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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on 'The effects of e-commerce on the single market (SMO)'

(2001/C 123/01)

On 2 March 2000 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Opinion on the following subject: The effects of e-commerce on the single market (Single Market Observatory).

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 10 January 2001. The rapporteur was Mr Glatz.

At its 378th plenary session (meeting of 24 January 2001) the Economic and Social Committee adopted the following opinion with 79 votes in favour and one abstention.

1. Summary and conclusions

— E-commerce currently accounts for a small proportion of overall trade. This is particularly true of business-to-consumer (B2C) trade. It is more significant in business-to-business (B2B) trade.

— E-commerce is, however, growing extremely fast.

— Consumers are hesitant to use e-commerce. The reason for this is lack of the opportunity or knowledge to gain access and lack of confidence with regard to the protection of privacy and security of payments.

— Another obstacle is the regulatory framework, which is in some cases incoherent and often entirely lacking, as well as the legal situation of suppliers which in some areas is fragmentary — particularly in view of the convergence of telecommunications and media and the corresponding infrastructure. A consistent framework cannot therefore be said to exist.

— Greater account also needs to be taken of these new trends in competition policy.

1.1. For these reasons a package of measures is needed laying down the basic conditions for a functioning internal market in e-commerce. It should be ensured that measures are, above all, adopted at global level.

1.2. If this does not happen, Europe will be missing out on opportunities for economic and social development and it will not be possible to narrow the gap between Europe and the USA in this area.

1.3. In summary, therefore, the Committee makes the following recommendations:

— Support for a constructive dialogue between consumers and manufacturers/distributors. Consumer organisations should be comprehensively consulted, in order to create a climate of confidence.

— Promotion of strategies to flank and stimulate the new technologies with the aim of providing access for as many people as possible. Special account should be taken of the problems of the less affluent sections of the population, as well as those of the elderly, for example.

— Establishment of a European and worldwide legal framework to ensure affordable and transparent access to e-commerce, offering the consumer security and guarantees. The measures adopted by the Commission for the reorganisation of the telecommunications sector (package of directives of 12 July 2000 [1]) are an important initiative.

— Establishment of a legal framework for areas which are excluded from the scope of the e-commerce directive. These would include a framework for alternative disputes settlement procedures, questions relating to unfair marketing, extension of the scope of the distance selling directive, drawing up of a distance selling directive covering financial services, and criteria for self-regulation initiatives.

— The Committee believes that SMEs will have an important role to play in e-commerce and that it must be made possible for them too to make use of the opportunities.

— Suppliers should offer consumers the opportunity to reach out-of-court settlements before legal proceedings are instituted. It is also important for consumers to be able to enforce their rights in their place of residence.

— In order to promote out-of-court settlement procedures and quality labels whilst avoiding obstacles to the internal market, comparable standards and principles need to be developed and applied.

— E-commerce poses new challenges for competition policy. The new developments should be observed with vigilance, particularly mergers, portals and network infrastructure.

— Development of safe payments systems and reduction of cost of cross-border money transfers.

— Reduction of existing tax obstacles and distortions. European firms' competitive disadvantage vis à vis third-country firms should be eliminated.

— The Community must assign the highest priority to data protection. The Commission should encourage the Member States to press ahead with implementation of data protection. Data protection law needs to be adapted to the new technological and economic context, in order to guarantee data protection for all forms of modern communication.

2. **Importance of e-commerce**

As the technological basis for e-commerce, the Internet has undergone rapid development. The importance of the Internet varies greatly from one region to another, however. Thus the OECD states, particularly the United States, dominate as regards both the number of servers and the number of users.

2.1. The European Commission [2] believes that e-commerce in Europe will have grown from $17 billion at the end of 1999 to approximately $360 billion in 2003.

2.2. The most important area is business-to-business (B2B) commerce. Estimates coincide in suggesting that it accounts for between 70 and 90 % of total e-commerce.

2.3. Business-to-consumer (B2C) e-commerce at present accounts for an insignificant proportion of business volumes. In Europe e-commerce currently accounts for less than 1 % of total final consumer transactions, i.e. less than traditional mail order business. For 2001/2002 it is estimated that e-commerce will account for 5 % of the total in the OECD 7, and for 2002-2005 the corresponding forecast is 15 %.

2.4. In some sectors, such as financial services or software, however, e-commerce already enjoys far greater than average importance. This shows that e-commerce will be able to play a major role in intangible products in particular.

2.5. E-commerce should be understood above all as a means of selling both digital and non-digital goods and services, particularly over the Internet. Other forms of selling are on the point of being introduced however, e.g. interactive TV (t-commerce) and mobile commerce (m-commerce). The latter in particular will gain in prominence with the introduction of UMTS technology.

(1) COM(2000) 384, COM(2000) 385, COM(2000) 386, COM(2000) 392, COM(2000) 393, COM(2000) 394, COM(2000) 407.

(2) Communication from the Commission — Strategies for jobs in the Information Society (COM(2000) 48 final).

2.6. Europe is lagging behind the USA with regard to both use of the Internet and the importance of e-commerce. There are various reasons for this: a single language, a single currency, lower telephone charges, more risk capital. Europe is, however, the leader in mobile communications and can be expected to develop this lead further with UMTS. The introduction of the euro will also boost the importance of e-commerce in Europe — even for European states which do not participate in the euro.

3. **Importance of e-commerce for the internal market and its operators (employers, consumers and workers)**

3.1. *Internal market*

3.1.1. E-commerce will influence the internal market in many ways. The purchase of goods and services across national frontiers will intensify. New markets are emerging. Consumers have a wider choice. E-commerce will boost the importance of the internal market. E-commerce can offer development opportunities for rural areas too. The structure of markets is changing.

In particular, electronic commerce in financial services can be expected to take on much greater importance. Banks will increasingly face competition from non-banks offering financial services.

3.1.2. Mutual recognition, which is regarded as one of the most important instruments for ensuring free movement of goods in the internal market, will gain further in importance as a result of e-commerce.

3.1.3. The distribution of tangible products will, however, grow in importance only if logistical problems are satisfactorily solved. The increase in the electronic trade in physical products will, however, also lead to an increase in traffic flows. It is difficult to say at present whether the change from physical despatch to downloading of certain products (e.g. music media) will cancel out these effects. The Commission is urged to initiate studies on the subject. The Committee highlights this problem and points to the need to find appropriate transport solutions.

3.1.4. Some intermediary business will decline. Manufacturers and suppliers of services will sell directly to the consumer. At the same time, however, the lack of clarity of Internet supply will create a new need for intermediaries. New forms and areas will develop, particularly in logistics, financing and information services. Forms of distribution will also need to be more closely geared to the needs and the — in some cases greatly changed — lifestyles of consumers.

3.2. *Businesses*

For companies use of the Internet means the opening up of new areas for business, the development of new products, services and forms of selling

3.2.1. The Internet also facilitates marketing, particularly focused marketing. Advertising and transaction costs can be reduced.

3.2.2. The Internet can be expected to produce cost reductions which, with properly functioning markets, will lead to lower prices, with the corresponding effect on prosperity. The reasons put forward for these cost reductions are as follows:

— disappearance of traditional middle men (disintermediation)

— lower communication costs (telephone, computer etc.)

— less physical infrastructure (business premises etc.)

— transfer of costs to customers (customers obtain information themselves)

— lower cost of distributing digital goods.

3.2.3. On the other hand, there will be new, additional costs which should not be underestimated — particularly public relations.

3.2.4. The new electronic media can be expected to have a greater impact on business-to-business transactions than on transactions with the final consumer. This is illustrated by the respective turnovers. The greater part of e-commerce is business-to-business and its use in sub-contracting and purchases of parts and materials is becoming increasingly common.

3.2.5. It is vital for SMEs to make use of this form of business. However, they are at present often not in a position to exploit these opportunities. It is particularly important for SMEs to be offered effective advisory services which will enable them to seize the opportunities and hold their own in this way of doing business or respond to the requirements of main contractors and other bigger enterprises to adopt new ways of operating.

3.2.6. For SMEs the additional PR costs may, as a result of the specific features and structures of the Internet, exceed the technology-related cost savings. Barriers to adoption are thus greater in B2C trade than in B2B. And thus also the risk.

3.2.7. Through the Internet small and medium-sized enterprises can have improved access to markets, as a result of lower communication costs. The technology also makes it easier for suppliers to gather information on customers and their purchasing behaviour. This makes it possible to target customers more precisely without the usual scatter effect of advertising.

3.2.8. The Internet is therefore often seen as an opportunity for SMEs, in fact particularly for SMEs. E-commerce will force firms to take a greater interest in the specific skills of their employees in this area. Succeeding in e-commerce will be a challenge for SMEs and will require changes in logistics and human resource development. Joint ventures and platforms can reduce this risk.

3.3. *Effect on consumers*

Against a background of globalisation of the economy, e-commerce offers the consumer an extraordinary opportunity to have access to all markets when choosing products hitherto unheard of — and to benefit from attractive prices or buy products which would not be available on national markets.

3.3.1. Asymmetric information is a feature of retail markets in general and of the Internet in particular. It is usually very expensive for the consumer to obtain information on all suppliers. Confidence therefore plays a major role in these markets. There is therefore likely to be a greater intermediary role in future for providers of advisory and search services.

3.3.2. Lower costs will be reflected in lower prices for the final consumer only if competition works. Empirical studies show, however, that the Internet is in principle no more competitive than other areas. The reason for this is a high degree of market concentration (familiarity). The market is highly transparent in theory but much less so in practice. This demonstrates the need for a framework — particularly a competition-related and legal framework — enabling the consumer actually to exploit possible advantages.

3.3.3. The Committee believes that firms, governments and the European Community should think about new forms of incentive to encourage simplification in terms of systems and machine translation of languages, promote the use of e-commerce among less affluent sections of the population and make the Internet an instrument used not only for consumption, but increasingly for education and information, an instrument which is of use to all.

3.3.4. The Internet is being used not only as a vehicle for e-commerce, but also increasingly for training and information. It offers employment opportunities and helps to satisfy the demand for greater knowledge. The Committee stresses that education policy needs to react to this changed demand, in schools, adult education and other areas such as the mass media. Investment is needed in hardware and software and in the construction of networks. There is also a need for training of teachers. Training in this field will be an important precondition for Europe's future competitiveness.

3.4. *Workers*

3.4.1. EU citizens will be increasingly affected by e-commerce in their capacity as workers. The structural shifts which can be expected to result from the forecast take-off of e-commerce will create a demand for new skills in the labour market. These forecast structural shifts must be met by appropriate training and skills initiatives and other measures. This will by no means involve only highly skilled workers. Basic and further training will need to be tailored to such workers.

3.4.2. The Committee points out that education policy will need to react to these changed demands both at school and adult further education level. Education policy-making today will determine Europe's competitiveness in the future.

3.4.3. The development of partly virtual business structures will encourage the emergence of new employment relationships. Not least, teleworking will grow in importance as a result of the rise of e-commerce. The social partners should look at these trends in terms of their impact on employers and workers. Particular care will need to be taken over compliance with the protective provisions of labour law and over health and safety in the workplace. Trade union access to companies and representation by works councils must be guaranteed.

3.4.4. E-commerce should create new opportunities for workers. Opportunities for worker participation will increase if there is a move from hierarchical structures towards networks of small, project-orientated units working relatively autonomously. It will be necessary to develop and promote these opportunities for workers.

3.4.5. In its Opinion on the White Paper on Commerce the Committee expressed views on initial and further training issues. The results are to some extent also relevant to e-commerce.

3.4.6. The rise of e-commerce also means increased worker mobility. Activities which were hitherto located in firms' administrative centres are being farmed out to places where workers are cheaper and social standards lower. In order to alleviate the increased pressure on Europe's workers, social rules are needed, at least at European level, to be agreed between the social partners, or else more far-reaching rules guaranteeing compliance with ILO standards for workers in all areas.

3.4.7. The Committee believes that, in drawing up a framework for e-commerce, it is important to strike a balance between the interests of suppliers, consumers and workers. The involvement of all three groups is essential for all aspects of e-commerce. Joint initiatives by the social partners are also extremely helpful in coping with structural change. The Committee also feels that the Commission should carry out a study of the (physical, psychological and economic) effects of e-commerce on workers.

4. **Obstacles to the creation of an internal market in e-commerce and solutions**

4.1. *Clear legal and regulatory framework needed*

E-commerce will be able to realise its potential only if there exists a reliable, transparent and predictable structural framework for businesses and consumers. The Directive on electronic commerce (2000/31/EC) established a legal framework for suppliers, making it possible for them to do business with customers in other Member States without having to apply the laws of those Member States. The directive provides for derogations in various areas, however. So, instead of ensuring a Single Market, e-commerce in the case of the retail sector may still be characterised by fragmentation of the EU into 15 different national markets thereby clearly restricting the potential for e-commerce in Europe. Thus, while fully understanding the situation of providers and the need to end fragmentation, the Committee feels that, as long as high-level harmonisation is lacking, an extremely responsible approach is called for here.

4.1.1. In many cases it is necessary for the supplier to be certain of the identity of the other party to a contract. In e-commerce it is also essential that the integrity of the data transmitted is guaranteed. Electronic signatures make this possible. The basic conditions were laid down in the Directive on electronic signatures (1999/93/EC). In practice, however, no use has so far been made of electronic signatures.

4.1.2. This e-commerce directive removes many of the obstacles to e-commerce for suppliers. And yet a consistent framework cannot yet be said to exist as a result of the inconsistencies which have arisen through the convergence of telecommunications technologies with each other and with the media. A new regulatory framework for communications infrastructure and related services should above all be aimed at promoting and underpinning in the long-term an open and competitive market for communications services.

4.1.2.1. The Commission's Green Paper on Convergence (COM(97) 623 final) has launched the discussion. In its 1999 Communications Review (COM(1999) 539 final) the Commission proposes horizontal rules for communications infrastructure. In its opinion the Economic and Social Committee supported these initiatives and felt that the discussions should be accelerated in order to provide businesses and consumers with a safe and reliable framework. The Commission's July 2000 telecommunications reform package adopts an approach of this kind. In view of the convergence of telecommunications, media and information technology, there is to be a single legal framework for all transmission networks and services. The Committee is glad that with the new legal framework an effort is being made to achieve greater coordination with general EU laws on competition and consumer protection.

4.1.3. A competition policy framework has been successfully established for telecommunications. Now the same path needs to be followed in other areas.

4.1.4. High initial investment (fixed costs) are a feature of the digital economy. The investment is often in intellectual property. Distribution costs, on the other hand, are very low. From the point of view of producers it is therefore understandable that considerable attention is paid to the protection of intellectual property, to copyright. In this context the Economic and Social Committee would point out that consumers' legitimate wishes and needs should not be neglected such as the opportunity to make copies for private use (e.g. recording of television programmes for later viewing). The Council has adopted the common position on patent law.

4.2. *Confidence in e-commerce*

Consumers are often hesitant about using the Internet to buy products and services because there is a lack of transparency with regard to product characteristics, possible additional costs, applicable law and jurisdiction. Consumers are unsure whether the products they wish to buy are free of defects, will be delivered on time, and whether they will be exchanged or refunded in the event of problems (especially defects or dissatisfaction) quickly, efficiently and fairly. Moreover, the technological systems are often not user-friendly.

4.2.1. Consumers are also concerned about fraud, lack of security, particularly of payments, and lack of protection of personal data.

4.2.2. Online shoppers will encounter situations which are unfamiliar from conventional shops and mail-order. When buying in a shop or ordering from a catalogue the consumer generally knows who he/she is dealing with. But Internet home pages are to be found which contain no information on the company. When making complaints about goods or services ordered it is therefore often difficult to locate the supplier, return products or where necessary inform the court of the address to which legal proceedings should be directed.

4.2.3. In many cases consumers' lack of confidence arises from a lack of understanding. It is incumbent on the Community, the Member States, firms and consumer organisations to make the necessary information available to consumers. In this way consumers will be enabled to make their own decisions.

4.2.4. If e-commerce is to develop, processes and transactions have to be simple and safe and the consumer must be able to resolve difficulties and disputes quickly, cheaply and effectively.

4.2.5. The EU has recognised that a secure framework is needed opening up to customers the many opportunities of e-commerce. Rules are needed covering minimum information on suppliers, prices, postage and packing costs, taxes, cancellation rights and the labelling of advertising matter.

4.2.6. Apart from numerous confidence-building measures via the establishment of legal conditions, the main rules are contained in Directive 97/7/EC on the protection of consumers in respect of distance contracts, which is already being implemented, and Directive 2000/31/EC on electronic commerce.

4.2.7. The network of protective provisions is incomplete, however. Thus, important areas of services are still excluded from major provisions of the distance selling directive (e.g. leisure services such as travel). In particular, no suitable legal framework exists for the distance selling of financial services.

4.2.8. In its Opinion (CES 458/1999) on the Proposal for a Directive concerning the distance marketing of consumer financial services (COM(1998) 468 final) the Committee pointed out that 'The specific characteristics of financial services and their immaterial nature, combined with their acknowledged complexity and importance to consumers, provide justification not only for proposing special provisions which do more than simply echo the general provisions applicable to distance selling, but also for adopting a high level of consumer protection in the areas to be harmonised'.

4.2.9. The universal application of the country of origin principle, as provided for in the e-commerce directive, could mean consumers being confronted with advertising practices or certain products (e.g. medicines) which they have so far not encountered. This could be a cause of uncertainty. The aim should therefore be to achieve a high level of harmonised standards in these areas.

4.2.10. The Committee therefore makes the following recommendations:

— The main provisions of the distance selling directive should be extended to other services and corresponding rules should be drawn up as soon as possible for the services in question.

— The decision on the proposal for the Directive on the distance selling of financial services should be accelerated. The main reason for delay is discussion in the Council of Ministers of the question of full harmonisation and possible derogations. As suggested in the Committee's opinion of April 1999, the deadline for final implementation should be set at 30 June 2001.

— The Directive on the distance selling of financial services should contain minimum requirements concerning information, a suitable cooling-off period, restrictions on certain forms of selling and a simple and effective system for refund.

— Framework rules are also needed covering areas excluded from the e-commerce directive. This would include a framework for alternative disputes-settlement procedures, questions of unfair marketing and criteria for self-regulation initiatives; such rules could form the basis for the establishment of 'Eurocodes', e.g. in the area of marketing. In this way consumers would have more confidence in self-regulation initiatives.

— Suppliers should be liable for loss or the faulty transmission of data provided in connection with consumer transactions.

4.3. *Codes of conduct and quality labels*

4.3.1. Codes of conduct by which companies operate should help to boost consumer confidence in e-commerce. In order not to impede the internal market, comparable standards and principles should be drawn up, above all at Community level, with input from the consumer associations and industry. Bodies monitoring compliance with codes of conduct should be supported.

4.3.2. The award of quality labels to companies should be considered as a suitable instrument for enabling consumers to form a view of the quality and reliability of suppliers. The quality label should give consumers the confidence to make purchases over the Internet under customer-friendly conditions.

4.3.3. It must be ensured that criteria are set at a high level and that suppliers actually abide by them.

4.3.4. The Committee feels that the monitoring criteria and certification system should be developed with input from consumer organisations and industry representatives at international level, so that the quality label is as widely used and accepted as possible. National quality labels should act merely as a spur to this trend. A plethora of widely differing certificates would create confusion rather than clarity and impede the operation of the internal market.

4.4. *Disputes settlement and enforcement of the law*

4.4.1. When cross-border consumer transactions give rise to disputes between consumer and supplier, it makes more sense for both sides to reach a settlement before any legal proceedings commence. Structured management of complaints by the supplier has an important part to play here.

4.4.2. Secondly, fair and simple disputes settlement has an important part to play in cross-border consumer transactions. Another consideration affecting consumers' willingness to enter into cross-border transactions is the existence of a procedure for the enforcement of rights similar to that applicable in domestic transactions. Initiatives on out-of-court settlement procedures have an important contribution to make here.

4.4.3. The Committee therefore stresses the need for the Commission and the Member States rapidly to develop cross-border mechanisms for the settlement of consumer disputes It must be ensured, however, that such procedures are freely chosen, i.e. that they are not a precondition for the conclusion of a contract and that the option of subsequent legal proceedings is not excluded.

4.4.4. Out-of-court settlement procedures should be of comparable quality throughout the Member States. This will serve the operation of the internal market, and only in this way can it be ensured that consumers actually make use of the procedures. It is therefore necessary to draw up comparable standards and principles at European level. The Committee suggests that accreditation, licensing or supervisory structures be guaranteed to protect against abuses.

4.4.5. The Committee points out that a great many questions still need to be answered in this connection (law applicable to out-of-court settlement procedures, language of proceedings etc.).

4.4.6. However, the operation of disputes settlement procedures of this kind also depends on the consumer always having the opportunity to enforce his/her claims in court.

4.4.7. Access to law and a secure framework are major preconditions for the acceptance of e-commerce by consumers. In December 2000 the Council stipulated in the Regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters that consumers may bring an action in relation to cross-border electronic transactions, or have an action brought against them, at their place of residence. Further improvements in cross-border application of the law are needed however (serving of documents, seizure etc.).

4.4.8 While acknowledging the need for a high level of consumer protection, it is also essential to avoid the fragmentation of the market for electronic commerce in the EU by a plethora of national regulations and constraints on competition and innovation.

4.5. *Competition*

Market structures in the e-commerce sector are developing rapidly. 'Lock-in' and network effects could rapidly lead to the development of oligopolistic or monopolistic structures. The time factor plays a greater role here than in other areas. This poses new challenges for competition policy. The new trends therefore need to be monitored carefully.

4.5.1. Competitive conditions need to be created at European level which make it possible for small Internet operators, which are generally receptive to the needs of users, to survive, thus ensuring balanced development of the sector.

4.5.2. The precondition for this is that there be a sufficient number of market participants at all levels and that they practise free competition. These levels include not only Internet service providers but also particularly Internet infrastructure suppliers.

4.5.3. In the process European competition policy must face up to new challenges:

— Products and services are often, thanks to the Internet, supplied via dual distribution systems: the virtual and the traditional market. It is becoming increasingly difficult to delineate the relevant market, and clear assessment criteria are needed, as is close cooperation with competition authorities on all continents.

— Information on prices, raw materials, quantities etc. is exchanged via B2B platforms. The competition authorities have the difficult task of establishing whether agreements restricting competition or illegal concerted practices are thereby coming about.

— As a result of the network effect and the enormous investment required, market participants in Internet business tend more to concentration and the formation of market-dominating positions than traditional markets. This is true not only of service providers but also particularly of suppliers of Internet infrastructure or content.

— Thus the Internet's network infrastructure is already globally dominated by only a few companies, which are involved in merger discussions. Moreover, these network infrastructures are concentrated on US networks, and a major part of trans-European Internet traffic is routed via the USA. Thus European consumers and firms are dependent on transatlantic links for security and reliability.

— Competition authorities must ensure that the group of market participants which lays down the industry standards for e-commerce does not abuse these for its own advantage or in this way achieve a dominant market position.

— The organisation and management of the Internet are of fundamental importance in this context. In the interests of European consumers and businesses the European Union must address the question of the extent to which European competition authorities can use their influence to bring about a competition-neutral organisation of the Internet.

4.6. *Safe and cheap payment systems*

4.6.1. Functioning, cheap and safe payments are an essential basis for the operation of an internal market in e-commerce. In a number of countries consumers often lack confidence in credit card payments, although European legislation has gone some way towards boosting confidence. Under the distance selling directive, credit card companies now carry the risk in the event of the fraudulent use of credit cards or credit card numbers.

4.6.2. Moreover, prepaid cards enable consumers to make payments anonymously. This opens up e-commerce to new groups of consumers (young people), to which it would otherwise be inaccessible for lack of the means of payment (credit cards).

4.6.3. The Committee's comments and recommendations

— Suitable means of payment need to be developed for small transactions.

— The cost of cross-border bank transfers is too high. This was shown by the Commission survey of March 2000. Small, cross-border payments must be made cheaper as a matter of urgency and fees payable by the final consumer must be substantially cut.

— Rules applicable to smart cards are needed (data which may be stored).

— Secure standards for payment by credit card exist (SET) but are at present rarely offered by companies (partly because of the high costs involved).

— The Commission is called upon to adopt uniform rules on the burden of proof in the event of fraudulent use of credit cards and credit card numbers and on the criteria for reimbursement. Rules are also needed on the reimbursement of payments by card companies in the event that the terms of a contract have not been properly fulfilled by the supplier (non-delivery or faulty delivery).

4.7. *Adaptation of the tax system*

4.7.1. Cross-border electronic commerce is increasingly throwing existing tax hindrances and distortions into sharp relief. Competition between tax systems is intensifying. This is particularly true of VAT.

4.7.2. In its proposal for a Council Directive (COM(2000) 349 final) the Commission set out new rules on the taxation of indirect electronic commerce.

4.7.2.1. There is felt be no need for regulation in cases where private individuals buy goods over electronic networks but where the goods are delivered by conventional means. Such cases do not create any special problem with regard to turnover taxes.

4.7.2.2. New rules are planned covering the online delivery of digital products, particularly to the final consumer. Electronic deliveries are treated as provision of services. If the service is provided by a firm with its head office in a non-EU country for a customer resident in the Community, the transaction will be taxed in the EU.

4.7.3. The Committee feels that an internationally compatible government framework for e-commerce urgently needs to be established. The existing competitive disadvantage of European firms vis à vis third-country competitors needs to be eliminated. This need arises both from the danger of tax erosion to the detriment of government budgets as well as from the need to prevent damaging tax competition which could weaken the European Union's position in the world trading system. The Committee therefore welcomes the proposals submitted by the Commission for applying VAT to e-commerce. The Committee also feels that the tax arrangements applicable to e-commerce must not place conventional commerce at a disadvantage.

4.8. *Access and access costs*

4.8.1. The speed with which the use of electronic instruments for communication and business transactions grows depends in part on cost. In some countries rapid growth is impeded by the acquisition, access, connection and operating costs of the relevant devices, which are still too high as a proportion of an average family's budget. The danger of the polarisation of society (digital divide) must be countered.

4.8.2. Whether these dangers can be averted depends on a number of obstacles being overcome. These obstacles particularly affect groups which potentially could benefit greatly from the new technology and e-commerce: the elderly, the sick and the disabled.

4.8.3. European research still has a long way to go in relation to computer hardware and software development. Some obstacles, which have so far been insurmountable, such as use of the English language, which has a particularly strong deterrent effect in the Latin countries, could for example be eliminated. Rapid and reliable machine translation systems could solve the problem of incomprehensible contract clauses which threaten to ensnare many buyers.

4.8.4. Access to infrastructure and services is particularly important. In this context, the interconnection of networks is important for the development of competition and interoperability of services.

4.8.5. Rules on access and interconnection are a fundamental framework for the investment decisions of both new entrants to the market and existing market participants. A high degree of legal certainty is therefore extremely important in this area. In the light of the specific situation of the communications market, even market participants with no great market power also need to be regulated to some extent in order to ensure fair competition at all levels of the market. This applies in particular to the requirement for the negotiation of interconnection and access.

4.8.6. The Committee's recommendations

— If the market does not guarantee access to infrastructure and services, political decisions are needed establishing the appropriate conditions.

— The Committee feels that a package of measures is needed to ensure affordable access to communications and e-commerce. This would include targeted promotion measures, telephone company services (such as leased equipment) and more competition over access to local networks.

— A proposal for a regulation has been presented by the European Commission which provides for the unbundling of access to customers. In this way more competition should be created in this area. It should be ensured, however, that this does not lead to problems or capacity shortages.

— The fact that the cost of leased lines is still relatively high makes measures urgently necessary — particularly at national level. If this is not successful, the competition rules will have to be applied extremely strictly at European level.

— In the light of technological developments and convergence between services the universal service concept needs to be reassessed to establish whether it meets current requirements. The Commission should therefore propose criteria for the extension of the concept of universal service in Community law and mechanisms for regular checks in the light of the dynamic and progressive character of the universal service concept. The Committee also feels that, if the definition and scope of universal service is enlarged, these should include fast Internet services.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

4.9. *Privacy and data protection*

One reason why consumers have taken to e-commerce only hesitantly is the fear of Internet activities compromising their privacy. E-commerce leads to a vast quantity of data being collected and processed. Data paths are becoming traceable. Directive 1995/46/EC on the protection of personal data lays down a framework for suitable data protection and for the free movement of data within the EU.

4.9.1. In practice, however, data protection does not always work. The improper collection of data and the compilation of consumer profiles are commonplace. The right to protection of privacy must, however, not be infringed, and personal data must therefore be restricted to information which is absolutely necessary for transactions and for the companies concerned.

4.9.2. There is also considerable scope for infringement of privacy in connection with the use of 'cookies' (to collect information on the habits of the user), the sending of which is a condition for access to many websites.

4.9.3. For this reason the Committee recommends that

— The Community assign the highest priority to data protection.

— The Commission encourage the Member States to promote the application of data protection.

— The Commission promote initiatives to raise public awareness of this issue.

— Consumers be offered support in order to control this data flow.

— The data protection directive for the telecommunications sector needs to be adapted to new technological and economic circumstances in order to ensure that data protection extends to all forms of modern communications (from telephone conversations to communications in general, location data, rules restricting the use of data provided for marketing purposes; rules on electronic profiling).

