ISSN 0378–6986

Official Journal

of the European Communities

C 75

Volume 43

15 March 2000

English edition

Information and Notices

Notice No | Contents | Page

I *Information*

. . . . . .

II *Preparatory Acts*

Economic and Social Committee

Session of January 2000

2000/C 75/01 Opinion of the Economic and Social Committee on the 'Initiative of the Federal Republic of Germany and the Republic of Finland with a view to the adoption of a Council Regulation on insolvency proceedings, submitted to the Council on 26 May 1999' 1

2000/C 75/02 Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — The European Airline Industry: from Single Market to Worldwide Challenges' 4

2000/C 75/03 Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on the Community code relating to veterinary medicinal products (codified version)' 11

2000/C 75/04 Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending for the fourth time Regulation (EC) No 1626/94 laying down certain technical measures for the conservation of fishery resources in the Mediterranean and for the fourth time Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms' 13

(Continued overleaf)

Notice No	Contents (Continued)	Page
2000/C 75/05	Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EC) No 1255/1999 on the common organisation of the market in milk and milk products'	14
2000/C 75/06	Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on the protection of workers from risks related to exposure of biological agents at work (Seventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)'	15
2000/C 75/07	Opinion of the Economic and Social Committee on the 'Draft Communication from the Commission to the Member States establishing the guidelines for Community Initiative Programmes (CIPs) for which the Member States are invited to submit proposals for support under the Equal initiative'	16
2000/C 75/08	Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Regulation clarifying Council Regulation (EC) No 2223/96 as concerns principles for recording taxes and social contributions'	19
2000/C 75/09	Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 77/388/EEC on the common system of value added tax — transitional provisions granted to the Republic of Austria and the Portuguese Republic'	21
2000/C 75/10	Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering'	22
2000/C 75/11	Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on coordination of social security systems'	29
2000/C 75/12	Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending for the fifth time Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms'	34
2000/C 75/13	Opinion of the Economic and Social Committee on the 'Amended proposal for a Council Regulation (EC) on Community Design'	35
2000/C 75/14	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 Enhancing Tourism's Potential for Employment'	37

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'Initiative of the Federal Republic of Germany and the Republic of Finland with a view to the adoption of a Council Regulation on insolvency proceedings, submitted to the Council on 26 May 1999' [1]

(2000/C 75/01)

On 22 July 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 initiative.

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 14 December 1999. The rapporteur was Mr Ravoet.

At its 369th plenary session (meeting of 26 January 2000), the Economic and Social Committee adopted the following opinion by 97 votes to 2.

1. **Introduction**

1.1. The present proposal for a regulation repeats word-for-word the provisions of the Brussels Convention of 23 November 1995 on insolvency proceedings, with the exception of Chapter V of the Convention concerning interpretation by the Court of Justice.

1.2. The purpose of the initiative is to speed up implementation of the Convention and to make it directly applicable in the Member States, in order to improve insolvency proceedings with cross-border implications.

2. **General comments**

2.1. *Scope*

2.1.1. The proposed regulation applies to collective insolvency proceedings — regarding either a natural or a legal person — and entailing the partial or total divestment of the debtor and the appointment of a liquidator. The proceedings involved are listed for each Member State in an annex.

2.1.2. Insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties, and collective investment undertakings, which are already subject to special arrangements, are excluded from the scope of the regulation.

2.2. *Proposed system*

2.2.1. The system introduced by the regulation represents a compromise between:

— the principle of the uniqueness and universality of insolvency, which implies that a business declared insolvent is subject to single proceedings the effects of which are acknowledged by all Member States; and

— the principle of the territorial and plural nature of insolvencies, under which proceedings may be initiated in each country where the debtor holds assets, and the effects of which are restricted to that country.

[1] OJ C 221, 3.8.1999, p. 8.

2.2.2. The text thus introduces the principle of main proceedings, opened in the country where the debtor's centre of main interests is located, which are recognised and effective in the other Member States with no further formalities. Unless proved otherwise, the centre of interest of companies is presumed to lie where their registered offices are located.

2.2.3. The courts of a Member State other than that in which the centre of main interests is located are empowered to open insolvency proceedings only if the debtor possesses an establishment within that state. The effects of the proceedings are limited to the debtor's assets located there. When opened after the main proceedings have already begun, such proceedings are referred to as secondary proceedings and must necessarily be winding-up proceedings.

2.2.4. Opening of secondary proceedings may be requested by the liquidator in the main proceedings, or by any other person or authority empowered to make such a request under the law of the country in which the request is made.

2.2.5. Guarantees are provided to ensure that the main and the secondary proceedings can be conducted simultaneously. They entail, for example, the duty of the different liquidators to communicate information, the option available to the liquidator in the main proceedings to request that the secondary proceedings be stayed, and the transfer of any remaining assets from the secondary proceedings to the total assets in the main proceedings.

2.3. *Law applicable*

2.3.1. The law applicable to the proceedings and their effects is in principle that of the Member State in which the proceedings are, or are to be, opened. The same applies to the conditions for the opening, closure and conduct of proceedings.

2.3.2. Specific rules are provided to resolve specific problems. One such is employment contracts: here it is stipulated that the effects of insolvency proceedings on such contracts shall be governed solely by the Member State law applicable to the contract of employment. Other rules concern the effects of proceedings on reservation of title, set-off, third parties' rights in rem and contracts relating to immovable property.

2.4. *Recognition of proceedings*

2.4.1. Under the terms of the draft regulation, any judgement opening insolvency proceedings handed down in a Member State is to be recognised within the territory of the others. This does not, however, prevent secondary proceedings from being opened.

2.4.2. Moreover, the liquidator in the main proceedings is empowered, as long as no secondary proceedings have been opened, to exercise within the territory of the other Member States all the powers conferred on him by the law of the state in which proceedings have been opened. In this way, he may remove the debtors' assets from the territory of the state in which they are situated, unless they are subject to third parties' rights in rem or reservation of title. In exercising his powers, however, the liquidator must comply with the law of the state in which he is taking action.

2.4.3. Judgements in insolvency proceedings handed down by the court which ordered that the proceedings be opened are recognised with no further formalities. Such judgements are enforced in accordance with the rules laid down by the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters. Under these rules, judgements given in a contracting state and enforceable in that state may be enforced in another state when, on the application of any interested party, the order for its enforcement has been issued there.

3. **Specific comments**

3.1. *Appropriateness of the initiative*

3.1.1. The Committee is in principle in favour of a Community regulation to overcome the difficulties raised by insolvencies with an international dimension and, thereby, to speed up the implementation of the 1995 Brussels Convention on Insolvency Proceedings. The initiative should make an effective contribution to integrating national economies into the single market.

3.1.2. The initiative is all the more welcome in that it is the first taken by the Council in the field of civil proceedings not directly related to consumer protection, employing for this purpose the new provisions introduced by the Treaty of Amsterdam.

3.1.3. The Committee would however emphasise the need to avoid an excessively complex system which might prove unworkable in practice. It is evident that most of the provisions contained in the proposed regulation are highly complex.

3.1.4. The Committee would also emphasise the need for the regulation to apply throughout the European Union. It therefore hopes that the United Kingdom, Ireland and Denmark will join in the planned arrangements, making use of the opportunities available to them under the protocols to the Treaty of Amsterdam.

3.2. *Objective*

3.2.1. The Committee must stress that insolvency proceedings are not intended only to settle liabilities and share assets among creditors. Other objectives must be pursued, such as the survival of viable businesses and the safeguarding of jobs. In this regard, the Committee is pleased to note that the draft regulation is not restricted to winding-up proceedings alone, but also extends to procedures aimed at rescuing companies (cf. Annex A).

3.2.2. The Committee nevertheless regrets that the proposed regulation does not remove the distortions caused by differences in national law. Similarly, it fails to set common objectives for all the Member States. While representing a degree of progress, therefore, the proposed arrangements are extremely modest and unambitious.

3.3. *Rapidity*

3.3.1. One of the main criticisms generally levelled against insolvency proceedings is their excessive length. Here, the Committee regrets that the planned regulation fails to reflect the concern to accelerate proceedings, for example by proposing to introduce uniform machinery to this end in all the Member States.

3.4. *Planned system*

3.4.1. The Committee regrets that the planned regulation does not simply enshrine the principle of the uniqueness and universality of insolvency within the European Union: this would mean that a business declared insolvent would be subject to single proceedings, the effects of which would be recognised by all Member States. The European Commission did in fact express its support for this approach when the Brussels Convention was finalised in 1995.

3.4.2. While it may be understandable that a system of this kind cannot be set up at world level, the same is certainly not true for the EU countries, which form a single market — a concept which, by its very nature, should exclude the possibility of secondary insolvency.

3.4.3. The universality of insolvency approach is unquestionably that most likely to guarantee equality of creditors and rapid and rational organisation of liquidation. Indeed, the system envisaged — which provides for simultaneous conduct of main and secondary proceedings, the effects of which would be restricted to a single Member State — may well in practice raise insurmountable problems.

3.4.4. Moreover, the possibility of opening secondary proceedings could render the main proceedings meaningless in economic terms.

3.4.5. The introduction of single proceedings would, on the other hand, serve to boost the chances of success of action to put failing businesses back on their feet.

3.5. *Scope*

3.5.1. The exclusion of credit institutions, insurance enterprises, investment undertakings and collective investment undertakings from the scope of the proposed regulation is to be welcomed. These entities are subject to specific rules and a single source of supervision — by the country in which the company has its registered office — which clearly could not fit in with a system recognising a plurality of procedures with limited territorial effects.

3.6. *Recognition and enforceability of judgements*

3.6.1. Seeking decisions to order enforcement may slow down proceedings and entail unnecessary cost. The Committee therefore believes that judgements handed down under the terms of the draft regulation should be automatically enforceable. In this regard, it warmly welcomes the current work at Community level to up-date and simplify the provisions of the 1968 Brussels Convention on jurisdiction and enforcement of judgements, and to incorporate these provisions in a regulation.

3.6.2. The Committee believes that the regulation should provide for recognition within the EU of judgements prohibiting persons having contributed to the failure of their own businesses, through negligent or improper management, from exercising certain activities.

3.7. *Comments on articles*

3.7.1. Article 16: it would seem that the provision contained in paragraph 2 is to be interpreted in the light of Article 3(4). Should Article 16(2) not contain a direct reference to this provision?

3.7.2. Article 18(1): it might be clearer to refer to preservation measures 'contrary to the exercise of these powers'.

4. **Conclusion**

4.1. Notwithstanding its reservations, the Committee considers the text to be preferable to a total absence of rules governing insolvencies with an international dimension. It

would however stress that it can only be a step towards a fuller and more ambitious measure. Efforts must in particular be pursued to ensure that the principle of the uniqueness and universality of insolvency is acknowledged.

4.2. The Committee therefore feels that at the very least, the emphasis of the text should be shifted to strengthening main rather than secondary proceedings. One way of doing this might be to reinforce the powers of the liquidator in the main proceedings, and to provide broader opportunities for securing stay of secondary proceedings.

4.3. The Committee is pleased to note that an evaluation clause was added to the Brussels Convention shortly before it was finalised. Under this provision, the system as set up may be evaluated at the request of a contracting state and in any case ten years after its implementation (Article 53). A similar provision should be inserted into the proposed regulation. However, in the Committee's view, this evaluation should take place after five years.

Brussels, 26 January 2000.

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 — The European Airline Industry: from Single Market to Worldwide Challenges'

(2000/C 75/02)

On 20 May 1999 the European Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 December 1999. The rapporteur was Mr von Schwerin.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January) the Committee adopted the following opinion with 116 votes in favour and three abstentions.

1. **Introduction**

1.1. In its Communication The European Airline Industry: From Single Market to Worldwide Challenges the Commission looks at the current state of the European airline industry, the need for continuing improvement of the competitiveness of European airlines and the past ten years of liberalisation of air transport.

1.2. The aim of the communication is to assess the progress made and to identify the initiatives which can contribute to the competitiveness of the industry.

1.3. The Commission considers that European airlines have developed innovative strategies in order to adapt themselves to market growth and competition challenges. During the last decade they have achieved considerable productivity improvements, which now permits the sector to create new jobs. However, the sector still suffers from a high degree of fragmentation and financial fragility when compared to its main competitors, notably North American carriers.

1.4. Liberalisation and globalisation make the market increasingly competitive and require airlines to undertake large restructuring efforts.

1.5. The Commission authorised state aid as a one-off measure to help national carriers to restructure during the transition to the liberalised single market. This transition is now over, however.

1.6. To help the industry towards this strategy, the Commission has drawn up the following policy orientation:

> 'The Commission uses all the tools at its disposal to ensure integration of the European market. This includes the application of EC competition law to prevent attempts to re-fragment the market through public intervention or anti-competitive alliances or mergers. The monitoring of public and private behaviour, the transparency of Community legislation and the definition and dissemination of best practices on a number of issues such as Public Service Obligations, are important elements in this regard.
>
> The elimination of technical obstacles to trade, in particular by faster and more efficient harmonisation of safety rules through the creation of a European Aviation Safety Authority and by giving impetus to ICAO activities in the environment field will help the industry.
>
> The fragmentation of the internal market results also from the lack of an external dimension. Ownership rules and the bilateral agreements system create obstacles to industry restructuring at European level and to fair competition with the open skies countries. These economic consequences add to legal justifications for a genuine external dimension permitting to insert the alliances within a fair European framework.'

1.7. The Commission intends to set up a comprehensive database of the European airline industry. This will increase the quality and availability of data and analyses on capacity, traffic, financial performance, productivity, industry and route structure, airports and employment that are necessary to support a policy aiming at safeguarding the competitiveness of the industry. Information and analyses on industry trends will be available to the general public on the Commission's internet site. This tool will enable the Commission to monitor the evolution of the industry in general and of air fares in particular.

2. **Gist of the Commission Communication**

2.1. The Commission considers air transport to be a high-growth industry, but cyclical and with uncertain profitability. Economic growth is the main force driving demand for transport. In recent years air transport recorded a strong growth in the volume of output produced and sold. According to the latest market studies, world-wide demand for air travel will continue to grow strongly in the next two decades, at a rate of about 5 % per year, although account has to be taken of major unforeseen events such as the recent financial and economic crisis in south-east Asia.

2.2. The Commission looks at the competitiveness of the European airline industry in comparative international terms and comes to the conclusion that the largest European airlines are similar in size to the largest American ones but a typical characteristic of the European airline industry is the existence of a second layer of relatively small airlines with a global vocation. This may partly explain the limited profitability of the European industry, since in the global airline industry size is an important efficiency factor.

2.3. With regard to the structure of the industry, the Commission points out that the opening-up of a market previously protected from competition usually results in a first phase in which the number of participants in the industry increases. This is followed by a second phase of consolidation whereby the number of firms decreases and their size increases. Air transport seems to have followed this process in the USA. Europe still seems to be in the first phase. In 1993 Europe had 132 airlines performing commercially significant scheduled operations; in 1998 it had 164.

2.3.1. When comparing the air transport market in the EU and the USA one should be aware of some important structural differences. For instance in Europe average distances between cities are shorter and competition from alternative transport modes, notably road and railways, is much stronger than in the US. Of course these aspects explain to some extent the different structure, yet it is striking that Europe, whose domestic market is less than one third of North America's, has a far higher number of airlines operating large aircraft, 90 against 37. Conversely European carriers' average size is much smaller, both in terms of number of aircraft operated (average fleet of 27 against 111) and market shares. The Commission concludes that the European airline industry is fragmented.

2.4. A major aspect of structural change is the emergence of a new operating strategy for airlines, hub-and-spoke operations, now followed by major carriers. By reducing the number of direct routes, traffic flows are condensed, permitting the use of larger aircraft and operation at higher load factors. Some airlines pursue low-cost, no-frills strategies based on features such as no interlining, no pre-assigned seat selection, no in-flight food, single class of service, use of cheap, uncongested secondary airports and uniform fleets of new and fuel-efficient aircraft.

2.5. On the subject of productivity, the Commission states that in the period 1990 to 1996 the 10 largest European airlines recorded on average a 53 % increase in revenue tonne kilometre (RTK) per staff, while their cost available tonne kilometre (ATK) went down by 13 %. The productivity of the 10 largest American airlines is still higher, however, meaning that restructuring efforts need to be continued.

2.6. The Commission believes that airlines are facing increasingly complex situations. Notably, ongoing demand for improved products in terms of more destinations and more frequencies requires the ability to innovate and greater financial resources. If European airlines are to survive and flourish in this increasingly competitive environment, permanent restructuring, that is ongoing improvements in efficiency and competitiveness, is necessary. Much of the increase in competition has come from the EU liberalisation measures in the industry. However it should be noted that this process has not introduced competition on all markets. The Commission's own 1996 report on the impact of the third package of liberalisation measures noted that 64 % of EC routes were operated as monopolies, although many of these are new or thin routes, and that fares for business passengers had not decreased.

