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COMMITTEE OF THE REGIONS

Opinion of the Committee of the Regions on the 'Proposal for a Council Regulation (EC) laying down general provisions on the Structural Funds'

(98/C 373/01)

THE COMMITTEE OF THE REGIONS,

having regard to the proposal for a Council Regulation (EC) of 18 March 1998 laying down general provisions on the Structural Funds [COM(98) 131 final — 98/0090 (AVC)] [1];

having regard to the decision of the Council of 19 May 1998 to consult the Committee, under Articles 130d and 198c of the Treaty establishing the European Community;

having regard to the decision of the bureau of 13 May 1998 to instruct Commission 1 for Regional Policy, Structural Funds, Economic and Social Cohesion, Cross-Border and Inter-Regional Cooperation to prepare the opinion;

having regard to the draft opinion (CdR 167/98 rev.) adopted by Commission 1 on 8 July 1998 (rapporteurs: Mr Behrendt and Mr Fraga Iribarne);

having regard to Article B of the EU Treaty and Article 2 of the EC Treaty, making the promotion of economic and social progress which is balanced and sustainable and the strengthening of economic and social cohesion and solidarity among the Member States objectives and tasks of the European Union and the European Community respectively;

having regard to the Community policy, formulated in Article 130a of the EC Treaty, of strengthening economic and social cohesion and of reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions, including rural areas;

having regard to the task of the Community, defined in Article 130b of the Treaty, of supporting the efforts of the Member States to strengthen economic and social cohesion by means of the Structural Funds, the European Investment Bank and the other existing financial instruments;

having regard to the task of the European Regional Development Fund, defined in Article 130c of the Treaty, of helping to redress the main regional imbalances in the Community, the task of the European Social Fund, defined in Article 123 of the Treaty, of improving employment opportunities for workers in the internal market, and the task of the European Agricultural Guidance and Guarantee Fund, Guidance Section, defined in Article 40 of the Treaty, of achieving the objectives of the common agricultural policy;

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[1] OJ C 176, 9.6.1998, p. 1.

having regard to the Committee's right, set out in Articles 130d and 130e of the Treaty, to participate in the definition of the tasks, priority objectives, organization, general rules, implementing provisions and reports on progress on achievement of economic and social cohesion;

having regard to its opinions on the Commission's Communication: Agenda 2000: For a stronger and wider Union, and on the Future of European structural policy, and in particular:

— Views of the regions and local authorities on arrangements for European Structural Policy after 1999 (CdR 131/97 fin) [1],

— First report on economic and social cohesion (CdR 76/97 fin) [2],

— Agenda 2000: the financing of the European Union after 1999 taking account of enlargement prospects and the challenges of the 21st century (CdR 303/97 fin) [3],

— The role of the regional and local authorities in the partnership principle of the Structural Funds (CdR 234/95 fin) [4],

— The CAP and eastward enlargement (CdR 239/96 fin) [5],

— The effects of the Union's policies of enlargement to the applicant countries of central and eastern Europe (Impact Study) (CdR 280/97 fin) [6];

— Towards an urban agenda in the European Union (CdR 316/97 fin) [7],

at its 25th plenary session of 16/17 September 1998 (meeting of 17 September) adopted the following opinion.

1. Part A: General assessment

1.1. The Commission proposal for a new framework regulation for the Structural Funds falls within the general ambit of the Agenda 2000 legislative proposals. The aim is both to secure the Community's future viability in a number of important fields and to create the conditions for eastward enlargement of the European Union. The Committee of the Regions particularly stresses the close linkage between the various aspects of Agenda 2000, its legislative proposals and the political decisions to be taken. The prospect of eastward enlargement requires a willingness to change, even within the existing European Union. International changes require a reorientation of agricultural and structural policy. The focus of structural assistance must be on overcoming development deficits and on securing structural adaptation which combats unemployment and leads to a durable economy through promoting regional competitiveness, with special attention to regions with specific characteristics, such as mountainous areas, islands and remote areas.

1.2. The Community can rise to the challenges facing it only through solidarity. The principle of solidarity was established because the balanced development of the Community is a basic objective of the Union and because we are required to work for economic and social progress, which is essential if regional imbalances are to be reduced.

1.3. For these reasons, reform of European structural policy will play a key role in the forthcoming decisions on Agenda 2000. The draft framework regulation is the focus for the future use of the Funds, as it encapsulates all the general provisions of European structural policy. The Committee of the Regions regards the draft submitted as a suitable basis for further discussions and negotiations. The Committee feels that in its proposals the Commission has in principle done justice to the aim of reducing the number of Objectives and Community initiatives and concentrating the areas eligible for assistance.

1.4. The Committee is pleased to note that the Commission has continued to place the overcoming of development deficits and structural adjustment problems, the combating of structural unemployment and the creation of new jobs at the centre of European structural policy. These priorities also include the need to combat the ever widening development gaps in Europe between the centre and the outlying regions, as described in the cohesion report and the work on the European Spatial Development Perspective. In view of the danger of dispersion of the Structural Funds among a multiplicity of themes, these central priorities are needed to

[1] OJ C 64, 27.2.1998, p. 5.
[2] OJ C 379, 15.12.1997, p. 34.
[3] OJ C 64, 27.2.1998, p. 40.
[4] OJ C 100, 2.4.1996, p. 72.
[5] OJ C 116, 14.4.1997, p. 39.
[6] OJ C 64, 27.2.1998, p. 48.
[7] OJ C 251, 10.8.1998, p. 11.

guarantee the concentration of funds on the achievement of common objectives. Above all, the priorities are in harmony with the EU's acknowledged political priorities of strengthening economic and social cohesion and combating unemployment.

1.5. The Committee of the Regions feels urban areas and their surroundings are underexposed in the Commission proposals. Europe is the most urbanized continent: 80 % of its inhabitants live in urban agglomerations. The importance of urban areas is not reflected in the Commission proposals. The relation between rural and urban areas is changing. This requires a better integration of urban policies, agricultural policies and structural policies.

1.6. The Committee of the Regions welcomes with interest the integrated approach advocated by the new Objective 2. The implementation of global regional strategies should indeed serve to boost the effectiveness of the Structural Funds. However, the Committee emphasizes the need to ensure that such an integrated approach does not make procedures more cumbersome and complicated. The COR also feels that more of its proposals for simplifying European structural policy contained in the opinions referred to above should have been incorporated into the draft regulation. Generally, the COR hopes that the reduction in the number of priority objectives and the streamlining of Structural Fund procedures at Community level will have tangible implications both for the local partners responsible for implementing programmes on the spot and for citizens.

1.7. The Committee of the Regions is disappointed that there is no reference to culture in the proposed regulations and would call, as it has done in previous opinions, for an explicit reference to culture. This would help strengthen the contribution culture and its associated activities can make to social cohesion and the positive impact it has in promoting growth, competitiveness and employment in many cities and regions.

1.8. In order to facilitate project funding and secure private sector cooperation in projects, the Committee of the Regions feels that it should be possible, during the forthcoming period, to consider private co-financing alongside public co-financing (public-private partnership).

1.9. The Committee of the Regions considers it important that, after careful programming, the new Structural Funds' period begin immediately, in full, at the beginning of 2000. This requires that the final decisions on the Structural Funds be taken as soon as possible, in the first half of 1999 at the latest. The COR urges the European Commission to take all steps to meet the timetable set out and requests that should this timetable not be met, special measures should be adopted and the gap between the two funding periods should be minimized. In addition the COR urges the Commission to review the SEM 2000 data sheets urgently.

1.10. The Committee of the Regions reiterates the views on the detailed arrangements for structural policy set out in the opinions referred to above, and therefore comments below only on the proposals of the draft regulation to which the Committee would like to suggest changes or additions.

1.11. The Commission proposals need further clarification. The Committee urges the Commission to provide further information as soon as possible, so that subsequent negotiations can proceed smoothly.

2. **Part B: Proposed changes and additions to the draft regulation**

2.1. *Title I: General principles*

2.1.1. Chapters 1 and 2: Objectives and geographical eligibility (Articles 1-6)

2.1.1.1. The Committee of the Regions backs the Commission's proposal to concentrate on promoting the development and structural adjustment of regions whose development is lagging behind (Objective 1). The Committee also supports the proposal that the criteria for Objective 1 eligibility be NUTS level II and per capita GDP of less than 75 % of the three-year Community average. As transitional arrangements are provided for regions which, because of their development progress, will no longer satisfy this criterion in the new funding period, the Committee of the Regions joins the Commission in calling for strict application of this criterion. This will ensure the necessary concentration of structural assistance under Objective 1 up to the end of the funding period. It also recognizes the need for the transitional arrangements to take account of regions that are no longer covered by Objective 1 in the implementation phase for current rules, but which are not eligible for support under any other Community objectives. The Committee of the Regions also endorses the Commission's proposal to support the most remote regions, as defined in the new Article 299(2) of the Amsterdam Treaty, and the areas currently covered by Objective 6 under Objective 1. The COR proposes that the automatic inclusion of the current Objective 6 should be defined on the basis of population sparsity.

2.1.1.2. The Committee of the Regions is pleased to note that the European Commission proposes assistance under Objective 2 for areas undergoing socio-economic

change in the industrial and service sectors, declining rural areas, urban areas in difficulty and depressed areas dependent on fisheries. The Committee points out that this is a highly complex Objective, which will (a) need to be broken down into sub-objectives tailored to the specific problems of the areas concerned, and (b) coordinated at programme level; the eligibility and assistance criteria for these sub-objectives must take account of the specifics of the structural problems involved at the appropriate territorial level and of remoteness criteria. The European Commission should also specify in particular the arrangements for implementing the EAGGF Guarantee Section assistance provided for in the new regional development programmes and dovetailing it with the other Structural Funds.

2.1.1.3. The Committee of the Regions recognizes that, in the interests of the concentration of assistance on the worst affected areas of the Community, the proportion of the population living in the new Objective 2 areas must gradually be reduced. But in accordance with the principle of smooth adjustment, properly coordinated with the transitional mechanisms, the Committee of the Regions feels it is vital that the percentage of the population covered by Objective 2, previously 25 %, should be reduced gradually and equitably to 18 %.

2.1.1.4. The method proposed by the European Commission for allocating this population ceiling among the Member States needs further explanation however. This is true in particular of the consideration of the severity of regional structural problems in the areas falling under the new Objective 2 at the appropriate territorial level, which should be distinguished from the severity of structural problems at national level.

2.1.1.5. The COR would note that, in individual cases, concentration may however also mean a disproportionate reduction in Objective 2 assistance for some Member States. The Committee therefore welcomes the Commission's proposal that the maximum reduction in the population covered by Objective 2 not exceed one third of the existing Objective 2 and 5b areas with the exception of areas in the phasing-out stage of Objective 1, which are eligible for the new Objective 2. This safety net will help to prevent excessively radical cuts, which might otherwise compromise the success of past assistance.

2.1.1.6. The Committee of the Regions points out that the criteria proposed by the Commission for the selection of areas eligible for assistance under the new Objective 2 require further discussion.

As a matter of principle it is welcome that special weight will continue to be assigned to labour market criteria in establishing eligibility and in relation to support measures. In this context it should be pointed out, however, that the unemployment rates calculated by Eurostat give an inaccurate and incomplete picture of the situation in the individual European regions and that efforts should be made to achieve suitable harmonization with Eurostat.

There is a danger that insufficient account will be taken of the specific problems of rural or industrial areas.

The COR believes there is a continuing need to support deindustrialized urban areas which have suffered substantial job losses. Within national assistance ceilings it should be possible to include additional criteria for industrial areas, such as indices of poverty, household income relative to regional costs of living and dependence on income support, and indicators of competitiveness, such as poor labour productivity and poor record of SME survival.

Within the population ceiling, the Objective 2 industrial strand core criteria should not be applied strictly and must allow for borderline cases to be taken into account, thereby recognising the difficulty of comparing some data sets. The regulations should specify that the Member States shall have flexibility in defining economic and social indicators to determine eligible areas of greatest need. These indicators should be drawn up by the Member State in consultation with local and regional partners. Given that the services sector is also one of the areas of activity to be included in Objective 2, this sector should also be mentioned in demarcating eligible areas.

For rural areas, other criteria, in addition to per capita GDP in the region, such as income level, population density, the proportion of the workforce engaged in agriculture and ageing of the population should also be taken into consideration. Further evaluation is required as to whether the criteria for support for rural areas are broad enough to take account of the particular situation in such areas.

The fact that, in future, EAGGF guidance will apply only to regions eligible under Objective 1 and that the EAGGF guarantee will be applied in Objective 2 regions must not be allowed to disadvantage the rural regions thus affected.

In the case of fishery-dependent areas, a broad interpretation of fishery-dependence should be applied, taking account of the conditions for regional development. The deciding factors could be the size and age of the fleet and the level of employment in the sector.

In addition, the likely restrictions on assisted urban areas — linked with the limited funds allocated — are not consistent with the problems of conurbations in Europe. These restrictions reflect the absence of Community prioritization of urban problems; the selection of criteria for determining whether urban areas are eligible under Objective 2 indicates a wish to assist ailing urban districts rather than to implement a genuine urban structural policy.

Moreover many current Community initiatives have fully proved their worth, e.g. the Urban programme and the four industrial initiatives. The current proposals fail to adequately reflect these experiences in future policy.

The COR agrees with the Commission that bordering on an Objective 1 area may be a criterion for a region to be classified as an Objective 2 area as otherwise there is a too big a discrepancy in the level of support. It would also point out the inconsistency of not applying the same reasoning to areas bordering on accession countries, as these countries are already receiving pre-accession aid and will eventually have Objective 1 status, while their wage levels and social and environmental standards are far lower. The COR therefore feels that special study should be devoted to the situation of these regions in the light of the future accessions.

2.1.1.7. The selection of new Objective 2 areas could be made in accordance with similar principles to those applied in the allocation of national assistance ceilings under the guideline for regional aid (Art. 92(3)(c) of the EC Treaty). To this end the framework regulation should set the support area population ceiling for the new Objective 2 at EU level as well as for each Member State. The demarcation criteria for the new Objective 2 areas should be laid down by the Member States with the involvement of local and regional authorities, and confirmation by the Commission of an area's eligibility for national regional aid should be sufficient to qualify it for selection as an Objective 2 area.

If the Commission wants greater consistency in future between regions eligible for Structural Fund aid and regions receiving regional aid, Community competition policy [Treaty Article 92(3)(c)] must not be the de facto determinant of zoning for future Structural Fund programmes. It is essential that local and regional authorities be closely involved in drawing up not only the map of areas eligible for Structural Fund aid but also the map of areas covered by regional aid.

Assistance provided under this Article has narrower objectives than those of the Structural Funds, especially given the proposed new strands to Objective 2. The question is whether this approach can adequately anticipate the rapid changes on the economic front in Europe's regions. For this reason, there should also be scope for assistance for regions outside the national support areas, this within the framework of the development of a sub-regional economic policy. Derogations should be provided for in the case of regions whose ability to meet aid criteria has hitherto varied more than the average.

The COR doubts whether the ceiling proposed by the Commission, 2 % of the population, is sufficient. The COR feels there is a danger that the Commission's moves to achieve coherence between support criteria will unduly restrict the scope needed by the regions to conduct their own regional policy.