Opinion of the Economic and Social Committee on the 'XXIXth Report on Competition Policy (1999)'

(2001/C 123/02)

On 5 May 2000, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the XXIXth Report on Competition Policy (1999).

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 8 December 2000. The rapporteur was Mr Pezzini.

At its 378th plenary session (meeting of 24 January 2001), the Economic and Social Committee adopted the following opinion unanimously.

1. Introduction: themes covered by the XXIXth report

1.1. In the first part of his foreword to the XXIXth Report on Competition Policy (1999), Professor Mario Monti, Commissioner responsible for competition policy, stresses 'the need to modernise Community competition law'. This is a recurring theme in the foreword and is also given a great deal of attention in the report [1].

1.1.1. The emphasis on modernisation stems from the continuation in 1999 of the process of modernising the legal framework for Community competition policy. The conditions for completion of this process are now in place, and there is no turning back.

1.1.2. Another extremely important theme in the XXIXth report is the central position of the citizen in Community competition policy. In the foreword and the main report, much attention is given to a new programme of measures aimed at putting citizens, as consumers, first, not just as beneficiaries but also as promoters of the policy [2]. In the Committee's view, the Commission's emphasis on giving consumers and their associations [3] the opportunity to stimulate and promote Community action in the competition field is significant, as the result will be to improve the efficiency and timing of that action.

1.2. Another key theme of the XXIXth report is the Commission's merger control work in 1999. This chapter is fully illustrated with explanations and a detailed set of case studies [4]. In the Committee's opinion, 1999 was a highly successful year for the Commission in this area, confirming its growing importance. Some of the issues addressed were even more complex than in previous years and led to conclusions which, though valid in economic terms, pose a series of questions which will have to be resolved rapidly, possibly in court.

1.2.1. One subject of particular importance relating to merger control, and to which the report devotes a good deal of time, is the sectors that stem from the convergence of technologies from diverse sectors and feature a high level of innovation. If new markets, arising from new technologies and the convergence of the technologies of various sectors, are to grow, the business initiative and competition they represent must not meet any obstacles that cannot be objectively justified. The Committee very much welcomes the Commission's attempt to reconcile the opportunity for companies to launch initiatives that may lead to the creation of new markets of this kind, with the need to ensure that such initiatives do not create positions that could prevent other companies from entering the same markets. There is a danger, however, probably confirmed by the report's discussion of the Telia/Telenor merger, that attempts to strike a balance between the various demands can lead to measures that can dissuade companies from making transactions that are clearly important for the development of Community policies. The Telia/Telenor merger which, as mentioned in the report, was abandoned after the Commission decision made approval conditional upon extensive changes to the original plan, would have merged the activities of the national companies of two Member States, and as such would have had a major impact on the process of Community integration and on the development of new markets, paving the way for other transactions that only a few years ago would have been inconceivable. The Committee therefore hopes that the Commission will bear this precedent in mind in future and assess whether in some cases a more flexible approach would be preferable, even if this means that it is not possible to eliminate every imaginable risk to competition.

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(1) The subject of the Modernisation of the legislative and interpretative rules is addressed in Chapter I A of the report.

(2) The Commission explains what it means by the term 'promoters of competition policy' in Box 1 entitled EU citizens and competition policy, which concludes the report's introduction.

(3) Box 3 in Chapter 1B of the report addresses Relations with consumer organisations.

(4) See Chapter II of the report.

1.2.2. Another interesting theme addressed in the report is that of the growing use of merger control to counter collectively dominant positions. The Committee agrees that in the context of merger control, the concept of collectively dominant positions can be genuinely useful in addressing increased risk to competition. Nevertheless, in the absence of precise definitions, there is a danger of over-stretching the concept of collectively dominant positions, making it difficult to distinguish such cases from other mergers that do not threaten competition but may actually encourage it and are an essential requirement of the modern economy. For this reason, in future, the Commission should think carefully before taking the path opened up by the Kali und Salz and Gencor/Lonrho judgments of the Court of Justice and the Court of First Instance, and move quickly to adopt the long-awaited guidelines on the definition of oligopolistic dominance, in order to nip these dangers in the bud and reduce the risks inherent in the excessive use of subjective discretion [1].

1.2.3. The increasingly important role of merger control is largely the result of the exponential growth in the number and size of transnational mergers. This growth is in turn sparked by the process of globalisation and the development of the new economy. With the current torrent of changes, companies are tending to view their size and capacity, which only a few years was deemed optimal, as inadequate. For this reason, there is a growing wave of mergers, often involving previous market leaders and triggering a spiral that is radically transforming existing competition scenarios.

1.2.4. The high level of Community activity is also the result of the mass of experience garnered by the Commission over ten years of merger control activity. The solutions illustrated in the XXIXth report, adopted for highly complex operations, including many of major industrial and economic importance, are particularly noteworthy. Increasingly, the Commission is aiming to marry the tough approach demanded by the increase in situations of individual or oligopolistic market power with the desire not to obstruct the free flow of entrepreneurial activity released by the new challenges and new goals. The report therefore reveals a Commission that has become one of the main protagonists in the merger processes under way at world level, and that is playing an ever more vital and demanding role.

1.2.5. The growing importance of Community merger control has probably been made possible by the new powers given to the Commission under the recent reform [2], the first manifestations of which are fully documented in the report. With further legislative developments just around the corner, aiming in part to continue along the path marked out by the previous reform [3], this is all the more important.

1.3. Another key theme in the report, in the area of merger control, is the development of international cooperation. In 1999, cooperation with American antitrust authorities increased significantly, with joint work on a number of especially difficult cases. The year also saw fruitful cooperation

[1] The report raises other merger control issues that deserve attention. Box 7 describes the new theme of the Assessment of potential dominance, which may also further extend the Commission's scope for action in the area of merger policy. This issue arose from two 1999 decisions that stated that the market power of the companies in question was significantly greater than that suggested by their market share, owing to specific advantages they had over their competitors. The idea of using merger control to address situations of potential market power in the absence of major changes in market concentration progressed further in 2000, when the Air Liquide/BOC decision of 18 January allowed the Commission to include mergers that reduced or eliminated potential competition although the market situation previous to the merger had not changed.

[2] See Council Regulation (EC) No 1310/97 of 30 June 1997 amending Regulation (EEC) No 4064/89 on the control of concentrations between undertakings. This amendment enables the Commission to make all its decisions on compatibility subject to obligations and conditions. The Commission's opportunities for action have also been increased by including within the scope of the regulation all full-function joint ventures, which, in addition to the other effects of mergers on market structure, involve the coordination of activities by parent companies, which can fall within the scope of Treaty Article 81.

[3] On the subject of further possible amendments to Regulation (EEC) No 4064/89, see the Report from the Commission to the Council on the application of the Merger Regulation thresholds, Brussels 28/6/2000 - COM(2000) 399 final. It is however likely that the proposed amendments provide for other changes including a further extension of the Commission's powers under the 1997 reform regarding joint ventures with coordination effects. This extension is one of the reforms mentioned in the modernisation white paper, which suggested that merger control should cover production joint ventures not covered by the previous reform.

with the antitrust authorities of other countries. Furthermore, the Commission has been assisting the CEEC countries and transferring experience in the area of competition law [1].

1.3.1. Cooperation with the authorities in the CEECs is especially important in view of the risks to competition associated with the privatisation process under way in those countries. Unless effective measures are taken, this process could generate private dominant positions likely to lead to serious distortions in the future Community competitive fabric. The Committee therefore hopes that cooperation will trigger effective measures, before irreversible damage is done. 1999 proved, however, that over and above the specific issues associated with relations with the CEEC countries, international cooperation is now indispensable given the geographical extent of the changes brought about by mergers. The effects of mergers are difficult to contain within a given area and therefore mergers increasingly fall within the jurisdiction of a growing number of antitrust authorities, with all the burdens and risks that entails [2].

1.3.2. Bilateral cooperation is no longer enough to limit these burdens and risks, although it will be needed ever more frequently in future. Therefore, despite the difficulties encountered so far, forms of multinational cooperation must definitely be explored as well, as was pointed out in the introduction to the XXVIIIth report, on which the Committee issued a very positive opinion [3].

1.4. The major commitment of the Commission to making Community action in the competition field more effective and incisive is also evident in the area of state aid. As in previous years, the primary objective here has been to reduce total state aid volumes, which are still too high. There are also other objectives. For instance, the Commission has attempted to reconcile the need to be tough on distorting effects with the desire not to damage initiatives that could encourage competition and need support [4].

1.4.1. With these objectives in mind, new rules, governing both substance and procedures, have been adopted with a view to making aid more transparent and to cutting unnecessary red tape, especially for SMEs, in order to free up more resources for addressing more harmful forms of aid [5]. The Committee

[1] The subject of international cooperation is dealt with in Chapter IV of the report, under the title International Activities. Part A of the chapter describes cooperation on competition policy with the associated countries of central and eastern Europe (CEEC). Part B describes Bilateral Cooperation with the United States in the area of anti-trust. In 1999, a cooperation agreement on competition was signed by the European Communities and Canada. During the same year, there were further contacts and discussions on establishing effective cooperation on competition with other countries. Work began with Japan, for instance, on examining the possibility of drawing up cooperation agreements similar to those made with the United States and Canada. The USA and Japan already have a similar agreement together. Discussions have continued with Japan, meanwhile, with a view to securing further deregulation, with reference in part to the competition sector.

[2] Currently more than 60 countries have adopted merger control systems that can be implemented with reference to transactions that are also being assessed by the authorities of another country, with a resulting increase in the burden on companies and a risk of contradictory judgments that is increasingly difficult to control.

[3] The subject of international cooperation in the competition field was covered in Commissioner Van Miert's introduction to the XXVIIIth competition policy report, which contained a full description of the current initiatives needed in order to achieve, however gradually, broader and more institutionalised forms of cooperation. Furthermore, Commissioner Monti has often spoken about this, in relation to competition policy in general and merger control in particular. One major step forward in this area has been taken in 2000, as high-ranking representatives of the American anti-trust authorities, who previously only favoured bilateral cooperation, have recognised the need to experiment, with due caution, with other forms of cooperation.

[4] Chapter III of the XXIXth report on competition policy is devoted to state aid.

[5] Legislative measures in the area of aid are described in paragraph A1 of Chapter III of the XXIXth report, entitled Modernising State aid control, which reads: 'For around two years now, the Commission, with the support of the Council, has been taking various steps to modernise the conditions in which State aid is monitored. An overall system, which is coherent and effective, provides the Commission with a body of legislation and rules that allows it to focus on cases with a real impact on the common market and eases the administrative burden on firms while ensuring legal certainty and improving transparency. Thus the procedural regulation (...) Council Regulation (EC) No 659/1999 of 22 March 1999(...) entered into force on 16 April [1999]. (...) Another aspect of the modernisation of State aid control was introduced by Regulation (EC) No 994/98 of 7 May 1998, which enables the Commission to adopt block exemption regulations for State aid. (...) On 28 July 1999, the Commission adopted three draft block exemption regulations concerning respectively State aid to small and medium-sized enterprises, training aid and the de minimis rule. (...) The Commission's main objective is to free resources from assessing numerous standard cases the compatibility of which with EU rules is normally not problematic'.

welcomes the efforts made in this direction, but believes that other avenues must be actively explored in order to counter hidden and non-declared aid. For instance, the cooperation of Member State authorities and all other interested parties must be secured to set up a control system covering the entire Community, similar to the action to be taken on restrictive agreements.

1.5. Commission competition activities in 1999 also extended to other areas, generally following in the footsteps of previous reports, with significant results [1].

1.6. All the measures, activities and themes mentioned above deserve due recognition. Nevertheless, this opinion must pay special attention to the programme for modernising the legal framework, owing to the general importance of the problems it will solve and its significance with regard to the other matters mentioned above. The successful modernisation of the legal framework is a vital precondition for solving any problem relating to Community competition law.

1.6.1. For instance, in the Committee's opinion, the XXIXth report rightly links the possibility of giving the citizen/consumer a central role with the decentralisation itself, which will be one of the modernisation reform's key achievements.

1.6.2. There is also a close connection between the reform and the other matters mentioned above, which illustrates the interdependence of the various aspects. For instance, to extend merger control activities, far more resources are needed than are presently available. The Committee would stress that this in turn requires the Commission to free itself of any unnecessary burdens hampering its work, which is another aim of the modernisation process. The link between modernisation and state aid activities is similar. The revision of the legal framework for state aid is part and parcel of the modernisation process and must be considered in the context of this policy as well [2].

2. 'Modernising' the legal framework

2.1. The Committee opinion on the XXVIIIth competition policy report [3] stated that there were two keys to understanding the report: modernisation and cooperation. These were 'the keys to the Commission's future scenario for competition policy'.

2.1.1. The keys to understanding this year's report are the same. Many projects begun or first formulated in 1998 were completed or acquired their definitive form the following year. In 1999, new projects were set up, in the same vein as the earlier ones but going much further, illustrating the now irrevocable desire for a complete overhaul.

2.1.2. In 1999, the legislative process setting out arrangements for vertical agreements, heralded by the 1997 Green Paper and given its broad outline the following year, was completed. The Committee gave it an overall positive response, while highlighting a few concerns [4].

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[1] Administrative activity regarding the application of Articles 81 and 82 of the Treaty, an area that saw significant results in 1999, is described in Chapter I of the XXIXth report, in Part B under the title 'Consolidating the single market' and in Part C under the title 'Sector-based policies'.

[2] Legislative measures in the area of aid are described in paragraph A1 of Chapter III of the XXIXth report, entitled Modernising State aid control, which reads: 'For around two years now, the Commission, with the support of the Council, has been taking various steps to modernise the conditions in which State aid is monitored. An overall system, which is coherent and effective, provides the Commission with a body of legislation and rules that allows it to focus on cases with a real impact on the common market and eases the administrative burden on firms while ensuring legal certainty and improving transparency. Thus the procedural regulation (...) Council Regulation (EC) No 659/1999 of 22 March 1999(...) entered into force on 16 April [1999]. (...) Another aspect of the modernisation of State aid control was introduced by Regulation (EC) No 994/98 of 7 May 1998, which enables the Commission to adopt block exemption regulations for State aid. (...) On 28 July 1999, the Commission adopted three draft block exemption regulations concerning respectively State aid to small and medium-sized enterprises, training aid and the de minimis rule. (...) The Commission's main objective is to free resources from assessing numerous standard cases the compatibility of which with EU rules is normally not problematic'.

[3] OJ C 51, 23.2.2000, p. 1 (Rapporteur: Mr Bagliano).

[4] OJ C 116, 28.4.1999, p. 22 (Rapporteur: Mr Regaldo).

2.1.3. In 1999 a further, still more wide-ranging reform was set in place, modernising the system applying Articles 81 and 82. The central element of the reform was the decentralisation of the system to Member State legal and administrative bodies with powers and responsibilities that in essence were previously exercised almost exclusively by the Commission. As a result, this is probably the reform that does most to highlight the scale and scope of the change. It must therefore be given special attention in this opinion, despite the fact that the Committee has already given its opinion on the general approach and will be reporting on the consequences.

2.2. The Committee opinion was favourable towards the modernisation plan as a whole. It did, nevertheless, stress that this positive assessment could not be viewed in isolation from a number of concerns and warnings, which were outlined in the same document. The opinion mentioned that preliminary, preparatory and accompanying measures for drafting and implementing the new legislation appeared to be a necessary condition if the reform was to meet the expectations it had raised. This aspect of the opinion is still vitally important. It is therefore appropriate to refer to the reasons that led the Committee to draw those conclusions.

2.2.1. The modernisation plans have sparked varying reactions from the parties concerned. There is general agreement as to the urgent need for a change, and acceptance in principle of the objectives set out in the White Paper. Nevertheless, it is also accepted that radical reform of this nature is very costly and difficult. Furthermore, it is agreed that many important aspects require further attention and that the success or failure of the reform cannot be left to depend on the efforts of the Commission alone.

2.2.2. These views are prompted by a variety of considerations, which are no less valid now. A reform with these objectives requires adjustments to be made to legal, judicial and administrative structures at both Community and national levels. Moreover, the possibility that the reform may require changes to be made to constitutional provisions in certain Member States, alongside changes to the Community Treaties, cannot be ruled out. In many countries, training and selection systems for judges will also have to be reviewed. Some Member States will have to draw up rules authorising the relevant authorities to apply Community competition law. In addition, attention must be given to the matter of the link between the legal and administrative authorities of the various countries and the coordination of their powers, and probably to the coordination of the powers of such authorities within individual countries. One fundamental problem will be that of securing the unity of the decentralised system and of making sure that handing power over to the national courts and authorities does not mean jeopardising the unity of the system or the primacy of Community law. For this reason, care must be taken to ensure that the interpretative principle used by authorities or courts in one Member State does not differ from that used by a court or authority in another. Furthermore, it is vital that courts and authorities of different Member States do not arrive at differing conclusions with regard to one and the same agreement.

2.2.3. New instruments are needed to maximise awareness of all the case law and administrative practice used to apply the same provisions throughout the Community. This is essential for any matter subject to assessment under Community competition law.

2.2.4. Given the importance of the matters touched upon here and others described in the Committee opinion, studies and further research will probably be required, involving universities and the relevant professional bodies, as well as State legislatures. The success of the reform requires all those concerned — Community bodies, national States and all other interested parties — to cooperate and contribute in their own spheres. In view of the complexity and difficulty of these matters, no-one can expect radical changes of the kind set out in the modernisation plan to be made overnight.

2.3. The Committee's position in its opinion on the White Paper took into account all the arguments that made the reform appear necessary and urgent as well as those requiring measures to be taken to address the problems highlighted. Following a thorough debate, the Committee aimed to stress the need both for the reform and for proper solutions to be found for the problems it would imply. This remains the Committee's position.

2.3.1. Nevertheless, in view of the wide range of difficulties to be overcome and the length of time needed (in some cases), the reform could not be made conditional upon the adoption of all the 'necessary' provisions or 'appropriate' action at Community level and by the individual Member States. In the Committee's opinion, the Community bodies must thus act quickly to adopt all the legal and administrative provisions within their responsibility, before the decentralisation comes about.

2.3.2. Furthermore, decentralisation should be part of a concerted effort at Community level to implement the new global framework required by the reform as soon as possible. This concerted effort must begin at once. The Commission must, therefore, take the initiative and begin as soon as possible stimulating active cooperation between the Member States and all possible interested parties, in order to implement all possible measures and initiatives to ensure the orderly and coherent development of the new overall frame of reference. The Commission and the Member States must also make the necessary arrangements to prepare the courts and regulatory authorities.

2.4. Following this necessary parenthesis, it must also be stressed that the Commissioner's foreword to the XXIXth report emphasises the need for modernisation 'both in the area of antitrust, where the actions of companies may distort competition, and in the area of State aid, where the actions of Member States may produce similar effects'.

2.4.1. The role of modernisation in the current phase of Community competition policy is also demonstrated by the fact that this year the Commission's reforms have continued apace. On 24 May 2000, the Commission adopted guidelines for applying Article 81 of the Treaty to vertical restraints, completing the reform in this area. The broad debate on modernisation generated by the White Paper has continued, and major developments in this area are on the horizon. There is word of a Commission initiative to launch the reform in the Community bodies, and this will be the subject of a specific Committee opinion. Meanwhile, a draft reform document on 'horizontal cooperation agreements' [1], which was issued on 27 April 2000, should dovetail with the other reforms and, if carried through properly, should have the desired innovative impact on the legislative framework concerned.

3. Decentralising Commission management of Community competition policy

3.1. One important aspect of the new frame of reference for future Community competition policy, uncovered by the current reform programme, is the concerted manner in which the new Community competition system must be implemented. The White Paper reform will give national courts and competition authorities the power to apply one of the most important competition provisions, namely Article 81(3).

3.1.1. Under the new system, exemption from the Article 81(1) ban on restrictive agreements will no longer depend on an administrative action (exemption) until now the exclusive responsibility of the Commission. After the reform, the Article 81(1) ban will not apply if the interpreting party considers that the economic conditions mentioned in Article 81(3) are met.

3.1.2. This ban is a key pillar of Community competition law. In future, it can be applied not only by the Commission but also by the administrative and legal authorities of any Member State, before which, as an exception to the rule, the companies concerned will have to challenge any application of the Article 81(1) ban.

3.1.3. The most significant effect of the reform will therefore be that the ban on restrictive agreements will no longer be imposed from the centre, but by various bodies that are not used to cooperating together and have differing traditions, values and mindsets. As a result, one of the most difficult but unavoidable aspects of the legislation implementing the White Paper's plans will be that of establishing the rules to govern the necessary cooperation between the bodies among which responsibility, hitherto the Commission's alone, will be divided.

3.1.4. Given the scale of the overall process of modernising the legal framework in question, the term 'cooperation' is also a key to the XXIXth report. One of the main reasons for reform is that the European Union can no longer afford the luxury of a competition policy managed from the top down, where all players other than the Commission have a role that involves only limited responsibility. In any case, this form of management is no longer necessary, or even possible, given the major changes in the Community context; and the reforms are in essence a reflection of this.

[1] See Competition rules relating to horizontal cooperation agreements — Communication pursuant to Article 5 of Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 81(3) of the Treaty to categories of agreements, decisions and concerted practices modified by Regulation (EEC) No 2743/72. This document, which was published in OJ C 118 of 27.4.2000, includes two draft regulations on exemption under Article 81(3) of research, development and specialisation agreements, and 'draft guidelines on the applicability of Article 81 to horizontal cooperation'.

3.2. The central role of cooperation in the new Community competition policy framework is borne out by other considerations relating to the modernisation project outlined in the XXIXth report.

3.2.1. With regard to the need for a concerted effort to create the right conditions for the reform, the cooperation of all the Member State bodies and institutions, encouraged and guided by the Commission, is a necessary precondition for the reform's implementation.

3.2.2. Cooperation must be the rule for all areas of competition law, not just those that are up for modernisation. For instance, the active role that the report states should be given to consumers and their associations is a right to be accorded them as citizens, but it also involves a duty on their part to cooperate, so as to ensure that their interests are protected as effectively as possible. The policy on State aid described in the report is unthinkable without practical, active cooperation between the Commission, the Member States and any other interested parties. In addition, the process of liberalisation, which is central to current Community competition policy, and is also referred to, demands full-scale cooperation between the Commission on the one hand and the Member States, national competition and regulatory authorities on the other, otherwise the good work done so far could be undone.

3.2.3. In the light of the above, future annual reports must not simply make general statements on the need for cooperation, but must describe the measures taken in all respects in order to make the necessary cooperation effective.

4. The importance of the aims of the modernisation plan

4.1. The above points demonstrate the Committee's unswerving support for the Commission's goals.

4.2. The modernisation should, first and foremost, lead to a much more thorough application than in the past of Community competition rules, expanding and sharpening up the Commission's own opportunities to act. Free of a workload that was no longer justified, the Commission will be able to devote many more resources and much more attention to tasks that cannot be delegated and on which the success of its competition policy largely depends. For instance, as the report points out, more resources should be given over to action against cartels and abuses and to merger control.

4.2.1. Furthermore, the Commission, free from other tasks, will have time and resources to conduct a continuous as opposed to periodic assessment of the performance of the new legislation. This will enable it to ascertain quickly any needs that have not yet been met by the existing legislation. As a result, it will be able to assess the case for new action or adjustments to existing legislation, as a matter of urgency if need be. Relieved of some of its previous commitments, the Commission should also be able to fulfil its role in supporting and guiding the other parties working with it to achieve competition policy objectives.

4.2.2. None of this will, in the view of the Committee, be an automatic consequence of the reform, however. The Commission's internal structures and the procedures and instruments it uses to exercise its guiding and coordinating powers will still require fine-tuning. It may, for instance, be necessary to conduct a thorough reorganisation of structures, methods and processes that could have a major impact on the reform's effectiveness.

4.2.3. The Committee would therefore ask the Commission to provide information on the measures it intends to take, and on the results already achieved in this respect.

4.3. Handing over the new responsibilities set out in the White Paper to the national courts and authorities will make for a far more widespread application of competition law than in the past, reaching situations that would otherwise have escaped Commission control. Once national courts can apply the whole of Treaty Article 81, there should be an increase in the number of requests for civil remedy, compensation and the declaration of contracts as being null and void, which only courts are able to rule on.

4.3.1. This should significantly improve the efficiency and effectiveness of the system, but it is also one of the more sensitive aspects of the reform. The Committee would also therefore stress the vital need for the Commission to promote a process of careful analysis and preparation, in which all must participate.

4.3.2. This analysis must cover all the legislative systems concerned and assess for each the minimum conditions under which the reform can be implemented and the measures needed to meet those conditions effectively. Work must also begin immediately on devising measures to make the new system transparent and manageable, and to ensure it functions without any serious discrepancies.

4.3.3. Given the importance of this matter, the Committee believes that the Commission should provide information on its findings so far and the steps taken in this direction. By way of example, before drawing up official lists of rules and collections of common case law after the launch of the reform, the Commission should provide — either in the next report or in other documents — information on the state of the application of competition law, on the measures taken in the area by individual Member States, and on the problems they have encountered ([1]).

4.4. The other modernising reforms too should definitely lead, on the whole, to a more effective Community competition system.

4.4.1. The new exemption regulation (CE) No 2790/1999 for vertical agreements will exempt a much greater number of agreements than previous exemption regulations. The regulation will therefore nip in the bud potential disputes over the legality of agreements that are not genuinely harmful, and which would generate unnecessary work. This process should also be assisted by the new economic approach to interpreting the ban on restrictive agreements, which is at the root of the reform regarding vertical restraints but which will also be adopted for horizontal agreements and will be a necessary consequence of the reform.

4.4.2. The efficiency and effectiveness of the system will also be boosted by the meeting of a further objective common to the various reforms, namely that of making the competition rules more simple, transparent, comprehensible and, in particular, widely known. The importance of this aspect is recognised in the foreword to the report, which states that it is 'of the utmost importance that the competition rules be clear, transparent, and efficiently enforced. But competition rules must also keep up with the pace of economic and technological development in the 21st Century.'

4.4.3. The Committee believes that the repeated use of guidelines in the reform process is consistent with the aim of greater transparency. Guidelines differ from exemption regulations because they give no assurance that, under given conditions, certain agreements may not be banned. They cannot therefore be viewed as an alternative to regulations, which should be used as often as is possible and appropriate under the White Paper's provisions. Guidelines can however be useful in clarifying the Commission's reasoning and could therefore prove indispensable in helping companies shoulder the new responsibility for assessing their own agreements. Given the importance of this instrument, the Committee thinks that the Commission should regularly update the guidelines so that companies always have an up-to-date framework on which to base their assessments.

4.4.4. Transparency will be an essential factor in the efficiency of the system as a whole, and it is the aim of the modernisation process in the State aid sector as well. The foreword to the XXIXth report, for instance, states that: 'Increased transparency is also necessary to raise awareness in Member States of the necessity for strict state aid control' and that: 'Increased information to the public will, moreover, encourage peer pressure on Member States to reduce state aid volumes' ([2]).

4.4.5. As transparency is so important for the system as a whole, the Committee hopes to see it become a general principle for other aspects not mentioned in the report. Cooperation between the various bodies and authorities should be as transparent as possible for the companies concerned in order to provide them with the most effective possible protection. For the same reason, transparency must be an ever present factor in all competition law-related procedures.

4.5. As a result of the current reform process, the competition rules will be applied as they were originally intended and more fairly. This will benefit all companies, but probably small and medium-sized enterprises most of all.

([1]) The XXIXth report also gives an insight into activities carried out at national level to apply Community competition policy principles. Box 2, for instance, deals with Cooperation with national authorities and national courts. The Committee nevertheless believes that the decentralised and transparent system aimed for requires information to be provided more systematically and meticulously; this will to some degree arise from the new forms of cooperation.

([2]) The foreword also mentions the possibility of setting up a state aid 'register' and 'scoreboard', stating that 'The register would contain factual information on all State aid decisions, whilst the scoreboard would provide guidance to the Member States on how to evaluate more accurately the cost/benefit consequences of their State aid policies. The annual survey on State aid in the EU will also continue to be improved and will provide a more detailed assessment of State aid expenditure.'

4.5.1. Thanks to the new rules on agreements and aid, SMEs will no longer be subject to unjustified restrictions or potentially costly assessments. The new economic approach will mean that the prime concern in the competition analysis will be the restrictive effects of the actions considered. These effects will depend to a large extent on the market power of the company concerned, power that SMEs are unlikely to possess. Agreements with restrictive clauses drawn up by SMEs will no longer, therefore, be measured with the same yardstick as the restrictive agreements of companies with a significant share of the market. Under the White Paper reform, the rule for SMEs will be that all restrictive clauses except those explicitly banned will be allowed, while for companies with a strong market share, it may become more difficult to use clauses that are restrictive to their own advantage.

4.5.2. The new interpretative stance will not prejudice the interests of large companies, however, as long as the agreements they draw up do not have a direct and immediate effect on the market; this is confirmed by the draft guidelines on cooperation agreements. Basic research, even that conducted by major competing companies, will be free of restrictions regarding both substance and procedures. Furthermore, it should be possible to draw up many production-related restructuring and streamlining agreements, with less likelihood than in the past that they will fall within the scope of competition rules. Large companies will generally have a greater capacity to make their own independent assessments with regard to competition, and to avail themselves of the new instruments already on hand to make the system transparent and sufficiently flexible and responsive to business requirements.

