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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'XXVIIIth Report on Competition Policy (1998)'

(2000/C 51/01)

On 31 May 1999 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'XXVIIIth Report on Competition Policy (1998)'.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 November 1999. The Rapporteur was Mr Bagliano.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 97 votes to 1 with 2 abstentions.

1. The XXVIIIth Report on Competition Policy is of particular importance, not only because it documents the Commission's outstanding administrative and legislative work, but first and foremost because it provides an early interpretation, in terms of action and initiatives, of the marked changes characterising the Community's new competition policy. There are two keys to understanding the 1998 report: the first is modernisation and the second is cooperation. These are the keys to the Commission's future scenario for competition policy.

1.1. In 1998, the Commission's supervisory activities as well as its initiatives and proposals already reflected the modernising approach made necessary by globalisation: in other words, the need to take account of an outside world which is changing much faster than in the past. The Commission fully expressed its awareness of this in the new regulatory and legislative approach to vertical agreements and in the subsequent highly innovative White Paper which was formally adopted in early 1999.

1.2. Such modernisation is also necessary and urgent at this key stage in the completion of the single market on account of the powerful influence on competition policy of the widespread restructuring under way on the European market, which is partly a result of increasing company merger initiatives. This is combined with the beneficial and invigorating effects on the Community economy of the introduction of the single currency and the rapid public sector liberalisation processes.

1.3. The road ahead is therefore clearly mapped out. It is consistent with past action, but is mainly geared to ensuring rapid and constant adjustment to current and future changes: most urgently, the numerous problems arising from EU enlargement. To meet these new commitments and increased responsibilities, a new way of shaping and implementing cooperation must be found — not only with but also between Member State authorities and judiciaries. All parties in any way involved must be in a position to cooperate with each other in the interests of the fair competition between companies which it is competition policy's task to guarantee. All future plans and action must, however, be placed in an international context.

2. The XXVIIIth Report on Competition Policy is preceded by an introduction which briefly outlines the content of the report itself. The question of international cooperation, however, is dealt with separately in a foreword by Commissioner Van Miert. The Committee sees this as intended to place particularly strong emphasis on the international aspect of competition policy, and hopes that it will form an integral part of the report rather than an addition — however prestigious this may be, bearing Commissioner Van Miert's signature.

2.1. The Committee welcomes the decision to give this year's preface over to the Commission's work at international level, in view of the growing importance of the international dimension. As the Commissioner acknowledges, his proposal for competition policy to be seen in a broader perspective echoes the Committee's oft-repeated call.

2.2. The comment that the ever-increasing integration of the world economy is creating an unprecedented interdependency between countries is perfectly accurate. Interdependency has not only now become one of the defining features of the current economic situation, but is set to grow still further in tandem with the irreversible globalisation process. Against this backdrop, competition issues also take on a necessarily global dimension. International cooperation is therefore essential.

2.3. Cooperation with the United States, under an agreement dating back to 1991 (but, as the Commissioner points out, coming into force in 1995), confirms that bilateral agreements can be highly effective. The results of action on bilateral cooperation with a view to enlargement also confirm that the Commission is moving in the right direction. The Committee, however, agrees with the Commissioner that steps need to be made towards multilateral agreements as a matter of urgency. Progress here is much more difficult, but it is the only possible path: efforts must be stepped up.

2.4. Under these circumstances, the aim of establishing 'a comprehensive worldwide multilateral framework, providing for the application of a basic set of common competition rules' comes to the fore. The WTO working group is examining proposals on the best approach to adopt, and should be encouraged and supported in every way possible.

In its opinion [1] on the XIXth annual report, the Committee concluded that

'although the final goal may seem distant, work should continue on the internationalisation of antitrust rules, and harmonisation (even partial and gradual) of the rules of international trade'. Almost a decade has passed: the 'one-step-at-a-time' policy needs to speed up or it will be left trailing by events.

A stronger political will is now needed. This is a further challenge, which needs to be faced gradually but determinedly.

2.5. In the meantime, 'turmoil and uncertainty' are increasing 'the threat posed by anticompetitive practices'. Further on in his introduction, the Commissioner makes the following comment, as courageous as it is important: 'so-called "crony capitalism" meant that competition between firms was very often foregone in favour of opaque arrangements which have very little to do with market forces. I am convinced that the pursuit of a robust competition policy, at both the national and the international level, would provide an important antidote to such tendencies by promoting the competitiveness of industry, decentralising commercial decision-making, fostering innovation and maximising consumer welfare'.

The WTO's role will be crucial in this respect. The Committee hopes that this acknowledgement on the part of the outgoing commissioner will be fully matched by both his successor and the Commission as a whole in the exercise of its full powers. To cite the most notorious case only (which has had a major impact on the Community's economy, and is also damaging to the majority of developing countries), the fixing of oil prices by international cartels must no longer be tolerated.

3. The Commission was highly active in 1998 at both the legislative and administrative levels under its programme of modernisation of Community competition law. This represents yet another challenge, going beyond the simple replacement of one law with another. The Commission also imposed severe penalties in cases of market partitioning, price cartels and abuses of dominant market position. In practice, modernisation — synonymous with 'refocusing' — has meant concentrating 'on those cases where the Community interest is manifest'. The policy is undergoing consolidation and is giving rise to ambitious projects for change. The Committee supports the Commission's interesting initiatives and action in this direction.

4. The notice on cooperation between Community and national competition authorities seems to be producing its first results, as reflected in effective collaboration (exchange of information on notifications, joint handling). The anomaly

[1] OJ C 60, 6.3.1991, p.19.

whereby seven national authorities are still not authorised to apply Articles 81 and 82, however, remains unresolved. In this connection, the Committee would repeat its insistence on the urgent need for harmonisation of national legislation on competition through the application of Articles 81 and 82, as a prerequisite for any improvement in cooperation and, above all, for effective decentralisation. It also hopes that this 'harmonisation' will encompass the principles underpinning national legislation on competition.

4.1. The Commission should devote a chapter (including comparative tables) of its annual report to the state of application of Community (as well as national) competition law in each Member State. This would also serve to assess the degree of transposition, as well as decentralisation, actually achieved. Here, the Committee wonders which of the effects of insufficient harmonisation in the different Member States are most damaging. It should be borne in mind that markets are still segmented and national diversities still strong, and that a number of dominant national positions remain in existence and have major, serious distorting effects on competition. A carefully-planned information campaign will be needed if greater transparency is to be achieved. Harmonisation takes time. Pending more substantial results, it might be necessary to look into at least specific supervisory instruments, with the same aim of preventing distortion or unduly advantageous positions.

5. Liberalisation has proceeded apace in telecommunications, but has been slower in the energy sector. The Committee views these sectors as providing a considerable spur for competitiveness and for consolidating and invigorating the single market.

5.1. In this context, the Commission should also examine the overall effects of liberalisation processes, and of the ending of certain monopolies. The purpose would not, of course, be to try to turn the clock back, but to fine-tune supervision and identify new trends or signs of change at an early stage. A further aim would be to keep a close eye on the possibly significant repercussions for employment. The Committee suggests that following an in-depth ad-hoc investigation, the Commission should publish periodical information reports and updates. These would be of great value to economic operators as well as to national institutions and authorities.

6. Legislative activity in the field of vertical agreements and state aid has been particularly intense [1]. Real reform, as part of the broader reform contained in the White Paper on modernisation, adopted in early 1999 [2], has been set in train. It provides the legislative ground-work for the new criterion for interpreting competition rules, which should henceforth place the emphasis on economic rather than legal or formalistic aspects. The Committee, which has already voiced its approval of the relevant options set out in the Green Paper, is drawing up an opinion on this matter, but wishes at this stage to acknowledge the Commission's consistency and clear, responsible vision of the problems.

7. The Commission has taken landmark decisions and imposed fines in application of the Merger Regulation. These decisions have always provided thorough documentation, in-depth analysis and solid economic and legal reasoning to back the conclusions reached.

7.1. Here again, however, the Committee believes that the time has come for the effects of this action to be verified, including at international level, as they may generate new forms of oligopoly or even monopoly, with repercussions on the Community market. The Committee calls upon the Commission to add to its annual report by including the results of its checks on the effects of formal commitments entered into by companies in the first and second phases of conditionally authorised merger operations. It must be borne in mind, particularly with regard to the employment market — to which the Committee is always highly attentive — that jobs in traditional sectors are contracting, having been decimated over recent years by automation and, more recently, by the unstoppable processes of relocation. Factories are switched, in part or in whole, to countries with lower labour costs, as a result of non-compliance with the ILO's minimum key standards. Competition policy cannot afford to overlook these aspects: it must be fleshed out and integrated — here again, by means of cooperation, first and foremost within the Commission itself — if application of competition rules is to be the result of a real Community policy.

7.2. Individual Member State markets must also be supervised for this purpose, so that concern for the global dimension does not have the effect of downgrading the importance — which is clearly primordial — of an efficient, competitive and expanding internal market. Many further mergers and concentrations may be expected to take place in the future, and at a faster pace. The speed of change in market and production structures inside and outside the single market must be matched by swift adjustment of rules and controls.

[1] OJ C 270, 24.9.1999, p.7.

[2] COM(1999) 101 final, 12.5.1999.

8. In the area of state aid the Commission defined its aim as being 'to improve transparency and legal certainty, to make the state aid monitoring system more efficient, to reinforce vetting, in particular in cases involving large volumes of ad hoc aid, and to simplify the monitoring system for more minor cases'. The Committee supports this objective as a matter of course.

8.1. The Commission's regulatory activity has also been intense in this area. A regulation aimed at codifying the various aspects of the monitoring system while strengthening its powers was proposed, and has now come into force. It will clearly be a valuable instrument in managing competition policy in the highly sensitive area of state aid. The Commission has in any case always acted with dispassionate objectivity and down-to-earth realism. The innovative proposal for a regulation enabling the Commission to exempt certain categories of horizontal aid from the notification requirement also appears to reflect a healthily pragmatic approach, and naturally meets with the Committee's support.

8.2. The Committee also welcomes the new framework on training aid. Facilitating training initiatives is a secure medium-term investment which will help to boost social and economic stability within the Member States. More, however, needs to be done. A competition policy that is in line with current circumstances and with the needs of European integration must facilitate all initiatives designed to encourage and stimulate employment.

8.3. Aid should in principle be progressively reduced, as the Committee has always recommended. The Treaty, however, makes provision for such aid within a competition policy which is simultaneously designed to help secure the cohesion targets also pursued by other Community policies.

8.4. With regard to regional policy, in March 1998 the Commission adopted an important document: the guidelines on national regional aid, which simplifies and updates the criteria for applying Treaty rules. The Committee agrees with the principles and with the evaluation and monitoring mechanisms set out in the document.

8.5. The Committee must, however, once again point to the very different situations in the various Member States, which continue to counteract all cohesion policies with clear implications for competition.

8.6. In this regard, the annual report on competition should also assess the effects of Community 'aid', which has mushroomed over recent years, now accounting for a considerable portion of public aid within the EU. A new concept of 'public aid' needs to be adopted, including not only state aid — at national and regional level — but also Community aid.

8.7. The CEEC are quite another matter. In paragraph 300 of the XXVIIIth Report on Competition Policy, the Commission acknowledges that 'In contrast to antitrust policy, the introduction of state aid control in the CEEC has proven to be much more controversial and difficult to bring about ... a lot of work remains to be done. The most urgent priority is to create transparency ...'. The situation is also extremely diverse: an extreme example might be heavy industry, which is in state hands to the tune of 80%. The adjustment process will be lengthy. The Committee is aware of these circumstances and difficulties, but for this very reason would again urge the Commission this year to exercise careful supervision of these problems and play an active part in any contacts or negotiations.

9. The outlook for competition policy, confronted with the dual challenge of enlargement and globalisation, can be reasonably bright provided simplification and modernisation are pursued more vigorously. The drive to modernise and reform brings a need for an overall review which should also serve to trigger new measures to encourage training, foster initiatives in the most innovative and hi-tech sectors, and map out new types of jobs.

9.1. The quickening pace of market globalisation has accentuated the role of innovation as the trump card for the more advanced economies, which must counter the aggressive, cost-based policies of the recently industrialised countries. In this setting, only strong investment in innovation can shield the developed countries from the competition, based on price and rising product quality, offered by their new competitors. In spite of this awareness of the strategic value of innovation and of the new technologies, the Committee notes some hesitation in seizing the related opportunities for modernisation and growth. Community competition policy must seek out appropriate areas in which to act as a driving and sustaining force, and to create the most advantageous reference framework for businesses, within which they must make choices, take decisions, place investments and take risks. This is where competition policy links in with other Community policies.

10. Competition policy is not simply a matter of legal processes, penalties and controls. Nor is it divorced from other Community policies. It should not be isolated from them, nor should it seek to distance itself from them. Consultation and

cooperation must be stepped up within the Commission. New trends must be detected and interpreted. The Commission possesses a tried and tested machine in its Competition Directorate-General: it can use it to learn about and understand change and to 'refocus' all its own policies promptly and consistently. The challenges of enlargement, globalisation and the single currency demand a more rigorous, and at the same time more far-sighted competition policy, backed up by a stronger and more active Commission presence at all international levels.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Commission Regulation on the application of Article 81(3) of the EC Treaty to categories of vertical agreements and concerted practices' [1]

(2000/C 51/02)

On 21 October 1999, the Economic and Social Committee, acting under Rule 23(2) of its Rules of Procedure, decided to draw up an Opinion on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 November 1999. The rapporteur was Mr Regaldo.

At its 368th plenary session (meeting of 8 December 1999) the Economic and Social Committee adopted the following opinion by 100 votes to one.

1. **Introduction**

1.1. The Commission's draft regulation on the application of Treaty Article 81(3) to vertical agreements, and the accompanying draft guidelines, were the fruit of a long debate on the need for a thorough reform of competition policy in this area.

1.2. The reform process began in 1997 with the publication of a Green Paper on Community competition policy and vertical restraints [2]. This was followed in 1998 by a Communication [3] in which the Commission outlined a new policy whose implementation would require changes to the current regulatory framework, by means of:

— an amendment to Council Regulation No. 19/65 EEC, in order to extend the powers assigned to the Commission under Article 85(3) of the Treaty to categories of agreements and concerted practices, for the purposes of decentralisation;

— an amendment to Article 4(2) of Council Regulation No. 17, the first implementing regulation for Articles 85-86 of the Treaty, to enable the Commission to exempt vertical agreements retroactively when notification takes place at a later point;

— the two Regulations No. 1215/99 and 1216/99, adopted by the Council on 10 June 1999.

1.3. The new legislation is designed to replace the Commission's existing exemption regulations relating to exclusive distribution agreements (Regulation No. 1983/83), exclusive purchase (Regulation No. 1984/83) and franchising (Regulation No. 4087/88). It also covers selective distribution, which was not previously subject to exemption [with the exception

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(1) OJ C 270, 24.9.1999.

(2) COM(96) 721 final of 22.01.97, ESC Opinion OJ C 296, 29.09.1997.

(3) COM(1998) 544 final and COM(98) 546 final, both OJ C 365, 26.11.1998, ESC Opinion OJ C 116, 28.4.1999.

of the motor-vehicle industry (exemption Regulation No. 1475/95), whose specific rules arose from complex reasons, which are still valid and which are currently under re-evaluation by the Commission].

1.4. The new Regulation will enter into force on 1 June 2000, subject to Article 12 which will extend the period of validity of the three above-mentioned regulations from 1 January 2000 until 31 May 2000. Furthermore, those agreements that were already in force on 31 May 2000 and that meet exemption conditions laid down by the current (EEC) regulations will benefit from a transitional period until 1 January 2002.

2. **General comments**

2.1. The Committee welcomes the broad lines of the proposed reform, as much of it mirrors the recommendations made by the Committee in previous opinions on the Green Paper and on the proposed amendments to Regulations 19/65 and 17/62, including the Commission Communication on the application of competition rules to the vertical restraints, accompanying the two proposals. (See aforementioned opinions for further information).

2.2. The Committee would also point out that the proposed reform regarding vertical agreements (first phase) and the White Paper on modernising competition rules (Articles 81-82) [1] (second phase), which is the forerunner of a major procedural overhaul based largely on removing the notification burden and on decentralising competition rules to give national authorities a greater role, will completely transform the system that has governed competition law in the area of agreements for forty years.

2.3. For more information on the White Paper and the issues relating to its application, see the Committee's specific opinion on this subject. One important point is that the White Paper reforms have already been anticipated in part by the rules on vertical agreements, which are certainly not immune from the risks linked to decentralising the application of Articles 81 and 82 to national level with the switch to the system of legal exceptions: risks such as the non-uniform application of the rules, market fragmentation and possibly even the risk that competition policy will be applied differently in the various Member States in cases above the 30% threshold, in the light of the non-binding nature of the Guidelines.

2.4. On these last-mentioned matters, the Committee would repeat the point it made in a previous opinion on the 'one-stop shop' in Europe, which should be given top priority in the event of decentralised application.

2.5. However, the Committee welcomes the fact that in general the new regulation confirms the Commission's intention to move away from central control by doing away with prior notification and to treat vertical agreements not only as being potentially good for competition, but also as being generally less harmful than horizontal agreements, where neither supplier nor buyer has a high degree of market power. It is also accepted that effective inter-brand competition can offset the limitations of intra-brand competition (between distributors of the same brand).

2.6. The new reform substantially modifies the current extensive legalistic interpretation of Article 81, since by introducing the concept of market power, widening the scope of the block exemption and simplifying the mechanism for notifying agreements, in essence it considerably increases the freedom of action for economic operators to respond to market dynamics with the necessary flexibility by drawing up agreements which operate in a context of reasonable legal security.

2.7. Thus, the existing block exemptions will be replaced with a single framework regulation which exempts all vertical restraints, subject to a so-called black-list of hard-core restraints which cannot be block exempted.

2.7.1. Introducing a threshold of 30 % of market share creates a safety margin which will make it possible to distinguish agreements presumed to be legitimate (below the threshold) from those (above the threshold) which, although not necessarily illicit, could call for individual examination.

2.8. This new regulatory framework, based on an economic type of approach in which vertical agreements are analysed in their market context and on the basis of the effects produced in that context, is accompanied by the Guidelines which are indispensable for making the Commission's policy under Article 81 more predictable for companies.

2.9. The Committee recalls that competition law does not always ensure fair competition. This means that an effective regulatory framework enforced by effective competition authorities will always be needed to avoid the abuse of market power.

[1] COM(1999) 101 final of 28.4.1999.

3. **Specific comments**

3.1. *Scope of the block exemption (Article 1)*

3.1.1. The Committee notes that the new block exemption regulation will enable those who have concluded vertical agreements, including exclusive distribution, exclusive purchasing, selective distribution and franchising, to have greater flexibility and better meet their commercial needs, thereby reducing the need to adapt such agreements to the constraints of existing block exemptions. The Committee welcomes the fact that the new block exemption has been extended to a wider range of activities carried on by the distributor, including supply and/or purchase of goods intended for resale and the marketing of services and intermediate goods.

3.1.1.1. The Committee also notes with approval the wider definition of vertical agreements contained in the latest draft. By defining the relationship between the parties only for the purposes of the agreement rather than in respect of any other unrelated activities of either party, the Commission ensures that the block exemption will be available to those parties who are realistically in a vertical relationship.

3.1.2. The Committee also welcomes the inclusion of vertical agreements between associations of SME distributors since that meets the point raised by the Committee in its earlier opinion.

3.1.2.1. However, the Committee notes Footnote 12 to Guideline No. 27 that, in cases where the turnover threshold of EUR 50 million is exceeded by a limited number of undertakings, a positive assessment of individual notifications would be possible.

3.1.3. The Committee welcomes the clarification (given in Art. 1.3) of the extent to which vertical agreements with ancillary restrictions relating to intellectual property rights are included in the block exemption.

3.1.4. The Committee suggests that the Guidelines should better explain how the Commission intends to interpret the notion of 'potential competitor', and draws the Commission's attention to the fact that a realistic interpretation of this notion is necessary in order to prevent a large number of industrial supply agreements from falling outside the scope of the block exemption.

3.1.5. The Committee welcomes the clarification of the relationship between the Technology Transfer Regulation and the new Block Exemption.

3.1.6. The Committee notes that the Commission is proposing to tighten up the application of the first paragraph of Article 81 to relations with commercial agents. The requirement that the commercial agent should not assume any financial or commercial risk flies in the face of economic reality and would cause enormous upheaval in the marketing networks of a wide range of sectors in the European economy. The narrow distinction with regard to risk-allocation is further aggravated by the 'black list' of dangerous activities (point 17).

The Committee asks the Commission to review its attitude and, in particular, to further clarify the criterion of 'financial and commercial risk' in connection with 'agency agreements'.

3.1.7. With reference to 'de minimis' agreements, the Committee hopes that the Commission will be able to follow up the re-examination decided by the Council on 4 June 1999 [1], and in line with the new approach to vertical agreements based on economic criteria will examine the undesirability of applying a list of negative clauses to agreements of lesser importance below the threshold of 10 % of market share.

3.2. *Market shares (Article 2)*

3.2.1. The Committee is pleased that its recommendation for a single threshold of 30% was accepted.

3.2.2. The Committee is pleased that the Commission has responded also to its concerns about the difficulties of calculating market share. It welcomes the response to its call for guidelines to calculate market share which deal with the specific issues arising in the context of vertical agreements and go beyond the Commission's Communication on Defining Relevant Markets. It also applauds Guideline 55 which emphasizes that there will be no fines where the parties make a good faith assumption that the threshold was not exceeded.

3.2.2.1. In the Committee's view, identification of the relevant market should be made clearer in the context of the guidelines through a series of significant examples to help undertakings define their market share at the regional, national and European levels.

3.2.3. The Committee would point out, subject to further analysis, that the complexity of the subject covered calls for guidelines which, using easily comprehensible language and on the basis of a set of examples interpreting various market situations, will enable operators to act on the market with the highest possible level of security.

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[1] Council of 4 June 1999 - Minutes No. 8958/99 Add. 1.

3.2.3.1. This applies particularly to cases of highly dynamic markets, where self-assessment by companies of both the relevant product market and the geographical market may prove to be a difficult task. An undesirable consequence could be an attempt by undertakings to seek refuge in notification to ensure legal security.

3.2.4. The Committee acknowledges and appreciates the effort made by the Commission to provide undertakings, through the guidelines, with a useful instrument for assessing for themselves the agreements and their compatibility with the competition rules of the European Community; however, it feels that an effort at synthesis and greater concentration on the really sensitive aspects mentioned above is not only desirable but necessary before the new regulation comes into force.

3.2.5. Moreover, the Committee does not find in the guidelines presented by the Commission any provision for a rapid-referral structure to enable operators in difficulty to receive precise answers on the application of the regulation and of the criteria in the guidelines.

3.2.6. The Committee points out that Article 2(2) of the new Regulation only partly takes account of the concerns expressed in earlier opinions about the need to take sufficient account of SMEs in the case of distribution contracts concluded with a grantor who holds a market share lower than the threshold, which in the absence of basic restraints will escape any control. It notes that at present, apart from the motor-vehicle sector which remains excluded for the reasons mentioned above, the SMEs run the risk of seeing their contractual position weakened.

3.2.7. The Committee renews its request for the Commission to insert clauses to limit, in the case under consideration, the powers of grantors in relation to distribution SMEs, or which at least would provide SMEs with effective safeguards. In this way, the consumer would also be better safeguarded: it is worth reiterating that the consumer must derive practical benefit from the vertical agreements.

3.2.8. The Committee points out that the draft single regulation on block exemption would put an end to the current exemption regulations on agreements covering exclusive sales, exclusive purchase and franchising.

3.2.8.1. In order to avoid lower levels of protection for SMEs operating in the context of agreements covered by these regulations, the Committee thinks it necessary for the guidelines to incorporate these specific points, which caused them to be adopted in the application of the new single regulation.

3.2.9. The purpose of this is to avoid the imposition on distribution SMEs of obligations likely to worsen their commercial position and make them too dependent on suppliers; this was already covered by some provisions of Regulation No. 1984/83 on agreements on exclusive purchase of beer, and agreements covering petrol distribution. The new regulation, by placing all distributors on the same footing, removes these provisions and thus arbitrarily reduces economic protection for the reseller.

3.3. *Above the threshold (30 %)*

3.3.1. The Committee particularly welcomes the Commission's statement that above the 30 % threshold, vertical agreements will not be presumed to be illegal and that individual examination by the authorities will not be automatic. It also welcomes the policy that individual cases will need to be assessed in economic terms with attention paid not only to market share but also to the state of interbrand competition in the market. This implies acceptance of intrabrand restraints even above the threshold in competitive markets. Equally importantly, it suggests that the current reform of vertical agreements will be in line with proposals for the modernization of competition policy.

3.3.2. The Committee is also pleased to note that precautionary notification as set out in Art. 4 (2) of 17/62 is no longer needed. By allowing vertical agreements exemption even if notification occurs after the entry date of an agreement, this will reduce pressure to notify on firms in marginal circumstances and allow the Competition DG to concentrate on the more important cases that come to its attention.

3.3.3. The Committee welcomes the Commission's policy of encouraging self-assessment by companies. The Committee hopes however that the Commission will remain open to informal advice and one day offer a quick look facility to firms who on reasonable grounds are unsure of their position.

3.3.3.1. However, it stresses that such a modification must not prevent firms which after self-assessment think that they have exceeded the market share from notifying immediately after the conclusion of the agreement to avoid too many opportunistic disputes.

3.3.3.2. Moreover, the Committee is very surprised to note that in the Guidelines (55) the Commission suggests there should be notification only in cases where there is a dispute; otherwise the Commission, in applying the competition rules, will not give priority to notification of individual agreements.

3.4. *Hard-core Restrictions (Article 3)*

3.4.1. The Committee welcomes the reduction of the list of hard-core restrictions.

3.4.2. The Committee also welcomes the exemption of maximum resale price and recommended resale prices from the price fixing restriction in Art. 3(a).

In addition, this implies that similar national provisions will remain valid in the future legal framework.

3.4.3. The Committee would also point out that revision of the 'de minimis' is necessary for franchising SMEs, which, in order to secure respect for the identity of the network and to have the necessary means to benefit from economies of scale, must be able to resort to certain clauses restricting competition such as exclusiveness of supply.

3.4.4. The Committee appreciates that Article 3 b) of the regulation allows the supplier the option of limiting active resales into an exclusive contractual territory or customer group, obviously allowing full scope for passive resales.

3.4.5. In this connection it is interesting to note how in the Guidelines (42) the Commission generally considers that the use of Internet for advertising or sales purposes should be regarded as passive resale where it is not specifically directed at individual customers. In contrast, e-mail messages not solicited by customers are regarded as an active form of resale.

3.4.5.1. This interpretation, which the Committee shares, will undoubtedly be useful also to the other Commission departments which for various reasons are concerned with electronic trade and the use of the Internet, although not always holding the same view on how electronic trade should be consistently regulated.

3.4.5.2. The Committee calls for a rapid initiative to create legal certainty on this issue.

3.5. *Non-hard-core restraints - condition under the BE (Article 4)*

3.5.1. The Committee points out that in general the exempted duration of non-competition obligations is five years, which however does not prevent the parties from renewing their agreements. This time limit does not apply when the goods and services are resold by the purchaser on premises owned or rented by the supplier with a resulting obligation of non-competition for the duration of the period concerned.

3.5.2. This approach should be endorsed as it generally satisfies the Committee's request that account be taken of the period necessary for the returns to equal the investments made.

3.5.3. The Committee nevertheless continues to have reservations about the link between permission for a one-year post termination non-compete clause in Art.4(b) and the five-year limit to an exclusive purchasing agreement in Art.4(a). If the exclusive purchaser can only terminate the relationship after five years and refuse to renew at the cost of being for a year without a livelihood in his or her chosen field, there will be relatively few non-renewals and the five year maximum will be more illusory than real. Art.4(a) restricts the non-compete clause to the period of occupancy of premises owned or leased by the supplier and this should also apply to the five year period.

3.5.4. The post-termination non-compete clause in Art.4(b) seems to go further than is necessary. Insofar as trademarks and copyright are concerned, the right to their use is extinguished when the contract terminates. It is true that know-how requires protection after the contract expires but the post termination non-compete clause is not necessary to protect the confidentiality of the know-how. More importantly, the post termination non-compete clause restrains the freedom to trade of the reseller who is no longer bound by contract.

3.5.5. In cases where one party of the agreement has introduced a long-term investment in the distribution arrangement, so that a five-year time period is insufficient, the possibility of exempting a non-compete obligation for a longer period should be decided on a case-by-case basis.

3.6. *Severability*

3.6.1. The Committee is pleased to note that the Commission has responded to its call for a severability rule. By providing that non-hard-core restrictions are severable the Commission has reinforced the process of self-assessment by the parties. The provision of a non-opposition procedure would have perpetuated the old method of unnecessary notification to the Competition DG.

3.7. *Withdrawals of the BE (Articles 5 and 6)*

3.7.1. The Committee agrees with the approach whereby the Commission can withdraw the benefit of exemption from one or more undertakings if it can demonstrate (and the burden of proof lies with it) that the agreements concluded by

those firms produce a negative overall effect on competition, even if the supplier or purchaser holds a market share lower than 30 % (Art. 5). This could provide better protection for distribution SMEs and a better balance in the relationship with the grantor.

3.7.2. The national authorities may withdraw the benefit of the exemption regulation also if the country concerned has the characteristics of a distinct national market. In this case withdrawal will be effective only within that country (Art. 6).

3.7.3. The guidelines interpreting Art. 5 and 6 (points 60-69 inclusive) define precisely the exclusive power of the Commission to withdraw the benefit when the geographical market concerned is larger than the territory of a single Member State; on the other hand, when the market concerned is made up of the territory of a single Member State, the Commission and the Member State will have joint power to decide on withdrawal.

3.7.3.1. The Committee is concerned at the risks of contradictory decisions and conflicting procedures which could arise in the absence of uniform application of the Community competition rules by the national authorities. Further concern for the legal security of undertakings also arises in connection with the mechanisms for redress.

3.7.3.2. The Committee wishes to reiterate its concern that insofar as national authorities are empowered by Article 6 to withdraw the benefits of the block exemption in their territory they must also be required to provide procedural safeguards equivalent to those contained in the Commission's own withdrawal procedure. The Commission should not hesitate to use its powers to avoid such a risk.

3.7.4. At all events, a withdrawal decision cannot have retroactive effect; therefore the agreement's exemption will remain until the withdrawal becomes effective. The Committee cannot but agree, since this approach corresponds to its own precise request in an earlier opinion.

Brussels, 8 December 1999.

3.8. *Disapplications*

3.8.1 In the Committee's view the Guidelines should better explain how the Commission intends to guarantee an acceptable level of competition, compatible with the presence of parallel networks of selective distribution, while taking into full account the nature of the contract products, which may need such a type of distribution. This would back up the new policy designed to assess the effects of the agreements on the market instead of merely covering formal aspects.

3.9. *Transitional period plus duration (Article 12)*

3.9.1. With regard to the transitional period, the Committee takes the view that, to avoid extra costs and the risk of legal uncertainty, current contracts which are compatible with the present block exemptions and have been drawn up before the new regulation enters into force should be allowed to run until the end of 2001.

4. **Conclusions**

4.1. The Committee acknowledges that the Commission in its draft Regulation has paid considerable heed to the comments and proposals made by the Committee in earlier opinions.

4.2. The general and specific comments made above, whether on the Regulation itself or on the Guidelines, are intended to supplement and improve the rules governing this complex area, which is extremely important for the integration of the markets.

4.3. The objective is a simple, well-defined regulatory framework, within which undertakings can operate on the market with legal certainty, in a competitive context which offers SMEs conditions in which they can grow and which provides the consumer with practical benefits.

4.4. The Committee therefore congratulates the Commission on the work it has done to this end.

The President

of the Economic and Social Committee

BEATRICE RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on:

— the 'Proposal for a European Parliament and Council Directive on national emission ceilings for certain atmospheric pollutants', and

— the 'Proposal for a European Parliament and Council Directive relating to ozone in ambient air'

(2000/C 51/03)

On 13 October 1999, the Council decided to consult the Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 November 1999. The rapporteur was Mr Chiriaco.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 96 votes to two, with three abstentions.

1. **Introduction**

1.1. *Acidification, tropospheric ozone and soil eutrophication*

1.1.1. Acidification, tropospheric ('ground-level') ozone and soil eutrophication are inter-related, transboundary environmental problems caused by emissions of sulphur dioxide (SO_2), nitrogen oxides (NO_x), volatile organic compounds (VOC) and ammonia (NH_3), and their by-products. Acidification — the deposition of acidifying pollutants (SO_2, NO_x, NH_3) onto vegetation, surface waters, soils and buildings — affects biological populations and forests, leads to acid groundwater damaging water supply systems and is harmful to buildings and monuments. Tropospheric ozone — a secondary pollutant formed by the reaction of precursors such as nitrogen oxides (NO_x) and VOC under the influence of sunlight — is harmful to human health as it can damage all parts of the respiratory tract. In addition, it also affects individual crop and tree species, degrades materials and contributes to climate change. Eutrophication, which is caused by the deposition of nitrogen compounds (NO_x and NH_3), leads to changes in terrestrial ecosystems, such as changes in plant community composition and biodiversity, and is a factor alongside acidification and tropospheric ozone in forest decline.

1.2. *The two Commission proposals*

1.2.1. The two proposed Directives on national emission ceilings for certain atmospheric pollutants (the 'NEC' Directive) and on ozone in ambient air (the 'ozone' Directive) aim at addressing these environmental problems jointly in order to exploit synergies and to ensure a coherent and cost-effective approach. When preparing its proposals the Commission consulted extensively with Member States, industry, NGOs and other parties [1]. Regrettably the agricultural organisations were not consulted, although they will have a role to play in implementing the proposed measures.

1.2.2. Taking account of previously established long and medium-term environmental objectives, the NEC proposal sets national emission ceilings for SO_2, NH_3, NO_x and VOC, to be achieved by 2010. The ceilings per Member State have been allocated on the basis of cost-effectiveness considerations: due to different environmental conditions (e.g. source-receptor relations) and abatement potential, as well as varying implementation costs, the required emission reductions differ per country ('differentiation versus a flat rate approach'). In implementing the Directive, Member States will need to assess what action is appropriate in their particular circumstances, and introduce measures accordingly (subsidiarity). The NEC proposal, which is closely related to existing EU environmental policy and legislation (such as the Acidification strategy adopted by the Commission in March 1997 and the Auto Oil I package), should be seen against the background of the planned multi-pollutant protocol to the United Nations Economic Commission for Europe (UNECE) Convention on Long Range Transboundary Air Pollution (CLRTAP) which will also set national emission ceilings for most UNECE countries including the EU Member States.

[1] See for more background information, including a comprehensive report containing the positions of the experts involved in the preliminary consultations by the Commission, the following website address: http://europe.eu.int/comm/dg11/docum/99125sm.htm.

1.2.3. Whereas the NEC Directive deals with emissions, the proposal for an ozone Directive, which is to become the third daughter Directive under the Air Quality Framework Directive adopted in September 1996 ([1]), concerns environmental quality standards. Underpinned by the ozone related emission reductions (NO_x and VOC) envisaged under the NEC Directive, the proposal aims at introducing (locally relevant) target values for tropospheric ozone in order to protect human health and vegetation, along with requirements to monitor ozone concentrations in ambient air and to report to the public on the findings of that monitoring.

1.2.4. By no later than 31 December 2004, the Commission will report to the Council and the European Parliament on the implementation of the proposed Directives. This report will then allow for a review of provisions in the Directives, taking account of new factors arising from research, the development of new technology, newly available data and new initiatives, and with the benefit of more comprehensive statistical references for areas such as natural and farm-generated emissions.

2. **General comments**

2.1. *Overall appreciation*

The Committee welcomes the Commission's initiative of presenting proposals which offer the Member States a framework for reference, monitoring and exchange of information with a view to further measures to protect human health and the environment, in accordance with the objective of sustainable development. It notes that the proposal for a NEC Directive is in line with the level of ambition indicated by the Member States at the outset of the negotiations on a multi-pollutant protocol at UN-ECE level (the so-called 'guiding scenario') as well as with the European Parliament's resolution on the Community's acidification strategy ([2]). The Committee regrets that, although they constitute a step in the right direction, the emission reductions to be agreed for the EU Member States under this protocol are likely to fall far short of the level of ambition associated with the national emission ceilings proposed by the Commission.

2.2. *The proposed objectives*

Before examining the more specific elements of the two proposals, it would appear necessary to look into the objectives upon which they are founded. Whilst the proposed qualitative long-term objectives are virtually undisputed, their translation into quantitative objectives for the long term and, in particular, for the interim period is a more controversial question. This involves a number of political decisions which are partly guided by the expected costs and benefits of different policy options. In turn, the results of the underlying cost-effectiveness and cost-benefit analyses, though they are calculated in figures, are also partly determined by assumptions of a political nature. It should also be stressed that the methodology for quantifying benefits in human health and environment terms and for internalising the costs of damage to health and the environment is constantly being refined and calls for more attention and resources. On the other hand, it is clear that a calculation based solely on economic considerations would be inadequate for assessing the effects of the proposed measures.

2.2.1. The proposed long-term objectives

2.2.1.1. The proposals' long-term objectives — for which no deadline is proposed at this stage — are to avoid exceeding critical loads (for acidification and eutrophication) and critical levels (for ozone) ([3]) as well as the effective protection of all people against recognised health risks from air pollution. This qualitative 'no adverse effects' objective — which is a measure of sustainable development — is in accordance with the commitments laid down in the 5th Environmental Action Programme of 1993 ([4]), which were recently confirmed by the Council and the European Parliament ([5]). The ESC agrees with this objective and has repeatedly supported it in its opinions.

2.2.1.2. The translation of this qualitative long-term objective into quantitative terms is undoubtedly one of the proposals' most crucial elements. As to the operational definition of critical acidification and eutrophication loads, it should be noted that these have been established per eco-system/Member State in accordance with an internationally agreed methodology ([6]). Thus, quantitative long-term objectives for acidification and eutrophication are founded on a sound and internationally recognised scientific basis.

([1]) OJ L 296, 21.11.1996.
([2]) OJ C 167, 1.6.1998, p. 133.
([3]) A critical load means a quantitative estimate of an exposure to one or more pollutants below which significant adverse effects on specified sensitive elements of the environment do not occur, according to present knowledge. A critical level means the concentration of pollutants in the atmosphere above which direct adverse effects on receptors, such as human beings, plants, ecosystems or materials, may occur, according to present knowledge.
([4]) See Chapter 5.2. This chapter, whilst establishing the objective of not exceeding critical loads for acidification, does not explicitly refer to eutrophication.
([5]) See Article 11(2) of their Decision of 24 September 1998 on the review of the 5th EAP — OJ L 275, 10.10.1998.
([6]) The critical loads are taken to be those compiled by the CLRTAP Co-ordination Centre for Effects.

2.2.1.3. Defining critical ozone levels for human health and vegetation is more complicated owing to the lack of a clear 'no adverse effects' level as far as human health protection is concerned. However, the Commission is of the opinion that the relevant WHO 'human health' guideline of 1999 (120 µg/m³ mean over an 8-hour period) can be treated as the critical level, despite the fact that this guideline is based upon acceptance of a certain amount of risk to the general population. The Committee would mention that this decision is in line with the fifth environment programme's provision that the European Union should apply the WHO guidelines. In contrast to the area of human health, the WHO has set critical levels relating to vegetation, which the Commission thus proposes as long-term objectives. The Committee endorses these proposed long-term objectives for human health and vegetation, taking into account, among other things, that they have been endorsed by the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) as well as by all Member States and environmental NGOs [1].

2.2.2. The proposed interim objectives

2.2.2.1. As it is generally acknowledged that it will be technically and economically very difficult to reach the 'no adverse effects' objectives in the near future, the Commission proposes a number of interim objectives for the year 2010. It is obvious that the choice of these interim objectives will crucially determine the extent of the required emission reductions, the associated costs and the environmental benefits.

2.2.2.2. The Committee notes that the exercise of setting interim objectives involves both a 'economic-technical' dimension based on cost considerations and a number of 'political' decisions. Without going into detail, it can be stated that — taking a 'Maximum Feasible Reduction' scenario as the upper limit — the interim objectives have been established at such levels as to avoid unreasonable marginal and total emission control costs. [2] These costs are calculated using the so-called RAINS model, developed in the context of the CLRTAP and generally approved by the Member States, as is also shown by the fact that it has been recently used in the context of the negotiations on the multi-pollutant protocol. This model has already been in use for eight years, is constantly being improved and will continue to be refined, especially with a view to the possible review of the directive in 2004 and 2008.