2.1.1.8. The Committee of the Regions sees its proposal for a specific objective for the development of human resources essentially fulfilled in the new Objective 3. The broad assistance criteria will on the one hand give the regional and local authorities room for manoeuvre in combating unemployment and modernizing employment systems. They do however carry with them the danger of fragmentation of assistance. This would reduce the intended efficiency gains in the fight against unemployment in Europe. The Committee of the Regions argues therefore that the use of the European Social Fund must in future continue to focus on all the fund's tasks, as laid down in the Amsterdam Treaty. Closer attention must therefore be paid to social exclusion, this being an action area mentioned in Agenda 2000 but not included in the regulations now being proposed. In particular, it must be left up to the regional and local authorities to select from the opportunities offered by Objective 3 and the European Social Fund priorities and measures which best take account of their specific conditions for the development of human resources. A proportion of Objective 3 funds could also be earmarked for accompanying measures under the territorial employment pacts.

2.1.1.9. The Committee of the Regions also suggests that in future it should be made possible for Objective 3 measures under the European Social Fund to be used in Objective 2 areas as well. Objective 2 assistance only partially exploits the potential of the European Social Fund for the development of human resources. The target group-specific approach of Objective 3 runs the risk of not being taken into consideration sufficiently in Objective 2 programmes. The coherent, horizontal use of Objective 3 in the Member States would then not be guaranteed.

2.1.1.10. The national level should not be the sole reference framework for all Objective 3 actions in favour of human resources. It is absolutely essential to adopt a regional or local approach for Objective 3 programmes, in addition to national schemes, so that local and regional characteristics are not neglected in the development of human resources, nor the fact that regional authorities are often the main co-financers of the ESF. Regional innovation strategies must be able to offer points of contact for this as advocated in a recent Commission decision. The level for the development and implementation of Objective 3 programmes should therefore be defined in negotiations between the Commission and the Member State with due regard to the views of the partners.

2.1.1.11. The Committee of the Regions suggests that the definition of Objective 3 in Article 5 of the framework regulation be clarified by making direct reference to all the fields of the policy remit of the European Social Fund in accordance with the Amsterdam Treaty and to the scope of the Member States and regional and local authorities in selecting measures for assistance in conjunction with national employment action plans. The Committee would reiterate the need for close consultation with local and regional authorities when drawing up the national employment plans which will be an important reference point for future Objective 3 programmes.

2.1.1.12. The Committee of the Regions notes that its call for transitional arrangements for former Objective 1, 2 and 5b areas, which because of their development are no longer eligible for assistance, has been taken up by the Commission in Article 6 of the draft framework regulation. Transitional arrangements will be needed to cushion the impact of the withdrawal of Structural Fund assistance so as not to undo what has already been achieved. This requirement is essentially met by the Commission proposals. However, the Committee of the Regions would ask that, in the interests of achieving a balanced compromise, the Commission make known its views on the length of the transitional periods and the shape of the transitional arrangements before a decision is adopted by the Council.

2.1.2. Chapter III: Financial provisions (Article 7)

2.1.2.1. The Committee of the Regions reiterates the view expressed in its opinions on Agenda 2000 and the Future of European Structural Policy of 19 and 20 November 1997 [1] that the EU's future structural policy in the existing and new Member States should be financed within the existing ceiling on own resources and the limitation of structural spending to 0,46 % of the Union's GNP. The Commission's proposal of funding of Euro 218.4 billion at 1999 prices for eligible areas in the existing Member States for the period 2000-2006 makes it clear that, with appropriate concentration, average assistance for the future beneficiary regions over the period 2000-2006 can be continued at the high level reached during the current period. In the interests of concentration of assistance on the neediest regions, the Committee of the Regions assumes that two thirds of the available funds are to be concentrated on the Objective 1 regions. The Committee of the Regions suggests that the funds earmarked for Objective 1 be exactly quantified, as in the existing framework regulation.

2.1.2.2. The Committee of the Regions asks the Commission to explain the procedure laid down for the allocation of funds to the Member States under Article 7(3) of the draft regulation, in particular the weightings assigned to the objective criteria (population, regional and national prosperity, relative severity of structural problems, unemployment). Equal treatment of all regions can only be guaranteed by an objective and transparent procedure based primarily on the establishment of a Community-wide criterion for defining remote areas and on the extent of regional structural problems.

2.1.2.3. The Committee of the Regions reiterates the view expressed in the above mentioned opinions of 19 and 20 November 1997, and continues to have a number of questions about the performance reserve of 10 % of total resources proposed by the Commission. The submission of the draft regulation has not answered the question as to whether it will be possible to use these funds at mid-term in accordance with a procedure which genuinely encourages high-quality programme implementation. Rather, it is to be feared that priority will be given to the rapid deployment of resources rather than to high-quality and therefore possibly longer-term projects. It seems better to look into whether the figures of the European Court of Justice which talk about under-spending are not lagging behind what goes on in practice in the regions, and also whether under-spending is not due above all to making much too late a start to programmes and to potential operators' lack of information.

2.1.2.4. The Committee of the Regions considers that the reasons behind the 'performance-linked reserve' of encouraging project quality and efficient management of resources over a long programming period to be sound.The 10 % performance reserve is however incompatible with the principles of planning, programming and proper implementation, as it effectively freezes an amount equivalent to one year's funding until after the mid-term evaluation. Moreover, it creates major uncertainties, as there is no guarantee that its application will generate positive effects additional to those already implicit in the responsible control and monitoring of assistance. The Committee is therefore opposed to a reserve of this kind.

2.1.2.5. The Committee of the Regions supports the earmarking of 5 % of total Structural Fund resources for the financing of Community initiatives and the use of 1 % of funds to finance innovative and technical assistance measures. It must be ensured however that implementing structures built up, including regional structures, and the system for the necessary monitoring

[1] CdR131/97 fin — OJ C 64, 27.2.1998, p. 5; CdR 303/97 fin — OJ C 64, 27.2.1998, p. 40.

and assessment of programmes are continued in full. The Committee points out however that in these two areas in particular the Commission should pay greater attention to transparent procedures for the allocation of resources and the evaluation of the efficiency of the measures undertaken.

2.1.3. Chapter IV: Organization (Articles 8-11)

2.1.3.1. The COR is pleased to see that, on several points, the draft regulation implements the expressed intention to enhance the role and influence of partnership. The Committee would point to the need to involve the regional and local authorities more closely in the programming and implementation of the Structural Funds. It also stresses that the provisions of the draft regulation on complementarity and partnership must leave the national, regional and local authorities scope appropriate to the institutional, legal and financial system of the Member State in question in the selection of the most representative partners and in the manner, extent and level of their involvement in Structural Fund assistance. This will promote the effective pursuit of regional policy in Member States and the role of regional government as the basis for programming in the individual Member States in accordance with their internal structure of responsibilities.

2.1.3.2. The COR agrees that action must be based on a broad partnership which also involves the relevant economic and social players in the preparation, monitoring and evaluation of assistance. However, local and regional authorities should continue to play a key role by virtue of their political responsibility, local knowledge and major contribution to co-funding and democratic legitimacy, including when it comes to deciding on the involvement of other partners. The regulation should set out framework provisions rather than detailed rules for how partnerships should be formed in practice. Such rules should be defined in the various programming documents in consultation with local and regional authorities so that account can be taken of the particular circumstances in each region or Member State.

2.1.3.3. The Committee regrets that the Commission has not defined its own role in partnership more clearly and developed this, although this is a contribution which complements national and regional efforts on the application of the European Structural Funds, in which European, national, regional and local funds are used in a coordinated way. The Committee draws attention to its proposals for the development of a genuinely equal partnership which could be encapsulated in a treaty.

2.1.3.4. The Commission proposes that it should in future be able to lay down the Community priorities for assistance in the form of guidelines. While fully recognizing the Commission's role of Community guidance, and the usefulness of such guidelines as a basis for discussions on the programmes between the Commission, Member States and regional and local authorities, the Committee of the Regions feels that the 'bottom-up' approach must be guaranteed, and that the programme documents must retain their binding and reliable nature for the implementation of Structural Fund assistance. In no cases should these guidelines mean that the Commission has the right unilaterally to interpret regulations adopted by the Council.

2.1.3.5. The situation is different however at the mid-point of a programming period. Changes in circumstances and accumulated experience of management in mid-stream make it advisable to publish guidelines and priorities for the adjustment of regional policy, without however resorting to legislative changes to the general regulation. The Committee of the Regions should be the EU body charged with assessing the redefinition and reorientation of the priorities and guidelines for the Commission's management.

2.1.3.6. As assistance will be programme-based, the Committee of the Regions also points out that the information needed at this level must be more clearly defined. The degree of detailed information to be contained in a programme must be determined. The regulation speaks of measures and operations. The Committee considers it undesirable that detailed information on measures and operations should come within the ambit of partnership between Commission and Member State, as this could result in considerable delays in making changes to programmes.

2.1.3.7. In this article the Commission once again advocates a combination of loans and grants in the application of the European funds. The Committee of the Regions feels that the participation of the EIB or the other Community bodies should not be made a binding condition. The choice of the most suitable forms of assistance should be guided by the requirements of programme content and specific local conditions.

2.1.3.8. The Committee of the Regions points out that, as in the previous programme period, account must be taken of overall economic conditions and specific economic situations, including local and regional contributions, in determining the additionality of Structural Fund resources. Otherwise unusually high national structural expenditure, cyclical trends in individual economies and the national and regional bases for financial planning might not be properly considered. The Committee of the Regions proposes that the detailed

arrangements for determining additionality be agreed in the programme planning documents in the framework of partnership. Because of the laws governing national budgets and the necessary involvement of national parliaments, it is not possible to set the level of expenditure for national labour market policy in advance for the whole six-year support period, as the Commission proposes.

2.2. *Title II: Programming*

2.2.1. Chapter I: General provisions (Articles 12-14)

2.2.1.1. The COR welcomes the requirement that the partners give an opinion on the plans before they are submitted to the Commission, and that the Commission take account of these opinions. These plans should be submitted to the partners in due time for them to give their opinion. The COR expects these provisions to be taken seriously so that local and regional authorities really are given greater influence in organizing action. The COR regrets the fact that it is still not guaranteed that local and regional authorities will be involved in — or even informed about — the Member States' negotiations with the Commission to approve the plans. The Committee of the Regions draws the Commission's attention to the burden which programme preparation, particularly with regard to the deadline for approval, could place on the regional and local authorities and the Member States.

2.2.1.2. Whilst the Member States and regions are allowed three months for drawing up regional development plans, the Commission allows itself six months for the decisions on Community support frameworks, the single programme documents and the operational programmes. There are objective reasons for reversing these deadlines. Six months should be allowed for the drawing up of plans and programmes, which is the more demanding part of the job, whilst with proper coordination three months should suffice for making a decision. The COR calls on the Commission to ensure that the Structural Funds operating principles are applied to all funds and in particular the rural development measures established by the EAGGF Guarantee Fund.

2.2.1.3. The Commission proposal for the introduction of a programming supplement introduces a further step into the programming procedure. The Committee of the Regions rejects this as being unnecessary and unjustified. Article 14(1) already provides for the opinion of the partners on the regional development plan. The involvement of the partners in the programming process is therefore already guaranteed. Moreover, the monitoring committees could be set up as soon as the eligible areas have been determined so that they could give their opinion on the draft operational programme.

2.2.1.4. The operational programme provides, as hitherto, for financial planning for the individual priorities and a qualitative description of measures within the individual priorities. The supplementary document will now refer financial planning to individual measures. Detailed financial plans of this kind cannot be accurately forecast for a seven-year funding period. This merely complicates the programming procedure and makes programme changes more cumbersome. As the Commission previously did not require this information at all, the fact that this document is to be submitted to the Commission purely for information rather than for approval is no compensation. Moreover, Article 31 of the draft regulation requires that the programming supplement be submitted to the Commission before interim payments are made. The programming supplement could therefore impede the flow of assistance funds.

2.2.2. Chapter II: Content of the programming (Articles 15-18)

2.2.2.1. The Committee of the Regions sees the usefulness of an integrated programme for each region. On this question too, it would be preferable for a level and number of programmes appropriate to the administrative structure and practice of the Member State in question to be agreed on the basis of the cooperation procedure.

2.2.2.2. The Committee of the Regions feels that it would be appropriate for regional conversion plans submitted under Objective 2 to cover all areas of the same NUTS II-level region, as well as one or more NUTS III or sub-NUTS III-level areas at the appropriate territorial level, as happens at present, depending on which option is more suited to the internal structure of each Member State. The thrust of point 5.1.4 of the COR Opinion of 14 May 1998 [1] should also be borne in mind.

2.2.2.3. The Committee of the Regions considers that there is no reason why a revision of the operational programmes and the single programming documents should necessarily be carried out after the mid-term review; rather; it should be an option in the event of major changes in the economic and social situation. Moreover, this revision should be carried out in the framework of consultation.

2.2.3. Chapter III: Community initiatives (Articles 19-20)

2.2.3.1. The Committee of the Regions notes that its call for the number of Community initiatives to be reduced and for thematic concentration has been heard.

[1] CdR 316/97 fin — OJ C 251, 10.8.1998, p. 11.

As in the previous period, it is important that the Community initiative formula should be applicable throughout the Community, regardless of Objective area status or the absence of such status. The Committee welcomes the areas for Community initiatives proposed by the Commission. However, with regard to the Community initiative programme on human resources and equal opportunities, the Committee reiterates the need to step up the drive against all forms of discrimination and inequality in access to the labour market, in particular those resulting from exclusion or the threat of exclusion in urban areas. It also reiterates the need for an additional instrument to flank industrial and sectoral structural change and military conversion.

2.2.3.2. As a continuation of the Interreg Community initiative, all instruments of cross-border, trans-national and inter-regional cooperation should be packaged together so as to constitute a back-up instrument for regions confronted with internationalization in several areas. The COR endorses the proposed strengthening of inter-regional cooperation. The COR thinks that the clear focal point within the Interreg Community initiative should be cross-border cooperation — as it has been to date. The broad range of cooperation forms, i.e. transfrontier, transnational and inter-regional, would continue. This cooperation should also cover a coherent group of regions, including non-neighbouring regions, with a view to boosting the region and promoting balanced, harmonious planning of the EU area; for example, cooperation could be between regions which include a major urban agglomeration. The COR refers to the good experiences with cooperation across the EU's internal and external borders. Special efforts should be made to use the good experiences with the current Interreg IIA and Interreg IIC Programmes, where responsibility is largely regionalized.

2.2.3.3. The Committee of the Regions calls for greater consistency and coordination between Interreg, the Instrument for Structural Policies for Pre-Accession (ISPA) and cooperation programmes with the Central and Eastern European accession candidates and Cyprus on the one hand, and with third countries in the Mediterranean and Russia, Norway and Switzerland on the other. It also urges that an appropriate role be assigned to local and regional cooperation and that experience with ECOS/Ouverture, Recite and similar programmes be used to organize and implement the new initiatives for local and regional cooperation. It has been found, among other things, that the objectives and thrust of the programmes make a valuable contribution to exchanges of experience between decentralized authorities in areas of importance for regional development. On the other hand, the mechanisms for granting funds and disbursement arrangements have sometimes been lacking in transparency. Meanwhile, it welcomes the fact that the new initiative will provide general financial support, within a single mechanism, for interregional cooperation initiatives which previously either were supported sporadically, i.e. per project included in a programme, or were eligible for no support at all.