5. **The new competition policy gives centre stage to the interests of citizens/consumers**

5.1. As mentioned earlier, the XXIXth report also looks into another key aspect, namely the prime position that competition policy should give to citizens/consumers.

5.1.1. This aspect is introduced in the foreword, which begins: 'Competition policy is relevant not only for those in business and their advisers, but also for the citizens of Europe, who need to have an overall view of how competition policy is implemented and its relevance to improving their daily lives. One of the essential roles of competition is to promote innovation and ensure that goods and services are produced as efficiently as possible and that these efficiencies are benefiting consumers ...'.

5.1.2. The role that competition policy must give citizens/consumers is then reiterated in more detail in various other passages in the foreword and the report. For instance, when describing the purposes of the modernisation reform, the foreword states that the objective of 'bringing the decision-making process closer to citizens [1]' is crucial. In the body of the report, it is noted that: '… Many citizens do not realise that competition policy is a powerful and effective tool for protecting their interests as consumers, users of services, workers and taxpayers. If they were conscious of these things, it is likely that they would provide the Commission with strong political support in this area (...) First, for every single decision taken as part of competition policy the question should be asked what specific advantage there may be for the citizen, and especially the consumer (...) the Commission intends to treat consumers not merely as people who benefit as a result of competition policy but also as promoters of competition policy...' [2]

5.2. The reason for quoting this passage at such length is to highlight the Committee's support for the Commission's reasoning and stance. More specifically, the Committee fully endorses the Commission's focus on the importance of bringing citizens/consumers closer to decision-making processes in the competition field. Any initiative designed to make citizens/consumers more familiar with competition policy, such as that already under way [3], is therefore to be welcomed.

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[1] The foreword states: 'In a Community of 15 Member States with strongly integrated economies, the application of the full range of competition rules should no longer be confined to one body, not only for the reasons associated with efficiency (...), but also to ensure that the citizens of Europe view competition policy in a positive manner and recognise it as playing an important role in their daily lives. The protection of the interests of consumers, and therefore of European citizens, is at the heart of Community competition policy. However, this is not always the public perception. By permitting consumers to address national competition authorities and courts (...) we will go a long way towards improving the perception which European citizens have of competition policy and of its benefits for them.'

[2] The body of the report continues: 'consumers and consumers' associations could be of great assistance in identifying and evaluating possible anticompetitive practices. (...) The Volkswagen case is still too isolated. The Commission intends to step up relations with consumers' organisations and more generally with the citizens of the Union. Lastly, the Commission is considering the advisability of organising meetings of various kinds with the citizens of the Union.'

[3] See brochure entitled: 'European competition policy and the citizen', published by the European Commission in June 2000.

5.2.1. In the Committee's view, any measures designed to promote and bolster the role of the citizen in promoting competition can also be highly significant. Measures of this kind can greatly increase the effectiveness of control measures, by uncovering abuses and serious illegal activities that would otherwise have gone unnoticed. This can be a vital contribution to the performance of the system.

5.3. For the reasons mentioned above, the Committee wholeheartedly agrees with the Commission on the central place that competition policy must give to citizens/consumers, providing of course that this does not upset the balance between the interests at stake, which was intended by the Treaty (e.g. Article 81(3)), and which the Commission has always sought to preserve. In actual fact, the report gives no suggestion of any intention to alter the current balance, but rightly focuses on the above-mentioned participatory aspects rather than on the interpretation of the rules, which have been consolidated over many years of application and case law.

6. Community merger control practice with regard to the undertakings to which transaction compatibility decisions may be subject

6.1. A few comments should be made in view of the growing importance of Community merger control, which celebrated its 10th birthday this year.

6.2. One aspect which emerges very clearly from the report, and which in the Committee's view deserves due recognition, is the fact that the Commission has stood its ground in many cases where major interests were at stake. This firm approach is borne out by the growing number of transactions abandoned to avoid prohibition.

6.2.1. The report also shows the flexibility of the solutions found when it has been necessary to reconcile the industrial aspects of a merger carrying risks to competition on the one hand, with the removal of those risks on the other. This has generally been possible by using the opportunity to subject Community compatibility decisions adopted at the end of either Phase I or II to undertakings proposed by the interested parties and deemed sufficient by the Commission to overcome the problems that emerged during the procedure. The capacity to reconcile these conflicting demands paved the way in 1999 for important economic and industrial operations, which would otherwise have been prohibited owing to the competition problems they generated.

6.2.2. The large number of transactions completed by introducing obligations or changes as early as the first phase is also significant. This demonstrates that the reform of the regulation, which enabled these measures to be taken, responded to a genuinely felt need. It also bears witness to the wealth of experience picked up by the task force, enabling it to take decisions — sometimes with very little notice — on measures which can sometimes be highly complex, as the report shows.

6.2.3. The Committee feels however that the increasing recourse to these undertakings makes it imperative to find satisfactory solutions to certain problems that arise when a compatibility decision is made subject to highly complex undertakings that often involve withdrawing capital from certain activities that may be very important, or other measures. The greater the number of provisions involving such measures, the greater the problems.

6.2.4. One such problem relates to the deadlines within which companies must make proposals for the content of possible commitments to be included in final decisions. These deadlines are often the subject of heated discussions during control procedures, between the Commission (which has an interest in bringing forward the deadline in order to have time to assess the adequacy and feasibility of the commitments proposed) and the companies (which conversely wish to postpone the deadline in order to protect their transactions for as long as possible). The bitterness of these divisions is often revealed in statements by companies whose planned transactions were prohibited by the Commission, complaining afterwards that the Commission threw out proposals that they presented a little before the end of the procedure and that could have salvaged the transaction.

6.2.5. The subject of time limits is so important that the Commission's implementing regulation for the merger control regulation devotes an entire article [1] to it. This article gives details of the time limits for presenting proposals in Phases I and II. The two time limits are peremptory and it is explicitly stated that the deadline for Phase II can be altered only under 'exceptional circumstances'. The need to keep strictly to these time limits is reiterated in the report, which devotes a 'box' to legal deadlines for submitting undertakings in Phase II of the procedure.

6.2.6. The Committee fully accepts the Commission's justifications, given that before accepting the undertakings, it has to carry out all the necessary checks and consult with the Member States. However the reasons why companies delay presenting their undertakings for as long as possible should not be discounted. For this reason, the Committee believes that the current reform should introduce changes to give companies the right and opportunity to ask the Commission to examine and discuss aspects of their transactions that may require more in-depth attention, before the deadline for formal notification. This would allow time for discussing the undertakings to be adopted in order to salvage the transaction, and would guarantee adequate protection in advance, thus meeting an equally important need.

6.2.7. The widely-debated subject of conditions and undertakings evolved significantly in 1999 when the Commission drew up a draft notice. This sheds useful light on the conditions under which such measures may be necessary, their timing and their possible content in various scenarios. The Committee therefore hopes that the notice will be adopted as quickly as possible and that the Commission will continue in its efforts to make its own procedures more transparent and to further the dialogue with the companies that are rightly treating these matters with increasing interest.

6.2.8. There are still major unanswered questions, however, which are unlikely to be resolved by the notice or by possible future amendments to the legislative framework. These include the matter (raised in the Committee opinion on last year's XXVIIIth report) of whether these measures can really solve the problems raised in the decisions. It is an important question, as the Committee is unaware of the findings of any studies on the performance of the measures, to assess with hindsight the value of the solutions and the true impact of Commission decisions in an increasingly important sphere.

6.2.9. The Committee is aware of the difficulty of this task, but it is nonetheless convinced that given the increasing importance of remedies in relation to merger control, this shortcoming will soon be addressed. The fact remains that, even on merger control, the 1999 annual report provides much encouragement and evidence of major achievements.

[1] Article 18 of Commission Regulation (EC) No 447/98 of 1 March 1998 'on the notifications, time limits and hearings provided for in Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings'.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 97/24/EC of the European Parliament and of the Council on certain components and characteristics of two or three-wheel motor vehicles'

(2001/C 123/03)

On 20 July 2000 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 the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 December 2000. The rapporteur was Mr Barros Vale.

At its 378nd plenary session of 24 and 25 January 2001 (meeting of 25 January), the Economic and Social Committee adopted the following opinion by 48 votes to 15 with four abstentions.

1. Introduction

1.1. The present opinion concerns a proposal to amend the Directive on certain components and characteristics of two or three-wheel motor vehicles.

1.2. The Commission's proposal is prompted by Article 5 of Directive 97/24/EC, which obliges the Commission to put forward proposals for a new motorcycle emission limit within two years of the adoption of the Directive, on the basis of research into the emission reduction potential of technology and an assessment of the costs and benefits of applying stricter limit values.

1.3. The proposal's primary aim is to improve air quality by defining maximum limit values for gaseous emissions from this type of vehicle.

1.4. This aim will be achieved by incorporating technology such as the oxidation catalyst (with or without secondary air injection), the closed loop three-way catalyst and direct petrol injection systems.

2. General comments

2.1. The Commission admits that electronic fuel injection and engine management systems have only just begun to find their way into the market. While these technologies are already feasible in four-stroke engines, the situation of two-stroke engines is quite different; various two-stroke engine manufacturers are currently developing this technology or already have a model on the market. The Committee considers that the mandatory introduction of new 'green' technologies must be conditional on their effective dissemination on the market and on producers having generalised access to them. The Committee hopes that such access can be achieved as swiftly as possible.

2.2. Two and three-wheeled vehicles are manufactured in small series and this, together with the vehicles' prices, is the reason why manufacturers' ability to write off R&D investment differs appreciably. Also, costs are higher for changes that have to be made in a short space of time due to a particular legislative measure entering into force, than for a change that can be incorporated into a model change that is already planned.

2.3. After listing the technological solutions that could be applied and the different results in two- and four-stroke engine emissions respectively, the Commission concludes that the proposed technological solutions for the first stage create the opportunity to establish one set of limit values applicable for all motorcycles, irrespective of the type of engine.

3. Specific comments

3.1. Because of the time-lag between (state of the art) technologies becoming known and the industrial feasibility and dissemination of the technological solutions mentioned for two- and four-stroke engines, precautions should be introduced concerning the dates when the proposed emission values become mandatory, in particular for the application of those technological solutions that still do not have industrially viable versions.

3.2. This concern stems primarily from the fact that while some attempts have previously been made to apply these technologies (e.g. direct injection) in small high-revolution engines, the products needed were not available on the specialised components market. This was due to technical difficulties and to the fact that, in quantitative terms, such products were of little interest to component specialists, given the high development costs but relatively small potential market.

3.3. Consideration must be given to the differing impact on the final cost of categories of vehicle equipped with two- or four-stroke engines, as this affects the competitiveness of prices on the market.

3.4. It would seem necessary to introduce mechanisms for correcting or amending the target values or dates in order to cater for cases where industrially viable versions cannot be found.

3.5. The issue of introducing fiscal incentives also needs to be clarified in order to protect the principle of competition, both between States and between different types of vehicle and companies in the sector. In particular, the Committee stresses that small and medium-sized manufacturers would have difficulty in meeting the optional limit values mentioned in Article 3(1)(b), as they do not have sufficient resources for R&D. These manufacturers may also face added difficulties on the market, as they do not have access to tax incentives, unlike their larger competitors with greater technical and/or financial capacity.

4. **Final considerations**

4.1. While the principle of environmental concern that underpins the proposal is welcomed, account must be taken of the likely technical and industrial difficulties. This is vital if the Directive is not to become unworkable for certain types of vehicle or if certain sectors with a long tradition in this type of vehicle (in particular, users of small two-stroke engines) are not to be excluded from the market from the outset.

4.2. The proposal must reflect the following:

4.2.1. In the case of technologies which are industrially feasible and available on the components market, and which are accessible to all engine and vehicle manufacturers (e.g. oxidation catalysts (OC) and closed loop three-way catalysts (TWC) for two-stroke and four-stroke engines, and secondary air injection (SAI) for four-stroke engines), the emission limits and deadlines mentioned in the proposal can be made binding.

4.2.2. The emission limits and deadlines which depend on technologies that are still in the R&D stage, and decisions which depend on tests whose details and reliability are not yet established, must be subject to an interim deadline to check their viability, as after 2003 they will be regulated in accordance with the state of the art at that time.

4.2.3. Here the Committee would draw the Commission's attention to the work being carried out by the UN-ECE Group on Pollution and Energy in Geneva on a new specific test cycle for motorcycles. It therefore does not seem advisable at present to establish optional limit values for the granting of tax incentives.

4.2.4. The Committee considers that the deadline mentioned in Article 2(3), regarding the validity of certificates of conformity which accompany new vehicles pursuant to Directive 92/61/EEC, should be changed to 1 January 2005.

4.2.5. The Committee also thinks that a one-year derogation should be provided regarding the application of the Directive to 'trial' bikes, so that manufacturers can explore solutions for this specific type of vehicle and adjust to the new requirements.

Brussels, 25 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

The following proposed amendment, which received more than one quarter of the votes cast, was rejected:

Point 2.1

Delete the last two sentences of this point and replace them by the following:

'The introduction of demanding technical standards (e.g. in respect of emission values) is an integral part of tried and tested environmental policy machinery. Account does, of course, always also have to be taken of the questions of technical feasibility and future dissemination on the market. Measures should also be taken to seek to ensure that these standards can be met by as many technology suppliers as possible.

The Committee understands all the possible reservations which may be expressed over the technical feasibility of standards in individual cases but it does endorse the principle that environmental policy should lay down demanding technical standards in order to enable environmental technology to press ahead.'

Result of the vote

For: 28, against: 32, abstentions: 6.

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council concerning life assurance (recast version)'

(2001/C 123/04)

On 26 July 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 Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 December 2000. The rapporteur was Mr Pelletier.

At its 378th plenary session of 24 and 25 January 2001 (meeting of 24 January) the Economic and Social Committee adopted the following opinion with 81 votes in favour and two abstentions.

1. Introduction

1.1. The basic texts governing the single market in life assurance, which is founded on the principle of the single authorisation and mutual recognition of checks, are the first directive of 5 March 1979 [1], the second directive of 8 November 1990 [2] and the third directive of 10 November 1992 [3], the latter directive amending and supplementing the preceding directives. It does not replace them completely and many of the provisions from the first two directives remain in force. These directives have themselves been amended by a directive of 29 June 1995 [4] intended to strengthen prudential supervision.

[1] Council Directive 79/267/EEC of 5 March 1979, OJ L 63, 13.3.1979, p. 1.
[2] Council Directive 90/619/EEC of 8 November 1990, OJ L 330, 29.11.1990, p. 50.
[3] Council Directive 92/96/EEC of 10 November 1992, OJ L 360, 9.12.1992, p. 1.
[4] European Parliament and Council Directive 95/26/EC of 29 June 1995, OJ L 168, 18.7.1995, p. 7.

1.2. Because of this accumulation of interlinking texts, and the resultant extremely complex layout, the Commission wishes to consolidate them officially in the interests of clarity.

1.3. During the official consolidation of the life assurance directives it became apparent to the Commission that it would be necessary to propose some amendments going beyond pure consolidation so as to clarify or update certain situations. This is why the proposal submitted for the Committee's opinion constitutes a proposal for recasting the directives.

2. **General comments**

2.1. Subject to the comments set out below, the Committee is generally favourable to the proposed recasting and can only share the objective of transparency and clarity.

2.2. Furthermore, the newly inserted provisions — of which there are six — are of limited scope and do not all require detailed comment. They concern the following points:

— definition of a regulated market;

— dates concerning the activities of composite undertakings;

— calculation of future profits;

— presentation of a scheme of operations by third country branches to be established in the EU;

— abolition of derogations;

— rights acquired by existing branches.

2.3. The majority of the proposal's provisions restate the life assurance directives, although several articles which no longer have any point are dropped. Regarding the articles which refer to the drawing-up of reports, the Committee wonders whether these reports have actually been drawn up.

3. **Specific comments**

3.1. *Preamble*

3.1.1. Recital 5

Recital 3 of Directive 92/96/EEC described the adoption of this directive as a 'stage that must be supplemented by other Community measures'. This phrase should be retained in the proposed 'recast' insofar as the single market still needs Community initiatives.

3.1.2. Recital 34

The French version lacks the reference '92/96/EEC No 13' in the margin.

3.1.3. Recital 58

It should be spelt out that the 'provisions concerning proof of good repute and no previous bankruptcy' must apply to the directors.

3.2. *Articles*

3.2.1. Article 1 — Definitions

3.2.1.1. 1(b) Branch

In the definition of 'branch' the words 'shall be treated in the same way as an agency or branch' which followed the words 'Any permanent presence of an undertaking ...' in Article 3 of the Directive of 8 November 1990 (90/619/EEC) have not been included (French text only). The Committee would suggest inserting two indents so as to clearly separate these two paragraphs, one starting with 'an agency ...' and the other with 'any permanent presence ...'.

3.2.1.2. 1(c) Establishment

The Committee would point out that in the French version the word 'établissement' (establishment) is not in italics like the other words defined in Article 1. The definition of 'establishment' should more logically precede that of 'branch'.

The Committee wonders why Article 1 does not provide a definition of 'Member State of establishment' which Article 2(f) of the second directive of 8 November 1990 (90/619/EEC) defined as 'the Member State in which the establishment covering the commitment is situated'. Is it regarded as redundant, being identical with 'Member State of the branch'?

3.2.1.3. 1(m) Regulated market

Directive 92/96/EEC provided for a provisional definition of a regulated market, pending the adoption of a directive on investment services in the securities field, which would harmonise that concept at Community level.

Council Directive 93/22/EEC [1] of 10 May 1993 on investment services in the securities field provides for a definition of regulated market, although it excludes from its scope life assurance activities. The Committee considers that incorporating this definition for life assurance is satisfactory and ensures that Community law is uniform.

Regarding the treatment of regulated markets in third countries, the Commission proposes leaving it up to the Member States to decide whether such markets are comparable with those in the EU. The Committee wonders whether more coordination and cooperation between the supervisory authorities is not needed to establish a number of criteria and requirements to improve the comparability of Community and non-Community regulated markets [2].

3.2.2. Article 18(6) — Simultaneous pursuit of life assurance and non-life insurance activities

The derogations introduced to the principle that life and non-life operations are to be kept separate should not be too numerous. Bearing in mind also the forthcoming enlargement of the EU, there is a risk of an increase in derogations to the principle. For this reason the Committee wonders whether the scope for derogation should not be further hedged in.

3.2.3. Article 23(1)(C) — Categories of authorised assets

Article 23(1)(C) of the French text of the draft recast, concerning the categories of assets authorised to cover the mathematical provisions, does not incorporate '(p) reversionary interests' from Article 21 of the third directive (92/96/EEC). This must be an oversight.

3.2.4. Article 25 — Contracts linked to a UCITS or share index

In the French version there is a mistake in the reference in margin. It should be Article 23 (92/96/EEC) and not Article 2.

3.2.5. Article 27(3)(a) — Rules relating to the solvency margin and to the guarantee fund

3.2.5.1. 2nd paragraph — calculation of future profits

The proposal states that 'the bases for calculating the factor by which the estimated annual profit is to be multiplied and the items comprising the profits made shall be defined by common agreement by the competent authorities of the Member States in collaboration with the Commission'. It stipulates that 'pending such agreement, those items shall be determined in accordance with the laws of the home Member State' and not, as in previous versions, 'of the Member State in the territory of which the undertaking (head office, agency or branch) carries on its activities'. In the Committee's view this amendment is in line with the Community directives which allot responsibility for supervising operations to the country where the head office is located.

3.2.5.2. Furthermore, the Committee wonders whether the method for calculating future profits should not include a more forward-looking dimension. This point should be studied when the texts on the solvency margin are amended.

3.2.6. Article 28 — Minimum solvency margin

3.2.6.1. In the third line of the fourth paragraph 'et' should be replaced by 'est' in the French version.

3.2.7. Article 49(2),(3),(4) — Scheme of operation of branches

The text of Article 11 of the first directive is reintroduced for the scheme of operations of third country branches. Is the information required by third country branches sufficient? Is

[1] Council Directive 93/22/EEC of 10 May 1993, OJ L 141, 11.6.1993, p. 27.
[2] 'Challenges posed by EMU to financial markets', OJ C 367, 20.12.2000.

more information needed to assess the links of a third country branch in a group or for intra-group transactions within the meaning of the directive on the supplementary supervision of insurance undertakings in an insurance group (98/78/EC) [1]?

The Committee thinks that it is justified in raising these points, especially bearing in mind the prospect of enlargement and the worldwide activities of criminal organisations.

3.2.8. Article 57 — Third country treatment of Community assurance undertakings

3.2.8.1. Paragraph 2

Rather than the Commission 'periodically' drawing up a report examining the treatment accorded to Community assurance undertakings in third countries, a more precise timetable should be stipulated, every five years for example.

Furthermore, was the above-mentioned report, which should have been drawn up for the first time no later than six months before the date referred to in the second paragraph of Article 30 of Directive 90/619/EEC, drawn up as provided for in Article 9 of that directive?

3.2.8.2. Paragraphs 4 and 5

Article 57 of the proposal incorporates Article 32b of Directive 79/267/EEC as inserted by Article 9 of Directive 90/619/EEC.

However, the last sub-paragraph of paragraph 4 and the first sub-paragraph of paragraph 5 have been omitted in the French version. The Committee proposes that they be reintroduced. The text is as follows:

'Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request.'

3.2.9. Article 59(2) — Derogations and abolition of restrictive measures

The Committee wonders whether a derogation should be retained for societies registered in the United Kingdom 'under the Friendly Societies Acts' when the derogations introduced for Belgian and Italian societies are no longer necessary.

3.2.10. Article 61 — Transitional regime for investments in land and buildings; Article 62 — Transitional regime for Sweden; Article 67 — Rights acquired by existing branches and assurance undertakings; Article 69 — Review of amounts expressed in euro

These articles laying down transitional regimes should either be adapted by stipulating a new period or be deleted as no longer relevant.

3.3. *The Annexes*

3.3.1. Annex III on information for policyholders

The Committee suggests amending point (a)14 to read 'type of contract' instead of 'type of policy' to bring it into line with the terminology used in the directive.

4. **Conclusions**

4.1. Without prejudice to point 2.2 above, the main objective of the proposal referred to the Committee is to consolidate Community provisions on life assurance so as to provide the public with a single, clear and readily understandable text. The Committee approves this initiative which will help to give economic agents and consumers an ordered overview of the general framework governing life assurance activities in the EU and will facilitate the growth of transborder transactions. It will also help to improve legal certainty for economic agents.

4.2. The Committee would strongly encourage the European Commission to carry out the same exercise as soon as possible for non-life insurance, an area where the complexities of the Community legal framework are in need of clarification. These operations are in fact governed by no fewer than nine

[1] Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998, OJ L 330, 5.12.1998, p. 1.

directives, adopted between 1973 and 1999, covering not only access to and exercise of non-life activities, but also more specifically vehicle insurance, credit insurance, travel insurance and legal protection insurance.

4.3. The Committee is also concerned that the proposed directive should not leave the way open for the principles and procedures laid down by the consolidated directives to be called into question.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Exhaustion of registered trademark rights'

(2001/C 123/05)

On 13 July 2000 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on the Exhaustion of registered trademark rights.

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 10 January 2001. The rapporteur was Mrs Sánchez Miguel.

At its 378th plenary session of 24 and 25 January 2001(meeting of 24 January), the Economic and Social Committee adopted the following opinion unanimously.

1. **Introduction**

1.1. The purpose of this opinion is to endorse the Commission's decision of May 2000 not to change the current Community exhaustion regime for registered trademarks, owing in part to the need to continue protecting European goods and services identified by trademarks.

1.2. Registered trademarks form part of the corpus of legislation governing industrial and intellectual property rights. At European level the discussion on registered trademarks has focused on the accession of the European Community to the Madrid Protocol and on the Community exhaustion regime.

1.3. Existing Community law [1] on industrial property rights (design, registered trademarks, copyright and similar rights) provides for the principle of Community exhaustion of rights. The purpose of this regime is to guarantee free movement of goods within the EU; it allows the owner of a trademark to prevent imports of products bearing that trademark which were first brought on to the market outside the EU.

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[1] Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks; Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark; Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products; Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs; Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property; Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights; Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

1.4. In November 1999 the Commission presented a working document that was intended to form the basis for future, more detailed, discussions in the group of experts appointed by the Member States at the request of the Council about a possible EU position on any change in the current Community exhaustion arrangements.

1.5. At the Internal Market Council of 25 May 2000, ministers exchanged contrasting views based on the outcome of recent discussions in the group of experts. At this Council, Commissioner Frederik Bolkestein informed the ministers of the Member States that the Commission had decided not to propose any change to the current Community exhaustion regime.

1.6. The exhaustion regime was included at the request of the European Parliament, under Article 13 of Council Regulation (EC) No 40/94 and Article 7 of Council Directive 89/104/EEC.

2. **General comments: arguments for and against a change in the Community exhaustion regime**

2.1. *The NERA study*

2.1.1. In November 1998 the Commission asked for a study to be carried out ('The economic consequences of the choice of regime of exhaustion in the area of trademarks') by National Economic Research Associates (NERA), S.J. Berwin & Co. and IFF Research.

2.1.2. The main aim of the study was to look at the potential economic consequences for the European Union of any change in the exhaustion regime for trademarks. The study analysed the effects that the exhaustion regimes (Community and international) might have on prices and trade volumes, market and product structures, and consumers, and the impact of these regimes on macroeconomic indicators such as employment.

2.1.3. The study concluded that the only obvious beneficiaries of a switch from the Community exhaustion regime to an international exhaustion regime would be parallel importers and the transport sector. National importers and exporters, and manufacturers, would suffer most.

2.1.4. A change in the regime would produce a barely perceptible reduction in consumer prices (0-2 %). The study also showed that the initial fall in prices would probably disappear over the long term.

2.1.5. The study did not quantify the potential job losses that a change in the regime would cause, although it indicated that jobs would probably be lost among 'national' suppliers of a product, while new ones would be created among 'external' suppliers.

2.1.6. Other conclusions of the study were that a change in the Community exhaustion regime would affect the quality of products, their availability to consumers and after-sales services.

2.2. *Public hearing*

2.2.1. On 28 April 1999 the Commission organised a public hearing attended by 180 representatives of various interest groups, including owners of registered trademarks from different industrial sectors, consumers, parallel traders and retailers.

2.2.2. At the hearing arguments were advanced for change and for maintaining the current Community exhaustion system:

— Those in favour of maintaining the current arrangements argued that an international regime would lower the economic value of trademark rights, which would have a negative impact on research and innovation, and reduce investment, causing higher unemployment.

— A number of participants argued against adopting the international exhaustion system on the grounds that there was a close link between parallel trade and piracy.

— Arguments supporting a change in the current regime focused exclusively on the fall in prices (0-2 % according to the NERA study) that would benefit European consumers.

— The potential broader range of products was another argument put forward by defenders of the international exhaustion regime.

2.3. *Groups of experts in the Council*

2.3.1. The Commission has held a number of meetings with the Member States and interest groups. Two meetings have been held with experts from the Member States on the basis of the working document prepared by the Commission in November 1999.

2.3.2. The ESC agrees in particular with the following arguments put forward by the national experts:

— The introduction and use of new technologies such as electronic commerce may make a wider range of products available to consumers at lower prices, so there would be less reason to change the current exhaustion regime for price reasons.

— In many cases products are protected not just by registered trademarks but by a number of intellectual property rights (industrial designs). Introducing an international exhaustion regime for registered trademarks would therefore have only a limited impact on a small number of sectors.

— In Europe, registered trademarks are governed by Directive 89/104/EEC (national trademarks) and Regulation (EC) No 40/94 (Community trademarks). It is essential that exhaustion regimes should be the same for both types of trademark (national and Community). Different co-existing systems would create confusion in the market, and among consumers, especially in terms of whether or not a product with a specific trademark had been brought onto the market legally.

2.4. *Consequences of a possible change in regime*

2.4.1. Community legislation

2.4.1.1. First and foremost, the Committee feels it is essential that the exhaustion regime be the same for national and Community registered trademarks. However, it must be borne in mind that there can be no guarantee that the exhaustion regime would be changed in both the legal instruments regulating this area (the Directive for national registered trademarks and the Regulation for Community registered trademarks), since the Directive can be changed by qualified majority in the Council, whereas amendment of the Regulation requires unanimity.

2.4.1.2. It is likely that some Member States would resist a change in the Regulation, which might result in two different exhaustion regimes existing alongside each other, a situation that would only produce confusion in the market and among consumers. However, the Community exhaustion regime also furthers integration of the single market. An international exhaustion regime could put European companies at a disadvantage, since there has been no equivalent process of integration at global level as yet; SMEs would be particularly affected, as they are covered by national trademark arrangements, these being cheaper.

2.4.2. Other intellectual property rights

2.4.2.1. Registered trademarks are only a part of the corpus of legislation dealing with intellectual and industrial property. In practice, most products are covered by a complex of rights relating to industrial property, registered trademarks, patents, copyright and designs. It is rare for the trademark to be the only industrial property right covering a product. For example, in the case of an audio compact disc the music will be protected by copyright, the technology by patent and the trademark by registered trademark rights.