2.7. In its 1994 Communication The way forward for civil aviation in Europe [1] the Commission identified scarcity and cost of infrastructure as a main cause of the high costs incurred by European air travellers. To improve this situation, the Commission has, in recent years, been carrying out initiatives targeting infrastructure:

— The adoption of Directive 96/67 liberalising access to the ground handling market for third parties at Community airports.

— A new directive on airport charges is now in the process of being adopted.

— The fragmentation of the air traffic management systems is addressed through the strengthening of the Eurocontrol organisation.

— The Community is actively taking part in creating the European Air Safety Authority (EASA).

— The Commission will reflect on the issue of environmental protection and its interaction with aviation competitiveness in a future communication.

2.8. To ensure long term success in the increasingly globalised air transport market, the Commission believes that European airlines need to develop into globally competitive entities. The relationship between flag carriers and regional airlines is moving beyond the simple practice of commercial agreements towards more advanced forms of integration such as franchising or direct control through acquisition. Four global strategic alliances (Star Alliance, One World, Wings, Qualiflyer) have emerged with the participation of European airlines.

2.9. The Commission is critical of the fact that, because of existing bilateral agreements there is not yet freedom to provide service between the Member States and countries outside Europe. A particularly negative consequence of the bilateral system is that European airlines normally cannot fly to non-Member States from any point in the EU but only from the territory of their home Member State. This particularly disadvantages European airlines in comparison with American carriers who can fly from any airport in the USA to a wide range of airports in the EU. Therefore it is important to complete the single aviation market with a genuine external dimension. Common agreements between the European Union as a whole and third countries have to be negotiated, the Commission feels, both at multilateral and bilateral level. The Commission will continue its efforts to achieve the creation of a Common Aviation Area with the USA. Furthermore consideration must be given to the position of air transport in the new round of negotiations under the General Agreement on Trade in Services (GATS) of the WTO, which resumed in 1999.

2.10. The Commission looks at the last ten years of liberalisation of the air transport industry. The Commission assessed these developments in 1996 in its Communication entitled Impact of the third package of air transport liberalisation measures [2] noting that the liberalisation process had mutated the economic environment for air transport by making it an increasingly competitive market. The first three years of liberalisation had resulted in gradually growing competition; in particular the number of carriers considerably increased. Liberalisation had brought clear benefits to consumers. However, some shortcomings might weaken the

[1] COM(94) 218 final — ESC Opinion OJ C 110, 5.2.1995, p. 22.

[2] COM(96) 514 final, 22.10.1996.

liberalisation process' ability to deliver to the consumer better services at lower cost. The report highlighted the problem of capacity restrictions and high costs for infrastructure as well as the contradictory and unsatisfactory trend concerning fares. Promotional fares had become more widespread. There were still large differences in fares per kilometre across Europe, however. There had even been price rises on lucrative routes. Recent developments confirmed the trend.

2.11. The Commission argues that the proliferation of tariffs, over-booking, the availability of seats at the most publicised promotional fares, the growth in frequent flyer programmes (FFPs), code-sharing and airline alliances can all make it harder for consumers to compare competing offers. As competition increases, market transparency needs to be assured, if consumer confidence is to be maintained. The Commission has also commissioned a study to examine the information passengers need to make rational choices.

2.12. Leasing of aircraft registered outside the Community is another area of concern. The Commission has noticed that Member States follow different practices for the implementation of the provisions on the granting of operating licences. The Commission, in co-operation with the Member States, therefore intends to prepare guidelines to clarify its interpretation of the provisions on short-term leases of non-EU aircraft.

2.13. The Commission has carried out a study on the impact of regulation and certain commercial practices on the development of competition in the air transport market. A number of small and medium-sized airlines were interviewed and asked to assess the liberalisation process and its shortcomings. The study found that there is an overall consensus that the present regulatory regime is working well. There were concerns, inter alia, on the following points:

— There are insufficient slots enabling new applicants airlines to compete 'head-to-head' with established airlines.

— Only larger airlines are able to operate loyalty schemes. The key barriers reside in the fact that FFPs favour airlines with large networks, which offer travellers greater chances to accumulate and use FFP points. In contrast there is little scope for small and medium carriers to operate such schemes, because their networks are too small to make them attractive.

2.14. The Commission looks at the social impact of current trends and notes that following the restructuring measures adopted by airlines, between 1988 and 1996 the overall number of employees in civil aviation increased from 435 400 to 489 700 and that the outlook for employment in this sector remains positive.

2.14.1. One of the main features of the period under review is the spreading of new forms of employment aimed at increasing flexibility. Conditions of employment have been modified, particularly for newly hired employees. Many of them are now granted fixed term contracts and, in many cases, a two-tier pay system is applied. Performance related pay schemes tend to replace seniority pay schemes for some categories of employees. This trend is not specific to the air transport industry, however. And for longer service employees job security remains relatively good at flag carriers. Furthermore, the level of wages is still higher there than at smaller airlines for similar jobs.

3. **The Committee's comments**

3.1. The Committee welcomes the Commission's in-depth analysis of the problems of the airline industry. The assessments and analyses contained in the communication are to a great extent correct. The goal of strengthening the competitiveness of European airlines, particularly vis à vis their US competitors, and of eliminating their structural disadvantages deserves wholehearted support.

3.2. The Committee regrets that the Commission considers air transport in isolation from other modes of transport, and considers that the Commission should, as a matter of urgency, put the linking of the various modes of transport on the agenda. The Committee considers stronger links between air and rail transport to be particularly necessary for environmental reasons, as in this way short-haul flights could be considerably reduced. But intermodality could also bring considerable benefits for consumers if they were thus able to reach their destinations more quickly, comfortably and cheaply.

3.3. The Committee fails to see any greater emphasis being placed on passenger rights. The Commission unfortunately deals with this only in passing. Passenger rights need to be improved, particularly on code-sharing flights. In view of increasing over-booking and delays it is urgently recommended that the regulation providing for an improved system of compensation for denied boarding and other inconveniences in scheduled air transport finally enter into force. Passenger rights must be firmly enshrined in the law. It must be made possible to take action against the cause of denied boarding, delays or other inconveniences etc. It should also be borne in mind, however, that airlines are not exclusively to blame for delays. A main cause of delay is air traffic control bottlenecks in Europe.

3.4. The Committee notes that the Commission deals with charter/holiday traffic only in passing. The Commission appears to make no distinction between scheduled and charter traffic, although different conditions sometimes apply and although charter flights account for a major share of civil aviation. Particularly in view of the fact that with the liberalisation of air transport it has become increasingly difficult to draw a dividing line between scheduled and charter traffic, the Committee recommends that conditions applying to charter/holiday traffic which differ from those applying to scheduled traffic be studied in more detail.

3.5. The Committee feels that the Commission should have studied the future prospects of air transport and the problems consequently to be expected in greater detail.

3.6. The Commission at the same time deplores the high degree of fragmentation of the air transport sector and calls for more competition. There is a contradiction here. A large number of airlines is not necessarily a bad thing. It can in fact promote competition. Apparently the Commission considers the number of European airlines operating large aircraft to be too high and expects market consolidation. It is unclear, however, what the Commission considers to be the optimum structure for a viable and competitive European industry in terms of number of airlines, size of companies, size of fleet and market share.

3.7. The Commission's statement that the transitional period for the granting of state aid is now over and that these were one-off measures to help national carriers to restructure during the transition to the liberalised single market is welcomed. Over the years since liberalisation began the flag carriers have had sufficient opportunity to adapt to the new competitive situation. State aid should, therefore, no longer be granted, as it would distort competition, as indeed it already has.

3.8. The Commission's intention of setting up a comprehensive database of prices, safety conditions and staff skills in the European airline industry and of making this available to the general public via its internet site is welcomed. As the data required are presumably already held by the various air transport organisations (ICAO [1], ECAC [2], IATA [3], AEA [4])] and national bodies, it would make economic sense to use this data and to coordinate the building of the database with these organisations and the national bodies. The Committee feels that, in building a database, care must be taken to ensure that the public is provided with reliable data which makes it possible to compare air transport services on offer.

3.9. The Commission describes hub and spoke operation as a new operating pattern for airlines and a major aspect of structural change. By reducing the number of direct routes, traffic flows are condensed, permitting the use of larger aircraft and operation at higher load factors. But hub and spoke operation is not a new operating pattern. In Europe, unlike the USA, air transport always used to be handled by a single national airport, to ensure that international long-haul flights could be filled. To the Committee's knowledge there has been no significant reduction in Europe of existing direct links between secondary airports. In the interests of maintaining consumer mobility, the Committee considers is important that there be no deterioration in services to secondary airports which perform a useful function in relation to traffic.

3.10. The Commission is too uncritical of the competitive policy of some airlines. The external costs of airlines are comparable. For this reason stronger supervision must be introduced for all companies which deliberately set out to achieve a competitive edge via lower pay, the recruitment of unskilled staff, lower social standards and non-compliance with safety regulations, e.g. with regard to the frequency of maintenance. EU-wide minimum requirements for training, e.g. training of cabin staff meeting the JAR-OPS [5] standard, inter alia should be laid down and enforced, in order to guarantee minimum quality and safety standards in air transport [6]. But all other air transport workers should also receive minimum basic training and on-going in-service training to ensure that the quality of air transport services is high. Some airlines still do not have new, fuel-efficient aircraft, but use old, cheaply purchased aircraft in order to minimise capital outlay. This means more noise pollution, higher fuel consumption, and thus more damage to the environment. At any event, the Committee feels that airlines should be prevented from making savings at the expense of the safety of aircraft and thus that of passengers and crews. The Committee believes that harmonised rules on crew working time are needed in the EU which should allow sufficient flexibility to accommodate operating requirements, without, however, prejudicing air transport safety.

3.11. The fact that before 1996 about 64 % of EU routes were operated as monopolies is mainly a result of low demand on those routes. There was simply not enough potential to justify the provision of services by another company. State intervention would therefore be wrong in market terms.

(1) International Civil Aviation Organisation [(ICAO).
(2) European Civil Aviation Conference (ECAC).
(3) International Air Transport Association (IATA).
(4) Association of European Airlines (AEA).
(5) Joint Aviation Requirement Operation (JAR-OPS).
(6) Opinion of the Economic and Social Committee on the Proposal for a Council Directive on safety requirements and attestation of professional competence for cabin crews in civil aviation — OJ C 214 , 10.7.1998, p. 37.

3.12. The Commission's statement that fares for business passengers have not decreased is untrue. A large number of fares have been introduced for business travellers too. The newly introduced flexible fares, cheaper than the normal full fare, make a choice available to business travellers too. In this way average fares in business class have also fallen. This is confirmed by a recent study drawn up for the Commission by the British Aerospace Consultancy.

3.13. The Commission's contention that scarcity and cost of infrastructure are a main cause of the relatively high costs of the European airline industry is entirely accurate, as confirmed by more recent comparative studies. The Commission could help here by putting forward suitable measures, e.g. with regard to the structuring of airport charges [1].

3.14. The Commission's intention of addressing the fragmentation of the air traffic management systems through the strengthening of Eurocontrol is wholeheartedly supported. The Committee considers that the negotiations for EU membership of Eurocontrol should be accelerated. When the EU becomes a member of Eurocontrol, Eurocontrol decisions taken with EU participation should be implemented in Community law.

3.15. In the Committee's view, the organisation of air traffic control on national lines and the plethora of air traffic control systems in Europe are no longer appropriate; a new decision-making procedure is needed. The various, uncoordinated air traffic control systems must be replaced by a single, pan-European system. The Committee proposes that Eurocontrol be given responsibility for setting uniform standards within the EU for air traffic control technology and laying down uniform procedures. The most important requirement for achieving rapid improvements in air traffic control is the introduction of uniform technology throughout the EU and improved cooperation between national air traffic control authorities. It must be possible to achieve short-term improvements in ATC-related flight delays without the introduction of a central, European air traffic control authority. The Committee considers a central authority of this kind to be a good idea, however, in the long term and supports its introduction. The Committee considers that the involvement of private-sector organisations should be considered, subject to quality guarantees, in order to ensure greater flexibility of national air traffic control.

3.15.1. The active involvement of the Community in the establishment of the European Aviation Safety Association (EASA) is welcomed, although it is not yet clear whether the EASA will also be responsible for air traffic control.

3.15.2. A Eurocontrol study reached the following conclusions on air traffic control problems: In 1998 28 % of all direct delays were attributable to air traffic control en route and 4 % to air traffic control ground problems, adding up to a total of 32 %. If the 37 % of consequent delays were assigned proportionally, this would add another 19 %. Thus 50-51 % of all delays had their origin in the air traffic control area, as compared to 13+8 % (=20-21 %) which were attributable to the airlines. Eurocontrol fears that the data for 1999 will be still less favourable.

3.16. The Commission's intention of focusing its attention on the noise and environmental pollution caused by air transport is also welcomed. The degree to which environmental responsibilities are fulfilled and public attitudes to air transport will depend on the efforts made in this area. Protection of the environment has long enjoyed high priority in air transport. Divergent local standards, e.g. on exhaust emissions, have, however, so far prevented a determined technological drive to develop new engines. The introduction of a kerosene tax is no solution, unless introduced worldwide in all the ICAO states in order to prevent distortions of competition.

3.17. The disadvantages of the fragmentation of the industry identified by the Commission can be countered by the synergy effects generated by the formation of international alliances.

3.18. The Committee does not share the Commission's views on air transport alliances in the context of competition law. Such alliances can make it easier to satisfy customer needs by making a larger, coordinated network of flight connections available. This is more advantageous to customers that the services offered by individual companies. From a competition point of view, therefore, alliances should be seen in a positive light. It should be ensured, however, that smaller airlines are not forced out of the market as a result of abuse of market dominance.

3.19. In investigating various alliances on the North Atlantic routes the Commission's competition DG has focused too much on individual routes, an approach which is out of step with current competitive conditions. By contrast, the US authorities increasingly look at the whole market. And indeed the majority of passengers on the routes which were the subject of the Commission's criticisms would have taken connecting flights. Harmonisation of the US and European competition policy is therefore needed.

3.20. As the Commission is working for an open skies agreement between the EU and the USA, the Committee considers that it would be appropriate to await the end of these negotiations before investigating the compatibility of the North Atlantic alliances with EU competition law.

3.21. The Committee endorses the Commission's reasons for seeking an open skies agreement with the USA. US airlines are placed at an unfair advantage by the existing bilateral treaties, as, in contrast to the European airlines, they are able to fly from any airport in the USA to almost any airport in Europe. On the basis of the existing bilateral agreements,

---

[1] Opinion of the Economic and Social Committee on the Proposal for a Council Directive on access to the groundhandling market at Community airports — OJ C 301, 13.11.1995, p. 28.

European airlines, on the other hand, can fly to the USA only from airports in their home country. This inequality of treatment should be eliminated as a matter of urgency in the course of the negotiations on an open skies agreement with the USA.

3.22. The opportunity offered by the new negotiating round within the framework of the General Agreement on Trade in Services (GATS) should be used to integrate air transport further into the discussions and to create a harmonised environment for air transport, e.g. overflying rights, slot allocation and airport services. Efforts should also be made to achieve the step-by-step liberalisation of air freight transport.

3.23. The air transport sector should not be more heavily regulated with a view to market transparency than other economic sectors. The competition between professional travel intermediaries in itself ensures sufficient market transparency.

3.24. For reasons of operating flexibility it is sometimes necessary to wet-lease aircraft from non-Community countries. The Committee advocates the adoption of an EU guideline requiring the wet-leasing of aircraft to be allowed only in exceptional cases and for a limited period, and then only on condition that the leased aircraft meet EU minimum safety and environmental requirements in order to prevent abuses. Thought would have to be given to a practicable authorisation procedure.

3.25. The slot problem at airports described by the Commission is a result of capacity problems at these airports. It is not only new applicants who suffer from this but also established airlines who have no opportunity to grow. This problem must be tackled by increasing airport capacity, although slot allocation mechanisms will of course always be needed. The Commission has announced its intention of producing a report on the slot problem and the Committee assumes that it will have an opportunity to express its views on this report. But the Committee would make it clear straight away that equality of opportunity for all airlines should be guaranteed.

3.26. European airlines too must be able to offer their customers frequent flyer programmes if they are to withstand global competition, as these are used by all major airlines and restricted use would amount to a competitive disadvantage.

Brussels, 26 January 2000.

4. **Conclusions**

4.1. The Committee considers that minimum basic training and on-going in-service training should be introduced and enforced as a matter of urgency throughout the EU for all air transport workers in order to guarantee the quality and safety of services.

4.2. The Committee considers it essential that air traffic control systems in Europe be harmonised and Eurocontrol strengthened. Eurocontrol should, the Committee feels, be given responsibility for setting standards for national air traffic control technology and binding procedures. National air traffic control should be assigned to the private sector. Only in this way can delays attributable to air traffic control problems be reduced.

4.3. The Committee feels that more emphasis should be placed on safety in air transport, as air transport is forecast to grow strongly over the next few years.