2.2.3.4. Finally, the Committee of the Regions reiterates its proposal that Community initiative projects be coordinated with eligible area assistance programmes. Implementation of the Community initiatives should tie in with the regional operational programmes and should be integrated into the regional operational programmes, where the local and regional authorities concerned so wish.

2.2.3.5. In this context, however, it is worth pointing out that the Leader initiative, which has achieved success to date in the development of rural areas, must not lose its positive effect as a stimulus to small regions because of the planned horizontal orientation. The Committee therefore calls upon the Commission, in preparing the Community initiative, further to strengthen the position of the local action groups in the planning and implementation of programmes, so as to give a clear signal of acknowledgement of these groups' competence for autonomous regional development. Thus what is needed is not a bureaucratic integration into the horizontal rural development programme, but rather cooperation and coordination. The implementation of the new rural development Community Initiative must be based on the principles of programming and partnership. If Local Action Groups are adopted, they should work closely with locally and regionally led partnerships, operating according to principles of accountability and transparency. With particular reference to the Community rural development initiative, the Committee welcomes the importance given to this sector. This sector needs to be strengthened, as is shown in part by the positive results of the Leader experiment. In this regard, it is stressed that the principle of 'bottom-up' planning — essential to effective rural development action — must be preserved and reinforced. In the interests of consistency and compatibility, it should also be ensured that the initiative is built into the planning documents.

2.2.4. Chapter IV: Innovative measures and technical assistance (Articles 21-23)

2.2.4.1. The Committee of the Regions proposes that the close link between the innovative measures and the eligible area programmes and other regional strategy formation programmes be enshrined in the Treaty. The tender and selection procedure for the innovative measures should retain a strong Community dimension in order to safeguard the granting to local players and representatives of civil society of access to the Structural Funds. The abovementioned procedure should, however, be framed in such way that expectations are not aroused which cannot be fulfilled because of the limited amount of actual assistance. Before funding is allocated for innovative measures and pilot projects in Objective 1 and 2 areas the Commission should consult the bodies entrusted with administration of the programmes in order to ensure that the activities are coherent.

2.2.4.2. The Committee of the Regions points out that the innovative actions and pilot projects must be available to all regions, possibly in partnership with those regions which are entitled to assistance under the Objectives. As part of the efforts to simplify and streamline these instruments, steps should be taken in the future to ensure transparent criteria, unbureaucratic management, decentralized administration and continued scope for assistance to small pilot projects.

2.2.5. Chapter V: Major projects (Articles 24-25)

2.2.5.1. The Committee of the Regions is pleased that the Commission intends to raise the threshold for major projects to a total cost of Euro 50 million. However, the approvals for major projects should continue to be granted, as hitherto, in the framework of the approved programmes, rather than on a separate basis to be defined by the Commission. The planning uncertainty associated with the Commission proposal and the time-consuming approval and administration procedures give rise to fears that in future major projects will rarely be financed from the European Funds, if at all.

2.2.5.2. It does not seem appropriate for the Commission to be able subsequently to confirm or amend the level of the Community contribution, if the project is part of a priority, in respect of which the co-financing proportion has been negotiated under the Community support framework.

2.2.6. Chapter VI: Global grants (Article 26)

2.2.6.1. The Committee of the Regions considers it necessary to maintain global grants as a form of assistance independent of the operational programmes, as the global grants were originally designed to provide a more dynamic instrument, more attuned to economic reality, than the operational programmes. Moreover, the removal of the global grants as a form of assistance would make their use slower and more cumbersome than that of the operational programmes. The Committee of the Regions endorses the possibility provided for in the framework regulation for an intermediate body to reach an agreement with the Commission on the use of global grants in Community initiatives, within the framework of the partnership with the regions, local authorities and Member States concerned. The COR considers that bodies should be designated to mediate between the competent local and regional authorities.

2.3. *Title III: Contributions and financial management by the Funds*

2.3.1. Chapter I: Financial contributions by the Funds (Articles 27-29)

2.3.1.1. With a view to greater flexibility in the implementation of operational programmes, the Committee of the Regions feels that the decision as to whether programmes should be financed from a single fund or from several should be taken in partnership with the managing authorities.

2.3.1.2. The Committee of the Regions considers that the financial participation of the Funds should continue to take the traditional form of subsidies. Recourse to other forms, such as those mooted for the first time in the draft regulation (repayable assistance, interest-rate subsidy, guarantee etc.) could perhaps be contemplated as complementary approaches but under no circumstances as substitutes for subsidies.

2.3.1.3. The Committee of the Regions advocates the retention of the existing limits on fund participation in eligible costs and eligible public expenditure. There is perceived to be no need for further differentiation of the participation rates in the framework of the regulation. If necessary the participation limits for Community funding could be eased, e.g. in the case of peripheral or ultra-peripheral regions, to take account of specific situations and difficulties. This could be agreed on the basis of partnership under the Community support frameworks or the programme planning documents with due regard to the provisions of Community law on the monitoring of aid.

2.3.1.4. The Committee of the Regions suggests that a clear definition of the eligibility of expenditure on operations and innovative measures is needed in consultation with the Member States before the new programmes begin. To simplify operation as far as possible, the relevant framework regulation should refer to the SEM work sheets (work sheets on the eligibility for assistance of expenditure under the Structural Funds).

2.3.2. Chapter II: Financial management (Articles 30-32)

2.3.2.1. The Commission proposes that any commitments for which no acceptable payment application has been received within two years be automatically

decommitted and the contribution of the Funds reduced by that amount. While recognizing the need for Community credits to be managed strictly, the Committee of the Regions is concerned as to the consequences of this type of proposal, as it would increase planning uncertainty in the beneficiary regions and would hinder efforts to carry out high-quality, and thus in some cases longer-term, projects. The regional and local authorities must make binding payment commitments to the final beneficiaries during the funding period. If, because of external problems, the funds are not available, this could pose intractable problems for regional and local budgets. The flexibility of the Structural Funds to span financial years must therefore be retained. This also applies to the requirement that the European Parliament carry over Structural Fund resources in the budget.

2.3.2.2. The Committee of the Regions considers that the four-month deadline (until 30 April) which the Commission proposes in the draft regulation for the adoption of budget agreements for the proposed funding is too long and should be reduced.

2.3.2.3. The Committee of the Regions feels that the period of 'two months from receipt of an acceptable application' within which payment is to be made by the Commission should be mandatory rather than a 'general rule'

2.3.2.4. The Committee notes with interest that in the coming funding period the Commission plans to put management of the Funds on a reimbursement basis whereby, apart from a single advance of 10 % of total costs, all payments by the Commission to Fund administrators will take the form of reimbursement of expenditure actually made, supported by receipted invoices. However, the Committee fears that this would, at the latest during the second half of the programme period, place an unacceptable burden on the budgets of the regional and local authorities, from which these costs would have to be pre-financed. In the light of current budget constraints, this would be an excessive burden which could only result in complications in the deployment of Structural Fund resources.

2.3.2.5. The requirement on the Member States to submit to the Commission by 30 April each year an updated forecast of applications for payment for the current and following budget years will entail a major commitment for administrations. The Committee of the Regions considers that it would be more appropriate to require that the programme for the current and following financial years be submitted to the Commission by 31 May of each year to allow time for any necessary revision of the payment forecasts for the two years in question.

2.4. *Title IV: Effectiveness of assistance from the funds*

2.4.1. Chapter I: Monitoring (Articles 33-36)

2.4.1.1. With regard to the annual review of the main outcomes of the previous year to be carried out by the Commission and the managing authorities, the draft regulation does not make clear the weight to be assigned to any comments or recommendations made by the Commission in the light of this review, nor the status of these in the event that they are rejected by a managing authority. The Committee of the Regions feels that these comments and recommendations should be made in the framework of partnership and not unilaterally by the Commission.

2.4.1.2. The Committee of the Regions was expecting the monitoring committees to be granted new powers, as the Commission had itself suggested. The matter is unfortunately not clearly resolved in the draft regulation. The Committee feels that in particular the right of the monitoring committee to make the final decision on small and medium-sized programme changes — including the limited transfer of funds between the priorities of an operational programme — should be strengthened. This would make use of the Structural Funds more flexible and bring it more closely into line with practice, as well as significantly strengthening the role of the regional and local authorities and other partners. The Committee of the Regions urges the Commission to play an active and responsible role in the work of the monitoring committees, as part of the cooperation procedure

2.4.1.3. The Committee of the Regions also welcomes the proposed distinction between the partners represented on the committee on the basis of their financial responsibility for assistance. This model should also be used in relation to human resources.

2.4.1.4. The number, level and size of the monitoring committees to be established should be agreed in the Community support framework or the programme planning document with due regard to the specific features of the Member State.

2.4.1.5. The Committee of the Regions draws attention to its proposal that the material and financial indicators for the monitoring of assistance be laid down in partnership in the framework of the programme planning decisions. The indicators should be established after consultation and in line with the specific conditions and needs of the regions responsible for the practical implementation of the programmes.

2.4.2. Chapter II: Financial control (Articles 37-38)

2.4.2.1. The Committee of the Regions proposes that the activities of the various Community-level control bodies, such as the financial control departments of

DGs XVI and XX, checks by the Court of Auditors and occasional checks by UCLAF be stepped up. These controls should be standardized with a view to the greatest possible effectiveness. In this respect, consideration should be given to coordination between Community control bodies and the bodies responsible at national, regional and local level. The procedure, according to which the Member States are to take remedial measures in line with the Commission's recommendations or requirements, is not clear. Nor is it clear in what cases and in what way the Commission is entitled to withhold payments in whole or in part in the event of irregularities. There should be a more effective partnership procedure for this eventuality too. In the case of Community structural measures having modest levels of funding, such as innovative measures, the eligibility rules should be made more flexible and a retrospective system of financial control should be introduced; the latter system should be backed up by machinery for the pooling of risks.

2.4.2.2. The Committee of the Regions considers that financial corrective measures should be carried out in the framework of cooperation with suitable procedural guarantees.

2.4.3. Chapter III: Evaluation (Articles 39-42)

2.4.3.1. The Commission's proposal for a regulation stresses the appropriateness of evaluations, and in the view of the Committee of the Regions this is beyond dispute. Such evaluations would bring clear added value in terms of the transparency and effectiveness of Fund activities.

2.4.3.2. Regional policy has essentially been implemented on the basis of operational programmes and it is planned that this should continue in the new period. The Committee of the Regions notes however that there is no single accepted and viable method for the evaluation of operational programmes. There are methods for the evaluation of projects, but not for the multiplicity of actions which an operational programme may comprise. Consequently, without calling into question the principle of evaluation, it would be a good thing for a generally accepted method for the evaluation of operational programmes to be established in accordance with the principle of cooperation.

2.4.3.3. Any evaluation should be based on the principle of cooperation. The Committee would therefore like to see establishment of an arbitration body which could, in cases of conflict, settle differences over evaluations between the Member State and regions on the one hand and the Commission's departments on the other.

2.4.3.4. With regard to the ex ante evaluation of plans, the Committee of the Regions notes with concern that the requirements are very extensive and ill-defined, particularly the short deadlines for submission and the requirements for preparation.

2.4.3.5. The Committee of the Regions would like to see the mid-term evaluation initiated and coordinated by the managing authority and approved by the monitoring committee, on which, if the COR's recommendation in this opinion is heeded, the Commission would be an active, voting participant. In this way a subsequent Commission pronouncement on the accuracy and quality of the evaluation would be unnecessary.

2.5. *Title VI: Committees*

2.5.1. The COR proposes that local and regional authorities — as part of their national delegations — be guaranteed a place on the advisory and management committees which are to advise the Commission on development and conversion of the regions, Treaty Article 124, rural development, fisheries and aquaculture and Community Initiatives. It would be a logical consequence of the Commission's intention to enhance partnership that involvement in these bodies should not be limited to the Member States. The COR also proposes that, as well as the European Parliament, the COR be kept informed of the work of the committees.

3. The Committee of the Regions calls on the Commission to revise the proposal for a Council Regulation laying down general provisions on the Structural Funds and, in so doing, to take account of the Committee's suggestions.

Brussels, 17 September 1998.

The President

of the Committee of the Regions

Manfred DAMMEYER

Opinion of the Committee of the Regions on the 'Communication from the Commission: Public Procurement in the European Union'

(98/C 373/02)

THE COMMITTEE OF THE REGIONS,

having regard to the Communication from the Commission on public procurement in the European Union (COM(98) 143 final);

having regard to its decision of 13 May 1998, under the fourth paragraph of Article 198c of the Treaty establishing the European Community, to issue an opinion on the subject and to entrust Commission 6 (Employment, Economic Policy, Single Market, Industry, SMEs) with the task of preparing it;

having regard to the draft opinion (CdR 108/98 rev.) adopted by Commission 6 on 3 June 1998 (Rapporteurs: Mrs Lund and Mrs Birath-Lindvall),

adopted the following opinion at its 25th plenary session of 16 and 17 September 1998 (meeting of 17 September).

1. Introduction

1.1. As a follow-up to the wide-ranging debate on the future of the EU's rules on procurement launched by the Commission's Green Paper on Public Procurement in the European Union: Exploring the Way Forward [1], the Commission published its communication on public procurement on 11 March 1998.

1.2. On 16 June 1997 the COR submitted its own contribution to the debate on the Green Paper [2]. The COR opinion pointed out that the public procurement directives have important implications for local and regional authorities as responsibility for a large proportion of public procurement lies with them. The COR was openly critical of the unnecessary amount of red tape involved in the public procurement directives. The thrust of its opinion was that the rules on procurement should be simplified as speedily as possible so as to reflect the demands of the current public-private sector interplay. In addition, several Member States have more restrictive public procurement arrangements which go beyond what is laid down in the actual directives, thereby creating a situation of unequal competition.

1.3. A wide range of players — and the European Parliament in particular — were similarly critical of the public procurement directives. The clear message from the players closely involved in the day-to-day application of procurement rules was that there is a need for simplification, greater flexibility and easy access to information in the area of public procurement.

2. General comments

2.1. *The overall approach*

2.1.1. The COR therefore welcomes the fact that the Commission communication focuses on simplification and greater flexibility. In the COR's view, the communication demonstrates the Commission's desire to take on board the proposals for simplification and greater flexibility made by the COR in response to the Green Paper.

2.1.2. The Commission communication proposes presenting a legislative package in 1998 which primarily seeks to streamline existing rules. The COR is pleased to see that, in line with its wishes, the Commission has abandoned the basic view that stability in the area of procurement should take precedence over the objective of making the necessary adjustments to the relevant directives.

2.1.3. The COR is therefore in overall agreement with the Commission's main conclusion from the public procurement debate: the need for simplification and greater flexibility.

2.2. *Simplification and greater flexibility*

2.2.1. It is clear from the communication that henceforth the Commission wishes to work on the principle that greater flexibility should be accompanied by more effective control and complaint procedures at national level. The COR would endorse this linkage of simplification and more stringent national controls provided that it leads to greater flexibility in practice. The COR is also working on the assumption that many countries have already established effective control and complaint

[1] COM(96) 583 final.
[2] CdR 81/97 fin — OJ C 244, 11.8.1997, p. 28.

procedures. The COR would also urge the Commission to apply an additional principle: namely that EU procurement should always bring with it real benefits for both purchasers and companies supplying the public sector. EU-wide procurement should be an active instrument for ensuring that the market for public services produces high-quality supplies at the most favourable prices. In practice, this overriding principle should ensure that the cost of procurement to contracting entities and tenderers does not undermine the economic benefit arising from increased competition.