2.4.2.2. The legislative processes relating to intellectual and industrial property rights are likely to be complex and long-drawn-out. The European-level discussion about designs began in 1993 and has not yet finished. As the Commission recently noted [1], changing the exhaustion regime for registered trademarks would not have much impact on the market because most products are covered by a number of intellectual property rights. The Commission does not consider it appropriate to introduce an international exhaustion regime for all intellectual property rights.

2.4.3. Economic growth in Europe

2.4.3.1. A change in the Community exhaustion regime could in the long term inhibit investment in new products or even result in the withdrawal of products with registered trademarks that are already established on the market because they cannot compete with imported products.

2.4.3.2. Owners of registered trademarks might also decide to cut post-sales services or other features of their products that parallel importers do not provide to European consumers because they are not subject to a Community standard.

[1] Commission Communication of 7 June 2000.

2.4.3.3. The Community exhaustion regime meets the need to further integrate the single market. An international exhaustion regime would put European companies at a competitive disadvantage because such an integration process has not taken place at global level. Conditions of access to markets for products from third countries vary more at global level than within the EU.

2.4.3.4. The single market has brought about economic integration and a levelling-out of prices across the EU. These conditions do not however exist on the global market. The countries coming under the WTO thus do not form a customs or economic union like the EU, or even a free-trade area. Numerous tariff and non-tariff barriers still exist between these countries, as do major differences in terms of their economies, legal systems, levels of wealth and development, controls and regulations.

2.4.3.5. In addition to the possible consequences of a change of regime for European manufacturers, consideration must be given product marketing/distribution channels — especially of specialist products — and franchising. At present, franchising arrangements give European consumers access to high-quality products with clear references. A change of regime would give rise to confusion among European consumers, who could come across products with well-known trademarks but failing to meet their expectations of quality.

2.4.3.6. Another important single market issue is the risk of counterfeiting and piracy concerning products coming from non-EU countries. As argued in the Green Paper on counterfeiting and piracy and its follow-up communication [1], account must be taken of:

— the negative impact of these products on the European economy;

— the risk of parallel import channels being used for such products;

— the need for action taken by the Commission in implementing the green paper to be consistent.

2.4.3.7. Finally, differences in administrative requirements or labour costs may affect the costs of parallel trade. Community policy has prevented such differences occurring within the EU, which is not the case at international level.

3. **Reasons to support the current Community exhaustion regime**

3.1. *Consumers*

3.1.1. The Committee believes that European consumers currently demand a certain level of quality and post-sales services, as well as competitive prices, and this is recognised in European law. But above all they expect to pay for what they believe they are getting. Sometimes producers of trademarks use different designs or variations for different customers. For example, the most popular brands of toothpaste in Europe are mint-flavoured, whereas in Indonesia the most popular ones are clove-flavoured. Another example would be lubricating oils for engines, whose composition can vary depending on the climate where they are to be used.

3.1.2. Access to products that are not designed to meet the climatic and technical requirements of European consumers could pose a safety risk to them. It is important in this part of the opinion to point to the possible impact on health in Europe of parallel imports of pharmaceutical products, bearing in mind that the pharmaceuticals sector in Europe is subject to considerable surveillance to protect consumer health.

3.1.3. Availability: the current Community exhaustion regime ensures the availability of all types and ranges, not just those that are most in demand. Thus an official vendor of jeans, for example, will offer its customers all sizes, not just those of the largest section of the population.

3.1.4. Post-sales services: European consumers expect a range of services to be provided by producers, which are not available to them with parallel imports. A television bought from an unofficial supplier may not come with any installation services or repair guarantee. Moreover, the instructions accompanying imported products are usually in the language of the country in which the parallel importer acquired the product, not that of the consumer.

[1] ESC opinion in OJ C 116 of 28.4.1999, rapporteur: Mr Malosse. Green Paper — Combating counterfeiting and piracy in the Single Market (COM(1998) 569 final); Communication — Follow-up to the Green Paper on combating counterfeiting and piracy in the Single Market (COM(2000) 789).

3.1.5. Counterfeited and pirated products: The routes used by parallel importers are often the same as those used for pirated products. An international exhaustion regime might trigger an increase in pirated products in the EU, the harmful effects of which for the proper working of the single market were confirmed in the replies to the green paper. As indicated in point 2.4.3.6 above, the harmful effects on European economic growth would also have repercussions for consumers. The importers of such products are responsible for proving that they meet Community standards. It is also important to highlight the serious consequences of counterfeiting and piracy for consumer protection and public health and safety. Given that some counterfeited/pirated products are in everyday use, the risks are frightening. Among the most significant cases uncovered by the European Commission in 1999 [1] were 530 000 counterfeit toothbrushes, 21 tonnes of counterfeit rice and energy drinks. The quality and origin of these products evade any form of control by the Community or Member State authorities.

3.1.6. Prices: Advocates of parallel trading cite reduced prices as almost the sole argument in its favour. In fact, the NERA study has now shown that price reductions are negligible (between 0 and 2 %) and that they tend to disappear in the long run. The NERA study also found that producers would lose up to 35 % of earnings, resulting in less investment in research and development for European products. But European producers must innovate constantly in order to compete and provide more added value to consumers. This added value is increasingly to be found in the 'intellectual' content of the brand (whether this is a technological or image-related innovation), which means that it is increasingly important for this intellectual property to be protected.

3.2. *Community legislation*

3.2.1. Keeping the current Community exhaustion regime would not lead to any change in Community legislation governing registered trademarks or any other industrial or intellectual property rights, particularly regulations or directives.

[1] 1999 annual report on the Community's customs operations concerning piracy and counterfeiting.

3.3. *Single market*

3.3.1. The Community exhaustion regime is a natural part of the single market, in which obstacles to free circulation of goods and people are being removed and the economies of the Member States are converging.

3.3.2. The purpose of EU competition law is to prevent any obstacles to integration of the market, including obstacles to consumers' freedom to buy what they want wherever they want in the EU. Competition law also provides an appropriate framework in which companies that consider themselves threatened or discriminated against in the face of potential dominant market positions can lodge any complaints.

3.3.3. The current Community exhaustion regime provides assurance to producers and suppliers with respect to investment in research and development for new products.

3.4. *Trade relations with third countries*

3.4.1. The first point to bear in mind is that the Community exhaustion regime is a natural part of the single market in which the Member State economies converge and which seeks to remove obstacles to the free movement of goods.

3.4.2. On a global level, there can be no valid comparison between European integration and the attempt to remove barriers to the free movement of goods on the one hand, and the WTO process on the other. Neither is there a parallel political process working to reduce existing differences between the EU and third countries.

3.4.3. Trademarks are important at international level. European companies competing on the world market must face companies with considerably lower production costs. The Community exhaustion regime offers a degree of protection to these companies and to non-European companies working within the single market.

3.4.4. An international exhaustion regime would mean that a trademark established in the EU would be unable to penetrate the markets of developing countries using marginal prices, since these products would immediately return to the EU, destroying the base market. Companies pursuing a marginal price strategy would have to choose between not exporting, or removing production from the EU to lower-cost markets.

3.4.5. It must also be borne in mind that parallel imports from third countries can have a significant deterrent effect on production and investment in innovation within the EU. This would probably result in reduced European exports and greater incentives to shift production to lower-cost locations than the EU.

3.4.6. EU competition law [1] represents the best way of dealing with possible abuses by certain companies.

[1] Especially the following articles: Treaty Article 82 on abuse of dominant positions.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 80/232/EEC as regards the range of nominal weights for coffee extracts and chicory extracts'

(2001/C 123/06)

On 23 October 2000 the Council decided to consult the Economic and Social Committee, under Article 251 of the Treaty establishing the European Economic 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 10 January 2001. The rapporteur was Mr Liverani.

At its 378th plenary session (meeting of 24 January 2001) the Economic and Social Committee unanimously adopted the following opinion.

The present proposal follows up the obligation undertaken by the Commission to amend Directive 80/232/EEC by adding the mandatory range previously contained in the Directive on coffee extracts and chicory extracts. The aim is to maintain a legal basis in Community law for the range. The range need not be adapted as it is sufficient to ensure free circulation of goods in the sector.

Entry into force will be 20 days after the publication of the Directive. This short period of time is justified because the range is already part of the acquis and therefore has already been implemented by all Member States.

The Committee endorses the Commission proposal.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council concerning the granting of aid for the coordination of transport by rail, road and inland waterway'

(2001/C 123/07)

On 15 September 2000 the Council decided to consult the Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the above-mentioned proposal.

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 7 December 2000. The rapporteur was Mr Kielman.

At its 375th plenary session of 24 and 25 January 2001 (meeting of 24 January 2001) the Economic and Social Committee adopted the following opinion by 77 votes in favour, with one abstention.

1. The Commission proposal

1.1. Thirty years ago, on 15 June 1970, the Council adopted Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway. The purpose of that regulation was to specify what amounted to 'coordination' within the meaning of Article 73 of the EC Treaty so as to make clear the boundaries between an exception (usually administration of the rail sector in particular) and the general rules.

1.2. Since then the different sectors have become liberalised, at varying speeds and to varying extents. Regulation (EEC) No 1107/70 has been amended in a somewhat piecemeal fashion, but, in the interests of simplicity and greater clarity, the time has now come to replace it with a new regulation.

The new regulation reflects how the transport market has developed over time as a result of the application of Article 73 of the EC Treaty. This article also has a role to play in connection with the financing of infrastructure.

The proposed regulation therefore envisages a comprehensive exception for aid for the operation and/or development of transport infrastructure which benefits infrastructure managers and, in the freight sector, aid for the benefit of users who are thereby compensated for the unpaid costs of competing modes.

1.3. The specific market access legislation required under Article 71 of the EC Treaty has delayed liberalisation in land transport. Full transport market liberalisation is thus still to be achieved.

1.4. The dates for full liberalisation are as follows: international road haulage: 1 July 1998; road passenger transport: 1 June 1996; inland waterway transport: 1 January 2000; and combined transport: 1 July 1993. Rail liberalisation is pressing ahead, with the discussion now focusing on the railway infrastructure package.

2. General comments

2.1. Aid granted by a Member State which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market and thus prohibited under the EC Treaty, insofar as this aid affects trade between Member States.

2.2. State financing of infrastructure open to all potential users and managed by the State does normally not fall under the EC Treaty since no advantage is conferred on a single undertaking. An example is transport infrastructure financing in the Member States. Thus, the construction and management of transport infrastructure fall outside the scope of the proposed regulation.

2.3. A specific State aid approach is necessary in transport because of the need for State intervention to maintain transport services which serve town and country planning purposes and also have to meet social and environmental concerns.

2.4. Under Article 73 of the EU Treaty, the coordination of transport and compensation for the provision of public services are considered aid-worthy.

2.5. In fact, the concept of aid within the meaning of the proposed regulation refers to the need for State intervention arising (i) in the absence of competitive markets or (ii) in the presence of market difficulties such as negative externalities or public goods.

2.6. The Commission states that the notion of external costs is not yet defined in Community law, but evidently feels that non-allocation of these costs results in market difficulties.

2.7. The EC Treaty also grants an aid exemption for the financing of public services. In this connection, public service obligations are deemed to be obligations which a transport undertaking would not assume if it were considering only its commercial interests. Council Regulation (EEC) No 1191/69 of 26 June 1969 establishes criteria for fixing the amount of State compensation permitted in rail, road and inland waterway transport when such public service obligations are imposed.

2.8. Under Article 87(3)c and drawing on Article 73 of the EC Treaty, the European Commission may authorise State aid to foster the development of certain economic activities where the aid does not adversely affect trading conditions to an extent contrary to the common interest. With a view to promoting investment by transport enterprises in intermodal transport, the discussions on the abolition of the 'de minimis' rule in respect of transport enterprises should be speeded up. This rule lays down the threshold figure below which measures taken by the public authorities are not regarded as 'state aid'.

2.9. The proposed regulation relates to the coordination of rail, road and inland waterway transport. It does not cover maritime transport facilities, but does take in transhipment between land transport modes, regardless of the location of the corresponding transhipment facilities. All transhipment involving maritime transport, even in combination with land transport modes, falls outside the regulation's scope.

2.10. To date, legal exceptions for State aid have existed under Council Regulation (EEC) No 1107/70 only for direct investments in inland waterway and combined transport terminals. These were, however, specific exceptions which are not conducive to an integrated approach to land transport infrastructure.

The Commission considers that these specific exceptions must be replaced by a general infrastructure exception.

2.11. In its opinion on the Commission White Paper Fair Payment for Infrastructure Use: A phased approach to a common transport infrastructure charging framework in the EU (COM(1998) 466 final), the Committee noted that, from the point of view of equal treatment of transport modes, it is desirable to implement the charging principles uniformly, at exactly the same time and, as far as possible, at source [1].

2.12. The reality is, however, that Member States still recover infrastructure costs for the various land transport modes in different ways and to different degrees. Furthermore, there is not yet any Community legislation which harmonises methods for calculating infrastructure access charges within or across land transport modes.

2.13. The Committee feels that the Commission should concentrate on establishing the internal and external costs of each transport mode instead of focusing in advance on State aid to compensate for the unpaid costs of competing transport modes.

2.14. Furthermore, the Committee believes that the procedure for obtaining State aid involves complicated, laborious reporting to the Commission. This considerably exacerbates the administrative burden, as does the whole of the planned notification and information procedure.

2.15. Of course, the modal shift which the Commission wishes to bring about must certainly be examined in the light of its social and economic consequences.

2.16. The Committee feels that the Commission is moving in the opposite direction. The Commission's justification for the proposed regulation is that rail liberalisation is not complete and no harmonised charging mechanism has yet been established to compensate for the unpaid costs of transport modes.

2.17. The Committee thus feels that a logical move would first of all be to liberalise the railways to the same degree as other land transport modes and, as set out in point 2.12 above, to work out clear criteria for allocating costs to transport modes, instead of a complicated, time-consuming and debatable aid mechanism as proposed in the draft regulation.

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[1] OJ C 116, 28.4.1999, p. 28.

3. **Conclusion**

3.1. The Committee considers that this proposal for a regulation is premature.

3.2. It is desirable first of all to secure the same degree of liberalisation across the various transport modes in order ensure that each mode is treated equally.

3.3. Moreover, in the light of the Committee opinion on the transport white paper, the Commission should first map out the relative proportion of the various internal and external cost elements before putting forward a proposal for a regulation which bases aid for a specific transport mode on the unpaid costs of competing modes.

3.4. The Committee feels that the social and economic consequences of the proposal have not been addressed.

3.5. In conclusion, the Committee is convinced that adoption of this draft will result in the introduction of an extremely complicated and bureaucratic system of checks.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on '*e*Europe 2002 — An information society for all — Draft Action Plan'

(2001/C 123/08)

On 29 May 2000, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on '*e*Europe 2002 — An Information society for all — Draft Action Plan'.

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 9 January 2001. The rapporteur was Mr Koryfidis.

At its 378th plenary session held on 24 and 25 January 2001 (meeting of 24 January) the Economic and Social Committee adopted the following opinion by 80 votes to three, with one abstention.

1. **Introduction**

1.1. The European Commission launched its '*e*Europe — An Information Society for all [1]' initiative in December 1999 [2].

1.2. It was motivated 'by the growing realisation that the application of digital technologies has become the key factor for growth and employment', the evidence that 'a "new economy" or e-economy is emerging [3], mainly driven by the Internet [4]', and the fact that 'in spite of Europe's lead in certain digital technologies, e.g. mobile communications and digital TV, the uptake of computers and the Internet in Europe remains comparatively low' [5].

[1] http://europa.eu.int/comm/information_society/eeurope/news/index_en.htm.

[2] The progress of the initiative is presented in the appendix (point 1).

[3] For the term 'new economy' and for more general information on the subject, please see: http://europa.eu.int/comm/information_society/eeurope/documentation/progrep/pr_annex2_en.htm.

[4] http://europa.eu.int/comm/information_society/eeurope/documentation/progrep/pr_text_en.htm (Introduction).

[5] See relevant table in the annex to the Commission's progress report; 'eEurope: An Information Society For All', electronic address: http://europa.eu.int/comm/information_society/eeurope/documentation/progrep/pr_annex2_en.htm.

1.3. The initiative is aimed 'at accelerating the uptake of digital technologies across Europe and ensuring that all Europeans have the necessary skills to use them' ([1]).

1.4. The broad lines of the eEurope initiative have been well received by the Member States. Most of them, meanwhile, have developed comparable initiatives at national level, e.g. 'Germ@ny goes online' ([2]), the British initiative 'Information Age Government' ([3]), and the French initiative on Internet coregulation ([4]).

1.5. However, all the evidence suggests that Europe has responded slowly to the major challenge of the Internet. The distribution of users ([5]), the link between education and the Internet ([6]), the absence of the new technologies from a large number of businesses, the level of growth in electronic commerce, and other statistics, reflect badly on Europe and confirm the extent of the ground to be made up. It is vital to catch up; but this will clearly be difficult given the pace and speed of developments in this sector. For this reason, in this particular case, Europe can ill afford the luxury of further delay or inertia in the implementation of the action plan.

2. **The Commission document**

2.1. The action plan in question was drawn up on the basis of the goals of the Lisbon European Council (preparing the transition to a knowledge-based society and economy) and taking into account the reservations expressed by the European Parliament and Member States (danger of exclusion, poverty, skill shortages, etc.).

2.2. The action plan focuses on solutions to the following questions: what should be done, who should do it and by when. Its key objectives are:

— 1st objective: a cheaper, faster and secure Internet

a) Cheaper and faster Internet access

b) Faster Internet for researchers and students

c) Secure networks and smart cards

— 2nd objective: investing in people and skills

a) European youth into the digital age

b) Working in the knowledge-based economy

c) Participation for all in the knowledge-based economy

— 3rd objective: stimulating the use of the Internet

a) Accelerating e-commerce

b) Government online: electronic access to public services

c) Healthcare online

d) Digital content for global networks

e) Intelligent transport systems

2.3. There are three main methods by which the above objectives will be achieved:

— accelerating the establishment of an appropriate legal environment;

— supporting new infrastructure and services across Europe;

— applying the open method of coordination and benchmarking.

2.4. With regard to the timeframe, the key deadline for achieving the action plan targets is 2002, although it is pointed out that it will be very difficult to meet the ambitious objectives set in Lisbon.

2.5. Finally, there are many proposals currently being developed within the framework of the eEurope initiative ([7]).

([1]) http://europa.eu.int/comm/information_society/eeurope/background/index_en.htm.
([2]) Private initiative of Deutsche Telecom in conjunction with the German government. See press release of 11.2.2000.
([3]) http://www.iagchampions.gov.uk/Strategy.htm.
([4]) http://www.internet.gouv.fr/francais/textesref/pagsi2/Isi/coregulation.htm.
([5]) See relevant table in the annex to the Commission's progress report, 'eEurope: An Information Society For All', electronic address: http://europa.eu.int/comm/information_society/eeurope/documentation/progrep/pr_annex2_en.htm.
([6]) Idem (page 40).

([7]) Such as:
— COM(2000) 323 (01): Proposal for a Council Decision adopting a Multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the Information Society.
— COM(2000) 318 (01): Communication from the Commission — e-Learning — Designing tomorrow's education.
— COM(2000) 237 (01): Communication from the Commission — Unbundled Access to the Local loop: Enabling the competitive provision of a full range of electronic communication services including broadband multimedia and high-speed Internet.
Source: http://europa.eu.int/eur-lex/en/com/greffe_index.html. For more details: http://europa.eu.int/eur-lex/en/com/reg/en_register_132060.html.

3. **General comments**

3.1. The ESC welcomes the eEurope initiative and considers it to be the most important and ambitious effort by the European Union to date to familiarise its citizens with and adapt its businesses and its public bodies as rapidly as possible to the new conditions created by the digital age and the new economy. In the Committee's view, this initiative is more than a starting point for that familiarisation and adaptation process, however; it is a buttress for the relevant processes that are already developing, though slowly, in the market and in society.

3.1.1. By introducing the eEurope initiative, the Commission and the Members States have recognised that market forces are not driving the Internet fast enough in Europe. All the products and services are available, but demand is insufficient. The eEurope initiative reinforces and complements the action of market forces in three ways, which in order of priority (the action plan lists them in the reverse order) are:

— promoting Internet use, and growth in demand;

— investing in people and skills;

— facilitating access to a cheaper and faster Internet, focusing on telecoms charges and security.

3.1.2. The ESC believes that substantial adjustment in Europe to the new conditions will depend in the long run on a combination of the relevant dynamics that the initiative nurtures in the market and society.

3.1.3. In that respect, the ESC agrees that the Commission's action plan will make a positive contribution towards meeting the objectives set by the Lisbon European Council. Under certain conditions, the plan could be a genuine help *inter alia* in enabling Europe to play a leading role in shaping the new global economic reality of the 21st century.

3.1.3.1. The following observations and proposals are intended to underline the need to clarify certain points in the action plan and to reinforce others. In any event, they express the ESC's general perspective on the eEurope initiative. The Committee's views on the individual objectives of the action plan are set out in corresponding opinions.

3.1.4. The ESC is adamant that all the measures relating to stimulating Internet use, establishing an information society and achieving the Union's new strategic goal [1] should focus on people and their needs, the European citizen, European society and the European economy. Provided it serves that principle, the establishment of the information society — as an antecedent to the knowledge-based society — will acquire real significance.

3.1.5. Inasmuch as the basic aim of the overall initiative is to promote Internet use, the success of the action plan will depend in the long run on:

— if and to what extent it promotes Internet use in business, government and European society as a whole; and

— if and to what extent it generates a dynamic or trend towards increasingly extensive Internet use.

3.2. The ESC is aware of the scale and number of problems associated with the development of the action plan. In particular, the Committee foresees difficulties in covering the ground and gaps that have opened up as a result of Europe's tardy response to the new technological challenges.

3.2.1. Despite the above-mentioned and other problems, the ESC is optimistic that the action plan can be successfully implemented [2]. The key is for there to be political support, and timely awareness among the public and business, and for the appropriate funding to be made available.

3.2.1.1. In practice the above means:

— putting the action plan, and more generally the eEurope initiative, at the top of the political agenda across the board, in all forms and areas of political action;

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[1] As is well known, in Lisbon, in March 2000, the Union set itself a new strategic goal for the forthcoming decade 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'.

[2] The ESC's optimism is borne out by the latest developments. The press release that accompanied the Commission's communication 'The eEurope 2002 Update', prepared for the Nice European Council, notes that the proportion of European households connected to the Internet rose sharply from 18 % in March to 28 % in October.

— bringing every area of public or organised private sector action into line with the initiative, utilising part, however small, of the resources earmarked for this purpose.

3.2.2. For the ESC, the risk of individuals, groups or entire regions being excluded from the overall initiative is great and manifold, given that non-computerised access to universal services will gradually become obsolete as the provision of computer-based services develops. For this reason, the ESC agrees with those who support the view that the programme as a whole and the individual measures should include means of combating these risks. This in part means that:

— support must be given to those regions that by their very nature are in danger of exclusion (mountainous, sparsely populated or island regions);

— special support must be given to people with special needs;

— and finally, support must be given to individuals who are untouched by modern technology or who for specific reasons, or plain economics, have no access to it.

3.2.2.1. The applicant countries are at risk too, with regard to the competitiveness of their economies and social cohesion. For this reason, provision should also be made for them throughout the action plan development process.

3.2.2.2. Against this backdrop, the Committee considers access for European citizens to the information society and participation in the knowledge-based society to be paramount as a social goal, and as a social and individual right. This right must be taken into consideration in the eventual debate on the 'Charter of Fundamental Rights' ([1]), and in its formulation.

3.2.2.3. The reference to the risk of exclusion points to a clear aim: that once the programme is complete, not a single European citizen, regardless of the level of schooling reached, or company of any size, should be able to deny having had the opportunity or the possibility to acquaint themselves with the information society.

3.2.2.4. In any event, the greatest risk is that Europe will be permanently lagging behind its competitors with regard to the information and knowledge-based society. For this reason, the ESC would place particular emphasis on the need for the European productive sector to enter the information society immediately. Otherwise, European business will not be able to compete in the new world economic environment, with all that implies for the development of individual policies to combat exclusion.

3.3. *Organisational problems*

3.3.1. In the ESC's view, in the final analysis, the implementation of the action plan will be judged largely in terms of organisation. It is precisely on this level that the ESC agrees broadly with the Commission's approach. It agrees in principle with the objectives as they are set out, the means of tying them in with the demands of the special European Council in Lisbon, the definition of the measures and of the operators with responsibility for carrying them out, and the deadlines set. As a complement to the organisational approach taken by the Commission, the ESC would make the following observations and proposals:

3.3.2. Organisational problems — observations

1st observation: In the ESC's view, the approach proposed by the Lisbon European Council for the coordination and implementation of the initiative is important. An 'open method of coordination based on (...) benchmarking' could indeed, under certain conditions, provide a major boost towards achieving the objectives of the action plan. The approach, however, fails to define the term 'benchmarking'. Furthermore, it fails to specify which body or bodies will coordinate the overall initiative ([2]).

2nd observation: There has been no mention yet of how the overall programme will be publicised and promoted in the community and in the business world so that the public will be informed fully and rapidly.

3rd observation: Lastly, there is no financial/technical estimate of the overall cost of the programme nor any mention of how the cost will be divided among the various levels.

([1]) See ESC opinion on the subject, 'Services of general interest', OJ C 368, 20.12.1999.

([2]) It should be noted that relevant committees have been set up in the meantime. Despite this positive development, the ESC notes the need to speed up the processes for dealing effectively with the serious issue of coordinating the implementation of the action plan.

3.3.3. Organisational problems — proposals

1st proposal: In principle, the ESC is in favour of being able to solve any organisational problems at national level. Despite this view, however, it believes that the most appropriate bodies to coordinate the overall initiative at local level may possibly be the multi-purpose learning centres referred to in the Lisbon European Council conclusions [1]. More specifically on the subject of benchmarking, the ESC would draw the Commission's attention to the need to ensure that the system as a whole is credible. First and foremost this means transparency and ongoing central political control over the operating procedures of the entire system (European Parliament/Council). In addition, however, it means taking any measures that will ensure the comparative data are reliable and truly comparable.

2nd proposal: Informing citizens about the eEurope programme and the related action plan in a comprehensive, credible and understandable way is an important factor in the success of the programme as a whole. At local level, the coordination of public information could be the task of the multi-purpose learning centres. In any event the ESC feels that there should be a continuous flow of information, in all directions and using all available means. The social partners and, more generally, organised civil society have a special role to play in meeting this requirement.

3rd proposal: The ESC recommends a detailed study on the subject and a specific budget. People should be aware of this study and budget, just as they should be aware of what exactly is at stake now and in the future.

3.4. *Individual issues of importance*

3.4.1. The second area of action, on which the success of the Lisbon objectives will be judged, relates to the means of tackling individual issues, that can nevertheless be considered important.

3.4.2. Individual issues of importance — observations

1st observation: The ESC would point out that in general, every country being different, only a small portion of the European public are participants in the information society — though of course the number is growing constantly. For want of specialised knowledge, many of them, both inside and outside the productive sector are bewildered by the developments. Many others, generally on the threshold of the working world, are participants in an information society environment that is shaped entirely by the market and its rules.

2nd observation: In the view of the ESC, the market's contribution to the development of the information society is important and positive. So far, it has helped to ensure that many European businesses, workers and citizens are familiar with it and are part of it. However, the overall effort must no longer be left exclusively to the market and its rules. This option would marginalise large sections of the population (the unemployed, the elderly, people with special needs, regions where the market does not function fully), while also inevitably leading to serious divisions and social conflict. For this reason, the ESC supports and underlines the position of the Lisbon summit, with regard to 'giving higher priority to lifelong learning as a basic component of the European social model' [2].

3rd observation: The issue for the ESC centres on how to move forward to increase familiarity with the information society and the potential prospects that progress will open up. In this context, there are two main areas of action, which must operate simultaneously and in parallel with immediate effect.

— The first of these, which is concerned with school education and the requirements the information society imposes on it, clearly serves medium- and long-term goals. An important one of these goals is that of meeting the need for experts (in terms of both quantity and quality). The European market must acquire and hold on to its own top quality experts in the information society.

— The other concerns Europeans who are outside the educational sphere, and their economic and social activities, of whatever kind. Action in this field caters to the need to familiarise Europe's citizens with modern technology and the information society without delay, whether or not they are in active employment [3].

[1] For further analysis of this proposal see the appendix, point 2.

[2] For further analysis of the means of acquainting the masses with information society technologies see Point 5, OJ C 117, 26.4.2000.

[3] See ESC proposal on the subject (OJ C 117, 26.4.2000).

3.4.3. Individual issues of importance — proposals

1st proposal: The ESC recommends conducting studies into the response of the adult population to attempts to familiarise it with the information society. These studies should first be addressed to the leading political, social and economic players. Such studies merit special attention, as for the first time in world history, children and teenagers are better placed in terms of 'knowledge' (of communications technologies) than a large section of people of working age (especially those currently in charge of production processes).

2nd proposal: The effectiveness of the action plan will to a large extent depend on the level of its initial audience and the incentives that are provided to elicit an overall positive reception from it. Without ruling out support for any type of relevant initiative, the ESC feels that the best possible dynamic for the development of the action plan and reaching its objectives may be achieved through the existing organisational structure of European society, coupled with appropriate incentives to suit each situation. In general terms, the ESC suggests that the plan should be developed through:

— SMEs,

— education, and

— civil society organisations.