4.4. The Commission's intention of dealing with the environmental aspects of air transport in a Communication is also welcomed. The Commission should also look at ways of improving the link between different modes of transport in Europe, particularly air and rail transport. Intermodality could bring many benefits for consumers and the environment.

4.5. The Committee feels that passenger rights must be firmly enshrined in law. It must be made possible to take action against the cause of denied boarding, delays or other inconveniences to passengers. The regulation providing for improved compensation of passengers for inconveniences suffered must finally enter into force.

4.6. The Committee strongly supports an open skies agreement between the EU and the USA in order to end the disadvantages suffered by European airlines vis à vis their US competitors.

4.7. The Committee feels that this would further the Commission's objectives and also be in the interest of European consumers, employers and workers with a view to future social dialogue.

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 the Community code relating to veterinary medicinal products (codified version)'

(2000/C 75/03)

On 4 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 17 December 1999. The rapporteur was Mr Braghin.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January) the Economic and Social Committee adopted the following opinion by 119 votes in favour and two abstentions.

1. **Introduction**

1.1. The proposed directive aims to codify, and thus supersede, the various directives that have been issued to harmonise the Member States' legislation on veterinary medicinal products, from Council Directives 81/851/EEC and 81/852/EEC of 28 September 1981 onwards.

1.1.1. Codification is a means of simplifying and clarifying Community legislation so as to ensure transparency and correct interpretation, in accordance with the Commission decision of 1 April 1987 and the Presidency Conclusions of the Edinburgh European Council in December 1992.

1.2. The new directive, which will codify the laws expressly mentioned in Part A of Annex II in a list of repealed directives, must be adopted in full compliance with the normal Community legislative procedures as laid down in Article 251 of the Treaty.

1.3. This legislative codification proposal has been drawn up on the basis of the texts of the acts published in the Official Journal, to which no substantive changes may be made. The Commission's consolidated text brings together the above mentioned directives and makes only such formal amendments as are required.

1.4. The Commission has taken account of the fact that Council Regulation (EEC) No 2309/93 [1] has since laid down Community procedures for the authorisation and supervision of medicinal products for veterinary use and established the European Agency for the Evaluation of Medicinal Products [2].

1.5. The codification proposal regarding veterinary medicinal products was drafted in parallel with the codification proposal for the directives on medicinal products for human use, on which the Committee has already given its opinion [3].

2. **General comments**

2.1. The Committee welcomes this codification, as it provides an essential reference point for the relevant authorities of the Member States. The proposed codification, reflecting a long-felt need, was finally included in the Commission's 1998 work programme and has now reached the proposal stage. The Committee hopes that accelerated procedure, endorsed by the interinstitutional agreement of 20 December 1994, will enable the rapid adoption of the codified legislation, enabling the directive to enter into force at least during the first half of 2000, if not on 1 January 2000 as stated in Article 99.

2.2. The codification is complete inasmuch as it covers Directive 90/677/EEC on immunological veterinary medicinal products and Directive 92/74/EEC on homeopathic veterinary medicinal products. The text is concluded by Annex I on 'Requirements and analytical protocol, safety tests, pre-clinical and clinical, for tests of veterinary medicinal products'.

2.3. The codified text retains the terminology used in the original directives and does not reflect more recent developments, for instance the guidelines published by the Committee for Veterinary Medicinal Products [4]. As the more recent versions of the repealed directives have applied more up-to-date terminology, the result is that differing terms are sometimes used in the various languages to express the same concept. The Committee would therefore recommend that all the languages use the up-to-date and now universally-used terms. This would be a change in form rather than content.

2.3.1. For the purposes of the smooth functioning of the pharmacovigilance system, the Committee particularly advocates applying the above suggestion in order to favour

---

(1) OJ L 214, 24.8.1993.

(2) Above-mentioned regulation and Directive 93/40/EC on which the Committee has already issued an opinion — OJ C 269, 14.10.1991.

(3) OJ C 368, 20.12.1999, p. 3.

(4) Committee set up as part of the European Agency for the Evaluation of Medicinal Products, ex Regulation (EEC) No 2309/93, with tasks specified by Directive 93/40/EEC, Article 1, point 10.

the term 'adverse reaction' over 'side-effect' or 'undesired effect', as the latter terms are no longer commonly used at international level. Incorporating such developments in the transposition of directives into national laws is a way of ensuring that the legislative framework is truly uniform.

2.3.2. Furthermore, the Committee would like to see single terms applied consistently and exclusively to single concepts, such as for instance: 'marketing authorisation', 'authorisation holder', 'summary of the product characteristics', 'public health'.

2.3.3. There are a number of discrepancies in the terminology used in Annex I, owing to problems with the translation from the original language. This sometimes makes it difficult to understand how the Directive is to be applied. In view of the technical nature of the points and their importance for the correct preparation of the registration dossier, it would be helpful to check the consistency of the translations and point out and explain the resulting changes to the initial version in specific notes or a special annex.

2.3.4. The various language versions do not always match up, possibly owing to imperfect translation from the original document. The Committee suggests that the Commission could make use of the present codification exercise to amend any articles that were incorrectly translated from the reference language in the first instance, while taking account of recent terminological developments.

2.4. The Committee, while aware of the importance of this codification for the purposes of harmonising the rules governing the sector and transposing the directive into national legislation as rapidly as possible, recommends that the Commission verify that technical terms are used in a consistent and uniform way, possibly by setting up a team of experts representing all the official EU languages. Particular attention should be given to the following terms:

— adverse reactions / negative side effects

— veterinary medicinal product / medicinal product / proprietary medicinal product

— holder of marketing authorisation / authorisation holder / applicant

— public health / human health / animal health.

2.5. Chapter VII tackles pharmacovigilance, a field in which Community rules do not appear to be uniformly or fully applied. In the Committee's view, the content and practical methodology should be clarified. Furthermore, given its importance for protection of public health, pharmacovigilance should be made a priority in the implementation of current legislation.

2.6. In the veterinary pharmaceuticals sector, there are still diverging interpretations by national administrations, a certain reluctance to trust scientific assessments from other Member States and lengthy national administrative procedures — all factors which have prevented full use of the advantages of the new authorisation procedures [1]. The Committee asks the Commission, when planning new measures in the light of experience gained, to ensure that risk/benefit analysis is the point of reference in every scientific evaluation of the data accompanying marketing authorisation requests.

2.7. The Committee hopes that new measures will be proposed for medicated foodstuffs (not covered as such in the current directive), in order to guarantee the purity of the active ingredients, quality standards, production procedures and checks and that the balance of medicinal, veterinary and food products meets specific qualitative criteria to protect human health and animal welfare.

2.8. The Committee hopes that when it conducts its overall review of the registration system for veterinary and, in parallel, human drugs in 2001, the Commission, helped by the major codification work currently under way, will focus on simplifying the definition of specifications relating to quality, safety and efficiency, applying the guidelines drawn up by the Committee for Veterinary Medicinal Products (CVMP) properly, making them an integral part of the new legislation when necessary, and guaranteeing a free choice of authorisation procedures (centralised system or mutual recognition) so as to ensure adequate availability of products for the various well- and lesser-known animal species, bearing in mind the absolute priority which is to protect public health and develop the concept of animal welfare.

[1] Communication from the Commission on the Commission communication on the Community marketing authorisation procedures for medicinal products — OJ C 229, 22.7.1998.

Brussels, 26 January 2000.

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 amending for the fourth time Regulation (EC) No 1626/94 laying down certain technical measures for the conservation of fishery resources in the Mediterranean and for the fourth time Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms'

(2000/C 75/04)

On 18 January 2000 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 12 January 2000. The rapporteur was Mr E. Chagas.

At its 369th plenary session (meeting of 26 January 2000), the Economic and Social Committee adopted the following opinion by 113 votes to 1 with 3 abstentions.

1. Introduction

1.1. In Regulation (EC) 1626/94[1] and Regulation (EC) 850/98[2], the Council adopted a number of technical measures to protect fishery resources in the Mediterranean and juveniles of marine organisms.

1.2. The International Commission for the Conservation of Atlantic Tunas (ICCAT) has recommended certain technical measures, as a consequence of which the Community, as a member of the organisation and bound by its recommendations, must amend the regulations in question.

2. General comments

2.1. The Committee approves the proposal.

2.2. The purpose of this fourth amendment is to prohibit the landing of bluefin tuna of age 0 weighing less than 3,2 kg, instead of the previous 1,8 kg, in accordance with the scientific recommendation adopted by the 11th extraordinary session of the ICCAT.

2.2.1. The draft amendment also proposes new wording for Article 3a, paragraph 1, of Regulation 1626/94, modifying the current periods in which Community fishing with encircling nets (purse seines) in the Mediterranean is forbidden.

2.2.2. This measure has also been adopted by the General Fisheries Council for the Mediterranean (GFCM). It is therefore hoped that all the third countries operating in the Mediterranean will comply with these prohibition periods, in order to prevent excessive pressure on bluefin tuna.

(1) OJ L 171, 6.7.1994, as last amended by Regulation 782/98, in OJ L 113.
(2) OJ L 125, 27.4.1998.

Brussels, 26 January 2000.

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 amending Regulation (EC) No 1255/1999 on the common organisation of the market in milk and milk products'

(2000/C 75/05)

On 20 December 1999 the Council decided to consult the Economic and Social Committee, under Articles 36 and 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 12 January 2000. The rapporteur was Mr Bento Gonçalves.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January) the Economic and Social Committee adopted the following opinion by 113 votes in favour, with seven abstentions.

1. Introduction: content of the Commission proposal

1.1. In document COM(1999) 631 final the Commission proposes to amend Article 31(14) of Regulation (EC) No 1255/1999. This paragraph covers the responsibility for modifying the list, in Annex II of the Regulation, of milk products eligible for export refunds.

1.2. The applicable legal basis is Articles 36 and 37 of the Treaty.

2. General comments

2.1. The aim of the proposal is to confer on the Commission the responsibility for amending the list of goods in Annex II by including the milk products eligible for export refunds.

2.2. It is thus a question of simply amending procedures so as to enable the Commission to make the most efficient use of available resources, creating additional management options with the aim of better identifying the goods which qualify for refunds.

2.3. This change will enable proposals for amendments to be approved by a committee procedure.

2.4. The amendments will make the procedures for milk products identical to those applying to export refunds for the products included in the CMO regulations for the cereals, sugar, rice and eggs sectors.

2.5. The amendments will have no financial impact.

3. Conclusion

3.1. The ESC is of the opinion that the proposal should be adopted.

Brussels, 26 January 2000.

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 the protection of workers from risks related to exposure of biological agents at work (Seventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)'

(2000/C 75/06)

On 21 October 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 unanimously on 16 December 1999. The rapporteur was Mr Thomas Etty.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January), the Economic and Social Committee adopted the following opinion by 122 votes in favour, no votes against, and with five abstentions.

1. The Committee agrees in general terms with the Commission that it is important to simplify and clarify Community law, without affecting the level of protection. This is certainly desirable in the area of occupational safety and health legislation where the architecture of existing instruments has become, in some cases, very complicated.

2. It notes that the purpose of the consolidation operation will not involve changes of substance to the present legislation.

3. The Committee also notes that the Commission's decision of 1 April 1987 states that all legislation measures should be consolidated after no more than ten amendments (as a minimum requirement). The Directive on protection of workers from biological agents of 1990 has been amended four times in 1993, 1995, 1997 and again in 1997.

4. The Committee fully agrees with the present proposal.

5. Finally, the Committee refers to the five general recommendations regarding codifications of occupational Safety and Health Directives in its Opinion of October 20-21 last on the 'Proposal for a Council Directive on the Protection of workers from the risks related to exposure of carcinogens at work (Sixth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (codified version) (COM(1999) 152 final — 98/0085 SYN)'.

Brussels, 26 January 2000.

The President

of theEconomic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Draft Communication from the Commission to the Member States establishing the guidelines for Community Initiative Programmes (CIPs) for which the Member States are invited to submit proposals for support under the Equal initiative'

(2000/C 75/07)

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 Section for Employment, Social Affairs, and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion unanimously on 11 January 2000. The rapporteur was Mr Sharma.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January), the Economic and Social Committee adopted the following opinion by 122 votes in favour and no votes against, with five abstentions.

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

1.1. The legal basis for establishing guidelines for Community Initiative Programmes (CIPs) derives from the Treaty of Amsterdam which includes a new title on employment and provides for a new co-ordinated strategy for employment across Member States. The employment guidelines, based on the four pillars of Employability, Entrepreneurship, Adaptability and Equal Opportunities, when transposed into national action plans for employment (NAPs), provide the framework for financial support at EU level. The aim of this community initiative which is entitled Equal, is to promote new means of combating all forms of discrimination and inequalities in connection with the labour market. This new approach is a direct consequence of Article 13 of the Treaty of Amsterdam which for the first time provides a legal basis for combatting discrimination based on sex, racial or ethnic origin, religion or belief, age or sexual orientation, and Article 137 in favour of social inclusion. Equal will also take due account of the social and vocational integration of asylum seekers.

1.2. The objective of the European Employment Strategy (EES) is to arrive at a significant increase in the employment rate in Europe on a lasting basis. This is to be achieved by developing skills and employability of those currently outside the labour market and to address the needs of those already in work but in vulnerable sectors to update and renew their skills. In the Communication the Commission underlines that the capacity for entrepreneurship needs to be broadened and equal participation of men and women in the labour market must be ensured. Action needs to be taken to counter inequalities, discrimination and exclusion, for the jobless and for the employed.

2. **General Comments**

2.1. The ESC welcomes the commitment to integrate Equal within the overall European Employment Strategy and agree that innovative action in a trans-national context has much to offer.

2.2. The ESC agrees with the emphasis on involvement of local and regional authorities, and greater emphasis on the role of business in the programme. (Paragraph 6). Although business have already participated in the previous community initiatives, they need encouragement by information and awareness campaigns to underline the added value and benefits of company involvement. Companies are often put off by the time they must invest due to heavy bureaucracy of such initiatives. However the importance of the involvement of NGOs and social partners in projects and the programme must not be overlooked. The mainstreaming potential of Equal will be great, and while authorities will be an important factor, the other sectors will also have much to offer which should not be downplayed.

2.3. A move to more strategic projects (paragraph 6) set firmly in both the relevant policy framework and in the local/regional context is welcome. There should, however, remain the possibility of smaller scale, focused projects also being supported and efforts should be made to integrate companies of all sizes including SMEs which constitute the motor for local development. Small projects do have the potential to produce valuable information, whereas large projects may not, but can on occasions become bogged down in organisational detail.

2.4. The ESC supports moves to ensure Equal is fully integrated with other EU programmes (paragraph 8) within and beyond the employment field, and would wish to see the same principle extended to Equal's integration with national and regional policies as well.

2.5. There is a need to ensure that gender equality issues (paragraph 9) are taken into account throughout the implementation of Equal, as well as other equality issues (ethnicity, age, disability etc.) also being treated as 'horizontal' concerns. Consideration could be given to some thematic fields which pick up on particular discrimination issues (in the same way as gender is expected to be a specific as well as

horizontal theme), particularly in relation to disability. Disability issues have greatly benefited from the Horizon programme, and may become marginalised if treated purely as a horizontal consideration.

2.6. The ESC understands that the thematic fields put forward are indicative at this point (paragraph 9). However, those currently proposed do not cover the full range of areas which should be covered, and in particular do not adequately represent those currently covered by Adapt. The final thematic areas should be more detailed with better explanations of what is meant — vague definitions in previous programmes have led to confusion and inefficiency.

2.7. The process of periodic review of themes (paragraph 11) should be designed in such a way that it can be integrated smoothly with programme implementation, without imposing delays or confusion.

2.8. The Development Partnership models (paragraph 12) should be feasible in all Member States. The importance of their plans being strategic and integrated with other programmes and policies is critical and will require a more sophisticated approach to the messages which potential bidders are given, and to the selection process itself. It will also require thorough information about local/regional/national priorities, which will be an additional requirement for Member State level technical assistance.

2.9. The Committee has taken note of the joint action of 29 April 1999 whereby the Council recognised the desirability of helping asylum seekers who faced repatriation with education and training, which will give them skills useful in their home country [1]. Member States should be encouraged by the Commission to ensure that action in respect of asylum seekers should be programmed in the Equal DPs.

2.10. The ESC supports partnerships (with Phare, Tacis and Meda countries (paragraph 17). The rules and regulations governing relationships between Equal DPs and others outside the EU need to be revised and clarified to ensure that all parties are clear as to what to expect and what is possible. There should be reduction in the minimum partner numbers to one, and it is important that all Member States adopt the same policy towards trans-national requirements. This should be communicated clearly to all parties, which is not the case with the current initiatives.

[1] Joint action of 26 April 1999 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing projects and measures to provide practical support in relation to the reception and voluntary repatriation of refugees, displaced persons and asylum seekers, including emergency assistance to persons who have fled as a result of recent events in Kosovo — OJ L 114, 1.5.1999, p. 2; cf Article 5 (c).