2.2.2. Consolidation of procurement directives

2.2.2.1. As suggested by the COR and others, the Commission communication proposes consolidating the 'traditional' procurement directives (on public supplies, public works and public services) into a single procurement directive. The purpose of this is to streamline administrative procedures and achieve greater clarity in the application of procurement rules for contracting entities and suppliers.

2.2.2.2. The COR is able to give its full support to this proposal in that it will be easier for local and regional authorities to follow a single set of rules, rather than three, as is currently the case. The COR feels that this consolidation should take place as soon as possible and that the codified version should be followed up with additional interpretative documents.

2.2.2.3. The Committee of the Regions welcomes the proposals aimed at improving the functioning of the directives; it would at the same time urge the Member States to step up the implementation of the directives.

2.2.3. Proposals for the introduction of a new procurement procedure — competitive negotiated dialogue

2.2.3.1. As a practical proposal to meet the need for simplification, the Commission has suggested introducing a new standard procedure, the 'competitive dialogue'. Here the Commission's objective is to achieve smoother and more flexible interaction between the public and private sectors than is possible under the usual open and restricted procedures. The Commission proposes that this new procurement procedure should replace the existing negotiated procedure with prior publication of a notice. At present there is very limited access to this method.

2.2.3.2. The COR would support the Commission's proposal to introduce this new procedure provided that it does actually lead to more flexibility and is in no way inferior to the current negotiated procedure. In this respect the COR feels it is necessary to highlight the problems experienced by local and regional authorities under the present procurement directives.

2.2.3.3. The overriding problem for local and regional authorities is that, in practice, it is very difficult to conduct a satisfactory EU procurement procedure, particularly in fields where the pace of product and market development is very fast and services very complex. This is the case with, for instance, procurement in the health sector (pharmaceutical technology, operating and X-ray equipment etc.), as well as with IT systems. There are essentially four types of problem:

1) Before publishing an EU-wide invitation to tender, the public authority is required to give a precise description of its requirements in the tender specifications. In order to do this, the authority must be able to enter into a flexible interchange with suppliers in order to obtain up-to-date details of the market solutions available.

2) During the tendering process itself, further clarification is often required, either of the authority's specifications or of the bids submitted by suppliers.

3) While the contract is being prepared, it may prove necessary in the course of cooperation between contracting authority and supplier to modify certain parts of the overall contract.

4) During implementation of the contract, minor technical adjustments may be needed.

2.2.3.4. It is the experience of many local and regional authorities that, in these four areas, the existing rules on procurement constitute an entirely unnecessary obstacle to the flexible interplay which ensures that citizens get the best services for the least money.

2.2.3.5. A report by the Swedish Nämnd för Offentlig Upphandling [1] [National Board of Public Procurements Complaints] shows amongst other things that the overall economic impact of public procurement legislation in terms of savings for public authorities is small. In the COR's view, the results of this study demonstrate that detailed and inflexible procurement legislation may result in less favourable economic results than would have been the case with flexible procurement rules.

2.2.3.6. The direct consequence for local and regional authorities is often that they are obliged to buy in the

[1] 'Effekter av lagen om offentlig uphandling' (Impact of the Law on Public Procurement), Nämnden för Offentlig Upphandling, January 1998.

services of expensive outside consultants to handle the procurement procedure. This results in citizens paying more overall for services.

2.2.3.7. The indirect consequence is that the obstacles impeding a forward-looking dialogue between contracting authority and supplier are not conducive to optimum product development and innovation among suppliers. The COR feels that, in the longer term, this could have implications for growth and employment.

2.2.3.8. The COR therefore urges the Commission to ensure that the proposed new procurement procedure — competitive dialogue — allows for a high degree of flexibility so as to facilitate a wide-ranging dialogue with suppliers before, during and after commissioning.

2.2.3.9. The COR would also urge the Commission to reject the notion that matters of price and content can be dealt with separately in the procurement process. At the moment, it is not always possible to make technical adjustments to a contract if this will affect the price. An EU procurement procedure should be seen as a single process in which price and content are inextricably linked.

2.2.3.10. In the COR's view, it is crucial that competitive dialogue be brought into line with the standard open and restricted procedures.

2.2.4. Clarification of 'grey areas' of the procurement directives

2.2.4.1. The Commission proposes that a number of areas covered by the procurement directives should be clarified so as to rule out ambiguity in the day-to-day application of the rules. The COR welcomes this initiative, as directives which are unclear give rise to continual problems of interpretation and hence high administrative costs.

2.2.4.2. One example of an area where clarification is needed is the provision for dialogue between public authorities and suppliers before an invitation to tender is issued (technical dialogue). In practice, the authority needs to gather information and knowhow from firms on current market solutions. At present this dialogue is severely hampered by the way the directive is customarily interpreted. Much greater flexibility is needed for both authority and supplier.

2.2.4.3. The COR feels that it is crucial when clarifying the procurement directives that the Commission tackles the job with an eye for simplification and greater flexibility. It is the COR's view that, in the interests of simplification, these clarifications should be made as far as possible by means of additional interpretative documents, and where this is not possible, then by amending the directives.

2.2.4.4. The COR believes there is a need to clarify the conditions under which private consultants may be brought into EU procurement procedures. The COR feels that steps should be taken to ensure a high degree of independence between private consultants and suppliers. This is especially true for sectors in which there are close historical and cultural ties between consultants and suppliers.

2.2.5. Reducing the administrative burden — increasing the ability to tender

2.2.5.1. In the COR's view, the current threshold values for the purchase of goods and services place an entirely unnecessary administrative strain on both purchasers and suppliers. The debate following the Green Paper has shown that a large number of players share this view.

2.2.5.2. Experience shows that firms have only a limited interest in bidding for small contracts abroad. The Commission's own studies indicate that only around 1 % of all contracts go to firms abroad. A study among Danish local authorities shows that foreign firms apply to have their tender considered in only 3 % of service procurements. Against this background, small contracts are even more likely to be mainly of regional, and in some cases, national, interest.

2.2.5.3. The COR believes that the lack of interest shown by firms in bidding for small contracts abroad, combined with the high administrative costs which are well documented, clearly demonstrates the need to raise the threshold values. It would therefore once again urge the Commission to propose an increase in the threshold values in the goods and services directive.

2.2.5.4. The COR reiterates its requests for a global appraisal of the administrative implications of the procurement directives, and of the implications stemming from the implementation of the directives by the Member States.

3. **Specific comments**

3.1. *Green procurement and tendering rules*

3.1.1. The Commission communication proposes clarifying the options for imposing environmental requirements in public procurement. The COR notes with pleasure that the Commission wishes to work harder for green procurement and would point out that

many local and regional authorities are actively engaged in fostering a green procurement policy. The COR emphasizes, however, that environmental requirements cannot be put on a par with the principle of cost effectiveness.

3.1.2. The COR considers it crucial in public procurement to be able, in addition to laying down certain conditions with regard to a product's properties (e.g. the PVC content of plastic), to impose objective requirements concerning the overall environmental impact of a product and of a company, including the production process.

3.1.3. The COR is aware that the international GPA agreement [1] makes this possible (cf. GPA agreement Article VI). The Commission is therefore urged to look into how far the GPA agreement could serve as a basis for imposing such objective environmental requirements in the case of EU procurement. If this cannot be done, the Commission is asked to propose amendments to the procurement directives to allow public authorities to take account of the environment in a responsible manner when purchasing.

3.1.4. The COR feels it is important for the Commission to integrate action in the field of procurement with environmental initiatives, especially the European Eco-label and the European eco-management and audit scheme for businesses, EMAS.

3.2. *Inter-municipal undertakings*

3.2.1. In response to the Green Paper, the COR called on the Commission to make clear that transferring tasks e.g. from one local authority to an inter-municipal undertaking (e.g. refuse company) is regarded as an in-house contract and therefore falls outside the scope of the procurement directives. The Commission communication does not address this issue specifically. The same goes for local authorities and inter-municipal undertakings which enter into inter-municipal agreements to have certain tasks of one local authority carried out by other local or regional authorities.

3.2.2. The COR therefore once again calls upon the Commission to make clear that the political choices made by local and regional authorities with regard to how they wish to organize themselves, including agreements between public authorities but not with private entities are not affected by the procurement directives. The COR feels it is important to emphasize that that the Council of Europe convention on local and regional self-government unambiguously establishes the right to enter into inter-municipal collaboration for the purpose of carrying out tasks of common interest.

3.3. *Electronic procurement*

3.3.1. The COR welcomes the steps taken by the Commission to further the development of an effective framework for electronic procurement. The Commission's electronic pilot project, SIMAP (Systeme dans l'Information de Marché Public) [2], has already produced good results, and the COR hopes that within a short space of time this project can lead to real administrative savings and greater transparency with regard to public procurement.

3.3.2. The COR would urge the Commission to ensure that, where appropriate, all parts of the procurement process can be handled electronically: sending out notices to tender, seeking new invitations to tender, sending and receiving specifications and bids and ultimately electronic exchange of agreements and payment for services rendered. In this connection, the Committee would point out that the system must include efficient security mechanisms, so that contractors do not need to worry about commercially sensitive information falling into the wrong hands.

3.3.3. The COR would, however, point out that there are considerable disparities between Member States in terms of information technology, and this is particularly true of local and regional authorities. It is therefore vital that those authorities and firms that do not have access to such electronic facilities do not end up in a worse position as a result of the Commission's proposals in this regard.

3.3.4. It is also the COR's view that the objectives in this field can only be achieved if the introduction of electronic procurement is followed up with targeted training for public authorities and businesses. The COR is happy to contribute to the Commission's work by drawing up practical proposals to boost training.

[1] The General Procurement Agreement is the international procurement agreement under the WTO which, inter alia, enables European companies to bid for public contracts in e.g. the USA.

[2] The Commission has set up a pilot project which is intended to form the basis of a global electronic procurement system.

3.3.5. Lastly, the COR takes the view that a prerequisite for more widespread use of electronic procurement is an effective CPV nomenclature [1]. The existing CPV nomenclature gives rise to a number of problems as its structure is not standardized and it is imprecise in many areas. The COR would therefore urge the Commission to improve the CPV nomenclature so that it becomes an effective instrument in electronic procurement too.

3.4. *Exclusion of certain supply sectors*

3.4.1. The Commission proposes that entities within the supply sector that are operating under real competitive conditions should not come within the scope of the Utilities Directive (93/38/EEC) [2]. This is particularly relevant in the telecommunications sector, where the liberalization process has led to former monopolies now functioning under conditions of real competition.

3.4.2. The COR agrees with this proposal and feels that steps should be taken to ensure that when a Member State decides that a sector is to be opened up to true competition (i.e. liberalized), that sector will automatically be excluded from the public procurement directives except where the public interest, which justifies the sector's status as a public service, requires a degree of monitoring involving compliance with Community rules on public procurement.

3.5. *Increased use of framework contracts*

3.5.1. The Commission proposes amending the rules on public procurement so as explicitly to permit the use of (flexible) framework contracts. It is a recognized fact that this is not expressed in so many words in the supplies and services directives. The COR would point out that a large proportion of the procurement currently undertaken by local and regional authorities makes use of EU procurement framework contracts. They are widely recognized as offering a flexible form of purchasing which facilitates on-going monitoring of product developments and price changes.

3.5.2. The COR endorses the Commission's view that as a matter of principle there should be greater scope for making use of framework contracts.

3.6. *Regulation of concessions* [3]

3.6.1. The Commission proposes increased regulation of concessions in the service sector. In the COR's view, the Commission has not produced evidence to support the claim that there is now a greater need for regulation than when the services directive first came into being. The COR is therefore unable to support the Commission's proposal.

3.6.2. The COR also feels that it would be appropriate to await the judgement of the Court of Justice in the Arnhem case (C-360/96) [4] as the Advocate General's ruling in the case goes a good way towards providing an interpretation of what is meant by concession in the service sector.

3.7. *Community-level checks and independent control and complaint authorities*

3.7.1. In its response to the Green Paper, the COR was sceptical (on grounds of the subsidiarity principle) about the Commission having increased powers equivalent to those applicable in the area of competition law (fines, compensation, etc.). At the same time the COR was in favour of applying the procedure for infringements of the Treaty, because of the greater pressure to comply and the obvious deterrent effect in Member States which do not respect the public procurement directives or have not even transposed them into national law.

3.7.2. The COR feels that the way to greater transparency and to securing legal guarantees for firms and purchasers lies in setting up national control and complaint authorities. Developing such authorities at national level will also guarantee fair treatment of complaints while helping to raise awareness about public procurement nationally. The COR would therefore support the Commission in putting further pressure on those Member States which, in the process of implementing the monitoring directives, have not yet set up independent control and complaint authorities at national level.

3.7.3. The experience of countries with such authorities is broadly positive. Both businesses and contracting entities have greater peace of mind when specific complaints are assessed by an independent body.

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(1) The Common Procurement Vocabulary is a global system for identifying individual groups of goods and services.

(2) The Utilities Directive covers procurement procedures within the following sectors: gas, electricity, water and heating supply, as well as public transport networks and telecommunications.

(3) Concession is the term used to refer to the arrangement whereby a public authority, against payment, gives a firm the right to operate a public transport network, for example.

(4) The Court of Justice is currently dealing with a case against a Dutch inter-municipal refuse company in Arnhem which is expected to raise the issue of concessions.

3.7.4. For purposes of simplifying public procurement and guaranteeing equal terms of competition, care should also be taken to ensure that national authorities do not apply rules which are more restrictive than those provided for in the Community directives.

3.7.5. Lastly, the COR feels that, in order to fight organized crime effectively, promote the continuation and growth of an honest labour market and maintain work of a high standard, it is important to emphasize that the rules on procurement should not require that contracts are awarded to the lowest bidder but also allow them to be awarded according to a properly defined 'weighted average'; or similar criterion.

3.8. *SME policy and tendering rules*

3.8.1. The COR welcomes the proposals of the Commission for special measures in favour of SME, which will increase their ability to tender.

3.8.2. For the COR, it is particularly important that future initiatives prioritize training and information. Local and regional authorities throughout Europe can attest to the fact that many businesses are not sufficiently well equipped to bid for public contracts. This often results in purchasing authorities being forced to reject bids because, for example, they do not meet the conditions of tender. Many local and regional authorities also find that it is always the same, usually big, national firms that bid for contracts again and again.

3.8.3. Local and regional authorities have a responsibility to foster a favourable business climate for companies, besides training and equipping them to face increased competition in tendering. An example from the municipality of Naestved in Denmark has shown that targeted action to train companies has led to both greater interest in public contracts and to a marked improvement in the quality of bids which the local authority receives when putting out an EU-wide invitation to tender. The COR calls on the Commission to give far greater assistance to local and regional authorities through exchanges of experience and help with setting up such training schemes.

3.8.4. The Commission notes that experience of direct participation in cross-border contracts of SME are disappointing. Replies to the green paper show that SMEs are confronted with many obstacles, such as lack of information about potential contracts. The COR would also point out that the existing highly bureaucratic public procurement rules represent a considerable obstacle for SMEs. The problem today is that the many procedural requirements involved in an EU tender mean that the administrative costs of drawing up bids for public contracts are too high for SMEs. Small companies do not have the same administrative capacity as large ones to handle the complicated tendering process. Effectively, the rules on public procurement give companies with large-scale internal resources a relative competitive advantage.