The incentives could for instance target:

— SMEs, by enhancing their electronic presence (web pages, inter-company communication, electronic communication with government, market research);

— educational establishments, by providing them with the relevant infrastructure, in schools, youth clubs, libraries, etc. (Such infrastructure in schools or colleges acting as local learning centres could also be made available to adults outside school hours.) One possibility that would definitely yield positive results would be to supply educators at all levels with free computer equipment (PCs with free access to the Internet) [1];

— civil society organisations, by providing them with whatever support is needed to install and update their electronic equipment.

3rd proposal: The ESC believes that a special effort is required of civil society organisations and SMEs as implementation of the action plan gets underway. In this respect, the ESC is prepared to provide the Commission with its assistance, through the organisations it represents.

4th proposal: A very strong incentive for ordinary Europeans to become familiar with the information society would certainly be the potential to broaden the exercise of democracy and the preconditions for more direct participation in the decision-making that affects them. The ESC suggests that research should be conducted into the impact of the information society on European democracy, economy and society. E-government could play an important role, for instance within public administration, between administration and business and between administration and the public (licences, taxes, social security, etc.) [2]. More direct forms of communication, government and participation in decision-making centres, greater transparency and information on tap as required, are factors that could help build a more democratic Europe, in political, social and economic terms.

4. **Specific comments**

4.1. *Objective 1: Cheaper, faster and secure Internet access*

4.1.1. The ESC agrees with the broad lines of the Commission's approach. It would however like to make the following comments and proposals.

4.1.1.1. Cheaper, faster and secure Internet access — observations

1st observation: A liberalised and healthy framework of competition in the area of telecommunications services [3] will certainly help to reduce the cost and increase the speed of Internet access. The ESC welcomes the Commission's proposals for directives to this effect [4]. However, it should be pointed

[1] In Sweden, 'money has been allocated by the government to supply 60 000 teachers with a personal computer.' Source: European Report on Quality of School Education — Sixteen Quality Indicators — May 2000 (Annex 1 — ICT — last point) http://www.europa.eu.int/comm/education/indic/backen.html.

[2] See ESC opinions: 'Green Paper on public sector information in the information society' (OJ C 169, 16.6.1999) and 'Digital content/global networks'.

[3] For more information see appendix, point 3.

[4] See COM(2000) 384, 385, 386 and 393 final and the ESC opinion 'Unbundled access to the local loop' (OJ C 14, 16.1.2001).

out that such a framework of competition does not yet exist to the same degree in all the Member States. The cost of Internet access [1] is high (compared with the US and Canada), and varies enormously from country to country within the EU. Meanwhile, the need for Europe to recover lost ground in Internet development is ever more pressing.

2nd observation: The ESC believes that Europe has a right and duty to develop its own pan-European high-quality, high-speed network for research, education and development. It therefore agrees with the Commission's proposal on this subject.

3rd observation: The issue of Internet security is complex and obviously difficult to solve. It is as much to do with the crimes, financial or otherwise, that may be committed, as with the protection of the rights of individuals — children for instance — from any violation of a public or private nature. The ESC feels that this problem must not be allowed to have a detrimental effect on:

— the development of the Internet;

— economic growth;

— the free movement of ideas, information, knowledge or products; or

— individual or social rights.

4.1.1.2. Cheaper, faster and secure Internet access — proposals

1st proposal: The ESC considers that the delay in securing a healthy competitive framework for telecommunications is a critical factor in Europe's race to make up lost ground in Internet participation. To make good this delay, the ESC suggests providing encouragement and support [2] for Internet access for groups of the population who can and must familiarise themselves with it quickly. These groups obviously include:

— those involved in education (pupils, students, teachers);

— businesses;

— civil society organisations;

— specific groups such as the unemployed and people with literacy problems.

In view of universal service requirements, the ESC also believes that it is necessary to look into fast and cheap Internet access, in particular for schools, universities, libraries and decentralised health services [3], in line with the American model [4].

2nd proposal: As a high-speed trans-European network would have a direct impact on the production process, it would broaden the conditions for sustainable development in Europe. In this context, European businesses must not be excluded from participating in or accessing such a network. Whatever happens, it must be a high-quality, European network with specific content, and named participants, clearly subject to democratic control.

3rd proposal: The ESC recognises that Internet crime is not just a European problem and that it cannot be fought at European level alone. It is therefore in favour, in principle, of an international body to prevent potential Internet offences (prevention), and believes that the state has a responsibility to protect the public from this form of crime (enforcement). The ESC would however stress that these functions must not be allowed to hamper Internet developments, nor must they be economically stifling or lead to any unnecessary restriction on individual or social rights.

4.2. *Objective 2: Investing in people and skills*

4.2.1. The ESC notes that the second objective will be the single most difficult part of the overall initiative to implement. With regard to the specific points included under this objective, the ESC would make the following observations:

4.2.1.1. Investing in people and skills — observations

1st observation: Objective 2 features:

— ambitious individual objectives;

(1) See the relevant table in the annex to the Commission's progress report 'eEurope: An Information Society For All', electronic address: http://europa.eu.int/comm/information_society/eeurope/documentation/progrep/pr_annex2_en.htm.

(2) This involves the supply of personal computers as well as connection to the Internet.

(3) See Commission proposal on the universal service in the telecommunications sector, on which the ESC issued an opinion.

(4) US Telecom Act 1996.

— many levels of action with differing requirements (children, adults, specific sections of the population, national level);

— tight implementation deadlines;

— a large number and variety of players to be involved in its implementation.

Despite the above outline of Objective 2, the ESC does not disagree with the framework, substance or content of the proposals. It believes that the central and primary goal of this action plan is to raise awareness (among governments in particular) of the need to implement it, and this will require a major shake-up.

2nd observation: In the opinion of the ESC, the achievement of Europe's current strategic objective will in future depend largely on the relationship that is created between education and the modern technologies, between education, the information society and the knowledge-based society. The Committee has made and will be making more specific comments on this subject in related opinions [1]. It is however worth noting the enormous extent of the changes required in the learning process and the responsibility of the academic world to influence and to help shape the new educational order. It should also be noted that:

— national educational systems — in general — have proved unready to meet the demands of the information and knowledge based society;

— the modernisation process required is radically changing the traditional picture of schools. In essence this implies a new type of school set-up with [2]:

  — broader objectives (meeting the demands of the information and knowledge-based society, the new European order and economic globalisation);

  — a different structure (responding to the new circumstances generated by the concept of life-long learning);

  — a broader scope for learning (responding to the need to extend the age range of compulsory education, also responding to the establishment of life-long learning);

  — modern study means, methodologies and content (adaptation and utilisation of the new technologies, especially information technology, throughout the educational process and practice).

3rd observation: The ESC agrees with the Commission's view that 'digital literacy is an essential element of the adaptability of the workforce and the employability of all citizens' [3]. Objectively, however, the ease with which individuals can become digitally literate is generally inversely proportionate to their age. In practice, this means that the effort required to adjust depends on how old a person is [4]. Clearly, ensuring the adaptability of the workforce, and the employability of older people in particular, calls for:

— a re-examination and adjustment of training systems;

— teaching to cover digital literacy;

— incentives for individuals to become fully acquainted with the information and knowledge-based society (having work-related knowledge, making full use of the Internet, and turning the opportunities offered by the knowledge-based economy to account).

4th observation: In the digital age, workers, their qualifications and their competitiveness are key factors in the development and quality of production. It follows that in the long run, these factors will determine the location of new industries, work organisation and working life in general.

4.2.1.2. Investing in people and skills — proposals

1st proposal: The ESC feels the time is ripe for the Union to take relevant strategic initiatives with relation to education. What is needed is a well-prepared and meaningful dialogue of the kind that has in any case already begun with the decisions taken in Lisbon. This dialogue on education and its European dimension must not be confined to the Council and the education ministers, but must extend to society and the productive sector, and involve turning current good practice to account. Only then will it be convincing and effective. The ESC is ready to take part in such a dialogue.

(1) See relevant ESC opinions: OJ C 168, 16.6.2000 and OJ C 117, 26.4.2000, and the opinion underway on 'The European dimension of education'.

(2) For further analysis see report on the European dimension of education and opinion in progress on the same subject.

(3) eEurope: Objective 2, point b.

(4) See the ESC's analytical proposal for mass familiarisation of the general public with the information society (OJ C 117, 26.4.2000).

2nd proposal: The ESC is especially interested in the institution of life-long learning, which will be responsible for acquainting Europeans — irrespective of their age — with the thinking and mechanisms of the information society. It must also pass on knowledge and understanding of the new order created by the prospect of European integration, globalisation and the new technologies. Lastly, in terms of work and production, it will be responsible for acquainting the public and businesses with the requirements of the modern age and the new economy. For this reason, the institution of life-long learning should be established as soon as possible, with the active participation of organised civil society [1]. In this area too, the ESC is prepared to cooperate, not least by presenting its views.

3rd proposal: The ESC suggests that, from now on, relevant decisions should take serious account of the repercussions that the development of the eEurope programme will have on workers. These repercussions must be addressed in social terms and within the framework of the European social model. After all, workers are part-owners of the project, as they have made an important contribution to the transition from the industrial to the digital age and the added value this has generated.

4.3. *Objective 3: Stimulate the use of the Internet*

4.3.1. The value of the Internet as a mechanism and domain for consolidating and developing the information and knowledge-based society and the 'new economy' depends on its visitors/users: the more Internet users there are, the greater its value. The stimulation of Internet use is, therefore, a precondition for the development of electronic commerce and all that it implies in terms of reducing production costs [2] and boosting productivity and growth. It will also prompt the creation of new businesses [2] and thus new jobs. Lastly, the stimulation of Internet use is a precondition for the development of integrated communications programmes, and easy and quick access to all kinds of information and knowledge, at virtually no charge. Developing an Internet, whose users will ideally include the entire European public, should make it easier to solve problems such as communication between administrations and the public and vice versa, the provision of health and education services, transport and travel.

4.3.1.1. Stimulate the use of the Internet — observations

1st observation: The ESC would stress that the development of electronic commerce [3] is essentially a matter for the market and consumers. The EU institutions and Member State governments must solve any statutory or legislative problems that arise as quickly and uniformly as possible. In addition, they must formulate a European position in the dialogue emerging at world level. Lastly, following on from points already made, they must stimulate Internet use, in part by taking specific measures to encourage consumer confidence in the Internet.

2nd observation: A united European front with regard to the statutory and legislative problems raised by the development of the Internet and its use in everyday transactions will be critical for Europe's prestige and competitive edge. It is also necessary if Europe is to play a serious part in the current global debate on the subject. There are battles to be won over the establishment and recognition of the '.eu' domain name, European digital content and the promotion of multilingualism on the Internet [4], digital television, and mobile telephony [2] and its connection with the Internet, smart cards, etc.

3rd observation: The ESC believes that governments must lose no time in becoming part of the digital environment. In part, this means the immediate education of employees in the above working environment. Meanwhile, the faster public authorities take on the electronic mind set, the faster the system will develop within society.

4th observation: The use of the Internet in under-privileged regions, and in particular the Objective 1 regions of the Structural Funds, may prove to be an important development tool, meeting outstanding needs (e.g. teleworking, on-line health care, etc.).

4.3.1.2. Stimulate the use of the Internet — proposals

1st proposal: The ESC would like to see, within a set timescale, a comparative evaluation of Europe's position regarding the third objective and, more specifically, electronic commerce and digital content. The report should also include an update on the latest technological developments in the area.

(1) For further analysis see the relevant Commission memorandum SEC(2000) 1832.

(2) See the relevant table in the annex to the Commission's progress report 'eEurope: An Information Society For All', electronic address: http://europa.eu.int/comm/information_society/eeurope/documentation/progrep/pr_annex2_en.htm.

(3) See ESC opinion (INT/018) 'Legal aspects of electronic commerce in the internal market' (OJ C 169, 16.6.1999).

(4) See ESC opinion 'Digital content/global networks'.

2nd proposal: The ESC senses the need for immediate application of the Lisbon European Council's proposal for benchmarking. This would naturally put considerable pressure on the governments of the Member States to respond to the specific action plan and move into the digital age. The initiative must also be given constant and unswerving support by all the EU bodies.

3rd proposal: The ESC believes that the Structural Fund Objective 1 regions lend themselves to the application of relevant pioneering programmes, that could be financed by the European Investment Bank, Member States, the Community and the private sector.

4th proposal: The ESC is especially in favour of developing intelligent transport services. It therefore calls upon the national governments, the Commission and the private sector to use the new technologies to increase the safety of land, sea and air transport.

5. **Recommendations**

5.1. The ESC, working from a positive standpoint regarding the eEurope action plan and on the basis of:

— the views of the organisations it represents, and

— its consideration of the subject to date,

— would make the following recommendations to the European Parliament, the Council and the Commission:

5.1.1. The Committee believes that, so far, the eEurope initiative has been promoted successfully and positively. The major players at economic and social level have to a large degree grasped its aims and importance. This however was the easiest part of the venture. The most difficult phase is that of weaving the initiative into the economic and social fabric. For this phase, the ESC recommends:

— further increasing political backing;

— concentrating efforts and maintaining a high profile for the initiative;

— highlighting good practice and relevant individual achievements.

5.1.2. The ESC believes that promoting Internet use is the most fundamental aim of the action plan. It feels that this will give a real boost to the European market, while also increasing the familiarity of the European public with the information society, in European terms (without exclusion, through education). It also believes that Internet use will bear fruit in the long term. The benefits will be reaped by the market and consumers, administrations and citizens, majorities, specific groups and minorities. Moreover, in the ESC's view, if Internet use is to grow, a majority social trend must be created. To speed up the promotion of Internet usage the ESC recommends:

— immediate connection to the Internet for public bodies; electronic links between administrations and the public and administrations and business;

— immediate support for Internet access for population groups, such as:

  — people involved in education (pupils, students, teachers);

  — businesses;

  — civil society organisations; and

  — specific groups, such as the unemployed and people with literacy problems.

5.1.3. In the ESC's view, there is a real and significant risk of individuals or groups of individuals being excluded from the information society and its benefits. To avoid this danger, the ESC recommends including the above dimension in all the various measures. More specifically, it recommends:

— strengthening regions that are by their very nature at risk of exclusion (mountainous, sparsely populated and island regions);

— giving more specific support to people with special needs (finding ways and means of raising their awareness);

— giving support to people who are untouched by modern technology or who, for specific reasons or plain economics, have no contact with it.

5.1.4. The applicant countries are also at risk in terms of the competitiveness of their economies and social cohesion. For this reason, the ESC recommends they be included in the development of the action plan.

5.1.5. The ESC points out the importance of ensuring that Europeans now and in future are familiar with the information society. It would also note that all the measures to promote Internet use, establishing the information society and achieving the new strategic objective of the Union must centre on people and their needs, the European citizen and European society. Only by serving that principle will the establishment of the information society — in advance of the knowledge-based society — become meaningful. The ESC therefore recommends that the familiarisation process be considered paramount as a social goal, and as a social and individual right. This right should be taken into account in the final version of the 'charter of social rights'.

5.1.6. The ESC believes that the proposed 'open method of coordination', based on benchmarking, will work well and should act as a driving force for the implementation of the action plan. Special care should however be taken to ensure that data are reliable and comparable. Ongoing political control will be required to ensure that the system works effectively. The bodies that coordinate the implementation of the action plan at local level can play an important part in terms of ensuring the reliability and effectiveness of the system as a whole. The ESC recommends examining the possibility of entrusting this role to the local learning centres foreseen by the Lisbon European Council, or similar bodies, that are already operating in some Member States. It goes without saying that these bodies should be independent from administrations.

5.1.7. Meanwhile, in any event, the ESC would stress the need at the same time to draw on the Structural Funds and relevant research programmes, in addition to related Community cooperation measures, especially those concerning the applicant and Mediterranean partner countries [1].

5.1.8. The ESC notes that the promotion of the action plan in local society and the local economy will be fraught with problems, some serious. Differences between countries, generations, various social groups (employed and unemployed), and individuals will make the overall initiative difficult. Research is needed immediately to address individual problems that may appear at this level [2]. The Committee also recommends supplying all parties with a constant flow of information, especially regarding the best practice for dealing with this type of problem. Finally, it recommends making the best possible use of any existing expertise at European and national level with a view to developing a preventive policy in this area.

5.1.9. The ESC is of the opinion that nearly all the action plan objectives and, more generally, Europe's current strategic goal will depend largely on the relationship that is created between education and the modern technologies, between education, the information society and the knowledge-based society. For this reason, the ESC would place special emphasis on the options taken regarding:

— modern forms of learning (e-learning and its implications for university and pre-university education in particular);

— new educational institutions (life-long learning, local multi-purpose learning centres);

— the European dimension of education.

The ESC, believing the time to be right, recommends that the Union act strategically and take the necessary measures in education. Such measures should be identified through an ongoing, meaningful and open dialogue between the Member States, the European institutions and European society as a whole.

5.1.10. The ESC believes that the social partners and, more generally, civil society organisations have their own important role to play in promoting the overall initiative, implementing the action plan and achieving the current European strategic objective. For this reason, it recommends close cooperation between the European institutions and civil society organisations. To this end, the ESC is prepared to contribute in whichever way it can.

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(1) ERDF, ESF, Cohesion Fund, Pre-Accession Fund, fifth RTD framework programme, Phare, MEDA, INFO 2000, Media, etc.

(2) Such as, for instance, the university research programme in Oxford, UK, Germany and Italy, co-funded by the DG for Employment and Social Affairs.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2027/97 on air carrier liability in the event of accidents'

(2001/C 123/09)

On 23 June 2000 the Council decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

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 9 January 2001. The rapporteur was Mr Green.

At its 378th plenary session of 24 and 25 January 2001 (meeting of 24 January 2001) the Committee adopted the following opinion by 79 votes, with one abstention.

1. Background

1.1. Regulation (EC) No 2027/97 [1] introduced a modern liability regime for European Community airlines in the event of death or injury of their passengers and guaranteed a uniform regime for European Community airlines pending the ongoing review of the 1929 Warsaw Convention with subsequent amendments. In 1996 the Economic and Social Committee adopted an opinion in support of the Commission's proposal for a regulation [2]. However, that regulation did not cover a number of matters, particularly those relating to baggage and delays, which are now addressed in the current proposal amending Regulation (EC) No 2027/97.

1.2. The Warsaw Convention [3] was a significant landmark in the history of international aviation; above all, it regulated the relationship between air carriers and passengers in the event of accidents occurring during international carriage by air. Normally the burden of proof lies with the claimant but the Warsaw Convention reversed this procedure. In order to alleviate the impact of this innovation, air carrier liability was limited unless the claimant could prove gross negligence.

1.3. Since 1929 the Convention has been amended and supplemented by a number of agreements, the most important being the Hague Protocol (1955), the Guadalajara Convention (1961), the Guatemala Protocol (1971) and the Montreal Protocols (1975). Though the Warsaw Convention has entered into force in over 140 countries, not all the subsequent agreements have taken effect, sometimes because there has been an insufficient number of ratifications and, in other cases, because the groups of signatory countries vary. However, in the case of the Montreal Protocols, only Protocol No 3 has not yet taken effect.

At present seven possible international legislative regimes exist.

1.3.1. Air transport legislation is therefore complicated by the fact that some countries have only signed the Warsaw Convention (1929) while others have also acceded to one or more of the later conventions, agreements or protocols. If maximum air carrier liability under the Warsaw Convention is indexed at 100, the Hague Protocol (1955) increases this limit to 200, Guatemala (1971) to 1 200, and the Montreal Protocol No 3 (1975) to 973 — the same ceiling as in the recent Montreal Convention (1999), namely 100 000 SDR [4] per passenger, with the proviso that air carriers may not refuse or limit liability for damage arising in the specific circumstances described in the Convention. The consumer price index for the relevant period in the industrialised countries reached an index of approx. 900 in the mid-70s.

1.3.2. Expressed in euros, the air carrier liability limit under the Warsaw Convention (1929) is approx. EUR 15 000; the Montreal Convention (1999) provides for minimum liability of just under EUR 150 000.

(1) OJ 1997 L 285, p. 1-3.
(2) OJ 1996, C 212, p. 38-40.
(3) For details of the Warsaw Convention with subsequent amendments etc., see Article 55 of Annex A to the Proposal for a Council Decision on the approval by the European Communities of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) COM(2000)446 final of 14.7.2000.
(4) The Special Drawing Right or SDR is an international currency unit defined by the International Monetary Fund. 1 SDR = EUR 1,44 as of 26.4.2000.

1.4. Speedy ratification by the Member States of the Montreal Convention of 28 May 1999 on the unification of certain rules for international carriage by air [1], in conjunction with the proposed amendment of Regulation (EC) No 2027/97, will facilitate the rapid entry into force of the Montreal Convention (30 States must ratify) and in particular facilitate the updating and harmonisation of the European Community rules on air carrier liability for compensation in the event of a passenger's death or injury. The impact will in the short term be to unify the rules concerning Community air carriers and passengers on both domestic and intra-Community flights, and ultimately, as a result of competition, to help achieve a substantial improvement for passengers travelling between EU and non-EU countries on airlines which are not established in the Community.

1.4.1. This approach is consistent with Treaty Article 307 and can assist Member States in taking a common position where necessary. It is also in line with Article 55 of the Montreal Convention (1999), which specifies that the Convention takes precedence over other provisions (Warsaw Convention, etc.).

1.5. The Montreal Convention (1999) reflects the insurance principle which has generally gained increasing ground in the EU in transport matters, namely that the party with direct responsibility for safety shall also bear direct economic responsibility for any inadequacies in that respect.

2. **The Commission proposal**

2.1. The Montreal Convention establishes a modernised and uniform legal framework to govern the liability of airlines for damage to passengers, baggage and cargo incurred during international journeys.

2.2. The Montreal Convention and Regulation (EC) No 2027/97 provide for the same basic system of liability for death or injury of passengers. Adoption of the Montreal Convention provisions inside the Community will therefore not have adverse effects for European standards. At a detailed level, however, a revision of the Community rules is needed in order to make the following changes:

2.2.1. Inclusion of a reference to the Montreal Convention in addition to the existing reference to the Warsaw Convention so that the new Convention becomes a point of reference and the Regulation keeps pace with developments.

2.2.2. Exact alignment of the provisions on liability, exoneration and compensation in case of death or injury on the texts of the equivalent provisions in the Montreal Convention so that the regime applicable to Community carriers is the same, regardless of whether the route flown is international, intra-Community or domestic.

2.2.3. Updating of the provision on advance compensatory payments and the amount payable upon death of a passenger.

2.2.4. Improvement and simplification of the provisions on passenger information in order to focus on areas of real interest to passengers.

2.2.5. A particular innovation in the proposed amendment to Regulation (EC) No 2027/97 is the introduction of a uniform regime for all forms of liability towards passengers and their belongings on all flights, including liability for baggage and for loss occasioned by delay, which is provided for in the Montreal Convention but hitherto not in Regulation (EC) No 2027/97.

3. **General comments**

3.1. Regulation (EC) No 2027/97 and the proposed amendment thereto differ in several respects from the Warsaw regime in that the Regulation draws a distinction between EU air carriers and carriers established outside the EU. On the other hand, the Warsaw regime makes an operational distinction between national and international carriage by air. As the Community is not part of the Warsaw regime, Regulation (EC) No 2027/97 and the proposed amendment thereto cannot conflict with the Community's international obligations.

3.1.1. In a case brought by IATA [2] before the High Court of Justice in England, although the judge found that the Regulation created conflicts for Member States in relation to their prior obligations to other Warsaw Treaty States, he declined to refer the matter to the European Court of Justice.

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[1] For details of the Warsaw Convention with subsequent amendments etc., see Article 55 of Annex A to the Proposal for a Council Decision on the approval by the European Communities of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) COM(2000)446 final of 14.7.2000.

[2] IATA has just under 240 general members, of which as many as 30 are established in the Community.

3.1.2. In addition, it is far from certain that any clash arises between the Warsaw regime and the Regulation since none of the countries which have undersigned the Warsaw provisions have taken any action in this respect.

3.1.3. Even if such a conflict could be established, that does not as such render Regulation (EC) No 2027/97 invalid. Should ratification of the Montreal Convention not be imminent, the Member States could on the other hand be forced to renounce their Warsaw Convention undertakings, but only where such a conflict could be established following the demand of a country which has ratified the Warsaw Convention.

3.1.4. Except in the United Kingdom, the High Court decision therefore has no legal force in the other 14 Member States. The decision can create *de facto* uncertainty only perhaps in the United Kingdom. However, as far as EU air carriers and citizens are concerned, there seems to be no grounds for non-implementation of the Regulation, since its rules on liability do not apply to air carriers which are not established in the Community. Non-EU carriers are only bound by the requirement to inform passengers, which does not seem incompatible with the Warsaw Convention.

3.1.5. In the light of the above considerations, the ESC endorses the Commission's viewpoint.

3.2. Implementation of the proposed amendment to Regulation (EC) No 2027/97 will give passengers a greater degree of certainty about their rights and ensure that the Community regime fits seamlessly with the new global rules provided for in the Montreal Convention.

3.3. The ESC calls for international pressure to be brought to bear so that the Montreal Convention (1999) can take effect speedily; to this end, the Member States should ratify the Convention as soon as possible. However, it must be borne in mind that the Warsaw Convention provisions will continue to operate for a time in tandem with the Montreal Convention as regards flights between the EU and third countries.

3.4. The ESC agrees with the Commission that the revised Regulation should enter into force on the earliest date compatible with the Community legislative process and the necessary adjustments by the industry.

3.5. Should that date be prior to the entry into force of the Montreal Convention, some confusion could arise as to the obligations of Community carriers. The ESC therefore advocates that efforts be made to ensure simultaneity as far as is feasible.

4. **Specific comments**

4.1. *Article 2(c)*

The ESC welcomes the proposed rewording of this text, which provides greater clarity.

4.2. *Article 2(f)*

The ESC takes the view that the relevant Montreal additional protocols should be incorporated into the proposed amendment to Article 2(f) since, in the case of their signatory countries, these instruments update the original and the revised Warsaw Convention.

4.3. *Article 3(2)*

Though the proposed clarification regarding air carriers' obligation of insurance pursuant to Article 7 of Regulation (EC) No 2407/92 [1] is consistent with Article 50 of the Montreal Convention (1999), the ESC recommends that this obligation should be spelled out more clearly in the Community context, on practical insurance grounds.

4.4. *Article 5(3)*

The ESC would point out that, as a consequence of the proposed deletion of Article 3(3), the reference to this clause in Article 5(3) of Regulation (EC) No 2027/97 should be amended accordingly.

4.5. *Article 6*

In the ESC's view, all air carriers in the Community must be required to provide written notice in simple and easily understood terms, specifying their legal obligations in respect of liability.

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[1] OJ 1992 L 240, p. 1-7.

4.6. *Article 7* (of Regulation (EC) No 2027/97)

In the ESC's view, the deadline by which the Commission is to draw up its report should be fixed so as to allow use of the report's conclusions by the deadlines indicated in Article 24 of the Montreal Convention concerning the review of liability limits.

4.7. However, in the ESC's view, the liability ceiling of 1 000 SDR for loss, damage or delay of luggage is too low. It would seem unrealistic for ordinary passengers to be expected to make a special declaration of interest in delivery of their baggage at destination.

Nonetheless, the ESC does understand that the proposed amendment of Regulation (EC) No 2027/97, on this point alone, duplicates the corresponding provision in the Montreal Convention.

5. Conclusion

Subject to the above comments, the Economic and Social Committee supports the Commission proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (COM(2000) 340 final). It also urges the Member States to ratify the 1999 Montreal Convention as speedily as possible.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities'

(2001/C 123/10)

On 25 October 2000 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 December 2000. The rapporteur was Mr Lagerholm.

At its 378th plenary session on 24 and 25 January 2001 (meeting of 24 January) the Economic and Social Committee adopted the following opinion with 82 votes in favour and two abstentions.

1. The Commission's Proposal

1.1. Against the background of the draft Directive on a common regulatory framework for electronic communications networks and services [1] the proposed Directive is intended to harmonise the way in which access to, and interconnection of, electronic communications networks and associated facilities are regulated. The aim is to establish a regulatory framework for relations between suppliers of networks and services so as to ensure sustainable competition and interoperability of services to the benefit of consumers.

1.2. The Directive provides legal certainty by establishing clear criteria for regulatory intervention and clear limitations on what obligations can be imposed, and in which circumstances, whilst at the same time allowing for sufficient flexibility.

[1] COM(2000) 393 final; ESC opinion CES 50/2001; see also ESC opinion in OJ C 204, 18.7.2000 on 'Towards a new framework for electronic communications infrastructure and associated services. The 1999 communications review' (COM(1999) 539 final).

1.3. All operators of electronic communications networks will have a right and — when requested by other authorised undertakings — an obligation to conclude interconnection agreements with each other for the purpose of providing the services in question, in order to ensure access to, and interoperability of, services throughout the Community.

1.4. Member States have to maintain all previous obligations concerning access and interconnection under Directives 97/33/EC [1], 98/10/EC [2] and 92/44/EC [3], as well as under the proposed Regulation on unbundled access to the local loop [4], until such time as indicated otherwise by the findings of a market analysis [5].