3. **Specific comments and recommendations**

3.1. *II. Actions within Equal CIPs*

Models for types of action

3.1.1. In the model put forward where there are three separately identified phases to DP development (paragraph 21), the stages should operate as seamlessly as possible, without unnecessary bureaucracy or delay in the transition from one to another.

Setting up development partnerships

3.1.2. It is essential that during the limited development phase (paragraph 25), information on thematic priority, state of the labour market etc. is available, and that the exact requirements are spelt out clearly to potential applicants. Links with the previous initiatives will also be important, and will require additional dissemination work to ensure that information is available. Connections should also be made with other programmes, in particular Leonardo. This should not mean, however, that only promoters with prior Adapt and Employment experience should (implicitly or explicitly) be selected.

Selection guidelines for implementing CIPs

3.1.3. The criteria set out in paragraph 26 will need to be supplemented with additional information particularly in relation to targeting, evaluation, dissemination and mainstreaming. These elements are so crucial for Equal that partnerships should clearly demonstrate their commitment to them from the very beginning.

The development partnership agreement

3.1.4. The Development Partnership agreement will be a crucial document. Comprehensive guidance should be given to partnerships on what it should contain, and how it should be used throughout the life of the partnership.

Trans-national co-operation

3.1.5. Flexibility in the types of trans-national partnerships should be encouraged. Some should be full partnerships with others following the same theme over the life of the project. Consideration should be given to some information-sharing and possibly joint decision-making between Member States where trans-national partnerships are in place before applications are made.

3.1.6. All Member States should take the same approach to trans-national working, so that conflicting policies do not apply to partners; this has caused considerable problems in the current Employment and Adapt programmes.

Requirement to demonstrate co-funding

3.1.7. Demonstration of available co-funding (paragraph 33) should be reviewed. Current rules governing the source of co-funding, and audit requirements for its demonstration (particularly in relation to SMEs) have been seriously damaging to the operation of many projects and directly contradict the objectives of the Community Initiatives.

Application of ESF rules

3.1.8. Consideration should be given to reducing the administrative burden, simplifying procedures and language, which arises from the application of ESF rules (which are essentially modelled on single year projects), by changing to multi-annual projects. Not only should it be possible to extend project timetables, but longer periods should also be considered from the start. Extensions may not be agreed until late on in project lifetimes, and may be associated with considerable additional administration. There would be merit in allowing some projects up to 5-6 years life, so as to be able to demonstrate results over a period of time. This is essential if the lasting benefits of pilot actions are to be observed.

The implications of increased flexibility of ESF regulations (paragraph 36) need to be thoroughly considered and very clear messages given to promoters (particularly in relation to eligibility). ESF's impact as a whole on the Initiatives should be considered, since many of its governing provisions are out of step with pilot, trans-national action, and act against the spirit of the programme and its ability to deliver.

Dissemination of good practice and mainstreaming of activities

3.1.9. The stronger focus on dissemination (paragraph 37) and increased emphasis on mainstreaming into EU and national programmes are welcomed. Links with national policy should be particularly strongly encouraged, and thought given to appropriate operational and monitoring structures to ensure that this happens. Funding for additional dissemination and mainstreaming (paragraph 38) is a good development, but the decision-making procedure to make this happen should be streamlined and efficient.

Technical assistance

3.1.10. Technical assistance is vital for the effective and efficient running of the programme (paragraphs 40-42). The ESC believes it should be funded at 100 % (as for the EU level technical assistance office.)

3.2. *III. Actions at European level*

Mechanisms to create an impact at Union level

3.2.1. The ESC supports the proposed actions of a thematic review at Union level, periodic assessment of the value added by Equal to the NAP but considers a creation of new discussion fora over and above those which already exist is a duplication of effort. It will be important to pay more attention to the messages to be delivered, and the audiences, which should receive them; it is all too easy in this environment to start with the medium and not the message.

3.2.2. The roles and responsibilities of the technical assistance office (paragraph 47) should be clearly specified and communicated to all other parties at an early stage, and its relationship to Member State Technical Assistance clarified.

3.3. *IV. Programme preparation*

Proposed contents of a CIP

3.3.1. The CIP should include, in addition to the items outlined in paragraph 49, a detailed review of the relationship between Equal and the implementation of other EU and national programmes, and also outline measures to be taken to ensure that they work together harmoniously. Member States should consider steps they could take which would reduce overlap and conflicting priorities, and achieve maximum synergy in implementation.

Proposed financial framework for a CIP

3.3.2. The financial framework put forward (paragraph 50) should be simpler than that currently used, in order to avoid lengthy and counter-productive subsequent modifications to the programme.

3.3.3. Intervention rates for DPs should be reviewed and consideration given to higher rates for highly experimental projects. An alternative would be sliding rates over time to allow projects to get started with ESF resources, and move into required co-funding proportions later. This would also test more accurately the sustainability, and thus mainstreaming potential, of project operations.

3.3.4. Monitoring and evaluation arrangements should be reviewed (paragraph 51). They should ensure that ESF type statistical data is modified to include qualitative data which take innovation and piloting into account. Also, DPs should be given much firmer guidance on what type of evaluation they should carry out themselves, with the inclusion of some common items to facilitate comparisons.

3.3.5. The audit process should also be reviewed, with stronger emphasis on accurate and stringent information from the beginning, and use of common systems, rather than the evolutionary 'case by case' approach which pertains at present.

Timetable for submission and agreement of CIP plans

3.3.6. The timetables for submission and agreement of plans (paragraph 53), (as indeed for all stages) should be reviewed in the light of what is actually likely to happen, and this should be taken into account in the programme. Current programmes all too often work to fictitious timetables, which all parties know will not be met in practice. This undermines the effectiveness of programmes, and their reputation.

Monitoring and evaluation of national programmes

3.3.7. The role of monitoring committees should be strengthened (paragraph 55), with more structures in place to ensure good quality attendance and the forming of effective links with other key bodies.

3.3.8. As mentioned above, programme level monitoring (paragraph 56) should be reviewed and made more appropriate to the innovative and trans-national nature of the programme, with the inclusion of measures of 'soft' outcomes and learning, not just crude output measures.

3.3.9. The timetable for programme evaluation (at both MS and EU level) should ensure that information is available to influence future developments, and does not come too early or too late.

Brussels, 26 January 2000.

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 clarifying Council Regulation (EC) No 2223/96 as concerns principles for recording taxes and social contributions'

(2000/C 75/08)

On 14 January 2000 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 Economic and Social Committee decided to appoint Mr Vasco Cal as rapporteur-general for this opinion.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January), the Economic and Social Committee adopted the following opinion by 79 votes in favour with 3 abstentions.

1. **Introduction**

1.1. The European System of Accounts (ESA) determines Member States' general government net borrowing, i.e. government deficit. This is a key factor in connection with the protocol on the excessive deficit procedure which, in turn, governs the stability and growth pact. The protocol requires that the government deficit of each Member State can be calculated quickly. The figures must also be transparent and comparable.

1.2. In this connection, some Member States declare taxes and contributions which are actually due (according to assessments and declarations), including amounts which will never be collected, i.e. taxes unpaid because of insolvency, bankruptcy etc. Other Member States declare actual cash receipts, which arrive much later.

1.3. The Commission thus proposes that 'taxes and social contributions recorded in the system (should) not include amounts unlikely to be collected' and that, 'accordingly, taxes

and social contributions recorded in the system on an accrual basis, (should) be equivalent over a reasonable amount of time to the corresponding amounts actually received.'

1.4. In practical terms, the Commission proposes that each of the recorded categories of taxes and social contributions should be subject to a weighting in order to eliminate sums regularly left uncollected. Where declarations are based on cash receipts, the Commission requires that the amounts relate precisely to the specific time frames and activities concerned.

2. **The ESC's comments**

2.1. The Committee approves the draft regulation in principle and hopes that it will be adopted by the Council without delay, as far as possible during the current Portuguese presidency.

2.2. The Committee notes that, at around 2 % of GNP, levels of uncollected taxes and contributions are relatively low. Their importance becomes clearer, however, when measured against the cuts — also in the region of 2 % — which Member States are supposed to make to their deficits under their stability and growth plans.

2.3. The Committee urges strict application of the weightings for each category of taxes and social security contributions. A blanket weighting not only compromises the transparency and comparability of figures between Member States, but would also make it more difficult to carry out the research needed to launch a gradual process of tax harmonisation in the European Union.

3. **Specific comments**

3.1. *Article 3 a)*

The Committee urges that the coefficients should not only be estimated on the basis of past experience, but should also reflect expected events which may affect the macro-economic context.

3.2. *Article 3 b)*

The Committee welcomes this provision which ensures that taxes and contributions are related strictly to the particular time frame and activity concerned. Continuity in the application of the principles is vital.

3.3. *Enforcement*

A transitional period not exceeding two years should be laid down for Member States which do not yet apply the provisions of Article 3 and whose current figures diverge from those that would have been obtained had they done so.

Brussels, 26 January 2000.

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 77/388/EEC on the common system of value added tax — transitional provisions granted to the Republic of Austria and the Portuguese Republic'

(2000/C 75/09)

On 13 January 2000 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 Economic and Social Committee decided to appoint Mr Mario Sepi as rapporteur-general responsible for drawing up the Committee's work on the subject.

At its 369th plenary session (meeting of 26 January 2000), the Economic and Social Committee adopted the following opinion by 84 votes to one with three abstentions.

1. The Committee endorses the Commission's proposal to grant the Republic of Austria an extension of the provision which, by derogation from Article 28(2) of the Sixth VAT Directive (77/388/EEC), allowed it to apply up to 31 December 1998 a reduced rate to the letting of immovable property for residential use.

1.1. The Committee takes note of the reasons adduced by the Republic of Austria in requesting this extension (limited in any case to the transitional period laid down in Article 28(13) of the Sixth VAT Directive) and shares the Commission's opinion that the risk of distortion of competition in the letting of immovable property for residential use should be regarded as non-existent.

2. The Committee also endorses the Commission proposal to grant the Portuguese Republic an extension of the provision (also derogating from Article 28(2) of the Sixth VAT Directive) permitting it to apply a reduced rate to restaurant services up to 31 December 1991.

2.1. The Committee regards as valid the arguments put forward by the Portuguese Republic for reintroducing the reduced rate (limited to the transitional period laid down in Article 28(13) of the Sixth VAT Directive). Like the Commission, the Committee regards the risk of distortion of competition in restaurant services as non-existent, since the measure is confined to one Member State.

Brussels, 26 January 2000.

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 Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering'

(2000/C 75/10)

On 5 October 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 Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 January 2000. The rapporteur was Mr Pelletier.

At its 369th plenary session (meeting of 26 January 2000), the Economic and Social Committee adopted the following opinion by 81 votes to 11, with 10 abstentions.

1. **Introduction**

1.1. In its opinion of 19 September 1990 on the First Directive on prevention of the use of the financial system for the purpose of money laundering [1], the ESC fully agreed with stepping up the repression of serious criminal activities condemned by the international community, and more particularly those connected with drug trafficking.

1.2. Several remarks made in this opinion were finally adopted.

1.3. The ESC also approved the setting-up of machinery based on the use of information resulting from compulsory transit through banking channels and financial institutions in general.

1.4. Since 1991, when the First Directive was implemented, the Council, the Commission and the European Parliament have constantly called for stiffer action against organised crime and an overall action programme to bring this about, containing concrete recommendations (see in particular the resolutions of the Dublin Council of December 1996 and the action programme of the Amsterdam Council of June 1997).

1.5. Most recently, the Tampere Council of 15 and 16 October 1999 devoted a considerable part of its recommendations to combating crime on an EU scale.

1.6. In addition to these recommendations aimed at strengthening co-operation between the authorities in the Member States, the Council has devoted a chapter to specific action to combat money laundering, recommending that the proposed amendment to the directive which is the subject of this opinion be adopted as soon as possible.

1.7. The Commission recently published a very important communication on the 2000-2004 Action Plan to combat drugs [2], which will be the subject of an ESC opinion.

2. **General comments**

2.1. The sheer scale of money laundering upsets the workings of the world financial system.

2.2. The origins of the funds concerned are very varied. Some cases are spectacular, such as the diversion of international aid from the IMF to countries such as Russia, but it is more difficult to detect when it comes from complex financial schemes set up by legal specialists having close links with offshore havens that are free from the disciplines and controls that the European Union and some of the western world have been trying to put into place over the past decade.

2.3. The strengthening of the means used since the 1991 Directive to combat money laundering is undoubtedly spectacular.

2.4. Nevertheless, it is still necessary to compare both the concrete action and declared intentions of the EU in this area with the actual impact on the volume of traffic and the estimated revenue that has resulted from it.

2.5. In the ESC opinion of 1990, available information set the amount of drug traffic at between USD 300 and 500 bn. Instead of declining, this traffic is now said to be running at 8 % of total world trade, according to UN statistics and information provided by the Financial Action Task Force on Money Laundering (FATF). Money laundering, for its part, is said to represent between 2 % and 5 % of world GDP each year, or more than USD 1 000 bn.

---

[1] OJ C 332, 31.12.1990, p. 26.

[2] COM(1999) 239 final.

2.6. In targeting the laundering of money linked with drug trafficking, the action taken by the EU and the Member States has lost sight of the absolute need to combat the problem at its source, i.e. on the ground, the selling of drugs, when the whole sequence of laundering operations is based on the retail selling of drugs to the unfortunate addicts.

2.7. The fight against money laundering cannot be separated from the fight against those who collect funds, whether it be within the framework of organised crime, which implies the involvement of complex structures, or in the simpler and more diffuse form of 'dealers' collecting a multitude of small sums representing the price of drug doses sold to the unfortunate addicts, the accumulation of which is the origin of the laundering process [1].

2.8. While recognising that police and legal repression is above all a matter for the Member States and does not fall within the scope of the present proposal for a directive, the ESC regrets that the directive does not stress the obvious link between police and legal repression of trafficking and that of the laundering of the proceeds from it. This is absolutely essential. Despite their efforts, financial intermediaries cannot take the place of the entire police and legal system; that is not their role.

2.9. The European Council in Tampere in October 1999 seemed to be moving in this direction when it called for 'the establishment of a European Police Chiefs operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions' [2].

2.10. The ESC opinion of 1990 noted that 'it is essential that the present proposal be backed up by the harmonisation of laws and practices designed to prevent drug consumption' [3].

2.11. The ESC fully shares the Commission's concern to see the FATF's efforts embracing the largest possible number of countries in order to create a worldwide anti-money laundering network.

2.12. The FATF's work here to establish criteria to identify countries and jurisdictions that can be considered as 'non-co-operative' in the fight against money laundering is a key part of the action plan. A list of these countries is being prepared by the FATF, with a view to publication in mid-2000.

2.13. The European Council in Tampere stressed the need to conclude agreements with offshore centres in non-EU countries in order to ensure effective and transparent co-operation, in line with the FATF's recommendations.

2.14. The ESC is convinced that the fight against money laundering must be tackled on a worldwide basis and regrets that the Council and the Commission are not playing a greater part in concerted action with the United Nations and the International Monetary Fund (IMF).

2.15. At its last annual meeting in September 1999, the IMF once again reaffirmed its determination to fight organised crime, drug trafficking and money laundering. The ESC feels that there must be better consultation between the EU and the IMF, because the latter is the only institution able to take measures comparable to those of the EU and apply them on an international scale.

2.16. The ESC approves the plan to impose a very high standard of constraints on the EU, exceeding the updated 40 FATF recommendations, by involving certain professions more actively in the fight against money laundering. One must note that the financial professions concerned by the 1991 Directive are under an obligation to provide their staff with a code of good conduct and a detailed guide to the directive. There is little doubt that the new professions concerned will be just as concerned to explain things.

2.17. The ESC feels that the countries seeking EU membership must be obliged to accept the incorporation into the acquis communautaire of anti-money laundering rules. It would not be enough for the directive to be simply formally incorporated into the legislation of the candidate countries as the acquis communautaire unless concrete measures were taken to ensure it was applied (e.g. beefing up the police and judiciary, joining the FATF, Interpol and Tracfin).

2.18. The strengthening of technical assistance in this area from the Commission to the candidate countries should be an essential part of partnership agreements.

2.19. The ESC would particularly draw the Commission's attention to the sensitive period of the changeover to the euro, which may well be favourable to cash transactions resulting from money laundering. Although a limit of 15 000 euros has been fixed for declaring sums, it will be very easy to get around

---

(1) See the Commission communication on a European Union Action Plan (2000-2004) to combat drugs and the ESC opinion — OJ C 51, 23.2.2000.

(2) Conclusions of the European Council of Tampere, 15 and 16 October 1999.

(3) See point 1.5 of the opinion on the Proposal for a Council Directive on prevention of the use of the financial system for the purpose of money laundering OJ C 332, 31.12.1990, p. 86.

this rule by submitting requests in several institutions for conversions below the threshold. In any case, it will be difficult to distinguish between hoarded and laundered notes.

2.20. Efficient feedback from the investigating authorities to the banks should improve the motivation of bank staff and the quality of reports. It should also enable banks to assess whether their training is adequate. And finally, efficient feedback should prevent banks from carrying out laundering transactions inadvertently. All in all, an efficient feedback system should lead to better results in the fight against money laundering.

2.21. Of course, the national authorities cannot breach the secrecy of investigation proceedings. Efficient feedback should at least include general information providing statistical data. Ideally, it should also include some specific information provided on a confidential basis to the reporting institution: for instance, an acknowledgement of receipt of the disclosure of a suspicious transaction, information on the decision taken by the competent authorities subject to compliance with the secrecy of investigation proceedings, and a copy of any judgement referring to a specific case.

3. **Implementation of the 1991 Directive**

3.1. The ESC has noted that the Commission, in its two reports to the Council and the European Parliament ([1]), believes that the 1991 Directive has been well implemented by the Member States and that the financial sector, and in particular the banks, have made a real effort to help prevent the entry of criminal money into the financial system.

3.2. Information gathered from FATF representatives and the IMF's report confirms the Commission's remark.

3.3. As controls in the banking sector have been tightened, launderers have sought other means to disguise the illegal origin of their funds; this represents a major challenge for the whole international community, and not just the EU.

4. **The Action Plan to combat organised crime**

4.1. The explanatory memorandum to the draft directive shows that the Council backs up the Commission's Action Plan to the hilt.

4.2. The prohibition of money laundering has now taken a big step forward since money laundering has been made a criminal offence in all the Member States.

([1]) COM(95) 54 final and COM(1998) 401 final.

5. **The prohibition of money laundering**

5.1. Following the recommendation of the FATF in 1996, the Council agreed on 3 December 1998 to the implementation of Article 6 of the Strasbourg Convention, which deals with laundering offences and plans to criminalise the proceeds of all serious offences carrying a maximum sentence of more than one year or a minimum sentence of more than six months. This is a big step forward in the repression of drugs-based crime.

6. **The coverage of financial sector activities**

6.1. Following the recommendations of the European Parliament, the draft directive tightens up the definition of the financial institutions concerned by including exchange offices, money remittance offices and investment firms as defined in the Investment Services Directive (ISD).

7. **The coverage of activities outside the financial sector**

7.1. The European Council of December 1996 in Dublin and the annual reports of the FATF concluded that laundering increasingly uses non-banking financial institutions and non-financial firms, because banks abide more strictly by anti-laundering measures, so the Commission is proposing, with the agreement of the European Parliament, to extend the scope of the directive to cover occupations and types of enterprise which can be considered to be involved in money laundering-related activities.

7.2. In its resolution of March 1999 the European Parliament proposed extending the scope of the directive considerably to include estate agents, art dealers, auctioneers, casinos, exchange offices, transporters of funds, solicitors, accountants, lawyers, tax advisers and auditors.

7.3. The various authorities that have had to deal with laundering practices, such as the UN Office for Drug Control and the High Level Group on Organised Crime set up by the Dublin Council, have all noted the trend towards using specialists, especially in law, to set up complex schemes involving shell companies, trust funds etc. to mask the origin and ownership of tainted funds ([2]).

([2]) Cf. 'Drug money in a changing world: Economic reform and criminal finance' — UN International drug control programme 1996 — which shows the key role of 'international business companies', especially in the Caribbean, used by criminal organisations because of the near-impossibility of unravelling the origin of the huge amount of funds they manage.

7.4. The Commission has included most of the activities mentioned by the European Parliament, though it has strong reservations about the inclusion of art dealers and auctioneers given the problem of defining the exact coverage and definition of such activities and the problems of monitoring the application of any rules, which — it should be remembered — would make it obligatory to reveal clients' names and pass on any suspicions about money laundering to the relevant authorities in the Member States.

7.5. The Commission also feels that any extension to art dealers would also raise the question of applying the same obligations to any dealer in high value items, including, for example, luxury car dealers, jewellery shops or stamp and coin dealers.

7.6. The draft directive has adopted a prudent attitude regarding lawyers, bearing in mind their professional duty of discretion and confidentiality. Lawyers would be exempted from any requirement in any situation connected with the representation or defence of a client in legal proceedings.

7.7. Outside these cases, Member States would be given the option of allowing lawyers to communicate their suspicions not to the normal anti-money laundering authorities but to their bar association or equivalent professional body. It should be noted that in some EU countries lawyers are authorised to carry out financial transactions and hold funds. Such activities complicate application of the directive to the legal profession.

7.8. Appropriate sanctions should be introduced where a report to the bar association should have been made but was not made.

7.9. The scope of the directive would only be extended to cover notaries and other independent legal professionals in respect of financial transactions or activities on behalf of companies where there was a high risk of money laundering.

8. **Identification of customers in non-face-to-face transactions**

8.1. The draft directive lays down the same recommendations for identifying customers in cases of non-face-to-face transactions. There is a grey area regarding how the directive is to apply to Internet transactions.

8.2. In its action programme on organised crime, the European Council of Amsterdam stressed that technological innovations such as the Internet and e-banking were highly efficient tools for crime, fraud and corruption. It emphasised that the means for preventing and stamping out such criminal activities 'were almost always lagging behind' ([1]).

8.3. Electronic funds transfer (by the Internet) is instantaneous and — with the help of a few simple techniques that anyone can do — easy to hide without leaving any trace. Moving funds through a non-co-operative country or using a shell company is enough to paralyse controls in the EU.

8.4. Consequently, it is the actors on the financial markets — rather than the transfers — who must be checked. The ESC stressed this need in its opinion of 27 January 1999 ([2]) on the legislation applicable to electronic money institutions, which highlighted the danger of allowing on to the market electronic money institutions who were subject to extremely lax regulations.

8.5. The ESC shares the view of the Commission that banks must have adequate procedures to identify customers in non-face-to-face financial transactions. However, it believes that the annex to the proposed directive is not the appropriate tool to achieve this purpose.

8.6. The absence of face-to-face contact between the bank and the customer indeed does not prevent a proper identification by means of supporting evidence as it is already stipulated in Article 3 of the 1991 Directive and effectively applied by banks. Among other things, this identification can be entrusted to a proxyholder or a trustworthy third party (for example, another credit or financial institution, a notary or an embassy) or can be made through registered mail.

8.7. The electronic signature should also be considered as supporting evidence, especially since the recent adoption of the Directive on a Common Framework for Electronic Signatures. In the ESC's view, the development of non-face-to-face financial transactions does not justify new rules of identification.

8.8. On the contrary, flexibility is absolutely necessary in order to encompass rapid developments in distance banking. This flexibility is guaranteed by the broad wording of 'supporting evidence'. Banks should only be required to have in place adequate supporting evidence of identification of their customers in non-face-to-face financial operations. The method of identification should be left to them. In general, the annex as such gives some good examples of possible procedures for identifying customers in non-face-to-face financial operations, but it would be quickly out-of-date as and when new ways of both distance banking and identification are developed.

8.9. Should the decision be taken to maintain the annex, the ESC urges the European authorities to make clear that the annex has a non-binding character and only serves as a guideline offering non-exhaustive solutions for the identification of customers in non-face-to-face financial transactions. Spelling out the non-binding character of the annex would allow the necessary flexibility for such procedures of identification.

([1]) Introduction to the action programme on organised crime — Amsterdam, 28 April 1997.

([2]) OJ C 101, 12.4.1999, p. 6.

9. **Exchange of information**

9.1. The Commission provides for an exchange of information concerning money laundering by proposing such an exchange in cases of illegal activities related to the European Communities' financial interests (this extension is criticised in the article-by-article assessment).

10. **Need for a regular review of the Union's action in this area**

10.1. The Commission intends to continue making regular reports on the implementation of the directive only to the Council and the European Parliament. The ESC feels that it has particular expertise on such matters and deplores the fact that it is not to be consulted on the extension of a directive submitted to it for an opinion.

11. **Comments on the individual articles in the proposed directive**

— Article 1 (replacing Article 1 in Directive 91/308)

1) The extension of the scope of the directive to cover exchange offices, transporters of funds, insurance firms (for activities covered by the directive) and investment firms does not give rise to any objection to the extent that it is a supplement to the definitions in the basic directive 77/780/EEC.

2) It is necessary to stress the importance of covering branches located in the EU of financial institutions with their registered offices inside or outside the EU.

3) The ESC feels that the directive should also apply to branches or subsidiaries of EU financial institutions located in non-EU countries, especially in countries that have not adopted equivalent supervisory and anti-laundering measures (offshore territories, tax havens, etc.).

4) Paragraph (E) — definition of 'criminal activity'

The extension of the definition to cover 'fraud, corruption or any other illegal activity damaging or likely to damage the European Communities' financial interests' may push financial institutions into declaring unreasonable suspicions going far beyond the initial aim of combating drug trafficking and organised crime. It is to be feared that the staff of such institutions may systematically declare any transaction that is simply doubtful or seems abnormal, so as not to leave themselves open to any legal liability.

5) The concept of damaging the European Communities' financial interests is likely to cover evasion of VAT or fraud relating to refunds provided for under the CAP, use of the structural funds or any of the many subsidies handed out by the EU.

6) This type of fraud is also the province of specific institutions (fiscal monitoring by the states and specialist EU bodies) [1].

7) Article 280 of the Amsterdam Treaty offers a legal basis for repressing fraud that jeopardises the financial interests of the European Union. It allows the Council, following a proposal from the Commission, to 'adopt the necessary measures ... with a view to affording effective and equivalent protection in the Member States'.

— Article 2a

1) The ESC doubts the advisability of excluding art dealers and auctioneers from the list. The goods dealt in by these middlemen may represent considerable sums, often paid in cash and without any real check on the identity of the buyer. It is virtually certain that auctions in particular are used as a discreet and easy way to launder money.

Therefore, clients should be identified when cash transactions exceed 15 000 euros.

2) The inclusion of accountants in paragraph (3) of the list is too wide-ranging, since it could concern accountants working as employees of a firm, including a bank. It would be more justifiable to adopt the term 'auditor'.

— Article 3(2), second paragraph

1) The second paragraph of Article 3(2) refers to an annex when defining the exact procedures for identifying clients in non-face-to-face financial operations.

2) Some of the obligations set out in this annex seem cumbersome or difficult to fulfil in practice, such as:

— the obligation to carry out the first payment of the operation through an account opened in the customer's name with a credit institution located in the European Union or in the European Economic Area (point v) b) or in a country covered by the directive;

[1] See the Commission's 1998-1999 work programme on the fight against fraud COM(1998) 278 final and the ESC opinion (R/CES 748/99 rev. 2) currently being prepared on the same subject.

— the various checks to be carried out when the counterpart is a credit institution located outside the European Union and the European Economic Area (point vi) b).

3) More generally, the Commission intervenes directly in the actual organisation of monitoring procedures by financial institutions, which is unnecessary and unjustified interference. Generally speaking, the text of the draft directive and its annex does not set out clearly the means to be used for identifying transactions carried out on the Internet.

— Article 7

1) The obligation to give notice of suspect transactions is the very basis of the draft directive. It should refer to objective criteria that give guidance on the range of transactions which give rise to reporting obligations although, because of the nature of the suspicious activities, this cannot be definitive.

— Article 12(2)

1) In the first sentence in this paragraph delete the words 'damaging or likely to damage the European Communities' financial interests' (see remarks concerning paragraphs 4 to 6 of the comments on Article 1).

2) It seems to follow from the new definition of a 'credit institution' (Article 1(A)) and from Recital 8 that a suspicious transaction of money laundering has only to be reported in the country in which the reporting office (head office, dependent branch or subsidiary of a credit institution) is situated. The ESC welcomes this rule, but recommends it be clarified in the core of the directive by adding a paragraph in Article 6 to lift any ambiguity.

12. **Conclusions**

12.1. Available information from the FATF in particular, but also the banking sector, shows that the 1991 Directive has achieved its objectives overall as regards neutralising the use of financial channels for money laundering purposes.

12.2. The amendments to the 1991 Directive fortunately flesh out the original machinery by bringing into the battle various actors likely to be involved in laundering.

12.3. It is understandable that the successful application of the machinery provided for in the 1991 Directive is pushing the European Parliament, the Council and the Commission to extend the area of repression to include not only non-drugs-related organised crime but also all serious offences.

12.4. As regards the area of declaration, the ESC shares the Commission's view that such an extension may go too far and 'complicate the active involvement and commitment' of the professions concerned. But the area of criminalisation is not the same as the area of declaration.

12.5. There is no definition of a 'serious offence'. Each state is free to draw up its own list. The ESC has noted with interest that the monitoring authorities (FATF, TRACFIN in France) prefer the concept of 'organised crime', which is more precise than that adopted by the Commission.

12.6. There is a real risk that the bodies responsible for preventing and combating laundering, such as TRACFIN, will be swamped — and therefore partially neutralised — by too many reports of suspicions. With experience, and provided financial institutions are given adequate feed-back on the effectiveness of their reports, the number of suspicious actions reported may decline. However, adequate resources must be provided by the appropriate authorities to ensure that follow-up actions are speedy and effective.

12.7. Action limited to the EU would be ineffective and might even lead to distortions of competition that would benefit financial institutions outside the EU, or even jeopardise the free movement of capital that is one of the building-blocks of Europe.

12.8. The ESC regrets that the draft directive — which is basically aimed at beefing up Europe's capacity to fight money laundering — does not devote enough space to necessary international co-operation.

12.9. The aim should be to extend European anti-laundering machinery as much as possible to include countries that are notorious for their involvement in such criminal activity.

12.10. International financial institutions: the United Nations, the IMF, the World Bank, the EIB and the EBRD, should draw up a charter or a code of good conduct with the European Commission including the basic recommendations of the FATF; application of these recommendations would be one of the conditions for granting any financial aid [1].

12.11. Offshore centres — which lie at the heart of the trafficking and are the weak link in any repressive action — that did not abide by the code of good conduct or opposed

[1] On 10 June 1998 the United Nations General Assembly adopted a position and an action plan against laundering that very largely met the European Union's objectives.

the openness of transactions (meaning especially the lifting of banking secrecy) should be cut off from international funds transfer systems such as SWIFT. The preparation of a list of non-co-operative countries by the FATF should enable this procedure to be applied rapidly.

12.12. As the IMF is the only body able to impose such discipline, the ESC recommends that the Council and the Commission contact the IMF with a view to incorporating into its statutes effective machinery for imposing sanctions against countries and financial institutions that do not co-operate in the fight against money laundering.

12.13. The application of sanctions should be entrusted to the international authorities responsible for regulating the financial and banking system: the BIS and the central banks.

12.14. The ESC repeats its wish to be closely involved in following up implementation of the directive.

Brussels, 26 January 2000.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the Opinion of the Economic and Social Committee

(in accordance with Rules 47(3) of the Rules of Procedure)

The following amendments were rejected but received more than 25 % of the votes cast:

Paragraph 11, point 4):

Delete the present wording and insert:

'Paragraph (E) — definition of "criminal activity"

The extension of the definition to include 'fraud, corruption, or any other illegal activity damaging or likely to damage the European Communities' financial interests' is a logical step but needs to recognise that the financial institutions and other agencies making reports may not be able to go further than to identify unusual transactions which raise a prima facie suspicion. It is no part of the work of the financial institutions to act as investigating authorities. Since there is a prospect of a large number of reports, in the early stages at least, a code of practice should be agreed with the financial institutions to refine the focus of such reports. Also, the national authorities should develop a form of feed-back to the financial institutions on the outcome of their reports so that their expertise in assisting the fight against money laundering for criminal purposes can be further developed.'

Result of the vote

For: 30, against: 43, abstentions: 10.

Paragraph 12, point 16:

Add the following point:

'12.16. The Committee notes the keener emphasis in the Council Directive that money laundering is driven by drug trafficking. This fails, in so doing, to recognise that laundering activities from criminal and from terrorist related activities, and from cross border smuggling prompted by differential taxation levels, is for many regions, more impactive on their economies than drug trafficking and these features deserve increased exposure in the Directive.'

Reason

The focus on drug trafficking as the leading evil that drives this element of the black economy creates an impression that the Council document over relies on the emotive abhorrence of the destructive outcomes of drug use, and allows 'ordinary decent criminal' money laundering activities to escape lightly. The inclusion of concern for exploitation of differential taxation will increase post enlargement, when in all probably a majority of Members will be outside Euroland.

Result of the vote

For: 36, against: 49, abstentions: 10.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on coordination of social security systems' [1]

(2000/C 75/11)

On 9 September 1999 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 1999. The rapporteur was Mr Rodríguez García Caro.

At its 369th plenary session (meeting of 27 January 2000), the Economic and Social Committee adopted the following opinion by 78 votes to 5 with 20 abstentions.