3.8.5. Against this background the COR would also urge the Commission to pursue the drive for simplification presented in the communication.

3.8.6. The COR asks the Commission to ensure that everything possible is done to give the widest dissemination of public procurement opportunities to SMEs.

3.9. *Representation of local and regional authorities*

3.9.1. Though local and regional authorities play a key role in applying the rules of public procurement, these same authorities have only limited representation within the bodies that advise the Commission on an ongoing basis.

3.9.2. The COR finds it most unfortunate that the Commission's advisory committee, for example, does not include a single representative with practical experience from the local and regional authorities, which in many Member States, are responsible for over two-thirds of total procurement and therefore have practical experience of conducting a great many procurement operations.

3.9.3. The COR therefore urges the Commission to consider how the Commission's ongoing work in this area can draw directly on the experience of local and regional authorities.

3.9.4. The COR supports the proposal that existing EU aid to the central and eastern European countries should encompass training in EU public procurement rules and technical support in this connection. Such aid is essential in preparing these countries for accession to the Union.

4. **Conclusions**

4.1. Local and regional authorities are responsible for a very large proportion of public procurement in Europe. The public procurement directives have a major impact on the interaction between local and regional

authorities and private companies, and hence on the services which those authorities provide for their citizens.

4.2. The COR welcomes the fact that, as the COR and others wished, the Commission has given priority to the need for simplification and greater flexibility. The COR hopes that what the proposed global legislative package will mean in practice is lower administrative costs for both public authorities and businesses. EU procurement procedures should continue to be an effective instrument to obtain the best supplies at the lowest cost.

4.3. In the interests of simplification, the COR supports the proposal to consolidate the traditional procurement directives in a single directive and to introduce a new procurement procedure — competitive dialogue — which can ensure the necessary degree of flexibility in the interplay between the public and private sectors.

4.4. The COR endorses the Commission's efforts to create a 'green' public procurement policy. The COR therefore calls upon the Commission to pave the way to making all environmental criteria an integral part of public procurement, either by means of a special interpretative document or by amending the public procurement directives. The COR emphasizes, however, that environmental requirements cannot be put on a par with the principle of cost-effectiveness.

4.5. The COR wants the Commission to ensure that SMEs can take full advantage of public procurement opportunities through encouraging improved training and ensuring the widest dissemination of those opportunities. The COR would point out that the Commission in particular, as well as the Member States and local and regional authorities, have a responsibility to set up targeted training initiatives in the field of public procurement.

4.6. The COR takes the view that, if the Commission's proposed initiatives are to be put into practice, it is essential that the experience of local and regional authorities is actively brought to bear in subsequent work on the rules for public procurement. The COR therefore urges the Commission to look into how the continuing dialogue can be enhanced by drawing on this experience.

Brussels, 17 September 1998.

The President
of the Committee of the Regions
Manfred DAMMEYER

Opinion of the Committee of the Regions on the 'Proposal for a European Parliament and Council Decision amending Decision No 1692/96/EC as regards seaports, inland ports and intermodal terminals as well as project No 8 in Annex III'

(98/C 373/03)

THE COMMITTEE OF THE REGIONS,

having regard to the proposal for a European Parliament and Council Decision amending Decision No 1692/96/EC as regards seaports, inland ports and intermodal terminals as well as project No 8 in Annex III [COM(97) 681 final — 97/0358 (COD)] [1];

having regard to the Decision of the Council of 24 March 1998 to consult the Committee of the Regions, under Article 129d and the first paragraph of Article 198c of the Treaty establishing the European Community;

having regard to the decision of the Bureau of the Committee of the Regions of 13 May 1998 to instruct Commission 3 for Trans-European Networks, Transport, Information Society to draw up the Committee's opinion on the subject;

having regard to the draft opinion (CdR 101/98 rev.) adopted by Commission 3 on 18 May 1998 (rapporteur: Mr Johan Sauwens),

at its 25th plenary session of 16 and 17 September 1998 (meeting of 17 September) unanimously adopted the following opinion.

1. Content of the Commission document

1.1. Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network (TEN) provides a broad framework for the establishment of an integrated, multimodal network [2].

1.2. The aim of the proposal for an amendment referred to the Commission is to clarify and reinforce the position of seaports, inland ports and intermodal terminals in the trans-European network.

1.3. These interconnection points are a precondition for interchange between different transport modes. The development of intermodal transport should contribute to a more efficient use of the entire network in both operational and environmental terms.

1.4. The European Commission's evaluation of seaports, inland ports and intermodal terminals in the TEN involved an extensive consultation of Member States and of other parties concerned.

1.5. In general, the Member States and the other parties involved endorsed the initiative to more effectively integrate seaports, inland ports and intermodal terminals in the multimodal TEN.

1.6. Differences emerged mainly over the details of the proposal, such as the number and location of interconnection points, as well as the criteria for projects of common interest.

1.7. The TEN is intended as a multimodal infrastructure network which should progressively combine and integrate the different transport modes and national networks.

1.8. This is based on the assumption that the integration of different modes and national networks should result in an overall increase in efficiency, which in turn should reduce congestion and pollution effects.

1.9. The combination of different transport modes is essential if the expected growth in transport activities over the next years is to rely to a significant degree on less congested and less environmentally harmful modes.

1.10. At the same time, the integration of hitherto unconnected networks should increase regional accessibility within the Community with positive effects on trade and productivity.

1.11. As a multimodal network, the TEN consists of links and nodes. However, in view of the aim of the TEN to combine and integrate different transport modes, the guidelines may be regarded as insufficient without specific criteria and outline plans for the development of the principal interconnection points.

[1] OJ C 120, 18.4.1998, p. 14.
[2] OJ L 228, 9.9.1996, p. 1.

1.12. In particular, seaports, inland ports and transhipment facilities in combined transport are prerequisite to the functioning of intermodal transport within a multimodal infrastructure network.

1.13. In its present form, the TEN must therefore be regarded as incomplete.

1.14. The identification of seaports in the TEN is an important step towards establishing a multimodal infrastructure network. Historically, seaports have often been the starting points for the creation of mainland transport links. Today, seaports play a key role in the design and establishment of hinterland transport systems.

1.15. Moreover, since seaports and inland interconnection points are interdependent and equally important elements in the development of intermodal transport, the European Commission decided to include inland interconnection points in the proposal.

1.16. To sum up, the current European Commission proposal can be regarded as a refinement of Decision No 1692/96/EC on a Trans-European Transport Network, which adds both limiting and broadening criteria for the selection of seaports, inland ports and intermodal terminals.

2. **Opinion: general comments**

2.1. The Committee of the Regions supports the European Commission's efforts to define more clearly the role of seaports and inland ports in combined transport at European level.

2.2. The Committee refers to its earlier opinions, in which it argued that water and combined transport should be assigned a more central role in European transport policy.

2.3. This should be done within an integrated overall approach to transport policy, with account being taken at the earliest stages of decision-making of spatial planning considerations.

2.4. Other important requirements are greater consideration of the real costs of transport, and a policy for the harmonization of conditions of competition.

2.5. The Committee of the Regions rather regrets that the current proposal for a decision is concerned almost exclusively with goods transport, although ports are an important part of the TEN in relation to passenger transport too.

2.6. The right of European citizens to mobility should be specifically mentioned in view of its social importance; this applies in particular to residents of peripheral areas of Europe. Moreover, the importance of ports in relation to tourism can hardly be overestimated.

2.7. The Committee regrets that the opportunity has not been taken to refine and clarify the criteria and specifications for inland waterway projects of common interest.

2.8. The Committee also fails to understand exactly why many inland ports, whose activity can make a substantial contribution to strengthening the use of the European inland waterway network, have not been included in the maps in Appendix I. The Committee is keen for this inland port network to be substantially strengthened.

2.9. The European inland waterway network must be optimized in the framework of the TEN, and the scale and capacity of a number of cross-border links must be brought up to a sufficient standard. Only then can inland ports play their role to the full.

2.10. With regard to coordination, the Committee shares the view that the development of seaports, inland ports and intermodal terminals is almost entirely market-led.

2.11. The Committee of the Regions particularly welcomes the inclusion of seaports in the Trans-European Networks (TEN), as a means of ensuring seaports can act as interconnection points in the international goods transport system with other interregional modes of transport provided for under the TEN.

2.12. Intermodal transport is an important aspect of a balanced transport policy. The Committee fails to understand exactly why many combined transport terminals, whose activity can make a substantial contribution to greater use of intermodal transport, have not been included in the maps in Appendix I. The Committee is keen for this intermodal network to be substantially strengthened.

2.13. Accordingly, the Committee of the Regions also endorses the Commission's efforts to provide funding for ports as projects of common interest when setting up the Trans-European transport networks. The consideration given to port projects highlights the importance of the seaport as a logistical centre and junction in the European transport system. The assessment and selection of the port projects must, however, be done critically.

2.14. The COR welcomes the fact that there are no proposals to draw up a classification of seaports along

the lines of that provided for in the guidelines for airports, and that the selection of specific ports as 'seaports of European interest' is not planned.

2.15. The COR agrees that TEN budget appropriations should in principle not be used to promote projects in port areas, in order to avoid distortions of competition. The promotion of superstructure projects is thus clearly excluded. The Commission has recognized that individual projects must be considered in the light of their impact on competition.

2.16. The three proposed exceptions to the principle that investment in infrastructure in port areas is not eligible for support are, however, to refer not only to transport management and information systems such as EDI but also to projects which involve combined transport. All the projects described under Appendix II, Section 7 would thus become eligible even when situated within the port area. This would cause considerable distortions of competition, as it would mainly involve superstructure investment for transhipment. This would be tantamount to back-door abolition of the basic criterion that in the port area only infrastructure projects are eligible for support.

2.17. Moreover, the Commission proposals would make it possible to harness the Structural Funds and Cohesion Funds for projects in port areas in assisted regions too, with support for superstructure investment being possible in exceptional cases. The Commission would thus be interfering directly in competition between European seaports. Competition must not, however, be distorted at the expense of the northern ports, as a result of a policy to direct or 'distribute fairly' traffic flows between European ports, whether by means of funding or improved basic conditions. EU measures must not be used to even out competition between European seaports. It is unacceptable that public funding for regional development should compromise the economic viability of private investment in other areas. If, from the point of view of regional policy, certain areas are to be developed, this should be done through the establishment and promotion of industries appropriate to the location. The COR is firmly against any deliberate transfer of existing, well-organized traffic flows.

2.18. There are thus good reasons for Community involvement, but in close consultation with the regions, Member States and local authorities, and with full regard to the principle of subsidiarity.

2.19. Contrary to the assertions of the proposal for a decision, efforts have already been made at a number of policy-making levels to coordinate interconnection points within the framework of an overall transport or mobility plan.

2.20. This will doubtless eventually result in a hierarchy of seaports at European level.

3. Conclusions

3.1. The Committee can initially endorse the criteria for defining seaports, as set out in Appendix 1, and the resulting list of 300 seaports adopted into the TEN. The Committee is also sympathetic to the granting of an exception for islands in the Aegean and Ionian seas.

3.2. At the current stage of development of European transport policy, the Committee can also endorse the criteria for the definition of terminals and inland ports, as set out in Appendix 1 (map).

3.3. Inland ports and intermodal terminals have not been adequately covered in the maps in Appendix I. Many further places fulfil the criteria. The maps, therefore, require supplementing.

3.4. With regard to the projects included in Appendix III, the Committee would point out that in all EU Member States a rapid development is taking place in priority projects and the definition of these, often on the initiative of regional and local authorities.

3.5. It would be better to update Appendix 3 regularly, after a broad round of consultations with the regions and local authorities.

Brussels, 17 September 1998.

The President
of the Committee of the Regions
Manfred DAMMEYER

Opinion of the Committee of the Regions on the 'Proposal for a European Parliament and Council Decision on the coordinated introduction of mobile and wireless communications (UMTS) in the Community'

(98/C 373/04)

THE COMMITTEE OF THE REGIONS,

having regard to the proposal for a European Parliament and Council Decision on the co-ordinated introduction of mobile and wireless communications (UMTS) in the Community [COM(1998) 58 final — 98/0051 (COD)] [1];

having regard to the Council Decision of 24 March 1998, in accordance with the first paragraph of Article 198c of the Treaty establishing the European Community, to consult the Committee on the subject;

having regard to the Bureau Decision of 15 July 1998 to instruct Commission 3: Trans-European Networks, Transport and the Information Society to draw up the relevant opinion;

having regard to the draft opinion (CdR 159/98 rev.) adopted by Commission 3 on 7 July 1998 (rapporteur: Mr Nordström),

at its 25th plenary session of 16 and 17 September 1998 (meeting of 17 September) adopted unanimously the following opinion.

1. Introduction

1.1. The Commission proposal lays down conditions with a view to the coordinated introduction by Member States of the third generation mobile and wireless communications (UMTS) in the European Union on the basis of the existing European Union legal framework. UMTS will offer users a wireless access to the Internet and other multi-media services in addition to mobile telephony and messaging services already available today.

1.2. On 15 October 1997 the Commission presented a Communication on the strategy and policy orientations with regard to the further development of mobile and wireless communications (UMTS). This communication reported on the consultations with Member States and sector players on the basis of a previous communication of 29 May 1997 and set out an action plan for creating a favourable environment for the development of UMTS.

1.3. This decision proposal is a response to the Council's invitation to the Commission 'to submit by early 1998, a proposal for a European Parliament and Council Decision which would enable orientations to be established on the substance of the issue and facilitate within the existing Community legal framework the early licensing of UMTS services and, if appropriate and on the basis of the existing repartition of competencies, in respect of coordinated allocation of frequencies in the Community and pan-European roaming'.

2. Background

2.1. The 1994 Green Paper on mobile and personal communications already stressed the importance of the future development of mobile and personal communications in the Community and at global level. The Community has played a major role in the development of the second generation of mobile communications including GSM and related digital communications services; this is now a great market success with more than 70 million users in more than 110 countries. Mobile communications used to connect computers and to access the Internet as well as satellite-based personal communications systems are also appearing and developing against the background of full opening to competition of telecommunications markets in most Member States on 1 January 1998.

2.2. Building on these developments, the communications industry is developing a strategic vision on the next generation of digital mobile systems referred in Europe as the Universal Mobile Telecommunications System (UMTS). Details of future service concepts and user requirements therefore need to be considered in order to formulate regulatory, frequency and standardization responses at a Community and national level.

2.3. The European market for cellular mobile services including UMTS is expected to reach in the year 2005 over ECU 100 billion in annual revenue with some

[1] OJ C 131, 29.4.1998, p. 9.

200 million subscribers. The global market is expected to grow even faster, in particular in Asia. UMTS should lead to the creation of tens of thousands of new jobs in the Community in a highly advanced and strategic sector of the economy.

2.4. The first phase of UMTS development will lead to the introduction of UMTS services by 2002.

2.5. A strategy for the introduction of UMTS in the European Union, taking into consideration the need to promote the UMTS standard as a key element of the recommendation for the next generation mobile communications (named IMT-2000), is currently in preparation at the International Telecommunications Union (ITU) for implementation in the year 2000: the agreement reached in ETSI on 29 January 1998 on the UMTS radio interface technology now positions UMTS as a strong candidate for acceptance as a global standard in this global context.

3. **Gist of the proposal**

3.1. *Aims and objectives*

3.1.1. The purpose of the decision is to provide without delay at Community level for specific Member State measures regarding the harmonized introduction of UMTS in the European Union; the Licensing Directive or individual action by Member States are not sufficient for this purpose.

3.1.2. A European Union decision is considered to be the most effective way to ensure harmonized and rapid introduction of compatible UMTS services so as to secure Europe-wide roaming of future UMTS services through the timely and Europe-wide availability of frequency spectrum for UMTS as well as common, open and internationally competitive standards to ensure the development of Community-wide and pan-European services.

3.1.3. This decision extends the harmonization process of the Licensing Directive, which involves the CEPT (European Conference of Postal and Telecommunications Administrations) and comitology. This will apply to both general authorizations and to individual licences. The decision also requires that licences be based on European standards developed by the ETSI (European Telecommunications Standards Institute) where available.

3.2. *Summary and content of the proposed decision*

3.2.1. Article 1 defines the basic purpose of the decision.

3.2.2. Article 2 contains the definition of UMTS. Orientations on the substance of the issue are required by the Council. UMTS is a new generation of services which needs to be defined taking into consideration technological progress and work done at the ITU and in the industry. A clear definition of UMTS will be of great help in facilitating the harmonization of UMTS in the European Union.

3.2.3. Article 3 outlines the key principles of coordinated authorization by Member States.

3.2.4. Article 3.1 requires Member States to take all actions necessary in order to allow the harmonized provision of UMTS services on their territory by 1 January 2002 at the latest; Member States will have to establish authorization systems by 1 January 2000.

3.2.5. Article 3.2 provides for frequency harmonization through CEPT and in reference to European standards developed by the ETSI and in particular a common, open and internationally competitive air-interface standard. Moreover, licences need to support roaming throughout the Community.

3.2.6. Article 3.3 requires that the basic characteristics of UMTS as described in Annex I be required by Member States when granting licences.

3.2.7. Article 3.4 provides for a safeguard clause in the case of incompatibility of systems and lack of sufficient frequency spectrum to accommodate all systems: Member States will have to coordinate their authorization procedures in order to authorize compatible UMTS services in the Community.

3.2.8. Article 4 covers roaming rights and obligations.

3.2.9. Article 4.1 requires Member States to ensure that organizations providing UMTS networks have rights and obligations to negotiate roaming agreements with other similar organizations to ensure seamless Community-wide coverage.

3.2.10. Article 4.2 allows Member States to take action, including the promotion of agreement among operators to ensure coverage of less populated areas, within the limits of Community law.

3.2.11. Article 5 establishes cooperation with CEPT. Mandates will be granted to CEPT/ECTRA and CEPT/ERC to harmonize frequency use and conditions attached to authorizations for UMTS networks and services. A timetable is provided in Annex II. On the completion of the mandates, it shall be decided in accordance with the type II b comitology procedure whether the result of the work done pursuant to the mandates shall be made applicable in the Community. Article 5.3 provides for a safeguard in the event of delay in the process.

3.2.12. Article 6 provides for cooperation with the ETSI, where necessary, to promote a common and open standard for the provision of compatible UMTS services, taking into account the global environment at the International Telecommunications Union.

3.2.13. Article 7 establishes the comitology procedure. The committee will be the licensing Committee created by the Licensing Directive 97/13/EC.

3.2.14. Article 8 provides that the Commission shall regularly inform the committee on the results of its consultations and that the committee encourages the exchange of information between the Commission and the Member States on UMTS.

3.2.15. Article 9 covers international aspects. The Commission shall take all necessary measures to facilitate the introduction of UMTS services in third countries and the free circulation of UMTS equipment. It shall seek implementation of existing international agreements and may ask for specific mandates for negotiation of new agreements.

3.2.16. Article 10 requires Member States to provide all information requested by the Commission for the implementation of the decision.

3.2.17. Article 11 contains standard obligations regarding confidentiality.

3.2.18. Article 12 provides that the decision will remain valid for a period of four years.

3.2.19. Article 13 imposes a reporting obligation on the Commission to the Council and the Parliament after two years.

3.2.20. Article 14 contains the standard provision regarding implementation by Member States.

3.2.21. Article 15 provides that the decision shall be addressed to the Member States.

4. COR comments

4.1. The Committee of the Regions welcomes the Commission proposal providing for the effective, far-sighted exploitation of UMTS within the Community. Given the pace of technological change in this field, it is particularly important to give the flexibility needed to update the proposal should future circumstances so demand.

4.2. UMTS will play an important role for the general public and for companies, and — not least — for public authorities which provide important services to the general public.

4.3. UMTS will make it possible to disseminate information and communication, independently of fixed line installations, and thus reach peripheral groups and areas which have proved expensive to service with traditional technology. The Committee of the Regions feels it is particularly important to highlight the UMTS service as just one of the many ways of facilitating the provision of services to, and development of, all regions and municipalities within the European Union.

4.4. The Committee of the Regions would particularly emphasize the importance of the Commission's assertion in the 33rd recital that 'the implementation of UMTS systems and services should take into consideration the needs of potential groups of users working in services of public interest (health, education, transport, environment, etc.)'. These services are largely run by regional and local bodies.

4.5. National governments or regions, according to the level at which authority presently lies are expected to be responsible for licensing UMTS services, and this should make it possible to ensure that the operator will guarantee coverage for sparsely populated areas at reasonable prices. The Committee of the Regions feels this is a particularly important right, and that follow-up provisions should be included to assess whether the right has been respected in practice.

4.6. The licensing authority should see to it that competition is established in the multimedia and Internet services market. This applies to both operators and technology, so that the services can be brought to as many people as possible with transparent pricing.

4.7. The Committee of the Regions would also point out that the UMTS licensing procedure should enable individual countries to give priority to requests for authorization from companies and organizations which are called upon to meet the public communication needs of regional and local bodies. Otherwise, the supply of information and communication services might end up being concentrated on large centrally located companies and organizations.

4.8. The Committee of the Regions would also point out that regional and local bodies are potentially major users of UMTS services. In order to provide them with cost-effective solutions, it is important to have sufficient competition in the various regions and local areas of the Community, and to avoid local or regional monopolies. The Committee of the Regions calls for a licence allocation system which will not raise the price of the licence unnecessarily.

4.9. Finally, the Committee of the Regions would emphasize that the pace of technological change is such that new technology is constantly being introduced; consequently, there is a continuous need for standardization. In connection with this ongoing process, it is important that the Committee of the Regions — which represents the general public and political bodies at local and regional level — should continue to be involved at an early stage.

Brussels, 17 September 1998.

The President
of the Committee of the Regions
Manfred DAMMEYER

Opinion of the Committee of the Regions on the 'Green Paper on the convergence of the telecommunications, media and information technology sectors and the implications for regulation: Towards an information society approach'

(98/C 373/05)

THE COMMITTEE OF THE REGIONS,

having regard to the Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation: Towards an information society approach (COM(97) 623 final);

having regard to the decision taken by the European Commission on 5 December 1997, under the first paragraph of Article 198c of the Treaty establishing the European Community, to consult the Committee of the Regions on the matter;

having regard to the decision taken by the Bureau of the Committee of the Regions on 13 May 1998 to instruct Commission 3 — Trans-European Networks, Transport, Information Society — to draw up the relevant opinion;

having regard to the draft opinion (CdR 149/98 rev) adopted by Commission 3 on 7 July 1998 (rapporteurs: Mr Koivisto and Mr Nash),

adopted unanimously the following opinion at its 25th plenary session of 16 and 17 September 1998 (meeting of 17 September).

The Committee of the Regions

1) considers the launch of a debate on the development of regulation in response to convergence to be of the utmost importance;

2) endorses the Commission's view that regulation should be kept to the bare minimum;

3) believes that extensive international standardization and the global competition it leads to is a better option from the regional standpoint than market protection based mainly on pan-European standards and regulation;

4) points out that the green paper places too much emphasis on market development and not enough on general social objectives; these objectives will undoubtedly accentuate the need for competition legislation;

5) notes that, while convergence entails risks for regions, it offers new opportunities for active players;

6) in assessing the effects of convergence, draws attention to the existence of large regional disparities as regards media and infrastructure, a factor which does not receive adequate attention in the green paper;

7) notes that it is considers the threat posed by convergence to content production in Europe to be a cause for serious concern;

8) does not believe that the positive effects of convergence on the level of total employment will be significant, although there are likely to be major changes in the location of jobs within the sectors affected by convergence;

9) cautions against overestimating the speed of development and stresses that the development of traditional infrastructure in the sectors affected by convergence will continue to be important for the majority of the population for a long time to come;

10) hopes there will be recognition of the important role played in fostering regional cohesion by research projects which enable existing infrastructure to be upgraded;

11) highlights the need to develop a universally applicable code of practice for all communication services in place of legislation, particularly with regard to the protection of privacy, the protection of minors and other public interest objectives. Such a code must go hand in hand with legislation penalizing such offences. European rules may be necessary since it is doubtful whether such legislation at national level will suffice;

12) reminds the Commission of the continuing importance for remote regions of networks which use analogue frequencies and of the reduced opportunities for operators in a competitive environment to undertake replacement investment in these regions, and hopes that these special circumstances will be taken into account when considering the future of frequencies in these regions;

13) considers it important to ensure access to competing information network services in all regions in the future by, for example developing the universal service obligation and exploiting the opportunities offered by convergence;

14) stresses that, in public broadcasting in particular, national and regional operators have far the best information at their disposal for taking decisions on, for example, licensing;

15) believes that the best option in the adaptation of existing regulation is to create a new framework for many on-line and interactive services, to co-exist with those currently applied and needed to be built on to traditional telecommunications and broadcasting services.

16) Recommends, in respect of the options put forward by the Commission, a combination of option 1 and option 2, i.e. the creation of a new framework for on-line and interactive services to co-exist with those currently applied and needed still to be built on.

1. **Background**

1.1. The Commission's Green Paper on the convergence of the telecommunications, media and information technology sectors and the implications for regulation seeks the views of all the players in the communications market with a view to deciding the scope and extent of a regulatory framework to cover this whole area.

1.2. The green paper responds to the requirement for debate. It is deliberately interrogative. It analyses issues, it identifies options and it poses questions for public comment. It does not take positions at this stage nor reach conclusions.

2. **Content of the green paper**

2.1. Convergence in the field of communications is defined at its simplest as the ability of different network platforms to carry essentially similar kinds of services, or the coming together of consumer devices such as the telephone, television and personal computer.

2.2. Perhaps the most radical examples of the diversity of convergence in the telecommunications area is the Internet. The green paper points out that the Internet is both the symbolic and prime driver of convergence. It is a vehicle for the delivery to users of both existing services (electronic mail, video, sound voice telephones and completely new services, e.g. the Worldwide Web). In this context it is interesting to note that the Internet is doubling its number of users each year.

2.3. The Internet has developed differently from traditional broadcasting and the telecommunications services. It has essentially been user-driven. The decentralized nature of the Internet is seen by many as the single main reason for its success. Its convergence of separate communication systems is exemplified in its broadcast content, which is traditionally regulated, and private communication, which is traditionally unregulated. These different traditions constitute one of the main challenges of Internet regulation.

2.4. In the area of economic and industrial competitiveness the green paper points out the danger that if Europe fails to take advantage of the opportunities provided by convergence it could be left behind, as other major trading blocks reap the benefits of a more positive approach.

2.5. The green paper points out that the EU needs to strengthen the competitiveness of its companies so that the public can get the most out of opportunities offered by the media, and so that market growth can be transformed into jobs.

2.6. It also points out the need for greater staff training so that people can be provided with the right mix of skills in an ever changing telecommunications workplace.

2.7. One example that the green paper gives is the regulatory uncertainty that arose during the last French general election campaign, where rules prohibiting the publication of opinion polls one week prior to the election applied to off-line media but not to polls published on the Internet. A number of editors in these circumstances ignored the ban which placed traditional media at a disadvantage.

2.8. It is feared that the process of obtaining regulatory clearance in all Member States and potentially from different regulatory bodies for a particular package of services may create substantial overheads for those wanting to operate on a pan-European basis.

2.9. The green paper identifies some regulatory barriers. These are:

1) definitions;

2) market entry and licensing;

3) access to networks, to conditional access systems and to content;

4) access to frequency spectrum;

5) standards;

6) pricing;

7) individual consumer interests.

2.10. The green paper offers a set of five principles which could offer a common basis for the future approaches in the sectors affected by convergence. These are:

— regulation should be limited to what is strictly necessary to achieve clearly identified objectives;

— future regulatory approaches should respond to the needs of users;

— regulatory decisions should be guided by a need for a clear and predictable framework;

— ensuring full participation in a converged environment;

— independent and effective regulators will be central to a converging environment.

3. General comments

3.1. The Committee of the Regions congratulates the European Commission for launching this very important debate. Although a term of recent origin, convergence is proving to be one of the key concepts of the information society.

3.2. Convergence in both markets and technologies is an intrinsic part of the development of the information society which must be accepted as such, along with its benefits and drawbacks, and which in terms of the form it takes and the regulatory issues it raises does not differ essentially from, for example, the changes currently under way in the financial sector.

3.3. Like the information society in general, convergence implies major structural changes at local and regional level, with a potentially adverse impact on regional development.

3.4. But like the information society too, convergence offers regions new tools and opportunities.

3.5. The primary objective of Union measures to be drawn up on the basis of the green paper and the feedback it generates should be to find a balanced approach which, on the one hand,

a) guarantees cultural development and the competitiveness of markets and the relevant sectors in Europe;

b) but which, on the other hand, ensures that regions are able through their own action, backed up where necessary by EU regional policy, to exploit the opportunities provided by convergence and the development of the information society in general.

3.6. Although convergence has major implications for Europe's regions in particular, the green paper takes no account at all of the regional viewpoint, not even the very marked regional differences in the way the services of the sectors affected by convergence are used. Some studies show that at national level alone the share of the press in the media markets of Member States ranges from 25 % to 75 %, that of television from 9 % to 62 % and that of radio from 3 % to 17 %. Differences between Member States and regions as regards use of the Internet are even larger.

4. **General implications of convergence for regions**

4.1. The Committee of the Regions notes that convergence could have a negative impact on regions and regional cohesion in Europe if:

a) large global companies operating in the content and communications sectors gain a position where they alone can determine the content of information society services and geographical access to these services, in accordance with their own commercial needs;

b) regulation continues to develop solely on the basis of broadcasting and communications technologies;

c) job losses in traditional sectors affected by convergence (radio, television, press) exceed the capacity of mainly small firms to create new jobs in these sectors.

4.2. In the view of the Committee of the Regions, convergence affords regions new opportunities such as:

a) access to the same services via different user interfaces, thus enabling regions to utilize the solution which is the best possible from the point of view of the consumer and the region, such as for example:

— access to the Internet via a computer, television and/or mobile telephone using a fixed data network, a telephone network, satellites, a cable TV network and/or networks originally intended for energy distribution;

— the Internet's driving force in promoting convergence, with the development of new capacity in telecommunications networks and other technical solutions has become an increasingly diversified tool;

b) regardless of location, both private and public producers of information can reach larger numbers of consumers because the options for accessing these services are increasing;

c) convergence is forecast to lead to the setting-up of numerous new small firms whose activities will not be dependent on location.

5. **Convergence and the European Information Society**

5.1. The Committee wishes to draw special attention to the fact that in formulating the questions serving as a basis for debate the Commission gives no indication of its position as regards the kind of information society it would like to see Europe guided towards through, inter alia, regulation of convergence.

5.2. In the green paper the Commission gives clear priority to the general market interest whereas public interest objectives are frequently seen as barriers or factors which passively adapt. Even this is an acceptable starting point, because it is essential for employment that the business sector can respond quickly to change on global markets. The Committee of the Regions nevertheless feels that the easiest way to give shape and substance to regulation would be to state from the outset what kind of information society it is wished to achieve in Europe.

6. **Question 1: The nature and impact of convergence today**

6.1. The green paper describes the many forms which the convergence phenomenon takes. While, of course, these are indicative of the direction of change, overall the volumes involved are still small. The Committee of the Regions notes that it is very difficult on the basis of current trends to forecast consumer behaviour, although ultimately it is the latter which determines the substance and speed of change. Convergence is currently impacting on the behaviour of individuals and businesses at many different levels and in different ways, but having no impact at all on the behaviour of the major part of the population.

6.2. The Committee of the Regions considers the weakened position of European content in the sectors affected by convergence to be a worrying development. Indeed, one of the key issues of the debate is how to secure European content in the light of convergence characterized as a largely market-driven process.

7. **Question 2: The socio-economic, business and consumer impact of convergence**

7.1. The Committee of the Regions considers the job-creation impact of convergence to be a very short-lived phenomenon. It is nonetheless clear that convergence will lead to major changes as regards the location of jobs. It is equally clear that many traditional occupations in the sectors affected by convergence will eventually disappear.

7.2. On the other hand, convergence is conducive to conditions which make it easier for very small but flexible firms to enter the sectors concerned and operate successfully. The cycle of change in the business world is likely to accelerate among the smallest and largest

firms; it is unlikely that a significant number of medium-sized firms will be able to operate in the sectors affected by convergence for a prolonged period in the future.

7.3. Since overall job losses will depend primarily on how easily new small firms can enter the sectors and perhaps on the ability of individuals who lose their jobs to find work on a self-employed basis, a crucial question here is whether the red tape associated with regulation in the sectors will pose insurmountable barriers for new entrants. Looked at from this perspective, ease of entry could mean less regulation (in terms of licensing, etc.) but also stricter regulation, particularly as regards public interest objectives. In that case a comprehensive approach, for example with regard to protection of privacy, will help new businesses and the sectors in general to better understand the content of these objectives.

7.4. Given the major differences that exist between Europe's regions in terms of usage rates and patterns for television, radio, the press, new network services etc., it is only natural that the effects of convergence vary greatly as well. In the case of technological infrastructure (broadband data, cable TV and mobile telephone networks) convergence can be expected to be most rapid and widespread in regions with the highest usage rates.

7.5. The Committee of the Regions draws the Commission's attention to the great differences that currently exist between Member States, and hence regions, as regards use of various means of communication.

7.6. Not even in the most advanced countries do multimedia computers and the Internet enjoy a dominant position, and it is possible that the present rate of growth will level off in the future. Although Europe must remain competitive in this area, the Committee of the Regions takes the view that the definition of objectives and values at enterprise or individual level must not, for a long time yet, be made solely in terms of a business world based on information networks.

7.7. The Committee of the Regions stresses that it must not be forgotten in the debate on convergence in telecommunications that traditional media forms are still very important for Union citizens and democracy, for example. It is therefore necessary to invest in the development of communications media such as digital radio and television as well, and not just in information networks.

7.8. As regards the large differences which exist between regions, the Committee of the Regions attaches particular importance to RTD projects which enable better use to be made of investment that has already been carried out rather than to projects which, if implemented on a wide scale, would require the expenditure of exorbitant sums on infrastructure. It is therefore interesting to note in this context the work which has been done to upgrade the transmission speed of ordinary copper telephone cable to the level required by multimedia.

8. Question 3: Barriers to convergence

8.1. The green paper discusses both existing and potential barriers to convergence. The Committee of the Regions has nothing to add to this list, but would stress that some barriers, such as, for example, fragmentation of public broadcasting and licensing issues in general, are, from the regional point of view, often key factors influencing the supply of content and can with equal justification be regarded as social requirements for convergence.

9. Question 4: The impact of current regulation on convergence

9.1. Market forces are certain to continue to play a key role in regulating development, and convergence both provides an opportunity and imposes an obligation for convergence in legislation and thereby a reduction in legislation. If, as is to be hoped, priority is given to public interest objectives, this is likely to increase the need for competition legislation.

9.2. The green paper gives examples of how the regulatory treatment of a given service differs according to the technology used to deliver it to the consumer. This shows that many of the underlying principles of regulation will have to be called into question. The Committee of the Regions would nevertheless emphasize that, even in the sectors affected by convergence, there are fundamental differences between products so that changing existing principles through convergence in regulation could have undesirable effects.

10. Question 5: Overcoming the barriers — Getting the right regulatory framework for business and for consumers

10.1. The Committee of the Regions takes the view that the technical definitions cited as barriers in the green paper will have to be developed on an ongoing basis by, for example, responding to the convergence process and ensuring that, as far as possible, the same content is accorded the same treatment regardless of the technology which is used to deliver it. The Committee would nevertheless stress that for some means of

communication the latter consideration may be less important from the regulatory point of view than the specific features of the sector concerned.

10.2. The Committee of the Regions would stress that the EU's most important regulatory task is to establish an explicit code of practice which would make it easy for businesses, among others, to take on board e.g. requirements relating to the protection of data affecting personal privacy.

10.3. The green paper proposes giving consideration to the setting of a clear timetable for the termination of analogue services. However, in many regions analogue networks have a long history and are operated by telecommunications firms which are in a monopoly position and whose operating licences or the relevant regulation also include responsibility for geographical coverage. For this reason their geographical coverage is often the most extensive. Moreover, with the liberalization of telecommunications, the new digital wireless services have so far been concentrated mainly in areas where user volumes are highest. Up till now, there has been no indication in countries which have extensive analogue mobile telephone networks that digital services are rapidly replacing analogue services in the most remote regions. The Committee of the Regions therefore considers it to be of the utmost importance to retain the frequencies of analogue networks for the time being whilst deploying the available means to speed up the spread of digital services to those regions which market operators have not considered sufficiently attractive. Rather than set a specific date the timing of the changeover should be linked to the situation prevailing in different regions.

10.4. The Committee would stress that it is in no-one's interest to protect one's own markets by means of standardization. Rather, standardization must take place globally, in particular so as to ensure the provision of services to consumers at an affordable price.

10.5. Since in principle convergence allows the same services to be accessed via different types of interface, it has already had a positive impact on the possibilities of various user groups (for example, people with disabilities) to use these services. Clearly, convergence which is driven by market forces is not, as such, receptive to the special needs of small user groups but with public funding the development of these services will become technically easier and cheaper.

11. Question 6: Securing public interest objectives in the light of convergence

11.1. The public interest objectives mentioned in the green paper include:

— universal service, i.e. the universal availability of specified services at an affordable price;

— public broadcasting;

— ensuring privacy and data protection;

— data security, e.g. encryption and digital signatures;

— cultural diversity;

— protection of minors;

— public order.

11.2. In the view of the Committee of the Regions general regulatory frameworks based on codes of good practice should be developed, particularly with regard to public interest objectives such as data protection, cultural diversity and protection of minors. These rules would be universally known and adopted as key principles by all operators in the sectors affected by convergence. As loopholes are continually coming to light in existing regulation, convergence can help to remedy this situation and at the same time meet public interest objectives.

11.3. The Committee considers achievement of universal service to be a key requirement for the information society in Europe. Convergence offers new ways of achieving this objective by enabling the same services to be accessed easily via different user interfaces and networks.

11.4. Convergence has two implications as regards definitional issues: on the one hand the need to define universal service in terms of a specific technology will diminish; on the other hand in some fields, notably data security, there will be a need for more detailed definitions than at present.

11.5. A considerable number of public service objectives are such that the responsibility for them must be borne uniformly and equally by all operators. The Committee of the Regions also considers it important that in the future the universal service obligation be widened to include at least two genuinely competing options. From the regional point of view, there will continue to be a major need for public broadcasting networks in the future, but these same networks could be put at the disposal of an ever-increasing number of service providers.

11.6. The Committee of the Regions would especially like to draw the Commission's attention to the contradiction which exists in the sectors affected by convergence between free competition and the universal service obligation and hopes that workable definitions can be developed in this regard. For example, some operators are subject to regional obligations while others are free to focus on the best and most lucrative markets. One

option might be to make wider and systematic use of regional policy instruments, such as the Structural Funds, to ensure wide coverage of universal service, in which case it could be decided at regional level what universal service means in each region. Examples of the use of Structural Funds resources to support the implementation of universal service can be found in at least the cohesion countries and Objective 6 regions in Sweden.

11.7. Existing tax systems could be revamped to bring the sectors affected by convergence better within their scope with a view to using public funds to fulfil the universal service obligation and create alternative jobs.

12. **Question 7: The future shape of regulation**

12.1. The Committee of the Regions agrees with the Commission on the need for a reassessment of regulation. The green paper discusses the different levels of regulation from a number of angles. Perhaps the key issue here is whether to regulate primarily on the basis of the technology used to deliver services (data network, radio, telephone, television, etc.) or the content of services, in which case the principles related to, for example, data protection, content, intellectual property rights and even commerce and consumer protection would, as far as possible, be independent of the means of delivery. In the view of the Committee of the Regions, regulation which is directed mainly at the technology used to deliver services is quickly losing its relevance as convergence gathers pace.

12.2. In many Member States regulation is based on principles which are old and partly outmoded. Development of the regulatory framework must, of course, take account of the effects of convergence, as indeed has already been done to some extent. Clearly, each Member State can itself decide on a solution which is the best and most effective in relation to its administrative structures.

12.3. The Committee of the Regions considers that a common regulatory approach is still required in areas such as, for example, allocation of frequencies and licensing so as to ensure smooth and balanced development and that, in principle, existing levels of administration are appropriate for this purpose. Nor should any restrictions be placed on the possibility of local and regional authorities to take decisions pertaining to, for example, providers of services over cable TV networks as authorities at this level have the best knowledge as regards consumer needs.

13. **Question 8: The international aspects of convergence**

13.1. In the view of the Committee of the Regions, the effects of new regulatory measures will be minimal, although they could have a negative impact on the competitiveness of Europe if they are not applied on a global basis.

13.2. In connection with planning additional steps, the Committee of the Regions wishes to draw the Commission's attention to the central role played by local and regional operators in realizing the information society in Europe. The Committee has set out arguments in support of this view in a number of opinions on the information society.

13.3. Consequently, cooperation between EU regions and regions in eastern and central European countries and support for such activities are one of the most important ways of encouraging these countries to exploit the opportunities offered by convergence.

14. **Question 9: Principles and possible approaches in the light of convergence**

14.1. The Committee of the Regions takes the view that convergence will create an entirely new basis for regulation over the next few years and at the same time partly undermine the justification for existing sector-specific regulation.

14.2. The Committee of the Regions would also like to point out that there are several other regulatory mechanisms at work within the Community which have a major impact on convergence but which are not mentioned in the green paper. The most important of these is, of course, taxation.

14.3. The green paper concludes by presenting three options for the development of regulation, given that it is judged that convergence requires adaptation of existing regulatory approaches:

a) seek to build on, and if appropriate, extend existing frameworks, rather than create new ones;

b) create a new framework for many on-line and interactive services, to co-exist with those currently applied to traditional telecommunications and broadcasting activities;

c) seek to create a comprehensive framework applying similar regulatory approaches to all three sectors.

14.4. As far as public broadcasting is concerned, the Committee of the Regions notes that there is no justification for the transfer to Community level of decision-making powers which currently lie with national and, to some extent, regional authorities.

14.5. A considerable part of existing legislation, or at least the principles underpinning it, is directly applicable to electronic services in areas such as intellectual property rights, privacy protection, etc. Similarly, consumer protection requirements in electronic commerce do not differ significantly from those governed by existing rules in other areas.

14.6. The Committee of the Regions considers a combination of the first and second approaches to be the best solution, namely to create the new framework for many on-line and interactive services, to co-exist with those currently applied and needed still to be built on.

Brussels, 17 September 1998.

The President

of the Committee of the Regions

Manfred DAMMEYER

Opinion of the Committee of the Regions on 'The significance of the intra-EU duty free regime to the regions'

(98/C 373/06)

THE COMMITTEE OF THE REGIONS,

having regard to Council Directives 91/680/EEC [1] of 16 December 1991 and 92/12/ECC [2] of 25 February 1992 as they relate to the abolition of the intra-EU duty free regime on 30 June 1999;

having regard to its Bureau decision taken on 12 March 1998, under the fourth paragraph of Article 198c of the Treaty establishing the European Community, to draw up an own-initiative opinion on the subject and to direct Commission 6 — to undertake the preparatory work;

having regard to the EP's Directorate General for Research's Working Document of October 1997 on 'The Economic and Social Consequences of Abolishing Duty Free with the EU' [3];

having regard to the conclusions of the EP public hearing on duty free held on 29 October 1997;

having regard to the 3 April 1998 EP Resolution on the abolition of duty free sales [4];

having regard to the draft opinion (CdR 109/98 rev.) adopted by Commission 6 on 20 July 1998 (Rapporteur: Mrs McCarthy-Fry, Co-rapporteur: Mr Cummins);

whereas the Committee of the Regions has already drawn attention to the importance of tourism and transport infrastructures to the regions, in for example, the following opinions:

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[1] OJ L 376, 31.12.1991.
[2] OJ L 76, 23.3.1992.
[3] EP's Directorate General for Research's Working Document of October 1997 on 'The Economic and Social Consequences of Abolishing Duty Free with the EU' (ref. PE 167.048, W-30).
[4] European Parliament Resolution of 3.4.1998 (ref. PE 268/233).

A policy for the development of rural tourism in the regions of the European Union — CdR 19/95 [1]; Commission Green Paper on the role of the Union in the field of tourism — CdR 376/95 [2]; Proposal for a Council Decision on a first multiannual programme to assist tourism — Philoxenia (1997-2000) — CdR 302/96 fin [3]; Cohesion policy and culture — a contribution to employment — CdR 69/97 fin [4]; Urban cultural tourism and its employment impacts — CdR 422/97 fin;

whereas at the 17 March 1998 Council of Transport Ministers an overwhelming majority of Ministers present called for a Commission study on the economic and social consequences of abolishing duty free with the EU to be undertaken;

whereas at the 19 May 1998 ECOFIN Council a substantial number of Member States expressed their support for a full review of the future of the intra-EU duty free regime,

adopted the following opinion at its 25th plenary session on 16 and 17 September 1998 (meeting of 17 September).

1. **Introduction**

1.1. The Single European Act envisaged the creation by end-1992 of an Internal Market without frontiers in which the free circulation of goods, persons, services and capital is assured. The achievement of the Single Community Market would entail the elimination of technical, physical and fiscal obstacles as factors which divided the markets and economies of the Member States as identified in the Commission's 1985 White Paper on the completion of the Single Market.

1.2. The abolition of the intra-EU duty free system was proposed by the Commission as one measure to complete the Single Market by 1 January 1993. The logic for the abolition of the system as cited by the then responsible Commissioner Scrivener was that the continuation of tax free sales for intra-Community journeys would imply the retention of some kind of frontier controls and would continue to distort the market in goods and of transport.

1.3. The abolition of the intra-EU system required amendments to the common system of value added tax and new legislation on excise duties arrangements. Accordingly, in 1990, the Commission came forward with two proposals, the first concerned transitional arrangements for taxation with a view to establishment of the internal market (the 'Fiscal Frontiers Directive') [5]. The second laid down general arrangements for products subject to excise duty and on the holding and movement of such products ('movement of excisable goods Directive') [6].

1.4. During its debate on the 'Fiscal Frontiers' Proposal in November 1990 the European Parliament noted that that there could be serious social and economic consequences arising from the abolition of tax and duty free trade and called on the Commission to determine these consequences in a report to be presented to the Council and the European Parliament. Commissioner Scrivener confirmed that a study would be carried out, and again in May 1991 responding to a Parliamentary written question Commissioner Scrivener stated that 'The Commission agreed with the wish of the European Parliament concerning a study on the social and regional consequences of the abolition of the fiscal borders, and most of all of the tax-free shops in the areas involved'.

1.5. Similarly, the European Parliament's report on the 'movement of excisable goods' Directive urged that the abolition of intra-EU duty free be postponed until 31 December 1995 in order to allow the industries involved adequate time to adapt and the Commission time to produce its report on the economic and social consequences.

1.6. In November 1991, in a general decision on both the Commission's proposals, the ECOFIN Council agreed that an extension until 30 June, 1999 would be appropriate in order to allow for the necessary measures to be taken 'to deal with both the social repercussions in the sector affected and the regional difficulties, in frontier regions in particular ....'. The 'Fiscal Frontiers' Directive was adopted as amended at this meeting, the

[1] OJ C 210, 14.8.1995, p. 99.
[2] OJ C 126, 29.4.1996, p. 24.
[3] OJ C 42, 10.2.1997, p. 22.
[4] OJ C 379, 15.12.1997, p. 21.
[5] Council Directive 91/680/EEC — OJ L 376, 31.12.1991.
[6] Council Directive No 92/12/EEC — OJ L 76, 23.2.1992.

'movement of excisable goods' Directive was adopted, also with the amended deadline, in February 1992. Thus the transitional regime for duty (i.e. VAT and excise) free was introduced. In order to facilitate the discontinuation of border controls, a vendor control system was later introduced by political agreement on 14 December 1992.

1.7. However, to date no report on the social, economic and regional consequences has been forthcoming from the Commission. When questioned in July 1997 year on the subject during a European Parliament Economic and Monetary Affairs Committee hearing, the Commission stated that in view of the fact that intra-EU duty free was due to be abolished on 30 June, 1999 a study of the social and economic implications would no longer be relevant.

This was not considered satisfactory by the Parliamentary Committee and its Chairman instructed the Parliament's research services to review the available independent economic data, to produce an assessment of the consequences identified and to suggest further areas of research to be undertaken by the Commission. This study [1] was completed in early October and was used as the basis for an EP public hearing on duty free, held on 29 October 1997. The report concluded that 'at a time of high unemployment in much of the European Union, the possibility that ending intra EU duty free will result in substantial job losses cannot be taken lightly. The Commission should carry out its own study, paying particular attention to regional and local effects'.

1.8. On 3 April, 1998, the European Parliament unanimously adopted a Resolution which notes: 'there is considerable concern and apprehension about the consequences of abolition on jobs, regions and transport sectors, especially in peripheral regions and in the sectors of ferry services and regional airports' and calls on the Commission 'to carry out and publish an independent study into the social, economic, regional and revenue consequences of the abolition of duty and tax free sales in the EU as a matter of absolute urgency and no later than 30 September 1998 to ensure that a clearer picture of the situation is available' [2].

1.9. At the ECOFIN Council meeting of 19 May 1998 several Member States expressed their support for a review of the future of intra-EU duty free trade. These countries represent approximately 85,5 % of the population of the EU.

At this ECOFIN meeting, it is understood that the Commission acknowledged that there may be negative impacts arising from the abolition of the system and undertook the presentation of a working document to clarify the existing instruments available to Member States to address the consequences of the abolition of the intra-EU duty-free system. It is expected that this working document will be presented to and discussed at an ECOFIN meeting in Autumn 1998.

2. General Comments

2.1. Research already available would indicate that the abolition of the intra-EU duty free system may give rise to severe social and economic consequences for many regions of the Union, particularly those that rely heavily on the contribution that duty-free trade makes to the viability of regional transport systems and to the promotion of tourism.

2.2. Despite repeated calls, the Commission has not come forward with an independent analysis of the impact of the abolition of the current regime. As the deadline for the discontinuation of the intra-EU system grows closer, many regions and localities are facing an uncertain future. An abundance of conflicting independent studies are gaining currency in the regions the larger part of which paint gloomy scenarios for many regions primarily in terms of job losses across a broad range of sectors from ferry services to tourism and distillers to retailers.

2.3. In view of the EU's commitments to reducing unemployment and to the promotion of economic and social cohesion any perceived threat to a substantial number of jobs spanning a broad range of sectors must be carefully scrutinised. Both short and long term benefits of all EU measures must be carefully weighed up and their appropriateness constantly reviewed.

2.4. With regard to the 1991 Council decision to abolish the intra-EU duty free system with effect from 30 June 1999, the following questions have yet to be fully answered:

2.4.1. Have the circumstances which gave rise to the Council decision to extend the system to June 1999 as opposed to the Commission's proposed deadline of end-December 1992 substantially changed?

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[1] EP's Directorate General for Research's Working Document of October 1997 on 'The Economic and Social Consequences of Abolishing Duty Free with the EU' (ref. PE 167.048, W-30).

[2] European Parliament Resolution of 3.4.1998 (ref. PE 268/23).

2.4.2. Has the Single Market developed to the extent envisaged (in terms of fiscal harmonisation) at the time that the decision was taken?

2.4.3. Has adequate consideration been given to the impact of the discontinuation of the system and have any guidelines been put forward to assist regions and Member States to mitigate any short or long term negative effects that discontinuation may have?

2.4.4. What has been the experience of Member States in applying the 'Fiscal Frontiers' and 'movement of excisable goods' Directives?

2.4.5. Do convincing arguments exist for a further limited extension of the regime beyond 30 June 1999 in order that proper, independent data on potential socio-economic effects of its abolition may be presented?

2.5. In the absence of an independent, Commission study on the social and economic implications of the abolition of the intra-EU duty-free system, data referred to hereafter is based on independent reports from regions, Member States, the various transport and manufacturing sectors and various interest groupings.

3. **Duty Free and the Single Market**

3.1. The abolition of the intra-EU duty-free system was proposed in the context of a Single Market with harmonised rates of VAT and excise duties. In such a market, the abolition of the system had a compelling logic. However in the absence of harmonisation of VAT and excise rates serious distortions of the market have occurred against which the effects on the operation of the Single Market as it stands of an intra-EU duty free system must be measured:

3.1.1. In theory, the coming into being of the Single Market should imply that travellers within the Union could purchase an infinite amount of tax/duty paid goods for export to another Member State. Although significant differences in VAT rates do still exist between neighbouring Member States (e.g. Denmark and Germany), these have not been considered to have given rise to unacceptable trade distortions. In the case of excise rates, differences between Member States are so vast that the Member States have found it impossible to accept complete free movement of duty paid goods. Thus the free movement of duty-paid goods applies only if these goods are personally transported by the traveller and are intended for final consumption. In order to enforce these two preconditions, a set of indicative allowances have been retained for duty paid.

3.1.2. However these indicative allowances are not globally applied and, most notably in high duty countries such as Ireland, Finland, Denmark and Sweden differing regimes concerning maximum quantities and travel-time periods apply. Moreover, the system of indicative allowances does not apply uniformly to all territories of the Union: territories including the Canary Islands, the Heligoland Islands, the territory of Gibraltar among several others continue to apply the same limits to EU travellers as to those from non-EU countries (i.e. duty-free allowances).

3.1.3. The system of indicative allowances for final consumption of duty-paid goods has given rise to losses of VAT and excise duty revenue to government exchequers in Member States which neighbour on others with substantially lower excise duty rates, and has had a negative effect on traders in neighbouring regions with differing excise rates resulting in unfair competition for legitimate traders.

3.1.4. It is clear that in Member States where rates of excise duty are low, there is no substantial difference between duty free and duty paid and that disparities in levels of duties imposed has given rise to far more significant market distortions and complications for traders, travellers and border controllers than the existing intra-EU duty-free system.

3.1.5. In this context of non-harmonised excise and VAT rates and the resulting market distortions to which this lack of harmonisation gives rise should the EU focus remain fixed on the abolition of the comparatively benign intra-EU duty free system given that its premature abolition (i.e. before the creation of the Single Market envisaged by the Commission's own 1985 White Paper) may have severe adverse consequences for those regions which are heavily reliant on it?

4. **Employment** [1]

4.1. It has been estimated that as many as 140 000 EU citizens may see their jobs placed in severe jeopardy should intra-EU duty-free trade be abolished. This figure

[1] In the absence of an independent European Commission report on the subject, all data referred to in sections 4 and 5 of this opinion have been taken primarily from various analyses carried out by individual regions and Member States, the European Parliament, industry associations, trade union associations etc. Oral exchanges with representatives of these sectors have furthermore been taken into account. As such, all data is indicative and based on best approximations of the information available.

takes into account: direct job losses, defined as those jobs at actual duty-free outlets in airports, on board airlines and on ferries; indirect losses, defined as jobs lost in the supporting industries such as harbours, transport links, manufacturers and distributors; and, induced job losses, defined as jobs lost due to a reduced net wage income in the local economy from loss of direct and indirect jobs.

4.1.1. Current available estimates on potential job losses in the aviation sector put figures as high as 30 000 (direct, indirect and induced). This figure is based on an assumption that some 60 % of total profits from tax and duty-free sales will be lost. Such profit loss is likely to lead to an increase in air fares of up to 20 % which in turn may lead to a fall in passenger numbers of as much as 4 %. A fall in passenger numbers will in turn lead to fleet rationalisation, contraction of routes, reduced investment and further job losses in the regions and localities affected.

4.1.2. Increased fares are most likely to negatively impact low-cost and charter services which traditionally are most sensitive to price increases and loss of revenue. Furthermore, these sectors of the industry are also most likely to have a relatively high dependence on intra-EU traffic and the use of smaller regional and secondary airports serving major cities. These airports are, in turn, most often heavily reliant on duty-free sales which provide them with substantial revenues and enable them to maintain landing charges at low levels. Loss of this revenue would lead to increased landing charges which would oblige airlines to increase excursion prices. Reduced consumer demand brought about by raised prices could result in the withdrawal of services from marginal routes and even the closure of some regional airports.

4.1.3. As regards ferry services, studies carried out in relation to Ireland, the UK, Germany and Scandinavia have indicated an estimated 50 000 job losses, 18-20 000 of which would come from operators and supporting industries with a further 5-7 000 lost through effects on the regions and localities. The same source further estimates that as many as 26-27 000 jobs particularly relating to tourism in these countries will be lost. These estimates are based on a foreseen price increase of 30 % on tickets for these services following the loss of revenue from duty-free sales. Such a price increase could see a major drop in demand for these services and, ultimately the axing of between 25 and 30 routes in northern Europe. The estimated dependence of ferry services on revenue from duty-free sales in these countries ranges from approximately 65 % in Finland to 30 % in Ireland.

4.1.4. Already, clear examples of the impact of the abolition of the intra-EU duty-free regime on employment in the aviation and maritime sectors are available. According to the European Federation of Transport Unions and various regional representatives, redundancy notices have already been issued to workers on certain ferry routes operating out of Schleswig-Holstein, Denmark, and between Jakobstad and Skellaftea, and with effect from April 1998, a certain UK airline has reduced its cabin crew on intra-EU flights in anticipation of the abolition of duty-free sales on these services. In all these cases, the direct reason cited by the companies concerned has been the future abolition of intra-EU duty-free sales.

4.1.5. The timing of the proposed abolition of the intra-EU duty-free system represents a double blow for ferry services specifically in light of the obligatory implementation of SOLAS 95 — regulatory standards enforceable after 1999. SOLAS 95 was adopted as a consequence of the Estonia ferry tragedy and has meant that ferry operators have had to invest in new ships or in major upgrades of existing fleet in order to comply with the stringent standards it introduces.

4.1.6. Over and above the inevitable loss of jobs in the retailing and transport sectors, the abolition of duty free is also likely to affect certain traditional regional manufacturing industries. For example, the Cognac producing region of France has estimated that at least 3 000 jobs will be lost in the region including direct, indirect and induced employment whereas the Scotch whisky industry is expecting falls in sales of 201 million ECU in 1999 with the resulting loss of 1 000 jobs mainly in peripheral areas of Scotland where unemployment is already unacceptably high.

4.1.7. Although all the abovementioned estimates must be regarded with some caution given that they are derived from a number of independent reports based on varying methodologies and a generalisation of local conditions, even the possibility of the abolition of the intra-EU duty-free system giving rise to significant job losses must be viewed with great concern. This concern becomes even more acute when it is generally recognised that job losses resulting from the measure will, inevitably, have the most negative effect on peripheral regional economies.

5. **Tourism**

5.1. Should the abolition of intra-EU duty free give rise to increased travel costs, within the EU, cost

conscious travellers may well choose non-EU destinations in order to minimise travel costs. Countries most likely to benefit from this shift would include North African resorts at the expense of Spain, Portugal and Italy and Cyprus and Turkey at the expense of Greece.

6. **Conclusions**

6.1. The COR urges the Commission, Council, European Parliament and Member States to step up the process of completion of the single market, in order to remove all market distortions.

6.2. However, the COR is of the opinion that the abolition of duty-free sales on 30 June 1999 will result in severe consequences for regional employment, local transport infrastructures, access costs and the EU tourism sector.

6.3. The COR supports the drafting by the Commission of a comprehensive report on the impact of the abolition of the current regime.

6.3.1. Pending the presentation by the Commission of its working document on the Community funds and national subsidies which may be made available to relieve any difficulties arising from duty-free abolition, particularly in relation to the impact on the peripheral regions of the EU; the COR is not convinced that even if such measures were in keeping with EU competition rules, that they provide the best solution.

6.4. In view of the abovementioned negative consequences of the abolition of the intra-EU duty free system prior to the envisaged EU-wide harmonised system of VAT and excise duties, and the presentation of an extensive independent report on socio-economic consequences from the Commission the COR does not consider that the planned abolition is appropriate at this time.

6.5. The COR is in favour of a continued extension of the current regime for a further period of five years, during which time it recommends the setting-up of a Commission task force comprising representatives of the various interests groupings (economic, social and other actors) along with national, regional and local authority representatives. This task force will have as its remit, a thorough investigation of the consequences of the abolition of the current intra-EU duty-free regime with a view to coming forward with concrete proposals for a successor system.

The COR recommends that its President not only forwards this Opinion to the Council, the Commission but also to the European Parliament, and the Governments of the Member States.

Brussels, 17 September 1998.

The President

of the Committee of the Regions

Manfred DAMMEYER