1.5. The competent national regulatory authorities (NRAs) are to encourage and secure adequate network access and interconnection, and interoperability of services. Following a market analysis they may impose obligations on operators with significant market power as regards transparency, accounting separation, non-discrimination and lastly, publication of a sufficiently unbundled reference offer. The NRAs may also require operators to grant access to, and use of, specific facilities and/or associated services. In conclusion, they may (with due consideration of operators' investment risks) impose price controls, including cost orientation of prices, and obligations concerning cost accounting systems.

2. **Comments**

2.1. On the subject of access and interconnection, the Committee, in its Opinion on the 1999 Communications Review, stated that 'regulatory intervention is justified only to redress market failures in providing effective and healthy infrastructure competition. Where there is market failure the regulatory response needs to be specific to the problem, appropriate and temporary'.

2.2. It also took the view that 'if it is deemed necessary to take short term action on regulating access conditions (such as in the case of local loop unbundling), attention should mainly focus on achieving commerce-based agreements. If this is not feasible, the methodology used for pricing unbundled access should create incentives for infrastructure investments (e.g., by time limits on specific costing mechanisms) and be applied in a consistent manner across the Member States. The development of alternative access possibilities needs to be monitored very closely and any recommendations to NRAs on access should include an obligation to forbear from regulatory interventions when alternative means of access are available'.

2.3. The ESC notes that the Commission's proposal is generally in line with the views expressed in the above Opinion.

2.4. The proposed Directive on access and interconnection is possibly the most decisive proposal as regards competition and investment propensity. The fundamental reliance on competition legislation also in this part of the new regime is, in the Committee's view, likely to generate a sound balance between regulation and market opportunities, for both customers and suppliers.

2.5. The proposal indicates that the interconnection concept is likely to vary considerably between applications and therefore might not lend itself to traditional regulatory intervention. However, it seems to be a considerable leap from this general observation to practical conclusions about when interconnection is still relevant and if it needs to be regulated.

2.5.1. In its opinion (point 4.10.5) on the proposal for a Framework Directive, the Committee stressed that there was likely to be a rapid establishment of modern communications networks competing in parallel. Transparency is likely to be the dominant trend here, in order to maximise network traffic. As is already the case with the Internet, any practical problems are either solved between the parties where they arise, or the traffic seeks out another route. The latter was seldom possible

(1) European Parliament and Council Directive 97/33/EC of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision, OJ L 199 of 26.7.1997, as amended by European Parliament and Council Directive 98/61/EC of 24 September 1998 with regard to operator number portability and carrier pre-selection, OJ L 268, 3.10.1998.

(2) European Parliament and Council Directive 98/10/EC of 26 February 1998 on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment, OJ L 101, 1.4.1998.

(3) Directive of 5 June 1992 on the application of open network provision to leased lines, OJ L 165, 19.6.1992, as amended by Directive 97/51/EC, OJ L 295, 29.10.1997 and Commission Decision No 80/98/EC of 7 January 1998.

(4) COM(2000) 394 final; ESC opinion in OJ C 14, 16.1.2001.

(5) In accordance with Article 14 of the proposed Directive COM(2000) 393 final.

with the traditional telephony network, and this was behind a potentially interventionist regulation of interconnection. The Committee believes it would be wise to refrain from any similar attempts to regulate the new networks until it has been shown that their alternative solutions would not operate satisfactorily. Furthermore, any IP regulation would need to be considerably more complex than that for telephony, and risk causing serious market disruption. Unlike the traditional telephony sector, the IP sector does not have a fixed set of services which can be defined using narrow quality standards.

2.6. The Internet, for example, is based on technical availability for anybody with the necessary end-user capacity. Universal accessibility is the basic principle for the net. If an operator fails to fulfil this criterion, he will have no net customers and be unable to sell advertising space. The Committee therefore feels there is scant reason to include the Internet in an interconnection regulation. In addition, end-users have several inexpensive alternatives for accessing the net in their own country or internationally. Usually access is provided through universal telephony service, making it possible to connect with the net by modem.

2.7. The Committee would have welcomed more detailed examples which could have made it easier to understand where the Commission believes that new interconnection regulation might be applied.

2.8. The Committee harbours no doubts that the new approach — namely, to refrain as far as possible from sector-specific regulation and instead rely on increased application of general competition law — is fully endorsed, in principle, by the Commission itself. However, the wording of a couple of points in the proposed Directive on access and interconnection could be understood to imply that the Commission is not fully prepared to rely on this strategy.

2.8.1. For instance the strategy section of the explanatory memorandum to the proposed directive states that continued monopoly advantages may still adversely influence competition. Few would dispute that, but in the next sentence a similar assumption is presented to motivate ex-ante sector regulation for mobile markets with only four or five operators. The ESC believes that until an evaluation of effective competition has been carried out under the new regime no such general assumption can be made. It should also be observed that the limitation of the number of licences in some countries seems to be due to administrative deficiencies rather than real spectrum scarcity.

2.8.2. There also seems to be a risk that legal certainty could be undermined by the statement in Article 8 that the Commission, in exceptional cases, can mandate the NRAs to apply more stringent obligations than those of Articles 9 to 13, provided such an expansion is 'justified in the light of the objectives laid down in Article 1 of this Directive'. In the Committee's view, it is doubtful whether it can be considered acceptable to generate such uncertainty regarding which ex-ante measures can be relevant. If an operator exercising a dominant position abuses his influence, the general competition legislation comes into play.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'proposal for a Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communication sector'

(2001/C 123/11)

On 25 October 2000 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 December 2000. The rapporteur was Mr Lagerholm.

At its 378th plenary session on 24 and 25 January 2001 (meeting of 24 January) the Economic and Social Committee adopted the following opinion with 76 votes in favour and two abstentions.

1. The Commission's Proposal

1.1. The proposed directive is part of a new regulatory framework for all transfer networks and services, designed to secure the competitiveness of the electronic communications market. On the basis of the proposed directive on a common regulatory framework for electronic communications networks and services [1] the present proposal is intended to replace Directive 97/66/EC [2], concerning the processing of personal data and the protection of privacy in the telecommunications sector; it would also particularise and supplement it. The directive must be adapted to developments in the markets and technology, to provide users of publicly accessible electronic communications services with the same level of protection of personal data and privacy regardless of the technology used.

1.2. Specific legal and technical provisions to protect fundamental rights and freedoms are particularly necessary in view of the increasing capacity for automated storage and processing of data of a personal nature. The provisions adopted by Member States should be harmonised in order to avoid obstacles to the internal market.

1.3. While the providers of publicly available electronic communications services must take appropriate measures to safeguard the security of their services, it is up to Member States to ensure the confidentiality of communications. In particular, they should prohibit listening, tapping and storage of communications. Traffic and location data may only be processed when they are made anonymous or with the consent of the users.

1.4. Subscribers have the right to require non-itemised bills. Calling users must have the possibility of preventing the presentation of the calling-line identification, while the called subscriber must have the possibility of rejecting incoming calls where the presentation of the calling line identification has been prevented. Exceptions are provided for in the case of emergency calls and, on request, in the case of malicious or nuisance calls.

1.5. Any subscriber should have the possibility of stopping automatic call forwarding by a third party to the subscriber's terminal. He should have the opportunity to determine whether his personal data are included in public directories, and if so which personal data. The use of automated calling systems (voice mail systems) and unsolicited communications for purposes of direct marketing is permitted only with the agreement of the subscriber.

1.6. Member States are to ensure that no mandatory requirements for specific technical features are imposed on terminal or other electronic communications equipment. Where required, the Commission is to adopt measures to ensure that terminal equipment incorporates the necessary safeguards.

1.7. Member States may restrict the scope of certain provisions to safeguard national security, defence, public security and in connection with criminal offences. The working party on data protection set up under Article 29 or Directive 95/46/EC [3] carries out the tasks laid down in that directive with regard to the protection of fundamental rights and freedoms and of legitimate interests.

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(1) COM(2000) 393 final.

(2) European Parliament and Council Directive of 15 December 1997, OJ L 24, 30.1.1998.

(3) European Parliament and Council Directive of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on free movement of such data, OJ L 281, 23.11.1995.

2. **Comments**

2.1. Maintaining user control over personal data is a prerequisite for successful electronic communications. However, much of such control relates more to horizontal privacy legislation and not to sector specific measures. Even if privacy is perceived as more crucial and urgent in the telecommunications sector, the Committee believes that the same privacy issues should be regulated in the same way, regardless of whether electronic communications or 'traditional' handling are involved.

2.2. The proposed Data Protection Directive (DPD) should therefore concentrate on the electronic communications-specific issues. There is concern that the present horizontal data protection directive 95/46/EC and the existing directive on data protection in the telecom sector 97/66/EC are still neither fully nor reciprocally implemented in a consistent manner. The recently adopted Directive on electronic commerce 2000/31/EC [1] and the Directive on electronic signatures 1999/93/EC [2] also contain provisions regarding privacy in communications. Arguably, certain aspects of the reasons and rationale in the former seem, at any rate, to contradict the DPD as currently proposed. The DPD must therefore be clearly focused on sector-specific issues so as to avoid the risk of conflict with the foreseen revision of the horizontal directive 95/46/EC in 2001.

2.3. The DPD changes to the current directive are described as limited. That may be the case but the new definitions could be considerably more far-reaching. Pending a revised horizontal directive next year a reasonable objective for the DPD could be solely to update the current directive to keep pace with technical progress, without broadening its scope beyond what is necessary for communications per se.

2.4. An example of the adjustment required is given in the proposed Directive on universal service (USD). The proposal in the USD that the processing of very precise location data should be mandatory for mobile 112 calls raises a privacy issue, apart from cost and technology considerations. Any system that provides for shared control of location details with the end-user reduces security against intrusion. Although in certain circumstances there is clearly an advantage in being able to trace 112 calls, it would perhaps be reasonable to ask whether end-users should be consulted before deciding on such a major step.

2.5. The proposal that e-mail should be included under a system which only allows advertising communications to be sent to subscribers who have given their prior consent to receiving unsolicited messages raises some serious questions.

2.6. The ESC supports the proposal for such an opt-in system for commercial e-mail. In the Committee's view, an opt-in system has one serious drawback in that it could well hinder the development of e-commerce and in such a way as to discriminate against companies in the EU. Commercial communications are a prerequisite for many of the services on the Internet. The Committee feels, however, that the customer's interest in being spared unsolicited commercial information must take precedence. An opt-in system of this type already operates in several Member States.

[1] OJ L 178, 17.7.2000.
[2] OJ L 13, 19.1.2000.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the authorisation of electronic communications networks and services'

(2001/C 123/12)

On 25 October 2000 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the the above-mentioned proposal.

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 7 December 2000. The rapporteur was Mr Lagerholm.

At its 378th plenary session on 24 and 25 January 2001 (meeting of 24 January) the Economic and Social Committee adopted the following opinion with 79 votes in favour and one abstention.

1. The Commission's Proposal

1.1. The proposed directive is part of a new regulatory framework for all transfer networks and services, designed to secure the competitiveness of the electronic communications market. On the basis of the proposed Directive on a common regulatory framework for electronic communications networks and services [1], the present proposal is intended to replace the current directive 97/13/EC [2] on a common framework for general authorisations and individual licences in the field of telecommunications services. In its 1999 Communications Report [3] the Commission expressed serious misgivings regarding the transposition of the directive.

1.2. In the Community, there is at present no harmonised approach to authorising market entry for communications service providers, but fifteen very different national regimes. Moreover, the incipient development of a pan-European service should be actively supported. An efficient, smoothly operating single market can be achieved by means of thorough simplification of individual Member States' rules and regulations.

1.3. The present proposal intends to cover all electronic communications services and networks under a general authorisation and to limit the use of specific rights to the assignment of radio frequencies and numbers only. It restricts the number of conditions which may be imposed on service providers and aims to ensure that no information is required as a prior condition for market entry and that a systematic verification of compliance with conditions attached to authorisations is confined to those conditions for which this is objectively justified.

1.4. By simplifying the procedures, the administration costs would be considerably reduced. The proposed directive limits charges imposed on service providers to administrative costs only with the requirement for Member States to publish such costs; it also foresees an adjustment of charges.

1.5. Fees for spectrum and number usage are allowed if the principles of non-discrimination, transparency, objective justification and proportionality are adhered to and are in keeping with policy objectives regarding the development of innovative services and competition. The CEPT should continue to play a key role in the harmonisation of the assignment of radio frequencies.

2. Comments

2.1. In its Opinion on the 1999 Communications Review the Committee stated its view that 'harmonisation of licensing conditions in both formal and practical terms is needed. The system should be based on general authorisations except where the issue concerns access to frequencies and numbers. Accordingly, harmonisation should not lead to the introduction of a more burdensome regulatory regime in markets where, for example, general authorisations do not require any pre-registration'.

2.2. The ESC welcomes the proposed Directive, which it considers well balanced.

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(1) COM(2000) 393 final.

(2) European Parliament and Council Directive of 10 April 1997: OJ L 117, 7.5.1997.

(3) Towards a new framework for Electronic Communications infrastructure and associated services — The 1999 Communications Review COM(1999) 539 final, ESC opinion in OJ C 204, 18.7.2000.

2.3. The ESC is pleased that the proposal addresses the issue of fundamental licensing motives. As the Commission points out, licensing has in some cases become very costly without basically benefiting end-users. A single European market can only be achieved if licensing is harmonised at a low level of intervention. That has proved effective in several Member States.

2.4. It is important that conditions for the authorisation of operations do not include non sector-specific obligations. The Committee is pleased to see that this is explicitly stated in Article 6 of the Directive and also welcomes recital 14's specification that it is not necessary to require systematic and regular proof of compliance with all conditions. This can be seen as a positive step towards reducing the burden the rules place on companies.

2.5. The ESC agrees with the Commission that licences should only be used in the case of scarce radio spectrum and telephone numbers, and that administrative charges should be set so as to cover only those administrative costs that are incurred under the proposed minimal regulation. There seems to be growing concern that IT users will be forced to contribute to spectrum licensing costs, which can significantly exceed administrative costs besides being totally unconnected with the outcome at auction.

2.6. The proposed Authorisations Directive should, in the Committee's view, be amended so as to explicitly prohibit the charging of one-time fees that are not used for purposes which can boost spectrum efficiency or are not part of an auction procedure or some other system in which the price is used as a means to achieve efficient radio spectrum allocation.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services'

(2001/C 123/13)

On 16 October 2000 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 December 2000. The rapporteur was Mr Lagerholm.

At its 378th plenary session on 24 and 25 January 2001 (meeting of 24 January) the Economic and Social Committee adopted the following opinion with 77 votes in favour and one abstention.

1. **Introduction**

1.1. Since 1990 the Commission has progressively put in place a comprehensive regulatory framework for the liberalisation of the telecommunications market. This has been vital to the EU's global competitiveness. An advanced communications industry is a precondition for Europe's transition to the information society. The Lisbon European Council of 23-24 March 2000 highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it emphasised the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.

1.2. The current regulatory framework for telecommunications has been successful in creating the conditions for effective competition in the telecommunications sector during the transition from monopoly to full competition. The new framework for communications infrastructure and associated services is designed to focus on promoting and sustaining an open and competitive European market for communications services. This will benefit the European citizen and consolidate the internal market.

2. **The Commission proposal**

2.1. The convergence of the telecommunications, media and information technology sectors [1] means that all transmission networks and services should be covered by a single regulatory framework. The proposed regulatory framework is to consist of the present framework directive and the following additional measures:

— Directive on the authorisation of electronic communications networks and services;

— Directive on access to, and interconnection of, electronic communications networks and associated facilities;

— Directive on universal service and users' rights relating to electronic communications networks and services;

— Directive on the processing of personal data and the protection of privacy in the electronic communications sector; and

— Regulation on unbundled access to the local loop.

2.1.1. In addition to the above package, a proposal for a decision on a regulatory framework for radio spectrum policy in the European Community has been submitted.

2.1.2. The proposals are based on public consultations on the Green Paper on convergence, the Green Paper on radio spectrum policy [2] and the 1999 Communications Review [3] on the existing regulatory framework.

2.2. Chapter I of the proposed directive sets out the aim and scope of the new framework. This is to establish a harmonised framework for regulation of electronic communications networks and services, i.e. a framework covering all satellite and terrestrial networks including both fixed and wireless.

2.3. Chapter II sets out principles for the establishment of national regulatory authorities (NRAs) and establishes certain procedures to which they are subject. Member States are to guarantee NRAs' independence and publish their tasks. The directive also establishes a right of appeal, making it clear that any appeal must be to a body independent of government. NRAs are to be given the right to gather information from market players in order to carry out their tasks effectively. They must consult the interested parties on proposed decisions and exercise their powers impartially and transparently.

2.4. Chapter III requires NRAs to contribute in a way that is technology-neutral to an open and competitive market and the development of the internal market, and to support the interests of citizens. NRAs are to promote the harmonisation of use of radio spectrum at Community level and ensure its effective management. They are also to ensure that adequate numbers and numbering ranges are provided on the basis of transparent, objective and non-discriminatory criteria. Timely procedures should also be established for the granting of rights of way and for compulsory facility sharing, which may be appropriate in some circumstances.

2.5. The general provisions set out in Chapter IV apply to several directives within the new regulatory framework. Accordingly, an undertaking is deemed to have significant market power if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

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(1) Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation — Towards an information society approach (COM(97) 623 final); ESC opinion in OJ C 214, 10.7.1998.

(2) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Next steps in radio spectrum policy — results on the public consultation on the Green Paper (COM(1999) 538 final); ESC opinion on the Green Paper in OJ C 169, 16.6.1999.

(3) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Towards a new framework for electronic communications infrastructure and associated services — The 1999 Communications Review (COM(1999) 539 final); ESC opinion in OJ C 204, of 18.7.2000. Communication from the Commission — The results of the public consultation on the 1999 Communications Review and Orientations for the new Regulatory Framework (COM(2000) 239 final); ESC opinion in OJ C 14, 16.1.2001.

2.6. Market analyses are to be carried out regularly on markets with an international dimension, as listed in the Commission Decision on Relevant Product and Service Markets that has still to be issued. Where an NRA determines that a market is not effectively competitive in a specific geographic area, it is to impose — or maintain — sector-specific obligations.

2.7. Other provisions deal with standardisation and the resolution of disputes between undertakings and disputes involving parties in different Member States. To secure single market harmonisation, the Commission is to be given scope to issue recommendations or lay down binding harmonisation measures using the comitology procedure. The Commission is to be assisted by the communications committee. The framework directive also establishes a high-level communications group, acting independently and with advisory status.

3. **General comments**

3.1. The evolution of the information technology (IT) and telecommunications sectors in Europe over the last decade has been most impressive. Customers in Europe do not yet always have the lowest tariffs, but in most Member States they can choose services that are appropriate to their needs to an extent that is barely matched elsewhere in the world. In most countries tariffs are decreasing fast.

Basically this is due to technology shifts, but these opportunities could not have been utilised for the benefit of end-users if EU telecommunications regulation had not opened the way to competition by getting rid of entrenched monopolies and other special rights.

Although it is clear that a full transition from monopoly provision to competitive supply is not complete in all Member States and on all relevant markets, it is nonetheless becoming increasingly obvious that the regulatory framework of the 1990s is not flexible enough for the current rapid market changes — changes that involve both the improvement of existing products and services and the creation of new ones; partly due to the convergence of technologies.

3.2. In its opinion on the Commission's Communication on the 1999 Communications Review [1], the Economic and Social Committee expressed general support for the proposed new regulatory framework for electronic communications.

3.2.1. The Committee

'particularly welcomed the commitment to base the proposed regulatory evolution on:

— the promotion and sustaining of an open and competitive European market;

— the consolidation of the internal market;

— greater reliance on competition law and simplification and reduction of sector-specific legislation accompanied by recommendations, guidelines and interbranch agreements. Besides the need to regulate access to scarce resources, sector-specific regulation should be employed only in areas where sufficient competition is lacking and only during a transitional period;

— technology neutrality, including no Internet-specific measures. Technologically neutral regulation should not, however, lead to stronger regulation of new services, but rather to the roll back of existing specific regulation of traditional services.'

3.2.2. The Committee underlined 'the importance of keeping these principles at the forefront, as the Commission further developed its detailed positions, and to ensure that the implementation of the proposals does not proceed at the pace of the slowest Member State but instead that sector-specific regulation is replaced by general competition legislation on the various markets (geographical and services), as competition arises. It was stressed that this could become more of a problem with the enlargement of the EU and that the enlargement can also be expected to make it necessary to provide appropriate support to some new entrants'.

3.2.3. The Committee also laid stress on 'the global character of the converging communication markets. The proposed European regulatory framework must not be seen in isolation. It is essential that the competitiveness of European players is maintained and allowed to thrive. There can be a risk that regional regulation could lead to the European regional market becoming isolated from the global market, especially if extensive regulation is allowed to curb the operation of market forces. The Committee therefore urged the Commission to take into account the impact of any measures on the global competitiveness of European industry'.

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[1] Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Towards a new framework for electronic communications infrastructure and associated services — The 1999 Communications Review (COM(1999) 539 final); ESC opinion in OJ C 204, 18.7.2000. Communication from the Commission — The results of the public consultation on the 1999 Communications Review and Orientations for the new Regulatory Framework (COM(2000) 239 final); ESC opinion in OJ C 14, 16.1.2001.

3.3. The ESC welcomes the fact that the Commission has maintained the general outline of the proposed regulatory framework after the extensive public consultation on the 1999 Communications Review.

3.3.1. The Committee considers the principle of increasingly flexible regulation with a limited number of public safeguards, which underpins the Directives as proposed at present, to be both appropriate and timely. It is also pleased to see that the new framework aims at predictability and greater consistency with horizontal EU legislation on competition and consumer protection.

3.4. The Committee wishes to stress the importance of a speedy realignment to horizontal principles. For institutional and practical reasons, it would not seem possible to shorter the timetable proposed by the Commission further. However, in relation to actual technology and market developments, it could prove to be too slow, and could blunt the competitive edge which the European electronic communications sector displays today.

3.5. The Committee supports both the Commission's aim to introduce a common regulatory framework for electronic communications networks and communications services in the EU, and the main thrust of the proposed regulatory framework. However, it is not able to endorse certain details of some of the proposals.

3.6. A number of points are worded in a way which can be considered contradictory and not fully in line with the general guidelines. The Committee deals with these points in its opinions on the respective proposals for directives.

4. **The framework directive (FD)**

4.1. The ESC welcomes the fact that the FD aims to address only cases where effective competition does not operate effectively on a relevant market. It is also pleased that a relevant market is to be defined in the same way as in EU competition rules. There is long experience of this practice and the outcome can be predicted with reasonable certainty.

4.2. Whether the outcome of the relevant market analysis motivates ex-ante, rather than the traditional ex-post, competition regulation is a matter of debate within Member States. Many take the view that ex-ante regulation should only be applied to companies deriving their dominant position on the market by virtue of their financing of investment within a monopoly regime. That also seems to be in line with the Commission's arguments in the proposed directive, as expressed in recital (20). In the Committee's view, this should have been expressed more explicitly in the directive itself.

4.3. It could also be argued that the reverse procedure for regulatory intervention — i.e. temporarily or permanently suspending the application of legislation ('forbearance') when its objectives have been achieved — should be spelled out more clearly. To both end-users and to providers it is at least equally important that the regulation should cease to apply once its objectives have been achieved. Implementation must therefore provide scope for stability, so that the regulation is not immediately reverted to as soon as a — perhaps temporary — deviation from the declared objectives is noted.

4.4. It is proposed that existing obligations for undertakings with significant market power (SMP) should be transposed into a new regime. In the Committee's view it must then be clearly stated that existing legislation should only be applied until such time as the first analysis of relevant markets is carried out in accordance with the new directive. This should have been clearly stated in the proposed Framework Directive.

4.5. Predictability is a key issue. Reliance on competition rules tends to promote predictability, but experience so far shows that application of a common regulatory framework still can lead to very different interpretations in Member States, as demonstrated by SMP notification on the mobile communications markets. While telephony was mostly a domestic service, new IT services are rapidly going cross-border, requiring more harmonised interpretation than the present regime has provided.

4.6. The ESC therefore supports the principle of listing acceptable NRA interventions and the mandatory notification of proposed regulatory action in Member States according to Article 6. It could however be questioned whether full consultation of all Member States is compatible in practice with the necessary speed of IT regulation. The problem could be significantly exacerbated by EU enlargement, which will accentuate the discrepancies between the various Member States' communications environments. Further thought should therefore be given as to whether the normal procedure for harmonising regulatory measures can be framed in such a way that a given measure only has to be notified to the Commission.

4.7. The Committee is also concerned that for instance, under Article 14, the Commission is formally obliged to consult with NRAs only. In its view, it is necessary that consumers and industry too should be consulted in a manner compatible with the short time limits needed. The Committee is concerned about Article 14(6) of the Directive, under which any decision taken by a national regulatory authority can be amended or annulled by the Commission.

4.8. Under the framework directive the Commission has the right — at least temporarily — to prevent the implementation of measures decided by the national authorities on the strength of the articles mentioned above, and with regard to radio-spectrum administration. This encroachment on Member State discretionary powers is motivated by the important role market definitions and interconnection play in the smooth operation of the single market. In accordance with the subsidiarity principle, the Community level is the lowest possible level for these decisions. The Article must, of course, be implemented fairly, and in accordance with the proportionality principle. The limitation must not be extended to regulatory measures other than those mentioned in the Article.

4.8.1. If the allocation of spectrum licenses under Article 8(6) is to be governed by the Article 6 procedure, a more precise definition is needed of which part of this procedure has such cross-border implications that it is not handled better domestically. Most frequency licenses would seem to be for domestic use and not to have major implications for the EU in general. A tried and tested international procedure based on the ITU radio regulations exists to provide a practical solution to any disturbance problems in border areas. Hence the Article 6 procedure should be limited to key areas for IT competition as a whole, such as GSM and UMTS.

4.9. The wording of Article 4 on the right of appeal against an NRA decision seems not to be perfectly clear in one important respect. Article 4(1) states, *inter alia*, that pending the outcome of an appeal, 'the decision of the national regulatory authority shall stand'. It should be made clear that this must not affect a stakeholder's ability to get enforcement of an NRA measure postponed while the proceedings are in progress — if such an inhibition procedure is available in a Member State.

4.10. The Committee finds the Commission's ambition of technological neutrality commendable, but wishes to point out that it is not simple to achieve in the short term.

4.10.1. Technical neutrality must not be interpreted as the carrying forward of regulatory measures devised for traditional services into new areas. The Committee believes that the proposed interconnection regulation provides an example of how this can lead to error.

4.10.2. Interconnection regulations take their starting point in telephony, which is a standardised transmission service with standardised user terminals. In this case interconnection is easily defined; everyone must have access to a telephone service, regardless of what network they are connected to. With the development of new telephony-based services this means that interconnection covers e.g. fax services.

4.10.3. Internet Protocol (IP) based services, especially the Internet itself, are in no way uniform, narrowly defined and closed to customer choice to the same extent as telephony. Depending on their mode of use customers will choose different access to IP services. A customer can have a UMTS telephone or a PC to communicate on the net. He/she can be connected up to the telephone network by modem, or have a broadband connection with a 10-20 times higher capacity. To pay for expensive broadband, for example, is only justifiable if customers are also prepared to pay for the downloading of services like moving pictures. A tenth of the necessary capacity for moving pictures will accommodate 'normal surfing'.

4.10.4. In the IP world, telephony networks therefore do not all have that basic similarity which underpins the traditional notion of interconnection. It is not in fact possible for all electronic communications networks to carry all IP services, since there can be considerable differences in capacity. Networks with lower capacity would quite simply crash if interconnection was mandatory. The alternative would be costly upgrading.

4.10.5. The Committee is of the opinion that a lack of interconnection rights would hardly be a problem. In most Member States, different companies are currently vying to roll out their own broadband infrastructure. They therefore have strong economic reasons to be transparent, so as to attract as much traffic as possible — and transparency is also an Internet-user requirement. Rather than stemming the flow of electronic information, there would seem to be more of a risk of some new infrastructures engaging in unfair competition by relying on remaining specific rights in areas such as electricity distribution and physical communication.

4.10.6. Clearly, new rapidly expanding markets such as that for broadband services can at times betray real competitive shortcomings which, from a narrow, formal, statistical standpoint might seem to warrant SMP status. The Committee believes that if this argument were then used to defend a cost-based fee structure, it could be a disincentive to investment and reduce competitiveness in the long term. It is important to remember that these new market climates differ radically from the traditional backdrop for 'interconnection' — i.e. conventional fixed telephony — where most of the investment in the network has already been made, and the purpose of regulation is the optimum exploitation of historical assets.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the European Community'

(2001/C 123/14)

On 4 October 2000 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 January 2001. The rapporteur was Mr Hernández Bataller.

At its 378th plenary session of 24 and 25 January 2001 (meeting of 24 January 2001), the Economic and Social Committee adopted the following opinion by 80 votes to one with one abstention.

1. **Introduction**

1.1. The Community institutions have concerned themselves with this question for a number of reasons, including the intensive use of radio spectrum, the complex decision-making process for its allocation and assignment, huge global expansion generated by the technological convergence of various services, and economic trends, as well as the need to apply internal market principles and protect Community interests at world level.

1.2. The Green Paper on Radio Spectrum Policy in the context of European Community policies such as telecommunications, broadcasting, transport, and R&D [1] addressed five key issues:

— strategic planning of the use of radio spectrum;

— harmonisation of radio spectrum allocation;

— radio spectrum assignment and licensing;

— radio equipment and standards; and

— the institutional framework for radio spectrum coordination.

1.3. The Green Paper was welcomed by the Economic and Social Committee, which considered radio spectrum to be the backbone for a very wide range of important industrial sectors, and argued that in addition to technical grounds, future decisions needed to reflect the economic, social and political importance of spectrum usage.

[1] COM(1998) 596 final; ESC opinion in OJ C 169, 16.6.1999.

1.3.1. The ESC was of the opinion that the EU needed to play an enhanced and better co-ordinated role in spectrum policy.

1.4. The Commission accordingly drew up a Communication on Next Steps in Radio Spectrum Policy: Results of the Public Consultation on the Green Paper, which was discussed at the meeting of the Telecommunications Council of 30 November 1999 ([1]). The three following initiatives were proposed at the meeting:

— to set up a spectrum policy expert group to address radio spectrum policy issues at Community level;

— to establish a regulatory framework for radio spectrum policy which would replace sector-based decisions such as those concerning Satellite Personal Communications Services (S-PCS) and Universal Mobile Telecommunications Systems (UMTS); and

— to produce a communication on the Community's policy objectives in relation to the agenda of the World Radiocommunications Conference (WRC).

2. **The Commission proposal**

2.1. The proposal is intended to ensure the harmonised availability and efficient use of radio spectrum, where required to implement Community policies in areas such as communications, transport, broadcasting and research and development (R&D).

2.2. The proposal aims to establish a framework that will ensure a proper balance between radio spectrum needs in order to implement Community policies, while taking due account of current institutional arrangements for radio spectrum management, and safeguarding Community interests at international level.

2.3. As a result of the public consultation exercise, the Commission considers that where harmonisation is required, legal certainty and appropriate procedures must also be safeguarded by granting mandates to the CEPT to develop spectrum harmonisation measures at European level and the corresponding proposals for the ITU/WRC. Legal certainty is also required to ensure implementation by Member States of agreed harmonisation measures.

2.4. To date, radio spectrum requirements have not been dealt with in Community legislation in Community policy areas other than telecommunications (such as terrestrial and satellite TV and radio broadcasting; road, rail, air and maritime transport; positioning, navigation and precision timing; Earth observation; and radio astronomy). The present proposal seeks to establish the political and legal basis necessary to ensure that radio spectrum is and will be available to implement Community policies in all these areas.

2.5. The main objectives of the proposal are to:

— set up a policy platform, to be called the Senior Official Radio Spectrum Policy Group, which is responsive to technological and regulatory developments in the radiocommunications field and which allows for proper consultation of all relevant radio spectrum user communities. The platform will advise the Commission on how best to distribute radio spectrum within and across different user communities and countries;

— establish a legal framework for spectrum harmonisation where necessary;

— ensure coordinated and timely provision of information on radio spectrum use and availability in the EC;

— ensure that appropriate Community and European positions are developed with a view to international negotiations relating to spectrum, where the issues at stake are covered by Community policies.

3. **General comments**

3.1. The Committee welcomes the proposal for a regulatory framework ensuring the harmonised availability and efficient use of radio spectrum, where required to implement Community policies in areas such as electronic communications, transport, broadcasting and Research and Development (R&D). This will guarantee the rational, equitable, effective and economic use of frequencies for all radiocommunication services, recognising:

— the importance of strategic planning in the use of radio spectrum;

— the need for assignment to be harmonised;

— the unsuitability of price mechanisms as an instrument for allocation of public interest services.

([1]) See COM(1999) 538 final, http://www.ispo.cec.be/spectrumgp/

3.1.1. The ESC would, however, repeat its agreement with the objective of striking the requisite balance between the technical assessment procedure and other political, economic and social procedures which might be used for this highly scarce resource.

3.2. The ESC notes that one objective not touched upon by the proposal is for the planned actions to guarantee the public interest, wherever it clashes with the private interest of groups or companies which wish to make use of a scarce resource, as spectrum is, for their own purposes (for example, with measures which may jeopardise territorial cohesion). The proposal's aim of achieving efficient management on the basis of technological neutrality is inadequate.

3.3. Community radio spectrum policy must ensure that competition and efficiency among service providers on the single market are not distorted. The ESC is concerned at the emergence of monopolistic or oligopolistic situations within the Community in areas of spectrum use. In the medium term, this might apply to UMTS licences, insofar as those bidding for contracts may establish links or associations, or undertake mergers with or buy-outs of their competitors. A balance must be sought between medium- and long-term interests, and in spectrum allocation and assignment, and appropriate measures must be taken to uphold viable competition.

4. **Specific comments**

4.1. The ESC suggests that in order to improve spectrum use, consideration be given to harmonising usage fees and rights at Community level, believing that this is preferable to payment by bidding for licences: harmonisation would boost free competition and economies of scale. The funds generated should be used to improve spectrum management.

4.2. The planned procedural framework should safeguard economic, social and territorial cohesion. Certain licence tendering procedures must not be allowed to result in certain disadvantaged areas funding infrastructure in others, through the fees charged to service users with the aim of offsetting the costs of tendering for spectrum use. In the final analysis, the procedural framework must serve to head off distortions of competition or cross-subsidies.

4.3. With regard to the value of radio spectrum, the ESC would warn of the possible negative impact on employment and increased costs for consumers which may result from putting defined, regulated licences for spectrum use out to tender and sale, since higher spectrum costs would be passed on to the price of the service and more intensive use of capital.

4.4. The ESC believes that the highest possible level of protection for users and public health must be ensured, and is convinced that further research into the health aspects of electromagnetic fields is necessary.

4.4.1. The proposed rules for the Senior Official Radio Spectrum Policy Group and the Radio Spectrum Committee fail to make sufficient provision for official involvement of civil society organisations.

4.4.2. The Economic and Social Committee therefore proposes that a European Radio Spectrum Forum be set up, with its headquarters at the ESC, to bring together concerned parties such as industry, trade unions, users, universities, local authorities and civil society organisations in general. Forum members could issue mandatory reports and formulate demands on a transparent basis, so that their interests are known to the Radio Spectrum Group and Committee.

4.4.3. The Forum would ensure that all those concerned by a given radio spectrum issue could explain their position, thereby contributing to the best possible resolution of existing problems.

4.5. Information provided by the Member States should be published as widely as possible and in a standardised format, to allow comparison of spectrum use in each location.

4.6. All the Member States must have centralised, public information systems holding all frequency use data which have not been classified at secret. With this sole exception, the Member States should satisfy all requests for information on any frequency assignment.

4.7. Publishing of frequency information is important, and should be supported. Real benefits can only be secured from publication if the information contains all the data necessary for it to be used effectively.

4.8. In addition to the types of information set out in the Annex, the information provided by the Member States should be supplemented in the light of the needs identified by the proposed Forum. Initially, this might include the following:

— use of assigned bands: number of users, degree of saturation, etc.;

— the economic and tax-related conditions, and those governing duration and extension of licences, with identification of licence-holders. This would provide information on the concentration of spectrum use and any ensuing regional and social imbalances in sufficient time for remedial action to be taken;

— assignment and spectrum use conflicts within each Member State together with appropriate measures to resolve such conflict and prospects for successful resolution;

— open conflicts with other Member States or non-EU countries on radio spectrum use.

4.9. Radio spectrum is a natural resource which must not be individually managed by the Member States: rather, it demands coordinated action at Community level paving the way for effective spectrum management at national level.

4.9.1. The ESC believes that the mechanism contained in the draft decision for working with non-EU countries and international organisations will help strengthen the single market and competitiveness and boost Europe's position on the world market and the EU's position in world forums.

4.9.2. The ESC agrees with the Commission that the necessary measures must be taken to achieve a common position and to ensure Community coordination.

4.9.3. The Community and the Member States must maintain the most open stance possible in the international arena (ITU, WRC and CEPT), without prejudice to application of the principle of reciprocity.

Brussels, 24 January 2001.

5. **Conclusions**

5.1. The ESC is convinced that a permanent, stable and uniform framework needs to be established at Community level, ensuring harmonised availability of radio spectrum and introducing legal certainty.

5.2. In applying these policies, interactive connections providing services to disadvantaged or thinly populated areas and giving access to information and e-commerce services throughout the Community could be expanded. This would contribute to regional cohesion and the growth of the information society.

5.3. The final aim of any radio spectrum policy must be to provide the public with high-quality services and guarantee their social relevance. For this reason, the ESC opposes a purely commercial approach to this policy: the economic and social value of spectrum frequency use cannot be evaluated only in terms of operators' profit opportunities — it is very largely determined by the importance of the services offered by operators, the number of users and, ultimately, by the enhanced quality of life it brings to citizens.

5.4. Frequency allocation cannot be separated from the application or specific service the bandwidth is to be used for. In this context, it would be helpful for Member States to harmonise their stance on the principles of radio spectrum pricing, frequency tendering and the introduction of a secondary market for radio spectrum. Where possible, profits should be ploughed back into research and the use of new information and communication technologies, thereby furthering the development of the information society, rather than being treated as tax revenue.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee — Pricing policies for enhancing the sustainability of water resources'

(2001/C 123/15)

On 27 July 2000 the Commission decided to consult the Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the above-mentioned communication.

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 20 December 2000. The rapporteur was Mrs Sánchez Miguel.

At its 378th plenary session (meeting of 24 January 2001), the Economic and Social Committee adopted the following opinion by 82 votes with three abstentions.

1. Introduction

1.1. The broad debate within the EU on water policy, encompassing the scientific community, environmental organisations, consumer representatives and the main economic sectors affected, agriculture and industry, has resulted in the draft Water Framework Directive [1] (WFD), which offers a framework for a sustainable water resource policy.

1.2. The ESC welcomed both the Communication on European Community water policy [2] and the draft WFD [3]. It did however comment on the need to lay down rules on pricing to make sustainable use of water resources possible.

1.3. Similarly, the ESC acknowledges how important the draft Parliament and Council decision establishing the list of priority substances in the field of water policy [4] is for the application of the WFD.

2. The objectives of the communication

2.1. The main objective in formulating a water pricing policy is to enhance the sustainability of water resources by encompassing all those elements relating to the quantity of water extracted and the pollution emitted into the environment.

2.2. It is important to clarify the concepts on which pricing theory and practice are based, particularly the different cost types to be applied with a view to achieving sustainable water use:

— Financial costs of water services, including the costs of providing and administering these services, operation and maintenance costs, and capital costs.

— Environmental costs that represent damage to the environment, ecosystems and users themselves.

— Resource costs, covering those caused by losses for other users, particularly through depletion of water resources.

2.3. The guiding principles in implementing water pricing policies which take account of environmental protection and economic efficiency focus on:

— Improving the knowledge and information base, taking into consideration the estimated demand for water and costs of water services and use.

— Setting the right water prices, at a level that ensures cost recovery for each sector (agriculture, households and industry), taking account not only of surface water but also groundwater.

— The river basin as the basic scale for assessing environmental and economic costs, since it represents the level at which environmental externalities take place.

3. General comments

3.1. The WFD believes that pricing has a key role to play in encouraging sustainable water use, recovering the costs of the associated services and achieving the objectives set in a cost-effective way.

[1] OJ L 327, 22.12.2000.
[2] OJ C 30, 30.1.1997.
[3] OJ C 355, 21.11.1997.
[4] OJ C 268, 19.9.2000.

3.2. The ESC acknowledges and fully supports the idea that prices should clearly convey that water is a scarce resource in order to encourage users to reduce consumption and pollution. At the same time, it would make the following comments.

3.2.1. While acknowledging that a large proportion of water use is accounted for by productive activities (agriculture, industry, tourism, etc.) of huge economic significance, it must be borne in mind that water is more than just an economic asset: it is a basic entitlement of human beings, and is essential to ecosystems. The link between these aspects must be made clear, so that in practice it is not purely economic factors alone which are considered, contrary to the Commission's intention. Essential water supplies to all — even those unable to pay for them — must therefore be guaranteed.

3.2.2. If pricing is to play this important role, a real link between sustainable use and cost recovery must be established, as set out in Article 9 of the framework directive. Variables which go unmentioned in the communication, such as ownership of water resources (since existing ownership and user rights must be maintained), public or private management etc., may put these two elements at odds with each other.

3.3. A shift away from obsolete management and consumption patterns towards a sustainable model is currently under way. The framing of demand management policies is hampered not only by the difficulties affecting any change of direction, but also by unawareness of these traditional methods and customs.

3.4. This lack of knowledge can result in some measures, which ought to trigger change, not having the expected effects; in the case of water, introducing economic principles and instruments may generate speculative prices, non-sustainable changes in use, etc. The traditional cost-benefit analysis is incomplete insofar as the market fails to recognise these elements.

3.5. The second section of the communication reviews the main features of pricing policies in the Member States, the accession countries and developing countries, and considers the possible impact of pricing on economics, environment and society.

3.5.1. The ESC fully agrees with the analysis that within the European Union, the greatest price imbalances concern urban waste water treatment and agriculture in the southern countries. It also endorses the reference to difficulties in matching price with the need for major infrastructure investment. At the same time, affordability (the relative proportion of water service costs to users' disposable income) is seen as the major problem in developing countries.

3.5.2. However, other potential negative effects, touched upon in the general part of this document, need to be examined further. These include possible changes in 'ownership of water resources' contrary to the objectives of the WFD and price speculation or excessive development or scale of infrastructure in Member States, applicant states or developing countries, sometimes combined with illicit or unlawful practices. The aim here is to be able to anticipate the impact of economic activity and provide for measures to adjust public and private administrations to the new situation.

4. **Specific comments**

4.1. Water pricing policy should be coordinated with other Community policies, particularly the CAP as amended by Agenda 2000, social cohesion, regional development and environmental policy, etc. in order to reinforce the relevant instruments.

4.2. Point 1.3 of the communication states that efficient pricing ensures that available resources are efficiently allocated between different water uses. This idea should be defined more clearly, for which purpose the following is necessary.

4.2.1. Balanced prioritisation of uses should be introduced in keeping with social and environmental criteria, so that sustainable use is not defined exclusively by price, or in other words by users' economic means. In areas suffering shortages, for example, fierce competition for use of water resources can arise between well-established, sustainable traditional agriculture and the leisure and tourism industries (golf courses, theme parks, etc.) which can pay more and recover costs by passing them on to consumers. Traditional farmers can only do this in part.

4.2.2. In accordance with the ESC's earlier views in this area [1], uses should be prioritised as follows:

— supplies for human consumption,

— guarantee of ecological requirements,

— agricultural and industrial use,

— leisure and other non-essential uses.

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[1] OJ C 30, 30.1.1997.

4.2.3 Prioritisation and weighting of uses should be integrated as another element in boosting sustainable use. The way this information is reflected in pricing needs to be studied before drawing up a series of helpful recommendations for water resource managers.

4.3. Point 2.1 lists the different types of water use and introduces the concept of environmental use. To define an 'environmental use' of water and, in particular, to compare it with other water uses, seems inappropriate. Conserving the environmental characteristics of water in terms of quality (a key objective of the WFD) and quantity, in order to safeguard ecosystems and fulfil regulatory functions, is a *prerequisite* for any other possible uses.

4.3.1. The communication should expand upon this aspect to prevent misinterpretation of the function of water and the way it is used. As the communication points out, the natural water cycle needs to be considered as a basic element which limits the possible uses of water resources, as a guarantee of sustainability.

4.4. The third section of the communication lays down the requirements for moving towards water pricing policies that enhance sustainable use. It opens with two statements which deserve our full support: firstly, there is no intention of seeking a uniform price, since this will depend on local environmental and socio-economic conditions; and secondly, the necessary regulation cannot be replaced with economic instruments and pricing.

4.4.1. In implementing all the requirements of the WFD, pricing must not be allowed to become the main priority for the relevant authorities, to the detriment of other priorities which are mostly expensive and not immediately cost-effective in economic terms, such as data collection, analysis of uses, preparation of management plans, etc.

4.5. Point 3.1 of the communication argues that knowledge about demand for water and the pollution load generated by users is necessary: such data generally lack sufficient reliability. The Commission advocates progress towards installing metering devices and testing of methods for validating the collection of important data.

4.5.1. The need for this knowledge should be highlighted but, most importantly, metering devices must be introduced across the board, particularly in agriculture and industry. This is because consumption for domestic purposes is generally under closer observation. Such a measure obviously poses technical difficulties, not because of any lack of suitable devices, but on account of the problems arising from selection of sampling points, the way farming has historically been organised, the lack of transparency among industries — especially those of greatest environmental impact — and organisational changes in the supervisory authorities.

4.6. Estimation of the cost of use and services is divided into financial costs, environmental costs and opportunity costs.

4.6.1 Two questions arise in relation to financial costs. The first is the reference to forward assessment of situations in which, under exceptional circumstances — such as droughts or other obstacles to normal service — pricing does not enable these costs to be recovered. This is a highly sensitive issue, particularly where private operators are involved. There have already been cases where consumption has fallen in reaction to a rise in the price of supply and treatment, lowering business forecasts and triggering a further price rise. The message to society is negative: water saving and recycling push prices up rather than down (Eurowasser, Germany, 1994).

4.6.1.1. It must be borne in mind that one of the defects of the market system is that in the case of certain resources such as water, what is good for society — water saving — is bad for the private interests which draw their profits from selling larger quantities.

4.6.2. The second question also concerns cost recovery by private operators. The communication considers that the financial cost structure should also cover return on equity (including profits) 'where appropriate'. The Commission's future recommendations must include the responsibility on the part of the relevant authorities to supervise such returns in order to safeguard the essential objectives of the WFD.

4.6.3. With regard to environmental costs and resource costs, the communication simply describes the difficulties in integrating them into pricing and the lack of calculation models beyond economic research. It is, however, essential for a harmonised structure and criteria to be available in order to evaluate such costs accurately. Otherwise, the WFD might be understood to have recovery of financial costs as its sole objective in this area.

4.6.3.1. Steps must therefore be taken to produce relevant guidelines and criteria for action reasonably soon, by analysing and reconciling the various schools of thought concerned: these range from evaluation of assets and opportunities in monetary terms to support for multi-criteria methodologies based on an understanding of sustainability which embraces environmental and social objectives.

4.6.4. The ESC believes that a code of good practice on how to calculate the various use and service costs should be compiled in order to prevent any interpretation or application of concepts contained in the communication which might nullify the objectives based on the principle of full recovery of costs.

4.7. The communication's definition of the 'right price' starts with the claim that 'in theory, the overall optimum of water use is reached where the marginal benefits from water use match the marginal costs, including environmental and resource costs'. The approach is based on a dual price structure: a variable element (volume, level of pollution, time of year, location), and a fixed element, in order to allow financial costs to be recovered under all circumstances.

4.7.1. The communication proposes a phased implementation plan for reasons of affordability, political acceptability and adaptability, and is of the view that in situations of unsustainable water use, social concerns must be taken into consideration but must not be the main objective of pricing policy.

4.7.2. Although this approach should be supported, it must be ensured that the accompanying social measures are shaped in tandem with pricing policy, that they are closely linked to it and do not disturb the sustainability not only of water resources, but also of the rest of the system, channelling investment to other activities of similar or greater impact.

4.8. The communication acknowledges the importance, as an economic instrument, of combining water charges and subsidies in order to point investment and economic activity in the right direction. For example, the duties, taxes or charges incorporated into water prices must be earmarked for specific purposes, so that a significant proportion of them is ploughed back into the sectors most affected by any restructuring. In this way, any loss of profit or income which might be caused by higher water prices would be partly or fully offset by investment, aid, subsidies or other instruments, such as modernisation of urban supply networks, irrigation systems, treatment plants, etc.

4.9. Such steps must be backed by initiatives to educate and instruct the general public so that the new water culture, particularly in its anti-pollution and water saving aspects, becomes firmly entrenched in European society.

4.10. Particular importance is attached to the involvement of users and consumers and the existence of transparent information on the part of the operators concerned, to help frame appropriate prices, increase social acceptability and ensure successful implementation.

4.10.1. The user and consumer concept needs to be broadened. Water issues have traditionally been seen as the preserve of operators, administrative authorities and technical experts; in some countries, this extends to electricity generating and construction companies and in others, especially in southern Europe, to farmers 'and irrigators' associations. This community of interests, with its deeply rooted traditional water culture, is in the process of taking on board the new social and environmental demands which are shaping a new water culture. Water management must be opened up to the guiding ideas and concepts of this culture: water saving, non-pollution, re-use, etc.

4.10.2. New social entities must be brought in who can bring innovation and change to bear on the shift to a new water culture. In particular, environmental NGOs, business associations and trade unions have a crucial role in keeping watch over environmental protection, water saving and the reduction of industrial pollution. These bodies also have the degree of organisation and social authority required to launch campaigns mobilising and boosting public awareness to strengthen pricing policy.

4.10.3. To this end, changes must be made to the institutional framework enabling users and consumers to contribute as described in Article 9(1) of the framework directive, and rights must be introduced in law. Without these, it will be difficult to monitor operators, especially in the quasi-monopoly situations the communication refers to. Official machinery allowing for independent monitoring of public — and private — sector operators must therefore be provided.

4.11. Community research and development programmes must specifically include objectives contributing to proper application of these economic recommendations both directly (research into methods for calculating environmental costs, resource costs, etc.) and indirectly, in order to cushion the socioeconomic effects of implementation (research into plant species with low water consumption; water-saving techniques in industry, agriculture and domestic supplies; how to reduce leakage losses in distribution networks, etc.).

4.12. The communication refers in several places to agricultural sectors experiencing severe difficulties in achieving appropriate pricing: difficulty in estimating sustainable demand and consumption, heavily subsidised crops, measurement of the diffuse pollution caused by nitrates and pesticides, the CAP and the lack of a methodology for reliable evaluation of the environmental costs and benefits. Water pricing for agriculture requires a separate document and process of consideration. Account should be taken, for example, of the beneficial aspects of cereal irrigation in preserving threatened species or improving soil characteristics, or agriculture's contribution to the CO_2 sink effect in relation to climate change.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on Community measures for the control of classical swine fever'

(2001/C 123/16)

On 2 October 2000 the Council of the European Union decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 December 2000. The rapporteur was Mr Scully.

At its 378th plenary session (meeting of 24 January 2001) the Economic and Social Committee adopted the following opinion with 81 votes in favour and two abstentions:

1. **Introduction**

1.1. *Classical swine fever (CSF)*

1.1.1. General characteristics of the disease

— It is a disease infecting pigs (domestic and wild) and it is caused by a well known Pestivirus (no risk for humans is known).

— Clinical signs: fever, anorexia, respiratory signs, haemorrhages in the skin; however clinical signs are extremely variable as well as their severity.

— Mortality is also variable (from very low in sows to very high in piglets).

— There is no known cure. Some pigs develop into a chronic state showing ill-thrift etc.

1.1.2. Clinical diagnosis can be very difficult, in particular at the early stage of disease in a farm; also laboratory diagnosis may be difficult.

— Incubation period: 7-10 days in the single animal, 15 to 30 days in the farm.

— Main route of infection: direct or indirect contact with infected pigs (airborne infection possible); movements of pigs incubating the disease play an important role in the spread of the disease.

1.1.3. The virus survives in pig meat for a considerable time, and can be spread through illegal use of swill-feeding; this represents the most usual method of spread of the disease. Affects the trade in pig meat.

1.1.4. The causal virus is very infective and can be carried on lorries, clothing etc. It is therefore essential in controlling the disease that strict quarantine and Stand Still orders are observed.

1.2. *The main problems linked to CSF and its effects*

— Existence of areas with a high density of pigs.

— Occurrence and persistence of CSF in the wild beast.

— Millions of pigs slaughtered and destroyed in 1997/1998.

— High costs and losses for the Community budget, for the Member States, for the farmers and for the tax payers.

1.3. *The Commission proposals on what must be done for the domestic pigs*

— Increase of disease awareness and preparedness (effective contingency planning is vital);

— Rapid and rigorous actions in case of outbreaks (preventive killing of pigs in contact holdings);

— Improvement of diagnostic skills for an earlier diagnosis;

— Improvement of epidemiological skills to trace disease back and forward.

1.4. The recent outbreak in the Netherlands which caused the slaughter of 10 million pigs and subsequent compensation cost for EU farmers, induced some criticism from the Court of Auditors.

2. **General comments**

The Proposed Directive amends the previous Classical Swine Fever Directives on which the Committee gave opinions in 1987 and 1991 ([1]). These amendments are welcomed.

2.1. The explanatory memorandum gives a full account of the reasons for introducing legislation for a 'Marker' Vaccine, including the rare occasion when it might be used. It also quite rightly points out the obvious deficiency that there is, as yet, no reliable diagnostic test to differentiate between the 'field' and 'vaccinate' strain of the Virus. Until this test is in place, and properly tested the vaccine cannot be used.

2.2. World Trade Organisation implications must be known before the introduction of vaccines.

2.2.1. The 'Third Country' trading implications of vaccines and their use must be examined. There should be international scientific agreement prior to their introduction. This should include 'Applicant countries' from Eastern Europe having an appreciation of the Communities future CSF policy.

2.3. *'Classical Swine Fever in feral Pigs'*

2.3.1. This subject is incorporated in the Commission proposal. Appropriate education campaigns should be undertaken by the Member States in order to enable society to co-operate properly when disease eradication is needed.

2.3.2. Experience has shown that where Swine Fever is present in the feral pig population, control, let alone eradication, is very difficult.

2.4. The ESC agrees in principle with the Commission proposal, but it would like to highlight the following:

2.4.1. Diagnostic Manual — The Commission should accelerate its work on adopting it. Based on a preview, the ESC feels that the draft document is on the right direction.

2.4.2. The incorporation of provisions on semen, ova and embryos into the text is welcomed.

2.4.3. Re-stocking by use of sentinel animals or alternative is welcomed.

2.4.4. Rules of 'in contact' and neighbouring farms are welcomed.

2.4.5. The aim of this text is to supplement, not to supplant the previous directives, and the underlining of the changes/additions, to the text is welcomed.

([1]) OJ C 83, 30.3.1987, p. 3 and OJ C 40, 17.2.1992, p. 87.

3. **Specific comments to the proposal**

3.1. *Preface (6)*

In connection with outbreaks of CSF and prevention of further spread, the possibility to kill contact herds should be mentioned before vaccination.

3.2. *Definition of feral pigs (wild boars) and high densely populated areas*

3.2.1. In Article 2, sub articles (a) and (b) there is definition of 'feral pigs'. When comparing with the previous directive, we assume that the reason for this amendment is to ensure that all wild pigs fall within this definition. The ESC believes that all pigs outside human care should be classified as 'feral'.

3.2.2. In Article 2, sub article (u) 'a high densely populated area' is defined as an area with a radius of 10 km around a holding that is known to be infected or suspected to be infected with CSF. The area has a higher number of pigs than 800 pigs per km^2. At the same time such holdings are to be located in an area with more than 300 pigs per km^2 (cf. directive on trade with live animals, 64/432/EEC) or to be located at a distance less than 20 km from such an area. A more simple definition to 'area with a high density of pigs' would be desirable.

3.3. *Articles 2 and 7 and Annex V — contact holdings*

3.3.1. A contact holding is defined as a holding in which CSF may be introduced because of the location, the movements of pigs, persons or vehicles etc., in connection also with its vicinity to other holdings within 20 km around a densely populated area. In parts of the EU there are substantial areas of 'high density' that may fall in with the meaning of this definition.

3.3.2. Article 7 (and Annex V) opens the possibility of killing contact herds before official confirmation of CSF has proved the presence of virus or antibodies. This is important in order to limit the spread of the initial outbreaks in an area (region).

3.3.3. Annex V describes the most important criteria which are to be considered before a contact herd is killed including 'movement of pigs from an outbreak holding to contact holdings after the likely time of introduction of virus in the infected holding'. Other direct contact like joint use of tools in the pen house or the like should also 'qualify' for a phased restocking.

3.3.4. Definition of criteria for culling of the so called contact herds, including 'neighbouring herds' has already been incorporated in the eradication strategy. Nevertheless, the eradication strategy should be even more intensified in the local area around an infected holding. The eradication strategy should, therefore, always include culling of herds within 1 000 m from the infected holding, unless special circumstances indicate otherwise.

3.4. *Article 11 — Surveillance zone (radius minimum 10 km)*

3.4.1. The surveillance zone may be lifted if among other things pigs on all holdings have undergone clinical, and if necessary laboratory examinations. The current provisions stipulate that serologic examinations of a representative sample of the herds are required before the surveillance zone may be lifted. We think that in future a screening of a representative number of herds should be compulsory in order to minimise the risk of missing infected pigs with no distinct clinical symptoms.

3.4.2. Articles 8, 9, 10 concerning epidemiology, protection and surveillance zones are welcomed.

3.5. *Article 19 and Annex VI — Vaccination*

3.5.1. In point 2, reference is made to Annex VI which describes the most important criteria that are going to be assessed before it is decided to use emergency vaccination. It is not clear whether one or several of these criteria should be fulfilled. Furthermore, it should be made clear that at any time the 'stamping out' strategy is preferable to vaccination; that emergency vaccination should be avoided and that other possible precautions like killing of contact herds, prohibition of any movements of live animals (apart from minimum zones etc.) should be enforced prior to any vaccination action.

3.5.2. Emergency vaccination should be initiated on the basis of a previous discussion in the Standing Veterinary Committee (ref. Article 26).

3.5.3. In point 9, conditions to the possible use of a marker vaccine are described. The approval of a marker vaccine, the international acceptance and the usage of vaccination should be conditional to the use of vaccination. This is essential in relation to EU exports in order to secure that the usage of a marker vaccine in one region does not jeopardise exports from other EU regions.

4. **Conclusions**

4.1. Fair and equitable compensation arrangements for farmers who have suffered financial loss as a result of disease control measures are an essential feature of any disease control scheme.

4.2. The proper implementation of Directive 92/102/EEC, in relation to the 'identification of porcine animals', is of importance in ensuring that all the relevant authorities have full knowledge of the location and density of pig populations.

4.3. The Committee welcomes the proposals for the possibility of the introduction of a marker CSF vaccine in certain limited circumstances.

4.4. The Committee considers it vital that all trade implications be clarified first.

4.5. The Committee points out that as yet no marker vaccine has been approved and that no differential test is even in existence. However the making of these rules should act as a guide to potential vaccine manufacturers.

4.6. The Standing Veterinary Committee will have to be consulted before vaccination is used.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EC) No 1258/1999 on the financing of the common agricultural policy as well as various other Regulations relating to the common agricultural policy'

(2001/C 123/17)

On 12 September 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 20 December 2000. The rapporteur was Mr Strasser.

At its 378th plenary session held on 24 and 25 January 2001 (meeting of 24 January), the Economic and Social Committee adopted the following opinion by 74 votes to 1, with 6 abstentions.

1. **Introduction**

1.1. On 26 July 2000 the European Commission proposed a radical revision of the EU Financial Regulation. The main purpose of the proposal was to simplify and restructure the existing Financial Regulation, which was introduced over 20 years ago.

1.2. The 1977 version has been amended 14 times, as and when necessary: firstly, in order to reflect institutional changes (the Maastricht and Amsterdam Treaties, funding for EFTA countries in the framework of the EEA) and then to ensure more rigorous management of Community resources.

1.3. The Commission considers that all the principles and key provisions for budget and financial management should

be brought together in a single legal instrument, whereas detailed and technical provisions should be covered in implementing regulations.

1.4. In order to ensure the necessary transparency in budget accounting [1], the draft proposal provides for 'negative expenditure' in the agricultural sector to be treated as earmarked revenue in accordance with the rules in effect for this sector.

1.5. The term 'negative expenditure' is used on the one hand when referring to recovery of payments already made and on the other for revenue that could not yet be considered as revenue in budgetary planning. 'Negative expenditure' is the result of a complicated budgetary mechanism and is divided into five categories:

— amounts recovered as a result of fraud or irregularities,

— corrections to advances made on the basis of Article 13 of the rules on budgetary discipline,

— any 'profits' which may arise from sales from public storage,

— the additional levy on surplus milk production,

— the financial consequences of clearance-of-accounts decisions.

1.6. In order to transform 'negative expenditure' from the EAGGF guarantee section into earmarked revenue, the Commission proposes to define what recoveries, levies and sums withheld under the common agricultural policy are to be considered as earmarked revenue in the following cases:

— financing of the common agricultural policy [2],

— the additional levy on surplus milk production [3],

— financing of intervention measures in the form of public storage accounts [4],

— and crediting of securities, deposits and guarantees furnished under the common agricultural policy and subsequently forfeited [5].

2. **Comments**

2.1. The Committee considers that the Commission's proposal to separate the budgeting and entering of 'earmarked revenue' accords with the budget principle of transparency, and especially also the need to identify the various account movements in the agricultural budget.

2.2. The Committee therefore welcomes the proposal to transform 'negative expenditure' into 'earmarked revenue'. This also provides the necessary clarification called for several times by the European Court of Auditors. This clarification also means that sums converted from 'negative expenditure' into 'earmarked revenue' are unquestionably available for purposes of the EAGGF Guarantee section. The Committee emphasises that this proposed amendment will not place any additional burden on the Community budget.

2.3. The Committee asks the Commission to ensure that its implementing rules contain clear instructions regarding the reports to be submitted by the member states.

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[1] The European Court of Auditors has lamented the difficulty of identifying 'negative expenditure' in the accounts (see for example its Annual report for the financial year 1998, point 2.39, OJ C 349, 3.12.1999).

[2] Regulation (EC) No 1258/1999, OJ L 160, 26.6.1999.
[3] Regulation (EEC) No 3950/92, OJ L 405, 31.12.1992.
[4] Regulation (EEC) No 3492/90, OJ L 337, 4.12.1990.
[5] Regulation (EEC) No 352/78, OJ L 50, 22 .2.1978.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending for the sixth time Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms'

(2001/C 123/18)

On 26 September 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 20 December 2000. The rapporteur was Mr Chagas.

At its 378th plenary session (meeting of 25 January 2001), the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. Council Regulation (EC) No 850/98 introduced technical measures for the protection of juveniles of marine organisms.

1.2. The present proposal is designed to clarify or correct some of the conditions established in this regulation, which is now being amended for the sixth time.

1.3. The proposed measures concern:

a) the calculation of the proportion by live weight of marine organisms on board after sorting or on landing, with respect to catches taken by nets of mesh sizes less than 16 mm;

b) the installation of square-meshed panels into towed nets of mesh size range 70 to 79 mm and the installation of sorting grids into towed nets of mesh size range 32 to 54 mm;

c) fishing with dredges;

d) landing of parts of crabs or damaged crabs;

e) ensuring that area-specific minimum sizes of crabs are duly observed;

f) informing competent control authorities of required information relating to fishing in an area established for the protection of mackerel;

g) the establishment of areas and time periods closed to defined methods of fishing, for the protection of hake;

h) the mesh size of fixed gears to be used when fishing for a variety of species in the North Sea and adjacent geographical areas;

i) the use of combinations of nets with mesh sizes 16 to 31 mm and greater than or equal to 100 mm or of 80 to 99 mm and greater than or equal to 100 mm in Regions 1 and 2 except the Skagerrak and Kattegat;

j) minimum sizes of crawfish, plaice, surf clams and a species of horse mackerel;

k) the measurement of the size of crawfish.

2. General comments

2.1. The Committee approves the proposal, on condition that the following recommendations are taken into account.

2.2. The Committee points out that in order to be feasible and effective, technical measures must strike the best possible balance between the desired purpose and fishing activity.

2.3. The Committee also recommends that technical conservation measures must reflect scientific and technological developments and must be preceded by dialogue with members of the sector.

2.4. The proposed new wording of Article 18(4) will disrupt crab fishing, as it stipulates that edible crabs may only be retained and landed if they are whole.

2.5. By not defining the word 'whole', the regulation makes this provision inoperable. Is a crab still whole if it has lost just one small claw?

2.6. The Committee therefore has misgivings about the feasibility of such provisions for fishermen at sea. The same applies to checks on these provisions. Such proposals do nothing to improve the credibility of CFP management measures in the eyes of the sector.

2.7. It must be remembered that different parts of the EU have different customs and cultures, with ensuing variations as regards the market for and consumption of this product.

2.8. This problem should be resolved by applying the subsidiarity principle and leaving the Member States to find a solution that fits in with local practices and traditions.

2.9. The Committee reiterates that technical measures will only be effective and achieve their aim if they are simple, workable and easy to police.

2.9.1. Amendments to the basic regulation should only be made when there is practical justification for them, as they complicate fishing activity and increase costs both for the sector and for consumers.

2.10. The Committee notes that this latest set of amendments, clarifications and corrections brings the total number of modifications to Regulation (EC) No 850/98 to over 40.

2.11. The Committee therefore recommends that a consolidated version be issued the next time the regulation is amended.

3. **Specific comments**

3.1. The proposed amendment 4 should be deleted.

3.2. The proposed amendment 6 should be moved to an annex listing the competent control authorities in the Member States.

3.3. There appears to be a mistake in Annex I. The 90-99 mm mesh size is applicable not only in ICES divisions VIId and IIIa and in the North Sea. It also applies in ICES division VIIe.

Brussels, 25 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic'

(2001/C 123/19)

On 8 May 2000 the Council decided, under Article 71 of the Treaty establishing the European Community, to consult the Economic and Social Committee on the above-mentioned proposal.

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 7 December 2000. The rapporteur was Mr Kielman.

At its 378th plenary session (meeting of 24 January 2001) the Economic and Social Committee adopted the following opinion by 50 vote to two, with two abstentions.

1. Introduction

1.1. On 28 September 1995 the Council of Ministers discussed a Commission proposal for a Council Directive laying down maximum authorised weights and dimensions for road vehicles over 3,5 tonnes circulating within the Community.

1.2. Among other things, this proposal laid down a harmonised maximum length of 12 metres for all rigid motor vehicles in the European Union.

1.3. However, several Member States wished to permit rigid buses with a maximum length of 15 metres. There was therefore no majority for setting either a 12 metre limit for all rigid vehicles or a 15 metre limit for rigid buses in the Community.

1.4. Parts of the Commission proposal were adopted as Directive 96/53/EC, but no maximum dimensions for buses were laid down.

1.5. For international transport in the EU as a whole, it is simply guaranteed that rigid buses of up to 12 m in length and articulated buses of up to 18 m can circulate freely.

1.6. Thus different maximum limits continue to apply for national transport. The Council therefore felt that further consideration should be given to harmonising the maximum length of rigid buses and coaches at a limit greater than 12 m throughout the EU.

1.7. At the Council's request the Commission thus prepared a report on the use of buses and coaches of up to 15 m in length, covering all aspects arising from the use of rigid buses and coaches of over 12 m in length.

1.8. On the basis of this report the Council of Ministers, at its meeting of 29 March 1999, invited the Commission to submit a proposal for an amendment to Directive 96/53/EC aimed at harmonising the maximum authorised dimensions of rigid buses and coaches in national and international transport.

2. General comments

2.1. Since Directive 96/53/EC harmonises the length of buses only for international transport, the result is that for national bus transport there are only national rules, which have developed independently in different ways. This implies that the free circulation in the Community of buses with a length of more than 12 metres is not guaranteed, although such buses are in common use in various Member States.

2.2. As regards the safety of passengers, it should be pointed out that there is no evidence that rigid buses with a maximum length of 15 metres would be less safe than similar buses of no more than 12 metres.

The Commission states that in certain circumstances rigid 15-metre-long buses would even be safer than articulated 18-metre-long buses.

2.3. Directives 96/53/EC and 97/27/EC on weights and dimensions of road vehicles lay down requirements for all vehicles to be able to turn in a swept circle with a prescribed outer radius and inner radius. On that basis the Commission concluded that it would be unjustified to introduce stricter rules for rigid buses of over 12 metres in length.

Many designs of rigid 15-metre-long buses do indeed have a greater outswing when turning a corner than do 12 m rigid buses and 18 m articulated buses. Some precautions at bus stops would need to be taken for their use.

2.4. The Commission proposes that buses longer than 12 metres should have three or more axles, in view of their higher maximum total weight. The length of buses with two axles would then be limited in effect to 12 metres.

2.5. The Commission also proposes a maximum length of 15 metres including skibox for rigid buses in national and international transport.

2.6. For buses with trailers the current rules are unclear.

The Commission proposal envisages removing any confusion by adopting a maximum length of 18,75 metres for bus and trailer combinations. This corresponds to the maximum length permitted for lorry and trailer combinations throughout the EU.

2.7. It should be mentioned that the Committee issued an opinion on 27 January 1999 on the 'Report from the Commission on the use of buses and coaches of up to 15 m in length' ([1]).

2.8. In this opinion the Committee opts for permitting a maximum length of 15 metres for rigid vehicles throughout the EU, without any additional requirements, so that all vehicles with a length of 12,75 m, 13,5 m or 13,75 m are permitted regardless of the number of axles.

2.9. The Committee is happy with the Commission's proposal to introduce a transitional period up to and including 31 December 2009 for vehicles used in national transport which do not meet the criteria laid down in the draft directive. After 31 December 2009 these vehicles would no longer be allowed to circulate.

3. **Specific comments**

3.1. In line with its opinion of 27 January 1999, the Committee takes the view that the Commission's proposal to require vehicles longer than 12 m to have three axles should be rejected. The Commission's argument is that this requirement is included to ensure that manufacturers keep to the weight limits when designing vehicles and that the vehicles do not damage existing roads.

3.2. However, weight limits and axle loads for vehicles in international transport have already been laid down at Community level. Exceptions to the weight limits are allowed for national transport. The Commission thinks it necessary, with reference to proper functioning of the cabotage market, to harmonise by making a third axle obligatory for vehicles longer than 12 m.

3.3. The Committee takes the view that this part of the Commission proposal is superfluous. In any case, countries which allow at national level vehicles with higher weights than those agreed at Community level will discover the disadvantage for themselves, since cabotage transport in other countries will be impossible; while countries allowing vehicles with weights equal to or lower than the Community limit will be able to carry out cabotage transport in other countries. The problem will therefore solve itself.

3.4. The Committee takes the view that the Commission's idea that all buses, regardless of length, must comply with the maximum outswing limit laid down in Directive 97/27/EC in order to qualify for type-approval is incompatible with its proposal to permit 15-metre-long buses in the single market.

3.5. It is clear that 15-metre-long buses cannot meet the requirements for outswing of buses as laid down in Directive 97/27/EC. Only buses with a maximum length of 14,6 m including skibox comply with them. This means that all 15-metre-long buses currently in use should disappear from the market. The Committee advocates amending Directive 97/27/EC in such a way that the outswing requirements allow the 15-metre-long bus to remain in circulation.

3.6. Finally, the Committee can agree with the Commission's observation that increasing the maximum length of buses in some Member States will mean that fewer buses are needed to transport the same number of passengers, with a corresponding reduction in the number of journeys — which would be welcome in both environmental and economic terms.

([1]) COM(97) 499 final — ESC Opinion of 27 January 1999, OJ C 101, 12.4.1999, p. 22.

4. **Summary and conclusions**

4.1. The Committee takes the view that the Commission's proposal to arrive at a harmonised maximum length for rigid buses in both national and international transport is essentially a commendable one.

4.2. Thus the Committee can endorse the following aspects:

— extending the scope of Directive 96/53/EC to cover national passenger transport;

— laying down a maximum length of 15 metres (including skibox) for rigid buses and coaches;

— laying down a maximum length of 18,75 metres for buses with trailers;

— stipulating a transitional period of nine years.

4.3. The Committee takes the view that the following parts of the Commission proposal should be modified:

— The requirement for buses longer than 12 metres to have three axles. In view of the internationally agreed weights as laid down in Directive 96/53/EC, this requirement is unnecessary. If the scope of the Directive were extended to national transport, manufacturers themselves could decide — within legal requirements — whether they prefer a two-axle or a three-axle design.

— The requirement for 15-metre-long buses to comply with the maximum outswing specifications laid down in Directive 97/27/EC. The Committee feels that, if the Commission thinks that the 15-metre-long bus should be harmonised throughout the EU, then Directive 97/27/EC should be amended in accordance with national outswing specifications, so that the 15-metre bus can continue to be used.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'Draft Commission Regulation (Euratom, ECSE, EC) amending Commission Regulation No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977'

(2001/C 123/20)

On 20 November 2000 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 regulation.

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

At its 378th plenary session of 24 and 25 January 2001 (meeting of 24 January), the Economic and Social Committee adopted the following opinion by 67 votes to one.

1. Introduction

1.1. A Council Regulation (Euratom, ECSC, EC) of 21 December 1977 is the legal basis, under the treaties, for the Financial Regulation applicable to the general budget of the European Communities.

1.2. Several amendments have been made over the years since 1977 and there have been further developments necessitating a general review, updating and consolidation to conform with modern best practice. Such review and consolidation is in course and completion is anticipated by 2002. This is a most welcome initiative.

1.3. The Commission is charged with the implementation of several provisions of the Council's Financial Regulation by way of 'implementing rules'. The rules currently in force are laid down in Commission Regulation (EC) No 3418/93 of 9 December 1993 and came into force on 1 January 1994.

1.4. The new consolidated Council Financial Regulation 2002 will of course necessitate review of the 1993 Commission 'implementation rules' Regulation (EC) No 3418/93. Nevertheless it is necessary to include the proposed amendments contained in this draft proposal at this stage. These changes arise principally from Council Regulations (EC) Nos 2548/98, 2779/98 and 2673/1999.

2. Substance

The substance and reasons for these implementations rules amendments is set out in the foreword of the Commission draft in Section 3 paragraphs 1-13.

3. Analysis

The analysis of proposed amendments is set out in part B sections 1, 2 (paragraphs 1-9), 3, 4 (paragraphs 10-13) of the Commission draft proposal.

4. Specific Comments

4.1. Article 1 sub paragraph 1(a) should be amended to read 'the need to be met in the short term or the long term' instead of 'the need to be met'.

4.2. Article 1a. Point 3, first line should read 'The Commission shall use information from the European Central Bank when ...' instead of 'The Commission shall use any source of information if considers reliable when ...'.

4.3. Article 104, point 2, second paragraph add '... and including a legal officer'.

Third paragraph, second line change as follows '... shall be present as an observer' instead of 'may be present as an observer'.

Point 4 delete the second paragraph and replace in third paragraph 'may' with 'shall' in the first line.

In the fifth and last paragraph of point 4, after '... committee' add 'and shall be retained for possible future reference'.

4.4. 49. In Article 135, point 3 the following four classes should be added to the list:

— undrawn commitment accounts;

— suspense accounts;

— provisions for legal cases;

— pensions liabilities.

5. General Comments

5.1. The Council Financial Regulation as variously amended together with the Commission Regulations setting down rules for implementation of certain provisions of that Regulation are highly technical and most cumbersome. Although designed to provide transparency in the financial affairs of the European Communities, the instruments in themselves lack transparency in many respects.

5.2. Although the 'European Company' has finally been provisionally agreed in outline, harmonisation of financial accounting procedures is still not very advanced.

As a consequence, there remain differences in financial control and management systems across the Member States. These include differences in titles and responsibilities of those working in this area in some cases this leads to confusion.

5.3. In the case of the amendments proposed in this instance, there would seem to be lack of clarity particularly in the responsibilities under the titles Internal Audit and Financial Controller.

6. Conclusion

6.1. The Economic and Social Committee fully supports this necessary but interim draft proposal amending Commission Regulation (EC) No 3418/93 but suggests that the minor amendments outlined above would improve the text.

6.2. The proposed new Financial Regulation due in 2002 is urgently needed for the updating, modernising, consolidation, simplification and enhancement of transparency in the financial control systems of the European Communities.

Brussels, 24 January 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions'

(2001/C 123/21)

On 25 July 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentionned 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 5 December 2000. The rapporteur was Ms Wahrolin.

At its 378th plenary session (meeting of 25 January 2001) the Economic and Social Committee adopted the following opinion by 68 votes to 11, with six abstentions.

1. Introduction

1.1. In presenting its proposal amending Council Directive 76/207/EEC [1] the Commission's purpose is to promote equal participation of women and men in the labour market and to remove further obstacles to women in employment.

1.2. The Commission's proposal is based on Article 141(3) of the Treaty, which empowers the Community to adopt measures to ensure the application of equal treatment of men and women in matters of employment and occupation, and on Treaty Article 141(4), which reiterates that Member States have a duty to adopt measures to ensure that this principle is implemented. The proposal seeks to define terms, reinforce protection of individuals lodging complaints, clarify the scope for exemption from certain principles, boost positive action measures to promote equality and safeguard special protection for women on grounds of pregnancy and maternity.

1.3. The proposal spells out the Member States' obligations in practical terms and takes account of Court of Justice case-law over the past 25 years.

1.4. For the first time, clear-cut definitions are provided in this proposal of sexual harassment and discrimination based on sex in the workplace; these definitions are based on, and consistent with, the definitions to be found in the proposed directives based on Article 13, dealing with harassment as discrimination based on other grounds as well as sex. In addition, the proposal introduces protection for employees lodging complaints of discrimination, even when the employment relationship has ended, and lays down guidelines for the independent national bodies to promote the principle of equal treatment. It clarifies the Member States' powers to provide for exemptions from the principle of equal access to employment, while requiring Member States to substantiate bans on employing one or other sex in special forms of work. The proposal specifies and guarantees special protection for women on grounds of pregnancy and maternity, including their right to return to the same workplace after maternity leave. Lastly, Treaty Article 141(4) is incorporated, whereby Member States are entitled to adopt positive action measures to promote full equality for women and men at work.

1.5. The proposal also highlights the role of the social partners in implementing the principle of equal treatment.

2. General comments

2.1. The Economic and Social Committee broadly welcomes the changes proposed by the Commission and would particularly stress how important it is that, for the first time, the definition of sexual harassment is now being given directive form and that the definition *per se* clearly states that discrimination based on sex at the work place is the issue. This makes it clear that it is always the employer's responsibility to prevent and deter sexual harassment in the workplace. At the same time, it is important — from a legal certainty perspective — to stress that an employer can only act on a specific case when it comes to his notice. The sexual harassment problem is a major, sensitive issue which can no longer be ignored and needs to be tackled at EU level. In addition, the Committee applauds the greater legal certainty resulting from the Directive's reference to Court of Justice case-law.

[1] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions OJ C 39, 14.2.1976, p. 40.

2.2. The Committee supports the thrust of the Commission's proposal, which is fully consistent with longstanding efforts and social and legal developments in the Community and the Member States. It agrees with the Commission that application of a Community legal decision is in accordance with the principles of subsidiarity and proportionality.

2.3. The Committee would welcome a proposal based on Treaty Article 13 which also includes other areas.

2.4. The Committee regrets that the Commission did not formally consult the social partners at European level, as provided for in the social chapter of the Treaty, before it presented the new draft directive.

2.5. The Committee's comments on specific articles in the Commission proposal are set out below.

3. **Specific comments**

Article 1

Article 1 contains all the proposed amendments to Council Directive 76/207/EEC.

3.1. *First amendment: insertion of a new paragraph in Article 1*

The Committee supports the Commission's proposal which adapts the Directive to Article 3 of the Treaty.

3.2. *Second amendment: a new Article 1a*

The Committee welcomes the Commission's proposal, which states explicitly that sexual harassment constitutes discrimination on the grounds of sex. The EU institutions have taken a number of different initiatives in recent years to prevent and combat sexual harassment at the workplace. Surveys show that sexual harassment is a widespread problem and that preventive action must be taken in the workplace, in both the individual's and the firm's interests. The European social partners have unanimously confirmed the importance of safeguarding the individual worker's integrity and dignity; however, their views differ as to which instruments can suitably be applied at European level. The Community has long taken the position that sexual harassment violates the principle of equal treatment and encroaches on the dignity of women and men in the workplace. It is highly satisfactory that now for the first time, a Directive explicitly states that sexual harassment constitutes discrimination on grounds of sex in the workplace.

The definition proposed by the Commission is based on its own code of practice [1] and is tailored to tally with the definitions based on Article 13, covering harassment on other grounds than sex. On the whole the Committee has no objections to the proposed definition but would prefer the draft text to refer to a 'humiliating', rather than a 'disturbing', environment, which would be fully consistent with the EU code of practice.

The Committee regrets that the Commission's proposal contains no reference to the employers' responsibility to create a working environment free from sexual harassment. The Committee believes that it is important to establish a policy of prevention in the workplace as was laid down in the 1991 code of practice, and suggests that the following wording be added to Article 1a:

'It is the employers' responsibility to create a working environment free from sexual harassment'.

3.3. *Third amendment: insertion of a subparagraph in Article 2(1)*

The Committee welcomes the Commission's proposal to introduce a definition of the concept 'indirect discrimination', but feels that the definition should be reworded to make it consistent and in line with the racial discrimination Directive and with other Directives based on Article 13 of the Treaty.

3.4. *Fourth amendment: new Article 2(2)*

The Committee agrees with the limited exception from the discrimination rules, based on 'genuine occupational requirements'. This exception should be reviewed regularly by the Member States and independent bodies so as to justify whether it should be retained or abolished.

However, the Committee would suggest that the Commission, in addition to what is stated in the directive, should also take up the matter of positive action so as to be as clear and specific as possible, regardless of the fact that this point is regulated by other texts.

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[1] European Commission 1993: Measures to combat sexual harassment; guidelines for a Commission code of practice.

3.5. *Fifth amendment: addition to Article 2(3)*

The Committee supports the Commission's proposal to state specifically that a woman who has given birth has the right to return to her job, or to an equivalent post, but regards the phrase 'with the same working conditions' as too inflexible and rigid. In its view, a better and more elastic wording would be 'under no less favourable working conditions'. Working life is constantly changing and the proposed wording 'with the same working conditions' will be excessively restrictive.

The right to a job and to earn a living is a key factor in ensuring equality between women and men. This is fully in line with both the EU's employment strategy and with the conclusions of the Lisbon Summit. It is quite clear that women must enter the labour market if the EU is to achieve the economic growth needed to sustain its social — and not least pension — systems. Equality is vital for productivity in Europe, where older people form an increasingly high proportion of the population. If Europe is to preserve social protection standards, women must be able to contribute to the economy through paid employment. The right to return to work under no less favourable conditions is an important factor in planning family life, and in particular combining a job with family life, besides being a natural complement to the provisions of the maternity Directive 92/85/EEC [1]. The ESC calls on the Commission to undertake a review of the maternity directive 92/85/EEC, in line with the new ILO convention on Maternity (Convention 183). The ESC considers that the issue of returning to work under no less favourable conditions should also be included.

The Committee applauds the Directive's reflection of Court of Justice case-law.

3.6. *Sixth amendment: new Article 2(4)*

The Committee welcomes the thrust of the Commission's proposal, which implements Treaty Article 141(1) in empowering Member States to adopt positive action measures to promote equality and requiring them to report regularly on their activity. Previous ESC proposals [2] and recommendations have referred to reporting in connection with the publication of the Commission's first report on equality. The publication of regular Commission reports containing a comparative evaluation of positive action measures adopted by the Member States will help give the Member States and their populations some idea of the situation in each individual country. The structure of these reports will be of major importance. The Committee recommends that the Commission should focus on specific comparisons highlighting differences and similarities between the Member States. There is little point in describing developments at Community level unless attention is paid to implementation and compliance with the rules in the Member States, where everything actually happens.

3.7. *Seventh amendment: addition of new paragraph (d) to Article 3(2)*

The Committee supports the addition proposed by the Commission.

3.8. *Eighth amendment: replacement of original wording of Article 6*

The new wording of Article 6 introduces into the Directive two important elements of the Court's case-law regarding enforcement procedures. The Committee welcomes the Commission's proposal which helps to ensure effective protection for the individual, and the fact that the principle of equal treatment is to have the desired impact.

The Committee would, however, draw the Commission's attention to the national rules on periods of limitation applicable, for instance, to the time limit for initiating legal proceedings after cessation of employment. These must not be rendered invalid by virtue of the directive, provided that they are not incompatible with other EU legislation.

3.9. *Ninth amendment, new Article 8a*

The Committee supports this proposal, which reinforces the right to legal protection provided in Article 6.

The Committee is pleased to note the clear guidelines for the independent bodies to be set up in each Member State and that the Member States are left free to decide on the structure and functioning of such bodies in accordance with their legal traditions and policy choices.

However, the Committee would suggest that point 3 of the new Article 8 a) be amended in line with the wording of the directive on racial discrimination and refers to its own opinion on that subject [3].

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(1) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health of work of pregnant workers and workers who have recently given birth or are breastfeeding OJ L 348 of 28.11.1992.

(2) Opinion on the Commission's annual report: Equal opportunities for women and men in the European Union — 1996 OJ C 296, 29.9.1997.

(3) OJ C 204, 18.7.2000, p. 82-90.

3.10. *Tenth amendment: new Article 8b*

The Committee welcomes the Commission's proposal and highlights the role played by the social partners in implementing equal treatment.

The Committee points to the importance of leaving each Member State free to act on the basis of its own legal traditions and policy choices. It is important to make progress in this area. It would therefore be most helpful to require the Member States, in their reports to the Commission, specifically to record how they have proceeded in their drive, in liaison with the social partners, to implement equal treatment.

3.11. *New Article 8c*

The Committee supports the Commission's proposal.

Brussels, 25 January 2001.

4. **Article 2**

4.1. The Committee has no objection to the Commission's proposal but recommends that the deadline by which the Member States are to implement the laws and other provisions required for purposes of this directive should be adapted to the date of decision so as to give the Member States at least one year to adopt national measures.

5. **Conclusion**

One of the European Union's most vital tasks is to combat discrimination in any form.

Despite the fact that demographic patterns make it urgent for as high a percentage as possible of the population of active age to be in employment, discrimination of various kinds persists on the labour market.

The present proposal amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, opens the way for further action to implement the above principle.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee opinion

The following amendment was defeated during the debate but secured at least one-quarter of the votes cast:

Point 3.5, Paragraph 1

The original wording of the Commission '... with the same working conditions' should be maintained in place of the proposed amendment '... with no less favourable working conditions'.

Reason

Self-evident.

Result of the vote

For: 30, against: 48, abstentions: 7.