2.2.2.3. As regards this model, the ESC notes, however, that RAINS is very likely to overestimate the necessary abatement costs, among other things because it is based on 'pre-Kyoto' energy consumption scenarios and because it only considers technical (end-of-pipe) abatement measures without taking account of the potential of structural changes such as increased energy efficiency or use of alternative energy sources. In this connection, the ESC takes note of the announced 'Action plan' to implement the Kyoto agreements [3] and takes the view that a series of measures adopted in this context will contribute to better implementation of these proposals.

2.2.2.4. Also against this background, the ESC supports the interim objectives proposed by the Commission. As far as the 120µ/m³ ozone target value is concerned , it should be noted that a number of countries have adopted or are planning similar and even more ambitious standards. For instance, the UK national ozone objective is 100µ/m³ (8 hours), that of Switzerland is 120µ/m³ (8 hours) and the (planned) Canadian one is 130µ/m³. The recently adopted US standard is 160µ/m³. *Prima facie* this more lenient US standard may raise competitiveness problems (no 'level playing field'). It is noted, however, that as current (average) ozone concentrations in the US are substantially higher than those in the EU, the required (proportional) emission reduction efforts are of the same order of magnitude.

2.2.2.5. Regarding the use of economic models such as RAINS, the Committee would add that although such models can play a useful role in guiding policy-makers in making informed environmental policy decisions, they cannot act as a substitute for such decisions. In the past, the ESC has repeatedly expressed the view that it is impossible to expect 100 % certainty in the technical justification for decisions on environment policy and that in cases of doubt, the environment policy principles enshrined in article 174 (2) of the EC Treaty, especially the 'high level of protection', the 'polluter pays' and the 'precautionary' principles should be applied [4].

(1) See points 5.3a and 5.9 of the explanatory memorandum.

(2) Thus, in principle, the estimated (marginal and total) benefits have not been taken into account when setting the interim objectives. In other words, these objectives have not been fixed on the basis of a 'maximisation of total benefits' approach, which would imply that emissions would be reduced until the point where marginal costs equal marginal benefits. A more detailed description of the general modelling approach and the objective setting principles can be found in the Interim Reports Cost-effective Control of Acidification and Ground-level Ozone prepared by the International Institute for Applied Systems Analysis (IIASA). All these reports are available on the Internet under: http://www.iiasa.ac.at/ rains.

(3) Commissioner Wallström's speech to the EP, Strasbourg session of October 1999.

(4) See the ESC opinions on the 4th and the 5th Environmental Action Programme (C 180, 8.7.1987 and C 287, 4.11.1992) as well as its opinion on the first air quality daughter Directive (C 214, 10.7.1998).

2.2.2.6. At this stage no separate interim objective is proposed for soil eutrophication, although the Commission does suggest considering such an objective as part of the planned review in 2004. The proposal is rather vague about the reasons for this delay. The Commission claims that as a result of the proposed national emission ceilings, the Community area affected by soil eutrophication will be reduced by ca. 30 % compared to 1990. The Committee regrets that such a separate objective has not been proposed by the Commission. In this connection, it should be recalled that the planned multi-pollutant/multi-effect protocol does pursue such an objective.

2.3. *The means to achieve the objectives*

2.3.1. The analysis carried out by the Commission shows that in order to achieve the identified interim objectives, it is necessary to achieve emission reductions beyond the so-called 'reference' or 'business as usual' scenario, which incorporates most of the relevant existing and already proposed EC legislation as well as relevant national legislation and policy plans.

2.3.2. The necessary additional emission reductions will be pursued in the framework of the proposed national emission ceilings. These national ceilings, which also encompass the emission reductions resulting from the legislation and policy plans included in the reference scenario, have been allocated on the basis of a comprehensive analysis of a cost-effective distribution of emission reductions between the Member States, again using the results of the RAINS model. The ESC welcomes this differentiated approach to achieving the interim objectives, which involves significantly lower costs than an approach based on flat rate percentage reductions. It should be kept in mind that the national ceilings approach gives the Member States the required degree of flexibility to determine — taking account of their specific national situation — which measures are best suited to comply with the emission ceilings allocated to them. However, the Committee takes the view that the Commission should play an active coordinating role in connection to the preparation and updating by the Member States of the planned national programmes (Art. 6) and emission inventories and projections (Art. 7) in order to ensure the optimal mix of emission reduction measures, to ascertain the stage reached in their implementation and to take the necessary corrective action.

2.3.3. The NEC Directive will be the main tool for ensuring that the interim objectives for acidification and ground-level ozone are met. For ozone, however, it will be complemented by a Directive on concentrations of ozone in ambient air. In submitting a proposal for this (third) air quality daughter Directive, the Commission fulfils the obligation laid down in the 1996 Air Quality Framework Directive. In line with the provisions of this framework Directive, the proposed ozone daughter Directive sets 'target values' for (local) human health and vegetation related ozone concentrations to be achieved in 2010. These target values have been derived from the interim objectives established for ozone (see 2.2.2 above). This implies that the proposed national emission ceilings will ensure compliance with the target values at regional level; to ensure attainment of these values at local level — i.e. to reduce locally generated excess levels — Member States may have to take further action.

2.3.4. The Committee notes that the Commission considered two options for expressing the target value for human health [1] and that it concluded that it was preferable to base it on the long-term objective for ozone, i.e. the WHO guideline. Taking into account the reasons outlined in point 5.3 of the explanatory memorandum and the fact that the great majority of experts including the CSTEE endorsed the Commission's decision, the ESC regards the proposed objective as a valid one, especially in terms of benefits for human health.

3. **Specific remarks**

3.1. As far as the identification and implementation of specific emission reduction measures by the Member States is concerned (cf. Article 6 of the NEC proposal on the national programmes to be drawn up), it is necessary to draw the logical conclusion from the options suggested by the modelling (see point 2.5 of the explanatory memorandum). This ensures the most appropriate combination of measures at national level and forms of synergy which can be achieved among sectors. The necessary measures involve redirecting investments and technological innovations towards 'sustainable growth'. They should increasingly be of a preventive kind, rather than corrective ('end-of-pipe') measures, and should be combined with existing efforts to achieve energy saving, use of alternative energy sources, a sustainable transport and mobility policy, and encouragement for 'clean' production methods and products.

3.2. As to the tools to be used to implement such measures, the Committee underlines the potential of financial instruments. If well designed, levies and charges, which comply with existing legislation and with the competition requirements of a globalised market, can be very effective tools to achieve environmental objectives. [2] Such levies and charges, established at national level,, should perhaps be coordinated at European or international level. By the same token, the use of incentives related to levies and charges to redirect investments

[1] See point 5.3 of the explanatory memorandum.

[2] See, for instance, the recent report The use of Economic Instruments in Nordic Environmental Policy 1997-1998 published by the Nordic Council of Ministers (Copenhagen, 1999).

and the promotion of technological innovations (see 3.1 above) should also be considered. In addition, incentives should be identified and gradually developed for companies who take steps to find substitutes for unsustainable activities (e.g. those causing acidification, ozone formation and eutrophication). Finally, the Committee also calls on the Member States to examine the scope for (voluntary) environmental agreements.

3.3. The planned multi-pollutant protocol, that involves the accession countries, can be considered a starting point for further emission reductions by these countries in the future as they join the European Union. This could eventually take the form of their own NECs, setting out transitional stages. As action in these countries beyond the protocol requirements is likely to be very cost-effective, the question could therefore be asked whether, between now and the time of their accession, measures in addition to those provided for by the protocol could not be encouraged.

3.4. Regarding the proposed 'ozone' Directive, the Committee welcomes the dissemination of up-to-date information on ozone concentrations to the public (see Art. 6). However, it considers that the 'information threshold', which is aimed primarily at informing sensitive parts of the population, should be divided proportionately among the Member States, depending on their climate and geography and the frequency with which maximum levels are exceeded, where appropriate even descending below the 180μg/m³ (1 hour average) proposed by the Commission. [1]

3.5. The Committee also suggests public education and training campaigns to inculcate awareness and good practice in the area of health protection - an aspect to be included in all policies, especially in relation to urban pollution problems. Initiatives such as the 'network of sustainable cities' or the 'car-free days' organised in a number of European cities help to raise awareness and improve understanding of the measures to limit pollution, in terms of their benefits for health.

3.6. The Committee would finally underline the importance of effective enforcement of the proposed Directives. In this respect it notes that the Commission proposals (Art. 12 of the NEC Directive and Art. 13 of the ozone Directive) require Member States to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive in question. It goes without saying that should Member States themselves not live up to the Directives, such national penalties have to be complemented by action by the Commission in accordance with its role as the guardian of EC legislation.

3.7. The Committee welcomes the review mechanism provided for under Article 9 of the NEC Directive, to be based on periodical reports. These will enable the Commission to propose changes in the national emissions ceilings listed in Annex 1, taking into account the factors listed under Article 9(1) (including international commitments made in relation to climate change). In this respect, special attention should be given to the future improvement of the RAINS model.

4. **Suggested measures and programmes for individual Member States to reduce emissions of the pollutants in question**

4.1. Bearing in mind the comments made in 2.3.2 regarding the need for national programmes to be actively coordinated, the Committee recommends a number of measures to be implemented and monitored in the various national, regional and local situations. The potential for synergy is obvious and some of the measures dovetail with those relating to climate change. The Committee proposes to look into this matter in further detail as part of its future activities.

1. *Reducing energy consumption in the transport sector*

Working on the assumption that national and local transport sector programmes, financed under State and regional laws, must generally be aimed at increasing energy efficiency, the Committee recommends the following measures:

— maximum joint financing of measures to promote sustainable mobility in urban areas and areas designated by the regions (areas at risk from atmospheric pollution). Such measures could include:

  a) preparing and updating urban traffic plans, paying special attention to their efficiency in terms of the reduction of ozone;

[1] See the 1998 and summer 1999 annual reports on tropospheric ozone pollution in the EU. Last summer, the population information threshold was passed in nearly all EU countries. The most critical situations were found in Italy, Greece, France and Spain where the public was informed of high ozone pollution for between 68 and 40 days running.

b) in urban areas and areas with over 500 000 inhabitants, implementing intelligent transport systems (ITS), building and improving park-and-ride schemes, increasing public transport capacity using hybrid electric or gas-powered vehicles, reorganising goods distribution using incentives to encourage companies to use hybrid electric or gas-powered vehicles;

— joint financing of the additional cost of using high-efficiency fuels in public transport and vehicle fleets;

— joint financing of the purchase of electric/hybrid/low-emission vehicles for public and public service fleets on small islands;

— joint financing of production and purchase of two-wheeled electric vehicles for government bodies and public services.

2. *Generating energy from renewable sources*

Working on the assumption that the generation of energy from renewable sources is also promoted by other legislation, the Committee recommends the following measures:

— joint financing of the construction of biomass power plants, preferably integrated with district heating networks;

— joint financing of the construction of solar thermal power plants;

— joint financing of the construction of photovoltaic power plants;

— joint financing of the construction of plants on small islands to generate power from the wind, urban solid waste fuel, and biogas.

3. *Reducing energy consumption in the industrial, household and services sectors*

Working on the assumption that reducing energy consumption is an objective of many programmes for public, residential and industrial buildings, the Committee recommends:

— joint financing of programmes for the efficient use of electricity and the reduction of consumption in private homes, offices, public buildings and industry and of the reduction of the overall cost of programmes, joint financing of measures on the additional cost of products, and on extra costs generally;

such programmes could include:

a. energy audits,

b. measures targeting housing and related buildings,

c. urban regeneration and sustainable development,

d. promotion and dissemination of high-efficiency electrical components and, heating and air-conditioning systems in the housing sector, in offices and in public buildings,

e. use of high-efficiency electrical parts in industry;

— joint financing of the additional cost of programmes for the use of innovative fuels with a low environmental impact and for the efficient use of fuels in industry.

4. *Reducing emissions in non-energy sectors*

The following measures are recommended:

— joint financing of programmes to reduce ammonia emissions from livestock farms.

5. *National information campaign on climate change*

— joint financing of public information campaigns and promotion of better techniques and practice which increase energy efficiency and reduce emissions;

— joint financing of public information campaigns, drawn up by public and goods transport service providers, to promote high-efficiency, low-emission transport systems;

— joint financing of public information campaigns, drawn up by managers of biomass power plants, to promote district heating.

6. *National research programme on climate change*

— a 'basic project' to assess and certify progress made in the emission reduction programme, as required by the Convention on Climate Change, the Kyoto Protocol and European Union decisions. This would involve updating emissions data, national data banks, numerical climate simulations and generation of the related climate scenarios;

— joint financing of applied research projects to develop technologies that are highly energy-efficient and low in

pollutant emissions for combined cycle plants, industrial and public cogeneration plants and in emulsion and residue gasification plants;

— joint financing of applied research projects for the development of low-emission transport technologies and systems.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'The development of outlets for food and non-food packaging waste'

(2000/C 51/04)

On 29 April 1999 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an own-initiative Opinion on 'The development of outlets for food and non-food packaging waste'.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 November 1999. The rapporteur was Mr Verhaeghe.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 112 votes with 1 abstention.

1. **Introduction**

1.1. In presenting this own-initiative opinion, the Economic and Social Committee is seeking to contribute to the discussion currently under way on a number of fronts within the EU on the recycling of waste, and packaging waste in particular. The key element of this discussion is the forthcoming revision of Directive 94/62/EC on packaging and packaging waste. This directive is essentially concerned with targets for the recycling of packaging waste, which are currently fixed at 25% as a minimum and 45% as a maximum by weight of the packaging placed on the market. Five years after its introduction, this directive has improved levels of non-recovered packaging waste and the management of household waste. This achievement shows that, in its present form [1], the directive is undoubtedly a first step in the right direction. The present opinion must also be viewed in the light of the debate within the Recycling Forum set up at the start of the year (this forum intends to submit a number of recommendations to the Commission by the end of 1999 on ways of tackling the difficulties faced by the EU recycling industry), as well as the Commission's future follow-up to these recommendations (in the form of a communication to the Council and the European Parliament).

1.2. The intention is not, of course, to repeat the substantial work carried out by the Recycling Forum, which deals mainly with the economic, technological and legal aspects of waste recycling, or to issue an opinion on the proposed revision of Directive 94/62/EC, which the ESC will look at another time. The present own-initiative opinion asserts the ESC's determination to deal with the basic issues underlying the results — the achievements as well as the shortcomings — of the recycling sector. The depletion of natural resources and the importance of conserving our environment make it essential to retain an approach to recycling which is proactive, forward-looking and geared to the need to develop outlets. However, the Committee also feels it is essential to address the economic considerations connected with packaging waste recycling. Indeed, the idea of sustainable development meshes both environmental and economic factors.

[1] We also refer to the ESC Opinion of 24 March 1993 on the Proposal for a Council Directive on packaging and packaging waste which gave the broadest endorsement to the directive in its present form.

1.3. The present opinion focuses in particular on the difficulties involved in the recycling of waste packaging of consumer goods. Not because recycling difficulties are more acute in the consumer goods packaging sector [1] than in other sectors but because this particular issue is very complex and enjoys a high profile, given the large number and wide range of players involved [2]. Moreover, the sector now has a certain track record which makes it possible to conduct an initial assessment.

1.4. The ESC's special contribution to discussion of this issue stems from its specific role as a platform representing the various social and economic players. It is well placed — after more than a decade of helping to establish environmental policies in the general area of waste management — to come up with — via this own-initiative opinion — a convergent approach, based on sustainability, which takes into account the issue of packaging and packaging waste as a whole.

2. **Difficulties arising in the recycling of packaging waste**

2.1. Up to now, in addition to approaches aimed at prevention and reuse, the preferred solution for reducing the amount of packaging waste sent for landfill or incineration without energy recovery has been recycling. The packaging Directive 94/62/EC duly sets out the minimum and maximum recycling targets to be reached in the Member States. Transposition of this directive into national legislation has given rise to systems for selective collection and sorting of packaging waste. This has provided a new boost for packaging waste recycling techniques and initiatives, and resulted in a radical change in the situation on the recycling markets.

2.2. While the active involvement of most European consumers asked to sort their waste as part of selective collection schemes is to be welcomed, we recognise that, over the past few years, the expansion of these selective schemes has generated an oversupply of recyclates. To date, demand for products made from recyclates has not risen in the same proportion as the supply of recycling materials obtained by selective collection. To a greater or lesser degree this is true of virtually all packaging materials. Some imbalances relate to cyclical pricing factors, while others are more structural in nature and are due to a shortfall in the development of outlets. However, a distinction must be made between two categories of packaging waste: those such as glass, paper, cardboard and metal for which recycling channels have existed for decades; and others such as plastics, where recycling is relatively new.

2.2.1. The expansion of recycling facilities for the first packaging category did not stem from environmental concerns. It was driven solely by profits to be made whenever demand for virgin materials or other higher-quality recyclates (such as manufacturing offcuts) outstripped supply. Selective collection campaigns were conducted from time to time to meet the needs of the moment. The costs involved were relatively low since the intention was above all to cream off the best of the waste on offer, in other words, to confine collection to readily available amounts. The establishment of permanent selective collection and sorting systems driven by environmental considerations has often meant very much higher collection costs and resulted in recyclate supply outstripping demand, and its overall reclaim value dropping to a point where — despite the savings to be made by using recyclates rather than virgin materials — it generally no longer covers the costs of selective collection and any sorting. Such oversupply of recyclates may even lead to negative reclaim values.

2.2.2. The growth in recycling of packaging waste in the second category, i.e. most plastic packaging waste, has been due mainly to environmental concerns rather than to market forces, which have played a very marginal role. As a comparison of the costs of selective collection and sorting with the price of virgin raw materials shows, there is often no economic justification at the moment for recycling second-category packaging waste (current technologies mean that the recycling sectors for plastic packaging waste are not always in a position to offer a sufficient number of outlets or to pay a price covering the costs of selective collection and sorting i.e. such that recyclates are competitive with virgin raw materials.

2.3. As things stand, the recycling of most packaging waste leads to a persistent and financially significant chain deficit. The aggregate cost of selective collection, sorting and recycling very often exceeds the market value of recyclates. Depending on the types of funding used in the selective collection and sorting systems in question, this loss is met by consumers when they buy packaged products which are part of a

(1) Including the primary, secondary and tertiary packaging of consumer goods in so far as they serve a common purpose. In terms of prevention, these three packaging types are often considered collectively. For example, an increase in the weight of primary packaging coupled with a cut in the weight of secondary packaging may result in less weight overall.

(2) These include: government, ordinary citizens, local authorities, manufacturers of packaging materials and packaging, manufacturers and distributors of consumer goods and operators involved both in waste collection and sorting and in recycling.

contributory packaging waste recycling scheme or by taxpayers when they pay municipal waste management charges. 'Green dot' [1] and other waste charges have now reached considerable proportions and are very likely to increase over the coming years once selective collection and sorting systems have gathered full pace in all the Member States.

2.4. This internalisation of costs, which makes for less strain on the environment, is one of a range of economic tools for environmental policy based on the polluter pays principle, which seek to induce operators — including consumers — to be more respectful of the environment. The Committee hopes to see an improvement and expansion of recycling, but would call for some degree of caution with regard to the associated economic conditions. Beyond a certain threshold in the amount of waste collected selectively, there is a noticeable tendency for the costs of selective collection and sorting of packaging waste to rise as an exponential function of the amount of waste collected and sorted. The cost per tonne rises as the selective collection rate expands and increasingly marginal packaging waste is tackled. The danger lies in the resultant potential for financial drift in the wake of (i) the rise in selective collection and sorting costs and (ii) the production of a high volume of recyclates which the market is not prepared to accept without a substantial increase in additional financial resources. The Committee feels that the rising cost of packaging waste management is inevitable, but that increases should be kept within acceptable proportions, in keeping with the expected environmental benefit [2].

2.5. Although most Member States publish statistics and indicators relating to the recovery of packaging waste, the amount of packaging waste sent for landfill or incineration with no energy recovery, or the costs of the different systems for the recovery of packaging waste or the return of reusable packaging, it is often difficult to compare and combine these data, despite the adoption of EC arrangements for the publication of statistics. This situation is a result of the different definitions of packaging and packaging waste, recovery methods, methods used to calculate packaging waste recovery indicators and any methods used to calculate costs. This leads to a certain amount of confusion, which does not simplify discussion of the issue of packaging waste recycling.

3. The search for solutions: points of departure and background

3.1. Environmental policies are a relatively recent development, as is the use of economic tools to induce operators to be more respectful of the environment. The impact of such moves is often difficult to predict, particularly in very innovative sectors such as packaging, and in little-known sectors such as waste processing and recycling were a few years ago. As well as increasing recycling and other forms of packaging waste recovery, Directive 94/62/EC has had the beneficial effect of:

— steering the packaging sector towards technical innovations such as reducing packaging weight and incorporating recyclates;

— helping improve expertise and transparency in the waste processing and recycling sectors (in terms of statistics, financial and logistical considerations etc.);

— instilling awareness into the general public about the environmental impact of (packaging) waste.

3.2. Given the new expertise and experience gained over the past few years, it is useful, not to say necessary, to adjust packaging waste recovery policy in the light of the opportunities and errors observed. The necessary corrections will get under way all the more quickly, the more willing the relevant players are to embark on forward-looking, focused dialogue [3].

3.3. Packaging is not an end in itself. It must not be considered separately from the product it contains and the associated patterns of consumption. Packaging is continually evolving in line with the requirements of the many players operating at the various links in the product manufacturing-distribution-consumption chain. Packaging is a basic element in the quality of life we enjoy as consumers today. It fulfils an essential and varied role in terms of storage, hygiene, protection, safety, information, comfort, etc.

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(1) With regard to 'green dot'-type charges, the funding system is designed to incorporate into the price of the packaged product sold to the consumer a fee paid in advance by the product manufacturer or the party responsible for placing the product on the market. Examples of 'green dot' schemes include Germany's DSD, Eco Emballages in France and FOST Plus in Belgium.

(2) By environmental benefit, we mean advantages obtained through the reduction of pollution and problems resulting in practice from lack of environmental management.

(3) We would also point out that, although it is generally agreed that all recycling activities are more environmentally sound than other methods of recovery, there is as yet no universally recognised method of verification able to furnish conclusive proof that this is the case.

3.4. The Committee recognises that tension exists between developments in contemporary lifestyle and consumers' tastes on the one hand, and the drive for prevention-led environmental policy on the other. Ever smaller families mean smaller food portions wrapped in more packaging. An ageing population needs more convenience goods, which often involve easy-to-use packaging. Paid employment outside the home is spreading across the whole population — both male and female; this in turn leads to more convenience food and the like, which often requires extra packaging. Packaging manufacturers now have to meet a new challenge, brought on by these sociological developments, in a way which is consistent with a prevention-led approach to protection of the environment.

3.5. The environmental impact of packaging waste has reached such proportions that action is essential. Protection of the environment merits our full attention. Sustainable growth must be a key criterion of the quest to find ways of tackling the problem of recycling packaging waste. The approaches selected must promote a pattern of economic growth which respects the natural and human environment of present and future generations. In terms of acceptability and sustainability, this means meeting the appropriate economic, environmental and social yardsticks. The role of packaging in the protection of human health must not be neglected.

3.6. The Committee would also stress the significance of educating and training present and future consumers. Consumers will only be able to make a positive contribution if they are made aware of the importance of the environmental issues posed by packaging waste and are able to make choices which reflect their aspirations.

3.7. The Committee stresses the need for an environmental policy capable of ensuring in the long term not only a high level of environmental protection but also a viable recycling sector, which does not rely on ongoing financial support for recyclates. From a long-term point of view, packaging waste should be seen as a source of materials or source of energy which could increasingly be utilised in place of certain natural resources currently used as raw materials or fuels; these materials or energy will prove to be competitive when all the environmental costs related to the use of natural resources are taken into account in the price of these resources.

4. **Some possible remedies**

4.1. In order to find a structural solution to the difficulties arising from the lack of outlets for selectively collected and sorted packaging materials, the Committee proposes drawing up an action plan comprising a number of mutually reinforcing measures designed to encourage the development of recyclate outlets (point 4.3). In tandem with the establishment of this action plan, the Committee would also stress the need to take economic considerations into account in Member States' environment policies as they relate to packaging waste and to give priority to approaches which allow an optimum balance to be struck between economic and environmental factors (point 4.2).

4.2. *Seeking an economic/environmental optimum in the management of packaging and packaging waste*

4.2.1. Against the backdrop of environmental policy based on the internalisation of environmental costs and in line with the concept of sustainable development the Committee draws attention to the need to carry out an analysis to determine the economic/environmental optimum [1]. Cost-effectiveness analyses can be used to combine technologies and management methods (prevention, reuse, recycling, energy recovery) in such a way as to ensure maximum reduction of pollution related to packaging use and packaging waste management, at minimum cost.

4.2.2. Cost-effectiveness analyses would ensure that Member States are better equipped to evaluate and choose the packaging-waste prevention and reduction methods they use to attain the targets set by European legislation. The optimum combination of methods and technology, in terms of cost-effectiveness, essentially depends on the following factors:

— the local features specific to each state, region or even municipality (4.2.2.1);

— economic cyclical fluctuations (4.2.2.2);

— the fact that for each packaging material a recovery method exists which is chosen in accordance with the material's technical characteristics and the state of technology at the time (4.2.2.3).

4.2.2.1. Each Member State, each region — even each locality — has features — including geo-demographic factors, consumer habits, tourist activities, requirements with respect to raw (or secondary raw) materials, fuels — which are more suited to certain recovery methods than to others. It is important to concentrate on such methods, while respecting the environmental standards in place, instead of adopting uniform practices which make it impossible to take advantage

[1] Compared to cost-benefit analysis, cost-effectiveness analysis is a more recent method which has the advantage of not requiring the quantification of environmental damage and the expression of this damage in monetary terms. These elements of cost-benefit analyses make for very uncertain findings.

of local opportunities. This delegation of responsibilities at local level should be completely transparent for all parties concerned: consumers, and those in the distribution, production and recovery sectors. In view of this, the principle of subsidiarity when selecting the optimum mix of methods for attaining packaging waste recovery targets.

4.2.2.2. Cyclical fluctuations in market values could justify temporarily changing recovery techniques used for a particular material — while continuing to comply with environmental standards — in order to eliminate gluts and avoid excessive fluctuations in market values.

4.2.2.3. There is a technologically preferable method, given the current state of the art, for each type of packaging material. In this connection, a clear distinction must be made between (i) material of non-organic (mineral) origin and (ii) material of organic origin. The non-organic category includes glass, steel and aluminium. Their physico-chemical features allow virtually unlimited recycling, without material loss or risk to health. The same cannot be said of organic materials, these being either cellulose-based (such as paper and cardboard) or synthetic-based (such as plastics, which are for the most part derived from hydrocarbons). Using current technologies, these materials offer limited options for recycling. They suffer loss of quality if they are repeatedly recycled and use of their recyclates may pose health risks. On the other hand, they have a very high calorific value, particularly in the case of plastics derived from hydrocarbons [1] for which energy recovery is an alternative to recycling. Steps should be taken to promote energy recovery of this kind in the same way as recovery methods such as composting or biomethanisation, which are suitable for paper and cardboard and some types of plastics.

4.3. *Blueprint for action to develop outlets for waste-packaging recyclates*

4.3.1. The Committee proposes establishment of a blueprint for action, reflecting its desire to support and encourage the recycling of packaging waste. The approach needs to be based on participation of all those involved in the chain of production, use and disposal of packaging. And it should take account of the economic constraints faced by these players. The blueprint should comprise:

— greater backing for research, innovation and development of new recovery techniques for packaging waste (4.3.2);

— identification and development of new markets for recyclates (4.3.3);

— introduction of CEN standards for recyclates (4.3.4);

— more responsibility for the various packaging waste sectors (4.3.5);

— development of constructive dialogue with consumers/citizens (4.3.6);

— continual improvement of the EU statistical monitoring system (4.3.7).

The Committee considers that a coercive or repressive approach should be avoided. Instead, action should be taken to encourage incentives — such as tax deductions or consumer reward schemes — for companies affected by the issue of consumer goods packaging and for consumers/citizens.

4.3.2. Greater backing for research, innovation and for development of new recovery techniques for packaging waste

4.3.2.1. It is necessary to optimise the entire packaging process, from packaging design to the recovery of packaging waste. All the relevant players should be involved, particularly universities and collective organisations, so that ideas and aspirations can be acted on and, if need be, desirable and acceptable changes can be made to behavioural patterns. From a socio-economic angle, new methods may generate new jobs, provide genuine added value and help to boost the EU's economic growth.

4.3.2.2. The Committee also proposes that all new technical developments in packaging and packaging materials be subject to a quantitative and qualitative assessment of their effect on the environment, and that every effort be made to ensure that their final disposal is of no risk to current or future generations.

4.3.3. Identification and development of new markets for recyclates

4.3.3.1. The Committee calls for a pro-active policy targeting the identification and development of new markets for recyclates. It proposes:

— development of industrial applications which provide outlets for recyclates to be included in EU-assisted research

[1] This method fits in very well with the lifecycle of plastics: they are generated mainly from a fuel (oil); in a second phase, they are processed into packaging material and, in a final phase, can easily be turned back into fuel. The energy recovery of packaging waste saves non-renewable natural resources, while making it possible to exploit the very major development opportunities and advantages which plastic packaging affords consumers. The strict condition here is that the entire process be carried out in an environmentally sound way, i.e. in compliance with appropriate environmental standards.)

(Fifth Framework Programme) and new application programmes;

— review of unjustified regulatory criteria which prevent the use of products made from recyclates. In the Committee's opinion it would be helpful to draw up an inventory — covering all Member States — of products for which different regulatory criteria [1] prevent the use of recyclates without justification on health or safety grounds. Subsequently, on the basis of this inventory, the potential outlets for the recyclates should be quantified, and the appropriate standard-setting authorities requested to adapt the relevant standards where this is justified;

— use of products and packaging manufactured from recyclates by all public institutions operating at local, national and Community level, with publication of a certificate issued by a competent agency.

4.3.4. Introduction of CEN standards for recyclates

4.3.4.1. The Committee stresses the need for CEN standards guaranteeing consistent quality in products composed of recycled materials.

4.3.5. More responsibility for the various packaging waste sectors

4.3.5.1. For our purposes, a 'sector' comprises raw material producers, manufacturers of packaging material and packaging, their users, recycling firms and intermediate trade. In conjunction with the approaches outlined above, the Committee advocates giving extensive responsibilities in packaging matters to each of the sectors involved, following the lifecycle approach [2] and a general overview which takes into account economic, environmental and health-related aspects. It would then be up to each sector, taking account of its specific characteristics and the technical, ecological and economic options available, to instigate proactive, acceptable prevention and recovery methods in order to attain the objectives set out in the directive, thus avoiding the gluts experienced in periods of economic downturn by local authorities and/or organisations which have set up selective collection and sorting systems.

4.3.6. Development of constructive dialogue with consumers/citizens

4.3.6.1. Constructive dialogue with consumers/citizens is a necessary adjunct to the approaches outlined above, since consumers/citizens share the heavy responsibility of making choices which future generations will not come to regret. Clear, objective information is needed to ensure that these choices can be made with full knowledge of the facts about all the possible packaging waste management options: prevention, reuse, recycling, energy recovery and the associated costs. To this end, an ongoing awareness campaign is necessary, starting with children, so that people are involved from an early age and throughout their lives. Industry, public authorities and the media still appear to have much to do in this field. It is true that the problems surrounding packaging and packaging waste are by no means easy to explain, but consumers/citizens are receiving too many contradictory messages. Consumers/citizens also feel that not enough attention is paid to their views on packaging, which they often deem to be unnecessary and sometimes misleading. Constructive dialogue is the only way to facilitate creative remedies which meet their increasing environmental aspirations. Once again, if this dialogue is to be effective, transparency is essential in the following areas: the price to pay; cost breakdown; market mechanisms; damage to the environment (consumption of natural resources; earth, air and water pollution) including health risks.

4.3.7. Continual improvement of the EU statistical monitoring system

4.3.7.1. In order to improve the quality and comparability of the statistics published by Member States, the Committee recommends that the measuring methods used are indicated or, where appropriate, that new measuring methods are defined. It also recommends the introduction of a databank covering the socio-economic factors associated with the recovery of packaging waste. Using tools, such as the analysis of packaging lifecycles in conjunction with 'value-chain' analysis for the different recovery methods, would also make it possible to assess the relative value [3] of the different packaging waste management strategies adopted by the Member States, in terms of both economic and environmental factors. In all of these areas, the European Environment Agency could play a very useful part. Furthermore, in view of the fact that the interpretation of definitions varies between Member States, the Committee suggests that, instead of simply making comparisons

[1] Several innovative recycling procedures have been abandoned due to a lack of outlets for the resulting products, the main reason being standards, often based on custom, which are set out in the specifications but not necessarily justified on safety or hygiene grounds.

[2] From the choice of materials to the methods used to prevent the packaging becoming waste.

[3] This would make it possible for a genuine benchmarking exercise to be carried out, and the cost drivers and best practices to be identified.

between Member States, progress made by each Member State should be measured on the basis of an analysis over time of the impact of their policy on packaging and packaging waste.

5. **Conclusions**

5.1. Given the benefits ensuing from the implementation of Directive 94/62/EC, the Committee calls for incorporation in European legislation of a pro-active policy on packaging-waste recycling and for ambitious recovery targets for all categories of packaging material without exception. This is essential given that the EU is densely populated — inevitably giving rise to the Nimby ('not in my back yard') syndrome — and is poor in terms of raw materials and energy resources. At the same time, the Committee emphasises that sustainable development requires the adoption of environmental policies aiming to strike a balance between economy and environment. Provided that the targets set in European legislation are met, the Committee proposes that Member States be given a degree of freedom in choosing a combination of methods (prevention, re-use, recycling, energy recovery) which enables them to achieve, at the lowest cost, the objective of preventing or reducing the environmental impact of packaging or packaging waste while complying with current environmental standards. Such standards must act as the common 'bottom line'.

5.2. The Committee stresses the need to make consumers/citizens aware of the packaging waste issue and to train them, from an early age, to adopt environment-friendly behaviour. It also calls for genuine dialogue between industry, public authorities, the media and consumers/citizens through collective organisations. Such dialogue should be based on partnership and shared responsibility for the environment of future generations.

5.3. Aware of the difficulties currently encountered in relation to the recovery and, in particular, the recycling of packaging waste, the Committee considers it necessary to adopt a pro-active policy based on participation, incorporating all those involved in the chain of production, use and disposal of packaging, and taking account of the economic constraints faced by these players. With this in mind, it proposes that a blueprint be drawn up for the development of outlets for recycled products. This should comprise:

— greater backing for innovation and for development of new recovery techniques for packaging waste;

— identification and development of new markets for recyclates;

— introduction of CEN standards for recyclates;

— more responsibility for the various packaging waste sectors;

— constructive dialogue with consumers/citizens;

— continual improvement of the EU statistical monitoring system.

5.4. All of these suggestions reflect the Committee's desire to see environmental policy on packaging and packaging waste progress towards an ambitious and pro-active approach focusing on prevention and recovery of packaging waste. Such an approach would safeguard sustainable development and would be more firmly anchored in partnership between all those affected.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on

— the 'Proposal for a European Parliament and Council Regulation (EC) amending Regulation (EEC) No. 3528/86 on the protection of the Community's forests against atmospheric pollution', and

— the 'Proposal for a European Parliament and Council Regulation (EC) amending Regulation (EEC) No. 2158/92 on the protection of the Community's forests against fire'

(2000/C 51/05)

On 5 October 1999 the Council decided to consult the Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 November 1999. The rapporteur was Mr Ribbe.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 102 votes to one, with two abstentions.

1. **Introduction**

1.1. Council Regulations No 307/97/EC, amending Regulation No. 3528/86/EEC on the protection of the Community's forests against atmospheric pollution, and No. 308/97/EC, amending Regulation No. 2158/92/EEC [1] on the protection of the Community's forests against fire, take Article 43 ('agriculture' — now Article 37) of the Treaty as their legal basis. On 30 April 1997 the Parliament queried this matter with the Court of Justice. On 25 February 1999 the Court gave its judgement in joint cases C-164/97 and C-165/97. The judgement repealed both regulations and stipulated that the Council should have used Article 130s ('environment' — now Article 175) of the Treaty as the only legal basis. However, the Court suspended the effects of the repeal to enable the Council to adopt two new regulations with the same purpose within a reasonable time.

1.2. In response to this Court judgement, the Commission is now proposing two new regulations. As regards their substance, these new regulations are (almost) identical to the repealed ones, but this time they are based on Article 175 of the Treaty. The financial allocation for these two measures (respectively EUR 34 million and EUR 50 million for the period 1997 to 2001) has however been adjusted in line with the actual budget allocations for 1997-1999 and those provided for in the 2000 PDB. Under the 1997 regulations, the financial reference amounts for the same period were respectively ECU 40 million and ECU 70 million.

1.3. It is recalled that the Community forest monitoring scheme established by Regulation (EEC) 3528/86, and extended until the end of 2001 by the 1997 regulation referred to in point 1.1 above, aims at improving knowledge of forest health. Together with the International Cooperative Programme on Assessment and Monitoring of Air Pollution Effects of Forests (ICP Forests) [2], the scheme is part of a Pan-European Programme for Intensive Forest Monitoring. After having monitored forest condition separately until 1990, ICP Forests and the EU agreed upon a common monitoring system in 1991. Today 34 European countries including all 15 EU Member States participate in the monitoring.

1.4. The general objective of the Community forest fire protection scheme set up by Regulation 2158/92/EEC, and modified by the 1997 regulation, is to reduce the number of forest fire outbreaks and the extent of areas burnt. It does so by part-financing measures to identify the causes of forest fires and the means of combating them, to set up or improve systems of prevention (such as protective infrastructures) as well as to establish forest fire monitoring systems. The 1997 regulation, besides extending the scheme by five years until the end of 2001, put special emphasis on the need to further develop the Community information system (data base) on forest fires.

[1] At several points (e.g. on the cover page), the English version of the Commission's proposal erroneously refers to Regulation 2158/86/EEC instead of 2158/92/EEC.

[2] This programme was established under the UN-ECE Convention on Long-Range Transboundary Air Pollution (CLRTAP).

1.5. In its 1998 Communication on a forestry strategy for the European Union [1], the Commission announced a more substantial review of the Community forest monitoring scheme in the year 2001. On the basis of, among other things, a planned workshop with scientific experts and other interested parties, it intends to submit a proposal for amending the existing regulation by the end of the year 2000. One of the main aims of such a proposal would be to widen the scheme by including, in addition to air pollution, other stress factors affecting forest ecosystems, such as drought, climate change or disease. [2] Regarding the Community forest fire protection scheme, the communication also announced an extension beyond 2001, stating that this specific action will be continued and strengthened. [3]

2. **General remarks**

2.1. In accordance with its opinion [4] on the 1997 regulations, the Economic and Social Committee welcomes the extension of the two schemes until the end of 2001. It also welcomes the proposed change of the legal base, which — in line with the Court's judgement — now reflects the predominantly environmental dimension of the schemes in question.

2.2. However, the Committee is very much concerned about the proposals' budgetary aspects. It notes that the financial allocation proposed for both schemes is considerably lower than the amounts envisaged in the 1997 regulations. This decrease does not do justice to the potential of both schemes, which could part-finance a far larger number of useful projects. The Committee therefore urges the budget authority to consider the scope for increasing the proposed financial allocation.

2.3. The Committee is of the opinion that the planned reports on the application of the two regulations should serve as a basis for the discussion of the review referred to in point 1.5 above and should include an assessment of the impact and the cost-effectiveness of the measures carried out. It therefore suggests that these reports be published one year before the expiry of both schemes, i.e. by the end of 2000. In addition, the proposed new regulations should include a reference to the planned extension of both schemes beyond the year 2001. Two specific amendments to this end are proposed under point 3 below.

2.4. The Committee chooses to make no further remarks on the substance of the proposed schemes, as it awaits the review proposals planned for the end of 2000. At this stage, it wishes to confine itself to a few brief considerations which the Commission should take into account when preparing these review proposals:

— the review process should involve all relevant players including environmental NGOs;

— the coordination with other monitoring systems (such as the one under Directive 96/62 on ambient air quality) should be strengthened;

— the scope for (further) associating the CEECs in accordance with the association agreements and the relevant additional protocols should be examined.

2.5. Against the background of the 1999 report on forest conditions in Europe [5], which shows, among other things, a general deterioration of the crown condition of the main tree species, the ESC would finally stress the need for policy makers to act upon the information provided by the schemes in question: it is up to them to take the necessary policy initiative to reverse the observed trends. A case in point is the need for a further reduction of tropospheric ozone concentrations, as it gets more and more apparent that ozone can lead to visible forest damage, especially in the Mediterranean area.

3. **Specific remarks**

Against the background of the general remarks made above, the Committee proposes the following amendments:

3.1. *Article 1 of the proposed amendment of Regulation No. 3528/86*

Article 11 of Regulation (EEC) No. 3528/86 is replaced by the following:

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(1) COM(1998) 649, 3.11.1998

(2) This is echoed in point 5 of the Council Resolution of 15 December 1998 on this subject, which calls on the Commission to (…) improve continuously the effectiveness of the European monitoring system of forest health, taking into account all the potential impacts on forest ecosystems.

(3) Again, this is confirmed in the December 1998 Council Resolution which in its point 6 'advocates the continuation (…) and possible improvement to the Community scheme (…) in view of the positive impact it has had (…).'

(4) OJ C 66, 3.3.1997.

(5) Jointly published by the UN-ECE and the European Commission.

‘Article 11

(1 and 2 unchanged)

3. One year before expiry of the period referred to in paragraph 1, the Commission shall submit to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions a report on the application of this Regulation including an assessment of the impact and the cost-effectiveness of the measures carried out and recommendations for the further development of the scheme.

4. Before expiry of the period referred to in paragraph 1, this Regulation shall be reviewed by the Council and the European Parliament on a proposal from the Commission and on the basis of the report referred to in paragraph 3.’

3.2. *Article 1 of the proposed amendment of Regulation No. 2158/92*

Article 10 of Regulation (EEC) No. 2158/92 is replaced by the following:

‘(1 and 2 unchanged)

Article 10

3. One year before expiry of the period referred to in paragraph 1, the Commission shall submit to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions a report on the application of this Regulation including an assessment of the impact and the cost-effectiveness of the measures carried out and recommendations for the further development of the scheme.

4. Before expiry of the period referred to in paragraph 1, this Regulation shall be reviewed by the Council and the European Parliament on a proposal from the Commission and on the basis of the report referred to in paragraph 3.’

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Directive 95/2/EC on food additives other than colours and sweeteners'

(2000/C 51/06)

On 6 October 1999 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 November 1999. The rapporteur was Mr Wilkinson.

At its 368th plenary session on 8 and 9 December 1999 (meeting of 9 December), the Economic and Social Committee adopted the following opinion by 102 votes to one with four abstentions.

1. **Introduction**

1.1. Directive 95/2/EC is based on the principle of the positive list. It contains a list of authorised food additives, the foodstuffs in which they may be used and the conditions for their use. This arrangement ensures transparency and food safety, thus allowing free trade in foodstuffs throughout the EU.

1.2. Additives not listed may not be used in foodstuffs, although new additives may be authorised for use for a period of 2 years by any Member State on its own territory. If, during this period, the Commission proposes that the additives in question should be authorised at EU level, their use is allowed for an additional 18 months to allow for the necessary legislative changes.

1.3. The amendment proposed would be the third amendment to the original Directive 95/2/EC. It includes both new additives and new applications for some additives that are already authorised.

2. **Comments**

2.1. The Committee notes that some of the substances covered by this amendment have uses other than additives, but these uses are not considered in this opinion.

2.2. The Committee also notes that the Commission has already evaluated the technical needs of all the additives proposed. The Scientific Committee on Food has examined their food safety and allocated Acceptable Daily Intakes (ADIs) that are satisfactory for the proposed uses.

2.3. The Committee therefore supports the proposal.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 70/524/EEC concerning additives in feedingstuffs'

(2000/C 51/07)

On 10 September 1999 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 November 1999. The rapporteur was Mr Donnelly.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 111 votes to one with one abstention.

1. **Preliminary comments**

1.1. Council Directive 70/524/EEC of 23 November 1970 concerning additives in feeding-stuffs, as amended by Directive 96/51/EC establishes for certain additives (antibiotics, coccidiostats and other medicinal substances, and growth promoters) a system which provides for the Commission to replace existing authorisations under certain conditions.

1.2. However, there is no legal base for the replacement of the authorisations given before 1 January 1988, (except the footnote in Annex B Chapter I of the annex of Directive 70/524/EEC as amended by Directive 96/51/EC).

1.3. If this proposal were not enacted, all additives authorised before 1 January 1988 and evaluated according to lower standard than since January 1988 would remain authorised, and also as in the past, the copy products. In contrast, for the more recent additives (authorised after January 1988) conditioned by the higher test of 'link to the person responsible for putting into circulation', the copy products will be forbidden.

1.4. This has created an incoherent system certainly contrary to the intentions of the legislator. The purpose of this proposed amendment is to establish a coherent legal situation ensuring that these replacements can take place at the same time for all additives concerned, irrespective of the date when their authorisation was granted.

2. **Specific comments**

2.1. The ESC agrees with the Commission proposal which corrects the legal anomaly and ensures that the same high standards of evaluation particularly with regard to product safety applies to high technology additives. It also facilitates equal treatment for all products concerned.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Regulation (EC) No 1577/96 introducing a specific measure in respect of certain grain legumes'

(2000/C 51/08)

On 27 September 1999 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 November 1999. The rapporteur was Mr Barato Triguero.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 107 votes in favour with one abstention.

1. The Committee generally endorses the principles of the present proposal.

2. It does however consider the maximum guaranteed area (MGA) for this crop to be clearly inadequate. This is shown in the figures set out in the Report from the Commission to the Council on the application of the system applicable to certain grain legumes [1]. On this basis, and given that this is a rotation crop with evident benefits in terms of soil conservation, it would seem appropriate to increase the MGA up to 500 000 ha, to be subdivided into 300 000 ha for animal feed and 200 000 ha for human consumption.

3. The Committee also recommends that the following be added to the species eligible for aid, as set out in Regulation No. 1577/96 [2]:

— Vicia monanthos

— Lathyrus sativa

— Latyrus cicera

— which would come under the sub-area for vetches.

3.1. Regulation No. 1577/96 introduced a specific measure in respect of certain grain legumes, which are the main legume species for human and animal consumption not included among the protein crops of the general system for arable crops. The Regulation left out a number of species of the same family which were already being grown at a relatively low level. The result is that in some cases in the present, these crops have disappeared, since they must compete with very similar crops receiving EU aid.

3.2. There are in fact more species of legumes than those mentioned in Regulation No. 1577/96 which are entitled to aid: as they are grown on a far smaller scale, they are of great value in maintaining biodiversity and safeguarding the genetic heritage. Including these species in the amended Regulation would have practically no effect on the current situation, since they are produced in such small quantities and, in any case, would stand in for the vetches covered by the Regulation.

[1] COM(1999) 426 final.
[2] OJ L 206, 16.8.1996.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 93/53/EEC introducing minimum Community measures for the control of certain fish diseases'

(2000/C 51/09)

On 29 September 1999 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 November 1999. The rapporteur was Mr Muñiz Guardado.

At its 368th plenary session (meeting of 8 December 1999) the Economic and Social Committee adopted the following opinion by 113 votes to three with two abstentions.

1. **Introduction**

1.1. Council Directive 93/53/EEC introducing minimum Community measures for the control of certain fish diseases [1] defines the measures that must be taken by the Member States in the event of outbreaks of infectious salmon anaemia (ISA).

1.2. In May 1998, an outbreak of ISA occurred in Scotland. The implementation of these measures by the competent authority in Scotland revealed that improvements could be made to allow efficient control of the disease whilst safeguarding the interests of the infected farms as far as possible. Such improvements could be made by introducing a deadline for the compulsory withdrawal of fish from affected farms, to be determined by the competent authority in accordance with the local situation and in compliance with the general obligations contained in Directive 93/53/EEC. The present proposal aims to introduce such improvements by amending Article 6 of the Directive.

1.3. At the same time, it is believed that the control of an ISA outbreak can be more effectively ensured by applying a vaccination policy. At present, such a possibility does not exist. Therefore the requirements laid down in Directive 93/53/EEC must be adapted so as to introduce a procedure which allows vaccination and the definition of the conditions under which such vaccination may take place (amendment of Article 14 of the Directive).

2. **Comments on the proposal**

2.1. The Economic and Social Committee welcomes these measures and supports the proposed amendments.

3. **More general comments and suggestions**

While approving the proposed measures to tackle an emergency situation in specific regions, the Committee also wishes to offer some more general comments and suggestions regarding the development of a fish health policy in connection with the wider issue of food safety.

3.1. The Committee is concerned to note the occurrence of such epidemics (14 years ago in Norway and now in Scotland and Canada, as well as being widespread in Asia). At present there is no evidence of transmission to human beings, but the economic losses have already reached worrying levels (20 million dollars per year for Canada alone).

3.2. An integrated Community policy for these products is therefore necessary in order to guarantee high quality and safety levels on uninfected farms and in uninfected producer countries. This means rigorous checks on imports and movements of live fish and roe, and the taking of all necessary measures to stop the spread of the disease. It might also be worth establishing a code of good practice for farming of salmon and other aquaculture species, again pursuant to an EU product quality and safety policy.

3.3. It must be borne in mind that a vaccination campaign will be economically burdensome and that, even if it does help to prevent outbreaks of the disease, it risks perpetuating it where it already exists, with the creation of asymptomatic carriers which would be extremely dangerous if exported to uninfected countries.

3.4. The effectiveness of vaccines, also in preventing the birth of healthy carriers, should be tested in advance, and not only at laboratory level. EU research in this and related fields should be stepped up (as part of the fifth RTD framework programme, via the key actions on fisheries, the 'cell factory', and health and food).

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[1] OJ L 175, 19.7.1993, p. 23.

3.5. A comprehensive international databank should also be developed on fish health, coordinating all the information available from industry, the competent national laboratories and bodies, concerning diseases, pathogens and parasites, with a view to restoring public confidence and managing the risks satisfactorily.

3.6. Lastly, the requirement for the immediate slaughter, for marketing purposes, of all fish on infected farms seems justified in order to stop the disease spreading. However, the slaughter, gutting and destruction of the waste must all be subject to strict veterinary supervision.

3.7. A three-yearly report on the situation and distribution of the disease should be submitted to the ESC and to the European Parliament. The report should also detail any forms of antimicrobial resistance, as indicated in the ESC's own-initiative opinion on resistance to antibiotics. [1]

[1] OJ C 407, 28.12.1998.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine'

(2000/C 51/10)

On 18 November 1999 the Council decided to consult the Economic and Social Committee, under Articles 37 and 152 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 November 1999. The rapporteur was Mr Leif E. Nielsen.

At its 368th plenary session (meeting of 8 December 1999) the Economic and Social Committee adopted the following opinion by 114 votes to one, with three abstentions.

1. **Background**

1.1. Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine [1] has been amended over 30 times, most recently by Directive 98/99/EC. [2] The Directive covers a range of serious contagious animal diseases. The many amendments reflect the complexity of the matter and the considerable animal health problems generated by free movement of live animals within the EU. The contagious animal diseases include tuberculosis and brucellosis — zoonoses comparable with diseases such as salmonella, listeria and E. coli which can be transmitted from animals to humans. All Member States have not yet qualified as free, or officially free, from these two diseases in accordance with the Directive's provisions.

1.2. Directive 95/25/EC [3] introduced a derogation exempting beef cattle from individual tuberculosis and brucellosis tests in trade between Member States with the same health status. However, under Directive 98/99/EC, the Council decided to set in motion a complete updating of the provisions of the original Directive 64/432/EEC as from 1 July 1999. These amendments repeal the derogation and allow more Member States to apply for recognition as being officially free of tuberculosis and brucellosis. Unless the animals concerned

[1] OJ 121, 29.7.64.
[2] OJ L 358, 31.12.98, p.107.
[3] OJ L 243, 11.10.95, p.16.

come from a Member State which is either officially tuberculosis- and brucellosis-free or operates a recognised monitoring system, tests must therefore be carried out on the individual animal prior to export, including to Member States with the same health status.

1.3. However, it subsequently proved that in some of the Member States concerned it would in practice not be feasible to comply with the individual test requirement by the set deadline.

1.4. At the request of the relevant Member States, the Commission is now proposing to restrict application of the Directive 95/25/EC provisions until the end of 2000. At the same time the procedural rules enabling the Commission to adopt further transitional measures in consultation with the Standing Veterinary Committee are to be updated. The proposed new committee procedure would involve the European Parliament formally overseeing the Commission's use of its powers to adopt such transitional measures. Lastly, a number of technical provisions are designed to clarify the rules concerning tuberculosis testing and the system of identifying animals from Member States which are officially disease free.

1.5. The proposal concerns both agricultural policy and public health and is founded on Articles 37 and 152 of the Treaty. Hence the procedure set out in Article 251 of the Treaty relating to the common decisionmaking procedure is applicable.

2. **General comments**

2.1. The ESC has repeatedly stressed the need for top level EU harmonisation of veterinary matters and for keeping derogations to a strict minimum. The outbreaks of swine fever in recent years have provided ample proof of the serious consequences that can result from failure to pay sufficient attention and monitor contagious animal diseases properly.

2.2. In the run-up to EU enlargement, it is also vital that the current Member States are united in their support for this aim, with the attendant practical implications for all parties involved. Enlargement will bring in its wake an increased risk of diseases spreading over wider areas. FAO, the UN food and agriculture organisation, has already in the present situation warned of the greater risks inherent in long distance transport, new transport routes to and from non-EU countries, increased contacts with countries where conditions are unstable and the continuing concentration of livestock in certain EU areas.

2.3. Against this background the ESC urges the Member States to act as speedily as possible to introduce the requisite measures to qualify as tuberculosis- and brucellosis-free, and subsequently for official status. In this connection, the ESC assumes as a matter of course that the Commission will do its utmost to help. The eradication of these diseases will also make it possible to step up action to bring other zoonoses under control.

2.4. In its capacity as representative of the interests most tangibly affected by the EU's decisions, the ESC finds it justified to call on the authorities involved to ensure that the decisions proposed can in practice be implemented by the set deadline. If the EU is to be seen as trustworthy and credible, deadlines must be realistic and be fully respected by both the EU institutions and national authorities.

2.5. In the present case, the earlier deadlines were extended only after six months of non-compliance. Further, it is only now pointed out that the 1 July 1999 deadline would inevitably have caused serious disturbances to trade.

2.6. One cause of the problem is apparently that certain Member States only involve their central veterinary authorities in the decisionmaking procedure and fail to consult the decentralised veterinary expertise and administrative bodies which are in a position to provide a more objective assessment of the practical circumstances, and are also willing to take on the tasks of practical implementation and monitoring of compliance. The lack of transparency of the rules, as a result of the constant changes, has no doubt aggravated the situation.

2.7. However, the ESC recognises the need for flexibility in the special circumstances and feels able to endorse the implementation of the derogation provisions, subject to the above reservations. One key condition must also be that application presupposes the agreement of the importer country, that animals are not used as productive livestock, that there is no possibility of infecting disease-free herds and that they may under no circumstances be imported into Member States or regions with a higher disease-free status.

2.8. The proposal to authorise the Commission, in consultation with the Standing Veterinary Committee, to adopt further transitional arrangements for up to three years, unless the European Parliament finds in the specific case that the Commission has exceeded its powers, is questionable and raises a number of issues of principle. Hence it should not be automatically endorsed in connection with a matter of urgency.

2.9. The common decisionmaking procedure is lengthy and inappropriate in practical situations like the present one. The ESC therefore fully understands the Commission's wish for a more streamlined and efficient procedure. However in the case in point, the problems were blamed, as already mentioned, on

failure to study and think out properly the basis for the Council Decision of December 1998 — which does not as such justify adoption of a new committee procedure. That would also set a precedent in other spheres and further complication of the committee procedures should be avoided. Future restrictions on further transitional arrangements, especially where repeated and relating to the accession of new member countries, is another issue.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

3. **Special comments**

3.1. The title of Directive 64/432/EEC and its Danish translation should be revised at an appropriate juncture and, for instance, aligned with the English version, which refers to animal health, as opposed to veterinary policy, problems.

Opinion of the Economic and Social Committee on 'Health and safety in the workplace — Application of Community measures and new risks'

(2000/C 51/11)

On 29 April 1999, the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'Health and safety in the workplace — Application of Community measures and new risks'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 November 1999. The rapporteur was Mr Beirnaert.

At its 368th plenary session (meeting of 8 December) the Economic and Social Committee adopted the following opinion by 118 votes to one, with one abstention.

1. **Introduction**

1.1. The important issue of health and safety in the workplace has recently been the subject of a number of European-level initiatives, all of which provide food for thought:

— the European Parliament debates on the report compiled by the Advisory Committee for Health, Hygiene and Safety at Work, and the Commission's mid-term report on the Community programme concerning safety, hygiene and health at work (1996-2000). These were included in the report submitted by Ms Ojala on 1 February 1999 ([1]);

— the recent study by the European Agency for Safety and Health at Work, known as the Bilbao Agency, on the Economic impact of occupational safety and health in the Member States of the European Union;

— the conference organised by the Commission and the Bilbao Agency on the Changing World of Work (19-21 October 1998) and the conference organised by the Finnish presidency and the Agency on Safety, Health and Employability (27-29 September 1999);

— the conference on Occupational Health and Safety Management Systems, held in Dortmund on 18-19 March 1999.

([1]) EP 228.815/final.

1.2. Three key questions emerge from the above:

— how can we make European health and safety legislation more effective?

— how can we strengthen the link between employability and health and safety?

— how can we deal with new health and safety risks?

1.3. The Economic and Social Committee intends to contribute to what it considers to be a particularly important debate. The Committee has always given priority to health and safety issues, and feels these should also be a major concern for employers and workers.

The following are some of the Committee's key opinions in this area:

— Opinion of 22 November 1995 on the Commission Communication on a Community programme concerning safety, hygiene and health at work (1996-2000) ([1]);

— Opinion of 30 June 1993 on health/safety at the workplace — training ([2]);

— Opinion of 3 July 1991 an Action Programme for the European Year of Safety ([3]);

— Opinion of 27 September 1984 on Occupational Medicine ([4]).

1.4. This opinion will address the key issues mentioned above (c.f. point 1.2). However, before doing so, we must ask: what is the EU's role in the field of health and safety?

The chosen approach is decidedly forward-looking. The Committee has opted for a general policy approach, whilst stressing that it must be underpinned by scientific and technical research. In this respect, the Committee would emphasise the important contribution of bodies such as the Bilbao Agency. The key role played by the Tripartite Advisory Committee on Safety, Hygiene and Health Protection at Work should also be highlighted, for the excellent opportunity it affords for discussion, including with the social partners. In order to exploit this potential to the full, the Advisory Committee intends to improve its operational procedure. This also raises the problem of funding.

2. What is the role of the EU in the field of health and safety?

2.1. As the Committee stressed in its opinion of 22 November 1995, the Commission must have a balanced policy combining legislative and non-legislative measures, of a binding and voluntary nature.

2.2. The legislative role is still important, and can be justified on the grounds that it affords social protection for the employee and economic protection for the employer against unfair competitive practice.

There is a considerable body of legislation in the field of occupational health and safety. As the Commission emphasises in its mid-term report of 3 September 1998 ([5]), there is a need to assess 'whether the legislation is really effective in creating and maintaining the right health and safety conditions, or if it needs improvement... The Commission will continue its policy of reviewing the existing Directives with a view to ensuring modernisation and rationalisation wherever required.' ([6]) The Committee endorses this approach as the Commission's remit includes the duty to assess and monitor the way legislation is implemented and suggest improvements.

2.3. The Committee believes that the EU's non-legislative role should be better promoted and highlighted, without prejudice to its legislative role, as pointed out in 2.1 above.

The EU does indeed have a role to play in providing information and awareness campaigns, reference material, training and benchmarking.

2.3.1. The Commission has taken a decisive step in this direction with the establishment of the European Agency for Health and Safety at Work, known as the Bilbao Agency, and the proposal for a broad programme of non-legislative measures to improve health and safety at work (SAFE).

The Committee fully endorses this line, but particularly regrets the fact that this important programme has still not been adopted. It is an appropriate instrument for promoting a culture of health and safety as an important factor in good management. The programme rightly focuses on SMEs and micro-businesses.

([1]) OJ C 39, 12.2.1996.
([2]) OJ C 249, 13.9.1993.
([3]) OJ C 268, 14.10.1991.
([4]) OJ C 307, 19.11.1984.

([5]) COM(1998) 511 final.
([6]) COM(1998) 511 final, pp. 5-6.

2.3.1.1. The Committee believes that information and awareness campaigns, reference material, training, benchmarking and, not least, research should be developed systematically, particularly as regards:

— occupational health and safety training from primary school level upwards; this particularly important point was addressed in the Committee's opinion of 30 June 1993 on health/safety at the workplace — training [1];

— training for the teachers concerned [1];

— vocational and academic training for future employers and employees;

— mobility, journeys between home and workplace;

— public health, and the use of toxic and cancerogenous substances in particular;

— environmental measures, risk impact;

— specific features of SMEs and micro-businesses;

— the link between occupational health and safety and the division of labour between men and women;

— specific aspects of temping, outsourcing, home-working and tele-working;

— promoting quality employment, with due regard for health and safety in the workplace;

— health and safety for the self-employed.

Without adopting an excessively regulatory approach to the above issues, the EU should look into the best way of addressing these concerns and objectives. This will be dealt with in points 4 and 5 below.

The Committee believes the Bilbao Agency will be a useful instrument in this respect.

2.3.2. For reasons of efficiency and cohesion, these actions will require, from the very outset, as broad a framework as possible. This means mainstreaming better health and safety provision for workers into all aspects of European policies, and into the initiatives of other competent Commission bodies. This is already the case with DG III initiatives on the placing on the market of safe machinery, working equipment and personal protective equipment. In order to achieve the declared objective, mutually enhancing parallel initiatives must be implemented in unison.

The Commission's mid-term report rightly stresses the fact that other Community policies such as transport and the environment also contribute to improved health and safety in the workplace. The Committee fully endorses the Commission's declared intention to look into the impact these policies have on health and safety.

3. **How can legislation be made more effective?**

3.1. Legislation has a twofold objective: on the one hand, a social one, in that the aim is to protect the health and safety of workers in the workplace; and an economic one on the other, as it ensures that the machines and products which circulate freely within the EU comply with safety and hygiene regulations.

Article 118a of the Single Act — which provides the legal basis for most social directives in this area — aims to combine harmonisation with progress. To this end, the directives lay down 'minimum requirements to be introduced gradually, taking account of the specific situation and technical regulations in each Member State'. The Committee believes that agreed minimum safety levels should not be allowed to differ between the Member States or according to the size of the firm.

3.1.1. Harmonisation is not, however, necessarily best achieved through detailed, formal legislation. The Commission's mid-term report emphasises the need to be able to assess whether a specific piece of legislation does actually help to create and maintain the right climate for health and safety.

The effectiveness question raises the issue of enforcement. In this respect, the Committee would refer to the opinion adopted on 15 November 1998 by the Tripartite Advisory Committee on the social and economic assessment of proposed legislation. The opinion rightly emphasises the fact that socio-economic analysis can play an important role in providing quality legislation, by keeping politicians informed of the costs firms usually have to bear, and of the social advantages. The Tripartite Advisory Committee believes that an analysis of this kind should take place in two stages. The first stage should

[1] ESC opinion, 30.6.1993, OJ C 249, 13.9.1993.

involve examining the aims, expected health and safety gains, investment and administrative costs for firms, and providing information on the unintended impact on the risks involved. The second analysis would be carried out if the first one revealed that firms would have to bear considerable costs, or that the benefits needed further research.

3.1.2. The effectiveness conundrum will be dealt with from two standpoints. Firstly, how can Community and national legislation best be dovetailed? This implies looking at the roles of the European level and national level. Secondly, how can legislation accommodate the needs of SMEs and micro-businesses?

3.2. How can we dovetail Community and national regulation in order to improve the effectiveness of legislation?

3.2.1. Dovetailing Community and national legislation poses some major problems:

— while a legal assessment of the monitoring arrangements for the transposition of a Community directive into national law is, of course, necessary, it is not sufficient. An assessment of how the directive is actually implemented — particularly on a sectoral basis — is also required, because if the disparities continue or even increase, as is sometimes the case at the moment, then worker health and safety becomes a factor in competitiveness. This will be addressed in point 3.2.4.

— the world of work is facing new challenges which require a different approach to the one usually adopted to deal with traditional occupational health and safety risks such as stress in the workplace, muscle and back complaints, etc. New employment patterns are emerging, raising specific questions which will be addressed in point 5.6.1. These problems cannot be dealt with in the same way as traditional occupational accidents and illnesses. Given that the picture and perceptions of these issues differ across the nations, sectors and regions of the Community, the Member States must be given greater leeway and responsibility for drawing up the implementation arrangements. There could be a case for a new type of directive setting the objectives, and — annexed to this — a catalogue of back-up measures to guide Member State action (c.f. 3.2.2 and 3.2.3). In this respect, the benefits of a prior selection and dissemination of examples of best practice should be stressed. Benchmarking is a non-legislative measure which the Committee would recommend (c.f. 2.3).

3.2.2. In addition to the traditional directives which lay down both the objectives and the protection arrangements (some areas will in fact still require a more thorough approach), the Committee calls for directives to set clear Europe-wide objectives, but which leave the implementation arrangements up to the Member States, subject to assessment and monitoring guarantees.

Responsibility could be shared as follows:

At European level:

— more focused objectives;

— definition of the arrangements for monitoring and assessing the success of the objective;

— establish — with the help of the relevant sectors — what tools are available (research, practical solutions, information campaigns);

— decide how to involve the social partners.

At national level:

— establish — with the help of the relevant sectors — certain implementation arrangements, according to certain target groups and activities;

— establish monitoring and inspection arrangements and procedures;

— inform and educate employers and employees, in cooperation with the social partners.

The Bilbao Agency must be able to assist the Commission and the Member States, without taking over from them.

3.2.3. Objective-setting directives should be backed up by guidelines providing more detailed information than binding legislation. This would be a handbook for firms rather than a legislative text, i.e. its use would not be a pre-requisite for certification. The handbook could be adapted to the relevant sectors and businesses. The social partners would be involved in the Advisory Committee's tripartite consultation process.

3.2.4. As emphasized above, it is not enough to carry out legal checks on the transposition of a European Directive, i.e. on whether the obligation has been incorporated into national legislation. In addition to scrutinising the legal text, an audit of its practical implementation at Member State level will also be

required, based on criteria such as: the number of firms implementing the directive; implementation arrangements in small and large enterprises; why they are/are not applying it; results.

— As the Commission pointed out in its report of 3 September 1998, it must implement its plan to establish Community indicators to assess national policy. The indicators will draw on statistics for accidents in the workplace and occupational illnesses. In this connection, the Committee feels that, in order to monitor the effectiveness of existing legislation, it would be worthwhile pushing ahead with the efforts already undertaken by the Commission to harmonise European statistics for accidents in the workplace and occupational illnesses. The Committee would also suggest establishing a Community Regulation to facilitate data transfers from the Member States to Community departments. Furthermore, the Committee believes that the statistics should include a breakdown according to gender;

— the Advisory Committee on Safety, Hygiene and Health Protection at Work recently looked into the operation of multidisciplinary prevention services and the implementation of health checks. This type of research must be supported and developed further. It must be used to provide exchange of best practice, more thorough assessment of the implementation and impact of current legislation, and to propose amendments to promote improved protection levels in the workplace;

— the Dublin Foundation's research into employment conditions, different employment categories and different types of work is intended to add to the analysis of the effectiveness of European measures and the extent to which the objectives have been fulfilled.

3.3. Application to SMEs and micro-businesses: this does not mean advocating different standards according to the size of the firm, but taking into account the specific nature of SMEs and their greater information and training needs, and the greater difficulty they have in coping with red-tape. It should be remembered that Article 118a states that directives should avoid imposing administrative, financial and legal constraints in a way which might hold back the creation and development of small and medium-sized enterprises.

3.3.1. Declared objectives and health and safety levels must be the same for all workers. The arrangements for implementation, inspection and especially dissemination of information and back-up measures for workers and firms will, of course, differ according to the size of the firm.

3.3.2. Some SMEs have expressed reservations about the various legal provisions which cannot be realistically applied by smaller firms. These are mostly administrative constraints which make legislation more cumbersome and are generally unfathomable for most firms.

The more detailed technical guidelines discussed in 3.2.3 above could be extremely helpful both for SMEs and for assessing implementation in smaller firms.

3.3.3. SMEs and micro-businesses will only really benefit from this approach if the documents:

— are simple and adaptable;

— offer practical solutions;

— are drafted in a spirit of cooperation, involving SME organisations in particular;

— are disseminated by the bodies normally consulted by SMEs;

— are distributed according to activity: e.g. mechanics, carpenters, restaurateurs, etc.

3.3.4. Information and inspection procedures must be backed up by specific aid programmes, pilot projects, and be included in vocational training programmes (Leonardo).

4. **The link between employability and health and safety: economic cost?**

4.1. While accidents in the workplace, occupational illnesses and other health and safety risks are — first and foremost — a serious human and social problem for the victim, they also involve considerable economic costs for society and the firm concerned.

The European Agency in Bilbao has studied the economic impact of health and safety in the workplace in the EU Member States. Some states put the cost of occupational illnesses at between 2.6 % and 3.8 % of GNP. It should be stressed, however, that the different calculation methods make comparison difficult. The Committee emphasises the need for reliable comparable data, which would also make it possible to identify the most efficient systems.

4.2. An effective health and safety policy is warranted not just for obvious human reasons and because of the economic cost of accidents and illness, but also because it enhances worker employability and productivity and boosts employment. The Committee therefore feels that occupational health and safety issues should be included in future employment guidelines. The guidelines should be backed up by examples of best practice, along the lines of the benchmarking system currently used to back up existing guidelines. The impact of employment policies on occupational health and safety should also be assessed. Turning to the question of employment conditions for men and women, it should be remembered that one of the main aims of the employment guidelines is to bring more women into the labour market. This concern is also highlighted in the ESC Opinion on the Proposal for guidelines for Member States' employment policies 2000. [1]

4.3. Initiatives must be developed for both employers and workers.

4.4. Since the employer is responsible for the way his firm is organised, he must also answer for the impact of his decisions on the health and safety of his employees. This responsibility is enshrined in the framework directive of 12 June 1989, which requires the employer to know the most appropriate prevention measures for his company, and the organisational arrangements which will enable him both to provide health and safety protection for his employees, whilst avoiding unsuitable regulations which might hamper competitiveness.

4.4.1. Good employment conditions are essential to the production of quality goods and services. Accidents in the workplace and other health and safety risks are first and foremost a human and social problem, but they also involve economic costs for the firm in terms of absenteeism, social insurance contributions, and losses in output, know-how, etc.

Initiatives and tools must therefore be developed to:

— convince employers that good health and safety conditions enhance competitiveness and the image of the firm, and that a good health and safety policy is a sign of good economic performance;

— raise employers' awareness of the fact that safety policy is one of the main planks of a global policy;

— highlight the key role of the organisation of work in promoting health and safety in the workplace;

— stress the proper importance of prevention and employee health monitoring services; in this respect the Committee would refer to the important contribution made by occupational medicine to improving protection of health and safety in the workplace [2]. In the course of their duties, the prevention and health monitoring services will need to take account of the different information and training requirements of the workforce.

To this end it is important to:

— collate and catalogue best practice in companies and highlight state-of-the-art systems. Research has revealed the following useful examples:

  — systems for regularly assessing safety conditions, backed up by incentives to exploit the good scores attained by company departments;

  — health and safety management systems as part of a global approach;

  — adapting work stations to the needs of older people and people with disabilities;

— establish and disseminate criteria for best practice, policy assessment machinery and measures undertaken;

— give a higher profile to the benefits of good policy; a more accurate cost/benefit assessment will provide decision-makers with better guidance. Priority should be given to continuing research and developing simple practical instruments for objective cost/benefit analysis, in order to provide for more judicious, informed decision-making.

4.4.2. Workers and/or their representatives must be involved in this approach:

— by including them in the preparation, implementation, assessment and re-alignment of Community policy, via existing consultation committees, particularly the Advisory Committee on Safety, Hygiene and Health Protection at Work;

— using the information, consultation and participation procedures provided for in the framework directive of 12 June 1989 and other specific directives;

[1] OJ C 368, 20.12.1999.

[2] OJ C 307, 19.11.1984.

— by including safety issues in education, teaching and training. In this respect, the Committee endorses the opinion (070/2/97) of the Advisory Committee on Safety, Hygiene and Health Protection at Work. The Committee would also refer to its own opinion of 30 June 1993 on health/safety at the workplace — training, also in relation to the following:

  — the future citizen (school-age)

  — the future worker

  — the worker on entering the firm

  — management structure

  — workers' representatives with a specific role in the protection of health and safety in the workplace.

4.4.3. The Bilbao Agency can lay the foundations for the European Commission's important duty — in addition to continuing to compare best practice — to provide analysis, information and consciousness-raising by carrying out preparatory work on the exploration, collation and dissemination of best practice, training programmes, etc. The Member States are individually responsible for dissemination via the appropriate channels.

5. **How should the new risks be addressed?**

5.1. The world of work has undergone a number of changes. Work is now organised in various ways, and different conditions of employment and different working hours can be found in one and the same firm. Computer technology has changed what we do and how we do it. Employment conditions have also been diversified: part-time, temporary and casual work are on the increase, as are teleworking and 'work on-call'. The make-up of the workforce has also changed: there are far more women in employment; the workforce is ageing; the tertiary sector's employment share continues to grow as a result of the boom in services; many firms are concentrating on their core business and sub-contracting some of their work out, particularly to SMEs, which account for an ever-increasing percentage of businesses; and firms have introduced less centralised management procedures. All this has impacted on employment patterns and consequently on safety and hygiene conditions in the workplace.

5.1.1. In some countries there has been a worrying increase in undeclared work in defiance of occupational health and safety requirements. This regrettable trend was addressed in the Commission Communication on undeclared work. The communication calls for a strategy to counter the phenomenon, and it was ringingly endorsed by the Committee in its opinion of 27 January 1999 [1].

5.2. It would be simplistic to consider the changes referred to in point 5.1 in terms of risk only. Economic conditions oblige firms to constantly modernise and adapt the way they manage and organise work. In this respect, investment in new technology often goes hand-in-hand with improved employment conditions. As for new employment patterns, these can suit the flexibility requirements of both employers and workers.

5.3. While it would be wrong to consider these changes in terms of risk alone, there is no doubt that they have produced new occupational risks which differ from traditional occupational accidents and illnesses: psychosocial complaints are more common; stress is on the increase — including at managerial and executive level; workers are burnt out and can no longer cope with challenge.

5.3.1. Compared to other workers, young people, disabled people, [2] migrant and unskilled workers are more likely to be vulnerable. They are sometimes known as labour market 'risk groups'.

5.4. Traditional methods are less effective when applied to the new situations and employment patterns. The challenge lies in managing to protect workers properly while finding practical solutions for achieving the objective by:

— collating data, objectivising the problem, comparing indicators;

— devising appropriate tools to suit the target group, work-type and employment patterns.

5.5. The general legislative framework and its objectives have been fixed at European level. However, the method of achieving the objectives should be constantly monitored and reviewed to take account of new employment patterns, the changing population and new risks.

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[1] OJ C 101, 12.4.1999.

[2] In this connection, see the compendium of good practice on employment for disabled people, published by the European social partners, UNICE, the ETUC and the CEEP. Supported by the European Commission. The compendium also contains practical suggestions for getting people back to work.

First and foremost, the technical aspects of current legislation must be continuously monitored and adapted in the light of:

— new products and procedures;

— new findings on the impact of existing products and procedures (e.g. OPS (organic psychosyndrome) and mineral fibres);

— new findings on certain ailments such as muscular and bone pain

— so that the declared objectives are in step with scientific and technological progress, particularly as far as thresholds are concerned.

5.6. Moreover, it is important to ascertain whether there are any practical problems in applying the framework legislation to new employment patterns, and to find suitable arrangements and solutions. Relevant areas include:

— health controls;

— worker information and training;

— follow-up of any health risks from new products or procedures.

5.6.1. In this respect special attention should be paid to temping, short-term contract work and outsourcing. These particular types of work make it more difficult for the worker to fit in because:

— several employers share responsibility for monitoring employment conditions;

— workers change their place of employment more often, and have to adapt quickly to a new environment each time.

In order to provide adequate protection levels, suitable practical measures will be needed for:

— exchanges of information on work-related risks and requirements between the various employers and the worker;

— clear, specific instructions whenever someone is recruited;

— continuous training;

— employer responsibility for medical observation and follow-up in case of exposure to hazardous agents or products, and

— for epidemiological research.

Know-how resulting from current practice, experience and research in the different Member States must be shared so that a more effective approach can be designed.

5.7. High employee-turnover rates and frequent absenteeism are often a sign of poor employment conditions, but, generally speaking, the latter are not the only problem. However, psycho-social complaints, stress and exhaustion can be linked to employment conditions. 'Good management' includes ways of addressing these problems, but the role and responsibility of the firm in dealing with these risks does not seem so clear-cut as with traditional occupational hazards. Personal life (the family, division of family responsibilities), basic training, and training and recruitment opportunities can all play their part. Without a global approach backed up by measures in other areas, calls for firms and employers to act will be in vain.

These measures are needed in the workplace, the home, at school, etc. Consequently, the Commission will have to adopt a global approach (cf. 2.3.2). One-off measures are less effective.

5.8. The various Member States have launched initiatives to address the new risks and employment patterns, in an approach which involves the social partners.

The following examples show how the social partners can be involved [1]:

— in the Netherlands, Agenda 2002 — in which the social partners have established the priorities for negotiation over the coming years — calls on the social partners to give priority to stress and improved employment conditions. Several sectoral collective agreements have latched on to this concern. It should also be noted that some sectors have concluded agreements committing the authorities, employers and workers to combating specific risks;

— in Belgium, the social partners have signed a multi-sector collective agreement (30 March 1999) on occupational stress prevention policy, under which employers must submit their policy programme to the Health and Safety Committee. In addition, the social partners in the temping sector have set up 'Prévention et Intérim' to raise firms' awareness of prevention issues and offer appropriate advice;

[1] See also the examples of best practice contained in the website of the European Agency for Safety and Health at Work (Bilbao Agency, http://www.eu-osha.es)

— in Denmark, a national agreement to reduce monotonous and repetitive work has been signed by the trade unions and employers' organisations;

— in Sweden, the social partners have signed an agreement on the appointment of local prevention officers.

One of the most interesting Member State initiatives is the Portuguese government's programme to improve occupational health and safety by providing incentives for employers whose progress in this field can be used as best practice.

5.9. By collating these actions, best practice and successful initiatives, the Commission can carry out an assessment in conjunction with the social partners, and — if necessary — amend legislation, design and publicise additional instruments and include them in new and existing support programmes.

6. **Conclusions**

— Promotion of health and safety in the workplace must be a priority concern for the authorities, the social partners, employers and workers. The fact that the world of work is undergoing radical changes makes their support all the more necessary. The best way to achieve this key objective is to make all interested parties — whether at Community, national, sectoral, regional or local level — aware of their responsibilities;

— Without prejudice to the legislative role, which is still important and warranted for social and economic reasons, the EU's non-legislative role should be better promoted and highlighted via information and awareness campaigns, and training and benchmarking initiatives;

— Legislation will be more effective if it aims for a better demarcation of European and national responsibilities, fixing clear objectives at Community level, and leaving implementation — subject to control guarantees — to the national authorities;

— In order to boost the link between employability and occupational safety and hygiene, awareness-raising and training activities must be provided for both employers and workers;

— The effectiveness of legislation in dealing with the new risks must be constantly assessed, and any amendments should draw on an analysis of best practice in the Member States. Benchmarking should be used to highlight the most useful examples, particularly as regards social partner practice.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on a European Action Plan to Combat Drugs (2000-2004)'

(2000/C 51/12)

On 8 July 1999 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an additional Opinion on the above-mentioned communication.

The Section for Employment, Social Affairs, and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion unanimously on 12 November 1999. The rapporteur was Ms Hassett.

At its 368th plenary session of 8 and 9 December 1999 (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion by 112 votes in favour, no votes against, and with three abstentions.

1. **Introduction**

On 25 January 1995 the Economic and Social Committee adopted an own-initiative opinion on the 'Prevention of Drug Abuse' ([1]) (rapporteur: Mrs Guillaume) in which it, inter alia, commented on the Action Plan to Combat Drugs, which is currently in force (1995-1999). This additional own-initiative opinion builds upon the work which was carried out in that context.

1.1. The Communication from the Commission on a European Action Plan to Combat Drugs (2000-2004) contains:

— a programme to combat illicit drugs using co-ordinated action at all levels;

— a call for prevention to be given the highest priority;

— proposals to increase the exchange of experience and best practice;

— proposals to reduce the supply of illicit drugs;

— a call for the integration of Schengen drug-related activities and the implementation of the EU Action Plan on organised crime;

— plans to promote at an international level the inclusion of clauses on control of illicit drugs in agreements on development and trade.

1.2. The aims and objectives of the European Action Plan are the following:

— to ensure that the issue of the fight against drugs is kept a major priority for the EU internal and external action;

— to continue the integrated and balanced approach where supply and demand reduction are seen as mutually reinforcing elements;

— to ensure the supply of objective, reliable and comparable data on the drugs situation in the EU;

— to promote international cooperation; and

— to emphasise that appropriate resources have to be made available, with the highest priority accorded to prevention policies.

The Communication also identifies a number of new challenges, e.g. the growing prevalence of synthetic drugs, the relation between drugs and urban delinquency, and drug-related problems in the areas of health, social policies and criminal justice. The urgent need to develop the necessary methodological tools to systematically evaluate actions to combat drugs at the EU level is underlined.

1.3. The fight against drugs remains near the top of the political agenda for the European Union and the individual Member States alike. Obtaining reliable data in this area — on the prevalence of illicit drug use, on drug-related deaths, accidents, disease/infection cases and crime, etc. — in order to get a just picture of the state of the problem is notoriously difficult. Notwithstanding these difficulties, the 1998 Annual report of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) clearly demonstrates that there is no cause for complacency.

1.4. The EU Member States and the European Community have, since the mid-1980s, adopted common measures for combating drug addiction and drug trafficking and for promoting international cooperation. The scope for EU activities in the fight against drugs, which basically falls within the competence of each individual Member State, is to support and coordinate certain efforts in areas where the Union can bring added value. Demand reduction, supply reduction and international cooperation constitute the foundations of the current EU strategy against drugs.

([1]) O J C 102, 24.4.1995.

1.5. For the European Union, the fight against drugs is an inseparable objective of the aim of creating 'an area of freedom, security and justice' which was introduced by the Treaty of Amsterdam. Action to fight drugs is viewed as a public health priority (Title XIII, Art. 152 of the EC Treaty), as a priority for cooperation in the field of Justice and Home Affairs (Title VI, TEU) and as a priority for international cooperation (Title V, TEU).

1.6. At the EU level, effective policies and strategies can only be formulated on the basis of the above-mentioned and sought after 'objective, reliable and comparable data' on the drugs situation. Two bodies have been set up to provide such information, the EMCDDA and the Europol Drugs Unit (EDU). The EMCDDA compiles and disseminates non-confidential data on drug abuse to support policy making. The EDU exchanges and analyses data on organised drug trafficking and related criminal activities to support police operations. The Commission also emphasises the need for systematic evaluation, assessment and follow up mechanisms. The work of these bodies contributes to improved knowledge about the extent and magnitude of the drugs problem in the Union.

1.7. The international dimension of the fight against drugs requires more intensive cooperation due to the seriousness of the problem and the fact that it poses a common threat to both the developed and the developing world.

1.8. In view of enlargement it is also pertinent to examine the situation in the accession countries. According to the EMCDDA 1998 Annual Report 'most of the central and east European countries face increasing problems associated with the traffic and transit of illicit drugs as well as a rise in local drug consumption' ([1]). Continued EU support, e.g. through the multi-country Phare programme for the fight against drugs, will be necessary in order to reverse this worrying trend.

2. **The Committee's 1995 Opinion on 'Prevention of Drug Abuse'** ([2])

2.1. In its earlier own-initiative opinion of 1995, the Committee considered that, despite all the efforts of European governments, including policies to combat the illegal production, sale and supply of all drugs, and the commitment of massive resources, these policies had not had the desired effect. It was now recognised that enforcement and supply-side measures alone would not solve the problem of drug misuse.

2.2. While supportive of enforcement policies coordinating the pursuit of those engaged in the production, trafficking and supply of illicit drugs, the Committee considered that equal emphasis should be given to the promotion of 'demand reduction' policies. These should include:

— adequately resourced treatment, rehabilitation and education programmes targeted towards those who might be inclined to consume illicit drugs;

— education and preventive programmes towards those groups who are vulnerable to the risk of illicit drug consumption.

2.3. While the scale of the problem demands a European-wide prevention policy, there was also a need to change attitudes. No Member State should have to run the risk of being considered as a drug haven because of innovative action. No single region, city, local community or local school should have to worry about its reputation because it wishes to promote a pro-active drug abuse prevention policy. A coordinated preventive approach would help bring the problem out into the open, help citizens in each community to recognise their individual and collective responsibilities.

2.4. The Committee considered that the European Union needed a much clearer and coordinated policy.

2.5. At local and regional levels, integrated networks needed to be established, based on coordination groups involving:

— local and municipal authorities;

— staff adequately trained in drug-abuse prevention;

— medical and paramedical staff;

— police officers;

— teachers and head teachers;

— employers, employment agencies;

— parents;

— family associations, community support groups and voluntary agencies;

— local press, television and radio networks;

— full-time professional coordinators;

— coordination of health services, local authorities, employment agencies and the social partners.

2.6. At national level, the Committee urged the setting up of coordination centres responsible for monitoring local and regional coordination groups, providing specific support where necessary and ensuring cross-referencing and a structured response to drug abuse.

([1]) 1998 Annual report on the state of the drugs problem in the European Union — European Monitoring Centre for Drugs and Drug Addiction, p. 61.

([2]) OJ C 102, 24.4.1995.

2.7. At European level, the Committee proposed that the following actions could be envisaged:

Actions (1995-1999)	Outcomes 1999 [1]
— national drug coordinators group to be supplemented by a multi-disciplinary team representing all 'three pillars' of the European Union;	Partial
— the setting-up of an EU Standing Committee on Drug-Abuse Prevention;	Yes
— the active implementation of Article 129 encouraging 'cooperation' and 'coordination' between the Member States on public health matters 'including drug dependence' and supporting the Commission's right of initiative in this area;	Yes
— support for efforts by the Commission to take a more pro-active role to promote, publish and circulate best practice;	EMCDDA
— the organisation of more Drug-Prevention Weeks;	Yes
— EC-sponsored training and education initiatives in drug-abuse prevention;	Yes
— the rapid implementation of the specific Commission Action Plan proposals for the training and exchanges of professionals;	Yes
— EU awareness campaigns and networking;	Yes
— EC-funded transnational pilot projects in target areas, helping to establish a pan-European coordination network.	Partial

[1] At the study group meeting on 9 September 1999 the European Commission was invited to outline broadly the outcomes of the 1995-1999 Action Plan.

The Committee notes with satisfaction that action has been taken which to a great extent corresponds to the suggestions made in the 1995 opinion.

3. **General Comments**

3.1. The Economic and Social Committee warmly welcomes the Commission proposal for a new Action Plan to combat drugs (2000–2004), and would particularly highlight the specific targets of the Action Plan in the five domains of action;

1) Information

2) Action on demand reduction

3) Consolidation of the *acquis communautaire*

4) Action at international level

5) Coordination, integration and simplification

3.2. In line with the Political Declaration by the 1998 United Nations General Assembly Special Session on Drugs (Ungass), the Committee endorses the basic principles of shared responsibility; integrating drugs control into mainstream development; a balanced approach between demand and supply reduction; respect for human rights and support for multilateral approaches.

3.3. The Committee agrees that in the context of the campaign to reduce demand the highest priority is given to health, education and training activities, and to instruments to combat social exclusion, in order to achieve the following two main objectives:

— to reduce significantly over five years the prevalence of illicit drug use among young people under 18 years of age;

— to reduce substantially over five years the number of drug related deaths.

These objectives are usually achieved through programmes targeted at the whole population through mainstream activities focused on the day-to-day needs of the population. Health care can be delivered through an assessment of the needs of particular communities; education can be delivered through the school curriculum, detached youth work and community networks; research should be part of wider population based investigations, and training can be provided as part of the wider preparation of the workforce.

3.3.1. The Committee agrees with the Commission that, inter alia, the appropriate application of new media such as the Internet for implementing and assessing education programmes aimed at drug prevention can be useful in the field of education and awareness raising.

3.4. The Commission places considerable emphasis on the state and semi-state sector. However, the ESC notes from experience the importance of including the broader social partnership models, which exist in many Member States. The proposal stresses use of both the public health and education systems, primarily provided by local and regional authorities, but only refers to the importance of peer education, non-governmental organisations and wider society. There is little mention of already existing partnerships, e.g. on crime and disorder, economic regeneration, health improvement, and cooperation business/local government.

3.5. The principle of shared responsibility requires an integrated and balanced approach. In order to achieve this, it is essential that we make use of the resources available within the social partnership. The Committee would highlight the need to build partnerships through a memorandum of understanding, with examples ranging from prevention in the workplace, and initiating cooperation between e.g. hauliers and customs authorities.

3.6. With regard to the experiences of the 1996-2000 Drugs Prevention Programme, it is imperative that the results are fed into the proposed Action Plan when it is implemented. The outcomes should be shared, developed and mainstreamed where appropriate. The successes are often highlighted, but it is crucially important to assess the failures as well. In the establishment of new actions we need to learn from our experiences. This emphasises the need for multidisciplinary and multidimensional responses at local, national and global level.

3.7. Generally, the first experimental drug use occurs because someone you know offers you drugs. Therefore prevention needs to be reinforced in the shape of peer groups, which has been widely recognized. It is necessary to involve young people themselves from the beginning, in the setting up prevention programmes.

3.8. The connections between drugs, alcohol and tobacco are complex. In some contexts it is clear that the use of one of these substances leads to use of another. In other situations this is not so obvious. The difference in legal status creates a further dilemma. Preventive strategies for tobacco and alcohol could also have an impact on preventing initial use of illicit drugs. Highlighting the dangers of combining substances, e.g. drugs and alcohol, is also absolutely necessary. This strategy, however, should recognise that the link is between the individuals via peer groups and not between the substances as such. The use of substances is often primarily based on availability. The Committee notes that health risks are not limited to prohibited drugs and that many of the new synthetic drugs are not yet controlled in the Member States.

3.9. In order to ensure an effective strategy towards supply reduction, the implementation as agreed by the EU of the Action Plans of Ungass is essential. This adds to the importance of the integration of EU international co-operation in the fight against drugs into the broader objectives of EU external relations. The Committee would draw attention to the scope offered by the Treaty, for stronger, overall external action against drugs, through the common foreign and security policy (CFSP).

3.10. There is now general recognition that the problem of illicit drug abuse and dependency is common to all Member States. Whilst sustaining enforcement alongside a harmonisation of penalties a dynamic European prevention policy framework is required, backed up by the concrete measures envisaged by the European Council. The new Treaty provisions permit a coordinated and comprehensive policy approach, necessary to reduce both supply and demand. Given that 8 % of world trade, according to United Nations figures is drug trafficking, the Committee stresses the need of a consistent European Union policy to combat drug production and trafficking. A broader coordination in the fields of justice and home affairs and of external policy is required. The importance of European and national policy is that when challenged, the local community will have channels that can be activated to ensure a long-term solution. Without a national policy, local communities can often respond emotionally and subjectively.

3.11. The Committee welcomes the Community action on synthetic drugs. The Joint Action [1] aims at the creation of a mechanism for rapid exchange of information on new synthetic drugs and the assessment of their risks in order to permit the application of measures of control on psychotropic substances, applicable in Member States, equally to new synthetic drugs.

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[1] Joint Action of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs, 97/396/JHA, OJ L 167, 25.6.1997.

3.12. The Committee considers that the European Union needs a much clearer and co-ordinated policy on the conditions of entry of candidate countries to the Union. The Committee believes that protocols should be entered into with these countries setting out their obligations to reduce the supply of drugs through their territory, establish programmes that will reduce the demand for illicit drugs and ensure participation in international activities. Agreements on controlling so called drug precursors (which play an important role in the manufacture of amphetamines, for example) must be included here. The Committee advises that high priority be given to the *acquis* in the area on freedom, security and justice, inter alia to the *acquis* on combating drugs.

3.12.1. At the same time the candidate countries should be encouraged to make use of the possibility of being involved in pilot projects in particular under the OISIN and Falcone programmes.

3.13. The issue of doping in sport has continued to rise over the recent years. Doping in sport often does not mean taking illegal drugs but misusing legal drugs. A clear and precise legal framework and closer international cooperation are urgently needed. The Committee therefore welcomes the decision of the European Commission to open discussions with the International Olympic Committee (IOC) on its invitation to participate in the creation and operation of a World AntiDoping Agency. The need to rebuild trust both within the sporting sector and public domain ever increases.

3.14. The Commission draws our attention to the EU employment initiatives and the educational and vocational training programmes. It should be noted that whilst these programmes were not initially designed to tackle the issue of drugs, a number of excellent projects have emerged. Therefore, guidelines and policies need to be developed and built into the programmes as a resource, to support any aspects that may deal with drugs and related issues. The Committee believes increased resources are needed to facilitate the coordination required to achieve a decrease in the demand for drugs.

3.15. Considerable efforts have been made throughout Europe to combat drugs. It is apparent, however, that many of these efforts are being made in isolation, without a comprehensive and systematic policy strategy, and often on a piecemeal and spontaneous basis. The Committee regrets the shortage of dedicated youth workers, especially at street level. European coordination should strengthen youth work.

3.16. To map the drugs problem more exactly is an important objective. The Commission paper gives little information about the size and shape of the problem. A major weakness of the Commission document is the almost complete focus on drugs as an urban phenomenon. Evidence suggests that this problem is as serious in rural communities, who do not have the infrastructure to respond effectively.

4. **Conclusions/Recommendations**

4.1. The Communication from the Commission on a European Union Action Plan to Combat Drugs (2000-2004) is an important step in the development of a comprehensive approach. However, it is with great concern that the Committee notes that the funds for putting this action plan into force have not been identified. In order to achieve successful implementation of the plan it is imperative that adequate financial means are allocated. In the implementation of its action plan the Commission needs to take into account the resources available, thereby ensuring a balanced approach between reducing demand and reducing supply, with due regard to Member States' own responsibilities.

4.2. The Committee stresses the need to fully implement Title VI of the Amsterdam Treaty. Concretely, it mentions that drugs constitute a threat to collective and individual security in numerous ways, often but not always linked to organised crime. It is based on shared responsibility between consumer, transit and producer countries. Within that comprehensive framework, it is clear that a major component will be the mobilisation of all available judicial and law enforcement resources against the traffickers and criminal organisations. It is essential that intervention be stepped up. It is not acceptable to leave certain neighbourhoods of European cities in the hands of drug traffickers, who openly peddle drugs to addicts, without the police intervening to stop them. The need to establish minimum rules relating to the constituent elements of criminal acts and penalties will require increased coordination, and particular attention must be paid to the harmonisation of laws and judicial, customs and police cooperation. The need for concerted preventive action by police, education and rehabilitation services is emphasised.

4.3. The Committee notes the conclusions of the European Council in Tampere, in particular the recommendations about an Area of freedom, security and justice. Also noted are the amendments to the Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, on which the Committee is currently drawing up an Opinion. In composing this Opinion on the Action Plan to Combat Drugs it is understood that the issues raised by the Tampere summit will be addressed in subsequent ESC Opinions.

4.4. The Committee calls on the Commission to provide greater analysis of the situation. Substantial data and research is available on the use of drugs in Member States, but it is necessary also to analyse and map the impact of drugs. Evaluation is often carried out purely on an analytical basis. The Committee requests that a study that examines the socio-economic factors which influences the development of drug use is conducted. Frequently, what is actually happening on the ground is not demonstrated. Improved analysis, coupled with an assessment of good and bad practice, will aid the European Union and its Member States to put in place an effective strategy.

4.5. The Committee notes the increased use of the Internet both from the supply and demand perspective of the drugs phenomena. Therefore the Committee calls on the Commission to implement the action plan on promoting safe use of the Internet [1], on which the ESC adopted an Opinion in April 1998 [2].

4.6. The Commission refers to the positive impact that sections of the youth framework programmes and the employment initiatives have had in combating drugs. The Committee is concerned that these programmes will be seen as the non-formal and training arm of the Commission's Action Plan. While these, amongst many EU programmes, deal with young people, they will not necessarily reach the appropriate target group for this Action Plan. The Committee calls on the Commission to increase the resources available for prevention and demand reduction.

4.7. With the focus on the problem of drugs, often the greater issues of exclusion and isolation are neglected. In this action plan the need to reach out and understand these phenomena is greater than ever. Many young people feel excluded and isolated; use of drugs is often a symptom of this exclusion. The Committee believes that the Commission needs to identify suitable mechanisms to reach out to and link with these young people. For example a young person may not come into contact with the public health system until a critical stage is reached. They may, however, come into contact with the local employment scheme or local groups. Better cooperation between the various services dealing with children and young people at every level including European is clearly needed.

[1] Decision 276/1999/EC; OJ 33, 6.2.1999.
[2] OJ C 214, 10.7.1998.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Councilon the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data'

(2000/C 51/13)

On 29 September 1999 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 November 1999 (rapporteur working alone: Mr Retureau).

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion with 117 votes in favour and two abstentions.

1. **Legal basis, content and scope of the proposal**

1.1. The legal basis and reasons for the proposal for a regulation are clearly explained. The purpose is to apply Directive 95/46/EC[1] of 24/10/1995 to the processing and transmission of personal data by European Community bodies and institutions.

1.2. Community institutions and bodies, and the Commission in particular, handle personal data as part of their everyday work. The Commission exchanges personal data with Member States in implementing the common agricultural policy and the Structural Funds, in administering the customs union and in pursuing other Community policies.

1.3. When Directive 95/46/EC was adopted, the Commission and the Council undertook to comply with it and called upon the other Community institutions and bodies to do likewise (public declaration issued on 24 October 1995). In practice, the Directive has already been applied in the Community institutions since that date.

1.4. Since the Amsterdam Treaty came into effect, the Treaty establishing the European Community contains a specific provision, Article 286, providing that from 1 January 1999 Community institutions and bodies set up by the EC Treaty must apply the Community rules on the protection of personal data set out essentially in Directive 95/46/EC and Directive 97/66/EC[2]. It also provides for the application of these rules to be monitored by an independent supervisory body, set up in accordance with the procedure referred to in Article 251. This is the most important innovation in the proposal for a regulation.

1.5. The present proposal for a regulation is designed to attain this twin objective (rather later than the application date provided for in the EU Treaty).

1.6. However, some key questions are difficult to assess in the proposal as it now stands.

1.7. For example, with regard to defining the Community institutions and bodies concerned by the regulation: looking at the list provided in an annex to the proposal, Europol is evidently excluded from the proposed provisions. What is the situation, for example, with the IT network of Schengen and its own supervisory authority: should they remain separated, or could they not be merged? The same considerations apply to the other third-pillar bodies.

1.8. Another important point is that although officials and other people employed by Community bodies and institutions are covered by the proposal, the link between the proposed provisions and the Staff Regulations of the European Union officials is not very apparent (although involvement of the Staff Committees is provided for in an annex). Have staff representatives been consulted? Processing of personal data relating to staff should surely be subject to separate special provisions to protect the privacy and rights of people employed by the Communities as effectively as possible, starting at the moment when the application form is completed and continuing throughout the person's career or for the length of the contract and whenever it is renewed.

1.9. Finally, the proposal covers only individuals, reflecting the limitations of the 1995 directive, which excludes de facto or de jure legal persons, who are however affected by collection and processing of data. Nevertheless, we would point out that legal persons are affected by the 1995 directive in so far as they handle or hold personal data relating to natural persons. The present proposal concerns only the handling and transmission by the Community institutions of data that may relate to natural or legal persons, whereas the safeguards envisaged apply only to natural persons.

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(1) OJ L 281, 23.11.1995, p. 31.
(2) OJ L 24, 30.1.1998, p. 1.

2. **General comments**

2.1. The Council, which naturally has every right to set a deadline for the submission of opinions, has set a very early deadline for the ESC to present this opinion on a proposal for a regulation that is complex and important because it concerns the protection of human rights in relation to the processing and transmission of personal data.

2.1.1. The Committee would have liked more time so that it could participate more closely in a legislative process based on co-decision that affects many of the members of economic and social organisations which it represents.

2.2. The Committee has already issued an opinion [1] on:

a) two Council proposals for a Directive concerning:

— protection of individuals in relation to the processing of personal data

— protection of personal data and privacy in the context of public digital telecommunications networks;

b) and a proposal for a Council Decision in the field of information security.

2.3. The general principles regarding the processing of personal data and essential guarantees to protect individual rights and the right to privacy that were set out by the Committee in the above opinion are still valid and relevant to the present proposal for a regulation. They comply with Council of Europe Convention No. 108 [2], which should be used to help evaluate the proposal for a regulation in conjunction with legislation and practice in the Member States and with the 1995 Directive.

2.3.1. The Committee urges the Council to refer to the principles and proposals set out in its 1991 opinion and the present opinion, and to take them fully into consideration in order to improve on the 1995 Directive as far as possible, with due regard to the constraints imposed by the legal basis, and at least to bear them in mind when re-examining the Directive for possible revision by 2001.

2.3.2. The Committee believes that the Community institutions and bodies must offer maximum protection and guarantees when processing personal data, on the basis of the most advanced international standards and national legislation and the best practices in the Member States. The aim should be to set an example and to promote harmonised progress, especially since the proposal concerns not only the processing but also the free movement of data and of the information obtained from processing it both within and outside the EU.

2.4. The rapid growth in information and communication technologies, the improved facilities for long-term storage of data on different media, the growing sophistication of processing and interconnection techniques, and the development of information transmission and access systems make it all the more necessary to improve protection and guarantees for the people concerned, while respecting the principle of free data movement.

2.4.1. However, these technological developments also provide new ways of protecting against unauthorised access, ensuring secure transmission and safeguarding privacy and the exercise of individual rights, including people's right to access, correct and oppose the use or transmission of data relating to them. First and foremost, it is the state-of-the-art that should be taken into consideration rather then the cost, unless the cost of introducing new techniques is disproportionately high in relation to the level of security to be provided.

2.4.2. Protecting people's rights and providing them with guarantees must be an integral part of the process of designing instruments and methods for collecting, processing, using and transmitting data; any person involved at these various levels, from data collection to final use, must meet strict competence and confidentiality requirements, and if any of these are breached, sufficiently deterrent penalties must be imposed. The proposal essentially makes provisions along these lines, and the Committee considers it to offer considerable protection overall, providing guarantees and possibilities for administrative and legal access and appeal that are generally satisfactory.

2.4.3. Progress has been made since the 1995 Directive, e.g. regarding the right of access to data, and the transposition provisions are precise and clear, e.g. the definition of sensitive data and data that may not be handled, the exact definition of what constitutes an 'adequate' level of protection for the transmission of data to countries or bodies not covered by the 1995 Directive, the inclusion of all possible forms of data processing, or the establishment of independent supervisory bodies in each of the Community institutions and bodies (permitting a priori monitoring of rights and freedoms and of privacy, which provides better protection than a posteriori monitoring).

[1] Rapporteur: Mr Salmon, opinion published in OJ C 159, 17.6.1991, p. 38

[2] Council of Europe (ETS No. 108) Conventionfor the protection of individuals with regard to the automatic processing of personal data. All the current Member States have now ratified this convention; most of the applicant countries have not.

2.4.4. Certain provisions should nevertheless be improved, although the Committee is aware that the Commission's proposal may not overstep the framework of the 1995 Directive, of which the Committee has already highlighted certain shortcomings. For instance, there should be specific protective provisions for legal persons, or even entities without legal personality, e.g. with regard to confidentiality and respect for corporate image in the case of companies. Such protection should be provided at all events, and measures should be taken to find the right ways of achieving it. The proposed provisions on the independent supervisory bodies, over which the Council and European Parliament have complete legislative power should also be improved.

2.5. The Committee thinks that all the measures envisaged, from data collection to data processing and transmission, should relate to purposes strictly defined and checked beforehand that must meet the lawfulness criteria correctly set out in the proposal, and should be essential to the activities of the institutions and bodies responsible.

2.6. The Committee thinks there should be a separate chapter devoted to protection of the personal data and privacy of staff employed by Community institutions and organs. This chapter should at least give the future European Supervisor the power, after consultation with staff organisations, to stipulate questions that should not be asked at the time of recruitment (e.g. on health), to prevent women being asked whether they are pregnant, and to specify what each individual dossier may contain. It would be a good idea here to refer to the ILO's code of practice on protection of workers' personal data and ILO Recommendation No. 171 on Occupational Health Services (1985).

2.7. With regard to the Community institutions and bodies concerned, the Committee notes that the proposal effectively covers the whole Community sphere, and it therefore agrees with the interpretation of Treaty Article 286, i.e. that the proposal applies to all the institutions. A restrictive interpretation, which for instance excluded Euratom or the ECSC from the scope of the proposal, would have been absurd and contrary to the objectives pursued.

2.8. However, given the gradual incorporation of the third pillar (which is not covered by the 1995 Directive) into the Community system and the need for a horizontal instrument for data collected, processed and transmitted in the framework of judicial and police cooperation, the Committee suggests that the remit of the European Data Protection Supervisor be broadened to immediately include the Schengen information system and to gradually include all the third-pillar agreements in which data protection is currently seen as an issue to be tackled separately, with separate monitoring standards and bodies, albeit on the basis of common principles. Such protection must also be introduced in the sphere of judicial cooperation, where it is not yet envisaged. This would also mean attaching additional protocols to the above agreements.

2.9. Thus on the basis of these general comments and bearing in mind all the new factors and developments that have taken place since its previous opinion, the Committee, while noting that there have been many positive and interesting initiatives, would like to make some more precise and detailed suggestions and recommendations, given in the order of the proposal's chapters and annexes.

3. **Specific comments and recommendations**

3.1. Article 2 (c), Definitions. The filing system is defined as a 'structured set of personal data'. Data does not have to be structured in order to be processed and used; it would thus be enough to refer to 'a set of personal or individual data'.

3.2. Article 4 (d), Data quality. Every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected ...This should read 'every possible step'.

3.2.1. Article 5 (d), Lawfulness of processing. The Committee agrees with the lawfulness criteria, but thinks that the proposal should refer to 'informed consent' here.

3.3. Article 6, Further processing. When processing is carried out for other than the original purpose, those concerned should be informed in advance of this possibility when the data is collected or when the new decision is taken.

3.4. Article 9, Transfer of personal data.

3.4.1. Paragraphs 1 to 4: when data is to be transmitted to people or bodies that are not subject to Directive 95/46/EC or to a country that has not ratified Council of Europe Convention No. 108, measures should be taken in advance to ensure that the level of protection is equivalent, not just 'adequate' (although this is the wording of the Directive). The Committee notes, however, that the practical provisions for ensuring matching levels are highly protective.

3.4.2. Paragraphs 5 and 6: the European Data Protection Supervisor (EDPS) should be informed in advance of cases where there has been a derogation, so that objections can be raised if necessary.

3.5. Article 10(1), Prohibited processing. The wording goes further than that of Article 6 of Council of Europe Convention No. 108, except with respect to data on criminal convictions, which is treated more restrictively in Article 10(5) (though processing of such data is not absolutely prohibited). The Committee would prefer a more detailed wording, as follows: 'The processing of personal data revealing racial or ethnic origin, political opinion, religious or philosophical beliefs, and more generally any belief or opinion not defined as criminal under international law, trade-union membership, and the processing of data concerning health, genetic heritage, or sex life, shall be prohibited.' Although genetic heritage can be understood as an aspect of health, the wording on prohibited processing should no doubt be reviewed if the Directive is amended.

3.6. Article 17, Notification to third parties. The possibility of exemption from the requirement to notify changes or blocking is too vague and too broad in scope.

3.7. Article 23(1), Security of processing. The person responsible for processing must ensure the highest possible level of security during data processing and transmission, in accordance with the state of the art and provided the cost is not disproportionate to the level of security which must be provided.

3.8. Article 25, Data Protection Officer and Annexes I and II:

3.8.1. The main question concerns the independence and qualifications of the people appointed by the Community institutions and bodies to actually collect, process and transmit personal data.

3.8.2. The provisions of the proposal protect these people from any undue pressure exerted by the appointing bodies, which are also the bodies to which they are answerable and subordinate.

3.8.3. These people must be explicitly released from this subordinate relationship as far as their data protection tasks are concerned, and must be answerable only to the European Data Protection Supervisor ([1]). Their data protection tasks should not be evaluated or assessed by their hierarchical superiors, nor should they have a negative effect on their career in the event of conflict with those superiors on data protection issues. Their term in office should be longer to provide a better guarantee of their independence and provide them with security and a long-term perspective.

3.8.4. The estimated proportion of working time the people appointed will spend on data protection tasks (5 % in general, 10 % in more exceptional cases), and the means placed at their disposal, seem limited. These officers must be given sufficient freedom and flexibility to carry out their tasks properly, and they must be provided with appropriate staff and equipment as required.

3.9. Article 28, Prior checking by the European Data Protection Supervisor (EDPS).

3.9.1. The principle that should be laid down is that any data processing likely to jeopardise in a specific way the rights and freedoms of those concerned must be subject to prior checking by the Supervisor. The existence or application of 'sensitive' processing operations must be carefully considered in advance by an independent authority. Provision is made for this in the proposal, for it is a fundamental safeguard.

3.9.2. However, some types of data processing should be added to the proposed list, and at all events the EDPS should check in advance situations such as:

— data-processing involving innovative application of existing technologies;

— the additional points proposed by the ESC in Article 10;

— data-processing affecting the police, security, criminal law, immigration and the residence of people from outside the Community (e.g. provision of visas, length of stay);

— processing that uses identifiers of general application;

— interlinking of files with distinct purposes;

— processing of data collected for other purposes;

— data-processing conditions that violate the principles of personal protection;

— processing that uses or requires data to be transmitted beyond EU frontiers;

— mandatory statistical surveys and surveys relating to whole sectors of the population and professions.

3.10. Article 32, Security of internal telecommunications networks, end of paragraph 1. The Committee recommends that the sentence be changed as follows: 'Having regard to the state of the art, technological development and, possibly, the related cost, if this is disproportionate to the objectives pursued, these measures shall ensure, and continue to ensure, a level of security appropriate to the risk presented.'

([1]) As stipulated, for example, in ILO Convention No. 81 on Labour Inspection.

3.11. *Supervisory authority*

3.11.1. Article 38, The EDPS. Paragraph 1 should specify that an independent supervisory authority is to be established.

3.11.2. Article 39, Appointment. The proposal provides for the EPDS to be appointed 'by common accord' by the Commission, Council and European Parliament for a term of four years. The EPDS may also be reappointed, but the proposal does not stipulate how many times this may be done.

3.11.3. The Committee again points to the need for an independent EPDS, who should therefore not be appointed by bodies such as the Council and Commission that regularly process personal data or ask for personal data to be processed, and circulate or transmit such data. As with the Ombudsman, it would seem more appropriate and more practical from a technical point of view for the EDPS to be appointed by the European Parliament in consultation with the Commission and the Council. A considerably longer (possibly double the length provided for in the proposal), but non-renewable, term-of-office could provide an additional guarantee of independence.

3.11.4. The tasks of the EDPS are particularly demanding and diverse, and the budgetary provisions in the annexes to the proposal seem somewhat modest considering the requirements of the post.

3.11.5. The Committee considers it absolutely necessary for the future supervisor to have adequate means and a sufficient number of highly qualified staff.

4. **Conclusions**

4.1. The Committee would have liked to examine in more detail all the provisions submitted to it in this proposal for a regulation that is so critical to the protection of personal rights and freedoms within the Community administration.

4.2. This project represents an enormous task that must be acclaimed for the important safeguards it provides. Its limitations largely reflect those of the 1995 Directive. Although it recognises the progress in the proposal as it stands, the ESC nevertheless presents general and specific comments in this opinion to the Council, the European Parliament and the Commission in the hope that its contribution will make it possible to strengthen the guarantees of freedoms and rights enjoyed by people within and outside the Community.

4.3. On the basis of the planned review in 2001 of how the Directive is being implemented and in accordance with the specific revision proposals that will then be presented to it for consideration, the Committee will make detailed and exhaustive proposals on the nature and scope of the changes that it would like to see made to the current text.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council: European Year of Languages 2001'

(2000/C 51/14)

On 30 November 1999 the Council decided to consult the Economic and Social Committee, under Articles 149 and 150 of the Treaty establishing the European Community, on the above-mentioned proposal.

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

At its 368th plenary session (meeting of 8 December 1999) the Economic and Social Committee adopted the following opinion with 67 votes in favour, no dissenting votes and six abstentions.

1. **Introduction**

1.1. Articles 149 and 150 of the EC Treaty form the legal basis for the proposed European Year of Languages 2001. Article 149 refers to 'developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States'.

1.2. In the field of language learning and training, the Community is following up earlier initiatives and undertaking new initiatives:

1.2.1. Under the Socrates programme, support was provided for the initial and in-service training of language teachers and the development of new teaching materials and for joint educational projects.

1.2.2. The Leonardo da Vinci programme promoted the development of vocationally-oriented language skills through transnational pilot projects and exchange programmes.

1.2.3. In the second phase of Leonardo II, due to commence in 2000, the importance of language learning will be reinforced and special attention will be paid to linguistic diversity and improving the quality of language teaching [1]. The aim is 'to promote a quantitative and qualitative improvement in the knowledge of the languages of the European Union, in particular those languages which are less widely used and less widely taught'.

1.2.4. Leonardo da Vinci II (starts 2000) aims to raise the visibility of languages. The Council Decision of 26.4.1999 highlights the 'promotion of language competences, including for less widely used and taught languages, and understanding of different cultures in the context of vocational training ("language competences")' [1].

1.2.5. Further key statements on the issue of languages and education can be found in the 1995 White Paper 'Education and training: teaching and learning — Towards the learning society' [2].

1.2.6. The Green Paper 'Education, training, research: the obstacles to transnational mobility' [3] also merits special attention.

2. **Gist of the Commission proposal**

2.1. The European Year of Languages is planned along the lines of the highly successful Year of Lifelong Learning (1996) and has four key objectives:

— to raise awareness of the richness of linguistic diversity within the European Union;

— to bring to the notice of the widest possible public the advantages of competence in a range of languages;

— to encourage the lifelong learning of languages and related skills;

— to collect and disseminate information about the teaching and learning of languages.

2.2. During the European Year, information and promotional measures will be undertaken on the theme of languages. The aim is to encourage people residing in the Member States to learn languages by raising awareness of their importance for the quality of life and economic competitiveness.

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[1] OJ L 146, 11.6.1999 — ESC opinion: OJ C 410, 30.12.1998.

[2] COM(95) 590 final — ESC opinion: OJ C 295, 7.10.1996.

[3] Green Paper 'Education, training, research: the obstacles to transnational mobility', COM(96) 462 final — ESC opinion: OJ C 133, 28.4.1997.

2.3. The following five measures are aimed at bringing home this objective:

— use of a common logo and of slogans

— Community-wide information campaign

— meetings and events at all levels (Community, transnational, national, regional and local)

— competitions and prizes

— financial support for initiatives.

3. **Conclusions**

3.1. The ESC broadly welcomes the European Commission's adoption of this proposed decision declaring 2001 a Year of Languages. The fact that this year falls at the beginning of a new millennium strikes the ESC as of considerable symbolic importance.

3.2. As the proposal quite rightly points out, the success of the Year of Languages 2001 requires 'appropriate cooperation between the European Community and the Council of Europe'. This is also mentioned in Clause 10 of the preamble, although the abstract wording of Article 10 of the proposal does not do justice to this requirement.

The ESC calls for a more concrete description of cooperation with the Council of Europe; this could take the form of, for instance, joint working parties or regular meetings of those responsible.

3.3. It has to be made very clear that the concept 'language' must not be reduced to grammar, vocabulary and correct pronunciation, but that cultural values are the real issue.

The aim is to reach out to other cultures through language. European history has common roots and Europe thrives on the diversity of its cultures and languages. In this respect language learning helps Europeans to discover their identity; it is not an end in itself, but the means of transmitting cultural values. It should also be stressed that language creates a social community. This should be expressed more explicitly in Article 2 and the financial statement.

3.4. A capital opportunity for language use is offered by Europe's border regions, where learning each other's language should be especially encouraged and developed. At least the same attention and assistance should be given to languages in areas which are not near neighbouring states. The ESC would regret the exclusion of minority languages. This would contradict both the proposal's objectives and the target populations mentioned in 6.4.

3.5. The ESC calls for a discussion — as part of the Year of Languages — of the sustainability of these activities. Past experience might be useful here. An appropriate analysis and assessment of previous 'Years' should go a long way to avoiding mistakes and problems in the Year of Languages 2001.

3.6. As for previous events (e.g. European Year of Safety, Hygiene and Health Protection at Work) the ESC would like to participate directly in the work of the advisory committee.

3.7. The ESC is ready to cooperate actively with the Commission and is interested in collaborating on an appropriate initiative in 2001, to be carried out jointly with the Commission and other institutions.

3.8. The ESC is convinced that the Year of Languages 2001, after an appropriate preparatory phase, will be able to make a significant contribution to the understanding of languages through successful cooperation at all levels, and hence to the development of Europe and its civil society.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'White Paper on modernisation of the rules implementing Articles 81 and 82 of the EC Treaty — Commission programme No 99/027'

(2000/C 51/15)

On 10 May 1999, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned White Paper.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 November 1999. The rapporteur was Mr Bagliano and the co-rapporteur was Mr Lustenhouwer.

At its 368th plenary session (meeting of 8 December 1999), the Economic and Social Committee adopted the following opinion with 68 votes in favour and two abstentions.

Introduction

1) In the field of competition law applicable to undertakings, the EC Treaty sets out general rules applicable to restrictive practices (Article 81) and abuses of dominant position (Article 82) ([1]).

   The Treaty empowers the Council to give effect to these provisions (Article 83).

2) In 1962, the Council adopted Regulation 17, the first Regulation implementing Articles 81 and 82. This Regulation laid down the system of supervision and enforcement procedures, which the Commission has applied for over 35 years without any significant change.

3) Regulation 17 empowers the Commission to apply the prohibitions contained under Articles 81 and 83 directly.

   At the request of the interested parties (notification), it also gives the Commission sole power to declare the Article 81(1) prohibition inapplicable, by virtue of conditions laid down in Article 81(3).

4) In other words, to use the Community terminology, Regulation 17 gives the Commission the power to 'authorise' — by granting an 'exemption' from the prohibition — agreements or practices, 'notified' by the interested parties, that would have been subject to the prohibition but are eligible for 'exemption' by virtue of the conditions laid down under Article 81(3).

5) The Commission is also given sole power to approve, at the request of the undertakings concerned, a 'negative clearance', stating the lack of grounds for applying the Article 81(1) and Article 82 prohibitions.

1. The reform proposed by the White Paper

1.1. *Reasons*

1.1.1. According to the White Paper, the system introduced by Regulation 17 is in need of radical reform.

1.1.2. The main reason for the proposed reform is that in view of the current position of the economy and of the Community integration process, and with the new challenges soon to be facing the European Union — especially regarding enlargement to the countries of central and eastern Europe and Cyprus, it is time to replace the centralised system of responsibility established by the Regulation.

In particular, the Commission must be freed from the workload arising from its 'monopoly' over the power to grant exemptions within the meaning of Article 81(3), in order to ensure effective application of Community competition rules.

1.1.3. There are also several other grounds for reform.

First of all, the Commission workload is no longer justified and is set to become increasingly burdensome in terms of the time and resources required. Furthermore, this workload no longer allows the Commission to exercise its power of 'exemption' efficiently and prevents it from focusing its efforts on major international monopolies and cartels.

([1]) This opinion refers to these articles using the numbering adopted in the 'consolidated' version of the European Union treaties which came into force on 1 May 1999.

1.1.3.1. The Commission workload is no longer justified, as a system based on precedents and regulatory provisions has now developed that can give undertakings legal certainty. In the early days, Regulation 17 exemption decisions were the only antidote to uncertain interpretation and inexperience.

1.1.3.2. The inefficiency is reflected in the unduly lengthy exemption procedures and the small number of cases that are concluded with a final decision, in spite of all the measures taken to overcome this problem.

1.1.3.3. A further reason for reform, according to the White Paper, is that national authorities and courts are often in a better position than the Commission to take effective action, and generally have the necessary skills and resources.

1.2. *Objectives*

1.2.1. The reform proposed by the White Paper means switching to a decentralised system for applying Articles 81 and 82, in order to:

— ease the unjustified and overly costly workload placed on the Commission by the current system;

— enable the Commission to invest the appropriate amount of effort and resources in fulfilling its main institutional duties in the competition field;

— involve the national authorities and courts to good effect in implementing the competition rules relating to undertakings;

— maintain the Commission's role in steering, directing, monitoring and intervening, with a view to ensuring the effective and coherent application and development of Community law;

— eliminate the risk of abuse, which (in the Commission's experience) is inherent in the system of 'notification' for 'exemption' under Article 81(3) [1].

1.2.2. A further objective is to apply competition rules using criteria that are more economic and less formal than in the past, in order to focus more intensely on the need to counter any anti-competitive effects arising from the actions or agreements of companies that have considerable market power, where such effects really exist.

1.3. *Switching from an 'authorisation' system to a 'directly applicable exception' system*

1.3.1. The Commission considers that in order to reach the desired objectives, the current 'exemption' system must be replaced with a 'directly applicable exception' system.

In other words, under the proposed reform, explicit authorisation will no longer be required of the Commission to lift the prohibition on agreements and restrictive practices, within the meaning of Article 81(3).

Providing the conditions listed under Article 81(3) are met, the non-applicability option will apply automatically from the moment the agreement or practice otherwise liable to contravene Article 81(1) is introduced.

This new system is termed the 'directly applicable exception' system as the exemption will be provided directly by law in each specific case.

1.3.2. The only exception to this new rule would be that the Commission will retain the power to adopt block exemption regulations and adopt specific exemptions for 'production joint venture' agreements.

The Commission intends to make frequent use of the block exemptions, using regulations with a wider scope of application than before, based on economic rather than formal legal considerations [2].

Under the reform, 'production joint venture' agreements, though currently prohibited or exempt as agreements within the meaning of Article 81, will become subject to the Merger Regulation procedure.

1.4. *Potential impact of the reform proposed by the White Paper*

1.4.1. Agreements that comply with the conditions laid down under Article 81(3) will be considered valid from the moment they are concluded.

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(1) According to the White Paper, notification is sometimes used as a delaying tactic, to avoid the risk of fines under Regulation 17, and to secure suspension of any national legal proceedings pending the Commission decision. Notification of an agreement actually provides a form of immunity from anti-trust rules by suspending the related fines.

(2) This approach has already been applied under the forthcoming general regulation on vertical restraints, OJ C 270, 24.9.1999.

As Commission authorisation will not be necessary, there will no longer be any obstacle preventing the national competition authorities and courts responsible from applying Article 81 in its entirety.

The national courts and authorities will also therefore be free to conduct a thorough examination of the facts and figures submitted to them without having to suspend proceedings pending a Commission pronouncement (thus eliminating the feared danger of abuses).

In this respect, the White Paper proposal constitutes a vital addition to the provisions already made in the notices on cooperation with national courts and authorities [1], for the purposes of applying Article 81 in a more diffuse and decentralised manner.

1.4.2. According to the rationale underpinning the proposed reform, 'decentralisation' and the 'directly applicable exception' system are therefore closely interlinked; the application of one necessarily involves the existence of the other.

The effective decentralised application of Article 81 would not be possible unless the national courts and authorities were able to examine grounds for exemption [Article 81(3)] as well as evidence of infringement.

On the other hand, in the event of a complaint by a third party, the inability to defend the 'directly applicable exception' before a national court or authority (responsible, under the decentralised system, for examining evidence of infringement) would prejudice the right of defence of the undertakings concerned, which under the reform would no longer be able to protect themselves using the notification procedure.

1.5. *The 'other measures' foreseen by the White Paper*

1.5.1. The White Paper makes provision or recommends research into various other measures.

These are aimed largely at ensuring the reform works and achieving the various complementary objectives (mentioned under para. 1.2.1 above).

1.5.2. A number of the measures will be the responsibility of the Member States.

First and foremost is for those Member States that have not already done so to grant to their respective competition authorities the power to implement Articles 81 and 82. It will not, however, be necessary to grant the same power to the national courts, as this has already been done by the Treaty, according to the interpretation of the Court of Justice.

1.5.3. Other measures are aimed at preserving and guaranteeing the Commission's steering and monitoring role.

Here, it is accepted that the steering role will require the adoption of general measures such as notices and regulations, as well as specific measures. The specific measures will include the power of the Commission to adopt decisions on more important cases or cases that raise new competition issues.

1.5.4. The possibilities for action and other measures and principles will also have the highly important role of arranging for the coordination and linkage of the activities of the national authorities, within the bounds of the Commission's steering role.

According to the Commission, (White Paper para. 91),

'After 35 years of application of the Community competition rules, the time has come to make better use of the complementarity that exists between the national authorities and the Commission, and to facilitate the application of the rules by a network of authorities operating on common principles and in close collaboration.'

1.5.4.1. Genuine coordination will also require an information system on cases pending and decisions adopted, involving the courts and competition authorities of all Member States as well as the Commission. Responsibility for coordination will lie principally with the Commission.

Success will depend, however, on the cooperation of the other members of the network.

1.5.4.2. There are also plans to give the advisory committee (with Member State representation) a new and more effective role coordinating the decisions of the Commission and the competition authorities.

1.5.4.3. Commission action will be possible before or even after definitive decisions are adopted, should the Commission not agree or be obliged to act in order to maintain the coherence of the system.

Furthermore, the Commission will be able to remove a case from the jurisdiction of a national authority and deal with it itself or pass it on to another national authority.

Should the Commission observe that the impact of a particular case largely concerns a single Member State, it will be able to pass the case on to the relevant authority in the Member State concerned.

1.5.4.4. Similarly, when a national authority concludes that a given case is of Community interest and requires Commission intervention, it should in turn be able to pass that case on to the Commission.

[1] Commission Notices of 13.2.1993 and 15.10.1997.

1.5.4.5. The White Paper states that the transfer of a case from one authority to another should also involve transferring the evidence collected in the former to the latter.

1.5.5. Other measures are designed to ensure that Community law takes precedence over national competition laws and that the decisions taken by the various authorities and courts are consistent. (See 2.3.5)

1.5.5.1. To this end, the regulation implementing the reform will contain a general provision whereby 'national' competition decisions and rules may not obstruct the full application of the block exemption regulations to be adopted by the Commission.

However, there is no specific mention of the possibility and scope for national authorities or courts to choose for themselves whether to apply Community or national law in cases where both are applicable.

1.5.5.2. On the question of consistency, the White Paper states (Point 103) that it 'may also be necessary to strengthen the principle that the application of national or Community law by national courts or authorities should be consistent with the application of Community competition law by the Commission'. The courts will however remain subject to the principles established by the European Court of Justice, and reiterated in the notice (see footnote 4) on their activities, to ensure that decisions are consistent.

On several occasions, the White Paper refers to the possibility of appealing to the Court of Justice to solve questions of interpretation and avoid inconsistencies.

1.5.5.3. It is important to remember, however, that there is potential conflict between a decision on a case to which the directly applicable exception has been applied under Article 81(3) and a decision on the same case where a tougher national law has been applied. The White Paper makes only the general statement that it would be 'advisable to establish mechanisms to avoid such conflicts in the first place'.

The Commission will be able to intervene as 'amicus curiae' in proceedings before ordinary courts.

1.5.6. With a view to dedicating more resources to combat cartels and abuses of dominant position, the White Paper provides for other measures designed to facilitate preparatory inquiries and the gathering of evidence.

The measures for strengthening powers of inquiry should include the obligation for undertakings to provide Commission officials with full information during investigations. Arrangements for notifications and claims will be more thoroughly organised following the reform, both to provide an incentive for undertakings and for the sake of efficiency. There is also a plan to raise the level of fines.

2. **Comments**

In adopting the white paper, the Commission has taken a courageous and ground-breaking initiative which responds to a widely-felt need.

2.1. *The importance of the reform proposed in the White Paper*

2.1.1. The proposal seemingly focuses on amendments to a procedural regulation that is over 37 years old, and whose reform has been on the agenda for years. However, the content and the implications of the document go much further.

2.1.2. The replacement of the 'authorisation' system with a 'directly applicable exception' system is much more than a mere procedural arrangement extending 'full' powers — for the application of Article 81 in its entirety — not only to national competition authorities but also to national courts.

The proposed reform goes far beyond procedural arrangements, and it must be examined from that standpoint.

2.1.3. Although, as the Commission points out, the switch from an 'authorisation' system to a 'directly applicable exception' system will not involve amending the Treaty, it will have a major impact in more general terms.

Indeed, the genuinely active involvement of the national bodies — not only in managing but also to a degree in forming Community competition policy — will be an innovation with major repercussions in time.

2.1.4. In contrast to court decisions, exercising the power to grant authorisations always leaves ample room for evaluation.

The content of an exemption 'decision' will never coincide with that of a 'judgement' relating to a 'directly applicable exception' based on Article 81(3). (For instance, an exemption decision must specify the duration of the exemption and any conditions to which it is subject. Judgements, in contrast, are necessarily limited to stating whether or not a prohibition is applicable.) A distinction may thus gradually emerge between both the scope and impact of these instruments.

2.1.5. The ample room for manoeuvre enjoyed by the Commission until now in its examinations with regard to Article 81(3) must fit into the context of a competition policy.

In the drafting of block exemption regulations and also in the individual exemption decisions, the Commission has managed to inject a degree of flexibility into the application of competition policy, so that it fits in with other Community policies (see 2.3.6.8). In the Commission's reply to the ESC opinion on the XXVIth Report on Competition Policy (1995)[1] it is explicitly recognised that: '... in its scrutiny of individual cases pursuant to Article 85(3) [now Article 81(3)] and in keeping with the principle of proportionality, it [the Commission] weighs up the restrictions on competition that result from the agreement and the environmental objectives to be attained.'

Examples could also include the related issue of merger control, for which different assessment criteria are adopted although in substance they are necessarily homogeneous.

The 13th recital of Regulation (EEC) No 4064/89 on merger control explicitly states that '... the Commission must place its appraisal within the general framework of the achievement of the fundamental objectives referred to in Article 2 of the Treaty, including that of strengthening the Community's economic and social cohesion, referred to in Article 130a'.

2.2. *The advantages of the reform*

The Committee believes that the reform could lead to a substantial improvement in the application of Community competition rules. Whilst the Committee supports the proposals in principle, the concerns outlined below under point 2.3. need to be resolved satisfactorily before any reforms are implemented.

The proposed reform meets requirements with regard to both the efficiency of the application of the rules themselves and the specific interests of SMEs and of business in general.

2.2.1. A more effective Community system for safeguarding competition

2.2.1.1. The Committee believes that, given its motives, objectives and probable effects, and inasmuch as it meets the need for companies to have legal certainty, as mentioned under point 2.3.6, the reform should do much to consolidate and further develop the Community integration process.

2.2.1.2. In this respect, the aim of the White Paper is very important, namely:

— to strive harder and more effectively to combat anti-competitive cartels and abuses of dominant position, and

— to address, at source, the danger that a given act or practice can effectively become 'immune' from competition law simply by the use of a notification.

All those concerned — small, medium-sized and large undertakings, consumers, and anyone directly or indirectly involved with a company's activities, above all the workers, — will benefit.

2.2.1.3. With the end of the notification system, and the consequent substantial reduction in the number of cases, the proposed system will reduce the burden and cost of safeguarding competition at Community level.

The elimination of the notification system signals the end of an essentially 'bureaucratic' activity, which has become a major obstacle to the efficient safeguarding of competition.

'Decentralisation' will not however simply offload the Commission's work onto the national authorities and courts, with an attendant risk of diverting resources from their respective institutional duties.

On the contrary, it will enable all the authorities and bodies concerned to focus on the most serious issues.

2.2.1.4. The move away from formal legal interpretation criteria — which in the past weighed down the application of Community competition law — will also reduce the number of cases, to the further benefit of the effectiveness and cost-efficiency of the system.

With mainly economic interpretation criteria, it should no longer be possible to make interpretations on the basis of the letter of the law rather than the intention of the Article 81(1) prohibition, which in the past extended its scope and thus also that of the exemption.

The advantages deriving from the reduction in the number of cases subject to examination by all the authorities concerned will easily offset the workload associated with the exchange of information between the national institutions and between them and the Commission; this 'exchange' will be a key factor in the smooth running of the system.

2.2.1.5. The switch from the 'authorisation' system to the 'directly applicable exception' system will necessarily involve a radical change in company behaviour regarding competition issues.

Given that up to now the 'prior notification' system has taken responsibility away from companies to some extent, the Commission is right to suggest that the switch will make them more accountable.

[1] SEC(97) 628.

It will be up to companies to assess very carefully whether their own agreements and initiatives could cause competition problems and/or result in penalties.

Meanwhile, the analyses which companies will be required to conduct in order to complete these assessments should, in time, sow the seeds for a competition culture, which will be the main means of ensuring an effective system for safeguarding competition.

2.2.1.6. One of the most important aspects of the reform is decentralisation.

Here, the Committee must agree that the national courts and in particular the national authorities should be in the best position to act effectively and swiftly to eliminate the local (but no less important) effects of anti-competitive activity.

The increased role of these institutions in implementing Community law could also make a major contribution to the harmonious development of the Community and the effective consolidation of the system.

2.2.1.7. More frequent application of Article 81(1) at national level should also stimulate the application of Article 82 nationally (abuse of a dominant position), given the complementary objectives of the two articles.

All this should lead to more widespread and meticulous implementation of Community competition rules, and result in a gradual strengthening of the system as a whole.

2.2.2. Benefits for SMEs

The reform will be of specific benefit to SMEs.

2.2.2.1. With the switch to the 'directly applicable exception' system, agreements will be legitimate from the start, removing the need to follow extremely lengthy procedures involving unforeseeable risks. This will substantially increase legal certainty and transparency, two factors of particular importance to SMEs.

Moreover, the lifting of the requirement to apply for exemption under Article 81(3) will remove the workload and costs associated with the Regulation 17 notification procedure.

2.2.2.2. The simplification brought about by the new system will make it easier to safeguard the rights of undertakings that consider themselves to have been injured by unfair competition. It will become easier to win damages, as companies will no longer run the risk of proceedings being suspended or uncertainty as to whether the Commission will grant an exemption for the agreements in question.

2.2.2.3. Decentralisation will in principle make it possible for SMEs to appeal to (and if necessary defend themselves before) national institutions (competition authorities and courts) directly.

2.2.2.4. The effect will be to improve the current situation in a number of ways, with particular benefit to smaller undertakings:

— the proceedings will generally be heard in the language of the country,

— the cost of proceedings, including logistical costs and the costs of any assistance, will be significantly lower,

— cases will be easier to manage

— it will also be easier to explain and understand local issues, which are often vital for making a more precise competition-related examination of the agreements and practices of small and medium-sized enterprises.

2.2.2.5. The future focus on economic criteria and market position, will also be of substantial benefit to SMEs.

The majority of these companies should benefit from the new block exemption regulations, which will free them of the burden of self-assessment imposed by the 'directly applicable exception' system.

2.2.3. Advantages for business in general

2.2.3.1. The business world as a whole will benefit from the advantages described above. After all, the reform responds to needs expressed by all the operators involved.

For this reason, in recent years, the Commission has launched various initiatives all with the aim of making the system more efficient.

2.2.3.2. In spite of those efforts, the main problems have persisted. The procedures are costly, the proceedings are lengthy and there is no legal certainty: more often than not, companies are obliged to implement agreements before the Commission has been able to examine them in depth.

All this runs counter to the objectives of Community legislation as represented by the 1962 'prior authorisation' system.

2.2.3.3. 'Comfort letters', with which the Commission attempted to address the operational difficulties, are not legally binding, as the Commission and the Court of Justice have acknowledged on several occasions. Comfort letters provide nothing more than an initial response, or rather a general pointer. They can protect companies from Commission action

(unless new evidence is brought to light). However, in contrast to exemption decisions, comfort letters give companies no real guarantee against complaints as to the validity of their agreements made by third parties (or even their own partners) to a national court or authority.

Furthermore, despite their heavy outlay of resources and time, comfort letters do nothing to develop a system whereby companies can enjoy the necessary legal certainty and peace of mind. Such letters are confidential, and in most cases present no arguments.

For all these reasons, they are not a reliable precedent, and cannot contribute to the development of the system in the way that the Regulation 17 decisions always have.

2.3. *Measures to address the difficulties and dangers inherent in the implementation of the reform*

2.3.1. Need to adopt preliminary and/or accompanying measures

The Committee feels it has a duty to point out the difficulties and dangers of implementing the reform proposed by the White Paper without first adopting appropriate 'preliminary measures', even if this means delaying the reform, however urgently it is needed.

The planned reform must be accompanied by a specific programme of preliminary and/or accompanying measures, both to help prepare the ground and to provide an initial response to the most pressing demands.

2.3.2. Measures necessary for involving the national courts in implementing the reform

2.3.2.1. It is first necessary to establish whether the conditions exist for switching from the existing centralised authorisation system to one that heavily involves the national courts.

2.3.2.2. While companies and national authorisation bodies have definitely been party to the development of the Community 'culture' of competition, national courts have been so to a lesser extent (and in a different way).

Decision-making practices and rules in the courts of the various Member States vary enormously, as do deadlines and procedures. Furthermore, some countries have courts that are specialised in civil and commercial law while others do not. The way courts deal with Community issues has thus developed differently in the various Member States.

Therefore, without appropriate measures, there is little or no chance that the national courts will react in basically the same way to the reform. The danger is that it will prove impossible to implement the reform in a uniform manner throughout the Community, and that the unity of the system will thus be jeopardised.

2.3.2.3. The varying situations in individual countries may also lead to inconsistencies and differences in interpretation, which the more mobile companies (and those located in the countries with the most favourable conditions) could exploit to the detriment of others and of the coherence of the entire system.

2.3.2.4. The time taken over civil and commercial law proceedings in the various Member States is often incompatible with the speed and urgency required by competition issues. Without radical changes, a case involving various levels of appeal could take longer than the already lengthy Community procedures necessitating reform.

Furthermore, the rules on the responsibilities and activities of the courts are often extremely rigid and in general not easily wed with the flexible contacts needed to work the system proposed by the White Paper.

2.3.2.5. Although the dangers that have been highlighted require full attention, it should be possible to deal with them if the right measures are taken and quickly.

The Committee also believes that many of the measures to eliminate or reduce these dangers must be taken directly by the Member States.

However, a major effort can and must be made to achieve this objective by the EU, at all institutional levels.

2.3.2.6. First of all, the relevant authorities and courts must be directly involved in the consultations that the Commission is conducting on this subject. These consultations could generate important answers to a number of preliminary issues that need a practical response, regarding for instance:

— the real reasons for the limited application of Community competition legislation by the national courts;

— specific obstacles giving rise to this situation, in addition to the lack of jurisdiction to apply Article 81(3);

— the need for special training in the courts;

— the need and scope for various types of cooperation and division of responsibilities between courts and competition authorities in order to make mutually beneficial use of resources and skills.

2.3.2.7. Secondly, a detailed training programme should be set up to familiarise courts with the new duties and issues they will have to face. From now on, universities and cultural, economic and legal institutions should also be involved in order to step up training and information measures.

2.3.2.8. Lastly, further efforts are required to continue legislative harmonisation, using notices, recommendations and decisions, where appropriate. The Committee hopes in particular that it will be possible to harmonise the various aspects that might give rise to 'forum shopping'.

For instance, taking a broader approach (in harmony with the Helsinki principles), the duration of proceedings and levels of court should, as far as possible, be compatible with the requirements of business and be standard throughout the European Community. Similarly, the courts' investigative and decision-making powers should be standardised.

The Committee is also in favour of setting up specialised courts (or special sections) in all the national systems to deal solely with competition law, as this would contribute significantly to the efficiency of the new set-up.

2.3.3. Measures that must be adopted to increase the involvement of the national competition authorities

2.3.3.1. Involving the national competition authorities will, though to a differing extent, have similar dangers and necessitate similar measures to those recommended for the courts.

However, the national competition authorities will probably have fewer problems in terms of 'culture' or lack of experience. There are also differences in the degree to which they are used to, and institutionally equipped for, working with the Commission.

2.3.3.2. However, with these institutions too, there are major differences between the Member States as regards the experience, resources and procedures available.

First, there are major differences regarding the implementation of Community law. It is an established fact that not all the national authorities have the power to apply Community law directly. Moreover, their powers and their degree of autonomy with regard to the executive may also differ.

As yet, only a few legal systems have adopted legislative principles or mechanisms involving an application of national competition law that tallies in essence with that of Community competition law.

2.3.3.3. For all the above reasons, preliminary measures must be adopted similar to those foreseen for the courts. Otherwise, the 'network' upon which much of the success of the new system will depend, will not function.

2.3.4. Conditions and requirements for the adoption of notices and block exemptions under the new system

2.3.4.1. The Committee accepts the role given by the White Paper to interpretative notices and block exemption regulations, to be adopted by the Commission.

It would seem essential, however, that the close connection (that has always existed in the past) between the adoption of these general instruments and the decision-making activity of the Commission be maintained. One of the fundamental features of Community competition law, which has contributed to the efficiency and success of Commission action, is its 'methodical' approach.

Even when adopting 'general' instruments, the Commission has always referred back to its experience acquired in dealing with individual cases; this feature must be preserved.

2.3.4.2. All companies must be able to benefit, in principle, from the experience gained in applying competition law and from the guidance provided by notices and block exemption regulations.

While competition law should be applied on the basis largely of economic criteria, these criteria must be identical for all types of company, unless it can be proved that the impact on competition genuinely differs.

2.3.5. Safeguarding the unity and coherence of the system and ensuring that Community law takes precedence (see 1.5.5)

2.3.5.1. In view of the nature of the Commission proposal, safeguarding the unity and coherence of the system will be the area carrying the greatest risks. For this reason, it will require the greatest legal imagination in order to pinpoint the most suitable preliminary and accompanying measures.

In switching from a highly centralised system to a decentralised system, there will always be a risk of losing the elements that hold the system together.

This is all the more true since the switch is taking place in the still highly diverse Community legal system. Furthermore, the national bodies that are to implement the decentralised system do not yet all appear to be ready to take on the responsibilities that this system will impose on participating bodies. The enlargement of the European Union to the countries of central and eastern Europe will raise several very serious and urgent problems in this respect.

2.3.5.2. The risk of fragmentation is heightened by the fact that decentralisation must take place in conjunction with the shift from an 'authorisation' system to a 'directly applicable exception system'.

This will reduce the number of provisions with 'erga omnes' effect [exemption decisions under Article 81(3)], with the result that it will not longer be legally impossible for there to be several assessments of the same agreement by one or more bodies.

2.3.5.3. The picture is further blurred by the diverse nature, powers and intervention measures of the competition authorities and courts that will be helping to implement the new system.

2.3.5.4. Another possible source of fragmentation and incoherence is the fact that all the bodies involved will often be faced with a choice between two differing sets of rules that do not always agree: the national rules and the Community rules.

2.3.5.5. A final complicating factor is the very nature of the cases to be decided.

An 'economic' approach to competition involves making an assessment on the basis of the impact of an agreement on the market in question, irrespective of where the agreement was drawn up or implemented or where the parties to it are located. Furthermore, with the 'economic' approach, the time when the agreement came into being or the act took place may also be irrelevant. The impact may and often does change over time, in the same way that a single agreement or practice can have a differing impact on different markets.

All this will reflect in turn on both the choice of the law applicable and the choice of which body should carry out the assessment. In theory, if the action affects the markets of several Member States simultaneously, the laws of all those States are applicable and all the national bodies have the power to judge in the absence of:

— supranational legislation applicable in all these Member States,

— or legislative or agreed principles imposing the application of that legislation, or of a specific national law, and/or providing exclusive power to apply supranational legislation [e.g. Regulation 17 for Article 81(3)].

2.3.5.6. The Commission is certainly aware of the complexity of the issues and of the difficulty of coming up with definitive solutions. Therefore, the White Paper sets out various measures to address the many problems and also refers to the need for further research.

The Committee notes and welcomes the open and responsible approach taken by the Commission. The present comments and suggestions represent its initial response.

However, the concerns raised by the proposal are understandable as illustrated by the risks and difficulties underlined in the present opinion.

The danger of the 'fragmentation of the single market' and the 'renationalisation' of competition law are particular sources of concern.

In the Committee's view, these concerns could be to some extent allayed by first adopting robust preparatory and accompanying measures.

2.3.5.7. For the Committee, flexibility in the system and in the sharing out of responsibilities is one of the main objectives, but it will only be achieved if a number of safeguards are set in place. Appropriate measures must be devised to:

— guarantee the necessary flexibility and the establishment of a genuine 'network'; and

— enable companies to tell which authority will be responsible for implementing the relevant procedure and what may be the outcome, and, more generally, defend their right to a defence most effectively.

Special measures must also be aimed at ensuring effective cooperation between the competition authorities and the ordinary courts, in order to tap all possible synergistic effects and secure greater consistency.

2.3.5.8. To this end, one important element will be a precise definition of 'Community interest', since this interest must be at stake for a case to be dealt with directly by the Commission rather than by a decentralised authority; the definition should as far as possible be based on objective criteria. The same must apply for the opposite scenario, i.e. the transfer of a case which is not deemed to be of 'Community interest' from the Commission to a decentralised authority or even from one authority to another.

However, provision must also be made for a binding general principle that the arrogation and transfer of cases must be conducted within a short timeframe, in line with business requirements.

A cut-off point must thus be established — either after a certain period of time or after a certain action has been completed — after which the Commission can no longer revise an adopted decision or transfer a case.

2.3.5.9. The decision to transfer cases from one authority to another, and/or to group together previously separate cases with a view to ensuring the effectiveness and cost-efficiency of the system, must be taken on the basis of known criteria and must in no way prejudice the right of companies to confidentiality and to the protection of their industrial secrets.

The principle must also be upheld whereby confidential evidence may only be used for the case and purpose for which it was gathered, in accordance with the principles set by the extensive case law already existing on the subject.

The use of presumption and other evidence must be tempered by the need to strike the right balance between achieving efficiency and safeguarding companies' legitimate interests.

2.3.5.10. Moreover, clear mechanisms must be put in place to secure the unity of the system and to prevent conflicting decisions.

Prevention cannot be based solely on the abstract recognition of the Commission's power to arrogate or intervene. Prior provision must be made for the conditions, procedures and legal effect of the exercise of that power.

Therefore, precise rules are needed to guarantee the legal effect, in all national legal systems, of the Commission's coordination and monitoring powers with relation to any incorrect or inconsistent decisions or rulings. Care must be taken, furthermore, to prevent jurisdiction overlaps on individual cases (involving either one or more authorities, or authorities and courts).

2.3.5.11. Companies must be able to appeal effectively to the most appropriate authorities against conflicting or inconsistent decisions or errors of judgement.

In view of the considerable economic and social importance of competition legislation, the Committee, while aware of the difficulties, hopes that judgements made by national courts (possibly promoting any necessary constitutional changes) will also be open to appeal to a supranational court of law, with full powers of examination that also cover the substance of the case.[1]

2.3.5.12. Very careful attention must be paid to the risk that competition law will be 'renationalised', as well as to defending the precedence of Community law. Appropriate safeguards are required.

Decisions on whether to apply national or Community law cannot fall solely to the discretion of the courts and authorities responsible.

There should be a provision to state that national law must not be applied to cases where Community law applies.

A decision establishing an infringement on the basis of national law must not take precedence over a decision or judgement that recognised the presence of any of the conditions laid down in Article 81(3).

2.3.5.13. For the system to become genuinely integrated, the harmonisation process must be stepped up, and all Member States must start applying Community principles to the interpretation of national law as well as Community law.

2.3.6. Legal certainty — the need to safeguard companies' confidence in the legitimacy of their agreements and practices

2.3.6.1. A further issue raised by the proposed reform is that of safeguarding companies' confidence in the validity of their agreements.

The Committee is aware that this requirement does not always sit comfortably with the reform's drive for greater efficiency.

2.3.6.2. The White Paper highlights the accountability of companies regarding the assessment of their agreements. In principle, such assessments will no longer be delegated to a body that takes a definitive decision on the matter.

The White Paper therefore considers that, in principle, the de facto conditions which gave rise in 1962 to the exemption (by means of authorisation) system for applying Article 81(3) (previously 85(3) of the Treaty) no longer exist. The exemption system was designed in part to satisfy the confidence requirement [the 'definite' validity, erga omnes, of authorisation decisions under Article 81(3)].

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[1] This issue has already been addressed with reference to the European trademark and the study on the Community patent. Although they are essentially unrelated, it is possible that the further research done in these areas could be applied to competition.

2.3.6.3. However, the White Paper recognises that in some cases, protection similar to that provided by Regulation 17, but even more effective, is not only justified but essential.

As mentioned above (see 1.3.2), this has been recognised for production joint ventures. Under the Commission proposal, these undertakings, though they are 'agreements', will in future come under the Merger Regulation, which provides for legally binding prior authorisation, similar to exemption.

Production joint ventures sometimes involve very high levels of investment and by their nature have irreversible effects that are similar to those of mergers.

In such cases, the directly applicable exception does not satisfy the need for legal certainty, as the uncertainty will clearly remain until the relevant courts or authorities have made their decision.

The absence of this exception could have a paralysing effect on business initiative and prevent initiatives that would otherwise strengthen rather than weaken competition.

However, with the 'exception' of production joint ventures (which would fall under the Merger Regulation), the need for legal certainty is met both by the brevity of Merger Regulation procedures and by the 'erga omnes' effect (as for the Article 81(3) exemptions) of the final decisions.

2.3.6.4. Exceptions should also be made for other cases, however, where, to a certain degree at least, there are grounds similar to those justifying the exception granted to 'production joint ventures'.

This may apply to certain forms of 'strategic agreement', which are increasingly common in industries that are innovating or being liberalised, or which in any case are undergoing major restructuring. These operations are not 'mergers' in as far as they do not result, at least formally, in the disappearance of the individual identities of the companies taking part. However, they do involve the entire structure of the companies concerned, sometimes with irreversible effects, and are the necessary precondition for major investments.

2.3.6.5. A further example is that of companies that prepare standard contracts for use in an unspecified number of agreements, to be drawn up at different times and in different places, and involving significant investment and irreversible effects.

2.3.6.6. The exceptions to the general rule cannot be limited to specific cases mentioned explicitly by the new legislation.

The White Paper makes explicit reference to a new type of 'decision' to apply to cases of particular importance or which raise new issues. However, this is not enough.

There is a need to clarify when they must be adopted, who can request them and under what conditions, what the procedures will be and what will be the legal effect of such decisions.

2.3.6.7. The question of when to apply the new type of decision must not be left to the discretion of the Commission, but must be governed by precise rules which can be invoked — in exceptional circumstances — by all interested parties.

Though they differ from the Regulation 17 exemption decisions, these decisions should be taken before the event, have 'erga omnes' effect, and be subject to brief procedures, similar to those set out in the Merger Regulation.

2.3.6.8. As well as meeting the above demands, these decisions could satisfy other reform-related requirements.

Together with regulations and notices, these decisions could provide the Commission with the primary instrument — or one of the primary instruments — with which to conduct its guiding role. (See 2.1.5)

They may also help to ensure uniform and consistent application of the law by the national courts: enabling the courts to refer to the Commission's decisions in legal proceedings will provide them with some guidance in interpreting the complexities of Article 81(3).

In this respect, the Committee would state that the importance of the reform and the influence it will have on all Community competition law justify the reform itself and demand the immediate implementation of several new preparatory and accompanying measures, while work continues on the reform project.

2.3.6.9. In any event, it must be made clear and a guarantee given that the abolition of the prior notification system shall not in any way prevent — but rather should encourage — prior dialogue between the companies, the Commission and the national authorities, should the companies so wish. Obviously, this dialogue will not replace the 'decision' or offer legal certainty, but it could provide an indispensable, preliminary, informal and non-binding indication for important cases, and as such could become a routine means of operating in mutual trust and openness.

2.3.7. Measures to be adopted 'before' the implementation of the reform

It may be useful — and in the Committee's view it is necessary — to adopt legislative, administrative and organisational measures to adjust the current system pending the implementation of the reform.

Such measures would prepare the ground for the reform and could make an (in some cases major) impact on current problems.

2.3.7.1. One interim measure could be to adopt a notice, definitively establishing the principle whereby the criteria for interpreting the first sub-paragraph of Article 81(1) must take account of the economic effects rather than the mere letter of agreements (as is already generally the case in the new system for vertical agreements, soon to be adopted).

This would possibly reduce the risk of Article 81(1) being applied increasingly on the basis of formal criteria alone (application of the prohibition if an agreement restricts the market behaviour of companies, regardless of the effects).

A measure of this kind (new criterion for interpreting Article 81(1)) could put companies at ease regarding the validity of their agreements and thus substantially reduce the need for them to 'notify' the authorities of them.

2.3.7.2. The efforts already made by the Commission and mentioned in the White Paper to shorten the length and lighten the burden of the procedures must continue, as considerable improvements have already been achieved.

2.3.7.3. The Committee does not feel however that these measures should involve giving the power of exemption under Article 81(3) to the national authorities [1].

This would put an end to the current Commission monopoly over Article 81 (3) exemptions as laid down by Regulation 17, but it would be more of a hindrance than a help. It would do nothing to reduce the overall number of notifications and it would raise difficult interpretation problems owing to the unclear division of responsibilities. The multiplication of powers would not result in the simplification aimed at by the reform, but would create new procedural problems which could constitute a further obstacle to the efficiency of the whole system and to company business.

3. **Conclusion**

3.1. In the Committee's view, the reform proposed in the White Paper is both justified and valid. There are, however, difficulties and dangers which must be addressed by means of a specific programme of preliminary and accompanying measures.

The Committee has used the present opinion to propose a number of practical, necessary and preliminary measures and to make a series of more general suggestions, which are nonetheless equally important for the implementation of the reform.

3.2. The aim of these measures is to create the necessary preconditions for reform (2.3.1.), namely:

— conditions for effective decentralisation (2.3.2 and 2.3.3),

— preservation of the unity and coherence of the system and the precedence of Community law (2.3.5),

— maximum legal certainty (2.3.6).

3.3. The Committee reserves the right to make further comments and contributions to the debate.

[1] This possibility is mentioned in the White Paper (points 58 to 62) as an alternative — later rejected — to the proposed solution, i.e. the switch to the 'directly applicable exception' system.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'General Product Safety'

(2000/C 51/16)

On 29 April 1999 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Opinion on 'General Product Safety'.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 November 1999. The rapporteur was Mrs Williams.

At its 368th plenary session (meeting of 8 December 1999) the Economic and Social Committee adopted the following opinion by 48 votes to nine, with two abstentions.

1. **Introduction**

1.1. The broadly-based General Product Safety Directive (GPSD) [1] came into force in June 1994, after a series of single-subject Directives such as the Toy Safety Directive [2]. This concern for safety was endorsed in the EU Treaty under Article 100a, taking 'as a base a high level of protection' and continues now in the Amsterdam Treaty under Article 153 (replacing 129a). The Treaty introduces a new dimension in terms of consumer protection and public health, which the Committee hopes will be given even greater priority by the new Commissioner.

1.2. Written into the GPSD (Article 16) is the provision that the Commission will report on the experience acquired together with appropriate proposals. The Council of Ministers was supposed to have decided by June 1998 whether to amend the Directive.

1.3. Since these reactions are overdue, the Committee is seeking to accelerate the appraisal process with an Own-Initiative Opinion.

1.4. The Committee has already been previously involved in the GPSD: first, with its original Own-Initiative Opinion in 1988 [3], and secondly, with its response to the Commission's referral in 1990 [4].

1.5. It should be noted that the principles of fair trade and fair competition must operate in the interests not only of consumers but also of industry and its workforce. Those who supply dangerous goods have an unfair advantage over competitors who accept the costs associated with building-in safety. They are not only a threat to consumers but they also undermine public confidence in the workings of the market.

2. **General Comments**

2.1. *What the existing GPSD sets out to do — a summary*

2.1.1. The purpose of GPSD is made clear in the first sentence — to ensure that products placed on the market are safe. So there is a duty for producers and distributors to supply products which present no risks, or present only acceptable risks compatible with the type of product concerned. Producers must make sure that their products can be traced, and distributors must not supply products which they know to be unsafe. They are obliged to inform consumers about any risks inherent in a product.

2.1.2. The Directive applies to all consumer products except second-hand products which are sold either as antiques or to be reconditioned before use. All other second-hand goods are covered. Food, except where it is already subject to more specific provisions, is also included.

2.1.3. It also provides for appropriate information to be given to consumers, and covers matters such as product recalls and bans. It also puts on a permanent basis the Rapid Information Exchange System for Dangerous Products (RAPEX), where Member States notify the Commission when they discover a dangerous product on their market.

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(1) 92/59/EEC, 29.6.1992, OJ L 228, 11.8.1992, p. 24 and ESC Opinion: OJ C 75, 26.3.1990, p. 1.
(2) 88/378/EEC, 3.5.1988, OJ L 187, 16.7.1988, p.1.
(3) OJ C 175, 4.7.1988, p. 12.
(4) ESC Opinion: OJ C 75, 26.3.1990, p. 1.

2.2. *Changes to be taken into account since the implementation of GPSD*

2.2.1. There have been major changes since 1992:

— the completion of the Internal Market and the free circulation of goods;

— the accession of Sweden, Austria and Finland;

— the increasing range of complex products on the market;

— new ways of selling which are remote and impersonal (e.g. electronic commerce and distance selling);

— the crises to which consumers have been subject (e.g. BSE and dioxins) and the consequent focus on risk assessment and 'the precautionary principle' as outlined in DG XXIV's draft paper;

— the development of global trading, the setting up of the new World Trade Organisation and its effects on consumer protection;

— developments in new technology and the acceleration of communications in enforcement procedures, especially their use in recalls and other emergencies;

— the effects of the principles of subsidiarity, which have become more important since the Directive was adopted.

2.2.2. Future changes should also be taken into account; for example, potential enlargement of the Union by countries which may not yet have effective safety regulation or the necessary expertise. The Committee commends existing arrangements where cross-border co-operation, work experience, training and exchanges are provided by relevant government departments in certain Member States.

2.3. *General comments on experience with the GPSD*

2.3.1. While deploring delays in providing reports, the Committee congratulates the Commission and other interested parties for having recognised that the GPSD would need to be reconsidered within a few years of its implementation and for building this requirement for review into Article 16. Its foresight is all the more apparent in the light of changes listed in the previous paragraph.

2.3.2. The Committee also commends all those who have initiated and continued extensive consultation on the implementation and revision of the GPSD.

2.3.3. The Committee points out that, although the GPSD is concerned primarily with protection, there is nevertheless the need for more effective consumer education, particularly for people already considered at serious risk. It notes with interest that DG XXIV has included education for vulnerable consumers in general in its funding for the year 2000. Since children are at particular risk, there is also an obligation on parents to be aware of their responsibilities.

3. **Specific Comments**

3.1. The Committee examined the present GPSD under its various titles:

— objectives, scope and definitions;

— general safety requirement;

— obligations and powers of Member States;

— notification and exchange of information;

— emergency situations and action at EU level;

— miscellaneous.

3.2. *Objective, Scope and Definition (Articles 1 and 2)*

3.2.1. Article 16 asks whether the scope of the Directive in Article 1 should be extended, and the Committee replies as follows:

3.2.1.1. The Committee notes with satisfaction that standards have steadily improved in the EU through the particular success of the Product Liability Directive, safety legislation and competitive pressure.

3.2.1.2. The Committee considers that the GPSD continues to be of value in providing the means of dealing with all those products for which no specific provisions exist in vertical directives.

3.2.1.3. Nevertheless, the Committee suggests that more can be done in two particular ways: first, by simplifying, clarifying and removing ambiguities and, secondly, by encouraging Member States to share information and ensure dangerous goods are taken off the market.

3.2.1.4. In addition, the scope of the Directive should ensure the safe installation and maintenance of products in accordance with contractual agreements. Article 2 should be amended to provide definitions of installation and connection associated with the safety of the product [1].

3.2.2. Article 2 deals with definitions, which do not apply to the products of specific directives.

3.2.2.1. The present definitions are generally in line with what the Committee proposed in its two previous Opinions [2].

3.2.2.2. Demographic changes, however, have brought about more problems which must be taken into account: it is now not only children who should be specified as at serious risk, but also the rapidly increasing numbers of older and very frail elderly people. The special needs of disabled people should also be considered, particularly at the design stage of a product.

3.2.2.3. In the existing Directive the word 'product' is defined in terms of consumer use. However, it was not foreseen that there would be grey areas resulting from the sometimes narrow divisions between products and equipment now on sale for domestic as well as professional use. Common examples of such product migration include laser pens, garden products and do-it-yourself equipment. The public therefore needs to be alerted to potential risks when such products are used without specialist knowledge, training and the availability of adequate protective clothing or equipment. Nevertheless, it is the Committee's view that the existing wording 'in the course of commercial activity' should be clarified with regards to problems of product migration, and that enforcement bodies should accordingly be alerted to this interpretation.