1. **Introduction**

1.1. In June 1971, the European Economic Community adopted Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons, and to members of their families moving within the Community.

1.2. At its 59th plenary session of January 1967, the Economic and Social Committee adopted its opinion [2] on the regulation, making a number of comments on the text submitted to it.

1.3. Since they originally came into force, both the regulation in question and Regulation (EEC) No 574/72 fixing the procedure for implementing it have been amended several times to bring them into line with changes in national legislation, bilateral agreements between Member States, and with successive EU enlargements since 1971.

1.4. In 1992 the Edinburgh European Council [3] recognized the need to carry out a general overhaul of legislation in order to simplify the coordination rules.

Point 3.1.6 of the Communication from the Commission 'An Action Plan for free movement of workers' [4], presented in 1997, contains an undertaking to submit a proposal to reform and simplify Regulation (EEC) No 1408/71, as a major and necessary part of the measures required to remove the obstacles to free movement and mobility within the European Union.

1.5. In its opinion of 28 May 1998 on the communication [5], the Committee welcomed the reform of Regulation (EEC) No 1408/71, agreeing to simplified and improved coordination of EU social security systems.

---

(1) OJ C 38, 12.2.1999, p. 11.
(2) OJ C 64, 5.4.1967.
(3) Edinburgh European Council, 11 and 12.12.1992. Presidency Conclusions (SN 456/92).
(4) COM(97) 586 final.
(5) OJ C 235, 27.7.1998, p. 82.

1.6. Similarly, the opinion [1] adopted by the Committee on 9 September 1998, on the social action programme 1998-2000 [2], also agrees with the need to improve social protection systems and adjust them in line with changing labour market conditions, so as to maintain high quality social security in Europe.

2. **Main points of the draft regulation**

2.1. The proposal focuses on the twin aims of simplifying and improving the current regulation.

2.1.1. Simplification is reflected in the substantial reduction in the number of articles.

2.1.2. Improvement entails extension of provisions to groups of citizens who were not explicitly included in the original regulation, such as third country nationals affiliated to a social security system in any Member State and people taking early retirement.

2.2. The principle of equality, by virtue of which citizens covered by the regulation enjoy the same rights and are subject to the same obligations as the nationals of the Member State in which they reside and/or work, is a pivotal factor in coordinating social security systems.

This principle is based on three basic elements: assimilation of the facts, aggregation of periods, and retention of rights, regardless of the citizen's place of residence.

As the proposal quite clearly argues in its explanatory memorandum, without such coordination, free movement could remain a dead letter, since people would be unlikely to exercise this right if it meant losing social security entitlements already acquired in another Member State.

2.3. The text contains six titles. The first and third titles are of particular importance, concerning respectively the general and specific provisions affecting the various benefits. The second title determines the legislation to which individuals are subject. The fourth concerns the Administrative Commission. The fifth contains miscellaneous provisions, and the sixth contains the transitional and final provisions of the regulation.

3. **General comments**

3.1. The Committee broadly approves the text of the proposal, regardless of any general and specific comments which it may propose to introduce into the text of the draft regulation.

Although the proposal's Explanatory Memorandum refers to reform and simplification of Regulation (EEC) No 1408/71, its scope is in fact greater, since it introduces important amendments to the way certain matters are regulated compared to the current rules.

3.2. The Committee welcomes the continuing progress in consolidating the equality of EU citizens' rights.

3.3. The inclusion of new groups who may be eligible for the rights set out in the regulation strengthens and increases the perception that progress is being made towards a citizens' Europe.

It is essential that EU citizens are made to understand that a Europe without borders is of benefit to the free movement not only of capital and goods, but also of people.

3.4. The ongoing aim of improving the coordination of social security systems in the EU has been confirmed by the range of proposals for reform of Regulation (EEC) No 1408/71 submitted by the Commission. In practice, some of these proposals coincide with the comprehensive overhaul of the text.

The Committee voices its satisfaction at the EU institutions' continuing awareness of the social factor.

3.5. While improving the coordination of social security systems is unarguably a major step forward, the individual features of the national laws of each Member State should however be respected.

3.6. Obstacles which may hamper free movement can also affect citizens' right to work. The Committee considers that the proposal will definitely help to remove obstacles to cross-border movement of EU citizens, although much remains to be done.

3.7. In view of the complexity and importance of the draft regulation; the working methods adopted by the Council and Parliament; and the likely changes to the text during the legislative process at the hands of the different Council presidencies, and without prejudice to the following points, the Committee will constantly monitor the progress of the proposal in appropriate ways.

3.8. An improved and simplified regulation must go hand in hand with improved and simplified administrative procedures for those entitled to benefits. Further development of the regulation should include instruments ensuring streamlined, flexible procedures for both workers and businesses.

---

[1] OJ C 407, 28.12.1998, p. 187.
[2] COM(1998) 259 final.

4. **Specific comments**

4.1. *Article 2*

The article determines the matters covered by the draft regulation, listing the types of benefits concerned.

The initial sentence uses the expression 'in particular' in referring to these benefits. This suggests either that such benefits are viewed as the main ones in a social security system, or that the draft regulation applies more particularly to these benefits than to others which are also mentioned in the text but not included in the list.

Given this lack of definition, an open list of benefits may give rise to legal uncertainty and undesirable effects.

4.2. *Articles 6 and 7*

It is stated in Article 6 that 'this Regulation shall replace any social security convention falling under its scope'. In Article 7 'Definitions', the third paragraph of indent (h) then states that the term 'legislation' 'also includes the social security conventions concluded between two or more Member States and one or more States not belonging to the European Union'. This appears in principle to contradict the content of Article 6. Clarification is required here. It would also be better to leave definitions to the final stage in drafting the regulation.

4.3. *Article 8*

4.3.1. The content of the current Article 14(b) of Regulation (EEC) No 1408/71 should be retained in Article 8(3).

4.3.2. The Committee notes that a difficulty exists for persons exercising representative functions vis-à-vis the EU institutions, including those working for Member State socio-economic organisations. It therefore considers that the European Commission should look closely at how it is decided which legislation applies to them.

4.4. *Article 9(1)*

This article lays down specific rules determining the legislation to which an employed person posted to another Member State is subject.

The new text is largely based on existing rules governing the application of social security. It confirms the procedure by which two Member States may grant derogations. On the other hand, it removes the derogation option under Article 14(1)(b) of the present regulation, which authorizes the appropriate authority in the Member State to which the employee has been posted to grant an extension of the period of application of the social security system of the country of origin (for not more than 12 months).

The Committee considers that the current possibility of derogation, contained in Article 14(1)(b) of the present Regulation (EEC) No 1408/71 should be maintained: certain highly-qualified functions in the field of research and development, establishment of new technologies or other strategic services, where it is known from the outset that the posting will last for more than 12 months, raise problems which need to be examined in greater detail by the Commission.

4.5. *Article 10*

This refers to persons pursuing activities as employees in the territory of two or more Member States. Paragraphs 1 and 2 repeat the expression 'substantial', in reference to the activity pursued by the workers.

The legislation applicable to the worker is determined on the basis of this substantial activity.

The term used is ambiguous, and not clearly enough defined to determine the legislation applicable to the worker. The meaning of the term will be clarified when the Court of Justice issues its judgement on the Fitzwilliam case, which is presently at the deliberation stage.

The legal certainty of the persons covered by the conditions described in the article must be adequately ensured. The Commission should therefore be urged to define clearly what is meant by 'substantial' activity, in terms of precise figures, leaving no room for arbitrary or subjective application of the rules and taking the expected judgement of the EC Court of Justice on this matter, when it comes, into account.

4.6. *Article 18*

At the end of this article, the phrase 'cannot be given such treatment within the necessary time' perpetuates the ambiguity of the present Article 22(1)(c). The following should therefore be added: 'provided that this assessment is made on the basis of medical criteria'.

In its Kohll [1] and Decker [2] judgments, the Court of Justice of the European Communities indicates that without prior agreement, reimbursement of medical costs incurred in a Member State is currently ensured in line with the rates of the Member State of origin.

Clarification from the Court of Justice on the exact scope of the Kohll and Decker judgments must be awaited, particularly in the light of two pending cases (Vanbraeckel and Smits-Peerboms), and the results of the study currently being carried out in this area by the European Commission will also have to be taken into account.

4.7. *Article 20*

Article 20(3) mentions 'other pensioners'. This could give rise to confusion, since it cannot be established whether this refers to recipients of national pensions or persons who are pensioners by virtue of the legislation of their country of residence (all).

In addition to this reading of the article, it could be concluded that a pensioner moving elsewhere would be subject to double taxation. The Committee calls upon the Commission to clarify the article.

4.8. *Article 26*

Article 26(1) refers to 'full reimbursement'. The paragraph of the Explanatory Memorandum commenting on this article says benefits are 'fully refunded' and goes on to add that 'such reimbursement will be on the basis of actual expenditure'. Actual expenditure should be mentioned where it can be determined: otherwise, reimbursement should be on the basis of average costs.

4.9. *Article 33*

Article 33(3) should refer to 'benefits of the appropriate scheme' rather than 'benefits of the general scheme or, in default thereof, of the scheme applicable to manual or clerical workers, as the case may be', since the wording as proposed would exclude contributions to other specific schemes, such as those for self-employed workers or civil servants, which may at present be taken into account.

4.10. *Article 43*

The present wording does not provide sufficient guarantees that the amount of the benefit will be the most favourable if the calculation is made by applying the legislation of a single Member State. In the event of sickness resulting from the type of work carried out in more than one Member State, benefits should be guaranteed to be the most favourable for the worker concerned.

4.11. *Article 50(3)*

This paragraph stipulates that the worker must return to the competent Member State if he has not found employment within the six months following the posting, if he wishes to continue receiving unemployment benefit in the competent Member State. The existing text limited this period to three months. The Committee agrees with the extension from three to six months. It believes that a time limit remains justifiable, in the light of the conditions for granting unemployment benefit in many countries and the shortcomings of supervisory mechanisms.

4.12. *Article 55*

The Committee considers the following comments to be necessary:

— This article covers two types of special benefit, one linked to means-testing and the other to diagnosis of a disability.

  Since their characters, origins and circumstances differ, they should have been dealt with in two separate articles under the same heading, allowing for different rules.

— The Committee notes that the Annex referred to in this article is empty of content.

  As a result, it is impossible to be sure of the specific benefits referred to in Article 55.

— In the particular case of benefits for disabled persons, the Committee considers that those corresponding to what Court of Justice case-law describes as 'benefits of mixed type' should not be subject to the residence condition.

4.13. *Title IV*

The Committee endorses the provisions governing the membership and functions of the Administrative Commission for the Coordination of Social Security Systems, as laid down in this title.

---

[1] Case C-158/96.
[2] Case C-120/95.

However, it believes that the title should also cover the membership and powers of the Advisory Committee on freedom of movement and social security for Community workers, in accordance with the Commission's proposal for a decision [1].

The idea of merging the present two committees was endorsed by the ESC in its opinion on the action plan for free movement of workers, in which it stated that support depended on the operating capacity given to the Advisory Committee. For its part, the Commission has submitted a proposal for a European Parliament and Council decision establishing an Advisory Committee merging the existing committees on freedom of movement and social security.

From this point of view, the ESC believes that this new Advisory Committee should be mentioned in the document now under discussion, clearly stating its functions in relation to the coordination of social security systems.

4.14. *Article 59*

This article refers to cooperation between Member States. Article 59(4) highlights EU citizens' right to use their own languages. It stipulates that applications and other documents shall be accepted, even if written in a language other than that of the State to which they are submitted.

The Committee welcomes this token of tolerance and respect for citizens' cultural identity, which highlights the wealth of Europe's linguistic and cultural diversity.

4.15. *Article 62*

The actions and activities which may be funded by the Community include informing citizens. In the Committee's view, the measures referred to in the second paragraph may be judged to be highly selective and to have little impact on public opinion.

Information campaign funding should concentrate on mass media messages, targeting in the first place those recently benefiting from the coordination rules, such as students and public employees.

4.16. In the same way as for Article 55, the Committee notes that Annex II of the draft regulation, referred to in Article 67, is devoid of content concerning the special provisions.

[1] OJ C 344, 12.11.1998.

Brussels, 27 January 2000.

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 amending for the fifth time Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms'

(2000/C 75/12)

On 18 January 2000 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 12 January 2000. The rapporteur was Mr E. Chagas.

At its 369th plenary session (meeting of 26 January 2000), the Economic and Social Committee adopted the following opinion by 62 votes to one with one abstention.

1. **Introduction**

1.1. In Regulation (EC) No 850/98 [1], the Council adopted a number of technical measures to protect juveniles of marine organisms.

1.2. Subsequent to the adoption and publication of the regulation, it was discovered that certain developments meant the text needed to be adjusted.

1.3. The present proposal for a regulation amends the relevant aspects of Regulation (EC) No 850/98.

2. **General comments**

2.1. The ESC approves the proposal.

2.2. The amendments contained in the draft regulation generally supplement the wording and fill the gaps detected in the text of the original regulation, while also aiming to strike a better balance between ideal technical measures and the reality of the fisheries sector.

2.3. The measure set out in Article 1(3) was particularly necessary in the context of national measures for the conservation and management of stocks, given the lack of clarity of the previous text.

2.4. The coordinates indicated for the drafting of a new Article 29 bis must be corrected.

2.5. The proposed restrictions on fishing for sand eels, which only have commercial value when converted into meal, are designed on the basis of scientific advice to preserve the balance of certain populations of marine birds in a small area off England and Scotland, given the impact of industrial fishing in that area.

2.5.1. The Committee suggests that the Commission fund more detailed research into other factors affecting the marine environment and acting to reduce resources still further. Analysis of the impact of industrial fishing for reduction purposes (fish meal) on juvenile populations, the food chain of other species, as well as catches for human consumption, would be particularly welcome.

2.6. The ESC suggests that the Commission consolidate the text of Regulation (EC) No 850/98 as soon as possible, as it has now been amended five times.

[1] OJ L 125, 27.4.1998.

Brussels, 26 January 2000.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Amended proposal for a Council Regulation (EC) on Community Design'

(2000/C 75/13)

On 9 September 1999 the Council decided to consult the Economic and Social Committee, under Article 308 of the Treaty establishing the European Community, 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 14 December 1999. The rapporteur was Mr Lehti.

At its 369th plenary session (meeting of 27 January 2000) the Economic and Social Committee adopted the following opinion by 57 votes to four, with two abstentions.

1. **Introduction**

1.1. A system of Community design law is to be implemented by a Council regulation and a related directive. The regulation would establish a similar type of legal set-up (a Community design right) as that which exists for Community legislation on trade marks, whereby one application would be sufficient for obtaining legal protection for the design of the external form of an object in all Member States. The Office for Harmonisation in the Internal Market (trademarks and designs) based in the Spanish city of Alicante would grant Community design rights.

1.2. The draft regulation would also create an unregistered Community design right, which would be valid for three years after the design was made available to the public within the Community.

1.3. The substantive legal provisions of the draft regulation are consistent with the legal protection provided by Directive 98/71/EC, as this directive harmonises Member States' national legislation on design rights. The directive must be implemented through national legislation by 28 October 2001 at the latest.

1.4. The original draft directive was submitted in 1993. As discussions on the draft directive were still ongoing, work on the draft regulation was postponed in autumn 1995. The Directive was finally adopted on 13 October 1998 as a result of the Conciliation procedure. According to the compromise reached by the Conciliation Committee, Member States must continue to apply their existing regulations on the use of spare parts for the repair of defective or faulty products. The agreement on spare parts is embodied in Articles 14 and 18 of the Directive, as well as the recitals. The Commission submitted the amended proposal for a Council Regulation in June 1999.

During the Conciliation procedure the discussion focused in particular on the free use of spare parts for repair purposes and the protection of their design. In design terms, the problem related mainly to component parts of complex products which may be used to restore the original appearance of the latter. The so-called 'repair' clause should avoid the creation ofcaptive markets in spare parts, in particular in the motor vehicle sector. The Committee notes that this problem also exists in other sectors.

1.5. The Commission undertook to launch a consultation exercise after adoption of the Directive, involving the parties most concerned. The consultation exercise is now underway and a summary of it will be drawn up.

1.6. The draft Regulation excludes, for the time being, the registration of the design of a component part of a complex product, the appearance of which determines the design of the component part (Article 10a). A proposal on the use and protection of spare parts under this draft regulation shall be submitted by the Commission in parallel with the proposal which the Commission shall make to complete the internal market in respect of spare parts within the framework of the Design Directive.

2. **General comments**

2.1. The Committee believes that the design protection Directive already implemented and the complementary Regulation are important measures for the European Community. The absence of uniform design protection legislation has made the registration of designs through separate national systems an expensive and slow process. Small- and medium-sized enterprises in particular have not always succeeded in obtaining sufficiently extensive protection for their products.

2.2. The Committee believes it is important for the directive on the legal protection of designs to be transposed into national legislation by 28 October 2001. The Committee recognises that this will entail reviewing, and possibly even completely revising, existing Member State legislation on design protection. The Directive and the complementary Regulation should harmonise design protection legislation within the Community and make it possible to obtain design protection throughout the Community by means of a single registration procedure.

2.3. The Committee feels that inclusion of the concept of unregistered designs in the Regulation will be effective. It will provide better design protection for products with a short real life span, such as textiles and toys. The concept and content of unregistered designs should, however, be clarified. In addition, the restriction regarding bad faith in Article 20(2) makes an unregistered design practically worthless, the more so as the right holder has no right to information; it should therefore be deleted entirely.

2.4. Progress on the Regulation has taken place according to schedule. The Commission aims to complete work on the Regulation by the end of 2000. Of the Regulation's 128 articles, numbers 1 to 100 have been dealt with so far. The work of the Council working group is still at a very early stage and the wording has not yet been finalized. Agreement on some key articles has still not been reached, partly due to problems of language and interpretation. There are also clearly differing views on design protection for unregistered products. Various comments have been submitted on all of the 100 articles discussed so far. The aim is to complete the first reading by early 2000 and the Commission wants the Regulation to be adopted by the end of 2000.

2.5. The Committee considers that the current wording of Article 10 on components is consistent with the intention of the Directive. The proposal would maintain in force Member States' existing legal provisions relating to the protection of spare parts. Changes can only be introduced to these provisions if the purpose is to liberalise the markets for such parts. Furthermore, the matter will be reviewed three years after implementation of the Directive. At this time the Commission will propose any necessary amendments to both the Directive and the Regulation, as this matter was 'frozen' during discussions on the Directive. However the Commission intends to make changes to the wording without changing the content of the article itself. The Commission will also submit an opinion on incorporating spare parts into the design protection Regulation.

2.6. The Committee considers that the wording of the draft regulation will require further honing to achieve conceptual clarity. The current proposal leaves too much scope for interpretation.

2.7. The legal basis of the draft Regulation has been changed, as the President of the Legal Affairs and Citizen's Rights Committee of the European Parliament invited the Commission to withdraw the draft Regulation and to put forward a new proposal, based on Article 308 of the Treaty. Under this Article the Regulation will be adopted unanimously in the Council after consultation of the Parliament.

3. **Specific comments**

3.1. The Committee feels it is necessary to bring certain points to the attention of the Commission in order to improve the objectives and effectiveness of this important regulation on the protection of designs.

3.2. Article 1.2a: The concept of unregistered designs requires further clarification especially with regard to the duration of protection. The problem relates to an important matter of principle, namely that the entire concept must be drafted in such a way that there is no scope for interpretation. This also applies to Article 8.

3.3. Article 4.3: The wording of the definition of 'normal use' in this clause does not follow the wording of the Designs Directive. In fact, it reverts substantially to the wording of Article 3.4 of the Council's Common Position of 17 June 1997, which was rejected by Parliament on its second reading and not reinstated during conciliation. It is important that the wording of the Directive is followed precisely in the Regulation.

3.4. Article 15: It is not sufficiently clear from the text how relationships between designers are to be determined.

3.5. Article 20.2: Although the Committee understands and supports the intention behind this clause, it finds the wording somewhat ambiguous. The Committee understands that the intention is to safeguard persons who unintentionally or innocently use a design or acquire a product which incorporates a design for which unregistered design protection is claimed. The Committee queries, however, whether the words 'the use contested results from copying in bad faith the design protected' is wide enough to cover every circumstance. Further consideration of the wording of this clause is required.

3.6. Article 27.5: The Community Design is intended to be based upon the unitary principle: i.e., it is a Community right. Article 27.5 completely undermines that principle by allowing extensive and substantial derogations to apply in individual Member States. In the Committee's opinion, with the possible exception of designs which are contrary to public policy or morality (Article 10), no derogations from the unitary principle should be allowed.

3.7. Article 39: It is vital that applications for registration of designs of component parts should identify the complex product to which they relate with sufficient detail to enable third parties to recognise them for what they are with reasonable certainty. Applicants for registration of a design of a component part of a complex product should be required to

submit a drawing or illustration of the complex product to enable examination to take place under Article 48 (see below under Article 49a).

3.8. Article 49a: It is essential that examination under Article 48 should include at least some examination for compliance with the requirements for protection, otherwise there is a very real risk of innocent third parties being 'litigated to death' by the abusive application of the system.

3.9. Article 67: The principles relating to the examination of facts need to be specified more clearly.

Brussels, 27 January 2000.

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 Enhancing Tourism's Potential for Employment'

(2000/C 75/14)

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 communication.

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 14 December 1999. The rapporteur was Mr Malosse.

At its 369th plenary session (meeting of 26 January 2000), the Economic and Social Committee adopted the following opinion by 71 votes to two, with one abstention.

1. **The background to the Commission's communication**

1.1. The European Commission has forwarded to the Economic and Social Committee, along with the Council, the European Parliament and the Committee of the Regions, a Communication on the follow-up to the Conclusions and Recommendations of the High Level Group on Tourism and Employment, published in October 1998. Consequently, the Committee opinion will also examine the work of the High Level Group (HLG).

1.2. The Communication is the most recent of the policy documents aiming to relaunch a European tourism policy, which has been 'grounded' since the November 1997 European Conference on Tourism, organised by the Luxembourg presidency. Since 1996, a proposal for a multi-year programme for European tourism, known as 'Philoxenia' [1], has been so successfully blocked by the Council that it would no longer appear to be on the cards (although the Commission does still include it in its strategy, when it mentions the Austrian presidency's much watered-down compromise proposal). The Communication could, thus, provide the 'new approach' called for by the Committee in the own-initiative opinion it adopted at the plenary session of 24 and 25 March 1999 [2].

1.3. The Communication draws deeply from the conclusions of the High Level Group (HLG). Its primary point is the need for up-to-date, Europe-wide statistics on tourism activities, skills and the most notable current schemes. It sensibly makes a link between tourism and the National Employment Action Plans, European employment policy instruments set up following the Luxembourg jobs summit in 1997. Lastly, the Communication singles out a number of the proposals made in the HLG report, highlighting potential synergies of structural, research and development, education and training, and business policy instruments. The Communication should devote more space to some of the HLG's

[1] COM(96) 168 final — OJ C 222, 31.7.1996, p. 9; OJ C 30, 30.1.1997, p. 103.

[2] OJ C 138, 18.5.1999, p. 4.

suggestions, such as establishment of an observatory network. In its conclusions, the Communication rightly stresses the need to adopt a strategy and decide on priorities, but does not suggest an order of priorities. The present opinion is designed to make proposals, explore new avenues and suggest a list of priorities. To that end, the Economic and Social Committee has analysed the HLG report and the Commission communication alongside other factors, building on previous Committee opinions and new questions for consideration, raised largely by its contacts in the field.

2. **The Committee's stance and thoughts on the issue of tourism and employment**

2.1. The Committee has adopted several opinions on tourism, including an own-initiative opinion on Tourism and Regional Development [1], an opinion on the Community action plan for tourism [2], the opinion on the Philoxenia programme [3], and, more recently, the 1999 own-initiative opinion mentioned above. The Committee's view is summed up in the following sentence taken from the latter:

> 'Europe can no longer refuse to give the recognition — politically and in terms of policy-making — that the fastest-growing sector of its economy deserves because of its economic and social position.'

2.2. The Committee has already ratified and endorsed the conclusions and recommendations of the High Level Group in its own-initiative opinion of March 1999. The Committee approves in principle the 'new approach', which turns its back on the 'clientelistic' practices of the past and replaces them with a more dynamic vision based on tourism's contribution to job creation. While, for several reasons (difficulty in providing an accurate definition of the sector's boundaries; seasonal and undeclared work, etc.), the figures given in the Communication and the High Level Group's Report (9 million jobs to date and between 2.2 million and 3 million further jobs over the next ten years) are doubtless only estimates, they do show that the sector has a promising future, on a par with the new communication technologies.

2.3. Whilst the strategic concerns of the sector are clearly established, the role and status of Community policies to promote job-creation remain to be defined. Point 3.2 of the Committee's March 1999 own-initiative opinion kicks off the debate as follows:

> 'a sector which is predominantly engaged in cross-border activity deserves a European policy with a stimulating, innovative and pro-active approach to sustainable business development, preferably within a consumer protection framework, and in harmony with other requirements, such as those of the environment, for example.'

Our work will be based on a joint, comparative analysis of the Communication and the High Level Group's Report.

2.4. *Implementation of an integrated job-creation strategy*

2.4.1. There are several reasons why the tourism industry is an ideal 'test-bed' for integrated job-creation strategies:

— its importance to the economy and its growth potential;

— the impact of tourism on several other sectors (transport, commerce, etc.) and the fact that it depends on these sectors;

— the various sections of the population employed by the tourism industry, particularly the more vulnerable groups such as young people, women, and the unskilled;

— the availability of unskilled, temporary and seasonal work;

— tourism's contribution to regional development: rural areas attempting to diversify, declining industrial areas looking for alternatives, urban areas aiming to raise the profile of their cultural heritage;

— the way services adapt to changes in tourism demands, thus requiring a link-up with training or even research facilities.

2.4.2. Tourism experts quite rightly emphasise the fact that their industry is currently one of the few which are able to reconcile productivity and job creation. Indeed, the customer's expectations as regards better quality and greater variety of the services are a source of job creation.

2.5. *New skills for new professions*

2.5.1. In the tourism industry, customer needs change with population changes. Moreover, tourists are increasingly choosy about standards and activities, and they expect cultural and entertainment facilities to be updated. This exacerbates a number of problems relating to skills and training development.

---

[1] OJ C 332, 31.12.1990, p. 157.
[2] OJ C 19, 21.1.1998, p. 116.
[3] OJ C 30, 30.1.1997, p. 103.

2.5.2. The problem is that training always lags behind labour market developments. It would therefore be better to prepare for them by acting on documented consumer/user needs, and by encouraging vocational and continuous training with a view to enhancing skills and qualifications. The need to pre-guess these trends opens up the prospect of lasting employment, and is in tune with the industry's current development phase which calls for a more professional, listening approach.

2.6. *Back-up for changing tourism requirements*

2.6.1. Initially, tourism was mainly the prerogative of well-off people in rich countries. Gradually, tourism spread to other sections of the population, thanks to economic growth, labour laws providing more time for holidays, and to the wider availability of transport. This was accompanied by the appearance of and the need to invest in new job-creating products to address new aspirations and cultural, sporting and countryside activities: theme parks, new air- and water sports, new slants on walking holidays, excursions, etc.

2.6.2. In this context, for example, the cultural sector provides a well of potential initiatives and jobs. A look at the figures for visits to monuments, museums, festivals and artistic events shows that very few of these are adequately exploited from the point of view of tourism. In several cases, a more professional approach would increase visitor numbers and create jobs.

2.6.3. Community action programmes can be harnessed by making this a Europe-wide search for new products, and by raising the profile of little-known heritage sites and initiatives. Inter-regional transfers of experience on concrete initiatives and strategies, and partnerships between companies from different countries should therefore be promoted. Useful examples are the Interreg programme and the Joint European Venture (JEV) which provide technical and financial support for joint business start-up projects — innovative job-creating initiatives — shared by a number of Member States.

2.7. *Working time — annualisation, flexibility and remuneration*

2.7.1. Employment in the tourism industry is seasonal and insecure. As workers change jobs frequently, they have virtually no ties with any one company. Moreover, except for a fewhigh-flying posts, wages are also considerably below the average for other sectors.

2.7.2. If it is to be managed successfully, the seasonal nature of the work needs to be taken into account. All national legislation provides for rest days, and the requirements of seasonal work must be accepted, integrated and organised accordingly.

2.7.3. In many regions, targeted action has already been successful in extending the tourist season. Coordinating the staggering of holiday periods across Europe could promote this development further. Extending the tourist season in this way, reorganising working time, and expanding demand (new custom from non-European and eastern European tourists, introducing new social classes to tourism and developing new forms of tourism) will benefit employment.

2.7.3.1. However, any sustainable benefit to employment is conditional on timely, forward-looking staff planning by companies and on jobs being offered at rates of pay and working conditions consonant with the labour market.

2.7.4. Moreover, if we consider the general trend towards shorter working hours, the new time schedules must take account of tourism's specific needs. The tourism industry is heavily affected by the need to offer its services in spurts, out of synch with other economic sectors. This has a direct impact in terms of very distinctive working conditions. This problem must be addressed in depth, as the future of the whole sector largely depends on it. The quality of the services provided depends on staff availability and motivation. The social dialogue will thus have to reconcile the industry's special requirements with concerns such as quality of life, quality of service and the potential for job creation through a reduction in working time.

2.7.5. Experience shows that saving money by cutting labour costs is incompatible with quality of service in this sector, and runs counter to the basic interests of the tourism industry and tourism businesses. Employers and employees thus share a long-term common interest, and this should make it possible to remove the often negative image young people have of the sector. The future of European tourism will also depend on how far it is able to attract the younger generations by offering good working conditions and good career prospects. Any initiative to raise the profile of the industry must therefore stress the need to advance the interests of the men and women it employs and provide them with training throughout their careers. Some hotel chains have built their success on these principles: attractive salary, career prospects and career-long continuous training.

2.7.6. In order to address these issues, there must be ongoing talks between trades unions and trade organisations which are truly representative of the industry, particularly SMEs. The cross-border nature of tourism makes it vital that this dialogue should also be pursued at European level. Moreover, compiling a list of European best practice would provide added value.

3. **Comments on the Commission Communication**

3.1. *Tourism information in Europe*

3.1.1. Although recent Commission progress on statistical methodology for tourism makes it possible to get an overview of the sector ('satellite' accounts), and despite the fact that Eurostat provides common instruments and that the data are relatively harmonised, tourism is per se difficult to assess. It is now impossible to quantify the number of EU visitors in a Member State: people travel more frequently, and it is difficult to say whether it is a holiday, business trip, or whether they are travelling for family reasons, etc. There are more second homes, trips to visit friends are up, and there is also travel connected with seasonal employment and undeclared work, etc.

3.1.2. The only way to obtain reliable, exhaustive data on the impact of tourism activities and make forecasts will be to establish methods for definitions and surveys, which cover a sufficiently broad sample, comply with EU standards, and reflect the reality and needs of the public and private sectors.

3.1.3. In order to develop the analysis and zero in on current trends in the industry, the Committee suggests taking on board the HLG's proposal for an 'action relay and observation network' of existing regional and local bodies (tourist boards, agencies, chambers of commerce, etc.) who are fully conversant with their markets and are the only ones who can understand what can be widely differing situations. These relay centres would also act as 'Tourism Advice Centres' providing the tourism industry with information, for instance as regards quality standards and research into customer expectations. It will be the role of the European Commission — in cooperation with the national and local authorities — to provide 'seals of quality' for these local organisations and training for their managers, and to ensure they operate as part of a properly structured European network (along the lines of the Euro-Info Centres).

3.1.4. The EU's role — thanks to an exchange platform — will be to collect information at European and international level (the experiment could be extended to Mediterranean partner countries and to Central and Eastern Europe) with a view to developing information tools and framing performance indicators. Developing such a platform by building on a network of local observatories attached to tried-and-tested local systems, will make it possible to launch inter-regional cooperation projects and implement effective benchmarking schemes.

3.2. *Developing businesses*

3.2.1. The European tourism industry is mainly composed of small and medium-sized operators. They often find it difficult to maintain a competitive edge (access to 'tourism providers', reputation, cutting edge advertising techniques, quality, consumer relations, etc.). Another feature of the industry is the presence of a whole host of small ancillary operators who rely heavily on tourism: craft industry workers, trades people and the self-employed, etc.

3.2.2. This situation, which differs from the United States (highly concentrated activity) and from emerging-market countries where foreign companies or public monopolies dominate, is a source of strength for European tourism, with its diversity, the quality and originality of its facilities, and the fact that tourism service providers are in touch with their cultural environment, etc.).

3.2.3. Rather than resigning ourselves to the gradual disappearance of this European diversity, the EU should turn it into a trump card. We know that this great diversity of players provides the best guarantee of maintaining employment levels and of creating local jobs in tourist areas which are often regions where jobs are scarce (rural areas, less-developed regions, island or land-locked regions, etc.).

3.2.4. Some regions of the EU have seen the downside of mass tourism: destruction of the natural environment, domination of the market by tour operators, watering down of local culture. In short, these regions become mere 'tourist destinations' and gradually lose their real assets, i.e. their traditional hospitality, the natural environment, their traditions and culture. At the drop of a hat, these 'destinations' can be dumped by the tour operators in favour of more distant, often non-European countries, thus compounding cultural devastation with economic stagnation. This shows the danger of staking all on tourism and of an imbalance between local business and the big tour operators which tend increasingly towards consolidation and often behave as if they were part of an oligopoly, setting out their terms on a take-it-or-leave-it basis.

3.2.5. Partnerships between small and medium-sized enterprises in the industry would seem to provide an excellent way of avoiding excessive domination by the tour operators, and of getting round the size problem. This is why the European Union should call on national and regional authorities to promote groupings and associations. At the cross-border level, the JEV programme — which provides excellent support for joint ventures between EU SMEs — should be the subject of specific promotion campaigns for the tourism industry. Moreover, it is vital that Community competition policy should look into relations between tour operators and the local tourism industry and try to redress the balance.

3.2.6. Similarly, all Community actions to improve the climate for SMEs will have a positive impact on the sector: reduced VAT rate on labour, cutting red tape, quicker payment procedures, stricter implementation of competition rules against monopolies or illegal agreements, a level playing field for all the industry's players, including the cooperative and non-profit sector. In this respect, the Committee calls for a bolder approach from the Council, which recently refused to grant the tourism industry the option to apply a reduced VAT rate, despite the fact that it is undoubtedly one of the most labour-intensive industries.

3.3. *Public-private partnership*

3.3.1. The Committee believes that the authorities — whether at local, national or Community level — have a vital role to play in devising and supporting tourism strategies. In the current climate, however, input from the private sector could help speed up the process.

3.3.2. Growth in the tourism industry often depends — for instance in the less-prosperous regions of the EU — on the availability of high-grade infrastructures such as water-treatment plant, for instance in coastal areas; coastal works; winter sports facilities; improvements to spa, sport, marina and airport facilities, etc. The authorities are often unable to cope with investment on this scale. The European Union can and must pitch in, using the structural policies for less-prosperous regions. It could also encourage, within the framework of its public procurement policy, public-private funding methods and franchises which allow private capital to access the projects. Community encouragement for this modern way of funding public interest projects would provide a useful contribution to boosting the potential of the sector.

3.4. *Tourism and research & development*

3.4.1. The Communication rightly stresses the potential benefits of innovation and new technologies. In this respect, the contribution of the 5th RTD framework programme should be emphasised, particularly its horizontal priorities ('innovation and SME participation') and such key actions as 'integrated development of rural and coastal areas' and 'the city of the future'. Unfortunately, these actions are beyond the scope of the vast majority of tourism industry operators. The Committee would stress the need for flexible support procedures for SMEs, which have untapped innovation potential, and for targeted technology dissemination projects, implemented by industry organisations. In order to ensure the greatest possible degree of transparency and facilitate access — still unavailable to 98 % of operators — to the 5th RTD framework programme, the Committee calls for the creation of a user-friendly 'information counter' on the web, including help points (Euro Info Centres and Advice Centres).

3.4.2. But, since European RTD does not stop with the 5th RTD framework programme (which accounts for scarcely 4 % of research in Europe), the Committee believes that joint projects and actions must also be explored, by harnessing the shared cost facilities of the COST programme, and Treaty Articles 168 and 169 (ex Article 130k and l), on common actions governed by Eureka programme procedures.

3.5. *The role of social dialogue in employment and training/skills policies*

3.5.1. The Committee — like the High Level Group — would stress here the importance of employment and training/skills policies in promoting and providing stability for the sector. Social dialogue is crucial here, and — in view of the cross-border nature of the industry — it is particularly important that it should be European in scope.

3.5.2. We should also drive home the fact that Community action is particularly justified on the social and human level. The fear of social dumping between regions can lead companies to neglect investment in human resources (training, qualifications, skills development, staff motivation) or look for cheaper or less-skilled labour. Social dialogue on the main challenges facing the sector (training, working time, etc.), conducted within the various main tourism zones (e.g. Mediterranean islands, mountain ranges), would provide an efficient way of identifying best practice and improving staff motivation and the quality of the services provided.

3.5.3. Experience of dialogue in the hotel and catering segment of the industry shows that new progress is possible, in particular on low-skill jobs and working time. Indeed, the employment guidelines suggest that annualisation is an appropriate response to seasonal work.

3.5.4. The Committee cannot hide its concern regarding the representativeness of the tourism authorities and the weak social dialogue in some Member States. It would seem essential to build on the best practice of some Member States to boost the role of the social partners and make them more representative, particularly of small and medium-sized enterprises and seasonal workers. This greater attention to the real situation of the industry must also be supported and echoed at European level.

3.5.5. The Committee would hope that the Member States' national employment plans will detail initiatives — financial included — which have been undertaken to boost employment in the field of tourism, and include the factors which have contributed to progress on social dialogue in the industry.

3.5.6. Social partner discussions must also focus on training and mobility management, in order to improve skills levels and ensure seasonal workers can find additional employment elsewhere.

3.5.7. As regards recognition of qualifications and access to the profession, the Committee would stress the need for full implementation of the principle of freedom of establishment, and for equivalence or mutual recognition of qualifications, in accordance with the studies undertaken within the framework of the ESC Single Market Observatory [1]. For some professions, such as estate agents, coach firms and guides, there are still a number of obstacles to the freedom to provide services or to freedom of establishment. These are either de facto or legal obstacles. Whilst it is vital to provide consumer protection, it is also legitimate to guarantee freedom of movement and of establishment.

3.5.8. With respect to training, the Committee regrets the fact that the Communication refers solely to financing by the European Structural Funds. Rather than funding, what is needed is a Europe-wide debate on vocational training for the tourism industry. The Committee would therefore suggest a ministerial conference for the year 2000, where both the Tourism and Education Councils could discuss the matter. In anticipation of the proposals which are likely to come out of the conference, the Committee might already suggest a major cross-border programme of placements and apprenticeships using regional and national funding, contributions from the businesses involved and, if necessary, additional Community funding. Moreover, the conference could launch specific programmes under Leonardo II to draw up blueprints for European programmes, twinning arrangements and schools networks. Joint studies should be conducted in the major cross-border tourism zones, to determine common skill requirements, even for company directors, and to plan the redeployment of existing training tools or the establishment of training courses.

3.5.9. In addition to services (hotel management, provision of accommodation, etc.), strategies for developing a relevant skills qualifications base should be aimed at training 'developers' to design packages combining several products: transport, leisure activities, gastronomy, culture, etc. This will involve building up across-the-board tourism skills. Sandwich courses and apprenticeships, the use of new communication technologies by service providers and developers, specific training for quality services, and language training are all features of tourism. The objective will be to provide in-depth, university-level training for 'developers' in a wide range of skills, to enable them to adapt to various types of activity.

4. **Other possible approaches to a 'New European Tourism Strategy'**

4.1. *Growth crisis*

4.1.1. The ESC Opinion on Tourism and Regional Development adopted on 20 September 1990 [2] provided new food for thought in areas such as social tourism, cultural tourism, mountain- and agri-tourism. These issues are still relevant. The opinion highlighted the crisis in the tourism industry, which had become a victim of its own success (irregular supply side growth, damage to the environment, etc.). Ten years on, the Committee's analysis applies equally well: there is indeed a 'growth crisis'.

4.1.2. Furthermore, despite promising figures, Europe's share of world tourism is steadily shrinking. While the number of tourists in the world is set to double in the next 20 years, Europe is likely to attract only 45-46 % of international tourism, in contrast to the current 60 %. Business travel and visits to over-crowded internationally-renowned sites (Rome, Athens, Paris, etc.) are still doing extremely well. Traditional European holiday destinations, however, are often in decline for a variety of reasons: seasonal over-population, a fall in the quality of services, an increasing sense of insecurity, deterioration of the environment (quality of water, buildings, etc.).

[1] ESC opinion CES 789/98, OJ C 235, 27.7.1998, p. 10.

[2] OJ C 332, 31.12.1990, p. 157.

4.1.3. Tourism is an economically viable activity which deserves to be encouraged; it must also be properly managed. Whichever way one looks at it, tourism is not a neutral activity in either cultural or sociological terms. It brings together different people and communities. It impacts on economic practice and working conditions. It can upset the natural and urban environment: encroachment upon heritage sites, unsightly building projects, waste, destruction of fauna and flora. Seasonal mass tourism also forces the authorities to build extremely expensive infrastructure which is exploited for only a few months of the year. This makes it difficult to get returns on the investment, and the authorities concerned can end up in debt. Crime can also be an involuntary side-effect of tourism, with drug-related crime and prostitution amongst the offences.

4.1.4. Because of these potential hazards, local people react — sometimes violently — against tourism. Unbridled mass tourism can lead to frustration, with people feeling they have been robbed of their land, their traditions, culture and values: 'it's all give and no take'. This shows there is a desire to manage tourism successfully, and to square it properly with the natural environment and local culture. This type of tourism already exists in several EU regions, which have so far managed to escape mass tourism. In this context, the Committee would highlight the role of civil society organisations in the tourist regions. It should be possible for them to be involved and consulted — alongside industry experts and politicians — on a local sustainable development strategy for tourism.

4.2. *Tourism and the single market*

4.2.1. A single market for tourism is far from complete. The euro will make the shortcomings and discrepancies even more obvious in a large number of areas. These were identified in the 1990 opinion [1], and include:

— standard classification of tourist accommodation — currently a real headache for European and other tourists;

— interoperability of reservation systems;

— recognition of qualifications and freedom of establishment;

— security of payment systems, contract validity, payment deadlines, litigation procedures, etc.;

— organising seasonal tourist flows, as a purely national approach is meaningless nowadays.

4.2.2. To these should now be added regulation of distance selling, which is growing thanks to the Internet.

4.3. *Tourism and culture*

4.3.1. Europe's cultural heritage has enormous potential and is a major trump card for the growth of provincial and city tourism. Lesser-known sites should be inventoried and integrated into an overall network. Cultural tourism requires marketing support. Investment must be channelled into the promotion and marketing of places of genuine cultural interest, in order to boost their visitor numbers and increase their financial viability and capacity to develop.

4.3.2. In terms of employment, this should spawn new professions where tourism meets culture: intermediaries, development project staff, research assistants, regional language promoters, information and promotion tool designers, multilingual staff, etc. This combination of tourism- and culture-based skills and resources is crucial for the growth of such tourism.

4.3.3. Furthermore, cultural tourism provides an indispensable channel for furthering mutual understanding between peoples. Cultural tourism should not be concerned only with promoting our cultural heritage, but also with living culture and contemporary creativity. A new European strategy should include a joint effort to improve cross-border cultural sites; joint action to promote Europe's cultural wealth to third country tourists; and use of the Structural Funds to raise the profile of our heritage and contemporary creativity.

4.4. *Tourism and European citizenship*

4.4.1. The Committee is convinced that tourism plays a part in European integration. The establishment of the Schengen and euro areas is — in principle — a very positive and very practical step. This approach should be explored further, particularly the impact on employment and the potential for job mobility within the sector. Facilities for third country tourists should also be considered in this light.

4.5. *Tourism, cohesion and sustainable development*

4.5.1. It is widely accepted that developing tourism in disadvantaged regions helps strengthen cohesion. However, a certain number of drawbacks (damage to the environment, unregulated urbanisation, lack of significant impact on the local economy, opposition from local people) do point to the need for prudence.

[1] OJ C 332, 31.12.1990, p. 157.

4.5.2. The strong pressure exerted by tourist developments on the immediate social and ecological environment is often at the root of negative phenomena that rebound on efforts to promote tourism. New 'sustainable' approaches to planning and developing tourism are needed. The expansion of tourism often entails the creation of specific types of infrastructure. Facilities that are only used for a short period of the year and that spoil the landscape are not uncommon.

4.5.3. Current tourism systems are often based on the concentration of a large number of people in small places for very short stretches of time. The result is a series of problems with waste management, water supply, energy and transport and how to run it.

4.5.4. Environmental management is only one aspect of a sustainable development approach, which also implies focused forward planning and a global perspective.

4.5.5. In this context, it is time for a fresh approach to tourism and cohesion, based on sustainable development, giving priority to the preservation of natural assets and leaning on the concepts of sustainable tourism and eco-tourism.

4.5.6. It is quite clear that when it comes to a European strategy to provide a real boost for the job-creating potential of tourism, the regions often need practical help more than money. Benchmarking at regional level would seem to fall within the remit of the EU.

4.6. *Social tourism*

4.6.1. Making tourism available to as many people as possible is a major factor in job-creation. Employment guidelines should therefore emphasise the snowball effect of various national measures for social tourism, and encourage them as part of the European single market (networks of tourist villages, initiatives for young people, schemes for older people, retirees, etc.).

4.6.2. Measures must be taken to increase access to holidays for all, while taking care to prevent the formation of ghettos, of places catering only for the disadvantaged.

4.6.3. In the interests of social cohesion, ways must be found to avoid segregating the social classes. Tourism must further an inclusive society.

4.6.4. Opening up tourism to all social classes should not be seen as inciting 'mass tourism' and all the drawbacks that go with it: poor service, lack of cultural content, etc. On the contrary, tourism should be seen as a source of enrichment and discovery. Furthermore, experience shows that lower-income consumers are attracted to types of holiday which invite contact with different peoples and cultures: B&B, gîtes, walking and cultural holidays.

4.7. *Tourism and education*

4.7.1. A Europe-wide scheme to stagger school holidays is bound to improve the quality of family tourism, and reduce pressure (environmental, economic, etc.) on the busiest resorts and tourist areas.

4.7.2. Without wishing to under-estimate the complexity of the coordination exercise (traditions, climate, cultural context, etc.), the Committee calls on the relevant European Councils (Education, Industry, Tourism) to look again at this issue.

4.8. *Tourism and enlargement*

4.8.1. EU enlargement will increase tourism's potential. First of all, customers from eastern Europe will come to discover our countries. Added to this is the often underestimated tourist attraction of those countries. Together, these two factors should provide a tonic for the tourism industry. It is therefore vital to involve central and eastern Europe in a European tourism initiative, for instance by setting up integrated initiatives for specific areas (Baltic Sea, Carpathian mountains, Oder river basin, etc.).

4.8.2. All things being equal, the same reasoning could apply to the countries around the Mediterranean, as part of a tourism policy differentiated according to major attraction zones.

5. **Recommendations: method and principles for European action**

5.1. Whereas:

5.1.1. the European venture has had a positive impact on the growth of the tourism industry (freedom of movement for persons, 'Schengen area', single currency, etc.);

5.1.2. tourism has made a unique contribution to improving the employment situation in Europe, mainly because it is one of the rare sectors which can reconcile productivity and job-creation;

5.1.3. it has been decided to recognise and preserve the local diversity of the European Union — including the enlarged Europe of the future — by emphasising the rich human, cultural and natural heritage;

5.1.4. the hazards of unbridled tourism pose a potential threat to the environment, heritage and cultural diversity, and could lead to a growth crisis for the industry;

5.1.5. it is necessary to raise the profile of unskilled work and make it more secure in order to enhance its appeal;

5.1.6. it is important to have a broad-based policy of quality and variety of the services available;

5.1.7. those areas of the EU which are heavily dependent on tourism are handicapped by infrastructure costs (especially island and remote peripheral regions);

5.1.8. distortions of competition exist, particularly between the local tourism industry and tour operators;

5.1.9. a European approach is warranted both on account of the self-evidently cross-border nature of the activity, and because the problems are much the same throughout the EU; an attempt to find common solutions thus seems more than justified on grounds of cost and efficiency;

5.2. The Economic and Social Committee calls on the Council, the European Parliament, the Member States and the Commission to launch an Initiative for a European Tourism Strategy (IETS), to include:

5.2.1. co-funding for pilot projects for exchanges of experience and benchmarking, particularly in areas such as defining local strategies, environmental protection, service quality, social dialogue and training for the new jobs in the industry, by drawing existing action relay and local tourism observation facilities into a structured network;

5.2.2. fast-track access to existing Community instruments (European Structural Funds, enterprise policy, R&D policy, Leonardo Programme, JEV, LIFE programme, etc.) to provide support for the regions which are most heavily dependent on tourism, and encourage innovation and partnership;

5.2.3. effective implementation of competition rules to tourism, in order to combat the distortions, monopolies and oligopolies which make life insecure for hundreds of thousands of the industry's small businesses;

5.2.4. more extensive social dialogue, particularly at European level, in order to improve skills, training and mobility levels, working conditions, working hours and job security;

5.2.5. a study in leading sectors — and including experts and consumer and employee organisations — into the case for a European Quality Charter with common standards and machinery for certification and assessment;

5.2.6. useful details of the employment policies and social dialogue arrangements the Member States would be asked to comply with under the National Employment Plans;

5.2.7. immediate implementation of the IETS initiative in the applicant countries, with particular regard to Phare and Sapard funding;

5.2.8. annual publication of a Commission report on the implementation of the strategy, the impact of Community policy on the industry (single market, CAP, external relations, social policy, etc.) and the figures for allocation of European funding;

5.2.9. regular consultation by the European institutions of the economic and social operators in the sector, in particular to analyse the impact of European legislation and policy on tourism;

5.2.10. an annual monitoring conference, involving the Member States, the relevant partners (tourism professionals, employees, consumers, related activities, etc.), the European Parliament and the Economic and Social Committee.

Brussels, 26 January 2000.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI