

On 24 February 1998 the Council of the European Union 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 Leif Nielsen as rapporteur-general.

At its 352nd plenary session on 25 and 26 February 1998 (meeting of 26 February), the Economic and Social Committee adopted the following opinion by 53 votes to one, with one abstention.

1. The Committee supports the Commission's proposal to consolidate the regulations laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products.

2. In this proposal the Commission combines the parent regulation (Council Regulation (EC) No 3699/93) and the legislation amending it in a single text. No substantive amendments are proposed — only the formal amendments required for purposes of consolidation.

3. The Committee would point out that it has repeatedly called for Community legislation to be consolidated because this is important to make the Community fisheries policy clear and intelligible to those actively involved in this sector.

Brussels, 26 February 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 European Parliament: Connecting the Union's transport infrastructure network to its neighbours — towards a cooperative pan-European transport network policy'

(98/C 129/19)

On 30 April 1997 the European Commission consulted the Economic and Social Committee, under Article 198 of the EC Treaty, on the above-mentioned communication.

The Section for Transport and Communications, charged by the Committee with the preparation of its work on the matter, adopted its opinion on 16 December 1997 (rapporteur: Mr Konz).

The Committee unanimously adopted the following opinion at its 352nd plenary session (meeting of 26 February 1998).

1. Introduction

1.1. The Commission communication, issued on 23 April 1997, was designed to provide the Pan-European Transport Conference, held in Helsinki on 23 to 25 June 1997, with a working document setting out strategies and options. It is of the utmost importance, particularly to would-be members of the European Union, to define a pan-European approach to transport networks with a view to linking EU and neighbouring transport infrastructure.

1.2. The Commission communication calls for the creation, in order to meet the needs of the 21st century, of a continent-wide transport network covering the countries of central and eastern Europe (CEEC), the European countries of the former Soviet Union and the EU's Mediterranean partners. With this in mind, the Commission has drawn up a five-point action plan:

— detailing pan-European corridors and transport areas as a framework for ensuring efficient transport services with all EU neighbours, including those in the Mediterranean basin;

— the extension of the trans-European transport networks (TEN-Tr) to the applicant countries as part of the pre-accession process:

— a common European approach to transport technology throughout the pan-European network;

— the encouragement of intelligent transport technologies (e.g. the application of computer technology, automatic signalling) throughout the network;

— closer cooperation on research and technology.

A socio-economic assessment and a strategic environmental impact assessment must underlie any pan-European network policy. These two processes should therefore be included in the five-point action plan.

1.3. The establishment of a pan-European network partnership bringing together all the relevant parties: the European Union, Member States, other countries concerned, international financial institutions, and the private sector is the best way of enacting the comprehensive approach to the pan-European network proposed by the Commission.

1.4. The partnership should also focus on financial, institutional and legislative matters.

2. General comments

2.1. The early issue of the Commission's communication has of course meant that it was unable to take account of the outcome of the Helsinki conference. As a result, the contents of various background reports and opinions, together with the final declaration issued at the close of the Helsinki Conference could not be reflected.

2.2. The Committee nonetheless expressly welcomes the Commission's communication on development of a cooperative pan-European transport network policy designed to link the EU's transport infrastructure network to neighbouring states. The Committee cannot, however, fail to notice the fact that there is a considerable divergence between the actual situation and the goals set out, particularly as regards project-funding. The broadening of the approach based solely on the establishment of corridors to embrace the establishment of pan-European transport areas, does, in particular, represent a qualitative leap, in the Committee's view.

2.3. The strategy of adopting an overall approach, taking account of the need to create mobility which is both sustainable and environmentally-compatible bears out the Committee's long-held standpoint.

2.4. The Commission bases its views on the results of the pan-European transport conferences held in Crete (14 to 16 March 1994: agreement on corridors) and on the objectives and principles to be adopted at the

impending Helsinki Conference (23 to 25 June 1997: updated corridors).

2.5. As one of the promoters of the pan-European transport conferences — the value of which it would continue to underline — the Committee points out that the various final declarations made at the conferences and the attendant objectives and principles do not constitute a binding political framework.

The Commission does, however, refer frequently to the outcome of these broad consultations involving governments, parliaments, EU institutions, international organizations and bodies and socio-economic interest groups. The results of the consultations should therefore provide a sound foundation for a common European approach. Viewed in this light the outcome of these conferences could thus be construed as an individual political commitment by the respective signatories.

2.6. The Committee's comments therefore cover not only the Commission communication under review, but also the statistics submitted by the Commission (Transport DG) to the pan-European transport conference in Helsinki. These figures provide a precise definition of the various corridors, objectives, timeframes for concluding the infrastructure improvements (between 2010 and 2015) and estimates of costs (the total cost is put at up to ECU 70 billion).

2.7. However welcome the ambitious nature of the individual projects may be, those holding positions of political responsibility should, in the Communities view, always bear in mind that a great deal of time will be required between the planning and implementing stages of the transport networks and that funding is very frequently the biggest problem in this context.

The Commission estimates that it will cost ECU 400 billion to implement all the projects of interest to the EU.

Even if EU funding is provided for this purpose in the EU's multi-year indicative programmes, these sums cover only a modest proportion of the enormous costs of building new transport infrastructures. Substantial amounts will therefore need to be found each year from the public purse and, where appropriate, from private sources in the EU and relevant neighbouring states to fund the transport network projects. These states should introduce special headings in their budgets for this purpose. Account should also be taken of the rapid growth in private transport in the CEEC which is causing a further increase in the number of cars on the roads of EU Member States.

The ESC feels that stepping up the pace of re-equipment of the rail network in the CEEC (cf. the Federal German Railway Company (DB) in the new German Länder) could provide a cheap and, above all, a quicker solution to the problem of improving transport capacity, safety and speed in these states.

2.8. The process of economic and political reform in the CEEC is in full swing. By virtue of the respective Europe Agreements the countries seeking to join the EU have already made considerable progress in narrowing the gap between themselves and the EU norm. In this context the ESC considers that more rapid progress will have to be made by these states incorporating the 'acquis communautaire' in the areas addressed by the Commission (particularly the socio-economic field and the environment).

As the targeted infrastructure improvements are to be completed between 2010 and 2015, the EU standards should be complied with much earlier, given the work which has to be started beforehand.

2.9. The Committee has always clearly stated that a pan-European transport policy can only ever be successful if it succeeds in setting in train the necessary structural change — particularly in the CEECs — with the participation of the social partners and if it succeeds in carrying out this operation against a background of stability.

This key demand of the ESC was incorporated in the Helsinki Declaration through the inclusion of 'consultation with the socio-economic groups' as one of the ten basic principles underlying future cooperation in transport policy at pan-European level.

The 'network partnership' approach may be regarded as providing a good basis for putting the above-mentioned principle into practice. This demand is also raised in the Commission's communication but insufficient account is taken of it by the Commission.

3. **Specific comments**

3.1. *Pan-European corridors and transport areas*

3.1.1. As the political action framework transcends the borders of the EU, the Commission rightly highlights the need for cooperation with the UN Economic Commission for Europe (UN-ECE) and the European Conference of Ministers of Transport (ECMT). The regional working groups operating within the framework of the G-24 group are also important, particularly in the area of international financial institutions.

3.1.2. The Committee takes the view that the provisions set out in the Commission's communication stipulating that all construction projects have to be economically viable and provide a minimum economic return of 10 % are out of step with Decision 1692/96/EC of the European Parliament and the Council of 23 July 1996 on common guidelines for the development of a trans-European transport network (TEN-Tr).

The abovementioned decision lays down, in particular, socially acceptable, safety-orientated conditions. It further specifies that projects must make a contribution towards strengthening economic and social cohesion, but, regrettably, labour market objectives are wholly disregarded in this context.

If a legally binding instrument comes into force at pan-European level, the abovementioned EU objectives would also have to be applied at this level. Special attention should be paid in this respect to islands and remote areas.

3.1.3. The Committee thus also supports the Commission's efforts to promote shipping in the Mediterranean area and to seek to establish, in the long term, an overall approach to planning an effective transport infrastructure in the Mediterranean area and the states bordering on the Mediterranean.

3.1.4. The principle of subsidiarity is to be applied here and steps should be taken to ensure that the members of the public concerned are informed and consulted in respect of the assessment of transport networks. In this context, the Committee would once again highlight the importance of consulting the socio-economic interest groups, who should be involved from the discussion and planning stages.

3.1.5. The Commission's communication fails to provide a clear definition of the 'multimodal' criterion. Does this term imply that parallel infrastructures should be constructed for the various modes of transport? Or are we simply dealing here with transfers from one mode of transport to another, using suitable platforms.

Transport infrastructures are designed to last many years and are very expensive. They also leave a lasting scar on the natural environment and are becoming increasingly unacceptable to the general public. It is absolutely essential to avoid duplicate investment in parallel infrastructures. The Committee is therefore in favour of a more intermodal approach and more intermodal freight transport [1].

3.2. *Extending the TEN approach* [2]

3.2.1. The Committee welcomes the approach advocated by the Commission. Once again, however, as was the case with the EU's trans-European transport network, the key question is: how is it to be funded? The TEN approach can barely be funded within the EU countries and there are much greater shortfalls in funding in the applicant states.

This fact has also been recognized by the Commission, which on 10 September 1997 issued a Communication on public-private partnerships in trans-European transport network projects [3]; the Committee endorsed the communication in an opinion adopted on 25 February 1998.

3.2.2. The networks to and via non-EU countries, together with the interconnection points between the different modes of transport are of reciprocal interest and should be given priority. The applicant states should enjoy a special position in this respect. There is no doubt that the inclusion of these states in TEN-Tr planning will complicate overall planning at EU level and the issue of funding.

Given the variety of planning processes involved (corridors, areas, and Transport Infrastructure Needs Assessment (TINA) and TEN), the ESC calls for much closer coordination of project planning and implementation.

The Committee also urges that the selected infrastructure projects benefit from more generous joint financing through the provision of EU grants, subject to the maximum harmonization of technical and construction standards.

3.3. *European approach to transport technology*

3.3.1. Interoperability between networks needs to be guaranteed in the interests of enabling optimal use (from an economic point of view and in the context of environmental compatibility) to be made of European transport networks. Only if such a proviso is met will all types of transport — both passenger and goods-transport, including intermodal goods transport — be able to make full and unfettered use, without delay, of existing and planned infrastructure.

Interoperability involves both technical aspects (standardization measures) and legislative and regulatory aspects. These two side of the coin as far as interoperability is concerned must be interlinked and coordinated.

3.3.2. Interoperability between networks is a 'sine qua non' if the various transport undertakings, are to provide different services in the safest form, offering the best value for money; interoperability and free, non-discriminatory access to all transport infrastructure are therefore the top priorities for the guidelines for trans-European transport networks.

3.4. *The intelligent use of transport networks — transport research*

3.4.1. As, in particular, the intermodal linking of telematics systems at pan-European level [4] is still inadequately developed, the ESC urges the Commission

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[1] See the ESC Opinion of 29 October 1997 on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled 'Intermodality and intermodal freight transport in the European Union: a systems approach to freight transport — strategies and actions to enhance efficiency, services and sustainability' (COM(97) 243 final) (OJ C 19, 31.1.1998, p. 1).

[2] Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ L 228, 9.9.1996, p. 1). ESC Opinion: OJ C 397, 31.12.1994, p. 23.

[3] Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on public-private partnerships in trans-European transport network projects (COM(97) 453 final).

[4] See the ESC's own-initiative opinion on the use of telematics systems in intermodal transport at pan-European level (OJ C 66, 3.3.1997, p. 27).

to pay greater attention to this aspect in the action plan attached to the communication (see point 1.2 above).

Telematics technology could help to achieve more rational transport flows and their practical implementation whilst taking account of a) the human factor as such and b) personnel implications.

3.4.2. Clearly the existing approaches should be used and further promoted. There are doubts, however, as to whether simply transferring the technologies used in the EU states to neighbouring states, or marketing the technology in those countries is the right approach.

If difficulties arise in applying these technologies in the neighbouring states, an appraisal should first be made of the extent to which the use of such technologies is desirable.

3.4.3. The report drawn up by DG VII — Transport for the pan-European transport conference in Helsinki, on the intelligent use of transport systems is a step in the right direction in this respect (SEC(97) 1227 — cf. point 2.2 on transport research and technological development — RTD). The DG VII report considers how the quality of European transport services, including intermodal services, can be improved.

3.5. *Development of a Europe-wide transport networks partnership*

3.5.1. Since a number of parliaments, governments, institutions and private undertakings are interested in the projects, it is particularly important to establish a regulatory and administrative framework.

Lately the emphasis is being placed more and more on on-the-spot coordination, all possible steps should thus be taken to involve regional authorities, together with the socio-economic groups concerned, in the partnership, in addition to the relevant national authorities.

The Committee would therefore once again highlight the importance of developing consultative machinery to permit dialogue with the social partners.

3.5.2. As regards the application in the regions and states concerned of Council Directive 93/38/EEC of 14 June 1993 on the coordination of procedures for awarding contracts, the Committee takes the view that an appropriate regulatory framework will have to be established for these states. This is the only way to prevent EU undertakings, with their greater expertise, from being the only firms considered for major contracts. Steps should also be taken to ensure that the relevant safety standards are met.

4. **Final observations**

4.1. *Structured dialogue in the context of a cooperative pan-European transport network policy*

4.1.1. In the own-initiative opinion [1] which it issued prior to the Helsinki Conference, the ESC considered in detail the possible form of consultative machinery as part of a cooperative pan-European transport network policy. Fixed structures are not the decisive factor when it comes to the establishment of machinery for dialogue between the socio-economic groups concerned. Different forms of consultation, including procedures which are of limited duration or cover specific issues, could be introduced, provided that they are sufficiently binding.

4.1.2. Steering committees have been used as a means of implementing a pan-European transport network policy in respect of the various corridors or as a means of formulating the associated area concepts. Only representatives of governments and administrations serve on these committees.

Why are the socio-economic groups not involved? Would it not be beneficial to make use of the expertise of the relevant transport enterprises, transport trade union members and transport users in this respect?

The ESC takes the view that supplementary advisory bodies would be the appropriate vehicle for such consultations. This would provide a way of discussing the issues in still greater depth and opening up the debate from the government level to include the socio-economic groups.

4.2. *Formation of political will and directing it more effectively*

4.2.1. The ESC takes the view that the communication under review represents an initial attempt on the part of the Commission to address the various aspects involved and to consult all interested parties. The ESC once again congratulates the Commission on this initiative.

4.2.2. If we are, however, to carry further and coordinate more effectively the formation of a political will, the Commission should issue an improved communication which should, in particular, include a stocktaking of the Helsinki Conference and build on the findings of the various working parties and the plenary assembly of this conference.

(1) ESC Own-initiative Opinion on the Pan-European transport conference and the social dialogue — from Crete to Helsinki (OJ C 206, 15.7.1996, p. 96).

Brussels, 26 February 1998.

The President
of the Economic and Social Committee
Tom JENKINS