3.2.2.4. In view of the fact that safety concerns a product throughout its lifetime, the Committee recommends that greater attention should be paid to practical instructions for safe disposal.

3.2.2.5. The Committee asks the Commission to look again at the implications of the word 'risk', particularly in the light of the latter's own studies on risk assessment. The precautionary principle should be invoked in situations where scientific evidence is not conclusive enough to determine a level of protection, but where there is a potential risk of serious damage to public health. It must also be made quite clear that acceptability of the risk factor depends on the attitudes of society towards the minimal unavoidable risks people are prepared to tolerate. It must also be apparent that society progressively raises its standards towards the risks it will tolerate.

3.3. *General Safety Requirements*

3.3.1. Article 3 paragraph 2 item 1 provides the important link between the GPSD and the provision of safety instructions and warnings, stating that 'Producers shall provide consumers with the relevant information to enable them to assess the risks inherent in a product'.

3.3.1.1. The Committee is concerned that information on labels and instructions, whether in the form of words, diagrams or pictograms, is not always clear, easy to understand, remember and apply.

3.3.1.2. Sometimes there is even an excess of information, which can be overlong and repetitive, with manufacturers and distributors giving extremely detailed safety instructions and identifying of every foreseeable use and misuse. The result is that consumers either avoid reading the material or experience mental 'overload' and fail to understand essentials.

3.3.1.3. The Committee, therefore, suggests there is a need for practical guidelines appended to the GPSD to clarify the ways in which information should be presented.

3.3.1.4. A major collaborative and co-ordinated investigation is also required, the object of which is to examine and monitor the adequacy of safety communication, including electronic communication and E-commerce.

3.3.1.5. The Committee also draws attention to the particular importance of clear, durable warnings and cautions, especially when the language used is not that of the country of the consumer, or when the translation into the native language is poor, and suggests the following:

— warnings should be given in the main language(s) of the country in which the product is sold;

— a lack of prescribed warnings and labels should be specified as reasons for prohibiting the import of a product from third countries;

— in special cases essential product safety information should be available wherever possible in alternative forms, such as braille, for the benefit of visually-handicapped people.

[1] This may be reconsidered in the light of future legislation on consumer contracts.

[2] ESC Opinions: OJ C 175, 4.7.1988, p. 12 and OJ C 75, 26.3.1990, p. 1.

3.3.2. Article 3 paragraph 2 item 2, concerning product recalls

3.3.2.1. The Committee finds the wording vague and impractical as to where and when suppliers and distributors should mark products and batches to assist with recalls and withdrawals. A clear distinction should be made between the two. 'Withdrawal' refers to the regulated removal of affected goods from shops, warehouses and factories, and 'recall' refers to the retrieval by suppliers and producers of goods already bought and used by consumers. Cross-referencing to Article 6, the Committee suggests that the GPSD should be amended so that all Member States have powers to require suppliers and distributors to recall products where necessary.

3.3.3. Article 4

3.3.3.1. Article 4 refers to the important subject of standards, which exist at national, European and international levels. Where EU-wide standards have not yet been agreed, the Committee considers it desirable for Member States to recognise the validity of each others' national provisions. It is important that the applicant countries should implement all relevant directives, including the accompanying EU standards, which will correspond to the obligations of the relevant directives.

3.3.3.2. The Committee points to the need for monitoring by the Commission to determine whether or not mutual recognition of standards has led to safety problems.

3.3.3.3. At present, enforcement officers have problems in bringing prosecutions in the absence of standards to which reference can be made. Hence the Committee emphasises the need to accelerate the production of EU standards, with CEN and Cenelec collaborating as appropriate with ISO.

3.3.3.4. The Committee points to the needs of producers for international harmonised standards.

3.3.3.5. The Committee also requests standards bodies to make the content of standards as relevant to consumers as they are to producers, and to increase opportunities for consumers to be represented on standard-making committees.

3.4. *Obligations and powers of Member States*

3.4.1. Article 5

3.4.1.1. Under Article 5, Member States must establish or nominate enforcement authorities and notify the Commission, which will notify the other Member States. This system is supported by the Product Safety Enforcement Forum of Europe, PROSAFE, which produces a database of agencies responsible for product safety. It is essential that consideration is given to the effective implementation and administration of the GPSD within each Member State. The Committee therefore considers that, wherever possible, Member States should designate a single enforcement authority with responsibility for product safety.

3.4.1.2. The Committee notes the need for an effective mechanism to bring about rigorous and consistent application of the Directive.

3.4.1.3. The Committee suggests that the Commission should include frequently updated information on competent safety authorities in the Health and Consumer Protection DG's website.

3.4.1.4. Member States should be placed under an obligation to help any enforcement authorities who need information about companies whose headquarters or main operation is within their jurisdiction.

3.4.2. Article 6 confers certain powers on Member States

3.4.2.1. The Directive should be amended to make the recall of dangerous products a requirement rather than an option for Member States, in view of the poor response rate achieved in certain Member States using the present optional system. There should also be the right of redress for producers in cases of error.

3.4.2.2. Member States should set up a consistent central database, co-ordinated by the Commission on a Europe-wide basis.

3.4.2.3. Member States should provide consumers with systematic access by multiple means to information on products which are recalled, including an EU internet website. Language used must be clear and unambiguous. They should encourage traders and their associations to be more innovative and effective in the methods they use to communicate with consumers, and to implement better systems of traceability and better methods of identifying individuals who have bought unsafe goods.

3.5. *Notification and Exchanges of Information; Emergency situations and action*

3.5.1. Article 6 of the GPSD is ambiguous on the matter of product recall, which has led to different interpretations through varying degrees of insistence by Member States. This Article must be clarified.

3.5.1.1. The Committee therefore recommends a recall procedure that will include a specific requirement for companies to inform government agencies about unsafe goods.

3.5.1.2. The Committee notes that product recall is just one element of a strategy. A planned and directed approach to designing and creating safer products is needed. Moreover, there is an on-going need for assessment of the state of product safety and its perceived shortcomings [1], and for establishing ways of measuring improvement and monitoring progress over specific periods.

3.5.2. Articles 7 and 8

3.5.2.1. The Committee recognises that the GPSD was adopted before the present emphasis on subsidiarity, which puts enforcement, emergency procedures and the imposition of penalties quite firmly in the hands of the Member States and their designated authorities, with the Commission playing a co-ordinating role.

3.5.2.2. In contrast, the EU is increasingly operating in a global context in which we need to bear in mind the positive contribution of OECD. We additionally require international protocols to deal with international enforcement issues and an online international database of all recalled and unsafe goods.

3.5.2.3. In view of these factors, the Committee proposes that the role of the EU should be to make sure that information through the Rapid Exchange of Information System (RAPEX), now established on a permanent basis, is effectively and speedily exchanged, and monitored for trends. At present there are information blockages which mean that information often reaches the 'front line' practitioners too late to be effective. Immediate risk should lead to immediate action and not be restricted by the rationale of the free movement of goods.

3.5.2.4. The Committee recommends that the present — unnecessarily complex — safeguard notification procedure needs to be supported by risk assessment procedures.

3.5.2.5. Member States should facilitate the computerised exchange of information between enforcement authorities and safety organisations, and the transmission of such information to the Commission and other Member States.

3.5.2.6. The Committee recommends that products known to be dangerous in the European Union must not be exported to third countries — particularly developing countries where there is much ignorance and little protective legislation — unless differences in culture, life-style and tradition make such imports acceptable. Such products should be reviewed on a case-by-case basis.

3.5.2.7. The Committee recognises that confidentiality may be a problem in the case of a suspected dangerous product, but suggests that any period of confidentiality needed by producers for product evaluation must be strictly limited.

3.5.3. Article 9

3.5.3.1. The Committee would like the present rather limited powers of the Commission to act on safety matters to be extended by removing some of the conditions and lack of clarity which make intervention difficult. In particular, the Commission should monitor the implementation of the Directive and the effectiveness of controls in the Member States.

3.5.3.2. The Committee also recommends that the Commission should have a role in monitoring accident data with a view to identifying trends and future priorities.

3.5.3.3. The Committee stresses the increasing importance of the European Home & Leisure Surveillance System (EHLASS) — on which the Committee has given its Opinion on several occasions — and makes the following points.

3.5.3.4. It is essential to have an effective accident monitoring system recording product safety data, logically situated in the Health and Consumer Protection DG and co-ordinating with other relevant Directorates General. The Committee recognises that in many cases products are only involved in an accident but are not necessarily the cause. EHLASS is the only present means of systematically acquiring statistical information about accidents — whether, for example, they have increased since the implementation of the GPSD — and providing the means of checking trends and establishing priorities. The system needs extension on a consistent basis throughout the EU, and co-operation with third countries such as the USA and Australia.

3.5.3.5. The GPSD should be amended to require the Commission to publish accessible EHLASS data annually, and to institute mechanisms for checking on entry imports from third countries. This will be particularly important in view of the planned enlargement of the EU.

3.5.4. Articles 10, 11 and 12

3.5.4.1. The Committee would like to see the present rather limited membership of the Committee on Product Safety Emergencies (set up under the original GPSD) appropriately extended in scope to include a wide range of expertise, such as independent health and safety specialists. It could assume similar responsibilities to those of a Product Safety Commission.

[1] Such an assessment should be on the lines of the report produced, at the request of the Commission, by the University of Louvain-la-Neuve, Autumn 1999, on the practical application of the GPSD.

3.5.4.2. The Committee also recommends that the GPSD should be amended so that the Committee on Product Safety Emergencies can investigate EU-wide data on accidents and can monitor product safety standards with a view to their revision.

3.5.4.3. The Committee suggests the publication of agenda and minutes on the Health and Consumer Protection DG's website.

3.5.5. Enforcement (The Committee notes that the GPSD does not actually address enforcement co-operation or levels of enforcement.)

3.5.5.1. In view of increased cross-border purchasing, the Committee indicates ways in which the Commission could usefully improve co-operation and information exchange among the EU enforcement bodies:

— by developing a regular and well-resourced forum of enforcement officials (see 3.4.1.1)

— by developing a common approach to risk assessment based on objective and scientific criteria

— by ensuring that testing and sampling procedures become more consistent.

3.6. *Miscellaneous and final provisions*

3.6.1. Article 15

The Committee endorses the need for a Commission report every two years, in the light of rapid changes within Europe. Such a report should include data from EHLASS and an annual list of product safety notifications, bans and recalls.

3.6.2. Article 18

Decision 89/45/EEC is repealed because Article 7 of the GPSD establishes RAPEX on a permanent basis.

4. **Other issues**

4.1. There are many other issues involved in the practical application of the present version of the GPSD, ranging from global implications to the environmentally safe disposal of products at the end of their lifespan. The most significant issues are as follows:

4.1.1. The Committee questions whether services should be covered by the revised version but concludes that the complexity of this essential subject would be better dealt with in a new and completely separate Directive covering carefully classified categories of service.

4.1.2. The Committee considers that, in accordance with the principle of subsidiarity, the Member States should deal with the question of sanctions, penalties and compensation.

4.1.3. The Committee rules out the desirability of setting up a Product Safety Commission for the European Union on the grounds that re-organising and extending the existing Committee on Product Safety Emergencies could adequately achieve this objective. In the case of individual Member States, properly-resourced Product Safety Commissions are to be encouraged.

5. **Conclusions**

5.1. An effective General Product Safety Directive, carefully and judiciously revised to take into account the changing needs of the European Union, is essential to the proper and well-balanced functioning of the Internal Market. It is an essential protective measure for consumers reducing their exposure to injury and even death. At the same time it is essential for producers and suppliers in that it provides a clear legal framework for all marketing activities relating to the principles of fair trade and fair competition.

5.2. For the sake of consumer protection, it is essential that the GPSD should be continually revised and updated where necessary. It is however important that any amendments should always take account of existing or contemplated product liability regulations. In the summer of 1999, the Commission published a green paper on this question, entitled 'Liability for Defective Products'. [1]

5.3. The Committee recognises that the Commission is currently revising the GPSD and asks it to take into account the results of its many consultations, including the comments of the Committee.

[1] COM(1999) 396 final, 28.7.1999.

Brussels, 8 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the opinion of the Economic and Social Committee

The following amendments, which obtained more than one quarter of the votes cast, were rejected during the discussions.

Amendment 2

Delete point 3.5.2.6.

Reason

Preventing a third country from importing from Europe goods which have been deemed insufficiently safe for sale to consumers, but which are not banned from sale in the country in question, must be seen as an unacceptable attempt to impose European regulations outside EU territory. An export ban would probably be seen as a patronising throwback to colonialism, which Europe should eschew.

Result of the vote

For: 14, against: 34, abstentions: 5.

Amendment 1

Delete point 4.1.1.

Reasons

As the paragraph rightly points out, the issue of the safety of services and liability for unsafe provision of services is very complex. This is also the reason the Council has not already approved a Commission proposal for a Directive on liability for unsafe and/or defective service provision. It is too easy to use the complexity of the subject to conclude that this area requires separate legislation in the form of an EU Directive. Such legislation would also carry a risk of inhibiting growth in the EU services sector, on account of the mostly incalculable — and consequently uninsurable — risks. This runs completely counter to the EU's efforts — recently endorsed by the ESC — to build on the employment potential of the services sector.

Moreover, unlike in the case of defective products, it is virtually impossible to remove services from the market on the grounds of risk. If, for example, a Member State prohibits a service on such grounds, this could lead to a violation of single market rules on the freedom to provide services. This is exactly the situation we are in today: according to a recent Commission communication, the Member States still do not generally apply the principle of mutual recognition to service sector jobs. Services are almost always provided in the framework of a contractual relationship. Civil law, which governs these agreements, provides adequate guarantees for resolving differences between the parties, e.g. compensation for damages in case of default. Furthermore, the 'law of torts' applies to non-contractual relationships, and this can also lead to compensation and prohibition. The guarantees provided for in the existing civil law framework in the Member States are thus sufficient to cope with current requirements, and there is no evidence of a need for further legislative harmonisation in the form of EU Directives.

Result of the vote

For: 22, against: 29, abstentions: 10.

Opinion of the Economic and Social Committee on 'Poland on the road to accession'

(2000/C 51/17)

On 25 February 1999 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'Poland on the road to accession'.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 November 1999. The rapporteur was Mr Ribbe.

At its 368th plenary session (meeting of 9 December 1999), the Economic and Social Committee adopted the following opinion by 103 votes in favour, 14 against and five abstentions.

1. **Introduction**

Since Poland set out on the road to democracy and a market economy, the ESC has supported the country's association with the EU under the Europe Agreement and has been a firm advocate of Polish accession.

The Association Agreement with Poland signed on 16 December 1991 came into force on 1 February 1994. The country submitted its application for EU membership on 5 April 1994. A year later the Council of Ministers decided to consult the European Commission, which then went on to draw up an opinion on the basis of the criteria laid down at the Copenhagen summit of June 1993. This opinion was presented on 15 July 1997.

Following the decisions of the Luxembourg European Council of December 1997, accession negotiations with Poland were officially started on 30 March 1998. The Commission was instructed to report regularly on the progress each accession country was making with its reforms.

The latest report was submitted on 13 October 1999. Its findings have been taken into account in this opinion.

2. **Purpose of the own-initiative opinion**

2.1. The Committee recognizes and welcomes the great efforts made both by the Polish government and the EU Commission, especially the DG responsible for enlargement, in the accession process. A great deal of the groundwork for successful completion of accession negotiations and the adoption of the acquis communautaire by Poland has been done on both sides. The progress made so far inspires the ESC with confidence. The programmes decided upon under Agenda 2000 will also help to intensify the accession process.

Nevertheless, there are still some outstanding problems which have not yet been sufficiently discussed and which the ESC became aware of, inter alia, during its visit to Poland in June 1999. The ESC would like to re-examine these in this opinion. The ESC's sometimes critical assessments and recommendations are to be seen as a contribution towards making accession proceedings more effective.

2.2. The present document does not intend to give an overview of the current state of negotiations with Poland. That information can be found in various publications produced by the Commission.

2.3. The purpose of the ESC's own-initiative opinion is therefore to give as objective as possible a picture of the current situation in Poland with regard to the accession process and to highlight problems which are emerging, or may emerge, during the integration process and which the ESC feels have not yet been given sufficient attention. The main focus will be an analysis of the current state of civil society organisations, a description of their present role, and recommendations for improvements, including through additional EU initiatives.

2.4. The opinion is based on the firm belief that a task as great and important as the integration of the central and eastern European countries into the EU can only be accomplished successfully if an in-depth and structured dialogue can be held with as many representative partners from civil society organisations as possible.

3. **General introduction**

3.1. Poland's economic development is at present very uneven. For years, the whole country has been experiencing a continuous economic upturn. Growth rates averaging 5 to 7 % are now typical of the remarkable dynamism which set in after the economically difficult years at the start of the economic and social transition in the early 90s. Budgetary and currency stability have continued to be a strong draw for foreign investors. Even among SMEs the trend has been ever upward. The main economic activity has been concentrated first and

foremost in the traditional urban centres. Warsaw, for example, is experiencing an extraordinary economic boom, providing the focus for 40 % of all foreign investment. There is almost full employment on the capital's labour market and skilled workers are in short supply, too. The situation is similar in Poznan, Szczecin, Gdansk, Lodz, Lower and Upper Silesia, Cracow and other cities.

3.2. The situation in most rural regions is quite the reverse, with an unemployment rate far above the national average, as for example in parts of northern Masuria (the town and surroundings of Goldap with a constant rate of 30 %) and Pomerania. One of the reasons for this is the break-up of the vast collective or state farms where thousands of workers are now left with no livelihood [1]. For years the cohesion of the rural population has been beset by serious social and psychological problems. There is also high unemployment in the rural regions of the south east and east, where numerous small farms now do nothing more than eke out a meagre existence.

There is thus a perceptible trend within Poland for regional disparities to polarise, creating considerable potential for social tension. This potential must not be underestimated in the run-up to the impending referendum on EU membership.

3.3. The growth in stark regional differences between town and country is being accelerated by the striking disparity in education. While in cities almost 10 % of the population hold a higher educational qualification and 34,1 % have completed secondary school and college, the corresponding figures in rural areas are only 1,9 % and 15,4 % respectively. In rural areas, the number of people leaving school without any qualifications is 10,8 % and the number who have only completed primary school 43,8 %, while in cities the corresponding figures are only 3,8 % and 27,6 % respectively. This serious disparity in education will have a lasting detrimental effect on the economic development of rural areas. Admittedly, the educational reform now being implemented is intended to address this situation, but there is little chance that the unsatisfactory state of affairs will change, and certainly not in the short term, especially as the funds needed for the educational reform would appear to be unavailable at present.

3.4. As one of the key objectives of EU policy is to reduce regional disparities, the EU accession partnership programmes for Poland should make this a priority even during the accession phase, supporting the efforts of the Polish authorities in a flexible yet focused manner. It seems not unlikely that the referendum on Poland's membership will be very strongly influenced by problems in rural areas and agriculture and may well be decided by this issue.

3.5. At the beginning of 1999, four large-scale and fundamental reform projects were implemented in Poland after being passed in parliament. They are:

— administrative and structural reform, reducing the number of voivodships (provinces) from 49 to 16 and introducing poviats (districts);

— reform of the pension system;

— health reform;

— educational reform.

3.6. The administrative reform has not only contributed to giving the regions and localities more responsibilities of their own, it was also imperative for the implementation of many of the obligations resulting from the adoption of the Community acquis. The ESC feels, however, that a considerable effort is still required, not only to build up the relevant administrative bodies, but also to train staff to an appropriate level. As yet there is also no smoothly functioning division of responsibilities in practice between the centre (voivods) and elected regional authorities (sejmiks) and their leaders (marshals), who are supposed to represent regional interests. The partially unresolved question of regional funding is particularly emotive.

3.7. Poland has set itself the target of meeting all the requirements for accession by 31 December 2002. The ESC endorses this clearly ambitious goal while nevertheless noting that a great deal of work is still required to achieve it at all levels and in all sectors, since it will involve not only accepting and transposing the acquis communautaire, into national law, but also implementing it. The details given in the above-mentioned Commission report of 13 October 1999 regarding the ground to be made up in certain areas, e.g. environmental protection, are a source of considerable concern to the Committee.

3.8. It should be strongly emphasised that accession is much more a large-scale social process than an administrative one. It is not merely a question of transposing and implementing the acquis; a new social model is to be established. The ESC would stress that, if the integration process is to succeed, it is important that Poland and its citizens (as well as its administrative structures) merge into the EU in a harmonious and organic manner. Civil society organisations have a very important role to play in this as catalysts. Accession is a desirable and sensible option for all parties concerned but it must not be forced through before all are ready, even though the ESC recognises and supports in principle the Polish desire for accession as soon as possible.

3.9. The Polish government continually emphasises that Poland's integration into EU has been the overriding objective in the country's recent history. This being so, the dramatic fall in support for EU membership within the Polish population

[1] Some 20 % of agricultural land was formerly worked by state concerns or large cooperatives, especially in western and northern Poland. The remaining 80 % was worked by private concerns which in most cases were very small.

must be a cause for the greatest concern [1]. Efforts to counter this trend must be stepped up by means of a carefully planned information campaign and, above all, concrete policies; the EU's support policy should also be strategically geared to achieving this (see below).

3.10. This means that both sets of negotiators must be convinced that:

— integration makes sense,

— personnel and financial resources deployed during the accession phase and subsequent membership represent the best possible investment in Europe's future, and

— the sometimes radical restructuring facing certain sectors (farming, heavy industry etc.) is necessary.

It is essential to convince all concerned that even those who apparently stand to lose out will ultimately gain from a process which ensures peace and a secure future, as well as contributing to overall environmentally and socially sustainable development (as defined by the 1992 Rio conference).

3.11. Nevertheless, the fears of those perceived as more vulnerable, as the potential losers, must be taken very seriously, perhaps much more seriously than has been the case to date, even though these fears may stem from insufficient knowledge of the EU or the consequences of accession. The Polish government and the EU with their programmes and initiatives must offer some kind of concrete prospects to counteract waning confidence in the merits of membership.

3.12. It is imperative to step up structured dialogue with civil society organisations. The ESC sees considerable ground to be made up in this area. Awareness of the true consequences of accession is extremely limited in many sectors. As a result, the debate within society is often based on speculation and conjecture. This leads to uncertainty among the population, a tendency to resist integration or to political lethargy, which is dangerous in the long term. This danger should be counteracted with a targeted, open and ongoing policy of information, untrammelled by propaganda of any sort, in which civil society organisations should be closely involved. The ESC offers the Commission and the Polish government its support in this endeavour. For instance, appropriate initiatives could be launched via the Joint Consultative Committee.

3.13. The Polish government may be fully convinced of the overall usefulness of substantially enhancing this dialogue, or of the need to do so, but it seems to the Committee that the development of this dialogue is proceeding much too slowly. The reasons for this may be manifold, and are certainly well-founded historically. Effective dialogue is an ongoing democratic process which did not exist in the traditional political system in central and eastern European countries. Government, employers and workers, as well as the other partners in society, have yet to define and identify their role, a process which will undoubtedly take time. The government clearly faces difficulties because civil society organisations are so poorly organised, but these must not be used as an excuse.

3.14. Fragmentation of the various groups representing civil society is indeed a serious problem which the government cannot solve single-handedly. For this reason, support for effective structures in civil society should also be seen as a priority from the EU's point of view and large-scale assistance provided e.g. through the Phare programme or, if necessary, through new programmes under the Phare umbrella (e.g. the twinning programme, which should no longer be restricted to the administrative sector).

4. **Specific comments**

4.1. *Social partners/civil society organisations*

4.1.1. Social and environmental standards, social dialogue and dialogue between and with civil society organisations have been part of Europe's economic, social and political culture for decades. They are important for the functioning of the market economy, and indeed, of democratic, civil society. They are also in part a component of the acquis communautaire. There is no substitute for effective social partnership and dialogue between and with civil society organisations. No government or parliament can single-handedly tackle the business which is negotiated between social partners and with civil society organisations in functioning democratic economies.

4.1.2. Such a culture cannot simply be transferred like a regulation or a directive to countries and societies which, because of their political past, have (so far) not been able or allowed to develop it.

4.1.3. There is no question that, in a country like Poland where political change was largely instigated by sections of civil society (the church and trade unions), political leaders are more than most aware of the particular importance of this dialogue. It is questionable whether this awareness is shared by all, e.g. the new class of employers. Many of the new aspiring entrepreneurs may not always be fully aware of their social responsibilities and obligations to society.

[1] According to the latest surveys, only 55 % of the population are now in favour of membership, compared with 83 % in 1997.

4.1.4. In the ESC's view, developing civil society organisations in the accession countries is one of the key tasks and one which, although scarcely achievable through legislation under the acquis communautaire, is nevertheless crucial to the success of the integration process. Yet this task cannot be accomplished by governments alone. That is why an intensive transfer of know-how is required, which the EU Commission should also have a strong interest in promoting.

As the ESC sees it, the situation with regard to the social partners in Poland is currently as follows:

4.1.5. With its constitution and various individual laws, the Polish government has created the legal conditions for social dialogue. The ESC very much welcomes this. Working conditions and labour relations in Poland are thus governed by comprehensive labour legislation. Unions and employers can therefore organise their relations in a variety of ways as in the West. Nevertheless, the ESC has observed that various difficulties still exist in practice. These are outlined below.

4.1.6. In 1994 a Tripartite Commission was formally set up in Poland supplemented by corresponding tripartite industry-specific working groups. But the Tripartite Commission has long been unable to fulfil its role. This is because the partners involved are not on an equal footing:

4.1.6.1. Trade unions in Poland are divided and polarised along party political lines. In particular, the two major trade union confederations, NSZZ 'S' (Solidarnosc) and OPZZ, are very closely associated with party politics. The NSZZ 'S' has close links with the ruling coalition of the AWS (Solidarity Electoral Action) and UW (Freedom Union) parties and accounts for the majority of the ruling parties' Sejm members (MPs), as well as many members of the government and high officials. Similarly, the OPZZ is the political partner of the opposition SLD (Democratic Left Alliance), albeit not so inextricably linked.

4.1.6.2. Apart from the large umbrella organisations there is a large number of other trade unions, some of which operate only at works or sectoral level and are only able to influence nationwide processes in exceptional cases.

4.1.6.3. Trade union influence and level of organisation are still considerable in those state companies which still exist (heavy industry, railways etc.), but in newly formed private companies the unions hold little sway. While the restructuring of state concerns is a frequent source of conflict between government and unions (see 4.2 Heavy industry/mining), not least because the unions see their influence being eroded, union influence in negotiations between private companies and their employees is the exception rather than the rule; such cases are almost always resolved through works agreements.

4.1.6.4. The employers are on the whole much less organised, presenting a very varied picture. In the public sector the state is often torn between its role as an employer and its role as a reformer. In the private sector, most employers shy away from integrating into regional or national structures. They are no match for the apparently all powerful unions and have no interest in agreements beyond works level. Most collective wage agreements continue to be concluded at works level. However, with the clearly emerging decline in union power, there has been a significant increase in the number of broken agreements.

4.1.7. Since 1997, when political forces with links to Solidarnosc came to power, the influence of Solidarnosc on the government has increased and most actual or potential disputes have been settled by decree rather than through negotiation between the social partners. For this reason employers have no interest in 'submitting' to the seemingly powerful unions. This means that many employers do not see the need for an organisation of their own, preferring instead to deal direct with the workers at company level, with or without sectoral unions.

4.1.8. At the same time there has been a marked decrease in the number of organised trade unionists in the private sector, a trend which is likely to spread to other sectors of the economy still to be privatised. With the tendency being for established unions to have only the appearance of strength, this may lead to the still fragile system of social partnership in Poland becoming totally marginalised. This may be to the detriment of the workers, which could in turn result in social unrest, because the necessary catalysts are not operative or are not in place.

4.1.9. It is important to note in this context that the political parties and the relevant unions have begun to review their interdependence and to define their true roles.

4.1.9.1. In establishing the SLD as a new, nationwide left-wing party, the Left has made it clear that 'its' union, the OPZZ, is not automatically affiliated, but that membership can only be on an individual, rather than a block, basis. Trade unionists are free to join, but the union will no longer be able to play a significant role in the new party as an umbrella organisation.

4.1.9.2. The trend can also be observed in the right-wing AWS alliance, albeit not as consistently. Solidarnosc is simply too powerful at present to be systematically excluded from the political process on the right. But even here it seems to be only a question of time before Solidarnosc is forced to limit itself to trade union activities. The question remains whether it will still have enough members by then to fulfil its role.

4.1.10. The crux of these developments is that the system of social partnership in Poland is still in its infancy and the practical implementation of the legal framework now in place is still not functioning properly. The ESC will keep a keen eye on progress in this area.

4.1.11. Other civil society groups and organisations are also facing problems. The level of organisation is in some cases extremely poor. There is a widespread aversion towards centralised structures, which is entirely understandable given the experience of the past. But since political decisions are obviously made at the centre, these groups and organisations would be well advised to set up organisational structures of their own on a par with existing political bodies with real decision-making powers in order to be able to participate effectively in the dialogue involving all sections of society.

4.1.12. The problem is somewhat compounded by a lack of awareness among the population on certain issues. Despite the highly commendable commitment of consumer protection organisations, questions of consumer protection have not received very much attention so far. This, coupled with the low level of organisation already described and lack of resources, highlights the serious need for improvement in the role of, for example, consumer and environmental protection agencies.

4.1.13. Nevertheless, there have been some quite positive developments which should be taken further. For example, regional chambers are given a major role in the dialogue. Polish law provides for regional chambers, such as chambers of agriculture. Following democratic elections, these chambers of agriculture are in place and ready to act in all the voivodships. With their statute and representative composition, they can help to create organisational structures for skilled labour in the sector and take on the role of a major interlocutor with regional and national authorities. It goes without saying that such chambers are no substitute for the work of e.g. autonomous farmers' organisations.

4.1.14. It is a matter of importance to the Committee to address the role of women in Polish society. According to the European Commission [1], the small proportion of women involved in political decision-making [2] is not the only evidence that equal rights are still far from being a reality. In fact, the trend is towards rather traditional, conservative family values, resulting in major difficulties for women who wish to run their lives independently on their own terms.

4.2. *Heavy industry, mining and the future of industry*

This section is intended to highlight the problems Poland is experiencing with the necessary structural changes and the role of government and the social partners in this process.

4.2.1. The state of heavy industry in Poland is a source of major concern both for the Polish authorities and the EU. It has so far proved impossible to carry out the planned privatisation of the steel industry. It seems that structural reform in the steel sector, which will probably entail job losses, is being held up by the all too numerous vested interests within the steel business.

4.2.2. The situation in the mining sector is critical. There is as much potential for social upheaval, in this sector as in agriculture.

4.2.2.1. Before the re-establishment of democracy in Poland, mining was the most privileged sector of the whole economy. Miners were the highest paid workers. They also enjoyed an exceptionally large number of social privileges. At the same time mining was the classic example of the irrationality of the system.

4.2.2.2. The policy of cheap energy and constantly rising production with no regard for the production or resultant costs rendered any kind of rational accounting impossible, with devastating consequences for the whole economy. Coal mines were permanently running at a loss. Their revenue depended solely on the level of state subsidies, and not on real prices and costs. This mentality largely persists today among mine workers and managers.

4.2.2.3. In the last 20 years the officially fixed price of coal represented between 40 % and 90 % of the actual production cost. This ratio formed the basis for determining state subsidies, which even included a state-guaranteed 'profit' for individual mines.

4.2.2.4. After the transition in 1989, the above-mentioned discrepancies were reduced, but the coal industry continues to operate at a heavy loss. The main reason for the plight of coal-mining is the dogged refusal to do away with the outdated structures of the former planned economy, i.e. the refusal to give up the special status accorded to the workforce which can no longer be justified.

4.2.2.5. The state-run monopolistic structure of the sector also plays a decisive role in perpetuating coal and electricity prices which are not determined by market criteria. The strong coal-mining lobby ensures that the boards of mining companies, pit managers, distribution companies and powerful

(1) See the European Commission's Annual Report 1998 on equal opportunities

(2) Women make up only 12,7 % of the national parliament.

trade unions present a united front despite their various and sometimes divergent interests. The rules of the market economy seem not to apply for these groups. Pit losses are growing, but miners' incomes and, in particular, the bonuses received by mining company directors continue to rise.

4.2.2.6. Every Polish government since the transition has tried to tackle the mining problem. A Fifth Reform Programme was submitted in 1999. As it stands, it seems to make a successful contribution towards significantly reducing the number of mine workers and increasing productivity, which is unfortunately of limited benefit in the light of the current low level of coal production prices worldwide.

4.2.2.7. The social plan included in the reform programme (in force since June 1998) provides for the following as a means of cushioning the necessary redundancies:

— the pensioning off of miners with 20 years of service at the coalface on 75 % of their current salary;

— a severance package for miners who have worked less than 20 years at the coalface and wish to take voluntary retirement totalling 24 monthly salaries, i.e. around PLN 50 000 per worker;

— two years of benefit payments and 65 % of salary with an offer of further training;

— grants for employers in other industries who take on redundant miners.

4.2.2.8. The success of the social plan is gratifying because it has enabled the government to reduce the number of mine workers from 243 000 in 1997 to 207 000 by the end of 1998. The problem is that the government was not expecting such a high take-up for the early retirement with severance package option and there are insufficient funds available.

4.2.2.9. The trade unions, under the umbrella of the NSZZ 'S' (Independent and Self-Governing Trade Union Solidarnosc) are uncompromising in their demands for financial compensation for the abandonment of coal mining. The OPZZ union (All-Poland Alliance of Trade Unions) and a number of splinter groups are, on the other hand, vigorously opposing any move towards pit closures or cutbacks. The unions are not willing to yield any ground to the government in these difficult times. On the contrary: after a hunger strike in the mines lasting several weeks, which was organised by the NSZZ 'S' (Solidarnosc) union at the end of 1998, they managed to force the government not only to reaffirm its commitment, but also to provide assurances that the payments given for early retirement would be inflation-linked. This deal came in for strong public criticism, firstly because it meant that other groups of socially disadvantaged workers were unable to push through their own claims in the long term as the government's financial reserves were being spent almost exclusively on the miners, and secondly there was condemnation of the all too powerful links between the NSZZ 'S' members in the government and the same trade unions representing workers.

4.2.2.10. The unresolved question in Poland is not whether the mining sector should be brought into line with the changed economic conditions, but how this process is to be funded against a background of unrealistic demands and ultimatums. The Polish taxpayer will not be able to sustain the necessary expenditure much longer. In this context, it would be useful to examine the precedent set by the European Coal and Steel Community, which came up with specific economic and social provisions to deal with such problems as reconversion and retraining.

4.3. *Agriculture and rural development*

The economic disparities between urban centres and rural areas are becoming ever greater. At the same time it is clear that 'city-dwellers' are not aware of the problems in agriculture and rural areas, do not understand them or simply ignore them, a phenomenon which is certainly not unique to Poland.

4.3.1. Two major problems are highlighted in all analyses of Polish agriculture: the large proportion of the population employed in agriculture [1] and the small size of the farms. The future of the overwhelming majority of today's farms (the European Parliament talks of 1 to 1,5 million of approx. 2 million farms) is seen as a social and not as an agricultural issue. The reason given is that some of the farms do not produce for the market, but cater for their own needs or engage in private marketing in one way or another.

4.3.2. There is no doubt that this form of agriculture based on extremely small farm units [2] will have to undergo radical structural change. It must be ensured, however, that such change is carried out in as socially sustainable and environmentally sound a manner as possible. Crucial to this are training programmes to upgrade skills within the agricultural production process, as well as to provide people with alternative skills of use outside the agricultural sector.

4.3.3. Polish farms may be classified in three categories. The first of these are farms which, with an injection of capital, will be perfectly able to become economically viable units. The second are farms which will continue to exist as secondary operations. The farms in the third category will probably be given up within a generation, particularly because, in many cases, those who might have taken them over have already sought another occupation.

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[1] Some 25 % of all jobs in Poland are in the farming sector, around half of these in full-time farming or as the main occupation and the remainder in farming as a secondary occupation, or on farms which produce for self-consumption and are not therefore a part of the official market system.

[2] The average size of Polish farms is approx. 7,5 ha. 95 % of all dairy farmers have five cows or less.

4.3.4. Clear development strategies should be drawn up as a matter of urgency for all three categories, taking account of regional differences in farming structure and the differing potential for job creation within and outside agriculture, where the serious disparity in education between town and country is once again a major factor. But such strategies are so far lacking. It is open to question whether this is the reason why there is virtually no dialogue between the government and farming organisations.

4.3.5. Even the rural development plan recently submitted by the Polish government contains relatively few references to concrete initiatives, and has also given rise to disputes. Just as it is correct to recognise in economic terms that a farm of e.g. four hectares with three cows cannot survive for long, so too is it wrong to call on a farm owner to give up farming without offering any alternative prospective source of income or social protection.

4.3.6. Also lacking are wide-ranging studies on the potential environmental impact of the structural changes necessitated by economic considerations and consequently, strategies to achieve in Poland what the EU is currently working on, i.e. the integration of environmental protection into agriculture [1]. One can expect to see a twofold trend: extensively farmed marginal land will be abandoned, while better-quality land will be farmed more intensively. There needs to be a detailed analysis of the impact of the ecological changes this will bring.

4.3.7. Unlike the production sector, major restructuring has already taken place, or begun or is currently being introduced in the processing and marketing sectors. Western companies are heavily involved, which has facilitated the financing of the overall process. However, this is creating a relatively centralised system with few market stakeholders which is not necessarily compatible with the needs of regional economies. Such a system also magnifies the obvious marketing difficulties faced by poorly organised small and medium-sized farms.

4.3.8. Rural development would benefit considerably if the EU and the Polish government devoted more attention to creating small and medium-sized structures in the processing and marketing sectors too (e.g. small butchery businesses (with affiliated abattoirs), bakeries and smaller and medium-sized dairies). The cooperative structures which still exist e.g. in the dairy sector should be used as a basis for this. The EU should make sure that these kinds of structures receive special consideration not only for Phare funding, but especially through the Sapard programme.

4.3.9. Bottom-up projects of this sort also have a confidence-building effect on regional populations.

4.3.10. Ministry representatives and members of farming organisations have repeatedly referred to the problems arising from the difficulties Poland faces in accessing the EU farm market and from the combined effort of the EU's export refunds policy and the reduction of Polish import duties [2]. As less Polish produce is sold on the Russian and Asian markets because of their economic crises, the marketing difficulties faced by the Polish farming sector, which are compounded by the CAP, are particularly serious. The current negotiations concerning mutual concessions for both agricultural and processed agricultural products should address this point.

4.3.11. The merging Commission negotiating position, which does not provide for compensation payments to Poland for agriculture, is likely to be a source of considerable conflict. The ESC is in favour of gradually integrating the agriculture of the CEEC into the existing system of EU compensation payments after accession, especially in areas where price levels in the accession countries are already on a par with those in the EU. The price differences which do still exist, as well as factors such as differing production costs, should be taken into account when determining the duration of the necessary transition arrangements.

4.3.12. The ESC would like to stress that when the future course of Polish agriculture is considered, particular attention should also be focused on those farms which in future will only be run as a secondary occupation. As long as it is not possible to create enough alternative jobs outside agriculture, farms should not be evaluated in purely economic terms; there should also be some recognition of their capacity to relieve the social burden.

4.3.13. The major structural problems facing agriculture in Poland cannot be overcome in a few years, however great the effort made. Nor is it safe to assume that the predominantly small-scale farms with extremely low productivity will be able to cope to some extent with the massive competitive pressure of the internal market within the foreseeable future. More time will be needed for agriculture in Poland to make the necessary structural changes and to boost its competitiveness. The ESC is therefore in favour of transition periods which take appropriate account of these requirements.

[1] There are comparatively few ecological problems in agricultural areas of Poland because of the relatively low capital resources and extremely limited use of inputs. The major problems which do exist are wind and water erosion.

[2] The pork imported from Denmark and the wheat and potato starch which used to be exported from the EU to Poland are quoted as examples.

4.4. *Transport*

4.4.1. The evolution of transport in Poland is marked by massive increases in the number of private cars and a rapid decline in public passenger and goods transport. This is equally true in urban centres, regionally and nationwide. The Polish road network cannot cope with this trend, being unsuitable for either the volume of traffic or the weight of vehicles (axle load over 10t).

4.4.2. The changes in the modal split and the resulting deterioration in public transport services are having grave social and environmental consequences. On the one hand, it means reduced mobility for all those who do not have access to a vehicle of their own and, on the other, there is clear evidence of the detrimental effects of increased traffic on the environment (air pollution, noise etc.). This is particularly true in cities, where in many cases transport is on the brink of collapse.

4.4.3. For many years Poland had neither the time nor the money to adapt its road infrastructure to the rapid increase in traffic. Cars can be acquired quickly (by private individuals) while infrastructure development (especially with public funding) takes time. According to EU financial projections of the investment needed for transport projects of European significance [1] in Poland, Poland would have to spend around 1,5 % of its GDP on this alone. The current proportion of GDP spent on investment in the entire (!) transport sector is only 0,7 %. Since existing transport infrastructure outside these transport axes is also in need of renewal [2], the Polish government — which has extremely limited financial resources [3] — is clearly caught in a dilemma between large-scale investment (e.g. in TINA projects) and urgently needed investment in maintenance and expansion outside the European transport axes, which is also vital for economic development, as well as having to decide between a road or a rail-oriented policy. There has even been some difficulty raising the necessary co-financing for projects to be built with Western assistance.

4.4.4. Both the Polish rail network and urban public transport structures were (and largely still are) relatively well developed, although services are about to be cut back on a massive scale [4]. Networks are out-dated technically and are often inadequately managed. Particularly in urban transport, where buses and trains have always been the mainstay, various kinds of restructuring are taking place. The central government has absolved itself completely of any responsibility for urban public transport. Financial assistance to boost efficiency is not provided by the state, so resource-starved local authorities are left to deal with the problem themselves. In addition, their transport operators are expected to absorb the cost of social policy measures decided upon by central government for which it provides no financial compensation (e.g. fare reductions for schoolchildren, students, the disabled, pensioners etc.).

4.4.5. Considerable discussion has arisen over the planned development of the Oder into a waterway 'of European dimensions'. While critics point to excess capacity on the railways and reject the investment needed on transport policy and environmental grounds, those in favour claim amongst other things that a waterway of this kind is 'in the interests of Europe.' The Commission should give the Polish government its views on this project as soon as possible, along with some indication of whether EU funding would be available, and if so, how much.

4.4.6. The evolution of transport as seen in Poland is not compatible with the EU's calls for a socially and environmentally sound 'sustainable' transport policy. So far there is no sign of a strategy for the coordinated and integrated development of the different modes of transport. Most decision-makers are unfamiliar with the ideas contained, for example, in the EU White Paper on citizens' networks, even though it is particularly important that these also be implemented in the accession countries.

4.4.7. Every possible opportunity and instrument should be used in bilateral talks and through the available EU programmes to avoid repeating the sort of transport policy failures which are now a source of regret in many Member States. At the same time, the positive solutions set out by the EU in the Eltis programme among others should be transposed to the accession countries such as Poland. The ESC would therefore urge the Commission not to limit Phare and the ISPA support chiefly to trans-European transport projects, but also to set up model initiatives in the field of urban transport projects, rural transport initiatives and projects to benefit cyclists and pedestrians. One criticism of the TENs is that they exclude urban transport problems and concentrate solely on links between centres. This needs to be changed.

4.5. *Environmental protection*

4.5.1. Poland has already made considerable progress in the environmental sector in recent years. This has been achieved through a combination of stringent environmental regulations and innovative forms of financing for environmental investment. The polluter-pays principle, much discussed in the West, is a reality in Poland. The money it brings in goes into the 'environment funds' held at national, voivodship, district and local level. Another important environmental financing instrument recognised by the OECD as exemplary is the Polish EcoFund (debt-for-environment swaps) set up in 1991. The proportion of environmental investment in Poland coming from abroad is around 5 %.

(1) See TINA report.
(2) See EBRD study on the development of the road system in Poland.
(3) Investment in road building has shrunk by $^3/_4$ compared to the mid '80s.
(4) 8 000 km of the Polish State Railways' 23 000 km network is to be closed down.

4.5.2. The transposition of the Community acquis on the environment into national law and the establishment of a functional environmental administration which it necessitates are tasks currently facing Poland. Much work is still to be done, especially with regard to setting up an effective environmental administration (including monitoring systems). The Polish authorities should lose no time in stepping up their efforts in response to the observations made in the Commission report of 13 October 1999 that there is still considerable ground to be made up in this area and that very little progress has been achieved of late. The ESC is of the view that the legal and administrative conditions relating to adoption of the Community acquis must be fulfilled in their entirety.

4.5.3. Another problem is the feasibility of transposition and technical implementation of Community environmental law. Despite good progress, numerous efforts and relatively high levels of environmental investment [1], Poland is still a long way from being able to meet EU environmental standards across the board. The situation is compounded by the fact that some environmental successes, e.g. cleaner air in cities (the move from coal to gas as domestic fuel) are being cancelled out by new forms of pollution (e.g. by the increase in car traffic).

4.5.4. There is often a shortage of technical infrastructure such as filtering and water treatment plants etc. The investment needed is estimated at well over USD 30 to 40 billion, and it is reasonable to assume that a much longer time span will be needed for implementation of Community environmental law than previously expected. For example, Poland is unlikely to be able to implement the municipal waste water directive on time. Some credence should be given to the argument that this might afford Poland some degree of competitive advantage because businesses will not have to pay for certain environmental precautions (initially). However, it is equally true that the EU Member States themselves are being dilatory about implementing many of the environmental protection provisions [2].

4.5.5. As far as environmental policy investment is concerned, transition periods are a sine qua non. A choice of clear, verifiable and if necessary enforceable courses of action should be agreed upon with Poland and the financial transfer which takes effect upon accession (e.g. from the Structural Funds) should be conditional on compliance with this environmental agreement.

4.5.6. The ESC welcomes the Commission's initiatives to support environmental measures under both the PHARE [3] and ISPA [4] programmes (from 2000). Nevertheless, some strategic consideration should be given to the kind of projects to be invested in. There are two possible strategies (which in brief are: either participation in large-scale investment or setting up small and medium-sized projects single-handedly. Since there is a shortage in Poland of new, innovative small-scale projects which create jobs, it may be worth shifting the focus of EU support to concentrate on the latter approach. The other advantage of the EU's own prototype projects is that they are more effective in drawing public attention to the positive impact of EU assistance, which will lead to greater support for EU membership.

4.5.7. The ESC would emphasise that any measures should take account of the need to preserve any remaining potential for nature conservation, reiterating its criticism that the accession countries are treated differently with regard to participation in the LIFE projects than EU Member States and third countries [5].

4.6. *EU assistance*

4.6.1. Accession assistance is given to Poland under three EU programmes: Phare, ISPA and Sapard [6] (the last two starting in 2000).

4.6.2. This assistance is very important to the accession countries and is very well received. But compared with the total investment required and the Community funds which these countries stand to receive after accession, the EUR 3 billion currently available each year is a relatively small amount, and how it is to be used requires careful and strategic planning. The accession countries are also still having some trouble absorbing the available funds in an appropriate way.

4.6.3. This makes it even more important that assistance should have the widest possible effect, promoting initiatives to serve as models or initiating measures which will show the EU in a positive light among wide sections of the public.

4.6.4. Probably the most successful action of this kind was the aid given to the 1997 flood victims under the Phare programme. In the same way, the Commission should place greater emphasis on smaller bottom-up projects, implementing them in conjunction with the Polish authorities. In particular, the fact that ISPA funding is concentrated on urban centres, which have far greater financial capabilities than smaller towns or rural areas, needs to be reviewed.

4.6.5. The ESC is very well aware that such small-scale projects are much more difficult for the Commission to manage, requiring as they do more administration, coordination and monitoring and thus tying up more staff. Staff numbers are insufficient in many cases; e.g. the Regional Policy

(1) Almost 2 % of GDP goes on environmental investment.
(2) The European Court of Auditors has noted that a large number of the 40 000 water treatment plants in Europe require modernisation or conversion and that another 40 000 plants need to be built. These will also not be completed before the 'deadline'.
(3) Approx. EUR 170 million since introduction.
(4) ISPA = Instrument for Structural Policies for Pre-Accession, Regulation (EC) No 1267/99, OJ L 161/1999.
(5) See ESC opinion on LIFE III (OJ C 209, 22.7.1999).
(6) Sapard = Special Accession Programme for Agriculture and Rural Development, Regulation (EC) No 1268/99, OJ L 162/1999.

DG will probably run into major problems unless a large number of qualified staff are assigned to the ISPA programme (at a cost of EUR one billion per year). An assessment should also be made of the extent to which the running of support programmes can be placed even more in Polish hands, reducing the role of EU services to checking that the relevant projects are being conducted correctly.

5. **Specific comments and recommendations**

5.1. The ESC is extremely concerned to note the rapidly dwindling support among the Polish population for EU membership. It sees this as a signal that communication with the general public has been inadequate, a fact which must be taken seriously. A range of measures are urgently needed to counteract this, including the development and implementation of an information strategy with civil society organisations. The new Joint Consultative Committee could be used for this purpose.

5.2. As far as the ESC is concerned, the development of political dialogue with civil society organisations is fundamental. As there are serious deficiencies in this area, it is proposed either that a special programme be set up, or that, for example, the twinning programme within Phare be extended to appropriate initiatives involving NGOs and other civil society groupings.

5.3. The ESC would recommend that the Council and the Commission address the following points in negotiations with the Polish government, examining the relevant implementation options:

— how to raise awareness among the social partners and civil society organisations of the need for them to organize themselves more effectively, by creating umbrella associations, for example. There is an urgent need for these organisations to improve coordination of their operations and to further develop their ability to conduct their dialogue with political authorities in a more structured form;

— the urgent need for appropriate development strategies which are socially and environmentally acceptable to be formulated for the key sectors (e.g. heavy industry, agriculture, railway reform), and to be discussed and implemented in a structured dialogue with the groups concerned which is co-funded by the EU;

— the urgent need to step up the flow of information to and dialogue with civil society organisations (employers, trade unions, trade, industry, agricultural groups, consumers, environmentalists) concerning preparations for EU entry and the implications of membership;

— how to develop an education campaign specifically for economically disadvantaged areas providing both training within agriculture and vocational skills for jobs outside agriculture, which are urgently needed to cater for the structural change in agriculture and to stop the economic gulf between town and country widening still further;

— how to rectify current transport trends in Poland, which are not compatible with the EU's aspirations towards a socially and environmentally sustainable transport policy, through the medium of a dialogue involving all sectors of society;

— how to meet the needs of smaller towns and rural areas in the regional distribution of ISPA funds;

— how to improve the operating environment for SMEs as the processing and marketing sectors are developed and how to develop cooperative structures further;

— how to solve the question of the division of responsibilities between the various levels of decision-making and administration, including funding, which is still unclear in certain cases;

— how existing contacts between Polish and EU interest groups can be enhanced and new ones established.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the opinion of the Economic and Social Committee

The following amendments, which obtained more than one quarter of the votes cast, were rejected during the discussions.

Point 4.1.6.1 and 4.1.6.2

Delete and replace with the following:

'(New 4.1.6.1) The Polish trade union landscape is characterised by the existence of two large confederations, NZZ Solidarnosc and OPZZ, whose sectoral and regional components generally enjoy a large degree of autonomy. In addition to these quite loose structures, there are many other trade union groupings and autonomous unions, in some cases operating only within a particular company.

(New 4.1.6.2) The complex relationships between the large confederations and the political world, Solidarnosc with the AWS and OPZZ with SLD, make purely social dialogue difficult at times by politicising certain issues.'

Reason

This wording gives a better representation of the socio-political context, avoiding cut-and-dried statements which are oversimplified.

Result of the vote

For: 41, against: 53, abstentions: 9.

Point 4.1.7

Delete the first part of the point up to 'has increased and ...', so the point begins 'Most actual or potential disputes ...'.

Reason

The description of the relationship between Solidarnosc and the government is simplistic to the point of inaccuracy.

Result of the vote

For: 39, against: 62, abstentions: 8.

Point 4.1.9.1 and 4.1.9.2

Delete.

Reason

4.1.9 is sufficient on its own.

Result of the vote

For: 41, against: 62, abstentions: 9.

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Member States laying down guidelines for the Community initiative for rural development (Leader+)'

(2000/C 51/18)

On 19 October 1999 pursuant to Article 262 of the Treaty, the Commission decided to consult the Economic and Social Committee on the above-mentioned communication.

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

At its 368th plenary session on 8 and 9 December 1999 (meeting of 9 December) the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. The Committee welcomes the draft Commission communication laying down guidelines for the Community Leader+ initiative. It is pleased that this initiative to support rural development is one of the four Community Agenda 2000 initiatives kept for the 2000-2006 programming period.

1.2. Rural areas make up more than 80 % of EU territory and contain more than a quarter of its population. The Committee therefore welcomes the Leader+ initiative as a complement to other rural development measures under the Structural Funds, and hopes that this package of programmes will help preserve a dynamic rural fabric in the Union.

1.3. On the basis of experience with Leader II, the Committee would like to make the following comments.

2. Financing of Leader+ through the EAGGF guidance section

2.1. In the interests of administrative simplification, the Commission proposes that Leader+ should be financed through a single Structural Fund, the EAGGF guidance section, and no longer through the EAGGF guidance section, the ERDF and the ESF, as was the case with Leader II.

2.2. Just as rural development policy, which has now been designated the 'second pillar of the CAP', will from now on be financed partly through the EAGGF guarantee section, the Commission wants measures relating not just to agricultural activity but also to rural development in general now to be financed through the EAGGF guidance section (hitherto limited strictly to agriculture).

2.3. The change, though limited and experimental at this stage, cannot be made under the guise of rationalisation alone. The Committee feels that it represents a deliberate policy direction for the EU which calls for further serious debate if it is to be continued after 2006.

2.4. For the time being, and in accordance with the main purpose of the EAGGF guidance section, the Committee would like many agricultural development projects run by farmers and their families in rural areas — including small agricultural based industries — to fall under the Leader+ development strategies.

3. Extension of Leader+ to all parts of the EU

3.1. Eligibility under the Leader initiative was previously restricted to Objective 1, 5b and 6 areas, but has been extended under Leader+ to include all rural territories, with Member States permitted to define a beneficiary area.

3.2. The Committee welcomes this major change compared with Leader II, and believes that it will give the Member States more autonomy in choosing priority areas.

3.3. However, the Committee is concerned that there might be a proliferation and dilution of projects, which could reduce the effectiveness of the initiative. This fear is all the more justified given that while eligibility has been extended under Leader+ the annual budget (EUR 2 020 million at 1999 prices over seven years, compared to six years for Leader II) is lower.

3.4. The Committee therefore calls on the Commission and the Member States to avoid the risk of spreading aid too thinly, which could be counterproductive in terms of achieving the desired results, and to try and ensure that the rural development programmes as a whole are well coordinated (cf. point 5 below).

4. **The pilot nature of projects eligible under Leader+**

4.1. The Commission's draft communication sets out (e.g. in point 14) the criteria for evaluating development strategies proposed by Local Action Groups (LAGs).

4.2. As a general principle, the Commission requires that these strategies must be of a pilot nature to be eligible for Community co-financing (cf. point 37).

4.3. The Committee considers this requirement to be consistent with the purpose of Leader+ to promote and support the implementation of original and high-quality strategies for integrated rural development.

4.4. Like the Commission, the Committee sees this pilot nature requirement as one of the selection criteria for proposed strategies, of the same order as integration, coherence with the territory, transferability of methods and complementarity with regional rural development programmes.

4.5. The rationale of Leader+ is that to be eligible a strategy must embrace a large number of local projects and initiatives so as to provide a coherent response to the needs of the people and regions concerned.

4.6. Some of these projects and initiatives will not be innovative in themselves, but will nevertheless be needed for putting into effect the integrated development strategy envisaged.

4.7. The Committee agrees with the Commission that the innovative — or 'pilot' — aspect of a strategy must be the development plan viewed as a whole. Moreover, this selection criterion must be assessed differently depending on whether the territories concerned have already been involved in the Leader I and Leader II programmes.

4.8. The Committee also appreciates the Commission's concern that Leader+ development plans should be based on a 'strong theme' that is typical of and unites the territory. The Commission is thus aiming to avoid a situation in which a simple series of local projects is presented as a coherent local development plan.

4.9. The Committee warns, however, that this requirement should not have the effect of discouraging truly integrated multisectoral approaches. Rather it would like the Commission and the Member States to specifically encourage multisectoral integration.

4.10. In view of its concern with equal opportunities and awareness that women and young people can boost development in rural areas, the Committee approves the Commission's proposal regarding these two key groups. It welcomes the Commission's request for Member States to examine the needs of women and young people working in rural areas and to put forward proposals responding to these needs and securing the measures necessary to remove existing discrimination, while taking into account the economic diversification of rural areas.

5. **Complementarity with other Community programmes**

5.1. It is important to avoid overlapping between the different Community instruments for rural development, duplication of funding and potential unfair opportunities this would create for the beneficiaries. The Leader initiative must apply where traditional rural development programmes cease to operate.

5.2. This naturally applies to coordination between Leader+ and measures covered by the new Regulation (EC) No. 1257/99 (the second pillar of the CAP) and all programmes that have complementary objectives in terms of job creation, vocational training, the craft sector or the social sphere.

5.3. There must be the same complementarity between the Interreg initiative and the support that Leader+ (part 2) can provide for transnational cooperation between rural territories in the EU.

5.4. For instance, the Committee believes that Leader+ could be a priority organisational instrument in mountain areas, which tend to be divided between several administrative bodies. The Leader programmes have demonstrated their relevance in mountain regions. The Committee would like to see a continuation of activities started in these regions and would like Leader+ to promote exchanges of experience and cooperation between the different mountain regions of the EU through networking and transnational projects. This example obviously does not imply that Leader+ does not offer a genuine opportunity for less-favoured regions in general.

5.5. The Committee also recommends that transnational cooperation projects should not be limited to the Member States. It should also be possible to extend them to include the countries of eastern and central Europe (CEECs). The Committee is aware that Leader+ funding is available only to the Member States, but it would nevertheless like to see easier access to pre-accession funds for CEECs that wish to become involved in rural cooperation programmes with EU territories.

5.6. The Committee also asks the Commission and the Member States to ensure that Leader+ complements Community-financed environmental programmes. It is therefore pleased to see that the priority themes proposed by the Commission include enhancing the value of sites of Community interest selected under Natura 2000. More generally, the Committee endorses the environmental dimension of rural development policy, including the promotion of good agricultural practice.

5.7. With reference to its recent opinion on the third stage of the financial instrument for the environment (LIFE III) [1], the Committee stresses the importance of disseminating and using the findings of projects financed by LIFE, in the context of both LIFE-Environment (land use development and planning) and LIFE-Nature. In that opinion, the Committee pointed out that 'national and EU funding instruments operating in the fields of regional policy and agricultural policy (such as the Structural Funds and the Cohesion Funds) should play a much greater and more innovative role than has hitherto been the case'. This obviously also applies to the Leader+ initiative.

5.8. The Observatory for Innovation and Rural Development will have a key role to play in ensuring effective coordination of Leader+ and the other Community instruments supporting rural development.

5.9. To help potential beneficiaries understand the system, the Committee suggests producing a guide to all existing Community policies concerning rural development and the relevant eligibility criteria.

5.10. This could be one of the first tasks assigned to the Observatory for Innovation and Rural Development led by the Commission, in collaboration with the competent authorities of the Member States.

5.11. The Committee would like action taken by the Observatory to be evaluated by an independent working group comprising representatives of the socio-economic interest groups concerned by rural development and chaired by the Commission.

6. **Composition of Local Action Groups (LAGs)**

6.1. LAGs remain one of the specific features of the Leader+ initiative, and probably the most important in terms of promoting a bottom-up approach to local development.

6.2. Experience with Leader I and Leader II has nevertheless shown that a majority of existing LAGs are run predominantly by government representatives. Although they are frequently efficient, these LAGs have not been seen by the local population as a new mouthpiece for local democracy, but as an additional administrative layer.

6.3. The Committee shares the Commission's wish that the LAGs should represent the different socio-economic interest groups in the territory concerned. It therefore endorses the setting of a 50 % ceiling on government representatives (civil servants and elected office-holders).

6.4. On the other hand, the Committee asks the Member States not to abuse this rule by requiring that 50 % of members be government representatives in LAGs that are composed mainly of private sector players, which they frequently are in Finland for example.

6.5. This new rule introduced by the Commission should allow several local interest groups to be represented in a given LAG. The remaining membership of the LAG must be negotiated between government and non-government players, and should not be determined by unilateral administrative decision.

7. **Networking**

7.1. Communication, or sharing experiences, has been one of the main features of Leader I and Leader II. Promoting networking between groups has been an ongoing task of the network organisation unit managed at Community level by the AEIDL ('Leader' magazine, seminars, missions and visits among the LAGs, etc.).

7.2. The Committee welcomes the Commission's willingness to step up the proactive approach to networking driven by the national network organisation units and a European Observatory for Innovation and Rural Development.

7.3. Drawing on experience with Leader I and Leader II, the Committee recommends that these network organisation units properly define the different types of networking activity, their objectives and the results expected, differentiating between specific cooperation activities between LAGs and the means of communication made available to them.

7.4. The Committee recommends that in addition to general information about ongoing projects, the Observatory and the national units promote a participatory approach based on visits, staff exchanges and specific projects set up by the LAGs on topics of joint interest.

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[1] OJ C No. 209, 22.7.1999.

7.5. Networking will thus help bring local development out of the isolated context in which it often takes place.

8. **Implementation**

8.1. The Committee commends the bottom-up approach that informs the Leader+ initiative. This approach makes it possible to actually assess the diversity of rural Europe and could presage the decline of blanket top-down approaches applied across all parts of the EU.

8.2. With regard to the mainstreaming principle under Article 6 of the Treaty and in line with Article 8 (pursuant to recital 27) of Regulation (EC) No. 1260/1999, the Committee would call on Member States to ensure that the environmental authorities are involved in the preparation, implementation and assessment of Leader+ programmes and, to that end, in the work of the monitoring committees. The same applies to the drawing-up of development plans by the local action groups; all local players, including environmental and farming organisations should be involved as closely as possible in this work.

8.3. In order to help local players produce innovative projects, the Committee would like the Commission and the Member States to make every effort to:

— clearly explain the eligibility criteria for LAGs and projects;

— simplify the administrative procedures which the LAGs must complete once their projects have been selected.

8.4. Notwithstanding the methods of financing that the Member States will choose, the Committee thus favours the global grant system, which gives more freedom to the LAGs in allocating the funds they receive. For this system to be completely effective, the authorities concerned in the Member States must ensure that allocation procedures and guarantee requirements are not so complicated that they cause delays with co-financing.

8.5. As proposed in the draft communication (cf. point 31), the Committee asks the Commission and the national and regional authorities concerned to provide information at the beginning of the initiative about their accounting requirements so as to simplify the financial management of Leader+ at the various institutional levels.

8.6. The Commission also sets a six-month time limit for Member States to submit their proposals for Leader+ programmes after the communication has been adopted and published. The Committee feels this deadline to be rather tight, especially for projects to be set up by territories that have no previous experience of participatory activities.

8.7. The Committee therefore recommends keeping the flexibility introduced with Leader II by allowing Leader+ development plans to be adapted during their implementation. If a plan is adapted, objectives, strategies and indicators must also be redefined in order to promote 'good practice' in project design.

8.8. The Committee also recommends that the LAGs, in particular LAGs that have recently been set up, receive proper technical support during the project design stage, and that they be fully informed about best practice and innovative measures documented during Leader I and Leader II.

8.9. With the above recommendations in mind, the Committee favours rapid adoption of the draft Commission communication and of the necessary legislation to implement Leader+.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Draft Communication from the Commission to the Member States laying down guidelines for a Community initiative concerning economic and social regeneration of cities and of neighbourhoods in crisis in order to promote sustainable urban development — Urban'

(2000/C 51/19)

On 19 October 1999 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Committee decided to appoint Mr Vinay as rapporteur-general for its opinion.

At its 368th plenary session (meeting of 9 December 1999), the Economic and Social Committee unanimously adopted the following opinion.

1. **Introduction**

1.1. The Commission communication sets out guidelines for a Community initiative, entitled Urban, for the economic and social regeneration of cities and deprived urban neighbourhoods, with a view to promoting sustainable urban development, as defined in Article 20 of Regulation (EC) No 1260/1999. The Committee has had to draw up its opinion quickly because the Commission intends to adopt the relevant guidelines as soon as possible.

1.2. The initiative follows the launch of the Commission's highly innovative communication on Sustainable urban development in the European Union: A framework for action. The earlier communication set out four guidelines for addressing urban problems, building on the reform of the Structural Funds. The Committee recently issued a favourable opinion on this. ([1])

2. **The Commission proposal**

2.1. The Commission notes that the current Urban programmes have delivered visible improvements in the quality of life in their target areas. It explains how this experience prompted it to use the framework for action in order to mainstream the urban dimension into Community policies and, in particular, to assistance from the Structural Funds.

2.1.1. The Commission outlines the key points of the framework for action and stresses the need to ensure that the new Urban offers distinct added value and is complementary to the other main programmes. Urban can provide a bridge between smallscale innovative schemes (piloted under Urban Pilot Projects and Life) and the adoption of an integrated approach in the main Structural Fund programmes.

2.1.2. Urban's chief aim is thus to promote the formulation and implementation of particularly innovative strategies for small and medium-sized towns and cities and for distressed neighbourhoods in larger cities.

2.2. Urban regeneration strategies must adhere to certain principles. First and foremost, there must be a sufficient critical mass of population and support structures. A strong local partnership is also needed, in order to define challenges, strategies, priorities, resource allocation, and so on. The partnership should include economic and social players, NGOs, and residents' groupings, including those active in the environmental field, as well as other interested bodies.

2.2.1. The strategies must complement the main forms of assistance under the Structural Funds.

2.3. Some 50 urban areas may be covered under the new initiative, each with a population of at least 10 000. Each must present a single problem to be tackled within a coherent geographical area and must demonstrate, using national indicators, that it is in need of economic and social regeneration or faces a crisis situation. The eligible areas, which must also meet at least three of the criteria listed in the Commission document, may be located either within or outside objective 1 and 2 areas.

2.4. Schemes must also respect certain priorities, such as redevelopment of brownfield sites, improvement of security and prevention of delinquency, and reduction of urban sprawl. Employment pacts are a further priority, as are education and training pathways for excluded persons, integrated public transport systems, and measures to reduce private car use. Waste treatment is also prioritised, alongside water and energy management. A detailed list of eligible measures is appended to the Commission document.

([1]) OJ C 368, 20.12.1999 on Sustainable urban development in the European Union: A framework for action.

2.5. The communication goes on to explain in detail the procedures for preparing, presenting and approving the individual programmes, and the arrangements for monitoring, implementing and evaluating assistance.

2.5.1. Urban is to be allocated EUR 700 million for the period 2000-2006. The breakdown of funding between Member States has been decided on the basis of such criteria as urban population density and unemployment figures, including those for long-term unemployment. A total of 56 measures are listed in the Annex, with average funding of around EUR 12 million. Measures may cover individual neighbourhoods or, if consistent with the conditions laid down, towns of 30 000/40 000 inhabitants, grouping together several areas. 2 % of the overall allocation will be managed directly by the Commission and used for coordination, experience swapping, assessment and formulation of indicators.

3. **General comments**

3.1. The Committee welcomes the Commission proposal. During the discussions on the reform of the Structural Funds, the Committee — like the European Parliament and the Committee of the Regions — had argued that the Urban programme had been extremely worthwhile and should be retained. The Commission appreciated the wisdom of this and broadly agreed, and it is particularly gratifying that Urban is one of the first acts of the new Commission.

3.1.1. The request to renew the programme was made because Urban was viewed particularly favourably. In both its design and implementation, Urban (launched in 1994) presented certain special features. Firstly, it targeted particularly rundown urban areas and took an integrated socio-economic and infrastructural approach. Secondly, it sought to closely involve local authorities and public and private associations, and the local community.

3.1.2. In short, the distinguishing feature of Urban was to place the focus on local residents, and not just on structures (although it obviously affected these too).

3.1.3. Some 116 schemes were funded under the last Urban programme, for a total of EUR 900 million. Overall, these were highly successful as regards both quality and lasting effectiveness.

3.1.4. Thanks to its special features, Urban proved to be a worthwhile experience not just for its practical achievements but also in the more political task of bringing the EU closer to the public. The decision to continue it is thus a significant one.

3.2. The new programme contains several improvements. Firstly, priority (albeit not exclusive priority) is given to small and medium-sized towns which were marginalised in the preceding programme and which are nevertheless an important part of the EU's urban landscape.

3.2.1. Also noteworthy is the emphasis on exchange of good practice, and the decision to provide financial instruments for activities run by the Commission in such areas as assessment, classification and classification methods. Lack of resources meant that the previous programme laid little emphasis on these activities.

3.2.2. The Commission's explanation of the status of measures to improve housing is worth highlighting. In Annex I, it explains that the ERDF (which is the funding source for Urban) is unable to finance such measures but that when these are inseparable from other development measures for the area concerned, the programmes must give evidence of appropriate financial allocations from the relevant national and/or local authorities, additional to the total amount eligible under the particular Urban project. This averts the risk that programmes which are appropriate and necessary might prove ineffective because they are not buttressed by other essential projects.

3.2.3. The fact that the list of measures eligible under Urban has been considerably extended could be seen as a positive development, particularly as the list is not exhaustive and includes measures adopted under the last Urban programme and the Urban Pilot Projects.

3.3. However, the Committee feels it useful to make a few specific comments on the methodology and content of the new Urban.

3.3.1. The Committee has on several occasions stressed the need to mainstream the consultation and partnership principle into all Structural Fund action [1]. The European Parliament [2] has made similar calls. Yet this element, which provided the 'added value' of Urban, seems to have been downgraded in the new proposal.

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[1] See OJ C 407, 28.12.1998 — Opinion on the Proposal for a Council Regulation (EC) laying down general provisions on the Structural Funds — cf. also OJ C 368, 20.12.1999 on Sustainable urban development in the European Union: A framework for action.

[2] Resolution on the proposal for a Council Regulation (EC) laying down general provisions on the Structural Funds — COM (1998) 131 — C4-0285/98/0090(AVC)).

3.3.2. The priority aims of Urban also seem to have been watered down in the long list of possible measures and chosen objectives. The new Urban no longer includes the previous programme's modest but crucial goal of 'acting as a catalyst in a broad-based approach, by undertaking key schemes to help deprived urban areas or cities with serious problems to achieve a lasting improvement in living standards for their inhabitants'.

3.3.3. The new proposal appears to favour a whole host of activities relating to the action framework for sustainable urban development. These have their merits, but they form part of a wider and more comprehensive plan than is appropriate for Urban. The scope of the new Urban is also clearly laid down in the criteria for eligible areas.

3.3.4. Urban must not be allowed to become a 'miniature' version of the action framework, with an all-embracing approach. Instead, it should continue to be a targeted and effective instrument for crisis situations, promoting initial socio-economic rehabilitation which then allows the areas concerned to benefit from wider initiatives such as those mentioned under the four objectives of the action framework.

3.3.5. It seems unlikely that innovative schemes for waste disposal or the building of pedestrian paths can provide an instant panacea for urban areas which in non-bureaucratic language may be termed socially and economically desolate. Such schemes should be pursued as a matter of course in all urban areas.

3.3.6. The Committee therefore thinks that the objectives and measures of the new Urban should be geared more closely to those conditions which the current text (point 11) considers crucial for the approval of assistance.

4. **Specific comments**

4.1. The Committee attaches particular importance to initiatives which encourage direct social involvement and participation in the various Community schemes, inter alia in the form of partnerships between social interest groups. The Committee therefore calls for the reinsertion in the indicative list of eligible measures of an item from the previous Urban programme, worded as follows: 'support in improving local decision-making capacity (neighbourhood committees, exchange schemes, the creation of partnerships between local authorities and local operators, etc.).' It should also be pointed out that the active participation of citizens' associations and other social groupings in the planning and management of the socio-economic regeneration of their area has done much to ensure the success of both the current Urban initiative and the Community's Leader initiative.

4.1.1. Also on the subject of participation arrangements, the Committee would stress the valuable role played by the social partners in the areas covered by the projects, and particularly in the socio-economic context of the areas which Urban is to assist. Such areas face serious employment problems, and have difficulty regenerating their economic fabric.

4.1.2. The role of SMEs and craft businesses should also receive greater emphasis, as these are often the mainstay of the urban economy. These businesses are the main creators of jobs and prosperity in the smaller towns and cities which are the priority targets of the new Urban.

4.2. The Committee is pleased to see that the eligible measures include advice on security and crime prevention. Here mention should also be made of schemes involving commercial businesses and private areas that are used by the public.

4.3. The instructions regarding procedures are extremely extensive and detailed. This may be beneficial but it may also create red tape. Except for a few essential specific points, it might be enough simply to refer the reader to the new regulation on the Structural Funds, as this covers virtually all the provisions mentioned.

4.4. The reduction in the overall financial allocation for Urban may be a logical consequence of the changes made in the use of the Structural Funds. However, the Commission should do all it can to increase the allocation, not least because the 56 new measures proposed in the new initiative are to cover a programming period that runs from 2000 to 2006. Such a watered-down initiative runs counter to the Commission's intention that Urban should have a strong visible impact both locally and at EU level. The Committee therefore thinks that the number of scheduled schemes should be increased.

4.5. Lastly, and to underscore the comments made in this opinion and in its recent opinion [1] on the framework for action, the Committee would draw attention to the conclusions of the recent first convention of civil society organisations. In several ways, the topics discussed at the convention are

[1] Cf. OJ C 368, 20.12.1999 on Sustainable urban development in the European Union: A framework for action.

relevant to the Urban initiative and to urban policies in general. Ultimately, the key to the success of any initiative will lie in the EU's ability to develop an interactive relationship with its citizens and with the environments in which they live and operate, where decisions are taken that will affect the lives of future generations.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Draft Communication from the Commission to the Member States laying down guidelines for a Community initiative concerning trans-European cooperation intended to encourage harmonious and balanced development of the European territory (Interreg)'

(2000/C 51/20)

On 19 October 1999 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned draft communication.

The Committee decided to appoint Mr Barros Vale as rapporteur-general for its opinion.

At its 368th plenary session (meeting of 9 December 1999), the Economic and Social Committee adopted the following opinion by 78 votes to one, with five abstentions.

1. **Introduction**

1.1. The present opinion has been drawn up subject to the constraints imposed by the fact that the Committee is being consulted, as a matter of urgency, at an early stage in the institutional procedure. The tight deadline obliges the Committee to be systematic and home in on the key issues if it is to offer its opinion in good time. The Committee may issue a more detailed opinion on the Interreg III programme at a later date, using the traditional format. This later opinion will be able to consider the experience and lessons drawn from the operational measures which preceded the programme, and assess its future prospects.

1.2. In any event, the Committee welcomes Commissioner Barnier's move to consult it at this stage, and hopes that this will become standard practice in such situations.

2. **General assessment**

2.1. The Committee welcomes the proposal, which follows its past recommendations to reduce the number of Community initiatives and extend their scope and capabilities. However, the Committee regrets that the Commission's proposals are not backed by information on the results of activities during the previous period.

2.2. The Committee welcomes the plan to involve the economic and social partners more closely in the various stages of the programme.

2.3. The proposal to oblige the regional authorities to involve local organisations right from the design stage of each programme is also a welcome step. The fact that the programmes will not depend solely on the central authority, but also on local players and operators, should make it easier to adapt them to the situation on the ground in each group of regions concerned, and should also make for more decentralised and effective action.

2.4. The Committee approves the proposal to select projects on the basis of competitive calls open to both the public and private sectors, as this will make the process more transparent.

2.5. The Committee welcomes the Commission's decision to pay the ERDF contributions into a single bank account in the name of the managing or paying authority, who will in turn transfer them to the bodies and authorities designated to implement the various sub-programmes and measures; only then will payments be made to the final beneficiaries.

2.6. The Committee also welcomes the possibility of loans being secured from the EIB.

2.7. The Committee endorses the requirement that Member States ensure that between 50 % and 80 % of their indicative allocation goes to Strand A. The Committee thinks that the 6 % (EUR 292 million) allocated to Strand C should be broken down as follows: 3 % for projects selected by the Commission under the terms specific to Strand C; 3 % for projects that link in with and strengthen projects approved under Strands A and B.

2.8. The Committee is pleased to note the Commission's continuing concern to promote the development not only of border regions within the EU but also of those on the EU's external borders, with a view to enlargement.

2.9. The Committee welcomes the efforts to coordinate the various Community initiatives, as is apparent from the opening-up of the programme to measures in the fields of rural development and fisheries structures.

2.10. The Committee is pleased to see that measures to be funded inside and outside the EU have separate budgets, with the former financed from the ERDF and the latter from other financial instruments.

2.11. The Committee also approves the flexibility offered to the Member States when deciding on the breakdown of funds by strand (while still respecting the margins set by the Commission), border and region.

2.12. The Committee welcomes the use of a Monitoring Committee comprising representatives of local, regional and (where relevant) national authorities, alongside representatives of the socio-economic partners and non-governmental organisations. This will promote a wider perspective and hence more appropriate action.

2.13. Finally, the Committee points out that the budget allocated to the programme is rather modest in view of its ambitious and extensive scope, especially as other Community initiatives have been discontinued.

3. **Recommendations**

3.1. So that action can be taken to remedy any shortcomings, the Committee feels it extremely important that Interreg be the subject of an implementing report, and that a comparative table of the various Interregs be compiled. No such table exists at present.

3.2. The Committee considers that the Commission should play a greater role in the monitoring and implementation bodies for Interreg, inter alia in order to provide more impetus and encouragement.

3.3. Since Interreg is to operate in conjunction with other Community programmes such as Phare, Tacis, MEDA and PASI, and as the procedures for each fund vary greatly, the Commission should coordinate procedures in order to prevent any blockages.

3.4. The Commission should include Kosovo and Montenegro among the Adriatic regions eligible for Interreg, as they are cross-border regions which currently face serious structural problems.

3.5. In order to promote good practice in the application of the Community initiatives and to make projects more rigorous and credible (as shown by experience with other initiatives such as Leader), the Commission should require each project to be monitored by a statutory auditor or similarly qualified expert.

3.5.1. Again in the interests of rigour and credibility, and in order to ensure that the general regulation's guidelines are respected, the Committee considers that the Commission should make sure that the Member States and local/regional authorities genuinely involve the economic and social partners. It should also make sure that this involvement is more than just a declaration of principles, and continues throughout the framing and implementation of the programme.

3.6. The Committee also suggests that when selecting projects, particular attention be paid to their structural impact, so that they do not peter out when their Interreg support comes to an end, as is often the case. The aim should be to create self-sustaining long-term infrastructure.

3.7. The Committee also thinks that projects should be highly entrepreneurial and should involve objective, practical cooperation. They should be sustainable and increasingly successful over the long term.

3.8. The Committee recommends that careful attention be paid to the outermost regions, now that the Regis initiative has been subsumed into Interreg.

3.9. The Committee considers that the Commission should ensure that the programmes proposed by the Member States place maritime regions, islands and upland areas on an equal footing with other regions, as otherwise these types of region could find themselves lagging behind other border areas from the same country.

3.10. The creation of three strands within Interreg is intended to precisely delimit the geographical scope of the projects presented within each strand. However, the Committee fears that worthwhile projects could be rejected because they are transversal and do not fit neatly into one particular strand. The Committee considers that when assessing projects, a reasonable degree of flexibility will be needed in order to cater for such cases, provided that the projects are relevant and worthwhile within the context of cooperation.

3.11. In order to build on the results of the first two Interreg programmes and ensure that projects designed to get enterprises and administrations to work together can be completed, the Committee thinks that it is necessary to continue to support initiatives of this type which were launched during Interreg II.

3.12. The Committee suggests the following alterations in the priorities and measures proposed by the Commission:

— Strand A — Point 2

  — Business spirit and SMEs: Development of trans-European networks and infrastructure, and of economic relations between SMEs (...) information, training (...).

  — It must be possible to part-finance operational expenditure by cross-border organisations for a longer period than that proposed by the Commission.

  — Tourism: (...) cultural tourism, sports tourism, environmental tourism (...).

— Strand A — Point 6

  — Improvements to other infrastructure: Improvement of information, training and communication networks, services and centres.

— Strand A — Point 8

  — Cooperation between citizens and institutions: (...) to promote employment. This action must focus particularly on young people, given that this is a strategic requirement for future convergence of the social, cultural and economic conditions of the regions concerned.

3.13. Lastly, systems must be introduced at all tiers of decision-making for evaluating and approving applications, for making payments and for monitoring. The aim should be to speed up proceedings in order to minimise risks, encourage operators, and set the programme in train promptly. Generally speaking, this was not the case in the past with Interreg.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Regulation amending Council Regulation (EC) No 820/97, establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products'

(2000/C 51/21)

On 12 November 1999 the Council decided to consult the Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Economic and Social Committee decided to appoint Mr David Evans as rapporteur-general with the task of preparing the Committee's work on the subject.

At its 368th plenary session (meeting of 9 December 1999), the Economic and Social Committee adopted the following opinion by 40 votes to one with four abstentions.

1. General remarks

Council Regulation (EC) No 820/97, establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products, lays down that a compulsory beef labelling system shall be introduced from 1 January 2000 onwards. The new proposal by the Commission provides for a delay of the introduction of the compulsory beef labelling rules beyond the start of next year — deferring limited labelling rules not later than 1 January 2001 and full rules until the start of 2003. There are two practical reasons for this postponement: Firstly, the European Court of Justice will shortly rule on the legal base of Regulation (EC) No 820/97 as the Commission and the European Parliament consider Article 152 of the amended Treaty and not the former Article 43 as being the correct base (co-decision rather than consultation). Secondly, the full databases which are central to the labelling requirements are not in place in all Member States and systems compatible with the rules are not likely to be functioning properly in some Member States in the near future. Consequently, the procedures for the adoption of that regulation will not be completed before 1 January 2000.

The object of this present proposal is, therefore simply to extend the existing voluntary labelling system, up to a maximum of one year, until compulsory rules enter into force. This will avoid a legal vacuum which would otherwise be created, and which would cause confusion for suppliers and consumers alike.

2. Special remarks

The Committee considers the compulsory beef labelling as a very important instrument to maintain and strengthen consumer confidence in the beef sector. In that sense, it very much regrets the postponement. For the practical reasons mentioned above, however, it supports the proposal to delay the introduction of the compulsory beef labelling rules and urges the decision making bodies to adopt the system as soon as possible.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council decision concerning the placing on the market and administration of bovine somatotrophin (BST) and repealing Council Decision 90/218/EEC'

(2000/C 51/22)

On 9 November 1999, the Council of the European Union decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Economic and Social Committee decided to appoint Mr Nielsen as rapporteur-general with the task of preparing the Committee's work on the subject.

At its 368th plenary session (meeting of 9 December 1999), the Economic and Social Committee adopted the following opinion by 46 votes with two abstentions.

1. **Background**

1.1. Since 1990 the Member States may not grant authorisation for placing on the market or administration in any form, of bovine somatotrophin (BST) to dairy cows on their territory [1]. This moratorium expires at the end of 1999.

1.2. Further to the Protocol on protection and welfare of animals annexed to the Treaty, the European Convention for the Protection of Animals Kept for Farming Purposes and the report of 10 March 1999 by the Scientific Committee on Animal Health and Animal Welfare, the Commission is proposing a permanent ban from 1 January 2000 on authorisation to place on the market or in any way administrate bovine somatotrophin (BST) to dairy cows. Undertakings buying, producing or marketing BST substances are required to keep registers detailing quantities etc.; on request, these must be made available to the authorities. The decision does not affect the Member States' production and imports of BST for purposes of its export to third countries.

1.3. The Commission points out, among other things, that it has not been proved scientifically or on the basis of experience, that BST is not detrimental to animal health or welfare. On the other hand, there is proof that BST can have harmful effects in the shape of clinical mastitis, food and leg disorders, reproduction capacity and reactions at the injection site. Apart from the fact that these disorders may cause animals pain, there is a risk of infecting other cows and hence causing a deterioration in the overall health of the herd.

2. **The ESC's comments**

2.1. The ESC fully endorses both the Commission's proposal for a ban on the use of BST and the Commission's arguments. However, the ESC considers that the Commission should indicate more precisely the degree of harm to animal health as set out in the scientific report.

[1] Council Decision 90/218/EEC (OJ L 116, 8.5.1990, p. 27), as last amended by Decision 94/936/EC (OJ L 366, 31.12.1994, p. 19).

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'The European Union's Forestry Strategy'

(2000/C 51/23)

On 29 April 1999 the Economic and Social Committee, acting under Rule 23(2) of its Rules of Procedure, decided to draw up an additional opinion on 'The European Union's Forestry Strategy'.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 November 1999. The rapporteur was Mr Kallio and the co-rapporteur Mr Wilms.

At its 368th plenary session on 8 and 9 December 1999 (meeting of 9 December), the Economic and Social Committee adopted the following opinion by 53 votes to seven, with seven abstentions.

1. **Introduction**

1.1. *From the own-initiative opinion of the Economic and Social Committee to an EU forestry strategy*

1.1.1. The European Commission published a communication on EU forestry strategy on 18 November 1998 in response to an own-initiative report by the European Parliament. On 15 December 1998 the Council of Ministers adopted a resolution on EU forestry strategy based on the Commission communication.

1.1.2. The European Parliament drafted the so-called Thomas Report of 31 January 1997 on EU forestry strategy, taking advantage for the first time of the right provided by Article 138b of the Treaty to draft own-initiative reports. In its report, the Parliament asked the Commission to draw up a proposal for an EU forestry strategy.

1.1.3. On 24 April 1997 the Economic and Social Committee adopted an own-initiative opinion [1] on the situation and problems of forestry in the European Union and the potential for developing forestry policies.

1.1.4. On 19 November 1997 the Committee of the Regions adopted an opinion [2] on the management, use and protection of forests in the EU.

1.1.5. The Commission adopted its Agenda 2000 report in July 1997. It included comprehensive reforms to the development of EU funding for the years 2000-2006, reform of the agricultural policy, as well as reform of both structural and regional policy. In March 1998 the Commission adopted the draft legislation for Agenda 2000 and the package was approved at the Berlin Summit on 26 March 1999. In this document forests are dealt with under the Regulation on Rural Development.

1.1.6. On 5 October 1999 the Commission adopted a communication on 'The state of the competitiveness of the EU forest-based and related industries'.

1.2. *The EU and international forestry policy*

1.2.1. During the 1990s the European forestry debate has focused mainly on defining and implementing the principles of sustainable forestry. At the 1993 pan-European Ministerial Conference in Helsinki, Resolution H1 defined sustainable forest management as: 'the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national and global levels, and that does not cause damage to other systems'. Forestry must be practised in a way which is economically, ecologically and biologically and socially and culturally sustainable. The EU has also been actively involved in developing international forestry policy. The principles of sustainable development and sustainable forestry were established by the United Nations Conference on Environment and Development at Rio de Janeiro in 1992. The forestry principles adopted at Rio have proved to be extremely important in recent years, even though they are not legally binding. The Food and Agriculture Organisation of the United Nations (FAO) has also proved to be an important forum for international forestry policy.

1.2.2. Since Rio, European countries have held three ministerial conferences on the protection of forests [3] to promote implementation of the documents approved at Rio. This pan-European process is ongoing. Since the Ministerial Conference held in Helsinki, European criteria and indicators for sustainable forestry have been agreed upon which encompass the basic elements of sustainable forestry, including economic, environmental, social and cultural factors.

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(1) OJ C 206, 7.7.1997.
(2) OJ C 64, 27.2.1998.
(3) Ministerial conferences: Strasbourg 1990, Helsinki 1993 and Lisbon 1998.

1.2.3. The international forestry debate continued from 1995 to 1997 in the Intergovernmental Panel on Forests (IPF), the work of which will be continued until the year 2000 by the Intergovernmental Forestry Forum (IFF). One of the most important tasks of the IFF process is to reach agreement on an international, legally binding instrument. Such an instrument has a key role to play as it does not make sense to resolve sustainable forestry issues, such as trade, the environment and funding, in a separate and fragmented way. The EU's forestry strategy also states that the Community supports the establishment of a global and legally binding instrument, which addresses the management, conservation and sustainable development of every kind of forest.

1.2.4. Other imminent challenges for forestry policy at both the European and international level include the role played by forests in controlling climate change and the promotion of credible forest certification systems.

1.2.5. During the enlargement negotiations, it must be guaranteed that forestry in the Central and East European Countries (the so-called CEEC countries) is conducted in a long-term economically, environmentally, biologically, socially and culturally sustainable way, and that, in this sense, the EU's forestry strategy is also implemented by these countries.

2. **The European Union's forestry strategy**

2.1. *Sustainable forestry and national forestry policies as a starting point*

2.1.1. The starting point of the EU's forestry strategy is the subsidiarity principle. This means that the sustainable management and use of forests are the responsibility of national forestry programmes and policies. The EU does not, therefore, have a common forestry policy along the lines of its common agricultural policy. As the Council of Ministers states in its resolution, forestry and commercial activity related to forests should remain market-based (point 14).

2.1.2. It is extremely important that forestry strategy be based on the concept of sustainable forest management as defined in 1993 by the above-mentioned pan-European ministerial conference on the protection of forests. Sustainable forestry consists of a balanced combination of ecological, economic, social and cultural activities.

2.1.3. Although the forestry strategy is a very welcome document, it leaves open, inter alia, the question of how the forestry strategy will be implemented in the short- and long-term. The only indication of concrete measures is made in Agenda 2000. In addition, the strategy lacks clear assessments and analyses of existing measures as well as any vision for the future. Nor does it propose any concrete measures for solving current problems — instead it does little more than list existing EU forestry sector measures.

2.1.4. Some of the proposals made by the Committee in its earlier own-initiative opinion [1] have been incorporated into the forestry strategy. However, the opinion argued that to safeguard the interests of the EU's forestry sector, it was necessary among other things for all Community policies to take account of their impact on the forestry sector. The EU also needs to substantially improve the coordination of EU forestry-related matters. These proposals have not been taken into account in the forestry strategy.

2.2. *Added value from EU-level measures*

2.2.1. Although the subsidiarity principle should be retained when forestry issues are being considered, EU-level cooperation can also be of benefit if Community-level action contributes added value to national measures. The involvement of the Community in the forestry strategy is viewed as beneficial to rural development measures, protecting forests from air pollution and forest fires, the development of information and communication systems on forestry, research and development, and development cooperation, inter alia. Subjects of special concern to forestry include maintenance of the biological diversity of forests, promotion of the use of wood as a renewable natural resource and as an environmentally friendly energy source, preventing climate change, and forest certification compatible with European circumstances.

2.2.2. The participation of the EU in international cooperation at both the pan-European and global level will also contribute essential added value by complementing national measures.

2.2.3. The EU's forestry strategy does not address issues concerning the forestry industry , as the Commission's directorate-general for enterprise has issued its own communication [2] on the European forestry industry and on improving its competitiveness. In the Committee's view it is, however, important for forestry and the forestry industry to coordinate their work in the forestry sector. This is the most effective way of promoting the use of wood and other forestry products, such as cork and resin as renewable and environmentally-friendly natural resources and materials from both the economic and environmental point of view. An example of the added value which could result from such cooperation would be the drawing up of a publicity or information programme, which would enable a wider public to be informed about the use of renewable natural forest resources as a way of enhancing people's well-being. One possible campaign of this kind would be to organise an EU year of forestry.

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[1] OJ C 206, 7.7.1997.

[2] The state of the competitiveness of the EU forest-based and related industries, 5.10.1999, COM (1999) 457.

2.2.4. To ensure that sustainable forestry serves as the basis for a competitive European forestry industry, forestry must also be an economically viable activity. International trade in timber should also respect the principles of sustainable forestry and profitability.

2.2.5. The forestry sector is a particularly important source of economic prosperity and employment in the EU. The forestry industry alone employs roughly 5 million people. As a consequence, the EU should seek to improve the general environment in which the forestry sector operates and to ensure that forestry continues to play an important role as an employer in rural areas in the future. The development of forestry sector services and ensuring the right conditions for the development of the industry are therefore of fundamental importance. The significance of forestry as an employer is not limited to the wood-processing sector, but also includes biological production on forested land and the non-wood products of forests. Furthermore, forestry provides work for tree-fellers and other workers. One-sided measures which result in job losses should be avoided. In addition, support should be provided for measures which create new jobs and which also provide retraining for a skilled workforce.

2.3. *Future challenges to forestry in the EU*

2.3.1. In the European Union 65 % of forest land is privately owned and there are 12 million individual forest owners. The crucial role of family forestry is not always given sufficient attention in the European debate on forestry. Coordination between individual forest owners is an important instrument for achieving a balance between supply and demand in the timber market. The Committee assumes that the application of EU competition rules will allow such coordination throughout the Member States. Forestry is economically important to many family forest owners. The economic importance of forests and for example, the effectiveness of timber markets have not been emphasised sufficiently in the forestry strategy. In addition, in many EU countries a few large multinational companies dominate the market. It is important to remember that economically viable forestry also helps to maintain diversity, as well as social and cultural sustainability. Sufficiently profitable forestry helps to ensure that all aspects of sustainable forestry are taken into account. This means that part of the price of wood as a raw material is redirected back into maintaining the ecological and social balance of forests. Non-wood forest products such as cork, mushrooms and berries are also important sources of revenue.

2.3.2. The EU's forestry strategy should provide more explicit support for the smooth functioning and promotion of trade in wood and processed wood products in line with the principles of sustainable forestry. These basic starting points must be taken into account in the WTO negotiations on world trade which are about to start. The same objectives must also be taken into account in the EU's development cooperation policy in the forestry sector.

2.3.3. The Committee welcomes the fact that the forestry strategy seeks to improve coordination of forestry matters within the Community. However, genuinely concrete proposals on improving cooperation are lacking. The resolution of the Council of Ministers also emphasises the benefits which can be gained from effective cooperation. At present the Commission has a number of departments specialising in forestry issues, which means that these are dealt with in a very fragmented way across various Commission directorates-general. In the external relations DG forestry issues are dealt with from the EU's external relations perspective, in the enterprise DG from the industry perspective, in the competition DG from the competition perspective, in the employment and social affairs DG from the employment perspective, in the agriculture DG from the agricultural and rural development perspective, in the development cooperation DG from the development cooperation perspective, in the environment DG from the environmental perspective, in the research DG from the research perspective, in the regional policy DG from the regional policy perspective, and in the energy DG from the energy perspective.

2.3.4. However, implementation of the forestry strategy alone would require greater involvement in the forestry sector and more effective cooperation between existing players in order to ensure that sustainable development in forestry related matters is managed in an integrated manner. In addition, the number of issues on which the Commission requires forestry expertise has grown considerably during the 1990s. As a result of the Rio de Janeiro Conference on Environment and Development, forestry and environmental policy have taken on a more international dimension than before. This trend is growing as the issues of biodiversity and climate change weigh increasingly heavily in decisions on forestry policy.

2.3.5. The Council of Ministers also emphasises the important consultative role played by the Standing Forestry Committee, the consultative committees on forestry and cork production and on Community forest clusters, whose expertise can be used to the benefit of all forestry measures within the framework of the Community's existing policies. The last two committees can also help to ensure that all viewpoints are heard and incorporated in the decision-making processes. These committees must be given adequate resources.

2.3.6. The forestry sectors of the Central and Eastern European applicant countries are in need of Community support to manage, conserve and ensure the long-term sustainable development of forestry. Among the matters of concern are ensuring that forestry respects environmental considerations, and developing an ownership structure for forest resources. The Community should provide support for private forest ownership where reasonable, as well as improving the institutional ability of the forestry sector to promote sustainable forestry. Equally, the considerable job creation potential of the forestry sector should be exploited.

2.3.7. In ten of the CEEC countries the forest surface area amounts to approximately 34 million hectares. This would increase the EU's current forest area by about a quarter. In addition these countries are planning to reforest a total of about 1,5-2 million hectares over an extended time period. Poland and Hungary in particular have ambitious forestry objectives. It is estimated that about a third of the forest surface area in the CEEC countries will be privatised, which would create some 3-4 million new private forest holdings. This would increase the number of private forest holdings in the EU from 12 to 16 million.

2.3.8. The main forestry policy objectives for the CEEC countries at present include forming associations of forest owners, training forest owners and workers and improving their skills, and increasing forestry efficiency. The multipurpose use of forests and in particular improving ecological and biological sustainability are also important aims. In the CEEC countries as much as several tens of per cent of forest have suffered from air pollution. EU programmes can be used to achieve these objectives. The Sapard regulation [1] can be used to provide support for forestry management and afforestation in agricultural regions, investment in private forestry estates, and the processing and marketing of forestry products.

2.3.9. The development of forestry and other wood-based business activity will come up against structural problems, as private ownership and related structures still need to be established. In the CEEC countries action plans aimed at the forestry sector have already been drawn up and support funds for promoting private forestry are currently being developed. Reaping the benefits of EU forestry support depends to a large extent on national funding which is very limited in some countries.

2.3.10. The rapid economic growth expected in CEEC countries represents both an opportunity and a threat for the current Member States. On the one hand their markets are undergoing rapid growth, but on the other, the new Member States may cause a mild shock in the EU's wood market and labour-intensive mechanical wood/timber industry as timber prices and labour costs are still low for the time being in the CEEC countries. However, raising the degree of processing of forestry industry products, the standardisation of products and the exploitation of new technology pose considerable challenges for the CEEC countries in the near future. Costs are also expected to rise.

2.4. *Agenda 2000*

2.4.1. The forestry strategy states that the Community's legal framework for forestry is based essentially on the Commission's Agenda 2000 proposal. In Agenda 2000 forestry is dealt with under the Regulation on Rural Development. Indeed, forests are important to rural areas and this must be taken into account if rural areas are to be developed in a harmonious way. The forestry sector is a particularly important source of employment for rural areas. Forestry and small- and medium-sized forestry industry companies are particularly important for ensuring that rural areas maintain their economic vitality. On questions relating to rural development the Commission's directorate-general for agriculture is assisted by the Star Committee, in which the Member States' forestry experts are not represented unless they are invited to meetings individually. This exacerbates the above-mentioned concern about the lack of an integrated approach to forestry issues, as well as the inadequate coordination of forestry matters.

2.4.2. The Commission's forestry support measures have until now lacked comprehensive mechanisms to evaluate how, and how much, Community money has been spent on supporting forestry. Nor is there any precise information on whether this support has helped to promote the stated objectives. Nevertheless, the paragraphs on forestry in Agenda 2000 open up new possibilities for using Community support.

2.4.3. The general objective is that support should promote the development of the economic, ecological and social status of forestry in rural regions. A significant change is that there are now more possibilities to support forestry on non-agricultural land. Environmental protection and nature conservation have also been given greater legitimacy as a basis for receiving forestry support. Furthermore, the paragraphs on forestry enable conventional forestry — in other words forest management and felling measures — to receive more explicit support.

2.4.4. The potential recipients of forestry support have been increased, and now include both local authorities as well as associations of forest owners. Before the EU enlarges to central and eastern Europe, the EU should work out how the forestry sectors of these countries are to be integrated into EU's arrangements.

2.4.5. Efforts should be made to use the EU's common funds as cost effectively as possible. Furthermore, point 14 of the Council resolution on forestry states that forestry and commercial forestry activity should be guided primarily by market forces. The Commission must ensure that the forestry support provided by Agenda 2000 does not distort competition in forestry product markets at either the regional or EU level.

[1] Council Regulation (EC) No 1268/1999 of 21 June 1999, OJ L 244, 16.9.1999, p. 64.

3. **Kyoto Protocol — Climate change and forests**

3.1. A United Nations climate agreement aimed at preventing climate change was also signed in Rio de Janeiro in 1992. Its objective is to stabilise the greenhouse gas content in the atmosphere in order to prevent dangerous disruptions to the weather system as a result of human activity. The agreement entered into force in 1994. The Kyoto Protocol, which builds on the climate agreement, was approved in 1997. The EU signed the protocol in April 1998. The Kyoto Protocol commits industrial and developing countries to reducing greenhouse gas emissions in order to reduce the overall level of emissions by an average of at least 5 % in comparison to 1990 emission levels. The EU's emission reduction level was set at 8 % compared to the 1990 level. Member States' environmental ministers (Luxembourg 16-17 June 1998) have reached agreement on a so-called EU bubble, within which Member States decide on how to divide the emissions reductions. The emission reduction commitments must be achieved by 2008-2012, in other words during the first commitment period. According to the European Environmental Agency, present efforts to achieve the emissions reduction commitments are not sufficient, which means that the EU needs to improve the effectiveness of its emissions reduction measures in all relevant areas.

3.2. Carbon dioxide is the most significant greenhouse gas. Because forests harness carbon as they grow, and therefore function as carbon sinks, forests also play a fundamental role in climate policy. Carbon is contained in the soil as well as in timber. For example in Finland the amount of carbon contained in the soil is estimated to be almost ten times the amount bound in growing stock. As stated in the EU's forestry strategy, forests can have an impact on the quantity of carbon dioxide in the atmosphere by protecting existing carbon stores and carbon sinks, by expanding forest area, by replacing fossil fuels with wood from sustainably managed forests, and by replacing products made from non-renewable raw materials with wood products. Wood products, which harness carbon for long periods, are important for meeting the emission reduction requirements.

3.3. The way in which the EU wishes to rise to the challenge posed by climate change is by supporting the use of renewable energy sources. The objective is to double renewable energy sources as a share of the total energy produced in the EU from the current 6 per cent to 12 per cent by the year 2010. This requires a considerable increase in the use of biomass in energy production. The proportion of bioenergy in the new, forest-rich Member States (in Austria, Sweden and Finland) is already quite large (12 %, 18 % and 23 %) [1].

3.4. The European Commission has also drafted a communication on implementation of the Kyoto Protocol.

3.5. The Kyoto Protocol is restricted to studying carbon sinks, which result from human-related changes in land use and forestry including afforestation, reforestation and deforestation. Only action taken since 1990 will be taken into account. These restrictions do not take into account the principles of sustainable forestry nor the long-term time span which is characteristic of forestry.

3.6. At Kyoto it was decided to exclude the question of harvesting from the study. Other excluded issues include products made from wood, even though they clearly also contribute to long-term carbon storage. When forest owners harvest wood, the Kyoto protocol counts the carbon stored in the forest as being released as soon as a harvest takes place. In practice, however, complying with sustainable forestry principles ensures that the carbon balance in forests remains stable over the long-term. When wood is harvested, the carbon is transferred to forestry industry products.

3.7. A great deal remains to be done in implementing the Kyoto Protocol. One extremely significant problem concerns the definitions of different concepts. So far the obligations imposed by the protocol on the forestry sector should not, on the whole, present any interpretation problems.

3.8. In order to clarify the current situation, the Intergovernmental Panel on Climate Change (IPCC) is currently preparing an expert report on issues relating to carbon sinks in the Kyoto Protocol. This report — IPCC special report on land use, land use change and forestry — should be completed by spring 2000. The report is expected to contain a sector-wide overview of carbon sinks and sources.

3.9. The Kyoto protocol contains three so-called flexibility mechanisms: international emission trading, joint implementation and the clean development mechanism. The emission reduction objectives can be met either by national measures or by exploiting these Kyoto mechanisms. Joint implementation means a situation in which an industrial country invests in a project to reduce emissions in another developed country and then obtains the benefit from this emission reduction. The clean development mechanism allows industry and developing countries to carry out emission reduction projects between them. The details of implementing the flexibility mechanism will be specified more clearly in the expert report of the IPPC. It is not yet clear, for example, whether emission trading should be restricted. It must be ensured that timber plants located by forestry industry companies in developing countries do not, as a result of public or other similar support, distort competition in wood markets in the future.

4. **Forest certification**

4.1. *Basic principles of forest certification*

4.1.1. Throughout the 1990s the forestry sector has had to face the shifting challenges posed by the question of sustainable development. Since the beginning of the decade, one response to these challenges has been to set up various kinds of market-based, voluntary certification systems.

[1] Source: COM(97) 599 final, 26.11.1997.

4.1.2. Forest certification is defined as a procedure in which an independent third party awards a certificate attesting that a forest is being managed and used sustainably in accordance with agreed standards. Forestry certification will help to inform consumers and customers whether the products they buy have been produced from wood which comes from sustainably managed and used forests. Certification is a market-based way of promoting sustainable forestry as well as a way of satisfying the needs of customers. When forest certification systems are set up, the principles of voluntariness, credibility, openness, cost-effectiveness and non-discrimination must be respected.

4.1.3. The sustainable use of forests has a long tradition in Europe. A stringent legislative framework and a very wide range of forestry policy tools are the best way of ensuring the sustainable management and use of forests in different countries. In Europe, forest certification can at most enable consumers to be active in demanding that the market provide products made from wood emanating from sustainably managed forests. Certification therefore promotes sustainable forestry and, as a corollary, the marketing of wood products.

4.1.4. The EU has an important role to play in promoting the use of wood and other forestry products over other competing materials. Sustainable forestry will help to prevent wood products from being substituted with less environmentally friendly materials such as aluminium or plastic. Many consumers do not associate the use of plastic with oil drilling or with mining for the steel industry, which means that their environmental impact is not necessarily appreciated.

4.2. *Existing forest certification systems*

4.2.1. The Forest Stewardship Council (FSC) is an international body set up by environmental organisations in 1993 in Mexico. The FSC is comprised of three chambers representing economic, social and environmental interests. The FSC does not issue certificates itself, instead it promotes the sustainable principles and criteria defined by the FSC and the use of local forestry standards. It also accredits certification bodies and monitors their work as well as use of the FSC mark. The FSC has played a key role in the worldwide development of forestry certification.

4.2.2. In addition, the pan-European forest certification project (PEFC) was set up in August 1998, based on the resolutions of the Helsinki 1993 and Lisbon 1998 meetings of European forestry ministers. The objective of the PEFC is to establish an internationally credible forest certification system for the certification systems of different countries and their mutual recognition. The PEFC defines and lays down the basic requirements and working methods which must be achieved through the standards of each country's certification system in order to be included in the PEFC system. The certification system seeks to establish a system which is suitable for small- and medium-sized family forestry.

4.2.3. Representatives of family forestry, local authority and state forestry, the forestry industry and trade drawn from 17 countries have all been involved in developing the system. The USA, Canada, Malaysia and Australia have also participated in the process as observers. Environmental and consumer organisations as well as trade unions have been invited to take part in an open discussion with PEFC representatives. The PEFC system started operation in June 1999. It also seeks to improve the contribution of the forestry sector to employment.

4.3. *The role of the EU in forest certification*

4.3.1. Forest certification is also mentioned in the EU's forestry strategy as one of the specific themes with regard to forests. The forestry strategy states, for example, that the Commission supports the development of the above-mentioned pan-European forest certification system.

4.3.2. Cooperation on forest certification can also be undertaken at EU level if desired by the Member States. The rapid progress of the pan-European forest certification system has shown that the European forestry sector is keen to undertake cooperation to promote sustainable forestry and the marketing of wood products. The EU should ensure that the certification systems in use within the EU comply with the principles of free trade and that they are transparent and impartial. Forestry certification systems will only have a realistic chance of market success if they win the approval of consumers and other interested parties.

5. **Conclusions**

5.1. The Committee regrets that the EU's forestry strategy does not contain sufficient concrete assessments and analyses of the existing Community measures and problems in the forestry sector. The Committee also calls for clearer objectives for the future which take into account the EU's eastward enlargement and other developments affecting the forestry sector.

5.2. The Committee welcomes the fact that the forestry strategy is based on the subsidiarity principle as well as the concept of economically, ecologically and biologically, and socially and culturally sustainable forestry.

5.3. The Committee recalls that the forestry sector is an important source of employment in the EU. Indeed, the EU should promote both the implementation of the forestry strategy and the use of wood and other forestry products as a renewable and environmentally friendly material in order to improve the employment situation in the EU. The development of forestry sector services and ensuring the right conditions for the development of the industry are particularly important.

5.4. The Committee feels that it is essential for the European Commission to play a greater role in the forestry sector in areas where Community-level action can contribute added value by reinforcing national measures.

5.5. The Committee feels it is essential for the Commission to substantially improve the coordination of forestry issues between the different directorates-general so that sustainable development in forestry-related matters is managed in an integrated manner. The new Commission must substantially reinforce and activate the management and coordination of forestry matters, taking into account the rapidly growing importance of forests as one of the key areas for sustainable development. The forestry sector is of critical importance to the economic, social and environmental development of the EU.

5.6. The Committee stresses the beneficial employment effects of the forestry sector, particularly for rural regions. Sustainable forestry also contributes to the balanced development of rural regions.

5.7. The Committee feels that the European Commission must ensure that the new support provided for forestry by Agenda 2000 does not distort competition in regional or EU-level wood and other forestry product markets. The Committee calls for the use of this support to be monitored and for the use of Community funds to be evaluated on a continuous basis.

5.8. The Committee feels that it is important that the communication issued by the Commission's enterprise directorate-general on the EU's forestry industry and its competitiveness is compatible with the forestry strategy. For the forest industry to be competitive, it must be based on profitable and sustainable forestry.

5.9. The Committee reiterates that the EU must respond to the climate change requirements at both the national and Community level, by promoting, for example, the use of renewable energy sources as well as wood and other forestry products.

5.10. The EU must ensure that the principles of sustainable forestry are complied with when implementing the Kyoto Protocol. The Committee points out that forestry industry products function as long-term carbon sinks. The EU should also inform Member States more effectively about the possibilities for using the flexibility mechanisms.

5.11. The Committee points out that forest certification is just one of many ways of achieving sustainable forestry and thereby promoting the marketing of wood products. The EU must ensure that the certification systems in use within the EU respect the principles of free trade and that they are voluntary, transparent, balanced and cost effective.

5.12. The Committee calls on the EU to monitor carefully developments in the forestry industry and related activities in the CEEC countries and to undertake timely analyses of the opportunities, threats and challenges which the accession of the new Member States will bring for the EU. These analyses must be based on the conclusions of the Helsinki pan-European Ministerial Conference on the practice of sustainable forestry.

5.13. The Committee feels that the EU should provide strong support for the establishment of a global, legally binding instrument for the management, conservation and sustainable development of every kind of forest, which complies with the forestry principles agreed at Rio.

5.14. The Committee calls on the EU to participate actively in the international forestry policy debate and in decision-making in the IFF negotiations and in FAO.

5.15. The Committee considers it important for the forthcoming WTO negotiations to take account of the principles of sustainable forestry in discussions on international trade in the forestry sector.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the opinion of the Economic and Social Committee

The following amendments, which received more than a quarter of the votes cast, were defeated in the course of the debate:

Point 2.2.1

Amend the first sentence as follows:

Although the subsidiarity principle should be retained when forestry issues are being considered, the Committee nonetheless urges that there be EU-level cooperation to ensure that Community-level action contributes added value to national measures.

Reason

It is very important that there be as much EU-level cooperation as possible in forestry and this should be expressed in the text.

Result of the vote

For: 29, against: 30, abstentions: 3.

Point 2.3.7

Delete the third sentence, beginning 'The Community should provide support ...' and replace it with the following text:

It is very important that there be on-going incentives for sustainable forestry. Given that the management of forests is in the hands of private individuals, government and other nature protection organisations, it is important to set up a framework within the EU for discussion of responsible forestry management.

It would be more appropriate for the final sentence of point 2.3.7 to be made a separate point.

Reason

It is not for the EU to say that private forest ownership should be supported. There is a place for other organisations concerned with responsible forest management alongside the private sector.

Result of the vote

For: 27, against: 35, abstentions: 2.

Opinion of the Economic and Social Committee on the 'Report to the European Parliament and to the Council on the operation of Commission Regulation (EEC) No 3932/92 concerning the application of Article 81 (ex-Article 85), paragraph 3, of the Treaty to certain categories of agreements, decisions and concerted practices in the field of insurance'

(2000/C 51/24)

On 8 July 1999, the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on the above-mentioned report.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 November 1999. The rapporteur was Mr Ravoet.

At its 368th plenary session (meeting of 9 December 1999), the Economic and Social Committee adopted the following opinion unanimously.

1. **Introduction**

1.1. The European Commission has presented a report (COM(1999) 192 final) to the Council and the European Parliament on the application of the exemption regulation to insurance companies for certain categories of agreement under the provisions of the Treaty in the area of competition [Article 81(1)].

1.2. The 1993 Council empowering regulation required the Commission to report on the application of this particular system within a period of six years. The Economic and Social Committee agrees that the report comes at a good time in terms of preparing the sequel to the policy followed under the exemption regulation, which will cease to apply as of March 2003.

1.3. The Committee welcomes the consultation process set up by the Commission for this report, particularly with the national authorities and courts responsible for matters of insurance and competition. The Committee hopes that the Commission will ensure the national bodies are unambiguous in their application of competition provisions. It believes that the risks of divergence are all the greater given that their decisions are based on both legal and economic criteria. For this reason, it is important to understand the methodologies and frameworks they are using. The prospect of decentralised responsibility for applying Community competition law, as heralded by the Commission's White Paper of 28 April 1999, heightens this concern.

1.4. The Committee would refer to its opinions[1] on the Council empowering regulation and the Commission exemption regulation.

1.5. This opinion is designed to:

— establish the context in which the provisions must be assessed;

— give a general assessment of the Commission report; and

— make a number of comments on specific points raised by it.

2. **General comments**

2.1. The Committee would underline its commitment to free and effective competition as a factor in economic progress, and as a factor of benefit to the consumer. It is therefore keen to ensure that derogations with regard to certain activities remain the exception and that they are not interpreted in such a way as to extend their scope.

2.2. The exemption regulation that covers insurance companies for certain types of agreement corresponds to the concern, expressed in Article 81(3) of the Treaty, to authorise agreements that contribute to technical or economic progress or to improving the production or distribution of products, providing consumers derive benefit from them.

2.3. Before the block exemption system came into force, the Commission was notified of a large number of insurance sector agreements falling into this category, for reasons often specific to this particular economic activity. The Committee welcomed the simplification that came with the adoption of the block exemption system, as it lifted some of the burden of weighty administrative control. It now notes that the Commission has consolidated its experience, and is in a position to continue application of the exemption regulation.

[1] OJ C 182, 23.7.1990, p. 27 and OJ C 19, 25.1.1993, p. 97.

2.4. The insurance business features:

— a price-setting mechanism which differs from that found in most other economic activities in that the cost price elements are located in the future in relation to the premiums and contributions collected (inverted production cycle); the Committee notes that insurance price formation is also influenced by the fact that Member States make certain types of insurance compulsory; this is reflected in rigid demand and the application of price controls to certain types of insurance in several Member States; the Committee would point out that the effect of such price regulation is to reduce companies' competitiveness;

— the role of protecting insured parties and their dependants, making it essential that insurance companies do not go bankrupt; this is especially important when companies have long-term commitments, in particular regarding retirement, where their role is becoming increasingly important;

— technical and legal complexity, which means it is often helpful for the consumer to be able to find common points of reference, to ensure greater transparency and a better understanding of contractual commitments;

— the need for access to major financial resources in order to meet market requirements, a need that exceeds the financial capacities of single companies.

2.5. These particularities doubtless explain the time that was needed to draw up competition rules specifically applicable to the insurance sector. The balance they demand between the objectives of running the single market smoothly, protecting consumer interests, and the efficient use of the Commission's administrative resources, justify what is definitely an exceptional system.

2.6. The Commission is quite right to state in its report that the entry into force of the exemption regulation coincided with that of the 'third generation' directives, putting the finishing touches to the completion of the single market in the insurance sector. Furthermore, the Commission seeks in the exercise of its responsibilities to strike the right balance regarding the freedom the single market offers the industry's operators.

2.7. The European insurance industry has undergone major changes since the beginning of the decade. These include, in particular, the end of the prior approval system for tariffs and conditions, the growth of cross-border competition, important mergers and acquisitions, also with other financial establishments, and the advent of new operators, technologies and sales channels.

3. **Specific observations**

3.1. *Joint technical statistics*

3.1.1. The Committee accepts that the need to ensure successful conclusion of insurance operations warrants insurance companies having access to statistics that are as reliable and representative of the market as possible. It believes that the system set up by the exemption regulation should be preserved, while ensuring that collective statistical work remains strictly indicative. The Committee joins the Commission in welcoming the fact that this work facilitates market access for the highest possible number of operators. It believes it is appropriate that the large companies should take part in these joint studies, as this increases the reliability of the findings.

3.1.2. The Committee believes that the compilation of more detailed joint statistics enables operators to fine-tune their underwriting policies, sharpening competition and increasing the reliability of technical calculations.

3.1.3. The Committee would recommend that these studies be made accessible to any operators interested, subject to reasonable conditions. Consumers should be able to obtain information, for instance by means of watchdog authority publications, on the part this data plays in the calculation of premiums.

3.2. *Standard policy conditions*

3.2.1. In the Committee's view, the interested parties — insurers, intermediaries and consumers — should be able to refer to illustrative conditions. Standard clauses are pointers, and a means of assessing the extent of cover. The report states in point 23 that the Commission intends to review the system established under Article 7(1), which lists standard exclusions, cover subject to standard conditions, and extension of standard cover to include risks to which a significant number of policyholders are not exposed.

3.2.2. The Committee notes the Commission's general standpoint on these clauses and approves of its careful approach. It feels, however, that the report does not demonstrate, in the light of practical experience, that this review is necessary. Experience shows that companies often deviate from these standard clauses — thus confirming their illustrative character — in attractive contracts, contracts covering major risks or contracts taken out through certain intermediaries who have negotiated specific terms for their customers. The use of indicative standard conditions relates both to the list of risks covered by the policy and to the precise indication of its

limits in the form of exclusions or safety precautions to be taken by the policyholder in order to be eligible for cover. The use of a list of excluded risks will, furthermore, depend on the way the policy is drafted. On some markets, policies list risks covered, while on others they follow the 'all, except' pattern. For these reasons, the Committee would welcome further information on experience with this type of clause, before changing the current system of exemption by notification.

3.2.2.1. The Committee would also refer to its opinions on unfair terms. Without going back as far as studies or opinions on the situation before the implementation of Directive 93/13/EC on unfair terms, the Committee would refer to the work carried out in 1997-1998 by the Single Market Observatory during preparation of the opinion on 'Consumers in the insurance market'. At that time, the Committee

1) pointed out the fundamental principle of the balance to be struck between the insurer and the policyholder in contractual relations,

2) recognised the justification for the exemption system dealt with by the present report, and

3) invited the Commission to conduct a more systematic study of clauses in contracts destined for consumers, in order to remedy any unfairness.

3.3. *Joint cover of certain types of risk*

3.3.1. In its opinion on the empowering regulation, the Committee noted the obvious advantage of joint cover of certain types of risk, especially for major risks.

3.3.2. The Committee is pleased with the pragmatic approach taken by the Commission in the complex area of defining which markets should be taken into consideration in assessing the lawfulness of the joint cover of certain risks. The Commission's recent examination of aviation insurance, mentioned in point 30 of the report, bears witness to this. It would be worth the Commission's while exploring ways of offering operators real legal security, within a reasonable timeframe, regarding whether or not joint cover of certain types of risk is lawful.

3.3.3. The Committee meanwhile would recommend that the Commission remain flexible regarding the necessary dimension (see point 28b in the report) for operating on a market as justification for joining a pool, and also take account of the opportunity that participation in a pool can offer to companies seeking technical experience.

3.4. *Safety equipment*

3.4.1. The Committee notes that the involvement of insurance companies in the standardisation of safety and protective equipment tends to increase the reliability of the equipment available to the consumer. On this score, the interests of the companies and those of the public are indistinguishable.

3.4.2. The Committee notes the context in which the Commission, on the basis of comments from safety equipment manufacturers, was led to adopt a critical stance towards the efforts of insurers to align technical standards regarding fire prevention and anti-theft equipment in particular. The insurers do nonetheless deserve recognition for the work they have done through their representatives in professional and consumer consultation forums and on standards bodies. The Committee is of the opinion that the slowness of progress in the European harmonisation of technical standards is owing to aspects that are often out of insurers' hands. While it is right to encourage harmonisation, insurance companies must not as a result be forced to level downwards, towards the lowest common denominator, the quality requirements which can reasonably be expected for safety equipment. Furthermore, insurers must be free to develop standards rapidly and flexibly when and where circumstances require.

The Committee invites the Commission to facilitate the free movement of goods in this sector through the appropriate channels, largely beyond the context of this report.

3.5. *Settlement of claims and registers*

3.5.1. The Committee notes that the interested parties have declined to extend the scope of the exemption regulation to registers and the settlement of claims, though these two categories were mentioned in the empowering regulation. It would, therefore, suggest that they should not be covered by the exemption regulation.

4. **Conclusion**

The report gives a fair assessment of the operation of the exemption regulation, bearing witness to pragmatism, concern to ensure potential operators can enter the market, and transparency for consumers. The Commission has exercised its responsibilities with discernment, authorising cooperation in the technical areas covered by the exemption regulation and stepping in when cooperation has an excessive influence on commercial conditions. The Committee notes that the system

meets a need and, as proved by the diverse insurance terms on offer, has not led to a loss of competitiveness. The report should therefore provide encouragement to continue along the path marked out by the regulation(s) and inspire the national authorities whose role is certainly set to grow in the years ahead.

Brussels, 9 December 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI