

English edition

Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I <i>Information</i>	
	
	II <i>Preparatory Acts</i>	
	Economic and Social Committee	
	382nd plenary session, 30 and 31 May 2001	
2001/C 221/01	Opinion of the Economic and Social Committee on 'The craft sector and SMEs in Europe'	1
2001/C 221/02	Opinion of the Economic and Social Committee on 'Counterfeiting'	20
2001/C 221/03	Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions "Working together to maintain momentum" — 2001 Review of the Internal Market Strategy'	25
2001/C 221/04	Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway'	31
2001/C 221/05	Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on establishing common rules in the field of civil aviation and creating a European Aviation Safety Agency'	38

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EN

(Continued overleaf)

<u>Notice No</u>	Contents (Continued)	Page
2001/C 221/06	Opinion of the Economic and Social Committee on the ‘Green Paper — Towards a European strategy for the security of energy supply’	45
2001/C 221/07	Opinion of the Economic and Social Committee on: — the ‘Proposal for a Directive of the European Parliament and of the Council establishing a Community monitoring, control and information system for maritime traffic’, — the ‘Proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures’, and — the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency’	54
2001/C 221/08	Opinion of the Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on rail transport statistics’	63
2001/C 221/09	Opinion of the Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC’	65
2001/C 221/10	Opinion of the Economic and Social Committee on: — the ‘Commission Report to the Council and the European Parliament on the quality strategy for olive oil’, and — the ‘Proposal for a Council Regulation amending Regulations No 136/66/EEC and (EC) No 1638/98 as regards the extension of the period of validity of the aid scheme and the quality strategy for olive oil’	68
2001/C 221/11	Opinion of the Economic and Social Committee on: — the ‘Communication from the Commission to the Council and the European Parliament on the welfare of intensively kept pigs in particular taking into account the welfare of sows reared in varying degrees of confinement and in groups’, and — the ‘Proposal for a Council Directive amending Directive 91/630/EEC laying down minimum standards for the protection of pigs’	74
2001/C 221/12	Opinion of the Economic and Social Committee on the ‘Proposal for a Decision of the European Parliament and of the Council laying down the Community Environment Action Programme 2001-2010’	80
2001/C 221/13	Opinion of the Economic and Social Committee on the ‘Report from the Commission to the Council on the state of implementation of Regulation (EC) No 2200/96 on the common organisation of the market in fruit and vegetables’	86
2001/C 221/14	Opinion of the Economic and Social Committee on the ‘Proposal for a Council Regulation amending Regulation (EC) No 2549/2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)’ ...	90



<u>Notice No</u>	Contents (Continued)	Page
2001/C 221/15	Opinion of the Economic and Social Committee on the '11th Annual Report on the Structural Funds (1999)'	91
2001/C 221/16	Opinion of the Economic and Social Committee on 'The regions and the new economy: Guidelines for innovative actions under the ERDF in 2000-2006'	97
2001/C 221/17	Opinion of the Economic and Social Committee on: — the 'Communication from the Commission to the Council and the European Parliament on the prevention of crime in the European Union — Reflection on common guidelines and proposals for Community financial support', and — the 'Proposal for a Council Decision establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime (Hippocrates)' ..	103
2001/C 221/18	Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage, and distribution of human blood and blood components and amending Council Directive 89/381/EEC'	106
2001/C 221/19	Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer'	110
2001/C 221/20	Opinion of the Economic and Social Committee on 'Re-invigorating the transatlantic partnership and dialogue'	113
2001/C 221/21	Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on insurance mediation'	121
2001/C 221/22	Opinion of the Economic and Social Committee on 'The situation of nature and nature conservation in Europe'	130
2001/C 221/23	Opinion of the Economic and Social Committee on the 'Evaluation Report on motor-vehicle distribution and sales and after-sales service in accordance with Regulation (EC) No 1475/95 (Additional opinion to the opinion on the XXIXth Report on competition policy)'	138
2001/C 221/24	Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on reporting formalities for ships arriving in and departing from Community ports'	149
2001/C 221/25	Opinion of the Economic and Social Committee on 'the Commission Staff Working Paper SEC(2000) 1973 "Science, society and the citizen in Europe"'	151
2001/C 221/26	Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EC) No 1267/1999 establishing an Instrument for structural policies for pre-accession'	166
2001/C 221/27	Opinion of the Economic and Social Committee on the 'Preparation of a European Union strategy for Sustainable Development'	169
2001/C 221/28	Opinion of the Economic and Social Committee on the 'Broad Economic Policy Guidelines 2001'	177

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on 'The craft sector and SMEs in Europe'

(2001/C 221/01)

On 2 March 2000, the Economic and Social Committee decided to draw up an opinion, under Rule 23(3) of its Rules of Procedure, on 'The craft sector and SMEs in Europe'.

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 16 May 2001. The rapporteur was Mr Pezzini.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion with 107 votes in favour and one abstention.

1. Objectives of the opinion

1.1. This opinion is a response to the need to examine the progress made in the 1990s in defining small business and the craft sector in Europe, and the policies that have resulted, by analysing the work done by the Economic and Social Committee, the European Commission, the national governments and the representative organisations.

1.2. This study is not an end in itself, but will pave the way for an ex-post evaluation (limited to the main effects and therefore not exhaustive) of what has been done and what remains to be done, with special reference to the lines of action proposed in the ESC's 1997 opinion on craft industries and small and medium-sized enterprises⁽¹⁾. It will go on to suggest lines of action for the new decade.

1.3. *The statistical definition of small business and the craft industry*

1.3.1. In its recommendation, the Commission defined small and medium-sized enterprises⁽²⁾ as follows:

'Article 1

1. Small and medium-sized enterprises, hereinafter referred to as "SMEs", are defined as enterprises which:

- have fewer than 250 employees, and
- have either,
 - an annual turnover not exceeding EUR 40 million, or
 - an annual balance-sheet total not exceeding EUR 27 million,
- conform to the criterion of independence as defined in paragraph 3.

2. Where it is necessary to distinguish between small and medium-sized enterprises, the "small enterprise" is defined as an enterprise which:

- has fewer than 50 employees and
- has either,
 - an annual turnover not exceeding EUR 7 million, or

⁽¹⁾ OJ C 158, 26.5.1997, p. 53.

⁽²⁾ OJ L 107, 30.4.1996.

an annual balance-sheet total not exceeding EUR 5 million,

— conforms to the criterion of independence as defined in paragraph 3.

3. Independent enterprises are those which are not owned as to 25 % or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definition of an SME or a small enterprise, whichever may apply. This threshold may be exceeded in the following two cases:

— if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly,

— if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25 % or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

4. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises which it directly or indirectly controls through possession of 25 % or more of the capital or of the voting rights.

5. Where it is necessary to distinguish micro-enterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.

6. Where, at the final balance sheet date, an enterprise exceeds or falls below the employee thresholds or financial ceilings, this is to result in its acquiring or losing the status of "SME", "medium-sized enterprise", "small enterprise" or "micro-enterprise" only if the phenomenon is repeated over two consecutive financial years.

7. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.

8. The turnover and balance sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly-established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year.

Article 2

The Commission will amend the ceilings chosen for the turnover and balance-sheet total as the need arises and normally every four years from the adoption of this Recommendation, to take account of changing economic circumstances in the Community.

Article 3

1. The Commission undertakes to adopt the appropriate measures to ensure that the definition of SMEs, as set out in Article 1, applies to all programmes managed by it in which the terms "SME", "medium-sized enterprise", "small enterprise" or "micro-enterprise" are mentioned.

2. The Commission undertakes to adopt the appropriate measures to adapt the statistics that it produces in line with the following size-classes:

- 0 employees,
- 1 to 9 employees,
- 10 to 49 employees,
- 50 to 249 employees,
- 500 to 499 employees,
- 500 employees plus.

3. Current Community programmes defining SMEs with criteria other than those mentioned in Article 1 will continue, during a transitional period, to be implemented to the benefit of the enterprises which were considered SMEs when these programmes were adopted. Any modification of the SME definition within these programmes can be made only by adopting the definition contained herein and by replacing the divergent definition with a reference to this Recommendation. This transitional period should in principle end at the latest on 31 December 1997. However, legally binding commitments entered into by the Commission on the basis of these programmes will remain unaffected.

4. When the Fourth Council Directive 78/660/EEC is amended, the Commission will propose that the existing criteria for defining SMEs be replaced by a reference to the definition contained in this Recommendation.

5. Any provisions adopted by the Commission which mention the terms "SME", "medium-sized enterprise", "small enterprise" or "micro-enterprise", or any other such term, will refer to the definition contained in this Recommendation.'

1.3.2. In the Committee's view, 'small enterprise' should be understood to mean both small enterprises and micro-enterprises as defined in the Commission recommendation and also craft firms, given their economic and social importance in the Member States where they are covered by law. The ESC

expressed this view clearly in the opinions it adopted on small enterprises and craft firms in 1992⁽¹⁾ and 1997⁽²⁾.

1.3.3. To clarify the objectives of the opinion, it is necessary to look into some of the problems that arise in the statistical quantification of small enterprises and craft firms in Europe.

1.4. While much is known of the productive fabric of SMEs in Europe, there is a lack of data on the subgroup of craft sector firms (with the exception of a few European countries).

1.5. In many cases it is difficult to gain a clear picture of the important economic role which craft businesses play in the EU. This is due to inadequate Member State coordination on craft sector statistics and the use of widely varying survey

(¹) The principles set out in the 1992 Schleyer Report were as follows:

- close owner/manager links within the firm;
- great reliance on human resources which can be used in conjunction with up-to-date manufacturing and management techniques;
- management and manufacturing skills of the head of the firm;
- fundamental role of the head of the firm who is directly involved in organising the manufacturing process.

(²) OJ C 158, 26.5.1997 p. 53.

methods which do not allow a satisfactory comparison of data; in any case, such data are not always available.

1.6. In the European Union there is a productive fabric of approximately 19 370 000 companies (in 1998) not including the farming sector, of which close on 19 330 000 are small or medium-sized, employing an average of six people. From a sectoral point of view, the trade sector (retail and wholesale) accounts for 5,56 million companies compared with 2,21 million companies in the manufacturing sector.

1.7. 93 % of all companies have fewer than nine employees; 5.8 % have 10-49 employees and only 0.8 % have over 50 employees: this means that, according to Eurostat, 98.8 % of non-agricultural European companies fit the definition of SME.

1.7.1. In Europe, SMEs employ 66 % of the workforce, as compared with 42 % in the USA and 33 % in Japan. SMEs therefore play a greater role in generating employment in Europe than in other directly competing geographical areas.

1.7.2. Nationally, the country with the highest number of companies is Italy (3 940 000 companies) followed by Germany (3 515 000) and France (2 325 000). Businesses are distributed very widely across the various countries. In Italy, France, Greece and Spain the most common are micro-enterprises (with under nine employees), while in Germany and the other EU countries, small companies (companies with 10-249 employees) are prevalent.

Table 1 — Breakdown of non-agricultural companies in the EU Member States

	Companies (1 000s)	Average size
A	285	11
B	530	5
DK	150	8
D	3 515	8
EL	620	3
E	2 510	5
F	2 325	7
IRL	85	10
I	3 940	4
L	15	13
NL	450	12
P	690	4
FIN	210	5
S	385	7
UK	3 660	5
EUR	19 370	6

Source: European Observatory for SMEs.

Table 2 — Main indicators of non-agricultural companies in the European Union

	SMEs				Large	Total
	Micro	Small	Medium	Total		
Number of companies (1 000)	18 040	1 130	160	19 330	38	19 370
Employees (1 000s)	38 360	21 320	14 870	74 550	38 680	113 230
Average size of company:						
— Employees per company	2	20	90	4	1 010	6
— Turnover per company (million Euros)	0,2	3	23	0,5	215	1,0
Exports as a percentage of turnover (%)	6	13	16	11	22	16
Value added per employee (thousand Euros)	30	50	95	45	90	60
Labour costs as a percentage of value added	40	53	43	45	38	42

Source: European Observatory for SMEs.

Table 3 — Percentage breakdown of employees working for private non-agricultural companies

	Breakdown of employees by company size				
	SMEs				Large
	Micro	Small	Medium	Total	
European Union	34	19	13	66	34
USA	11	19	12	42	58
Japan	n/a (*)	n/a (*)	n/a (*)	33	67

(*) Not available (the Japanese statistics are compiled using different criteria and do not therefore lend themselves to comparison).

Source: European Observatory for SMEs.

Table 4 — Size of non-agricultural companies by sector

	Companies (1 000s)	Employees per company	Size
Mining	50	36	S&L (*)
Manufacturing	2 210	14	S&L (*)
Construction	2 775	4	Micro
Wholesale	1 490	5	SMEs
Retail	4 070	4	Micro
Transport and communications	1 090	8	S&L (*)
Financial intermediation	395	14	S&L (*)
Hotels and restaurants	1 460	5	Micro

(*) Small and large companies (there are not generally any medium-sized companies in these sectors).

Source: European Observatory for SMEs.

1.8. Whilst these statistics enable us to quantify the number of firms in the EU that are non-agricultural, it is more difficult to determine how many of these can be termed craft firms and how many agricultural enterprises there are. This is a serious shortcoming, given the role which agriculture plays in safeguarding the hydrogeological balance of the land and, more broadly, in conserving the environment and promoting rural development.

1.9. In recent years, the Commission's efforts have made it possible to quantify the number of firms in the EU more accurately. However, it is still difficult to tell how many of them can be defined as craft firms. In some countries the number of firms and the size of the workforce in companies that could be defined as craft firms are underestimated because definitions and criteria are applied indiscriminately. In Spain, for example, there are officially approximately 15 000 craft firms, which is probably an underestimate. On the other hand, in countries where craft industry estimates are based simply on firms with a workforce of less than nine, the figures may err in the opposite direction.

1.10. The type of legal definition used can also affect the size of the firm, e.g. in countries where there are no size restrictions on craft firms, they are much bigger than in countries where there is a legal ceiling.

1.11. The above comments show how the absence of a European statistical methodology for quantifying craft-type firms prevents a proper assessment of the sector. There are three main problem areas:

- it is not currently possible to assess the size of the European craft sector, owing to differences in legal definitions and survey methods;
- there is no method for compiling statistics based on minimum common denominators;
- the scale of the phenomenon is changing.

1.12. The final resolution adopted in 1996 by 15 European craft sector experts (one for each Member State) during the second symposium on European craft industry statistics⁽¹⁾

marked a step towards a common research programme whose main objective is to help solve the statistical side of these problems.

1.13. At that symposium, in anticipation of further methodological developments⁽²⁾, an attempt was made to group together available statistics, using the three approaches mentioned in the ESC's 1996 report: sector/size, professional and artistic⁽³⁾.

1.14. The following features emerge:

- an economic comparison of the data is not possible;
- the available data tend to underestimate the phenomenon;
- where there is national legislation, defining the characteristics of craft firms, the economic significance of the craft industry for the national economy emerges;
- in general, countries that have a legal definition of the craft industry have a higher number of craft firms;
- the significance of the craft industry is probably underestimated in countries such as Spain and the United Kingdom. It is no coincidence that both countries tend to use the term 'artistic' when defining crafts-related firms;
- in countries where the professional approach prevails (the activity is the factor determining whether the company is a craft firm and there are no company size limits), the size of the craft workforce compared to the total number of people employed by companies is greater than in other countries.

1.15. These differences should not be seen as a problem but rather as a cultural and economic asset and a starting point for a common strategy that develops and enriches the identity of small companies and craft firms in Europe.

⁽¹⁾ The second symposium on European craft industry statistics was organised by the Istituto Guglielmo Tagliacarne, under the aegis of Commission DG XXIII in Rome on 20-21 March 1996.

⁽²⁾ In 2000, the Istituto Tagliacarne in Rome was awarded a European Commission (DG Enterprise) contract to prepare a pilot methodology for quantifying the European craft sector.

⁽³⁾ These distinctions have also been adopted by the European observatory for SMEs — European Commission.

Table 5 — Number of craft firms (in thousands — in accordance with national definitions)⁽¹⁾

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Professional approach									
Austria	42	42	42	42	42	42	42	43	n.a.
Germany (*)	598	606	614	594	598	603	605	607	608
Iceland	5	5	6	6	6	6	n.a.	n.a.	n.a.
Liechtenstein	1	n.a.	n.a.	n.a.	1	n.a.	n.a.	n.a.	n.a.
Luxembourg	4	4	4	4	4	4	n.a.	n.a.	n.a.
Sector/size approach									
France	854	857	831	811	821	828	823	819	n.a.
Italy	1 140	1 209	1 260	1 272	1 326	1 333	1 325	1 338	n.a.
Netherlands (**)	101	107	115	121	101	127	140	145	n.a.
Artistic approach									
Spain	14	15	15	15	15	15	15	15	n.a.
Other approaches									
Belgium	n.a.	n.a.	n.a.	n.a.	54	n.a.	n.a.	n.a.	n.a.
Finland	n.a.	n.a.	n.a.	104	n.a.	n.a.	n.a.	164	n.a.
Ireland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Sweden	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
UK	n.a.	n.a.	17	n.a.	19	n.a.	n.a.	n.a.	n.a.

(*) Owing to changes in calculation methods, the data for 1994 and after are not comparable with earlier data.

(**) As inactive companies were excluded in 1995, the data for 1995 and after are not comparable with earlier data.

NB: Owing to the varying definitions of 'craft firm', direct comparisons between countries are not possible.

Table 6 — The craft sector's contribution to GDP in a number of European countries (*)

Country	% of GDP
France	5,1
Germany	9,6
Greece	3,0
Italy	12,0
Luxembourg	15,0
Netherlands	3,5
Spain	0,3

(*) The figures are indicative.

Source: National statistics.

⁽¹⁾ The following tables are the fruit of methodological guidelines that grew out of the 1994 and 1996 conventions hosted by the Istituto G. Tagliacarne in conjunction with the European Commission and the sectoral associations.

Table 7 — Craft sector exports in a number of European countries (*)

Country	% of total exports
Austria	2,8
Denmark	6,0
France	4,2
Germany	2,0
Italy	18,3

(*) The figures are indicative.

Source: National statistics.

Figure 1 — Distribution of the 15 European countries according to the four factors

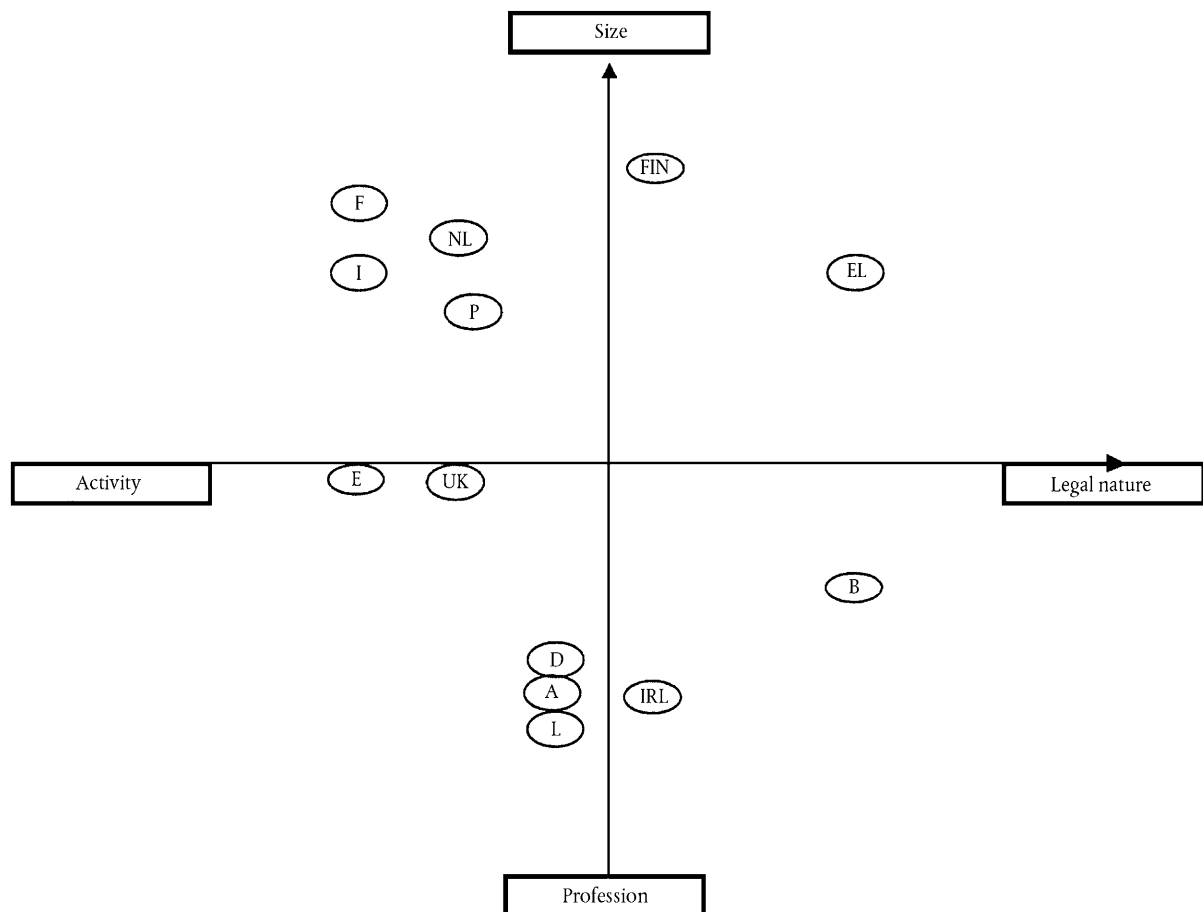


Table 8 — Statistical definition of craft in Europe: characteristics of the available data for each country

	Austria	Belgium	Denmark	Finland	France
Legal definition	Yes	No	No	No	Yes
Size	×	×	×	Companies with 1 to 3 workers.	Companies with 1 to 10 workers. This limit can be exceeded in some cases.
Activity	Belonging to one of the following economic sectors: construction, metals, carpentry, health and hygiene, clothing, food, cleaning, glass, paper, etc.	×	×	×	Belonging to one of the following economic sectors: food, metals, textiles, carpentry and furniture, other manufacturing, construction, repair, transport and other services.
Profession	There is a list of 43 craft professions.	There is a definition of craft worker and a list of 45 craft professions divided into 11 categories.	A list of craft trades and professions is in preparation.	×	Enrolment on craft registers is compulsory.
Entrepreneur	The entrepreneur must own the title of master craftsman.	×	×	×	Entrepreneurs are enrolled on craft registers.
Legal Nature	×	Only self-employed people can be considered to be running craft firms.	×	×	×
Other	×	×	×	Goods and services produced manually.	×

(cont.)

	Germany	Greece	Ireland	Italy	Luxembourg
Legal definition	Yes	No	No	Yes	Yes
Size	×	Companies with under 10 workers.	×	Varies depending on sector of activity.	×
Activity	Belonging to one of the following economic sectors: construction, electricians, technicians, carpentry, health and hygiene, pottery, clothing, food, cleaning, glass, paper, etc.	×	×	All sectors, with the exclusion of health and public administration.	Belonging to one of the following economic sectors: construction, mechanics, health and hygiene, clothing, food, etc.
Profession	There is a list of craft occupations (94 trades + 57 professions).	×	There is a definition of a craft worker and 39 trades are considered to be crafts.	Craft entrepreneur.	Craft is identified by the way work is done in the company. (152 trades)
Entrepreneur	×	×	×	The craft entrepreneur must be directly involved in the work of the company.	×
Legal Nature	×	Craft firms are run by self-employed people or families.	×	Run by self-employed people or as companies.	×
Other	Technology can be used as a craft tool, but must not replace manual skill.	Craft enterprises do not use sophisticated technologies but prefer a traditional way of work.	×	×	Craft enterprises produce tailor-made products and services and work for a known market/client.

(cont.)

	Netherlands	Portugal	United Kingdom	Spain	Sweden
Legal definition	Yes	Yes	No	No	No
Size	SMEs (EU definition).	Companies with a maximum of nine workers, plus apprentices.	×	Companies with 10 to 15 workers (flexible limits).	×
Activity	Belonging to one of six economic sectors: food, metals and furniture, construction, installations, sales and services.	Belonging to one of the following economic sectors: textiles, pottery, straw-work, leather and hides, wood and cork, metals and stonework, paper and graphics, engraving, building and restoration work.	There is no legal definition. Companies involved in artistic activities can be considered to be craft firms: carpentry, basket making, hand made pottery, metal work.	Only companies involved in artistic activities are considered to be craft firms. Activities are divided into 4 groups: popular craft, artistic craft, production of food products, services.	×
Profession	×	There is a list of craft professions divided into 12 categories.	The craft professions are those listed in section 5 of SOC2000.	×	There are 100 professions (a diploma is optional but not necessary to run a craft business).
Entrepreneur	×	Entrepreneur who carries out a specialised activity involving both esthetic and manual expertise.	×	×	×
Legal Nature	×	Run by self-employed people or as companies.	×	×	×
Other	×	×	×	The activity must be carried out by someone who knows the entire production process and products must be custom made.	×

Table 9 — Statistical definition of craft in Europe: characteristics of the available data for each country — Summary of all data

	Summary of all data
Legal definition	6 out of 15.
Size	7 out of 15. Limits: 3, 10, 15, 40, 50.
Activity	10 out of 15. 7 countries include manufacturing, construction, repairs, transport (France and Italy) and services, while Spain and the UK restrict the definition to artistic activities.
Profession	11 out of 15. In general these countries refer to group 7 of the international classification ISCO 88, (craft and related trades workers). Sometimes professions connected to health services (group 513), household services (group 514) and vehicle drivers (group 83) are included.
Entrepreneur	4 out of 15 have an explicit definition. Luxembourg also gives consideration to 'non-entrepreneurs'.
Legal Nature	6 out of 15. With the exception of Italy and Portugal (where companies are included) only self-employed craft workers are considered craft firms.
Other	5 out of 15 refer to the use of technology in the production process.

2. From Avignon to Milan

2.1. The 1990s were a key period in building a new set of reference points for small companies and craft firms. This repositioned them in the value chain, in terms both of participation in the production process (sub-contracting for instance) and of links with the business world in general.

2.2. There is now a 'new' awareness that these companies play a significant role in the general economy. This makes it even more important to develop a specific policy for small business and craft firms in Europe.

2.3. The Economic and Social Committee has made a major contribution to the understanding of events and the identification of appropriate solutions. Over the years, through the work of its constituent bodies and the resulting reports,

the Committee has always championed a specific role for small businesses and craft firms and has repeatedly suggested to the institutions, and the Community bodies in general, ways of taking action that would be more in line with the scale and economic bearing of the small business world.

2.4. In practice, the special nature of the sector has been affirmed. This does not mean that the craft and small business sector is not fully integrated in the economy, but rather that it can no longer be dealt with under the same general 'SME' heading as other companies when it comes to enterprise policy measures, but that specific and less generic policies are needed.

2.5. In close cooperation with the sectoral organisations, the European Commission began looking into the craft sector's needs after the first European conference, in Avignon, in

October 1990. The changes that grew out of that conference reinforced the need to promote exchange and dialogue between companies, between their national and European representatives and with the EU Member States.

2.6. The second conference, in Berlin, in September 1994 and the Milan conference in December 1997 helped to further this process and to pinpoint companies' main causes for concern in the face of the economic and social changes happening in the European Union and other parts of the world.

2.7. These conferences were a major step towards greater consideration of the craft sector at European level, bolstering the principle that the craft sector represents a harmonious culture of difference. More than other forms of work, it expresses a social way of conducting economic activity and can therefore bring the public closer to the business world.

2.8. It was also realised that what was needed was not only an affirmation in principle of the importance of craft firms and small businesses in Europe, but also a precise quantification of the phenomenon in order to draw the necessary conclusions.

2.9. Here too major progress has been made, thanks to the combined work of the ESC, the European Commission, sectoral organisations and specialised institutes. This work, which is still going on, should result in a quantification of the craft sector in Europe and above all a statistical definition of craft firms.

2.10. In 1997 the ESC issued its second opinion on the craft sector in Europe. This opinion, which was the fruit of an internal debate in the Committee and of the views expressed more than once by the Commission and the Parliament, proposed 10 priority lines for action that were echoed in the European craft industry charter three years later. They corresponded closely to the needs of small businesses and craft firms, in anticipation of the current debate.

2.11. The ten lines of action proposed by the ESC were the following:

- social consultation;
- boosting business competitiveness;

- establishing the European Academy for Craft Industries and SMEs;
- supporting the development of a European identity for the craft industry and small business culture throughout Europe;
- securing an enhanced role for apprenticeships and promoting combined work/training schemes;
- improving information for micro-businesses;
- simplifying bureaucracy;
- providing incentives for cooperation and exchanges between micro-businesses;
- promoting a culture of innovation for craft workers and small businesses;
- supporting professional organisations in their work to promote the growth of craft firms and small businesses.

2.12. The aim now is to use an ex-post evaluation approach to ascertain what has been achieved and whether the lines of action chosen four years ago are still relevant and important, with regard to new development trends, or in what terms they should be fleshed out and/or modified.

2.13. The ten priorities have been divided into four groups, combining two types of information: degree of implementation and relevance.

2.14. The first group contains the lines of action that have been implemented and which are still relevant; the second covers those that are still relevant but which are harder to put into practice; the third includes lines of action that irrespective of their degree of implementation are less relevant now and should therefore be revamped; the fourth group, lastly, features measures that have been implemented only partially or insufficiently.

2.15. The first group includes: the establishment of the European Academy for Craft Industries and SMEs in Avignon, although this has yet to reach its full potential; cooperation between companies, especially through the Euro-partnerships; the enhancement of the place of apprenticeships and the use of combined work/training schemes; and support for the development of a European identity and culture for the craft industry and small business.

2.16. This business culture must involve both self-employed people and employees and must promote the concept of work as a factor in social cohesion. This process is highly developed in areas with a high concentration of small and craft firms (such as the 'industrial districts'), which often show the highest income levels in Europe.

2.16.1. While education and vocational training programmes have gone some way towards enhancing the value of apprenticeships, the Committee feels that work should also be done to encourage apprentice exchanges and to adapt the existing programmes to the reality of small business.

2.17. The second group includes administrative simplification, which is being addressed slowly and painfully in all EU Member States⁽¹⁾, with varying degrees of success. Failure to succeed still carries a high cost — not only financial — for small businesses. Administrative simplification (one example being the one-stop shop) should be accompanied by simplification of the tax system and the wage structure. These concepts, once suggested rather hesitantly, are now very real, with the Luxembourg process and the subsequent achievements after 1997.

2.17.1. Simplification of tax formalities should go hand in hand with an improved tax climate for small companies, in particular by reducing the burden on the labour factor. This factor, which is of paramount concern to small companies and craft firms, tends to be especially affected by the restraints arising from the complex array of fiscal and social requirements that stifle recruitment and contribute to the spread of undeclared work, with all the negative repercussions for employment and the social security system.

2.17.2. As is underlined in the eighth principle of the European Charter for Small Enterprises, administrative simplification should help to improve the status of entrepreneurs. On this note it is important to ensure equality of treatment among companies, regardless of their legal form, and to improve the situation for self-employed workers, who in some Member States do not enjoy fair competition with businesses with company status.

2.18. The relationship between business and government is just one aspect of a broader problem concerning the modern role of government in the post-industrial age. The challenge facing public administrations is cultural change, which will require civil servants to move from a traditional culture based on reading and writing to the 'digital culture'. All this must be brought about largely through continuous training and the introduction of new job descriptions.

2.19. This means joining all central and local government in a network, and linking it to companies and the region. Government must be a factor for growth and competitiveness, and must be a constructive partner, especially for small businesses and craft firms.

2.20. The third group — areas requiring a review of the concepts expressed and a different approach, more in line with recent market developments — includes boosting business competitiveness, and promoting the culture of innovation among craft firms and small businesses. When these ideas were proposed it was impossible to envisage the incredible growth of the new economy and the impact this could have for two such classic economic concepts as competitiveness and innovation⁽²⁾.

2.21. The paragraphs below provide a more detailed analysis of one of the main priorities that small businesses and craft sector should focus on in the next decade.

2.22. The fourth and final group covers social consultation, support for professional organisations, and information for micro-enterprises.

2.23. On social consultation: the 10th action line of the European Charter for Small Enterprises states that it is necessary to develop stronger, more effective representation of small enterprises' interests at Union and national level. Small enterprises are not yet recognised as fully-fledged social partners with the right to sign agreements independently, despite the fact that they account for over half of the Community's companies. Clear representation is obviously not helped by the high degree of fragmentation among small enterprise associations.

⁽¹⁾ See: European Commission, Joint Employment Report 2000; Part II: The Member States. COM(2000) 551 final, Vol. I.

⁽²⁾ See: Action Plan for Innovation in Europe, COM(96) 589 final; Lisbon European Council, March 2000; Towards a European research area, COM(2000) 6 final; Innovation in a knowledge-driven economy, COM(2000) 567 final.

2.24. On the subject of support for professional organisations in their work to promote the development of craft firms and small businesses, the Committee welcomes the stance taken by the European Parliament on the Multiannual Programme for Enterprise and Entrepreneurship, recognising and supporting the role of professional and sectoral associations that represent SMEs and craft firms, and calling on the Member States to create the right climate for that role to develop. The Committee believes it is important to devise Community, national and regional measures, with a view to bolstering the work of small-business support organisations, and to encourage dialogue among organisations from the various Member States at Community level. This final measure is especially necessary in the context of enlargement which will require an active dialogue with small business associations in the applicant countries.

3. The European Charter for Small Enterprises

3.1. Insufficient and poorly timed economic information, red tape, difficult relations with the credit system, and rules that have often been designed for more complex and structured productive systems are just a few examples of an economic 'habitat' that needs to change.

3.2. In June 2000, this thinking led to the adoption at Community level of the European Charter for Small Enterprises, at the end of the Portuguese presidency⁽¹⁾. For the first time at a European Council meeting, small enterprises were a topic in their own right, moving beyond the usual concept of SME, now obsolete on a number of counts.

3.2.1. The Lisbon and Feira European Councils stressed the importance of small businesses for the EU's growth, competitiveness and employment. Small companies form the backbone of the European economy and are the main driving force behind job creation in Europe. The Member States are committed to focusing on small enterprises and taking their specific requirements into account.

3.2.2. The European Parliament, meanwhile, in its report on the Multiannual Programme for Enterprise and Entrepreneurship, has stressed that SMEs, micro-enterprises and craft firms make a significant contribution to competitiveness, research and innovation, and that they have a crucial role to play in strengthening social and regional cohesion. The European Parliament asked in particular that the European Charter for Small Enterprises be annexed to the Multiannual Programme for Enterprise and Entrepreneurship in order to give the charter legal value.

3.2.3. The Committee regrets that despite its requests and those of the Parliament, the Commission has abandoned measures for cooperation between companies in the new Multiannual Programme for Enterprise and Entrepreneurship at a time when other programmes are seeking to develop them, especially in research and development, international cooperation and cooperation with the applicant countries.

3.2.4. The Committee also regrets that the moves taken by the Commission's Enterprise DG to set up an expert committee on small firms are not in keeping with the principles enshrined in the Feira Charter for Small Enterprises.

3.3. The charter is the result of a long-term process, and is a crucial staging post in identifying the tools needed to achieve the goals it expresses so clearly.

3.4. The charter recognises the energy of small enterprises, their importance for job creation and thus their contribution to local economic development and the social development of a country.

3.5. The charter stresses the need, in line with what the Committee has been stating for some time, to remove the legislative, administrative and tax obstacles that prevent small enterprises from responding in an effective way to the challenges of globalisation.

3.6. Back in May 2000⁽²⁾, the Committee welcomed the Lisbon European Council's plan for a charter for small enterprises, and urged the Commission and the Council to 'continue to provide strategic assistance for small companies and craft businesses, using appropriate methods and instruments'.

3.7. In the light of this EU initiative, the OECD's European charter on SME policies seems to make a step backwards. The document that the OECD approved in the same month of June 2000, in Bologna, is anchored in an old view of company support, using undifferentiated policies that discriminate against small companies and craft firms.

(1) Feira European Council, 19-20 June 2000.

(2) Opinion on the European Charter for Small Enterprises, OJ C 204, 18.7.2000.

3.8. It is clear that the OECD still views SMEs as a homogeneous 'mass' of players, whose needs are identical and require the same solutions. This approach is wrong, and offers ineffective answers to the many problems facing small businesses.

3.8.1. The European Parliament asked in particular that the European Charter for Small Enterprises be annexed to the Multiannual Programme for Enterprise and Entrepreneurship in order to give the charter legal value.

3.9. The progress made on the charter, following the Feira Council, is the subject of a brief communication from the Commission to the spring Council⁽¹⁾.

3.10. Portugal has already begun to apply the Feira approach by adopting Law 44/2001 of 9 February 2001 (DR I-A No 34) which defines the constitution, limits and functions of the craft sector and craft enterprises, aligning itself on the French and Italian position.

4. **Strengthening the competitiveness of small companies and craft firms by promoting a culture of organisational/commercial innovation and participation in the new economy**

4.1. In recent years, the context for this issue has changed enormously. The capacity of small business to manage innovation has improved, and this is reaffirmed in the Bologna charter⁽²⁾. Furthermore, much of the capacity to stay on the market and be competitive depends on the opportunities that each entrepreneur or group of companies has to innovate, not only with their processes/products but first and foremost organisationally and commercially.

4.2. The new innovation phenomenon that has developed in Europe, especially in the last three years, is the new economy. It is spurred by many factors linked to the dissemination of information and communications, as well as the commercial use of the Internet. The Internet is a new means of communicating which complements traditional forms and has greatly facilitated the creation of networks of processors at diverse levels.

4.3. It is an extremely pervasive tool and it is helping to change not only our way of communicating but also economic relations and our quality of life. Currently, companies can use the Internet in three ways: to increase the efficiency of certain areas of business, to transform the entire company, or to set up new Internet-based companies — 'dot.coms'.

4.4. The new economy is not in opposition to the old but is becoming an adjunct to it. The traditional economy is changing and playing a part in managing this change. In a few years' time, there will no longer be a linguistic distinction, it will all simply be called the 'economy'.

4.5. In the traditional economy, as it is commonly understood, the production of goods and services is based on the utilisation of resources, raw materials and the work force. In contrast, the new economy has been defined as the economy of knowledge and information, whose distinguishing features are the dissemination and (world-wide) acceptance of the Internet⁽³⁾ as the means of distributing information and knowledge through hypertext pages, following a predefined and agreed model. The framework behind the dynamic effect is the electronic interconnection of individuals (people, companies and organisations). Every element of the latticework is both active and passive in the process.

4.6. The use of the Internet by small companies means not only opening up new commercial sectors, developing new products and new forms of distribution, but also cutting costs, which in a functioning marketplace should lead to lower prices in the following areas, as the Committee underlined in its opinion on 'The effects of e-commerce on the single market'⁽⁴⁾:

- Disappearance of traditional middle men (dis-intermediation)
- Lower communication costs (telephone, computer etc.)
- Transfer of some costs to customers (customers obtain information themselves, etc.)
- Lower cost of distributing digital goods
- Internet use has opened up real new employment opportunities for people able to work with the Web.

⁽¹⁾ European Charter for Small Enterprises — Annual Implementation Report, COM(2001) 122 final of 7.3.2001.

⁽²⁾ The term 'Bologna Charter' is used to refer to the document approved at the OECD conference on SMEs, held in Bologna in June 2000.

⁽³⁾ The term Internet was formed from 'interactive network'.

⁽⁴⁾ OJ C 123, 25.4.2001.

4.6.1. E-commerce is the term used to describe any use of the Internet for the exchange of information, goods or services. Its importance stems from its capacity to accelerate the distribution process, enhancing opportunities to use goods and services by attempting to bridge the gap between producer and customer. In essence, e-commerce is like a virtual market in which each producer is faced with an international raft of potential customers. Clearly, this is not a panacea for all market problems, but it can help to contain them.

4.7. Currently, electronic transactions can be defined as either business to business or business to consumer. In the first instance, on-line sales create alternative distribution channels and shorten the chain of intermediaries, changing traditional patterns. In the second instance, ('B2C') producers and consumers can make direct transactions, reducing the time and cost of supply and thus of production.

4.8. From these brief comments and a superficial reading of the situation, it would seem that the two types of economy are separate and associated with two types of market: the physical 'market place' and a 'market space' based on information, with the former appearing to be of lesser importance.

4.9. The key to understanding the situation is not that simple, however. If it is assumed that work is at the root of all value-adding processes, then the seemingly separate concepts (old and new) should be merged into one (one economy without distinctions).

4.10. Small businesses and craft firms, where the labour factor in many ways predominates over the capital factor, could make the connection between these two worlds, which are only seemingly distinct as the new economy is changing business practices everywhere, not only for medium-sized and large companies.

4.11. This is at once a challenge and an opportunity for small companies and craft firms that are not highly structured. They could however be helped to overcome the time- and space-related barriers to access. Security-related issues must

also be reviewed and changes made to suit small companies' requirements.

4.12. On this note, an important role will be played by the use of funds under the EU's fifth (and soon sixth) framework programmes for research and development, and by company training in these areas.

4.13. This means that it is necessary to pinpoint problems, development schemes and lines of action that favour a symbiosis between innovation, the new economy, and small companies, and above all that facilitate small companies' access to national and international innovation networks, Community R&D programmes and financial services on a fast track tailored to their needs as opposed to those of more structured companies.

4.14. Nowadays, it would be a major mistake to talk about competitiveness and innovation without reference to these processes and to limit the approach to product innovation alone, in a world where organisational and commercial innovation is becoming increasingly important.

4.15. Not to support the introduction of these innovations, which probably have the greatest innovative benefit for craft firms, would be restrictive and inappropriate in terms of the definition of support measures for small companies, and it would prevent them holding a competitive position⁽¹⁾.

4.16. One solution could come from the 'go digital' initiative (under the eEurope programme), which was taken following the Lisbon and Feira Councils. This is designed to introduce the new information and communication technologies into companies, small and micro-enterprises in particular, in a similar way to the measures provided for under the Commission programmes: Structural Funds, the multiannual programme for enterprise, research and development, EIB financing. The Committee in any case hopes for better cohesion between the various measures and urges the Commission to involve the associations that represent small businesses and craft firms directly in design and implementation.

⁽¹⁾ In addition to dissemination on the Internet, it is necessary to support the factors that promote innovation in SMEs. Some of these factors, perhaps the most important, were highlighted at the forum held in Lyons in November 2000 (Towards a European innovation area), namely: business culture, education systems, the tools of the information society, opening up to science, organisational innovation, support for private investment, the promotion of venture capital, support for small businesses and the craft sector, the dissemination of research and technological development initiatives.

5. The financial obstacles to development and innovation facing small businesses and craft firms

5.1. One of the main problems faced by small companies in their day to day existence, and which is a genuine barrier to competitiveness and innovation, is their difficulty in tapping into the credit system and the need nevertheless to finance their own investments, especially those intended for innovation. This problem blocks companies' growth and prevents them from introducing innovative factors.

5.2. This was underlined in the conclusions of the Lisbon European Council of 23 and 24 March 2000, which emphasised the importance of considerably improving the financing of innovative SMEs and paying special attention to new entrepreneurs, in order to promote employment.

5.3. Finding the capital necessary for productive investments is extremely important in the economic activity of a company, especially for small companies and craft firms.

5.4. One of the main problems that companies, especially small companies, must face every day is the difficulty of securing capital for business start-ups and/or expansion, which leads to excessive dependence on loans in relation to their own funds, as well as higher costs compared with medium-sized and large companies, especially where interest rates are concerned.

5.5. In this context it is vital that, alongside the European Company Statute, work be completed on the statutes for associations, cooperatives and mutual societies.

5.6. Businesses find it difficult to secure capital at all stages of company life, from start-up to consolidation and expansion. Hence the need to promote alternative forms of financing among small entrepreneurs and craft firms for both start-up (e.g. seed capital) and company expansion, through finance cooperatives, venture capital, etc.

5.6.1. Some important initiatives can be stymied by communication problems, or by technical or budgetary difficulties. Here, an important contribution can be made by programmes such as: SME guarantee, ETF — start-up (European Technology Facility) and JEV (Joint European Venture) (1).

5.7. In practice it is a matter of promoting real small company access to financial services and creating a favourable climate that supports company growth, cooperation between companies and company innovation.

5.8. These issues have been aired several times, by the Committee in its opinion on the multiannual programme for enterprise (2), and by the European Commission in its recently published 'Review of specific Community financial instruments for SMEs' (3), which lists the panoply of financial facilities provided by the European institutions (EIB, EIF, Commission, EBRD).

5.9. This document shows that the problem to be addressed is not so much the need for new ad hoc financial instruments, given that existing financial products already offer a vast range of options for varying financial needs, but rather the actual accessibility and use of these instruments by small companies and craft firms.

5.10. If the criteria were solely quantitative, unstructured companies would be the first out and would be excluded — as in practice they currently are — from public and private international finance facilities.

6. The European crafts academy

6.1. One of the main objectives of the European Academy for Craft Industries and SMEs is to monitor and pass on experience of traditional trades to the appropriate institutions, not only to safeguard traditions, but also as a source of employment and social development.

(1) For further details see the ESC opinion on the 'Proposal for a Council Decision on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) — The growth and employment initiative' (COM(98) 26 final) — Brussels, 26 March 1998 — rapporteur-general: Mr Pezzini.

(2) OJ C 116, 20.4.2001, p. 4.

(3) COM(2000) 653, European Commission Communication of 18 October 2000.

6.1.1. The Committee hopes that the academy will strengthen its activity and become more involved in measures, work and studies on the situation and recognition of the status of small companies and self-employed people, the development and enhancement of apprenticeship, cooperation between companies and business organisations, and support for the development of a European identity and culture of craft and small business. The academy should also be responsible for monitoring and verifying the implementation of the European Charter for Small Enterprises, and forming proposals for practical measures for the effective implementation of the charter's action lines.

6.1.2. By means of its constituent parts, the scientific committee, and the network of universities and specialised institutes to which it is linked, the academy must step up its work and fulfil its statutory duties, namely to:

- enhance the cultural dimension of the craft sector and small business;
- prepare useful strategies for the national and European organisations;
- rediscover traditional trades;
- spread an entrepreneurial spirit;
- foster a culture of labour socialisation;
- support apprenticeship.

6.2. The European Parliament has also asked that pro-SME measures implemented by the European Union take account of the objectives established in the European Charter for Small Enterprises, and in particular that the Multiannual Programme for Enterprise and Entrepreneurship plan specially-targeted measures for small companies, micro-enterprises and craft firms, by applying a definition of their specific characteristics and requirements. Acceptance of the principle of evaluation would furthermore enable an assessment of the positive and negative effects of Community measures (in particular regarding health and safety) on the running of small companies, whose survival and development depend on strategies and production methods that are quite different from those of major industrial groups.

6.3. The European Charter for Small Enterprises underlines the need to ensure that policy makers give adequate consideration to small companies. The Committee is therefore glad that by adopting the Multiannual Programme for Enterprise and Entrepreneurship⁽¹⁾ the Council has decided (Articles 2 and 3) to use this programme to take further steps towards achieving the objectives set out in the charter.

7. Conclusions

7.1. The European Charter for Small Enterprises stresses the central role that small companies play not only in economic growth and innovation, but also socially, by providing jobs and as a factor in developing personal responsibility. In practice, the fabric of small businesses and craft firms is more than just an economic asset, and it must be developed, enhanced and in some cases protected, with the establishment of a more supportive economic environment. The charter contains statements of principle to that end. It states that it is fundamentally important to set up a legislative framework that does not impose unjustified burdens on small companies, in accordance with the principle that government should serve the public, and therefore small businesses, and not vice versa.

7.2. Special emphasis is placed on the importance of education and human resource management policies, effective access to financial services (more specifically: start-up capital, venture capital and working capital), innovation policies and the new economy, stronger public-private partnerships, political and social dialogue, and all forms of support for the bodies that provide assistance for SMEs⁽²⁾.

7.3. In any economy, SMEs — and particularly craft firms — are a key factor in the training of skilled workers. This applies not only to trades offering apprenticeship training but also to ICT professions. Given demographic trends in the EU and Europe as a whole, and the growing need for well-trained skilled workers, a radical review of tax systems and labour costs seems to be an urgent necessity at Member State level, especially as regards the period of apprenticeship and/or training. Appropriate human resources, equipped with the requisite skills, are the only way to achieve the objective set in Lisbon of making the EU the most dynamic and most competitive innovation- and knowledge-based economy.

7.4. The business environment must therefore be favourable to entrepreneurial initiative, innovation and growth. This also means promoting a clear distribution of administrative responsibilities, applying a fair and transparent competition policy, combating corruption, and establishing stable and non-discriminatory tax regimes. Special attention should be paid to the establishment of national and European legislation to protect entrepreneurs' private property and private life in the

⁽¹⁾ OJ L 333 of 29.12.2000.

⁽²⁾ For a more detailed analysis see the Commission's two-yearly report: 'The activities of the European Union for small and medium-sized enterprises (SMEs)', COM(2001) 98 final of 1.3.2001.

event of bankruptcy, especially if it is the result of external causes not related to the business, by using measures such as drawing a distinction between personal and business assets.

7.5. The Committee would like to suggest a number of lines for action, in accordance with the above-mentioned principles and in continuation of the social, economic and cultural debate on small businesses and craft firms in Europe, which developed during the 1990s and to which the Committee's contribution has already been noted. These action lines draw together the points already made in the ESC's 1997 report on the craft industry.

7.6. Existing financial instruments should be simplified and the eligibility criteria for these and investments for in-company innovation eased for smaller businesses, in order to reduce the cost of access to finance (especially the cost of preparing the relevant files). This is necessary because, very often small entrepreneurs judge that the definite costs of the undertaking (interest rates, excessive guarantees, administrative costs, lack of information, long time waiting for loans to be granted, etc.) outweigh the 'possible' benefits.

7.7. The types and number of Community financial instruments should be reduced, as many of them have the same purpose and technical and legislative coordination should be stepped up. The result would be an increase in available resources, fewer risks, and lower cost to users, ensuring that more structured companies, medium-sized companies in particular, do not have a monopoly on the facilities available.

7.8. Awareness of these instruments must be raised by providing companies and regions with more information and promoting the establishment of one-stop shops for requesting information and submitting applications (one-stop credit shops).

7.8.1. As small craft firms tend to be fully occupied with strictly productive activity and lack adequate organisational structures, they often do not receive or manage to procure the necessary information. In a market where information is an economically precious good whose circulation is not always optimal and which does not reach all companies, one reason for the scant use of financial and credit facilities by small businesses is actually an information deficit. Any initiatives designed to rationalise and spread information, such as those proposed above, could therefore help to bridge the gap between medium-sized and small companies.

7.9. The use of guarantees for micro-credit should be encouraged by establishing associations to finance certain types of investment, such as integrated Internet use, in order to facilitate the acquisition of hardware, software and the necessary training.

7.9.1. The existence of guarantees for micro-credit could enhance the relationship between commercial banks and small companies and encourage the former to be more active in this sector (20 % of the companies that fail in the first five years do so for reasons linked to inefficiencies in the credit system). Micro-credit schemes are often managed by specialised non-banking institutions that generally have limited access to bank finance because of their low levels of available collateral. A micro-credit guarantee scheme could be a very effective way of bridging this gap.

7.10. Equity guarantees are needed for investments in early-stage companies, with special facilities for women and young people going into business. Another possibility is mentoring by mature professionals who are able to assist young entrepreneurs, or to start up their own new companies.

7.10.1. This is notoriously the most delicate phase of the business life cycle and the one in which most business failures occur. Tax systems should therefore encourage the expansion of small companies and help them in the start-up phase, for instance by offering facilities designed to increase equity guarantees for investments made during the start-up phase. These already exist in certain Member States but should be extended to the entire European Union. If they were properly structured and financed they could help to persuade national and international investors to invest in risk capital.

7.11. Research and innovation should be encouraged by means of an active input from the ESC and support organisations, in order to improve information and the participation of small companies and craft firms in the financing arrangements available under the framework programmes.

7.11.1. The European Parliament's report on the Multiannual Programme for Enterprise and Entrepreneurship stressed that SMEs, like micro-enterprises and craft firms, make a significant contribution to competitiveness, research and innovation and that they play a vital role in strengthening social and regional cohesion.

7.12. The network of associations that help and advise SMEs in the manufacturing, commerce, tourism and general services sectors should be encouraged and supported in their work, with a view to furthering the dissemination of good practice among small companies and boosting their economic, commercial and social performance.

7.13. In a sector which employs 66 % of the working population, it is particularly necessary to involve the social partners and to actively develop employee participation by encouraging business-owners to promote guaranteed social standards, for instance in the retail sector and in subcontracting firms in the industrial and building sector.

Brussels, 30 May 2001.

7.14. Measures for small companies should be monitored and coordinated in order to prevent overlaps and increase their impact.

7.15. Community legislation on public contracts must be brought more into line with the pattern set by the United States and adopted by the Senate of the French Republic, i.e. setting aside a share of public contracts for small companies and craft firms.

7.15.1. The methodological route taken in the early 1990s must be pursued, gleaning more information about the nature and scale of small companies and craft firms in Europe, in order to gain a clearer idea of their qualitative and quantitative contribution, and to design increasingly effective and well-targeted measures.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on 'Counterfeiting'

(2001/C 221/02)

On 19 December 2000, the Economic and Social Committee, acting under Rule 23(2) of its Rules of Procedure, decided to draw up an additional opinion on 'Counterfeiting'.

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 16 May 2001. The rapporteur was Mr Malosse.

At its 382nd plenary session held on 30 and 31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 112 votes to one.

1. Introduction

1.1. The Economic and Social Committee, at its 361st plenary session (meeting of 24 February 1999) adopted an opinion⁽¹⁾ in response to consultation by the European Commission, in accordance with Article 198 of the Treaty establishing the European Communities, on the Green Paper on combating counterfeiting and piracy in the single market.

1.2. On 30 November 2000, the Commission submitted a Communication to the Council⁽²⁾, the European Parliament

and the Economic and Social Committee on the follow-up to be given to its Green Paper. The Committee Bureau decided at its meeting on 19 December 2000 to issue an additional opinion in order to send out a political signal to the Commission, the Council and the European Parliament and to European civil society, in view of the considerable impact this problem has within the Community.

1.3. The Committee opinion adopted on 24 February 1999 was the result of in-depth work; this had given rise to a hearing which brought together more than 30 economic and social

⁽¹⁾ OJ C 116, 28.4.1999, p. 35.

⁽²⁾ COM(2000) 789 final of 30.11.2000.

organisations throughout Europe, all of which one way or another — were facing problems caused by counterfeiting and piracy. The recommendations of that opinion are set out in the appendix to this draft.

1.4. The Committee has closely followed the ideas and discussions surrounding this topic since the Green Paper was published. In particular, it took part in a hearing organised by the European Commission jointly with the Germany presidency of the Council in Munich on 2 and 3 March 1999 and in a European forum on combating counterfeiting and piracy organised by the French Council presidency in Paris on 20 and 21 November 2000.

1.5. This additional opinion is part of a series of initiatives taken by the Committee for promoting intellectual and industrial property rights in Europe. Thus, the own-initiative opinion on 'The exhaustion of registered trade marks rights'⁽¹⁾, adopted on 24 January 2001, stresses the dangers of a flood of counterfeit products if there were to be a switch away from the Community exhaustion regime.

2. General comments on the Commission proposal

2.1. Approval of the Commission's general approach

2.1.1. The Committee supports the European Commission's intention to submit a proposal for a Directive in the near future aimed at boosting the resources for ensuring that intellectual property rights are complied with and defining a general framework for exchanging information and for administrative cooperation. In view of the alarming recent upsurge in counterfeiting and piracy activities, the Committee would underline the urgency of issuing this proposed directive as quickly as possible. Most of the European organisations concerned, just like the ESC in its opinion on the Green Paper, had already stressed the need for this. In this connection the Committee underlines the right of economic and social organisations, including consumers organisations, to go to court to request the closure of establishments where acts of counterfeiting and piracy have been committed, as well as to request application of the procedure for recalling goods, the costs of which should be jointly borne by those responsible for producing and marketing the counterfeit or pirated goods. Lastly it stresses the importance of establishing counterfeiting and piracy as crimes with minimum penalties which have a sufficiently deterrent effect, including penalties for distributors and private individuals when large quantities of counterfeit

goods are involved; acquired with full knowledge of the facts. These penalties should include closure of production establishments with social support measures for staff whose situation has been abused. The Committee would wish this principle to be included at this stage in the draft directive, though more precise provisions may be included in initiatives undertaken as part of the creation of a European judicial area.

2.1.2. The Committee particularly welcomes the fact that the Commission is intending to introduce a right to information. In order to clamp down effectively on these crimes, the first condition is often that the holder of the rights has full information about the origin of the counterfeiting and the distribution networks. To do this, it is necessary for the right to information to be independent of the offence and therefore not subject to any conditions. The Committee thus would stress the need for right holders to be kept adequately informed so that they do actually contact the customs services with requests for action, all the more so since counterfeiting and piracy are otherwise difficult to detect.

2.2. *The need for consistency between internal and external actions: 'Everything but counterfeiting and piracy'*

The Committee regrets the fact that this Communication does not adopt a global approach in tackling counterfeiting and piracy — particularly the aspects of these activities which occur outside the EU — since a large quantity of pirated and counterfeited products circulating within the EU comes from third countries. Recently the European Commission proposed an initiative entitled 'Everything but Arms' designed to allow 48 of the poorest countries in the world to export all their products except for arms to the European Union, 'without quotas, without tariffs, and without exception'. Note that while arms generally come from developed countries, the same is not true of counterfeit and pirated products; incidentally, these follow the same route as drugs and illegal immigration and represent a real threat, undermining genuine development opportunities by stifling legal economic expansion. The Committee thus recommends using Article 9 of the regulation on generalised preferences to exert pressure on those countries which turn a blind eye to such practices. At the same time, as well as clamping down on offenders, it would also be up to the European Union to promote awareness — raising campaigns and training in its cooperation programmes with those countries most affected by this phenomenon.

2.3. *A crucial issue for enlargement but also vital for current Member States*

The Committee fully supports the determination that the Commission has demonstrated in ensuring that the fight

⁽¹⁾ OJ C 123, 25.4.2001.

against counterfeiting and piracy is a priority issue in the negotiations with the applicant countries, particularly those which are heavily involved in this problem. To this end, consistency must be secured between this Communication and the one recently presented by the Commission⁽¹⁾ analysing the major problems facing the customs services, especially after enlargement. However, the Committee urges the European Union to make sure that the obligations placed on the applicant countries and the practices asked of them are no greater than those applying to each of the current Member States. Otherwise the Community's position seems to us quite shaky. How, in fact, can drastic measures be imposed on applicant countries while some current Member States continue to be quite lax in their approach?

2.4. *The Committee proposes a formal political act*

So as to propel matters forward and endow the Union's efforts with a global dimension, the Committee advocates holding a 'jumbo' Council, bringing together ministers responsible for justice and internal affairs, the single market, trade and foreign affairs. At this meeting, coordinated national and Community measures should be taken to combat counterfeiting and piracy, to step up sanctions against offenders, to bolster customs action against those countries turning a blind eye to these practices and to coordinate measures and instruments for protecting industrial and intellectual property rights. In addition, it would be appropriate to use such an occasion to issue a formal Council Declaration highlighting the economic and social harm caused by such practices, the dangers for personal health and safety, and the link with large-scale organised crime.

3. **Specific proposals on training and awareness-raising**

3.1. *Awareness-raising and public information*

The Committee had also called for awareness-raising and public information campaigns and it welcomes the fact that these are included in the urgent measures proposed by the European Commission. It is nevertheless concerned by the absence of detail on this point and the lack of resources released for this purpose. It stresses the key role played by civil society organisations: consumers, professional associations, the commercial sector, writers and artists associations and

other representative bodies. It suggests that specific instruments be put in place for providing information: a Europe-wide campaign involving posters in ports and airports, and the immediate creation of a website accessible in particular to business organisations, distributors and consumers' organisations through whom information about court decisions would be relayed (this latter suggestion is only mentioned as a 'medium-term action' in the Commission's plan).

3.2. *The key role played by the courts*

The Committee regrets the fact the Commission makes no mention of the need for training and coordination measures to boost the effectiveness and resources of police and judicial bodies: most of the organisations and businesses concerned have stressed how urgent this is. In this connection the Committee suggests that Member States and the Commission put forward proposals soon for measures to be implemented in the framework of the European judicial area, for:

- strengthening and specialisation of EUROPOL units;
- putting in place training and exchange programmes for policemen and magistrates;
- developing a network of courts with the necessary qualifications for handling these cases, with back-up from a specialised European chamber dealing with the adoption of the Community patent;
- organising the exchange of information through the European network for mutual legal assistance.

To make the wheels of justice turn more quickly, the Committee would even suggest that when the draft European enforcement order is being prepared, the possibility be discussed of including the handling of counterfeiting and piracy cases.

3.3. *Information for businesses*

The Communication omits to broach the crucial issue of informing businesses about their rights and duties in the face of the increase in this criminal activity. The Commission merely points out that 'responsibility relies primarily with holders of intellectual property rights, who must be on their guard', and seems to forget that more often than not this concerns small and medium-sized firms, tradesmen, craftsmen, freelance writers and researchers who do not have the resources to monitor the situation in this way and are often unaware of their rights. The Committee therefore calls for awareness-raising campaigns funded by the Union to be mounted in conjunction with professional bodies. Such projects are already in place in some member states and it would be appropriate to introduce these throughout Europe, adopting a transnational

⁽¹⁾ COM(2001) 51 final, of 24.1.2001, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee concerning a strategy for the Customs Union.

approach. Moreover, the Committee again stresses the value of providing businesses with specialised information tools such as data bases on designs and a European counterfeiting observatory in the form of an information network for businesses via the Euro-Info centres. More generally, the Committee feels bound to stress how urgent it is for effective Community instruments to be adopted for protecting property, such as the Community Patent and the Regulation on Community Design.

3.4. *The central role to be played by European civil society in the new forms of regulation*

3.4.1. The Committee also points out that the Communication does not directly tackle the central role which European civil society organisations could play straight away in what is known as 'self-regulation and co-regulation'. This involves amongst other things codes of good conduct for the distribution sector and the industry, as well as quality labels. Along the same lines, the 'free-rider' approach, consisting of making blatant imitations (look-alikes), must also be blacklisted insofar as these unfair practices are damaging to the spirit of creativity and inventiveness.

3.4.2. The Committee suggests to the Commission that a working seminar on these subjects be held with all the major economic and social organisations, at which good practices for civil society operators would be presented and proposals

worked out for these practices to be brought into widespread use.

4. Conclusion

4.1. The Committee underlines how urgent it is to adopt a coordinated global policy for combating the scourge of counterfeiting and piracy. Over and above the economic and social harm which is caused, the very health and safety of the general public is under threat while the spirit of invention and creativity is treated with disdain.

4.2. Any delay in providing the European Union with instruments for protecting creativity and invention (the Community patent and the regulation on Community design) and for fighting against counterfeiting and piracy (the draft directive announced by the European Commission) would be interpreted as a sign of weakness. Today, inventors, businessmen, designers and artists run the risk of seeing their work copied, and consumers and distributors are in danger of being cheated. It is important to turn the tables and ensure that it is the counterfeiters of innovation and the pirates of creativity who run the risks.

4.3. In this struggle, the Union's strongest allies will not only be the forces of order (police and the courts), but also civil society organisations. In fact, pressure from society can be a very effective weapon in terms of staying on guard, sounding the alert, educating the public, and upholding moral standards.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

APPENDIX

to the opinion of the Economic and Social Committee**Summary of the recommendations contained in the Economic and Social Committee's opinion on the Green Paper on Combating counterfeiting and piracy in the single market**

- 1.1. All forms of counterfeiting, piracy and other parasitic acts cause severe damage to European firms and creative people.
 - 1.2. Such acts deceive the customer and the consumer, and may involve serious risks to their safety and health.
 - 1.3. They have a negative impact on employment and creativity in Europe.
 - 1.4. Very often, illicit counterfeiting and piracy are tied up with undeclared work, tax avoidance, disregard for social and labour law and organised crime.
- 2.1. In view of all this, the ESC recommends that the EU adopt an overall approach to the phenomenon that takes account of the external and internal political aspects and introduces appropriate measures for preventing and stamping out all forms of counterfeiting, piracy and other parasitic acts.
 - 2.2. Bearing in mind the importance of prevention, the ESC notes the importance of having a single set of laws containing uniform protection, at reasonable cost, for all forms of intellectual property, proper information for creative people and entrepreneurs about their rights, and campaigns to warn consumers and appeal to their sense of civic duty.
 - 2.3. The ESC would stress the need to launch information campaigns for the general public, coordinated at European level and involving consumers' organisations, trade unions and the professional organisations concerned, including those in the distribution sector.
 - 2.4. The ESC recommends the setting-up of a 'European observatory to combat counterfeiting, piracy and other parasitic acts', operating in a network with all the organisations and associations concerned; it suggests pilot schemes to encourage projects on a European scale aimed at alerting and informing the public and training the authorities concerned.
 - 2.5. The ESC stresses the urgent need to strengthen legal and police cooperation, in liaison with the organisations and associations concerned. It considers that to combat organised large-scale counterfeiting and piracy effectively, the proper way, together with prevention, is to apply the law very strictly with the support of effective cooperation at European level.
 - 2.6. The ESC thinks it would be wise to allow the organisations and associations concerned to sue on behalf of wronged firms, inventors or consumers.
 - 2.7. The ESC feels that justice must be encouraged to apply the laws strictly, especially in the event of repeated offences and organised crime, and that complainants should not have to bear the cost of destroying illegally-manufactured goods. Appropriate ways for achieving this would be to provide specialist training for judges, set up special courts and extend the provisions concerning the Community trade mark to cover other areas of intellectual and industrial property.
 - 2.8. The ESC recommends that the combating of counterfeiting, piracy and other forms of parasitism should be closely linked to the combating of undeclared work, tax avoidance and organised crime. Cooperation between authorities should be extended and strengthened through European training programmes involving and mobilising all the types of authority concerned.
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Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions "Working together to maintain momentum" — 2001 Review of the Internal Market Strategy'

(2001/C 221/03)

On 19 April 2001 the European Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 May 2001. The rapporteur was Mr Franz.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion by 110 votes in favour, with two abstentions.

1. Introduction

1.1. On 29 March 2000, the Committee adopted an opinion on the Commission communication of 24 November 1999⁽¹⁾ setting out a strategy for the internal market (rapporteur: Mr Little)⁽²⁾. The first annual review of the strategy, published on 3 May 2000⁽³⁾, was the subject of a Committee opinion adopted on 19 October 2000 (rapporteur: Ms Sánchez Miguel)⁽⁴⁾.

1.2. On 11 April 2001, the Commission submitted a second review of the internal market strategy in a communication entitled *Working together to maintain momentum*. The Internal Market Council will discuss this paper and draw conclusions at its meeting on 30 and 31 May. In submitting the present opinion, the Committee is seeking to make its voice heard at an early stage in the debate now being launched on this review.

1.3. The Commission communication retains the four strategic objectives set out in the strategy paper:

- to enhance the efficiency of Community product and capital markets;
- to improve the business environment;
- to improve the quality of life of citizens;
- to exploit the achievements of the internal market in a changing world.

1.4. In its new agenda for the next eighteen months, the Commission has cut the number of its target actions from the current 130 to 78. The priority target actions have been selected largely in the light of the Stockholm European Council conclusions, but are also based on the Commission's own studies and input from other sources, including the Economic and Social Committee. The Commission's overall aim is to focus on consolidating and speeding up implementation of the Lisbon priorities, since the most important thing now will be to press ahead with — and implement — the actions already launched.

2. General comments

2.1. The strategic goal laid down in Lisbon, namely to make the EU the most competitive and dynamic knowledge-based economy in the world, has been repeated so often that it has almost become something of a mantra. Unfortunately, since Lisbon, too little headway has been made towards achieving this goal. In its contribution for Stockholm⁽⁵⁾, the Commission — with welcome candour — laments that fact that many of its proposals have been delayed or watered down for different reasons, including a lack of political will. The Committee shares these concerns, which the Stockholm European Council has amplified rather than allayed. What matters this year, therefore, is not to adopt new strategies or to formulate new objectives, but to translate existing targets into specific action within ambitious yet realistic timeframes.

2.2. This applies on the one hand to the structural and economic reforms agreed in Lisbon and reaffirmed in Stockholm; these form part of the Cardiff process and are moving forward too slowly in some Member States. Equally, it applies to the completion of the single market. The Lisbon European Council rightly noted a point again underlined in Stockholm — namely the single market's crucial role in achieving key Union objectives such as sustainable economic growth, more and better jobs and greater social cohesion. However, actual progress on the ground fails — sometimes by a wide margin — to live up to these fine words.

2.3. The Committee has basically endorsed the Commission's 2000-2004 internal market strategy, the strategic objectives set out therein, and the annual review of its operational target actions. However, the Committee has felt from the outset that, since legislative processes are known to take time, the deadlines set for transposing many of the actions are very optimistic. Accordingly the results presented by the Commission in its first strategy review in May 2000 were modest.

⁽¹⁾ COM(1999) 624 final.

⁽²⁾ OJ C 140, 18.5.2000, p. 36.

⁽³⁾ COM(1999) 257 final.

⁽⁴⁾ OJ C 14, 16.1.2001, p. 13.

⁽⁵⁾ Communication COM(2001) 79 final, 7.2.2001, Realising the European Union's potential.

2.4. The current second review also shows that transposition of the actions launched leaves a lot to be desired in many cases. Most of the actions planned for this period were introduced in good time by the Commission, but, in the Council and Parliament, there is often a lack of will — or political clout — to meet the prescribed deadlines. Thus, of the 36 target actions scheduled for completion by June 2001, only 20 are expected to be completed on time.

2.5. The Commission itself has on numerous occasions pointed to the gap — which has become particularly apparent recently — between rhetoric and reality, between words and deeds. Clearly, Member States' policy is too often determined more by domestic considerations and tactical concerns than by a desire for compromise, without which all plans for legal approximation in the single market are doomed to failure.

2.6. In this paper, the ESC assesses individual target actions of the single market programme. It follows the Commission's breakdown according to longer-term strategic objectives and focuses on some of the actions it considers to be a priority.

3. Horizontal priorities

3.1. The communication rightly states that the full transposition of all internal market legislation is a prerequisite for the proper functioning of the market. Although this is a legal obligation on Member States, considerable transposition deficits remain. Only three Member States met the interim target established in the internal market strategy of reducing their transposition deficits to 1.5 % by December 2000. Alarming, the Commission notes that nearly 13 % of all internal market directives have not yet been transposed in one or more Member States. There are also considerable transposition deficits in two of the three EFTA countries, which — as members of the European Economic Area — are also obliged to convert single market rules into national law. This means that we only have a partial internal market.

3.1.1. The Committee still feels that the speedy elimination of transposition deficits is a priority objective. This can be achieved by Member States making stringent voluntary commitments which must be reviewed regularly. The interim target laid down in the Commission communication — that Member States halve their transposition deficits by December 2001 and reach 98.5 % transposition by spring 2002 — does not seem at all overly ambitious. The half-yearly Single Market Scoreboards are indispensable since they set out progress made and delays encountered in achieving this and other single market objectives and are designed to trigger critical debates in the Council and Parliament.

3.2. The Commission thinks that citizens must be better informed of their rights and given timely help in case of problems. It considers it essential to improve the integration of existing structures such as the dialogue and information centres, the contact points and co-ordination centres established within each national administration and the European consumer information centres (Euroguichets) so that they are used more productively and more efficiently. The Committee supports this objective.

3.2.1. The coordination centre and contact point network for citizens and businesses is up and running in theory. However, experience so far shows that the network is not yet efficient enough in all areas, as the ESC's Single Market Observatory was able to note for itself in hearings with users and other contacts in a range of Member States. The findings and conclusions are set out in the own-initiative opinion on PRISM 2000⁽¹⁾.

3.2.2. So that existing structures can be put to better, more efficient use, an improved integrated on-line inter-active problem-solving network is to be set up by June 2002. Such networking is designed to provide the capability for tackling quickly and effectively the full range of problems encountered in the single market. This is one of the conclusions drawn by the Commission from the Internal Market Forum, which it co-staged with the European Parliament in November 2000 and which discussed grassroots issues. The Committee supports this plan.

3.3. By dint of a further scheme — the Interactive Policy-Making initiative — the Commission is seeking to expand the dialogue via the Internet with 'those on the receiving end' in order to bring their reactions to bear in the policy-making process. The scheme is designed to allow economic operators to evaluate both existing EU policies and new initiatives. The Committee trusts that it will be involved in the preparation and implementation of this new consultation procedure and would also point out that, at the moment, the vast majority of people are excluded from Internet-based dialogue.

4. Enhancing the efficiency of Community product and capital markets

4.1. The focus here is on opening up additional key economic sectors to more competition. The Lisbon European Council rightly pressed for speedier liberalisation of gas and electricity markets, postal services, financial markets and transport. In these areas, the aims of the internal market strategy coincide with those of the economic reform process launched at Cardiff, the results of which have now been the subject of a third Commission report.

⁽¹⁾ OJ C 116, 20.4.2001, p. 106.

4.2. Although it is generally agreed that economic reforms on product and capital markets are the key to achieving the ambitious targets set in Lisbon, moves to turn them into reality have so far failed to match expectations. While it is important, in all measures for opening up the market, also to consider the implications for workers and, if need be, to rectify any adverse developments, it would be equally inappropriate to think that labour market difficulties stand a good chance of being solved by delaying requisite structural reforms.

4.3. The Community has made headway in opening up the telecommunications market and in establishing a legal framework for e-commerce. These are, however, just the first links in a chain of requisite measures. Swift action must now be taken to put into effect the entire telecoms reform package proposed by the Commission in June 2000.

4.4. In contrast, liberalisation of the internal markets in electricity and natural gas is making no progress at all. The agreed liberalisation targets have not been met in hardly any area across Europe. Thus, the Stockholm European Council again agreed only on the overall objective of opening up these markets but failed to lay down a specific and binding timetable. The Committee points out that when the requisite action is taken to open up the markets more quickly, security of supply is also an issue that must be borne in mind. The Committee has issued a detailed opinion on the issue⁽¹⁾.

4.5. With regard to the liberalisation of postal services, agreement was reached in Stockholm only on the overall target of adopting the directive by the end of 2001. For the moment, however, the Commission proposal for further liberalisation of the postal services market is, the Committee regrets to note, being blocked in both the Parliament and the Council because of conflicting national interests.

4.6. As a result, on many fronts, the European single market is not yet complete. This applies in particular to the entire service sector, which generates some 70 % of EU GDP. Fully integrated financial markets are an urgent priority and must be tackled without delay so that both the single market and the euro can realise their full potential.

4.7. The Lisbon European Council made the point that effective and transparent financial markets foster growth and employment by better allocation of capital and lower costs. The Financial Services Action Plan, which contains 43 individual proposals for eliminating obstacles caused by differing national rules, is to be implemented fully by 2005. Work on the action plan must be stepped up if this key target laid down in Lisbon is to be achieved. The Committee welcomes the declaration of intent given in Stockholm to establish an integrated securities market by the end of 2003. This task could be facilitated by drawing on the recommendations of the Lamfalussy group for a new regulatory approach which distinguishes between framework legislation and implementing measures.

4.8. The Commission's recent communication setting out a comprehensive internal market strategy for removing barriers to services is important in this connection. This two-step scheme seeks, first, to accelerate initiatives already planned, and then, in 2002, to present a further package of initiatives with a precise timetable, aimed at adapting the single market to the fundamental changes and dynamics in the service sector. The Committee backs this initiative and the proposed timetable and will consider this communication in detail at a later stage.

4.9. For many years, there have been complaints about the excessive cost of protecting intellectual property rights in Europe, particularly for SMEs. Thus, the Lisbon European Council rightly attached top priority to reaching agreement on a Community patent. The Committee too, in its wide-ranging opinion of 29 March 2001⁽²⁾ stressed the urgent need to promote research and innovation through a reasonably priced and unbureaucratic Community patent. Unfortunately, the declaration of intent by the Heads of State or Government is blatantly contradicted by the actions of national governments on the Internal Market Council, where the discussions about the Community patent have once again become bogged down. The impression is that national interests are often deemed more important than the needs of an innovative economy which has long been calling for this measure. The regulation on Community design has also been blocked for months for similar reasons.

4.9.1. At the next Internal Market Council, the Commission should call on Member States to state clearly whether they want the Community patent, and, if so, at what price. It would be better to withdraw the proposal if it becomes clear that the measure would no longer bring businesses any added value because of the high costs of unnecessary translation into too many languages or because of calls for assurances that national patent offices will not close or shed jobs.

(1) Communication from the Commission to the Council and the European Parliament — Completing the internal energy market; Proposal for a Directive of the European Parliament and of the Council amending directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas; and Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity.

(2) Proposal for a Council Regulation on the Community patent OJ C 123, 25.4.2001.

5. Improving the business environment

5.1. The Feira European Council achieved an initial important breakthrough in the stalemate surrounding the tax package (to remove tax-based distortions of competition). However, the agreement in principle to introduce a Community capital gains tax is still subject to considerable reservations and no decision is expected before 2002 at the earliest. This has, however, rekindled the debate on a code of conduct to combat unfair tax competition and on the taxation of interest and royalty payments. The Committee hopes that the work can be stepped up so that, in line with the remit given in Stockholm, agreement can be reached on the tax package as a whole, if possible before the end of 2002.

5.1.1. Unfortunately, Nice failed to agree on majority voting at least for procedural simplifications relating to VAT. Council negotiations on the Commission proposals to modernise VAT legislation in the internal market are dragging on as a result. Rapid adoption of these proposals would, however, be vital to remove the burden of red tape on the cross-border movement of goods and to reduce scope for tax fraud.

5.2. The Committee is pleased that plans for a European company statute have also got off the ground again thanks to an agreement in principle reached in Nice. However, rapid legislation on this front is being held back by the current dispute with the European Parliament on the legal base and the threat of legal action being brought. Further delays should now be avoided, however, since this new type of company organisation — which also brings workers major benefits — is urgently required in an internal market that is growing ever closer together. Thus, the ESC welcomes the Commission's plan to submit a directive on outstanding tax-related issues before the end of May.

5.3. The European company statute could be a first step towards removing the oft-lamented obstacles to company mobility within the European single market. The Commission is called upon also to propose appropriate legislation without delay for cross-border mergers and company transfers.

5.4. The Commission again notes that, at 1 % of GDP, state aid levels are still too high and must be reduced in order to avoid distortions in competition within the single market. It also wants to make the system more transparent. Against this backdrop, the Stockholm European Council's request that Member States demonstrate a downward trend in state aid by

2003 is considered by the Committee to be too weak. On the other hand, it is pleased that the Commission has been asked to ensure that a publicly accessible state aid register and scoreboard are available online by July 2001.

5.5. For a long time now, the Committee has advocated a radical simplification of single market legislation in order to cut red tape for businesses and create a climate of trust among both companies and consumers. It recently issued a detailed opinion on the issue and proposed, among other things, an independent impact assessment of Community legislation and codes of conduct for all EU bodies with a view to better lawmaking. The Committee will be subjecting its own work to such a code of conduct, which was unanimously adopted by its plenary assembly in autumn 2000. The Commission has announced an initiative to promote simpler legislation and is called on by the Committee to act soon. The Committee notes the key role of civil society players in ensuring the success of these reforms.

5.6. The mutual recognition principle is fundamental to the optimal working of the single market. The Committee awaits with interest the Commission report due to be published by the end of 2001 which will look at steps to enhance this principle and consider what still remains to be done. The Committee would point to its opinion of 30 November 2000⁽¹⁾ and would take this opportunity to reiterate the readiness of its Single Market Observatory to work together with the Commission on the issue.

6. Improving the quality of life of citizens

6.1. Many barriers remain to workers' and citizens' mobility within the single market. Different national tax and benefit systems, insufficiently transparent conditions for the recognition of professional qualifications and difficulties in transferring pension and health insurance rights from one Member State to another are just some of the factors that put a brake on mobility. Removing these barriers would first and foremost benefit sectors experiencing an acute skills shortage.

6.1.1. The Committee is pleased to note that the Commission is planning to present the 2002 spring European Council with an action plan for developing and opening up new European labour markets in order to reflect both the integration of the single market and the dynamism of Europe's new economy. It particularly welcomes the Commission's plan to put forward, this year, proposals for simplifying the regime for professional recognition. In its recent opinion on freedom of movement for workers in the single market⁽²⁾, the Committee put forward a number of points and ideas for consideration.

⁽¹⁾ OJ C 116, 20.4.2001, p. 14.

⁽²⁾ OJ C 132, 25.4.2001.

6.2. The Committee also backs the Commission's plan to submit a discussion paper before the end of this year, setting out ideas for a general regulatory framework for consumer protection and administrative cooperation. The wide divergences between Member States' consumer protection laws fragment the internal market and reduce consumer confidence in cross-border transactions, which e-commerce and the euro in particular are expressly designed to facilitate.

6.3. Alternative dispute mechanisms can resolve many single market problems more quickly and more effectively without the need for lengthy court proceedings. A top priority is the Commission's plan for this year to establish — and have running — a European extra-judicial network for settling disputes. This will be done in conjunction with the Member States and will be along the lines of the financial services cooperation network (FIN-NET) launched in January.

6.4. The current crisis in the food sector proves the need for urgent Community action. Further to the White Paper on Food Safety, the Commission has proposed the establishment of a European Food Authority and the laying-down of procedures in matters of food safety. The Committee recently issued an opinion on these proposals⁽¹⁾. The Nice European Council called on both Council and Parliament to speed up work so that the future European Food Authority can become operational from the beginning of 2002. The Committee endorses this call. In the interests of consistency and continuity of dialogue on food safety issues, the Committee will carry out regular ad-hoc assessments of developments on this front.

7. External aspects of the internal market

7.1. The prime objective is to press ahead resolutely with the accession process. From the moment they join the Union, the accession countries must fully adopt single market rules, which they must also be in a position to implement. The main responsibility for that lies with the future Member States themselves, but the EU can and must provide support. In future, the existing aid schemes are to be stepped up so as to improve supervisory, enforcement and judicial structures. The Committee welcomes this objective. It advocates the speedier establishment of single market contact points and coordination centres in the candidate countries.

7.2. Technical assistance from the EU and the development of bilateral partnership agreements on single market issues play a major part particularly in building up efficient administrative

machinery in the candidate countries. This duty is incumbent not only on Member States' government agencies. Banking, insurance and securities supervisors and other institutions from the Member States should also not delay the peer review process with the candidate countries.

7.3. Preparations for accession must be accompanied by the creation of civil society structures in the future Member States. Such structures are essential to a functioning single market. In some candidate countries, the establishment of civil society organisations is still in its infancy or is proceeding only slowly. Also, the governments of these countries are only gradually getting used to the idea of involving the social partners and other organisations in opinion-forming and social dialogue. By working together with partner organisations in almost all candidate countries, the Economic and Social Committee is making a key contribution to launching this civil dialogue.

7.4. Another external aspect is the incorporation of certain internationally agreed rules into the single market legal framework. This includes the forthcoming adoption of the regulation on the application of international accounting standards and a directive governing the capital framework for investment firms in order to secure a level playing field for EU companies. The Committee endorses these Commission priorities.

7.5. That said, the pace of negotiations with certain third countries on arrangements for the taxation of income from savings should be quickened. Without such arrangements, the agreement in principle reached in Feira to introduce a Community capital gains tax cannot be translated into a decision. It is therefore essential to bring forward the December 2002 deadline set by the Commission.

8. Conclusions

8.1. The challenges of the present and the immediate future require from all players a speedier, more resolute approach than hitherto to the completion of the single market. The decisions and reforms that are needed must be adopted now; they must not be deferred until a later date.

8.2. A completed, properly functioning single market will provide the long-term boost to growth that Europe urgently needs and that will make it less dependent on uncertain world markets.

⁽¹⁾ OJ C 123, 25.4.2001.

8.3. A common currency presupposes a common market. Hence, the forthcoming introduction of the euro is hard to square with an incomplete single market, particularly since its weaknesses and shortcomings will then become more rapidly and more directly visible.

8.4. Last but not least, a fully functioning single market is needed to provide a solid basis for the successful integration of new Member States into the European Union. How are the candidate countries to be convinced of the need to adopt the *acquis* quickly if Community law has not yet been fully transposed even in the existing Member States?

8.5. The Committee therefore backs any moves and plans which can help maintain the momentum behind the internal market strategy.

8.5.1. In order to measure and monitor progress even more closely in the future, the Commission is planning to develop a comprehensive set of indicators which will make it possible to gauge progress made towards meeting the operational objectives set out in the internal market strategy. The indicators will measure results and will also include an environmental and consumer dimension. The Committee is awaiting the first results — due for publication in the November 2001 Single Market Scoreboard — with keen interest.

8.5.2. The studies launched by the Commission on the benefits in certain sectors where the performance of the single market needs to be enhanced are also considered by the Committee to be useful. Over and above that, the Committee would welcome the Commission having the costs of non-integration investigated in certain target sectors of the strategy where cross-border trade is still seriously hampered. These costs should be quantified in terms of prices, growth rates and employment figures.

8.5.3. All impact assessments must be particularly careful to monitor the implications of the measures for workers. In the further implementation of the internal market strategy too, it must always be remembered that the benefits of the common market must be enjoyed equally by all groups in society.

8.6. All the schemes mentioned are important and provide a further case for pressing ahead with the single market process without delay. The crux of the matter, however, is and remains the political will of all those responsible — the Commission, the Parliament, the Council, governments and players in society — to complete the single market and transpose the rules on time. All stakeholders must therefore use the current review of the internal market strategy as an opportunity to examine the reasons for the delays and to commit themselves to taking swifter action in the future.

Brussels, 30 May 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 on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway'

(2001/C 221/04)

On 20 October 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 8 May 2001. The rapporteur was Mr García Alonso and the co-rapporteur Mr von Schwerin.

At its 382nd plenary session (meeting of 30 May 2001) the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. The aim of this Regulation is to enhance legal certainty by creating a harmonised framework for exclusive rights and State aid in passenger transport, thereby ensuring that they are compatible with the single market in the transport sector.

1.2. As is pointed out in the explanatory memorandum to the proposal, the situation varies considerably from one Member State to another: some markets are open to competition (on the basis of tendering for public service contracts of varying duration), while in a substantial number of countries there is no competition as the markets are closed; in one country, part of the market is totally deregulated. In addition, there are public and private enterprises (this is mentioned only in the explanatory memorandum), often competing together in the same market segments.

1.3. Passenger transport may be divided into three broad categories:

- urban transport;
- inter-urban transport, with three sub-categories: peri-urban transport (local transport to surrounds of large cities); long-distance transport (linking widely spaced major population centres); and regional transport (links to rural or thinly populated areas);
- occasional transport (e.g. school or works buses); on account of its nature such transport is liberalised and therefore not covered by this Regulation.

1.4. Clearly each of these categories of transport has its own economic and social characteristics which must be taken into account when framing the legislation which is to govern them.

1.5. In the passenger transport sector, certain public service obligations are imposed on operators, including the obligation to operate, the obligation to carry and tariff obligations⁽¹⁾, e.g. to cover a particular geographical area (containing zones of both high and low or very low user density) or to provide a certain quality of service (e.g. frequency); which the operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions⁽²⁾. In return for these obligations, which usually form part of a concession, the operator is granted:

- exclusive rights for that area. The reason for these exclusive rights is to provide a service and to compensate the operator, in part or in full, for the additional costs occasioned by certain routes or special conditions. The exclusive rights give the operator security and mean that costs can be offset within its concession area, thus encouraging the provision of more regular and reliable services;
- and/or financial compensation for the costs incurred in meeting the public service requirements.

⁽¹⁾ The obligation to operate is the obligation for transport undertakings to ensure the provision of a transport service satisfying fixed standards of continuity, regularity and capacity. The obligation to carry is the obligation for transport undertakings to accept and carry passengers and goods at specified rates and subject to specified conditions. The tariffs obligation is the obligation for transport undertakings to apply, in particular for certain categories of passengers (...) or on certain routes, rates fixed or approved by an authority which are contrary to the commercial interests of the undertaking and which result from the imposition of, or refusal to modify, special tariff provisions.

⁽²⁾ Article 2, Council Regulation (EEC) 1191/69.

1.6. This makes for relatively fair tariffs (which are also covered by the concession contracts) for different groups of users, irrespective of the real cost of providing the service. In addition, in certain cases, the concessionary arrangements may provide for supplementary aid to keep down tariffs. It is important to highlight the word 'tariffs' because what it means is that the operator cannot unilaterally set the prices which users have to pay; they are set (and adjusted) by the relevant authority as stipulated in the concession contract.

1.7. This Regulation covers the organisation of various modes of transport (rail, road and inland waterway) and the aforementioned categories, insofar as the authorities grant exclusive rights to operators, impose minimum requirements or grant compensation for providing services. Transport modes which do not meet any of these three requirements are therefore excluded from the scope of the Regulation.

1.8. Four of the Regulation's chapters concern: ensuring the quality of public passenger transport, public service contracts, minimum criteria for public passenger transport operation, and procedural issues.

1.9. Ensuring the quality of public passenger transport involves criteria such as: safety, frequency, punctuality, accessibility for persons with reduced mobility, environmental factors, and the transport needs of people living in less densely populated areas. Further criteria are integration with other transport modes and the level and transparency of tariffs.

1.10. Public service contracts are compulsory in all cases where financial compensation is given for the expenditure incurred in meeting the public service requirements and where exclusive rights are guaranteed. Public service contracts are generally awarded by tender. These concessionary contracts have a maximum duration of five years, though a number of derogations are provided for. Operators must furnish economic and social information annually for each route.

1.11. Public service contracts may be awarded directly on a case-by-case basis for any rail, metro or light rail initiative:

- provided that it can be shown that:
 - it would be impossible to meet national or international rail safety standards, or

- the costs of maintaining coordination between the operator and the manager of the infrastructure would exceed the benefits accruing from the bid;
- where an operator provides transport services other than rail transport but they are integrated with directly awarded rail services;
- for public service contracts with an annual value of less than EUR 400 000 (or in the case of a network, less than EUR 800 000);
- with an exclusive right, provided that no financial compensation is given and it involves
 - a new service, or
 - an individual route which is awarded on the basis of quality criteria.

1.12. Finally, some safeguards are established for the authority: a requirement to subcontract a defined proportion of the total contract, the possibility of not awarding new contracts to an operator who controls more than 25 % of the passenger transport market, a requirement to keep on staff who worked for the operator which held the concession previously, a requirement for the operator to establish itself in the Member State in question, save as otherwise stipulated in Article 71 ECT.

1.13. The minimum criteria for providing services will be applied without discrimination to all transport services of a similar character in the area for which a single authority is responsible. These minimum criteria may include compensation, provided that any limitation on tariffs applies only to certain categories of passenger, that the compensation does not exceed 20 % of the value of that operator's services in that area, and that compensation is granted on a non-discriminatory basis. In this case the compensation granted in accordance with this Regulation will be exempt from the notification procedure laid down in Article 88(3) ECT for State aid.

1.14. The purpose of the procedural provisions is to safeguard the transparency and fairness of the whole process and its compatibility with the rules governing public contracts in the single market.

1.15. Finally, the transitional measures include a general period of three years (with certain exceptions) for terminating arrangements which do not comply with the proposed Regulation.

2. General comments

2.1. The Committee shares the thinking behind this Regulation as set down in recital 7: 'with appropriate safeguards, the introduction of regulated competition between Community operators in this sector leads to more attractive services'.

2.2. The Committee welcomes the Commission's intention of introducing a market regime for public passenger transport based on controlled rather than full competition.

2.3. The Committee basically approves the most important regulatory instruments listed in the Regulation, in particular:

- the obligation for the competent authorities to provide adequate public passenger services;
- the establishment of quality criteria;
- financial compensation that covers expenditure incurred in meeting the public service requirements;
- compensation for the cost of public services;
- the granting of exclusive rights (for a specified period);
- the organisation of competition through tendering, with appropriate derogations.

These instruments serve the Commission's intention — supported by the Committee — of achieving an optimum balance between public mission and the competition principle.

2.4. The Committee also notes with satisfaction that henceforth equality of opportunity and competition between all types of enterprise, irrespective of their legal form, will be achieved through legal and accounting transparency.

2.5. However, the Committee cannot conceal the fact that it is sceptical as to whether the arrangements laid down for applying the specified resources and instruments will result in practice in a cohesive balance between public mission and competitive market regulation.

2.6. While the Committee regards the instruments for regulating competition, especially the tendering procedure, as very practical and solid, the derogations and quality criteria are rather imprecise and unwieldy. They need to be considerably expanded and clarified.

2.7. With particular reference to the Commission Communication 'Services of General Interest in Europe'⁽¹⁾ of 20.9.2000, the Committee suggests underpinning the importance of general interest services by means of better instruments. For instance, where a decision has to be made between tendering or derogation (direct award), every Member State should be free — in the case of services which this State defines as of general interest within the meaning of Commission Communication COM(2000) 580 — to decide whether it wants to create additional criteria for amending its legislation in order to improve its transport system.

2.8. This amendment would also respond better to the question-mark still hanging over the draft Regulation, namely compliance with the subsidiarity principle. In the Committee's view, the arguments advanced so far by the Commission for direct responsibility for local public passenger transport do not hold water.

2.9. Greater respect for the competences of the Member States on the basis of the Communication on general interest services would also meet the arguments of those Member States which, in the case of local public passenger transport, invoke the fundamental rights of local authorities as laid down in their constitutions (e.g. Germany).

2.10. In the interests of improving and helping to streamline the proposed Regulation, the Committee would nevertheless set out the following comments:

3. Chapter I — Scope and definitions

3.1. Article 2 — Relationship to public procurement law

3.1.1. With an eye to Article 12 of the draft Regulation, which concerns a special award procedure, Article 2 should be deleted. It is more important to spell out clearly the award provisions in Article 12. The present wording of Article 2 could lead to demarcation problems and consequent legal uncertainty.

3.2. Article 3 — Definitions

3.2.1. The scope of the 'public service requirement' is not defined clearly. The Committee would have preferred to retain the definition of 'public service obligation' laid down in Regulation (EEC) 1191/69, namely: "Public service obligations" means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions'.

⁽¹⁾ COM(2000) 580 final of 20.9.2000.

3.2.2. The Committee further proposes widening the definition so that 'integrated services' covers several operators cooperating on the same terms, e.g. in a transport consortium owned by the same body.

3.2.3. The following definitions are imprecise and need reformulating or are missing altogether:

- competent authority: replace 'State body' by 'public body';
- the term 'route' used in various articles, and 'individual route' in Article 8, should be defined precisely. At all events the latter term should also encompass regional services.

4. Chapter II — Ensuring the quality of public passenger transport

4.1. Article 4

4.1.1. For the ESC it is not enough to establish criteria for the 'qualifications' of staff; it is necessary to meet the requirements of the directives on minimum social standards in general, e.g. working time and rest periods.

4.1.2. Generally speaking the Committee regards the present wording of Article 4 as too weak on the actual quality criteria. The Commission should once again consider whether it should not recommend specific Europe-wide minimum criteria for services in conurbations as well as rural areas. Thought should also be given, in the interests of best practice, to organising a permanent information exchange on the quality of local transport and to using benchmarking. One such example is ELTIS (European Local Transport Information Service — www.eltis.org).

4.1.3. Nor is it clear what the connection is between quality criteria and the corresponding obligation to finance the costs which cannot be covered by fares. A clear obligation must be created whereby quality requirements must be part-financed by public funds if the receipts from fares are not enough.

4.1.4. The Committee would suggest amending Article 4(2) as follows:

- (a) consumer protection factors including the accessibility of the services, in terms of their frequency, speed, punctuality, reliability, capacity of the resources used in relation

to flow of passengers, level of comfort provided for customers, the extent of the network and the service information that is provided;

- (c) integration between different transport services, including integration of information, tariffs, ticketing, timetables, consumer rights and the use of interchanges in the geographical area under the responsibility of the competent authorities and with operators designated by other competent authorities;

(new letter) the provision, where necessary, of integrated intermodal services;

- (f) the balanced development of regions and coordination with long-distance transport services;

- (g) the transport needs of people living in less densely populated areas, including the ability to propose appropriate innovative solutions without any deterioration in the service provided (choice of mode, method and adaptation of the service, ticketing);

- (h) passenger health and safety, cleanliness and hygiene of equipment, safety of passengers and goods;

- (i) the qualifications of the staff, in particular those with responsibility for safety;

(new letter) respect for collective agreements and/or labour regulations in force in the sector concerned;

(new letter) having a system for maintaining equipment and facilities that ensures the reliability of the transport services on a daily basis;

(new letter) the financial strength of the company and existence of an adequate system of guarantees to cover claims by third parties.

5. Chapter III — Public service contracts

5.1. Article 6 — Award of public service contracts

5.1.1. Article 6(b): the stipulation that the operator has to meet certain costs in full is unworkable in the Committee's view as ticket revenue may depend to such an extent on transport policies that such costs cannot be adequately covered. The Committee therefore calls for the deletion of Article 6(b). Tariffs will also be subject to negotiation between operators and the authorities.

5.1.2. Article 6(c): the five-year limit on public service contracts is too low and should be raised. The derogations provided for in (c) already make it clear that five years is not long enough. Moreover, these derogations are worded so imprecisely that it will be difficult for the operator to claim them vis-à-vis the competent authority. The depreciation period for buses, for instance, is currently far more than five years. In the Committee's view the duration of contracts should be such as to guarantee exclusive rights for a period long enough to enable operators to recover their investment, and should be from eight to fifteen years depending on the type of service (see point 1.3).

5.1.3. The proposal establishes a similar operational framework for all countries, but ignores the fact that degrees of market openness currently differ considerably from one country to another and that many of these countries already have established concession systems which are to a great extent, but not entirely, compatible with the Regulation. Others have embarked on a process of devolving responsibilities to the regions including the negotiation of new, directly awarded, public service contracts and are making significant process on improving transport quality and increasing flows.

5.1.4. The proposal quite rightly differentiates between passenger transport modes (rail and metro, road, inland waterway), but does not differentiate in the same way between the very different features of these modes in the way they serve their user categories (see point 1.3).

5.1.5. In some instances criteria such as openness to competition, limitation of aid and scope of exclusive rights are confused, thereby introducing potentially incorrect options at certain points in the Regulation. As the central plank of the proposal is to provide passengers with public services of a certain standard at as low a cost as possible (with or without tariff subsidies), the granting of exclusive rights for a specific period allows operators to minimise costs over the long term provided that the concession is granted for long enough. This means that the competition factor (which makes for the lowest tariffs possible) must be applied when the concession (and associated exclusive rights) is granted; nevertheless, the concession must strike a balance on the duration of the contract; this should be long enough to enable operators to make more competitive bids by allowing them enough time to recover their fixed and start-up costs but short enough for the process

to be opened up to new competitors, especially in very closed sectors or countries. In this respect the five-year period provided for in the Regulation would generally seem too short. There is in addition the need to avoid any threat to jobs, which would have an adverse impact on service quality and safety.

5.1.6. Seen in this light, the derogation criteria are too general and not tailored to the different categories of passenger service defined in point 1.3. The Committee suggests fixing the duration of the concession on a case-by-case basis, differentiating between the various categories of service and passenger transport modes; seeking in each case to strike the optimum balance between more intensive competition, with rapid renewal of concession contracts, and longer periods of exclusive rights allowing tariffs to be geared to the long term. This would also make it possible to reduce the considerable discretionary powers allowed by the extensive special conditions provided for in the Regulation, even though they are subject to scrutiny by the European Commission.

5.1.7. In the Committee's view Article 6 should include a new paragraph stating that contracts entailing reckless underbidding will not be accepted.

5.1.8. Article 6(d): the words 'or for specific sectors of their network' should be added after 'each route'. Operators of smaller networks should be required to provide information on the whole network.

5.2. Article 7 — Direct award of public service contracts

5.2.1. In line with the basic principle of general interest services laid down in the general part of the text under consideration the Committee proposes that a new first paragraph be added to Article 7:

'1. As soon as a Member State has defined a transport service as a service of general interest within the meaning of Communication COM(2000) 580 of 20.9.2000, the competent authorities should be allowed to opt for direct management of these services⁽¹⁾.'

5.2.2. Old paragraph 1 becomes new paragraph 2, with the following added:

'In addition to "national and international safety standards", it should be possible for the competent authority to cite "regional and local safety and quality criteria" as grounds for a derogation.'

⁽¹⁾ Demand formulated by various Member States at the Council of Transport Ministers on 20 and 21 December 2000 in Brussels; session No 2324 of the Transport Council; Press: 470 — No 14004/00.

5.2.3. Old paragraph 2 becomes new paragraph 3, amended as follows:

‘Only the “additional costs for maintaining coordination” should be mentioned and the rest of the paragraph deleted. It should be added that the direct award of a contract is also possible if “existing integrated services are threatened or their further integration impeded”.’

5.2.4. The Committee approves direct award on the basis of a new initiative, as provided for in Article 7(6). However, it considers that the quality criteria which the operator agrees to abide by and which justify the award of such exclusive rights should be assessed and taken into account when the contract is awarded.

5.3. *Article 8 — Award of public service contracts following quality comparison*

5.3.1. The direct award of contracts on the basis of quality criteria as provided for in Article 8 should not be limited to ‘individual routes’ and should be extended to regional services as set out in point 1.3.

5.4. *Article 9 — Safeguards*

5.4.1. The Committee has some criticisms to make of the safeguards laid down in Article 9, in particular:

- The power of the competent authority to require the award of subcontracts, albeit limited to 50 % of the contract value, is contrary to the principle of efficiency which the Regulation seeks to establish. This requirement severely limits operators’ freedom to manage and introduces reasonable doubts as to whether operators will be able to choose subcontractors freely, especially when the competent authority is regional or local.
- The decision not to award a service to any operator which would have more than 25 % of the market is also a matter of considerable concern to the Committee. Firstly, on account of the virtually unlimited discretion which it gives the competent authority not to award a contract. Secondly, because of the vagueness of the phrase ‘market for public passenger transport services’. What is the scope of this market: national, regional, local? How can a competent authority be familiar with the market position of an operator outside its own area?

5.4.2. Article 9(3): the Committee welcomes the Commission’s intention of providing direct protection for staff in the case of a change of operator. But the proposed provision is too weak in that the competent authority ‘may’ require the operator to offer rights; it is proposed amending this to ‘must’. The Committee also doubts whether the protection afforded by the reference to Directive 77/197/EEC is sufficient. It would be better to state expressly that in the event of a change of operator staff are to be retained on the same terms as previously.

6. Chapter IV — Minimum criteria for public passenger transport operation

6.1. *Article 10*

6.1.1. The Committee endorses the wording of the first paragraph which requires the general rules or minimum criteria to be adhered to by all operators but regards any limitation [e.g. the 20 % clause in paragraph (b)] as superfluous. As the neutral impact on competition is assured, it must remain a matter for the individual Member States to grant compensation for special services without limiting it to a percentage of the total value of the services.

6.1.2. The Committee would also like to make the following comments on the minimum criteria set out in Article 10:

6.1.2.1. Article 3 of the recent proposal for a Community Regulation on aid for the coordination of transport⁽¹⁾ states that ‘Aid ... for the management, maintenance or provision of inland transport infrastructure, shall be compatible with the EC Treaty’; by its very nature, such infrastructure aid benefits all categories of users equally. The EU has frequently reiterated its policy of promoting public over private transport for environmental and social reasons.

6.1.2.2. Similarly, the limitation of compensation to 20 % of the value of the services covered seems to spring more from a desire to help balance the budget than to meet a social need. This is all the more serious as the same criterion covers such diverse categories as long-distance transport (where such modes as train and bus compete), urban transport (often heavily subsidised), and regional transport (which by nature is always potentially in deficit if a certain minimum level of quality is to be maintained).

⁽¹⁾ COM(2000) 5 final.

6.1.2.3. It also unduly penalises enterprises which carry out only one of these activities within an area and cannot set it off against other categories of service or increase the amount of revenue eligible for compensation, the services they provide not requiring the same level of compensation.

6.1.2.4. Nevertheless, the Committee agrees with the proposal that such compensation be available to all operators on a non-discriminatory basis provided the various transport categories are differentiated.

7. Chapter V — Procedural issues

7.1. The Committee supports the Commission on all procedural issues and would merely suggest that a more precise legal definition be developed of the 'public appeal body' whose features mean that at least partially it will be called upon to play the role of independent regulator as in other sectors where intervention is customary (water, gas, electricity, telecommunications). If so, consideration should be given to it also playing the role of arbitrator between competent authorities and operators with regard to the setting of tariffs.

7.2. Article 12 — Award procedures

7.2.1. Article 12(3): add a new indent (d):

'employees to be retained and their contractual rights in accordance with Article 9(3)'.

7.3. Article 13 — Transparency

7.3.1. In the interests of greater transparency for citizens and hence users, it should be ensured that before any decision is taken to initiate a tendering procedure, consultations are held at local or regional level with operators, other competent institutions and consumer and passenger groups to clarify whether tendering or direct award is the right course. This recommendation is linked to the proposed amendment to Article 7 regarding further direct award options.

7.4. Article 15 — Accounting provisions

7.4.1. The accounting provisions laid down in Article 15 deserve the Committee's full support. Their aim is to guarantee the transparency and non-discrimination of the award procedures and a fair balance between compensation and additional costs incurred in complying with public service obligations. These provisions should be seen in conjunction with Annex I.

8. Chapter VI — Final provisions

8.1. Article 17 — Transitional measures

Article 17(1)

8.1.1. The Committee regards the proposed transitional period of three years as totally inadequate. For instance, some of the concessions currently running in the Member States are of substantially longer duration. Three years is also too little to amortise existing investments.

8.1.2. The Committee also has serious doubts about the effectiveness of the transitional measures provided for in Article 17 as some of them could give rise to the expropriation of legally acquired rights and a barrage of legal actions which could block the further progress of the current provisions. This assessment is based on the following considerations:

8.1.2.1. Article 17(1) stipulates that: 'schemes, contracts or arrangements implemented otherwise than in compliance with the provisions of this Regulation [shall] cease to be valid within three years'.

8.1.2.2. However, as the explanatory memorandum to the proposal points out, there are other countries whose markets have been opened up to competition through tendering procedures or concessions (the latter based on a combination of exclusive rights of a duration directly linked to the amortisation of the investment required to provide the service, thereby eliminating the need for regular compensatory payments to the operator), all in accordance with the laws of the Member State concerned. Nevertheless, no Member State's current national or local tendering or concession scheme, even if guided by the philosophy behind this Regulation, can fully comply with its provisions. Thus under the present wording of the draft Regulation such tendering procedures and concessions are not valid and must be abolished within three years.

8.1.2.3. These existing public invitations to tender and concessions, which were originally open to competition between various operators, each specified a duration, generally more than ten years, enabling the operator to quantify its costs (and in many cases enter into fixed agreements with third parties for the purchase of rolling stock or the use of infrastructure). Shortening these periods would lead to financial claims against the competent authority for the unilateral

breach of the terms of the concession; these would have to be settled in the national courts, or even go to the Court of Justice in Luxembourg for a preliminary ruling.

8.1.3. The Committee proposes raising the transitional period to 8-10 years, with consideration being given to the possibility of applying different arrangements in the various Member States.

Article 17(2)

8.1.4. The additional period of up to three years specified in Article 17(2) for operators investing in rail infrastructure is still too short to amortise the investment.

8.1.5. The proposed amendment to Article 17(1) would automatically take care of 17(2).

8.1.6. As a constructive alternative the Committee therefore suggests a selective system of transitional periods differentiating between the various categories and modes of transport.

8.1.7. The Committee is very pleased to note that applicant country operators are treated as Community operators for the purposes of this Regulation and it hopes that these countries will also be able to apply the provisions of the Regulation in full when the treaties of accession come into force.

Brussels, 30 May 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 on establishing common rules in the field of civil aviation and creating a European Aviation Safety Agency'

(2001/C 221/05)

On 22 December 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 8 May 2001. The rapporteur was Mr von Schwerin.

At its 382nd plenary session held on 30 and 31 May 2001 (meeting of 30 May) the Committee adopted the following opinion by 112 votes to one, with one abstention.

1. Introduction

1.1. In its Introduction, the Commission recalls the need to establish, as a logical complement to the rules establishing the internal air transport market, common rules in the field of aviation safety. The current system, based on Regulation (EEC) 3922/91 and the work of the Joint Aviation Authorities⁽¹⁾,

has, in the opinion of the Commission, been shown to be not working properly. The current system is seen as lengthy, inflexible and often inconsistent with Community obligations and policies.

1.2. In order to remedy the perceived deficiencies of the current system, and to create a European Safety body comparable to the US Federal Aviation Authorities (FAA), the Council adopted on 16 July 1998 a decision to authorise the Commission to negotiate with non-Community JAA member states an agreement establishing a European Aviation Safety Authority (EASA) with the legal status of an international organisation, covering all tasks related to the regulation of aviation safety.

⁽¹⁾ The JAA consists of a number of civil aviation regulatory authorities who have agreed to co-operate in developing and implementing safety regulatory standards and procedures. For this purpose, they develop and adopt Joint Aviation Requirements (JARs) and undertake to implement these in a co-ordinated and uniform manner.

1.3. The Commission however, expressed doubts about the feasibility of this system in view of constitutional problems with some Member States, the lengthy procedures involved, and the perceived uncertainty of the Parliament and national parliaments willingness to accept the wide delegation of powers involved. At the invitation of the Council, the Commission presented an analysis of a possible Community alternative, which was considered by the Council as the most practicable way forward. The current Proposal contains the Community alternative.

2. Gist of the Commission's Proposal

2.1. The Commission's explanatory memorandum to the proposal makes the following points:

2.2. The achievement of the original objectives and the implementation of related means require the creation of a specialised agency, with a high level of expertise. Moreover, the Commission considers that in order to play its role effectively in protecting public interests internally and promoting European views externally, the agency needs to be vested with real powers and enjoy the necessary independence.

2.3. However, the Commission is also of the opinion that the exercise of executive powers and the control of implementation of rules and regulations is the prerogative of the Commission. Delegation to another body may only be done on the basis of rules limiting its discretion to a technical judgement within the sphere of competence.

2.4. Thus, to remain in line with this described institutional architecture, the Commission proposes a two step approach:

- the proposal contains basic principles for the certification and maintenance of aeronautical products and prescribes essential requirements based on Annex 8 to the Chicago Convention and existing Community legislation applicable to environmental protection;
- as for all other fields of aviation safety, in particular safety aspects of air operations, flight crew licensing, airport operations and air traffic management, basic principles and essential requirements will have to be adopted in due course in accordance with the normal legislative process, to complement the present proposed Regulation.

Thus the proposal limits itself to those aviation safety aspects which relate to products, important for the European aeronautical industry, and does not cover airline operational aspects, airport aspects and air traffic control aspects.

2.5. As regards the system the Commission proposes, it is based on the following principles:

- the European Parliament and the Council set basic principles for regulation and essential requirements defining the level of safety and environmental protection required;
- in the way the essential requirements are to be implemented, in particular the procedure to be followed to obtain the necessary approvals, the privileges attached to such approvals, as well as applicable technical standards, the option of delegation to the Commission has been chosen.

2.6. As noted under 2.4, the Commission envisages to implement this system for products and their maintenance. As regards the basic principles and essential requirements for operations, personnel, airports and ATC services, Article 7 merely determines that the Commission shall, where appropriate and as soon as possible submit proposals thereon. Thus, a two tier approach is introduced, separating for the time being products from other aviation safety aspects.

2.7. In cases where rules are to be applied by Member States they would need to be set by the European Parliament and the Council. The Commission would then be given the capacity to complement them when they refer to very specific technical fields and to adapt them to specific scientific or technical progress. This would in particular apply to air operators' certification requirements or flight crew licensing, which are at this stage, not covered by the proposed legislation, but which will have to be adopted in due course.

2.8. The Commission considers that for products, a different situation applies. Uniformity would be best achieved through centralised certification. Moreover, in view of the rapid technological evolution, it is considered that over-specification of technical details at legislative level is undesirable. The Commission would thus be empowered to adopt the necessary implementing rules. The agency would have the technical discretion to evaluate the conformity of the product with the essential requirements.

2.9. For products, implementing rules would be mainly procedural requirements as contained in applicable Joint Airworthiness Requirements⁽¹⁾ (JAR) of the JAA. The agency

⁽¹⁾ The JAA are committed to the joint certification of new aircraft, engines, and propellers and have established a joint system of approval. Apart from the JAR-21 'Certification Procedures for Aircraft and Related Products and Parts', the JAA has currently adopted, amongst others, codes for the certification of large aeroplanes (JAR-25), small aeroplanes (JAR-23) and powered/sail planes (JAR-22), helicopters (JAR-27/29) engines/APU (JAR-APU), props (JAR-P) and equipment (JAR-TSO).

would be empowered with the granting of certificates attesting the conformity of products with the essential requirements, because this is considered to be a purely technical judgement.

2.10. For maintenance, where centralisation is not envisaged, the Commission proposes a mixed approach, where the Commission is empowered to adopt the necessary implementing rules in a sufficiently detailed manner, based on the applicable existing JAR.

2.11. In Article 46, the Agency is awarded investigative powers (also referred to as 'inspections') for the purpose of carrying out the duties assigned to it by the Regulation. Two specific types of investigative powers are further defined in Articles 47 and 48. In order to ensure the correct application of the safety rules, the Agency is empowered to inspect Member States (Article 47), in assistance to the Commission, and undertakings (Article 48).

2.12. Finally, the Commission has included a judicial control mechanism. In order to prevent that technical cases are presented to the Court of Justice, a specialised level of boards of appeal is proposed as a place of first instance. The members of such a Board (or Boards) will be appointed by the Agency Administrative Board from a list of candidates prepared by the Commission (Articles 31-36).

3. General comments

3.1. General aim

3.1.1. The Committee endorses the objective of the Community policy on aviation safety and welcomes the proposal of the Commission.

3.1.2. The Committee shares the view that there is a need for a strong organisation with extended powers in all fields of aviation safety and the potential for taking over executive tasks currently exercised at national level when collective action appears more efficient. It endorses the view expressed by the European Parliament that a single aviation safety regulatory authority should be established, with the prime task of ensuring a uniform high level of safety in Europe through the gradual integration of the national systems. The Committee agrees with the Commission, that in order to attain such a body, the best possible use should be made of the framework provided for by the European Union. The Committee welcomes the proposal of the Commission to establish common rules in the field of civil aviation and to create a European Aviation Safety Agency (EASA).

3.2. Nevertheless, the Committee does have a number of critical points which would need to be addressed. The Committee considers it vital that the proposed Regulation should indeed achieve its stated goals. Although the current Commission's proposal is a creative and novel first step, it does not yet appear to fulfil its promise. It still contains a number of uncertainties and inconsistencies that need to be eliminated. More importantly, on a number of points the proposal could be enhanced substantially. The Committee recalls the comment made in an earlier Opinion that it is important that the Agency would be able to set up all the rules governing aviation safety⁽¹⁾. The proposal would need to ensure that this goal is indeed achieved in due course.

3.3. The proposed approach

3.3.1. The Committee notes that the proposal of the Commission builds on the work and experience gained with Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation.

3.3.2. The Committee welcomes that the proposal takes due account of the views expressed by the European Parliament and the Council in the earlier discussions on the draft Convention and has worked closely with the Council in preparing the current proposal.

3.3.3. The Committee is pleased that the Commission has presented a creative and studied approach that contains novel concepts to attain the stated goals.

3.4. Criticisms and suggestions

3.4.1. The autonomy of the agency

3.4.1.1. As regards products and their maintenance the proposal envisages to implement a system of delegation of powers to the Commission. The Committee acknowledges that when it comes to implementing rules, delegation to the Commission is both useful and desirable. Nevertheless, the proposal could further clarify those cases where the necessary supervising role of European Parliament and Council would remain intact.

3.4.1.2. Moreover, while the Committee welcomes the efforts made by the Commission to accommodate an autonomous agency, the Committee wonders whether the current institutional framework could not accommodate a more independent position for EASA, particularly when it comes to establishing highly technical implementing rules and standards.

⁽¹⁾ OJ C 14 of 16.1.2001, p. 33, see conclusions regarding Regulation (EEC) 3922/91.

3.4.1.3. The Committee notes that the proposal does contain some scope for the Agency in its ability to provide guidance material and acceptable means of compliance. Whether this can be seen as rulemaking or policy could be a matter for debate. The Committee notes that there is certainly some room for manoeuvre in the proposal in this respect to claim that the Agency indeed does have independent powers to implement technical rules. The Commission has included an in itself welcome amount of independence in the proposal.

3.4.1.4. The Committee welcomes the principle embodied in the proposal that the legislator would not have complete and detailed technical responsibility, which would enhance its oversight and policy function. The Committee wonders whether while this is indeed relevant for the Parliament and Council, it would also not be relevant to the Commission. Particularly in the field of aviation safety, it is important that the basic system for safety is determined at the right political level (thus, there is a clear task for the European Parliament and the Council to take their responsibility). The basis on which individual safety elements are arranged is also a task for the regulator, either directly the European Parliament and the Council or, through delegation, the Commission. However, it would seem undesirable for the regulator to be too specific on technical detail, which could entail automatic political responsibility in case of accident. It is here that the role of the Agency, expert in these matters, would come into play. What under normal circumstances under a national legislation would be further delegation of rulemaking powers to an Agency, would not seem to be possible under the Treaty.

3.4.1.5. In its Explanatory Memorandum, the Commission adheres to a strict interpretation of the jurisprudence of the Court which determined that delegation of powers is permissible only when 'it involves clearly defined executive powers, the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegating authority'.

3.4.1.6. Thus, the Commission only limits the delegation of powers for EASA on the issue of type certification. The initial focus of the proposal is on products. It is submitted by the Commission that products need centralised certification. Moreover, since technological advances evolve rapidly, it is not good to over-specify technical details. Although no specific motivation of this claim is offered, the Committee considers that this could indeed be the case.

3.4.1.7. The Committee does not see however, why such a conclusion would not also be applicable to all aviation operations, maintenance or personnel requirements. Similarly, this would seem to apply to airport and air traffic management aspects.

3.4.1.8. The conclusion of the Commission would thus seem to be valid for all fields of technical safety.

3.4.1.9. The Committee considers that implementing rules of a strictly technical nature (guidance and recommended — or rather: acceptable — practices) could be well seen to fall within the scope of the jurisprudence. Much will depend on the wording of the basic regulations put forward by the Commission and the technical detail involved. In this respect the Committee feels that, in line with the call of the European Parliament and in accordance with the stated desire of the Commission to provide the necessary independence, more could be done to award the agency with the necessary technical implementing powers, including specific technical rulemaking powers, provided the wording is precise enough and indeed limited to the technical rules only, and submitted to strict review by the delegating authority. Much depends on the interpretation of the word 'rulemaking'. It would be hard to delegate the power to adopt legally binding regulations. However, when it comes to implementing rules, like standards and guidance material, technical specifications, there would seem to be room for improvement. There is no reason not to view them as binding, certainly in the sense that individuals and undertakings can rely on them and invoke them in Court.

3.4.1.10. Moreover, this independent position could be more emphasised in the other Articles of the proposed Regulation, where it is noted that the independence is not reflected and the agency would rather be seen to be fully part of the Commission. At this stage, the role of EASA seems to be mainly assisting and support the Commission and providing technical expertise to the Commission.

3.4.1.11. EASA is clearly closely linked to the Commission, staffed with people who have the status of Commission temporary and permanent staff. As regards the use of temporary staff, the proposal would need to consider the necessity to maintain continuity both in staff levels and expertise. Where possible longer-term contracts should be considered.

3.4.1.12. In preparing draft legislation the Agency has no option but to follow the instructions of the Commission. It is doubtful whether the text allows the Agency any possibility to refuse or initiate. The Agency would at least need to have the right to refuse to prepare regulations that it does not support from the point of view of aviation safety.

3.4.1.13. In international affairs, the Agency is obliged to assist the Commission, and thus must of necessity, bear or at least share the burden of responsibility, even if it would not agree with something.

3.4.1.14. The emphasis of the position of the Executive Director of EASA is on independence. He/she is not to take instruction from any government or body. But as far as the Commission is concerned, that is clearly not the case. Since the Commission is the main regulator, this would seem to be confusing at least.

On the independent position of the Agency and its ability to act in international matters, the Council in particular would be in a position to strengthen the Regulation.

3.4.2. Scope of the proposal

3.4.2.1. The proposal initially focuses on products and appliances only. Operations, personnel, airports and air traffic management are not dealt with at all or not completely. It would seem that on these issues, the Commission considers that political agreement would be feasible, while for the other elements that would be more complicated.

3.4.2.2. The Committee considers that as regards airports and Air Traffic Management, this would indeed seem to be the case. In these areas, views and concepts are still in need of further development before effective inclusion could be contemplated. However, as for operational and personnel issues and to a certain extent related operational maintenance issues, this is seen as a major deficiency. The stated goal of a high uniform level of safety in aviation is thus not reached.

3.4.2.3. The Committee welcomes therefore Article 7 that states that the Commission shall, with regard to the basic principles and essential requirements, where appropriate and as soon as possible, submit proposals to the Parliament and the Council for adoption on the basis of Article 80(2) of the Treaty.

3.4.2.4. The Committee considers that Article 8 (jo. Article 56) where the Regulation repeals Regulation (EEC) 3922/91 creates a difficult situation, particularly when the proposed JAR/OPS amendment of Regulation (EEC) No 3922/91 enters into force before the adoption of this proposed Regulation⁽¹⁾. The JAR/OPS amendment of Regulation (EEC) No 3922/91 after all ensures harmonised implementation of the JAR/OPS in the Community and is a valuable first step in the direction of a truly Community wide harmonisation of operational safety. Abandoning this with the implementation of the proposed Regulation on EASA, would mean that all operational aspects of 3922/91 could be lost. Although Article 56 of the proposal does contain a provision which could be interpreted to prevent this, it would need further clarification. Moreover, the proposal, in particular its

Annex, would need to ensure that the benefits of the JAR-OPS amendment of Regulation (EEC) No 3922/91 would be preserved⁽²⁾. The Committee agrees that if the JAR-OPS amendment is not implemented, withdrawal of Regulation (EEC) No 3922/91 would not matter greatly, since it currently covers mainly airworthiness elements, adequately covered by the proposed Regulation.

3.4.2.5. Apart from safeguarding this important element, the Committee considers that it is important that the proposed Regulation would do more and already would include two issues:

- a clear time-frame and schedule should be provided for the mentioned proposals of the Commission required to fully cover the operational, maintenance and personnel issues essential for air transport operations in the Community;
- a clear and detailed transitional arrangement should be included that acknowledges the work and position of the JAA and its relation with the Community framework.

The Committee acknowledges that it would need to be a specific point of concern of the Council to provide the Commission with the political support to include these.

3.4.2.6. The Committee is of the opinion that, particularly when it comes to safety, it is important that concurring competence and authority are clearly identified and defined, particularly on all that concerns the investigating powers⁽³⁾ of the Agency, and that a complicated and non-transparent situation is avoided as much as possible.

3.4.2.7. Finally, in this respect, the Committee is of the opinion that the transition period and the relationship with the JAA work should also more clearly specify what the position would be of the European States that are not bound by the *Acquis Communautaire*. This means further clarification of Article 54, including the introduction of the possibility for a meaningful transition period for countries acceding to the *acquis communautaire*.

⁽²⁾ The Committee would like to quote its final observation mentioned in its Opinion CES 1179/2000 of 19.10.2000, OJ C 14, 16.1.2001, p. 35: 'The Committee feels it is essential to establish the planned European Air Safety Authority (EASA) as quickly as possible. This authority would then be able to issue all the rules governing air traffic — including the EU OPS'.

⁽³⁾ The ESC notes that the Proposal for a Regulation of the EP and the Council establishing a European Maritime Safety Agency, COM(2000) 802 final, refers to 'visits' as opposed to 'inspections'.

⁽¹⁾ OJ C 14, 16.1.2001, p. 33.

3.4.3. The position of directly involved parties

3.4.3.1. Both the worker unions and industry have emphasised that there is a need to closely involve stakeholders in all phases of the rulemaking process. There is indeed reason to do so. Aviation is a highly complex technical world and much of the know-how lies with industry and the individuals that work there. Because of this, much of the actual responsibility in for implementation is delegated to the 'workfloor', naturally under strict supervision. The Committee is of the opinion that both on all levels of implementation (i.e. comitology and EASA) such representation and participation of worker unions, industry and users could be enhanced.

3.4.3.2. Overall, the proposal would benefit from more transparency, not only as regards those stakeholders directly falling under the applicability of the safety rules, but also as regards consumers and, should environmental concerns be maintained in the proposed Regulation, environmental interests.

3.4.3.3. Moreover, as regarded the Appeals Board, it is considered that the required expertise in the field of aviation safety would need to be a major consideration for the selection of possible candidates. Such expertise would be a requirement in most, if not all, of the positions of the Agency's staff.

The Committee considers that next to the Commission and the technical representatives, also the political responsible should be included in an appropriate manner.

3.4.4. ICAO basic requirements

3.4.4.1. The Commission considers that adding Annex 8 to the Chicago Convention to the Regulation, sufficiently establish the essential requirements referred to in the proposal. It is the view of the Committee that ICAO Annex 8 only contains a minimum standard, which needs to be met by the required detailed national standards. On a number of product categories Annex 8 provides no guidance at all, and changes might be incorporated in Annex 8 in future.

3.4.4.2. Therefore, the Committee considers this is an issue of great concern, because it directly affects the goal of maintaining a high level of aviation safety and also influences the credibility of the EASA — indeed of the whole system — with our international partners. Nevertheless, the Committee acknowledges that in order for Annex 8 to apply within a Community context, and in the absence of Community membership of ICAO, including Annex 8 under the proposed Regulation would be unavoidable.

3.4.5. Safety and the environment

3.4.5.1. The Committee notes that the proposal does not only limit itself to safety issues, but also to environmental protection. While the proposal as yet is limited to ensuring that products and appliances shall be certified to comply with agreed noise standards in the Community, this element puts a fundamental question on the table, the role and responsibility of EASA, and moreover, the purpose of this Regulation. Economic and environmental considerations may well conflict with safety. The balance and possible choices that need to be made belong to the political and regulatory level, not to the level of implementation or implementing rules. The Committee considers that this combination should be re-considered, also in view of the possible extension of the scope of EASA, which could lead to such conflict and also, confusion in the perception of the public.

3.4.6. International relations

3.4.6.1. The beginning of the Regulation does not provide for the conclusion of any sort of Agreement with third countries, only for what is described as co-operation. Yet in Article 9 the concept of Mutual Recognition Agreements (MRAs) appears. As yet, MRAs are mainly used in the context of trade discussions. The Committee considers that the proposal would need to contain a broader wording covering co-operation, agreements and other international arrangements.

3.4.6.2. No specific independent role is envisaged for EASA. All contacts with third countries (including the FAA) would have to be through the Commission. The EASA can of course assist the Commission, but it is always under the full control of, and working on behalf of, the Commission. The Committee considers that this should be further enhanced. The agency can co-operate under the working arrangements concluded by the Commission. The Committee notes that is a very vague and uncertain description, which may provide some administrative flexibility, but does not bring clarity or enhance the independence of the agency.

4. Conclusions

4.1. The Committee feels that it is essential to establish the planned European Aviation Safety Authority (EASA) as quickly as possible. This authority would need to be able to issue all the rules governing aviation safety⁽¹⁾.

⁽¹⁾ OJ C 14, 16.1.2001, p. 33, see conclusions regarding Regulation (EEC) No 3922/91.

4.2. The Committee does consider it vital that the proposed Regulation indeed reaches its stated goals. The current proposal by the Commission is a creative and novel first step, but would as yet not seem to fulfil its promise.

4.3. The Committee is of the opinion that the proposal still has a number of flaws and inconsistencies that need to be eliminated. More importantly, on a number of elements, the proposal should be substantially enhanced.

4.4. The Committee feels that, in line with the call of the European Parliament and in accordance with the stated desire of the Commission to provide the necessary independence, more could be done to award the Agency with the necessary technical implementing powers, including specific technical rulemaking powers, provided the wording is precise enough and indeed limited to the technical rules only, and submitted to strict review by the delegating authority.

4.5. The independent position of the Agency could be more emphasised in the Articles of the proposed Regulation, where it is noted that the independence is not reflected and the Agency would rather be seen to be fully part of the Commission

4.6. On the independent position of the Agency and its ability to act in international matters, the Council in particular would be in a position to strengthen the Regulation.

4.7. The Committee considers that Article 8 (jo. Article 56) where the Regulation repeals Regulation (EEC) No 3922/91 creates a difficult situation, particularly when the proposed JAR/OPS amendment of Regulation (EEC) No 3922/91 enters into force before the adoption of this proposed Regulation. The Committee considers that Article 56 should be further clarified in order to ensure that the benefits of EU-OPS are preserved.

4.8. The Committee feels that much would be gained by including the following points:

- a clear time-frame and schedule should be provided for the mentioned proposals of the Commission required to fully cover the operational, maintenance and personnel issues essential for air transport operations in the Community;
- a clear and detailed transitional arrangement should be included that acknowledges the work and position of the JAA and its relation with the Community framework.

4.9. The Committee acknowledges that it would need to be a specific point of concern of the Council to provide the Commission with the political support to include these.

4.10. Finally, the Committee considers that on the points of transparency, stakeholder participation, transition and relations with third countries, the proposal could be substantially enhanced and clarified.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Green Paper — Towards a European strategy for the security of energy supply'

(2001/C 221/06)

On 4 December 2000 the Commission decided to consult the Economic and Social Committee, under Article 162 of the Treaty establishing the European Community, on the above-mentioned Green Paper.

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 8 May 2001. The rapporteur was Mrs Sirkeinen.

At its 382nd plenary session of 30 and 31 May 2001 (meeting of 30 May) the Committee adopted the following opinion by 112 votes, with three abstentions.

1. Introduction

1.1. Energy is an essential commodity for all. Modern society is highly vulnerable to changes in energy availability and price. Relatively small disruptions can have detrimental effects on the economy, social conditions and competitiveness. Energy production and use can also have a major impact on the environment and public health.

1.2. EU energy policy has three parallel objectives: maintaining competitiveness, securing the supply and protecting the environment. Although the market and circumstantial factors have changed, these prime objectives are still entirely topical.

1.3. The opening up of energy markets to competition in the Member States and the aim of creating an internal market in electricity and gas are changing the ground rules of energy policy⁽¹⁾.

1.3.1. Energy companies can no longer be individually obliged to make certain investments or to take other measures as was the case in the time of state monopolies. Nor is it possible any longer in a competitive market to pass on whatever costs may arise to the consumer.

1.3.2. Competition generally makes for efficient use of resources and brings down prices on open energy and gas markets. There are fears that this in turn will reduce the motivation to use energy efficiently and to save it, and will prioritise short-term profits at the potential expense of long-term needs and consequences.

1.3.3. An internal market in energy in itself improves the supply situation in that the resources of many countries are pooled, at least in theory. However, this requires a true, completely open internal market in which the opportunities for cross-border trade are effective and balanced and transport connections are adequate.

1.4. It is a feature of world energy markets that they only partially function in accordance with the principles of competition. Much of the world's oil is in the hands of a cartel. The number of operators in the natural gas market is small, as the high cost of infrastructure limits the degree of freedom in the market and pricing continues to be linked to that of oil. A large proportion of both oil and gas reserves are found in politically unstable regions. Electricity is a product that cannot be stored and is very difficult to transport over long distances. These technical factors restrict the extent to which there can be a free market for electricity.

1.5. As markets have opened up, Member States are now facing a new situation. What measures can be taken to ensure that power companies make adequate investment in energy production and distribution at the appropriate time and in a way which favours the environment so that shortages and the associated repercussions do not occur? By way of example, a serious problem occurred in California, where the markets were opened up in a clearly unsuccessful way, with wholesale prices being liberalised but prices for the final consumer kept at artificially low levels. However the real reason for the electricity shortage was that during a period of over ten years no additional electricity production capacity was developed in the state, nor were the transit grids strengthened. At the same time demand for electricity has grown rapidly. Europe must learn from this.

1.6. The task of governments in open energy markets is to establish a framework for ensuring that the market functions efficiently and that other social objectives can be achieved.

⁽¹⁾ Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas (COM(2001) 125 final).

Governments, or in certain countries states or regional governments in part, are responsible for:

- ensuring efficient and fair competition in the market which also guarantees the entry of new players;
- safeguarding the public service, including sufficient capacity under normal circumstances;
- any necessary taxation;
- promoting research and development activity;
- relations with other states and the EU;
- and promoting environmental protection and security of supply in the energy sector, in particular through the promotion of:
 - diversification of energy supply sources,
 - the use of renewable energy resources,
 - the efficient production, use and saving of energy,
 - sufficient strategic stockpiles and spare capacity.

Member States continue to have the right and responsibility to make their own choices concerning the forms of energy to be used independently.

1.7. The EU has been responsible for establishing the necessary common framework by applying in particular the articles on competition, the internal market and research cooperation. The most important measures are:

- integrated stockpiles of oil and oil products,
- minimum rates of taxation on oil products,
- the electricity internal market directive and monitoring its implementation,
- the natural gas internal market directive and monitoring its implementation,
- the rules for the internal energy market in connection with the above directives,
- joint measures for increasing the use of renewable energy sources, such as the Altener programmes,
- joint measures for increasing energy efficiency, such as the SAVE programmes,
- promoting international cooperation (Synergy programmes),
- research cooperation in the energy sector under the framework programmes, and
- Euratom Treaty joint measures in the field of nuclear energy.

Many of the EU's environmental provisions apply either directly or indirectly to energy production and use.

1.8. The ESC has endorsed the above-mentioned energy policy objectives in numerous opinions⁽¹⁾. To avoid repeating the Committee's views on the various aspects, it is only the key messages which are reiterated here. The ESC has supported the opening up of markets as a means of guaranteeing competitiveness, but it has also called for the social and other implications to be taken into account. The public service requirement must be maintained to prevent exclusion and to safeguard social cohesion. The Committee has called for a high level of environmental protection in line with the EU's environmental action programmes and observing the principle of sustainable development. It has also supported the strong emphasis on renewable energy sources and efficient energy production and use.

2. Summary of the Commission Green Paper

2.1. The Green Paper is the response to an observable fact: Europe's growing future energy dependence. The European Union is extremely dependent on its external supplies. It currently imports some 50 % of its requirements, a figure that will rise to about 70 % in 2030, with an even greater dependence on oil and gas, if current trends persist.

2.2. Current energy consumption is covered for 41 % by oil, 22 % by natural gas, 16 % by solid fuels (coal, lignite, peat), 15 % by nuclear power and 6 % by renewable. By 2030 the energy balance will continue to be based on the following assumptions for fossil fuels: 38 % oil, 29 % natural gas, 19 % solid fuels, 6 %⁽²⁾ nuclear power and barely 8 % renewable.

2.3. The EU cannot free itself from its increasing energy dependence without an active energy policy. Energy receives no more than a mention in the preamble to the Amsterdam Treaty. The Green Paper outlines the need to rebalance the policy of supply by clear actions for a policy of demand.

⁽¹⁾ ESC opinion on Community Energy Policy (own-initiative opinion) of 14.9.1994, OJ C 393, 31.12.1994; ESC opinion on the Green Paper 'For a European Union Energy Policy' (COM(94) 659 final) of 5.7.1995, OJ C 256, 2.10.1995

⁽²⁾ Assuming neither the member states nor the EU do anything to at least replace current plant when it reaches the end of its operational life.

2.4. The analysis in the Green Paper sets out to show that efforts will have to focus on orienting the demand for energy in a way which respects the EU's Kyoto commitments and is mindful of the security of supply. Security of supply does not seek to maximise our autonomy in energy or to minimise our dependence but to reduce the risks connected to the latter.

2.5. Therefore, the Green Paper sketches out the bare bones of a long-term energy strategy according to which:

- The Union must rebalance its supply policy by clear action in favour of a demand policy (mainly by promoting energy saving in buildings and the transport sector).
- It states the need to develop actions to modify trends in order to fulfil EU obligations under the Kyoto Protocol.
- It highlights the value of taxation measures to steer demand towards better-controlled consumption which is more respectful of the environment.
- The development of new and renewable energies is the key to change, doubling their share in the energy supply quota from 6 to 12 % and passing from 14 % to 22 % for electricity production to be achieved between now and 2010.
- The contribution of atomic energy in the medium term must, in its turn, be analysed without omitting any element of the debate: waste management, global warming, the security of supplies, sustainable development, etc.
- Research on waste management technologies and their implementation in the best possible safety conditions must be actively pursued.
- As imports of oil and gas are increasing, a stronger mechanism ought to be provided to build up strategic stocks and also to strengthen and diversify supply networks.

2.6. The Commission does not propose in the Green Paper a ready-made strategy: it launches a debate on the essential questions which shed light on the energy choices to be made in the EU.

3. General comments

3.1. The ESC welcomes the Commission Green Paper as a commendable document. The various parts of the study point to the fact that the EU's external dependence is high and increasing, and at a time when oil and consequently also gas price trends have brought a reminder of the detrimental effects of dependence, it makes sense to try to put together a global picture of future developments. The environment, and especially the prevention of climate change, cannot be ignored when discussing energy, or indeed in this context.

3.2. If present policy continues, the prospects for the next 30 years are bleak. External dependence is growing substantially and so are greenhouse gas emissions. There is no reason to doubt the theories and calculations. The scenario which is emerging must be taken seriously and account of it taken in all relevant measures.

3.3. The Commission's study is, however, very EU-centric and the issue must also be considered from a global perspective. Fossil fuels, which will continue to account for the majority of the planet's energy supply for the long term, are limited. The highest energy consumption is in North America and Europe, but as living standards rise in other parts of the world, fuel use is increasing fast in these countries. Competition for energy resources is intensifying, increasing the likelihood of a crisis, and there is already some talk of future energy wars. Against this background the Commission should be far more concerned about the EU's external dependence.

3.4. The time frame of the study should also be longer. Some basic aspects of the energy sector do not change much even over a 30-year period. Bigger changes in fossil fuel availability, for example, will not be apparent until later. On the other hand, the most recent technological solutions will probably only be really significant over the longer term. It is clear that the level of precision of the current analysis does not allow the time span to be extended. However, certain basic factors, such as the outlook for fossil fuel reserves and demographic change, could have been projected over a longer time frame. Longer-term assessments of breakthroughs in new technologies should be carried out.

3.5. The most important measure for reducing the risks associated with energy supply and other risks is to ensure the most diverse and balanced possible use of different types and forms of energy. In addition, efforts must be made to ensure the optimal use of every economically and ecologically feasible energy source. This cannot be emphasised enough. In this respect, the rapid growth in the use of natural gas and major reduction in the proportion of nuclear power forecast by the Commission would seem to be problematic. This trend also considerably increases both dependence on imports and greenhouse gas emissions.

3.6. The significance of energy to the national economy and the economic impact of energy policy decisions should be examined more closely. Although energy costs currently only account for a small percentage of national product, economic growth and competitiveness are highly sensitive to energy price rises. Growth in energy consumption is at present slower than economic growth; however within the EU two kWh of energy are still used on average for every euro of national product. Oil price changes continue to have a direct impact on the price of natural gas and coal, and changes in primary

energy prices have a far-reaching multiplier effect on the economy. In addition, the exchange rate between the dollar and euro has a decisive impact, as the price of oil is still, at least for the time being, determined in dollars. Efforts should be made to conduct energy trade in euros.

3.7. The document raises a major question: can the measures envisaged by the Commission, i.e. mainly making energy use more efficient and increasing the use of renewable energy resources, really reverse the trend of external dependence and increasing greenhouse gas emissions within the timeframe in question without compromising economic and employment objectives? The Commission does not give any kind of figures on this point.

3.8. To respond to the major challenges of the Green Paper, the Commission needs to develop the common harmonised framework, the aim of which is to ensure general welfare and economic development and provide households and industry with a secure energy supply at a reasonable price, while respecting the principles of environmental protection and sustainable development. The assumption should be that Member States retain the right to take energy policy decisions independently, particularly with regard to forms of energy production, as well as the other views expressed in this opinion. Nevertheless, at the same time the Commission could, as it did in 1973 and 1979, establish indicative EU Community objectives that could serve as a reference basis for Member States to define their own energy plans, striving to achieve collectively these EU objectives.

3.9. In view of the global dimension of energy supply, the Commission should add the following to its list of questions:

The large energy consumption of other industrialised countries and the growing energy needs of developing countries are also continuing to increase the use of fossil fuels considerably. What measures could be taken by the EU to support the efforts of third countries to achieve sustainable development? Should renewable energy sources, especially solar energy, and the transfer of energy-saving technology and know-how to developing countries be promoted?

4. Answers to the Commission's questions

4.1. Can the European Union accept an increase in its dependence on external energy sources without compromising its security of supply and European competitiveness? For which sources of energy would it be appropriate, if this were

the case, to foresee a framework policy for imports? In this context, is it appropriate to favour an economic approach: energy cost; or geopolitical approach: risk of disruption?

4.1.1. The EU cannot at present avoid increasing its dependence on external energy sources, even though doing so entails risks to the security of supply and competitiveness. Dependency cannot be eliminated, but the risks can and should be kept low.

4.1.2. Some EU Member States and regions are particularly vulnerable as their external dependence is over 50 %. The energy policies of these countries must pay special attention to the supply question. It is particularly important for these countries and regions to examine what common measures at EU level could help to prevent their vulnerability. Particular attention should be paid to the problems of the EU's remotest regions.

4.1.3. Creating a framework policy as such for energy imports of one or various fuels is hardly possible in today's market. Instead, the opportunities for companies to do business freely and under reciprocal conditions should be raised in all relevant EU bi- and multilateral external relations. Cooperation between producer countries and the EU should be stepped up in order to secure favourable trading conditions. The prime objective should be the most functional and open markets possible for all energy types and compliance with WTO rules in the energy sector.

4.2. Does not Europe's increasingly integrated internal market, where decisions taken in one country have an impact on the others, call for a consistent and co-ordinated policy at Community level? What should such a policy consist of and where should competition rules fit in?

4.2.1. The internal energy market should function as far as possible according to the general rules governing the internal market, including competition rules. Since part of the energy sector is public in nature and relies on transport and distribution networks, special provisions on this are also necessary.

4.2.2. The following aspects should be borne in mind when considering the question of the EU's common energy policy:

- Which aspects need to be dealt with, and which measures taken, at the EU level so as to be more effective than at the national level (subsidiarity)?

- Which of these aspects and measures cannot be handled by the EU under the present distribution of competences?
- Is a specific policy required to ensure a balance between the three pillars of energy policy: supply, competitiveness and environmental requirements?

4.2.3. The ESC's position on the responsibility of national governments and the EU with regard to energy policy is discussed in point 1.6 and 1.7. EU-level action is essential, at least in order to ensure the efficient operation of the internal market and also to manage the EU's external relations, in particular with producer countries and the WTO.

4.2.4. Energy policy in the EU should be linked more closely with other EU policy areas, such as climate, research and agricultural policy.

4.3. Are tax and state aid policies in the energy sector an obstacle to competitiveness in the European Union or not? Given the failure of attempts to harmonise indirect taxation, should not the whole issue of energy taxation be re-examined taking account of energy and environmental objectives?

4.3.1. Energy taxes and state aid are often employed as instruments to achieve commonly agreed objectives such as environmental protection, promoting use of renewable energy resources, etc. To ensure that state aid and taxes do not distort competition between EU countries, efforts are being made to introduce harmonisation. If energy taxation is harmonised just within the EU, this would further weaken competitiveness vis-à-vis other countries, especially the OECD countries.

4.3.2. Energy taxes, if employed properly, can guide choices towards more environment-friendly alternatives if, that is, a choice exists. This ties in with the idea that the external costs of different energy forms should be internalised. However, it is difficult to clearly determine external costs and they tend to vary a great deal from case to case. With a view to reducing carbon dioxide emissions it might be sensible to introduce a carbon dioxide tax, but the internal market means that this is only possible if fully harmonised.

4.3.3. Taxing energy use will, at least in the long term, result in energy savings. However, taxing consumption also has other consequences. If they are not harmonised internationally they weaken industrial competitiveness and reduce consumption demand in the domestic economy, which affects economic

growth. Plans to introduce energy taxes must take these consequences into account and compensate for them as far as possible.

4.3.4. To ensure environmental improvements, the potential revenue from energy taxes should at least be targeted at projects designed to protect the environment.

4.3.5. Energy taxation should have an impact on the environment, but should not have a detrimental effect on competitiveness or in social terms. The 1992 and 1997 proposals did not fulfil these requirements in all respects. The Commission should look into how these conditions could be met.

4.3.6. Often it is possible and good from a macroeconomic point of view to reduce greenhouse gas emissions on the basis of voluntary agreements instead of relying on taxation. Well-crafted agreements are often a more reliable way of achieving the objectives set.

4.4. In the framework of an ongoing dialogue with producer countries, what should supply and investment promotion agreements contain? Given the importance of a partnership with Russia in particular, how can stable quantities, prices and investments be guaranteed?

4.4.1. The EU should strive to establish normal and effective business and investment conditions with producer countries, for example by supporting the development of energy market structure and trading conditions. The opportunity for strategic partnership and long-term EU cooperation with certain producer countries should also be considered as an important way of securing EU energy supply.

4.4.2. Cooperation in the energy sector between the EU and Russia should be promoted and Russia should be encouraged to sign the Energy Charter agreement.

4.4.3. An effort should be made to conduct energy trade in euros.

4.5. Should more reserves be stockpiled — as already done for oil — and should other energy sources be included, such as gas or coal? Should the Community take on a greater role in stock management and, if so, what should the objectives and modalities be? Does the risk of physical disruption to energy supplies justify more onerous measures for access to resources?

4.5.1. Securing the coal supply by stockpiling reserves in all EU countries or at least at EU level is unnecessary as the EU has its own coal production and the Commission proposes keeping it at the level required to ensure security of supply.

4.5.2. The Member States should be prepared for a problem with the security of supply resulting from increased use of natural gas. The conditions for introducing common stockpiling targets should be considered. Consideration should be given to an appropriate stockpiling system either for gas or for a substitute fuel. It is virtually impossible to create a uniform model as the uses, quantities and sources and geological conditions of natural gas are extremely varied, as are the possible substitutes.

4.5.3. The EU must present a united front in the context of IEA activities.

4.6. How can we ensure the development and better operation of energy transport networks in the European Union and neighbouring countries that enable the internal market to function properly and guarantee security of supply?

4.6.1. The improvement, construction and use of energy transport networks should be based first and foremost on the market, the companies operating within it and the degree to which they are self-supporting. The Commission must effectively implement its plan to strengthen transport connections. Rules governing access to and use of networks should be introduced without delay.

4.6.2. If necessary, investment in neighbouring countries and other important regions should be promoted using specific EU funding and EBRD and EIB loans. The Balkans are an important region in this respect.

4.6.3. In considering the possibilities for building new infrastructure for transporting natural gas, no mention has been made of the northern alternative, even though it would provide many additional new benefits and would be consistent with the EU's northern dimension policy. The objective of the northern dimension is, as with Mediterranean cooperation, to narrow regional differences in living standards, promote economic growth and develop multilateral cooperation in order to ensure the balanced development of the region. The main emphasis of northern dimension cooperation is on the environment and energy. The energy sources of the region are extensive and diverse.

4.7. The development of some renewable energy sources calls for major efforts in terms of Research and Technical Development, investment aid and operational aid. Should co-financing of this aid include a contribution from sectors which

have received substantial initial development aid and which are now highly profitable?

4.7.1. Other sectors are not expected to repay R&D aid. In addition, the level of aid given, the recipients and present profitability vary enormously from country to country and from company to company, making it practically impossible to come up with a fair solution.

4.7.2. Through evolving forms of taxation and in certain support models (guaranteed price and compulsory purchase), business in traditional forms of energy is already helping, at least in part, to fund renewables.

4.7.3. To exploit the potential of renewable forms of energy, support measures are necessary. However common rules should be drawn up as soon as possible for national support measures in order to ensure an even-handed operational environment for companies and that the single market does not become distorted⁽¹⁾.

4.8. Seeing that nuclear energy is one of the elements in the debate on tackling climate change and energy autonomy, how can the Community find a solution to the problem of nuclear waste, reinforcing nuclear safety and developing research into reactors of the future, in particular fusion technology?

4.8.1. In its general comments the Committee has stressed the need to develop and continue to use all forms of energy. This includes nuclear energy and coal.

4.8.2. The problem with nuclear power is its political acceptability in some Member States, which presupposes completely open information about nuclear issues.

4.8.3. The safety of nuclear energy in the EU is of the highest standard and reactor safety is continually improving. The techniques exist for the storage and definitive storage of radioactive waste, and political decisions need to be taken on these. Research must also be continued on the development of possible alternative solutions. The use of nuclear energy and the management of nuclear waste are the responsibility and competence of the Member States. The Union can assist its Member States in the field of research and the exchange of information. In the context of enlargement the EU must ensure that nuclear safety is of a high standard in the future member states. It is also important to promote the transfer of EU countries' high safety expertise to the less developed countries using nuclear power.

⁽¹⁾ See ESC opinion on the Proposal for a Directive of the European Parliament and of the Council on the promotion of electricity from renewable energy sources in the internal electricity market (OJ C 387, 20.12.2000).

4.8.4. Electricity from nuclear power does not produce greenhouse gases. The Commission states that the EU's current nuclear energy production, which accounts for 35 % of electricity used, is equivalent in terms of reducing emissions to taking 75 million cars off the roads. Nor does nuclear energy increase external dependence. As the bulk of nuclear energy costs are capital costs, cost trends are in fact very stable and predictable.

4.8.5. Member States take the decisions on the use of nuclear power, and independent decision-making must continue to be respected in the future. However, it is difficult to see how the EU can in future meet the challenges of climate change and ensuring energy supply at reasonable prices without nuclear power continuing to make at least its current contribution to electricity production. Nuclear power may also in the future support the developing hydrogen economy, which requires a secure supply of electricity or natural gas.

4.8.6. The EU's research framework programmes must continue to support research into nuclear power, including in particular fusion, by means of extensive international cooperation. These efforts are important both for developing the technologies of the future and retaining an essential level of know-how.

4.9. Which policies should permit the European Union to fulfil its obligations within the Kyoto protocol? What measures could be taken in order to exploit fully potential energy savings which would help to reduce both our external dependence and CO₂ emissions?

4.9.1. The EU must continue resolutely its efforts to prevent climate change on the basis of the Kyoto agreement.

4.9.2. The Commission and Member State governments are drawing up action programmes; some countries have already published theirs. As the burden is shared between the Member States, they have responsibility for implementation. Sectoral measures at EU level would hamper responsible and cost-effective action.

4.9.3. The Commission has presented a programme of energy efficiency measures, on which views have been expressed elsewhere and which should form the basis for action. There are plenty of opportunities to develop and adopt new technology while improving the efficiency of energy production and use. The principle must be to produce as much as possible from as little as possible.

4.9.4. How much energy-saving potential can actually be realised when at the same time there is a need to safeguard economic growth and social cohesion?

4.10. Can an ambitious programme to promote biofuels and other substitute fuels, including hydrogen, geared to 20 % of total fuel consumption by 2020, continue to be implemented via national initiatives, or are co-ordinated decisions required on taxation, distribution and prospects for agricultural production?

4.10.1. A common EU programme may help to promote the development and use of biofuels for transport as a means of harmonising support and other measures and incorporating this question into the Common Agricultural Policy in an appropriate manner. Responsibility must, however, lie mainly with the Member States.

4.11. Should energy saving in buildings (40 % of energy consumption), whether public or private, new or under renovation, be promoted through incentives such as tax breaks, or are regulatory measures required along the lines of those adopted for major industrial installations?

4.11.1. Energy saving in buildings will probably be a matter for the Member States first and foremost as conditions vary so much. Building standards are probably an effective means of regulation, but there can be no question of uniform, EU-wide standards.

4.11.2. However, consideration should be given to what the EU could do to speed up action by the Member States, e.g. in the field of standardisation and consumption standards. The Committee will discuss this matter in more detail when drafting its opinion on the relevant forthcoming proposal for a directive.

4.12. Energy saving in the transport sector (32 % of energy consumption) depends on redressing the growing imbalance between road haulage and rail. Is this imbalance inevitable, or could corrective action be taken, however unpopular, notably to encourage lower use of cars in urban areas? How can the aims of opening up the sector to competition, investment in infrastructure to remove bottlenecks and intermodality be reconciled?

4.12.1. The ESC is waiting for the Commission to present its proposals on energy saving in transport in its forthcoming White Paper on transport policy, and will present its views on this matter in its opinion on that subject.

4.12.2. Rail transport needs to be made more efficient through liberalisation, but with due care.

4.12.3. Transport in urban areas is clearly a matter for national or even local administration. The EU could take on an educational and developmental role.

4.13. How can we develop more collaborative visions and integrate the long-term dimension into deliberations and actions undertaken by public authorities and other involved parties in order to evolve a sustainable system of energy supply? How are we to prepare the energy options for the future?

4.13.1. R&D and the 6th Framework Programme are crucial here.

4.13.2. In energy management, no alternative should be excluded from development work.

4.13.3. Appropriate forms of cooperation with national authorities must be found.

5. Conclusion

5.1. The ESC welcomes and commends the Commission's Green Paper. It demonstrates that the current policy would pose considerable problems over the next thirty years in terms of ensuring the security of energy supply and reducing carbon dioxide emissions in an enlarged EU.

5.2. The Commission's analysis should however be more global in scope. The planet has limited supplies of fossil fuels, for which the industrialised countries are already competing and for which developing countries will increasingly compete in the future. In this context the risk associated with external dependency is becoming more evident. The timeframe of the study should also be longer, as developments in the energy sector take place slowly and problems will not come to a head until the second half of the century.

5.3. The most important measure for reducing the risks associated with energy supply and other risks is to ensure the most diverse and balanced possible use of different types and forms of energy.

5.4. The Green Paper raises an important question: can the measures envisaged by the Commission, i.e. mainly making energy use more efficient and increasing the use of renewable energy resources, really reverse the trend of growing external dependence and increasing greenhouse gas emissions within the timeframe in question and without compromising economic and employment objectives?

5.5. To respond to these major challenges, the Commission must develop the common framework and set EU-wide indicative targets, starting from the principle that Member States retain the right to take energy policy decisions independently, particularly with regard to forms of energy production.

5.6. The ESC considers it reasonable to add the following to the questions posed by the Commission: what action could the EU initiate to support third countries' efforts to achieve sustainable development?

5.7. The Committee's main answers to the questions posed by the Commission are the following:

5.7.1. The EU cannot avoid increasing its dependence on external energy sources, but the risks can and should be kept low.

5.7.2. The objective of the EU's external relations must be to safeguard the opportunities for companies to conduct business in the energy sector freely and under reciprocal conditions. Long-term relations with producer countries should be developed.

5.7.3. Energy policy must respect the principle of subsidiarity. EU-level action is essential, at least in order to ensure the efficient operation of the internal market and also to manage the EU's external relations, in particular with producer countries and the WTO.

5.7.4. Energy taxation must have a clear impact on management of the environment, however efforts should be made to avoid any negative consequences in terms of (among other things) competitiveness and social considerations.

5.7.5. Securing the coal supply by stockpiling reserves is not necessary in all countries. In order to secure supplies of natural gas, the use of which is increasing, Member States should take steps according to their particular needs. The requirements for introducing common stockpiling targets must be clarified.

5.7.6. The improvement, construction and use of energy transport networks should be based on the market. The EU must support the strengthening of transport connections and establish common ground rules. If necessary, investment in networks with neighbouring countries and other important regions, including Northern Russia, should be promoted using specific EU funding.

5.7.7. To exploit the potential of renewable forms of energy, support measures are necessary and common rules should be drawn up as soon as possible. Traditional forms of energy already contribute to this funding even though there are no objective reasons or precedents for this.

5.7.8. There are problems connected to nuclear power, but it also has clear benefits. Member States take the decisions on the use of nuclear power. However, it is difficult to see how the EU can in future meet the challenges of climate change and ensure energy supply at reasonable prices without nuclear

power continuing to make at least its current contribution to electricity generation.

5.7.9. There are plenty of opportunities to develop and adopt new technology to improve the efficiency of energy production and use.

5.7.10. With regard to the question of transport, the ESC is waiting for the Commission's White Paper before taking a position on these issues.

5.7.11. Building standards are an effective instrument with regard to saving energy in buildings; however there can be no question of uniform, EU-wide standards because climatic and other conditions vary so much. The Committee will discuss this matter in more detail when drafting its opinion on the relevant forthcoming proposal for a directive.

5.7.12. Research and development activities and the 6th R&D Framework Programme are of key importance in preparing for future energy options and sustainable development.

Brussels, 30 May 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 establishing a Community monitoring, control and information system for maritime traffic',
- the 'Proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures', and
- the 'Proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency'

(2001/C 221/07)

On 25 January 2001 the Council decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Economic Community, on the above-mentioned proposals.

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 8 May 2001. The rapporteur was Mr Retureau and the co-rapporteur Mrs Bredima-Savopoulou.

As its 382nd plenary session held on 30 and 31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 111 votes for, with three abstentions.

1. Introduction

1.1. In line with its commitment to present a series of legislative proposals on maritime safety, the Commission is proposing three new Council and European Parliament texts on which it is asking the Committee for its views.

1.2. The Commission's 'second set of Community measures on maritime safety following the sinking of the oil tanker Erika' (hereafter 'Erika II package' for simplicity's sake) contains three proposals: one directive and two regulations.

1.3. These proposals were announced in the Erika I package on which the Committee has already commented⁽¹⁾. In that opinion the Committee made some general comments to which we would refer here before analysing the new proposals and commenting on them in detail.

1.4. The Committee is sorry to see that the Council has not followed in full the Commission's proposal for an amendment to the directive aimed at stepping up inspections in ports, which was part of the first package. As the Committee pointed out, this proposal would have significantly increased the number of qualified inspectors; the Council's present position could severely restrict the number of vessels posing a risk inspected in ports, which the Committee deeply regrets. It hopes that this situation may change so as to ensure full respect of the objectives of the Paris Memorandum and the targeting coefficients proposed by the Commission.

1.5. The Committee, which called for an agreement on the introduction of double-hull tankers to be sought first, as far as possible, in the IMO, is pleased to note that a revision of the IMO's present withdrawal timetable, as called for jointly by the EU Member States, was decided at the IMO session on 24 and 27 April 2001.

1.6. In view of the importance of the human factor for safety, there is an urgent need for the ILO's maritime conventions to be incorporated in Community law through their ratification by the Member States and for another revision of the texts on crew safety. The member countries should press the other members of the IMO and ILO, and the Community should for its part help to promote the universal ratification of these conventions and the most recent protocols so as to raise and align the general level of protection for seafarers and their safety training. For its part the Committee will draw up an own-initiative opinion on this subject, covering all modes of transport.

2. The legislative proposals of the Erika 2 package

2.1. *The directive establishing a Community monitoring, control and information system for maritime traffic*

2.1.1. The risk of accidents due to the concentration of maritime traffic in straits is particularly high; more generally,

(1) OJ C 14, 16.1.2001, p. 22.

the consequences of certain accidents may be catastrophic for the economy and environment of regions along the coasts of European seaways. Hence the need to monitor and organise traffic to minimise these risks. This is the purpose of the proposed directive.

2.1.2. The Commission suggests that Directive 93/75/EEC laying down notification requirements for vessels carrying dangerous or polluting goods, as it stands, is inadequate because it does not cover ships in transit off Europe's coasts. Therefore, and in order to monitor and control more effectively the traffic off the European Union's coasts, the proposed directive provides for:

- a) requiring vessels sailing in EU waters to carry automatic identification transponders;
- b) extending the reporting requirements of Directive 93/75/EEC to other dangerous or polluting goods and, in particular, to bunker fuels;
- c) systematic use of electronic data interchange (EDI) for reporting data on dangerous or polluting goods carried by ships;
- d) requiring ships to carry voyage data recorders (black boxes);
- e) boosting the development of common databases and interconnection of centres in order to obtain a more complete picture of traffic in European waters;
- f) closer monitoring of vessels presenting a particularly serious threat to safety at sea and to the environment;
- g) enhancing the powers of intervention of coastal Member States to avert serious accident hazards (re-routing of ships, mandatory pilotage or towage);
- h) designation of ports of refuge; and
- i) banning of vessels from leaving ports in exceptional weather conditions.

2.2. *Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures*

2.2.1. The Commission's proposed regulation for improving the liability and damage compensation schemes in force complements the existing international two-tier regime by creating a European supplementary fund, the COPE Fund, to compensate victims of oil spills in European waters. The COPE Fund will have a ceiling of EUR 1 000 million and will be

financed by European oil receivers of EU coastal Member States receiving more than 150 000 tons per annum of crude oil or heavy fuel oil and in proportion to the quantities received. The Fund will only be activated once an accident that exceeds, or threatens to exceed, the ceiling provided by the IOPC Fund has occurred in EU waters.

2.2.2. Further, the Commission intends to address through the IMO the shortcomings in the international liability and compensation system, with a view to achieving the following amendments in the Civil Liability Convention 1992:

- the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part;
- the prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship should be removed from the Civil Liability Convention; and
- compensation and damage caused to the environment should be reviewed and widened in light of comparable compensation regimes established under Community law.

2.2.3. To complement the measures in the area of liability and compensation, the Commission proposes to make provision for financial penalties or sanctions for established grossly negligent behaviour on behalf of any person involved in the transport of oil at sea.

2.2.4. Finally, should efforts to achieve the appropriate improvements to the international liability and compensation rules fail, the Commission will make a proposal for adopting Community legislation introducing a Europe-wide maritime pollution and compensation regime.

2.3. *Regulation establishing a European Maritime Safety Agency*

2.3.1. The Commission asserts that the task of ensuring the proper and convergent implementation of existing rules related to the EU maritime safety and pollution prevention legislation, is difficult due to the diverse administrative tradition of the EU Member States. Consequently, and in order to help the Commission ensure an efficient application of existing Community legislation the creation of a European Maritime Agency is proposed under a draft Regulation.

2.3.2. The Commission thinks that it would be somewhat unrealistic, or at least premature, to envisage setting up an integrated European operational structure or coastguard that would take over the role of national maritime administrations. On the contrary, the Agency should support the action of Member States and the Commission in applying Community legislation, monitoring its implementation and evaluating the effectiveness of the measures in force.

2.3.3. The Agency will not be empowered to take decisions since it would be up to the Member States and in particular the Commission, in its capacity as custodian of the application of Community legislation, to perform the necessary follow up to the Agency's work and suggestions.

2.3.4. The Agency will have legal personality and will need to be located in a convenient location that will also enable it to develop working relations with appropriate EU institutions.

2.3.5. The Agency will be controlled by an Administrative Board consisting of four representatives of the Commission, four representatives of the Council, four representatives nominated by the European Parliament and four representatives from the industry (including users) nominated by the Commission. Its Executive Director will be appointed by the Administrative Board on a proposal by the Commission. The term of office of the Executive Director and the members of the Administrative Board will be five years, renewable only once.

2.3.6. A small number of the Agency personnel will be seconded from the EU institutions on a temporary basis. The other personnel will be recruited on the basis of experience and merit and will be hired on the basis of temporary renewable contracts.

2.3.7. The tasks which the Agency has to carry out in order to fulfil the defined objectives include, inter alia, the provision of technical assistance in preparing amendments to Community legislation, strengthening of the port State control regime, and monitoring of classification societies. The Agency may decide to establish regional centres in some Member States where better surveillance of maritime traffic is warranted. In order to perform the tasks entrusted to it, the Agency will carry out visits to the Member States to verify their performance in the implementation of the legislation.

3. General comments

3.1. Ship reporting

3.1.1. The ESC supports the creation of a comprehensive and centralised system for ship reporting, surveillance and control, encompassing Search and Rescue and Vessel Traffic Information Services.

3.1.2. The ESC notes that to a large extent, the specific proposals reiterate obligations already imposed upon ships by various IMO Conventions. The UNCLOS Convention recognises IMO as the competent organisation for matters related to maritime safety and pollution prevention affecting international shipping.

3.1.3. The envisaged reporting system covers the wider area of European waters and encompasses operational mandatory reporting systems established through IMO. The Commission suggests that transiting ships will have to participate in IMO systems covering EU waters and progressively in new systems. In the first place, the Member States and the Commission should endeavour to establish the proposed system through IMO, as envisaged by Article 20 of the proposed directive, and implement it independently if IMO fails to establish such a system at international level in a reasonable period.

3.1.4. The ECS recalls that in its opinion on the Erika I package⁽¹⁾ it endorsed the calls for the introduction of a coastal State scheme which would pinpoint zones and ports of refuge that must have the necessary equipment and capability to deal with accidents, which would enable the authorities to provide pro-active assistance to vessels in distress.

3.1.5. In view of the interaction between ships and coastal stations, the ESC considers it particularly important that Member States fulfil their corresponding obligations stemming from the directive in a timely manner.

3.2. COPE Fund

3.2.1. Liability and compensation for damage to the environment resulting from spills of persistent oil from tankers is governed by the 1969/1992 Civil Liability Conventions (CLC) and the 1971/1992 International Oil Pollution Compensation Fund Conventions (IOPCF).

3.2.2. The Conventions establish a two-tier system whereby the shipowner is liable under CLC and cargo interests are responsible under IOPCF. Under CLC, the shipowner is strictly liable for pollution damage and is obliged to have insurance to meet his liabilities up to a limit established by the Convention. When claims following an oil spill incident exceed the ceiling, additional compensation is available from the IOPC Fund, which is financed by oil importers.

⁽¹⁾ OJ C 14, 16.1.2001, p. 22.

3.2.2.1. It is generally accepted that the system has attempted to strike an appropriate balance between the interest of claimants in receiving certain, rapid and adequate compensation, the ability of the shipowner to obtain insurance cover and the need to involve cargo interests in payment for pollution damage.

3.2.3. Up to now, 57 countries are parties to the 1992 CLC and 55 countries are parties to the 1992 IOPC Fund, and more are expected to join. It is noteworthy that every important maritime nation, except the US and China, has joined the IOPC Fund. However, some countries have remained a party to the original CLC (1969) which has a weaker compensation regime than the 1992 protocol, but provides for unlimited liability of the shipowner if the accident and pollution occurred as a result of the owner's fault. The 1992 protocol (CLC 1992) also provides for unlimited liability, but this is virtually impossible to implement because it is subject to exceptionally restrictive conditions under the liability regime: there must be a very serious fault, personally attributable to the shipowner and deliberate; actual personal intent to cause the disaster must be proved, which is practically impossible for the victims.

3.2.4. In the opinion of the Committee, the balance should be maintained between the interests at stake, but it is clear that the compensations under the present system do not cover the real amount of the direct and indirect damages caused by oil spills and that the present ceilings need to be raised substantially under CLC as well as under IOPCF. The Erika case shows that the compensations, not yet paid, fail largely to compensate the real damage. The contributing parties to both systems of compensation have no other choice, if they wish to keep their contributions to these Funds within reasonable limits, but to pursue the most effective possible policy of safety and prevention of accidents.

3.2.5. The introduction of an additional European framework (third tier), intended to work in parallel and in complement with the international system, is justified for the Committee if the international system does not rapidly fix new appropriate ceilings. The amount of EUR 1 000 million is to some extent comparable to the unilateral US ceiling of USD 1 000 million.

3.2.5.1. The ESC has maintained in a regular chain of opinions that, in view of the international nature of maritime transport, measures should be taken preferably at international level. The setting-up of a European complementary compen-

sation Fund should not be a reason not to improve compensations under the existing conventions and the priority of the Member States in IMO should be to work together for these essential improvements.

3.2.5.2. A significant improvement in the international system would in fact proportionately reduce the financing requirements of a complementary European system, in the interests of all parties, and spread the cost over all operators from countries party to the conventions and not just European operators.

3.2.6. The Commission proposes to address other shortcomings in the international system through the IMO. The ESC notes that work is underway in IMO in the IOPC Fund which has set up a working group to this effect. The findings of two sessions of this working group in March and June 2001 will be submitted to its Assembly in autumn 2001. The ESC also acknowledges that the IMO adopted a 50 % increase of the CLC/Fund limits in November 2000 which will enter into force in November 2003.

3.2.7. Despite the above increase, even the new levels would still be inadequate to meet certain claims, like the Erika case, which would far exceed the current level of 200 m SDR. Moreover, experience with past incidents indicates that large oil spills may occur from relatively small tankers, e.g., in the case of Erika. In such instances under the CLC regime the maximum amount payable according to that vessel's tonnage was USD 12 m, with the IOPCF providing complementary compensation up to the present ceiling of 200 m SDR.

3.2.8. In the light of the above considerations, the ESC believes that the ongoing discussions in IMO should also consider a possible readjustment of CLC compensation levels between categories of vessels without disturbing the overall balance between ship and cargo.

3.2.9. The Commission proposes that under a revision of the CLC the pecuniary liability of the shipowner shall be unlimited, if it is proved that the pollution damage resulted from gross negligence in his part.

3.2.10. However, the ESC notes that limitation of liability of the shipowner is the cornerstone of the 1992 Civil Liability Convention. The limitation of liability is coupled with strict liability of shipowners and the provision of insurance of the relevant sums by the insurers of oil pollution claims, the P&I

Clubs. Under the current regime, there is provision for direct access of claimants against the P&I Clubs and quick settlement of claims without the need to prove any fault on behalf of the shipowner, thus, avoiding protracted litigation and possible frustration of the victims of pollution incidents.

3.2.11. In light of the above, the ESC therefore believes that the current system of shipowner liability — which as mentioned above is to be raised 50 % in 2003 — could be maintained in IMO. However, the Committee thinks that a fault-based regime with potentially unlimited liability for the shipowner and possibly the owner of the cargo — who like the shipowner should be obliged to ensure the safety of potentially polluting cargoes — in the case of serious fault or negligence attributable to them, merits serious consideration with a view to adjusting the present regime so that at all events it operates forthwith in favour of the victims of pollution.

3.2.12. Therefore the Committee considers that with regard to the Commission's proposal on unlimited liability further study is needed so that its implementation does not lead to delays in compensation or entail legal fees to the extent that initiating such proceedings brings no benefit to the plaintiff or may even be more detrimental than the present system. It must be remembered, for instance, that in the case of the pollution of the northern coast of Brittany by the Torrey Canyon the substantial compensation obtained by the victims was in fact largely eaten up by their expenses after ten years of proceedings, evaluations and counter-evaluations. However, the competent courts should be able, in the case of serious or intentional fault, to impose appropriate penalties, for instance within the framework of the proposed implementation of an environmental penal law.

3.2.13. Over the last ten years, out of 360 tanker accidents, in virtually all cases the damage has been covered by the shipowners' insurance, with a complementary call being made on the Fund in only five cases. The Erika was the only case in which the amounts granted from the Fund were, according to estimates, far below the damage as determined under the present system for identifying damage eligible for compensation, which the Committee regards as too restrictive.

3.2.14. The Commission proposes that the compensation of damage caused to the environment should be reviewed and widened in light of comparable compensation regimes established under Community law to cover the claims concerning damages to biodiversity.

3.2.15. The ESC recalls that in its opinion on the Erika I package it has already favoured this idea. According to that

opinion, 'the ESC strongly urges the Commission and the Member States to coordinate their efforts within the IMO on tightening safety standards and providing fuller compensation for victims of pollution caused by ships, which should also include damage to the environment and to biodiversity'.

3.2.16. Moreover, the recent sinking of the chemical tanker *Ievoli Sun* (31 October 2000, off the French coast) highlighted the most unsatisfactory legal regime regarding the liability and compensation of hazardous and noxious substances other than oil.

3.2.17. The ESC recalls its opinion on *Erika I* in which it addressed this point and reiterates that the EU Member States should urgently ratify the Hazardous and Noxious Substances Convention (HNS) of IMO with a view to precipitating its international entry into force.

3.2.18. The complementary European fund would therefore only be called upon in cases which the Committee hopes are as rare as possible. Nevertheless, the damage eligible for compensation is the same as that defined under the existing conventions. In the Committee's view, however, compensation should also cover — besides damage to the environment and biodiversity, including the cost of restoring the environment and rescuing animals affected by the pollution — the indirect damage suffered by individuals, certain financial losses suffered by firms, in particular SMEs, in certain sectors such as tourism, and the lasting effect on the image of a coastal region discouraging the establishment of new businesses and tourism for a long period.

3.2.19. To facilitate the access of individuals and SMEs-SMIs to compensation, the Committee thinks that — within the framework of national judicial systems and with regard to the use of the COPE Fund — consideration should be given to recognising the right of professional organisations and local associations whose members are directly affected, including ad hoc associations founded in the wake of an accident and who can show proof of legal competence or a mandate to represent victims' groups, to act at law on behalf of their members.

3.3. *The European Maritime Safety Agency*

3.3.1. The ESC, whilst endorsing the purpose of the proposed creation of a Committee on Safe Seas replacing the existing committees referred to in the Council regulations and

directives in force in the field of maritime safety, wonders how that proposal relates to the proposal to create the European Maritime Safety Agency.

3.3.2. The ESC believes that there must be no overlapping between the role and competences of the regulatory Committee on Safe Seas and the administrative European Maritime Agency.

3.3.3. Although the Agency institutionally cannot have any legislative or regulatory powers, there is a need to clearly define the role and competences of the European Maritime Safety Agency in order to avoid any risk of confusion or duplication of work with the Committee on Safe Seas. The need is particularly evident in view of one of the important tasks assigned to the Agency, namely to assist the Commission in the process of updating Community legislation in the field of maritime safety.

4. Specific comments

4.1. Comments on the content of the proposed instruments

4.1.1. The Committee notes that the Erika I and II packages basically comprise technical and financial provisions and that in spite of concerns about the key role of the 'human factor' in accident prevention and crisis management — concerns raised, moreover, by the Commission and entirely shared by the ESC — this fundamental dimension is missing from the second package.

4.1.1.1. The 'human factor' is no less important in accident prevention and crisis management since 80 % of maritime accidents are attributed to it. The EU has issued several directives aimed at achieving a high quality in respect of port State inspections, classification societies and crew. Directive 94/58/EC⁽¹⁾ in the version Directive 98/35/EC⁽²⁾ lays down the minimum level of training for seafarers through the adoption of the IMO's STCW Convention. Directive 1999/63/EC⁽³⁾ lays down EU — wide rules for working time on Member State vessels, thus contributing to ship safety. It is

supplemented by Directive 1999/95⁽⁴⁾ which extends the rules on crew working hours to third country ships calling at Community ports. Article 12 of Directive 95/21⁽⁵⁾ on port State control sets out the professional profile of inspectors. Article 4(1) of Directive 94/57⁽⁶⁾ in conjunction with Annex B No 6 expressly stipulates that classification society inspectors are to be subject to internal quality audits and continuous training.

4.1.1.2. Without underestimating the abovementioned provisions, some of which are shortly to be amended, the Committee still thinks that, along with the legal and technical measures, consideration should be given to specific new measures on the number, basic and ongoing training, and general working conditions of inspectors, traffic controllers, rescuers and ships' crews. It also notes with concern the increasing number of incidents of fraudulent certification of seafarers which eventually affects safety as well as the alarming increase of piracy attacks on ships in some parts of the world needing an international reaction. The Committee therefore calls on the Commission to draw up appropriate proposals, for example in a new 'Erika III' package on the human dimension, thus making for a comprehensive and integrated approach to maritime safety.

4.1.2. The ILO plays and must continue to play, in close cooperation with the IMO, a key role in respect of crew training, living and working conditions and safety. Thus new international labour conventions for seafarers were adopted by the maritime session of the ILO Conference in 1966, the application of the ILO's maritime conventions being closely linked to that of IMO conventions. Furthermore, on 26 January 2001 in Geneva, the 29th session of the ILO's Joint Maritime Commission adopted several safety-related resolutions and a social declaration highlighting the need for an integrated approach including the human dimension. The Commission and the Member States have a major joint responsibility for the ratification, effective implementation and follow-up of the ILO's maritime conventions and recommendations. The ESC notes with regret that a delay has built up in implementing this joint responsibility and urges the Commission and Member States to make up this delay as soon as possible.

⁽¹⁾ OJ L 319, 12.12.1994, p. 28-58, ESC Opinion OJ C 34, 2.2.1994, p. 10.

⁽²⁾ OJ L 172, 17.6.1998, p. 1-26, ESC Opinion OJ C 206, 7.7.1997, p. 29.

⁽³⁾ OJ L 167, 2.7.1999, p. 33-37.

⁽⁴⁾ OJ L 14, 20.1.2000, p. 29, ESC Opinion OJ C 138, 18.5.1999, p. 33.

⁽⁵⁾ OJ L 157, 7.7.1995, p. 1-19.

⁽⁶⁾ OJ L 319, 12.12.1994, p. 20-27, ESC Opinion OJ C 34, 2.2.1994, p. 14.

4.1.3. The failure to recruit sufficient qualified inspectors for State port inspection duties was why the Council watered down the Erika I proposals, which both the Commission and ESC expressly regretted. All land-based safety personnel, and pilots, marine rescuers, anti-pollution specialists, etc. must be taken into account in terms of recruitment, training and appropriate working conditions.

4.1.4. The ESC reiterates its concern⁽¹⁾ that economic pressure on masters and crews who continue to serve on board substandard ships may have an impact on ship safety. Therefore, crew members must be encouraged to report anomalies on board likely to cause accidents and subsequently must be given proper protection. In the Committee's view the human dimension of safety must be taken into consideration as a matter of urgency if the proposed technical measures are to be applied effectively under favourable conditions.

4.2. *Directive establishing a Community monitoring, control and information system for maritime traffic*

4.2.1. The information on ships' bunker and fuel tank capacity should be integrated into the EQUASIS databank. To determine the quantity and nature of potentially polluting products actually transported by a ship, and to make it possible to take appropriate measures in the event of an accident or to apply certain rules of navigation, the Committee thinks that the declaration should cover the nature and quantities of the ship's cargo and fuel.

4.2.2. The ESC notes that Chapter V of the International Convention on the Safety of Life at Sea (SOLAS Convention) contains detailed provisions on ships' routing, ship reporting systems and vessel traffic services, supplemented with resolutions describing in detail the principles of these services and systems and operational arrangements. Therefore, the requirement of Article 5 seems to be redundant for vessels covered by the SOLAS regime, as the obligation of ships to participate in IMO-adopted reporting systems and to comply with the applicable procedures already stems from the SOLAS Convention.

4.2.3. The ESC acknowledges the usefulness of automatic identification systems (AIS) known as transponders. However, and in order to be consistent with the international require-

ments, Article 7 should require ships to be fitted with AIS in accordance with the schedule in the SOLAS Regulation V/19.2.4. Conversely, Member States should furnish themselves with the required shore radio reception equipment as early as 1 July 2003 in order to be able to utilise the data from the transponders.

4.2.4. Article 8 should be changed so that it requires ships to be fitted with a voyage data recorder (VDR) when required to be so fitted by SOLAS Regulation V/20, which will enter into force on 1 July 2002. IMO concluded that at this stage it should not be a requirement that existing cargo ships be fitted with VDRs. By utilising the procedure of Article 23, it will be possible in future to harmonise the requirement for existing cargo ships with that of IMO, in terms of timing and variation of standards (simpler VDR equipment).

4.2.5. The Committee also hopes that the final agreement for the deployment of the Galileo system will be operational soon as it enables the position of ships to be determined very precisely and, once integrated into the navigation surveillance system, would make a considerable contribution to safety, to monitoring the route of ships and to pinpointing the location of accidental and intentional spills.

4.2.6. To the extent that the purpose of Article 13 is to identify ships posing a potential hazard and to pass the relevant information to another party, the article has a clear scope. However, the actions specified in paragraph 3 that seem to fall under the scope of port State control may be confusing.

4.2.7. The ESC supports any effort whereby mariners and coastal States are informed of navigational dangers. Any obligations placed upon a master for reporting incidents and accidents at sea in accordance with Article 14 should be consistent with international law, and in principle with Article 8 and Protocol I of the MARPOL Convention and Regulation V/31 of the SOLAS Convention. However, the 1982 UN Convention on the Law of the Sea, which recently came into force, opens up new possibilities for action by the coastal State to protect the economic resources and safety of its waters and coastline for the whole length of its exclusive economic zone, which may extend to 200 nautical miles from its coast and even further if necessary. These new powers are not defined exhaustively by the Convention. The relevant information to be communicated by the master in the event of one of the risks specified in Article 15 occurring is consistent with IMO Resolution A.851(20).

⁽¹⁾ OJ C 14, 16.1.2001, p. 22.

4.2.7.1. The Committee recognises that under present maritime transport conditions and because of the high number of flags and sub-standard ships, bearing in mind the nature of their cargo, the quantities transported and the density of the traffic off the coast of Europe, it has become necessary to extend significantly the powers of port States and coastal States, not least to make up for the laxity of some States under whose flag a huge tonnage is registered. This requires the preparation, on the legal basis of the UN Convention, of maritime legislation more appropriate to our times and the major risks which exist, as illustrated by recent major accidents. Civil society supports these trends and calls for stricter and more effective standards on navigation safety and pollution prevention.

4.2.8. Exceptionally adverse weather and sea conditions may affect all ships at sea, but the general state of the vessel or the nature of the cargo should encourage extra prudence. Under Regulation V/34 of the SOLAS Convention the master has the obligation to ensure that the intended voyage has been planned so as to ensure safe navigation and avoidance of dangerous situations, including anticipation of all known navigational hazards and adverse weather conditions. Similarly, the company, or any other person, shall not prevent or restrict the master from exercising his professional judgement with respect to safe navigation and protection of the marine environment. However, masters are too often forced to act against their better judgement. The ESC therefore understands the reason for the proposal in Article 15, and the desire to intervene in exceptional cases where masters appear to be lacking in prudent seamanship or even reckless in opting to proceed to sea in exceptionally bad weather. However, the article does not offer sufficiently elaborated objective criteria to help port authorities to act in a consistent and uniform manner. The ESC believes that Article 15 should be more specific in this regard, setting out clearly the general principles. At the same time the Commission and Member States should contribute to relevant developments in IMO in developing detailed guidelines for practical implementation.

4.2.9. The ESC welcomes the acknowledgement of the need to establish a legal framework to accommodate ships in distress. The ESC also shares the view that there is obviously a Community and an international dimension to this problem, since ships refused access to one port or to a safe haven may, while searching for another safe haven, create demands on other nations' search and rescue facilities or cause pollution to other nations' coastline.

4.2.10. The ESC, while in agreement with the proposal, realises the sensitive nature of the notion of 'port of refuge' and the conflicting interests. However, it feels that in most cases ships in distress are in need of sheltered waters to

avert or minimise the consequences of the incident and not necessarily the protection of a port as such. Therefore, under certain circumstances and under certain conditions that should be clearly set out in Article 17, the ESC suggests that the concept of 'places of refuge' or sheltered waters should also be taken into consideration, possibly with appropriate equipment, so that vessels in distress can be directed there in lieu of a port, when appropriate. The ESC maintains that the overriding consideration should always be the safeguarding of life.

4.3. *Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures*

4.3.1. Article 10 — Penalties

4.3.1.1. Under Article 10 Member States shall lay down financial penalties on any person found by a court of law to have contributed by his wrongful, intentional, or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution. According to § 3 such penalties shall not be insurable and they would be of a penal nature. Moreover, such penalties would apply to any ship and not only to tankers to which the rest of the directive applies.

4.3.1.2. The ESC notes that according to the terms of this article, the criminal legislation would have to be adopted by the Member States and not by the EU. Nevertheless, the ESC wonders whether it is compatible with the EU legal order to introduce legislation of a criminal nature at the present stage of development of Community law. Moreover, in several Member States national legislation provides criminal penalties of a financial nature for cases of maritime pollution. The Commission is invited to produce an inventory of relevant national legislation in EU Member States before proceeding to adoption of Article 10. Furthermore, the term 'grossly negligent acts or omissions' may not be sufficiently precise for inclusion in a Community legal instrument and may jeopardize already well established and workable legal regimes. Pending developments regarding the Communitisation of the third pillar, it should be ensured that under national legislation of Member States there is no impunity for such offences.

4.4. *Regulation establishing a European Maritime Safety Agency*

4.4.1. The ESC notes that the diverse administrative structures and traditions of the Member States are not limited only

in the area of maritime safety and the prevention of marine pollution. In the view of the ESC, the proper and convergent implementation of existing legislation can be ensured by a number of important and well-known factors, such as clear policies, firm commitments and adequate resources. The proposed Regulation does not address the roots of divergent implementation, nor does it attempt to establish a model administrative structure to redress the situation. Instead, it establishes an administrative body empowered to audit (and overrule?) the powers and prerogatives of national administrations.

4.4.2. The ESC is of the view that the desirable aim can be better achieved with a wider and more balanced representation of interested parties (including users) and professional sectors in the Administrative Board. It also considers that it would be advisable to ensure that a significant part of the staff of the Agency is seconded from national administrations, for obvious reasons. National experts as staff members for a fixed term can facilitate the necessary linking of the Agency with national administrations and can acquire knowledge and experience in the pursuance of EU policy for the benefit of their administration after the expiration of their term.

4.4.3. The ESC notes the wide range of the defined tasks of the Agency and the task of performing any other task assigned to the Commission by Community legislation on maritime safety, including legislation applicable to ships' crews. While some of the tasks seem to be of a purely administrative character, others may create the risk of confusion or duplication of work required by Community legislation to be performed by other bodies, namely the Committee on Safe Seas and the Committee established under Directive 94/57/EC as amended.

4.4.4. The powers of the Agency to carry out visits to the Member States and to have access to all files, data and reports and to make copies, to ask oral explanations from any staff member and to have access to any premises, land or means of transport may appear excessive and reaching far beyond the

aims of the regulation. A proper and effective working relationship and a full cooperation between Member States and Community institutions are necessary and have to be established and developed, while they might be affected if there were an excessive imbalance in the status, competences and the prerogatives of the respective entities.

5. Conclusions

5.1.1. The Committee, subject to the comments and suggestions set out above, considers that in general the Erika II package is a step in the right direction towards establishing safe navigation conditions and avoiding accidental pollution, and for ensuring, in the event of an accident, sufficient and fair compensation for all the damage caused to individuals and the environment.

5.1.2. However, there is still a long way to go before the legislative proposals on maritime safety are fine-tuned and completed, bearing in mind at all times the international character of maritime transport and the powers and role of the current regulatory and standards institutions, in particular the IMO and ILO and their conventions and recommendations, and more generally the whole international convention system encompassed by the United Nations Convention on the Law of the Sea (Montego Bay Convention, to which the Community itself is party) which lays down the rights and obligations of flag, coastal and port States, all institutions and conventions which play a key role and need to be strengthened.

5.1.3. Even more important is the need to create the conditions for effectively implementing European and international maritime law. This requires long-term political commitment, increased material resources, genuine and effective cooperation between the Commission and the Agency, maritime committees and competent Member State authorities. It further requires the human factor to be taken into account — in the Committee's view the most essential element in the safety of maritime transport, a strategic sector of activity for the internal and external trade of the EU.

Brussels, 30 May 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 on rail transport statistics'

(2001/C 221/08)

On 21 March 2001 the Council decided, under Article 285 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 8 May 2001. The rapporteur was Mr Donnelly.

At its 382nd plenary session held on 30/31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 112 votes for with two abstentions.

1. Introduction

1.1. This proposal was presented by the Commission in order to be able to assess the effects of Community measures in the rail transport sector, and to provide a basis for the preparation of new measures. The Commission thinks it important to have Community statistical data which can be used to follow developments in the rail sector.

1.2. In particular, the idea here is to systematically map out harmonised data on the safety of rail transport. Up to now such data have been lacking in the available rail transport statistics. The draft regulation is intended to change this.

1.3. It is true that rail transport statistics have been collected since as far back as 1980, under Directive 80/1177/EEC, but this directive has the following shortcomings:

- it covers only freight transport;
- it confines itself to a list of railway administrations for which data are to be compiled: partly as a result of the restructuring of the rail industry which has divided it into infrastructure managers and train operators, this list is now out of date;
- the quality of the statistics collected is not good enough;
- the directive contains no provision for its adaptation through a committee procedure.

Because of these shortcomings and the fact that a further regional breakdown of statistical data is thought to be desirable, so that freight and passenger flows can in future be described on a region-to-region basis throughout the EU, it is proposed to replace Directive 80/1177/EEC with the present draft directive.

1.4. In addition to the statistics collected by the Member States under Directive 80/1177/EEC⁽¹⁾, they are expected under Regulation 1108/70⁽²⁾ to provide annual data on the use of, and expenditure on, infrastructure. Other statistics on rail transport are collected on a voluntary basis. The Committee would draw particular attention to the need to ensure privacy in the collection of statistics.

1.5. The proposal is presented in the form of a regulation rather than a directive, since the new legislation is intended to be directly applicable without having to be transposed into national law. Of course, the national authorities still have the option, when collecting the statistics required, of applying methods which take account of the differing circumstances in the Member States. Moreover, a statistical regulation has also been drawn up for road transport [Regulation 1172/98/EEC⁽³⁾]. It entered into force on 1 January 1999.

1.6. The Committee is of the view that the statistics collected from all transport sectors must be comparable. This is all the more necessary as statistics are (will be) collected from all transport modes.

2. General comments

2.1. The regulation provides for a new set of Community statistics on rail passenger transport. Data are already collected on freight transport under Directive 80/1177/EEC. The Commission proposes, given the 'methodological constraints on collection of rail passenger data', that a limited quantity of statistics be collected and that additional statistics be introduced later on.

⁽¹⁾ OJ L 350, 23.12.1980, pp. 23-40, Opinion OJ C 300, 18.11.1980, p. 3.

⁽²⁾ OJ L 130, 15.6.1970, pp. 4-14, Opinion OJ C 48, 16.4.1969, p. 1.

⁽³⁾ OJ L 163, 6.6.1998, pp. 1-12, Opinion OJ C 95, 30.3.1998, p. 33.

The Committee thinks it worth noting that, depending on the scope and accuracy of voluntarily reported data, Eurostat will develop a method to include additional statistics in the regulation at a later stage.

2.2. The Commission maintains that the type of data on traffic flows on the rail network are comparable with those currently collected on road transport through the five-yearly E-road censuses coordinated by UnecE. It further states that the methodology used for collecting rail statistics will differ from that used in other transport sectors. The Committee does not see any problem in this.

2.3. It is clear from the annexes to the draft regulation that the Member States must collect and send in both annual and quarterly statistical data on passenger and freight transport — results and indicators. This seems highly labour-intensive and therefore likely to give rise to higher costs. The Commission has not taken up the opportunity in its proposal to grant the Member States funding over a number of years to compensate for the likely extra costs. The Committee takes the view that this should indeed be done, all the more so since the aforementioned Regulation 1172/98/EEC includes a financial contribution from the Community for the first three years of its implementation.

2.4. The Committee notes that the Commission proposal — quite rightly — does not as yet address the collection of statistics by the applicant countries. The Committee would, however, draw attention to the need for these countries to be advised in good time of future obligations.

2.5. The Commission maintains that the shortcomings listed in point 1.3 were the main reason for draft regulation, but that the statistical data to be collected are also of interest to those concerned in the Member States since:

- they provide information on the rail transport market;
- railway operators can use the information to engage in 'benchmarking';
- the information could be used to obtain funding for large-scale projects, since banks obtain objective data on the financial viability of these projects.

2.6. The Committee would draw particular attention to the role that technological development can play in the collection of data. For instance, the Galileo project could, through the satellite system, overcome some of the problems in the collection of statistics.

3. Specific comments

3.1. The Committee can endorse the exclusions from the scope of the draft regulation which are listed in its Article 2, since they are of marginal importance for the Community rail transport market.

3.2. The Commission states that the choice between detailed or simplified reporting will be made via the procedure laid down in Council Decision 1999/468/EC of 28 June 1999. This choice will then be binding on the Member States. The Committee endorses this approach as it ensures the necessary flexibility.

3.3. The Commission has chosen the usual NST/R classification for goods, while for dangerous goods it has opted for the usual classification in railway circles, found in the Regulation on international rail transport of dangerous goods (RID). The Committee can endorse these choices.

3.4. The Committee has serious doubts as to whether three years is a suitable period to allow before the Commission draws up an evaluation. Experience with statistics provides sufficient grounds for these doubts. In the Committee's view a longer evaluation period, e.g. five years, would be more appropriate, all the more so since the Commission intends to present a report after only three years to the European Parliament and the Council which would include both a quality assessment and a cost/benefit analysis.

4. Summary and conclusions

4.1. In general the Committee can endorse the Commission's intention to create an adequate statistical basis for both passenger and goods transport by rail. The Committee is particularly pleased to note the Commission's intention to include data on safety in the statistics to be collected.

4.2. The present draft regulation presupposes that the extra costs involved in the collection of the data will be entirely borne by the Member States. Given the experience with a similar regulation on collecting statistics for road transport (Regulation 1172/98) under which funds are made available by the Community to the Member States for the purpose, the present proposal seems somewhat curious.

4.3. The Committee asks the Commission to consider an extension of the deadline for an evaluation of the regulation from the proposed three years to five years. The Committee does not think it realistic to expect a thorough assessment of the effectiveness and quality of the statistical data collected after such a short period, or to be able to present a reasoned report to the European Parliament and the Council.

4.4. The Committee recommends exploiting all technological potentialities for the collection of statistics. It is thinking in particular of the possibilities opened up by satellite communications. In addition it attaches great importance to keeping the applicant countries and Switzerland of future obligations, so as to further improve the comparability of statistics in the future.

Brussels, 30 May 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 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC'

(2001/C 221/09)

On 14 February 2001 the Council decided to consult the Economic and Social Committee, under Article 175 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 10 May 2001. The rapporteur was Mr Braghin.

At its 382nd plenary session (meeting of 30 May 2001) the Economic and Social Committee adopted the following opinion with 109 votes in favour and 3 abstentions.

1. Introduction

1.1. The proposal in question is intended to promote the alignment of Community law with Articles 6 and 7 of the Aarhus Convention covering public participation in environmental decision-making and access to justice in environmental matters, thus enabling the Commission to meet its own international commitments and open the way to ratification of the Convention by the European Community.

1.2. These articles contain provisions on informing and consulting the public before decisions with an environmental impact are adopted: the proposal mentions a series of amendments to Directive 85/337/EEC ('the EIA Directive') on the assessment of the environmental impact of certain public and private projects, and to Directive 96/61/EC ('the IPPC Directive') on integrated pollution prevention and control, as

regards the authorisation of categories of industrial activities listed in the relevant annex.

1.3. Action at Community level is deemed to be necessary to ensure that the procedures governing public participation in the environmental decision-making process are uniform in all Member States, leaving it to the Member States themselves to define the practical ways of implementing them.

1.4. Since all the Member States and the Community have already signed the Convention, the proposal should not give rise to additional costs for the Member States apart from those arising in any case from transposing the Convention's provisions into national law. However, there are likely to be costs connected with the more widespread dissemination of information, with the organisation and analysis of contributions (envisaged also in the form of opinions) deriving from public participation, and with possible consultation of the public through public-opinion surveys and subsequent publication of the decisions taken.

2. Comments

2.1. The Committee thinks the Commission is right to attach importance to providing the public with environmental information, first with its proposal to amend Directive 90/313/EEC⁽¹⁾ and now with the present draft directive on public participation in the drawing up of certain plans and programmes relating to the environment. The subject is highly important politically and has some technical and political content; the Commission has taken account of this in the specific amendments proposed for Directives 85/337/EEC and 96/61/EC to bring them into line with the content and spirit of the Aarhus Convention. This effort to achieve consistency and precision — including terminological precision — explains why in some respects the proposal goes beyond the content of the Convention, whereas in others it does not fully comply with it — see the points below.

2.2. The Committee agrees that it is necessary to align Community rules with the provisions of the Aarhus Convention as regards access to information (the first pillar — see above), public participation in the decision-making process (second pillar) and access to justice in environmental matters (third pillar) — aspects covered in the present draft directive — and endorses the effort to eliminate any legal disparities between the Member States and to define homogeneous procedures for action.

2.3. The Committee takes the view that the citizen has a right to information, which should be provided in the most appropriate manner and timescale, providing the public with a real, constructive participation instrument and avoiding unnecessary commitments and burdens for the public authorities and distortions in the performance of important economic activities. This aspect must be borne in mind when assessing the effectiveness of the proposed measures.

2.4. The definitions of 'the public' and 'the public concerned' given in Article 2, paragraphs 4 and 5 of the Aarhus Convention constitute an important step in the direction of harmonising the national systems. The Committee would however point out that the definition of the public concerned remains vague: those who have an interest in the said procedure. It is not specified that the interest must be direct and practical, and in every case recognised by national law.

2.5. The proposal envisages that non-governmental organisations which promote environmental protection and satisfy the requirements of national law should be deemed to have the interest referred to in point 2.4 above. The Committee regards the phrase 'meeting any requirements under national law' as too generic, and suggests that a definition be found which links their participation to specific related environmental interests.

2.6. The Aarhus Convention, dealing with information in the context of public participation, calls for the safeguarding of legitimate interests such as the confidentiality of personal data and of commercial and industrial information, intellectual property rights, and the need for consent to the dissemination of information if the party concerned is not bound by existing rules to make them public (Articles 6(6), 4(3) and 4(4) of the Convention). The proposal does not deal with these aspects under the heading of dissemination of environmental information, and the Committee takes the view that it is desirable to safeguard such interests without going beyond the limits properly set by the Convention⁽²⁾.

2.7. The Committee agrees that it would be desirable to include⁽³⁾ an obligation upon Member States to set up, as part of their national law, a procedure for appeals to a judicial body or another body set up by law; such a procedure must be rapid and not over-burdensome, with fixed, short deadlines. Given that principles and conditions for access to justice in environmental matters arising from decisions by public authorities already exist in national legal systems, the Commission should make proposals for greater harmonisation of national provisions.

2.7.1. The proposed directive lays down an indisputable right to contest the legitimacy (in substance or procedure) of any decision or act, for any body or person affected (or potentially affected) by the authorisation procedure (Article 2.1) or by the decision-making procedure relating to the issuing or updating of the authorisations or their conditions (Article 3.1 b.14). The present wording of the proposal therefore allows someone whose right to participate in the procedure has not been respected to appeal, not only to

⁽¹⁾ COM(2000) 402 final of 29.6.2000, on which the ESC gave its opinion on 29 November 2000 (CES 1408/2000 in OJ C 116, 20.4.2001, p. 43).

⁽²⁾ ESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information, CES 1408/2000 — 2000/0169 (COD), 29 November 2000, in OJ C 116, 20.4.2001, p. 43.

⁽³⁾ As an Article 10a in Directive 85/337/EEC and as an Article 15a in Directive 96/61/EC.

contest a procedural error but also to contest the substantive legitimacy of the procedure. It follows from this that in operational terms it could encourage appeals intended solely to slow down administrative procedures, with increased costs and an unjustified resort to legal disputes.

2.7.2. According to accepted legal principles, the opportunity to contest the substantive legitimacy of an act must be guaranteed for anyone wishing to protect specific rights safeguarded by law; it must not be confused with the possibility of appeal on procedural grounds, or on grounds of neglect. The Commission proposal should therefore distinguish clearly between cases of access to justice to contest procedural legitimacy from cases relating to substantive legitimacy.

2.8. The Committee recognises the desirability of taking into account the problem of public information and participation with regard to decisions which can have cross-frontier effects, although this is not covered by the Aarhus Convention. In order to be practicable, the proposal should lay down the principle of balance between the various legitimate interests involved, so as to avoid any abuse of this instrument on the basis of presumed cross-frontier environmental effects, at the expense of the social and economic interests of the country

where the decision must be taken or the authorisation granted, and so as to clarify the problem of languages and translation costs, thereby avoiding excessive costs and time-lags. The Committee thinks it desirable for the Commission to receive periodic reports from Member States on the implementation of this provision.

2.8.1. The Commission is called upon to ensure that, in the context of the enlargement negotiations, the public's right to information and participation in plans and programmes relating to the environment is guaranteed, in accordance with the terms of the directives currently being amended, and in particular to ensure that there is an effective procedure for dealing with cross-border problems.

2.9. The assessment criterion for substantial modification and/or enlargement of a plant or a production process, as expressed in Article 3(1)(a), is not sufficiently clear and can give rise to confusion. It would be more logical to maintain the definition of substantial modification given in Article 2 of Council Directive 99/13/EC of 11 March 1999 on limiting the emissions of volatile organic compounds (VOCs), which relates *inter alia* to plant coming within the scope of Directive 96/61/EC.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on:

- the 'Commission Report to the Council and the European Parliament on the quality strategy for olive oil', and
- the 'Proposal for a Council Regulation amending Regulations No. 136/66/EEC and (EC) No 1638/98 as regards the extension of the period of validity of the aid scheme and the quality strategy for olive oil'

(2001/C 221/10)

On 19 January 2001 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned report and 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 10 May 2001. The rapporteur was Mr Barato Triguero.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion by 110 votes to one with five abstentions.

1. Introduction

1.1. The Economic and Social Committee has drawn up an opinion on the Commission's proposal on the extension of the aid scheme and the quality strategy for olive oil. It also makes appropriate comment on the report on the quality strategy for olive oil, given its influence on the future CMO (common market organisation) arrangements for olive oil.

1.2. The ESC also wishes to highlight the social importance, both historically and in the present, of olive production, which is part of the culture of many regions of the Union.

1.3. The primary objective of any CMO is indisputably to preserve production and the social fabric it supports. Olives have been and remain a basic element in the economic and social life of the producer regions. Their location and concentration in some of the Union's most depressed regions, their vital employment role in many regions (accounting for 90 % of farm employment in some), the high number of farms depending on the crop, the associated processing industry etc. place olives at the heart of the economic and social life of such areas⁽¹⁾.

1.4. The ESC would point out that olive production represents a stable source of employment, supported by the current CMO. Countless olive-producing farms provide income both for workers and small producers in areas with no alternative employment. Any modification of the current CMO which failed to take account of this fact could have a negative impact on employment, with an ensuing loss of population and territorial imbalance⁽¹⁾.

1.5. Olive groves represent a crop of major ecological and environmental value. They often serve to protect against soil erosion and provide nesting areas and food for birds and hoofed animals.

1.6. The ESC would argue that as the southernmost productive wooded areas in the EU, olive groves play a key social and environmental role in areas where they could not, or could not easily, be replaced with other crops, and help rural populations to continue living in the countryside.

1.7. The EU leads in olive oil production, with 74 % of the world total. As such, it underpins the work and income of many farms.

1.8. The ESC would stress the nutritional and health importance of olive oil in preventing disease, and not only of the cardiac and cardiovascular type; consumption should be encouraged worldwide in view of the innumerable benefits it provides.

1.9. Regarding quality, the Commission must propose clear rules to the Council to guarantee olive oil authenticity, by improving consumer information with a labelling system which prevents confusion⁽¹⁾.

1.10. The ESC wishes to indicate its interest in the following to the Commission:

- certification and safeguarding of olive oil quality;
- enhancing the quality and reducing the environmental impact of production;
- improving sector and market management.

⁽¹⁾ CES 600/97 — OJ C 287, 22.9.1997.

2. The proposal

2.1. General comments on the proposal

2.1.1. The ESC considers that the Commission's proposal to extend the current support system for the sector for a further two marketing years, while gathering more detailed information on the state of olive-growing, is the best decision at present. Given the current lack of data indicated by the Commission, it would be inappropriate to carry out any other kind of reform until there is greater knowledge of the sector. Many of the factors requiring a transitional CMO in 1998 remain unresolved.

2.1.2. The ESC believes, however, that this two-year period should be used to improve a number of aspects and adjust the present regulation of the European olive oil market, by immediately acknowledging present conditions. The Commission should also urge the Member States to complete their work on the Geographical Information Systems (GIS) and other systems which enhance monitoring.

2.1.3. This period should also be used to implement more flexible machinery, to ensure that the market is not affected by lengthy price slumps: producers have been left vulnerable to market turbulence since public aid was abolished under the 1998 reform, which basically affects family-run farms and less productive areas.

2.1.4. The aid scheme for table olive producers has helped to stabilise markets, make them more transparent, improve verification and boost employment. All the producing countries have progressively adhered to the voluntary option of directing aid to the table olive sector: this option should therefore be retained in the CMO to come into force from 1 November 2001.

2.1.5. The ESC warmly welcomes the Commission's decision to give close consideration to the quality strategy for olive oil in the EU, believing that this should represent the main objective of CMO reform over the coming years. The ESC shares the Commission's concern to boost transparency, crack down on fraud and provide consumers with more information to help them choose which oil to buy.

2.1.6. In this regard, the proposals to rationalise the number of designations, particularly at retail level, appear sound, provided that they are backed up with the necessary efforts for consumers to be fully informed of the choices the market provides and the real differences between such choices. Action of this kind could increase general knowledge of the properties of the different types of olive oil among both existing and potential consumers.

2.1.7. Since the present CMO restricts eligibility for aid to olive groves planted before 1998, the ESC proposes that in order to prevent the amount of aid being affected, the control methods be broadened. This would guarantee that aid is channelled only to olives and oil from eligible groves.

2.1.8. Without prejudice to the above comments, in view of the length of the Commission report, the ESC has analysed the main aspects of the document in greater detail.

3. The report

3.1. Comments on the report

3.1.1. Comments on the introduction

3.1.1.1. From the outset of its analysis of the situation in the sector in the EU, the Commission voices its preference for giving priority to aspects bearing on quality strategy before launching upon a proposal for definitive reform. Control and organisation of the sector also feature prominently in this part of the document. Dislocations are detected in the formation of prices for olive oil which are not in line with the quality expected by consumers, with considerable overlap between categories.

3.1.1.2. The Commission is aware that some decisions, such as those regarding oil designations, may be challenged by certain subsectors of the industry, but has decided to press ahead with its proposal because aspects such as labelling which accurately reflects package contents, and the development of analysis techniques for better identification of olive characteristics, justify this type of initiative on quality strategy for olive oil and table olives.

3.1.2. Analysis of the present situation (section 1)

3.1.2.1. Rules and standards (1.1)

3.1.2.1.1. The ESC endorses the aim of carrying forward the application and development of existing standards on olive oil, such as Directive 2000/13/EC on labelling, and on the guarantee of product authenticity. However, it believes that the Commission will fail to achieve its aim in full unless this is accompanied by a blanket prohibition across the EU on

offering consumers lawful blends of olive oil with other vegetable oils. The ESC is aware of the legal difficulties which could arise from a blanket prohibition throughout the EU on blending olive oil with other vegetable oils, but feels that the positive effects in terms of market transparency might justify the work involved. Given the health-promoting nature of the product, the ESC urges that efforts be made to make olive oil more accessible to lower-income consumers.

3.1.2.1.2. The ESC believes that under present circumstances, in which consumers are insufficiently familiar with the oils available on the market, using acidity as the classification parameter could, in some cases, confuse consumers and lead them to make wrong judgements. For this reason, it considers that the packaging of currently designated 'olive oils' should not indicate their degree of acidity, since they are obtained from a blend of refined and virgin oil. This would prevent acidity being perceived in inverse proportion to quality by consumers. Natural acidity is in fact one of the final quality parameters for virgin oils.

3.1.2.1.3. Over recent years, the production sector has accomplished major efforts to adjust its equipment to the more modern extraction processes which have enhanced the quality of the oil obtained and minimised the environmental impact of mill operations. In the light of this, the ESC would urge the Commission to allocate the bulk of the 1.4 % currently withheld from production aid to promoting olive oil, under the sector's supervision. This comment should not be taken to imply giving up the use of phytosanitary treatments in areas of endemic infection, as this is necessary to maintain product quality, but should be effectively supervised by specialist personnel and carried out only when necessary.

3.1.2.2. Market situation (1.2)

3.1.2.2.1. The ESC believes that analysis of the market situation should extend beyond the sector's operators and olive oil categories. The opportunity presented by the forthcoming reform of the CMO should be taken to correct or address points such as obvious market distortions or the ineffectiveness of the present private storage system.

3.1.2.2.2. *Operators and their organisations (1.2.1)*

3.1.2.2.2.1. The high number of producers in the EU warrants efforts to encourage them to join together. Consolidation can boost the functions of these producer organisations and foster a more organised structure for production from the bottom up, thereby mirroring the process of industrial

concentration under way in the sector. In the ESC's view, a number of functions must necessarily be performed by the appropriate authorities, such as monitoring of aid and its recipients.

3.1.2.2.3. *Categories of olive oil produced and sold (1.2.2)*

3.1.2.2.3.1. The ESC agrees with the Commission that technical developments have brought about a considerable reduction in the production of lampante categories. Bearing in mind that olive harvesting is influenced by weather and climate, significant percentages of defective or lampante oils cannot be completely avoided.

3.1.2.3. Quality factors (1.3)

3.1.2.3.1. The proposal to draw up a Community-wide code of good olive cultivation practice covering both olive groves and mills could provide an incentive to promote oils produced in accordance with the code, as this would be indicated on labels. In any case, the code should be drafted in full agreement with the relevant subsectors, to ensure that it can be put in practice.

3.1.2.3.2. Emphasis must continue to be placed on replacing conventional pressing systems, which produce an effluent which is highly polluting for water and require prior decantation which also has an environmental impact, with modern centrifuging extraction systems, under which the rich residue can be further exploited to obtain olive-pomace oil.

3.1.2.3.3. Oils obtained by exhausting pulp by physical means away from the mills in which oil is extracted from the olives as harvested is of lower quality. On account of the length of time since initial extraction, certain values can often significantly exceed those considered normal for quality parameters. These oils could therefore be placed in a lower category, as for example the Commission suggests for olive-pomace oils.

3.1.2.3.4. Olive paste, once processed in mills, retains a percentage of oil which can be extracted by chemical or physical processes. With a view to improving control of the quantities produced and the aid granted, it would seem appropriate to propose at this stage that the current flat-rate aid for olive-pomace oil production be replaced with a new procedure reflecting the quantities actually produced.

3.1.2.3.5. The ESC shares the Commission's view that all oils derived from pomace should be described as crude olive-pomace oil, and regrets that the opportunity has been missed to introduce payment of the aid for olive-pomace oil on the basis of the actual quantity produced. This would also help to ensure more effective supervision of the quantities of olive oil produced.

3.1.2.3.6. Regarding the possible uses of pomace, in addition to obtaining pomace-olive oils, thought should be given to using the substance as an organic fertiliser (after composting), particularly in areas of predominantly chalky or high pH soils. This would reduce the use of synthetic chemical fertilisers and the energy costs involved in producing them would be saved. The costs of transporting a pulp such as pomace, which has a high water content, would also be saved.

3.1.2.3.7. *Oils sold for consumption (1.3.3)*

3.1.2.3.7.1. Aware of the low level of consumer knowledge concerning the quality and types of olive oil, the Commission proposes to clarify and reduce the number of current designations at both the wholesale and retail levels. The ESC welcomes the Commission's stance, and it is to be hoped that its proposals will be sufficiently understood by consumers, for whom the suggested changes are basically intended.

3.1.2.3.7.2. There is a clear lack of analytical procedures for identifying specific lawful blends of olive oil and determining the proportions involved. The most sensitive point of the Commission proposal under this heading is the present use of the term 'olive oil', which is at the same time a generic designation and a specific category.

3.1.2.3.7.3. This overlap introduces an element of confusion which should be removed. This could be achieved by selecting a new term for the present 'olive oil' category (blend of refined and virgin oils), adding some qualification — with neither a negative or a positive connotation — which clearly distinguishes it from the generic term olive oil. Given the possible economic repercussions for some of the subsectors involved, the ESC proposes a prior survey of consumers and users to sound out their reaction to a possible change in the current designation of olive oil. In any case, efforts must continue to raise the profile of higher-quality oils and allow base prices for the different categories of olive oil to be more clearly differentiated. In so doing, it must be borne in mind that because of their unique production process, higher-quality oils generate more employment, require shorter processing times and are more environment-friendly.

3.1.2.3.7.4. A temporary compromise solution might be to retain the 'olive oil' category until the study is completed, but for labels to include the expression 'refined and virgin olive oil' in clear lettering, $\frac{2}{3}$ of the size of that used for the 'olive oil' designation. This would give consumers an extra element of choice in comparing olive oil prices and qualities. The compromise could be accompanied by further research into analytical methods to enable the proportions present in blends in each batch to be identified, or at least using tracers combined with random checks.

3.1.2.3.7.5. The ESC agrees with the Commission on the need to stamp out practices such as deodorising lampante oils for subsequent direct consumption: they constitute economic fraud for consumers and unfair competition for other producers and packagers.

3.1.2.3.7.6. The sector's image is tarnished by the cases which have been revealed of blends of seed oil with olive oil, fraudulently sold as 'olive oils'. If unscrupulous operators are not to be tempted, it is essential for this latest, quality-oriented reform to impose a blanket prohibition across the EU on the production and sale of blends of vegetable oils with olive oil. In any case, a tightening-up of the labelling rules is necessary.

3.1.3. Suggested approaches (section 2)

3.1.3.1. Classification of olive oil (2.1)

3.1.3.1.1. The Commission's proposed amendment to the Annex to Regulation No. 136/66 on the designation and definition of olive oils introduces a new term in the wholesale trade (crude olive oil) to designate all virgin oils, and abolishes the ordinary category. The ESC considers the amendment to be acceptable since the quality parameters, such as acidity, which must be met for a given designation are stricter.

3.1.3.1.2. The current 'olive oil' category, which the Commission proposes to describe as 'standard', also covers blends of refined and virgin oil. Since the refining process enables the degree of acidity to be verified in the refined oil element, acidity should be regarded exclusively as an upper limit (1°) which may not be exceeded. At consumer level, however, and in order to avoid confusion, acidity should not be considered as a sign of quality: in the ESC's view, therefore, this parameter should not appear on labelling.

3.1.3.1.3. The ESC welcomes the Commission's proposal to impose a maximum limit of 5 litres on packages for the retail trade, in order to step up safeguards regarding the quality of oil consumed by consumers.

3.1.3.1.4. Directive 2000/13/CE further develops and updates labelling rules for foodstuffs. Moves to standardise label contents will be helpful, provided they do not involve repetition, and particularly on condition that any claim made on a label can be proved by the company responsible for the packaging. If left unregulated, the proliferation of descriptions and claims on labels could confuse consumers. The ESC therefore recommends that information included on labels or back labels be brought into line with existing law, and in any case that optional indications can be checked by the official supervisory bodies in each Member State. In this regard, certain marketing approaches which push the truth to the limit should be reigned in.

3.1.3.1.5. The optional designation of origin in the virgin and extra virgin olive oil categories is worth mentioning. Indication of origin would boost clarity and transparency.

3.1.3.1.6. The Commission's proposals on restricting the option of indicating regional origin of virgin olive oils produced in the EU exclusively to Protected Denomination of Origin (PDO) and Protected Geographical Indication (PGI) are inadequate. The possibility of indicating origin, defined as the place of origin of the olives, should be extended to all virgin olive oils.

3.1.3.1.7. This possibility would ensure that the origin of olive oils from each region or Member State would have to be determined regardless of where the product was eventually packaged. This approach would also distinguish EU-produced olive oils from imports from third countries.

3.1.3.2. Analytical checks (2.3)

3.1.3.2.1. The ESC shares the Commission's opinion on the need to improve the accuracy of the analyses carried out on olive oil in order to prevent or detect improper blends.

3.1.3.2.2. Panel testing remains a valid method for qualifying olive oils, despite its high cost per unit sampled. However, the significant element of subjectivity and randomness in the current analysis should offer sufficient reason for more intensive efforts to devise an alternative, more reproducible,

method of analysis. The Community therefore needs to adopt the new IOOC (International Olive Oil Council) method while research designed to improve it continues.

3.1.3.2.3. Oils to be submitted for analysis should include all those marketed within the EU, in order to avoid practices such as bulk selling which still continue in certain producer countries for final consumption. This represents a worrying proportion of total production. The practice should be stamped out in order to provide consumers with a guaranteed product.

3.1.3.3. Operators' organisation and activities (2.4)

3.1.3.3.1. The most efficient approach would appear to be to organise the olive oil production sector by strengthening and extending the role of existing producer bodies in the sector, in order to harness the level of integration producers have achieved.

3.1.3.3.2. Extending the scope of these bodies' involvement would be one way of optimising existing organisational resources. This may not however be universally applicable, and in the ESC's view aspects such as preventing fraudulent labelling must be the exclusive responsibility of the appropriate authorities.

3.1.3.3.3. Sector and market management might be one of the new functions for the sector's producer organisations most worthwhile pursuing. The way they are spread across the various production areas means they have direct access to highly reliable information. Duly processed, this information can play a key role in enhancing market trend forecasting, sales decisions, transition from one marketing year to another etc., thereby optimising use of resources and avoiding major price fluctuations on the olive oil markets.

3.1.3.3.4. Environmental management of the products and subproducts of the olive oil cycle, including action such as the phytosanitary treatments needed to maintain quality, is another area to which the functions of producer organisations might be extended.

3.1.3.3.5. In any case, there must be the greatest possible degree of cooperation between producer organisations and the appropriate authorities, as well as between Community, national, regional and local authorities, with a view to ensuring that measures taken comply with the relevant legislation.

3.2. *Comments on the operational conclusions of the report*

3.2.1. Following a one-year transitional period, labelling will have to comply with the specifications arising from the CMO applicable with effect from 1 November 2001. This should also be the deadline for making it mandatory to retail olive oil in packages of not more than 5 litres fitted with a non-reusable seal, designed to make refilling impossible.

3.2.2. The ESC is pleased that the Commission acknowledges the enormous promotional and research work being carried out by the IOOC, but regrets that this is not reflected more widely in areas such as promotion in the internal market, and that its research budget has not been increased.

3.2.3. The ESC proposes that, in the light of the IOOC's international experience with olive oil and given the huge importance which a change of designation can have for the external and internal promotion of olive oil, the body's views should be heard before making any such changes.

4. **Final comments**

4.1. The ESC wishes to draw attention to the importance of the olive oil sector in the EU and, consequently, to the need

for a CMO which helps maintain production as a means of achieving appropriate development of the rural environment.

4.2. The ESC supports the Commission's plan to extend the current CMO for a further two marketing years, since systems providing a complete picture of the sector have not yet been completed. However, certain instruments such as private storage, which have been revealed as ineffective in periods of low market prices, must be corrected.

4.3. The ESC welcomes the Commission's aim for consumers to be better informed on the olive oils offered on the market, and the opportunity to amend a number of designations, as part of a quality strategy for olive oil. A start should be made on these approaches in the near future: there is no need to wait a further two marketing years to implement them.

4.4. The ESC advocates stepping up research in the sector with a view to obtaining higher quality oils and boosting exports.

4.5. It is essential, in the ESC's view, to continue and intensify the EU's promotion policy for this sector, in terms of both market regulation and increasing olive oil exports.

Brussels, 30 May 2001.

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 and the European Parliament on the welfare of intensively kept pigs in particular taking into account the welfare of sows reared in varying degrees of confinement and in groups', and
- the 'Proposal for a Council Directive amending Directive 91/630/EEC laying down minimum standards for the protection of pigs'

(2001/C 221/11)

On 29 January 2001 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above mentioned communication and 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 11 May 2001. The rapporteur was Mr Nilsson.

At its 382nd plenary session on 30 and 31 May 2001 (meeting of 31 May), the Economic and Social Committee adopted the following opinion by 73 votes with two abstentions.

1. Introduction

1.1. The protection of pigs is a matter of Community competence. Council Directive 91/630/EEC lays down minimum standards for the protection of pigs. In accordance with Article 6 of the Directive, by 1 October 1997, the Commission had to submit a report to the Council dealing specifically with the welfare of sows. The report was drafted by the Scientific Veterinary Committee, and provides the basis for the Communication and the revised rules the Commission now proposes in the Communication and proposal for a Directive⁽¹⁾.

1.2. Article 5 of Council Directive 91/630/EEC provides that its Annex can be amended under a procedure whereby the Commission may propose amendments to the Annex without consulting the EU institutions. The aim, according to the Directive, is to be able to take account of scientific progress more rapidly. The Annex contains a number of minimum rules for pig farming.

1.2.1. Accordingly the Commission is now putting forward a proposal for amendments to Directive 91/630/EEC. At the same time, a proposal for amendments to the Annex of the Directive is being drafted for submission to the Standing Veterinary Committee. This second proposal can then be adopted directly by the Commission if it broadly complies with the Standing Veterinary Committee's opinion.

1.2.2. In recent years there has been an increasingly intense debate within the EU on animal welfare. The ESC therefore welcomes the Commission Communication and Proposal for amendments to the current Directive. However, it regrets that the proposed amendments to the Annex are not to be submitted to the EU institutions for the usual consultation as part of the legislative procedure.

1.3. European agriculture is going through turmoil because of foot and mouth disease which is highly contagious among animals. Agriculture has been hit by crises such as BSE and dioxin poison in animal feed, and consumers now question the safety of food production. It is absolutely crucial to regain and boost consumer confidence in European agricultural production methods. Several ESC opinions have expressed their strong support for this. The Commission proposal to improve the welfare of sows must be seen as a first step in this direction.

1.4. Pig farming in the EU is not strictly regulated. The common organisation of the market in pigmeat is very liberal, and only includes two market support measures, i.e. export subsidies and support for private storage.

1.4.1. This means that farmers who keep pigs have to live with the price fluctuations of the market. In 1998 and 1999, prices were at exceptionally low levels. The crisis reached unheard of proportions when, in 1998, prices to producers sank by 27 %, and by 6 % in 1999. They thus reached a new all-time low, and were below production costs.

1.4.2. In 1999 the Commission, with a view to reducing the impact of future price fluctuations, proposed voluntary arrangements to enable the Member States to establish producer-funded regulatory funds⁽²⁾.

1.4.3. Pig farming is sensitive to changed production costs. It must be possible to pass these costs on to the market if animals are to be reared ethically and sustainably.

⁽¹⁾ COM(2001) 20 final.

⁽²⁾ COM(2000) 193 final and CES 1009/2000, OJ C 367, 20.12.2000, p. 40.

1.5. Consumers are right to demand safe food and ethically sound production methods which allow livestock to live a healthy, natural life and meet animal health and welfare requirements.

2. The Commission Communication and proposal

2.1. In 1997 the European Commission adopted a report from the Scientific Veterinary Committee and its section for animal health and welfare on intensively kept pigs, and various proposals to amend EU legislation in order to protect pigs and improve conditions for them.

2.2. The proposal prohibits the confinement of sows during most of their pregnancy to individual stalls which restrict their freedom of movement. It also sets out rules to improve the general living environment of pigs and especially piglets, setting requirements for living space, floor surfaces and proper feeding systems. New requirements for training of pig handlers are also introduced. In addition the Commission is proposing tougher regulations for noise and light levels, access to food and materials for rooting, timing of weaning of piglets, and minimum flooring surfaces.

2.3. The Communication reveals the considerable discrepancies in Member State production. Five Member States have 72 % of the total sow population. The biggest producer countries are:

- Germany (20,4 % of total number of sows)⁽¹⁾
- Spain (19,8 %)
- France (11,6 %)
- Netherlands (10,4 %)
- Denmark (9,9 %).

2.3.1. At the same time there is huge variation in herd size. In the Netherlands, 90 % of herds have more than 100 sows, whereas in Germany 40 % have less than 10. In Italy 80 % of the herds have less than 10 sows.

2.3.2. Some countries also tend to concentrate pig production in certain geographic areas, where animal density is higher than levels deemed to be ecologically sustainable (1,4 animal units per hectare).

2.4. The findings of the report also confirm the Communication's assertion that 65 % of all pregnant sows are housed individually, and of these, 60 % do not have access to materials for rooting.

2.5. Existing herds will be covered by a ten year transition period (until 2012) to implement the proposals. However, a number of key measures will apply from 1 January 2002 to all newly-built or rebuilt holdings. There will be a derogation for holdings with less than 10 dry pregnant sows, but this does not include the point relating to pig feed requirements.

2.6. Investment in buildings and technology to improve animal welfare is eligible for support from the European Agricultural Guidance and Guarantee Fund.

3. General comments

3.1. The ESC welcomes the Commission Communication and Proposal and endorses the broad thrust and proposals. The ESC regrets, however, that it has taken the Commission so long to present its proposal since the Scientific Veterinary Committee submitted its report in 1997. The ESC also condemns the fact that the proposal is limited to dry sows and does not include farrowing and suckling sows. The ESC also takes a critical view of the fact that only the Standing Veterinary Committee is to be consulted on the proposed amendments to the Annex, rather than all the EU institutions.

3.2. EU pig production is dynamic and competitive. The EU is the world's largest exporter, and in 1999 it exported 1,5 million tonnes to third countries, mainly at current world market prices. Imports are less significant and total 65 000 tonnes. The sector is very important economically, and accounts for some 11 % of the EU's total agricultural output.

3.3. At the same time, pig farmers have to adapt to world market prices, and this has brought significant economic hardship over the last two years.

⁽¹⁾ Eurostat 1999.

3.4. Pigs are social animals. The Scientific Report gives a comprehensive account of available experience and research into the welfare of pigs. It describes the consequences of not respecting the physiological and behavioural needs of pigs. There can be a conflict of objectives when requirements relating to behaviour, health, the environment and economic factors are weighed up. At the same time, rapid structural streamlining and development of technology is under way. This, together with requirements on ethically sound animal husbandry, means that common minimum standards are needed.

3.5. In pig farming, there are different needs depending on which stage of the lifecycle the animal is at. A 'sow' has had a litter. A 'dry pregnant sow' is a sow whose previous litter has been weaned, and which is pregnant again and ready for farrowing. A 'gilt' is a young pregnant sow which is about to farrow for the first time. Most pigs have been raised as 'fattening pigs'. Each of these different stages has special requirements for the animal's needs.

3.6. Legislation and regulations for the protection of pigs also vary between Member States. In some countries, there are much stricter legal requirements. At the same time, the retail sector has introduced marketing rules and regulations which will impact directly on the market and on pig feeding and production procedures.

3.7. The report underpinning the Commission's position also shows that there are still shortcomings in animal housing, and that animal protection requirements need tightening up. The report makes no fewer than 88 different recommendations, the bulk of which have been endorsed by the Commission.

3.8. The increased accommodation requirement for fattening pigs is one major exception. The report proposes that the minimum space requirements for fattening pigs should be increased. Here, the Commission prefers to wait for the next report, which is suggested to be submitted in eight years' time. This is an important issue from the point of view of animal protection, but also for consumer confidence in production. Insufficient space for the animals leads to tail-biting, which is remedied by tail docking. An increased minimum area could therefore mean that tail docking is required less often. However, this presupposes that producers are allowed an adequate transition period, as is the case with some of the other proposed amendments to the Directive. In particular, the case for more spacious accommodation for fattening pigs could be made when new holdings are being built.

3.9. The Committee fully endorses the proposal to forbid definitively the use of confinement for sows and gilts, and confinement for dry pregnant sows, whereby the animal has to stay in a fixed position and has no room to turn around. This does not apply where there are temporary medical reasons, for example. This is only fair from the animal protection standpoint, but a certain amount of space to move around is still required.

3.10. The Commission reveals the report's economic calculations of its proposals. This is commendable and of considerable importance since producers have to live with price/demand fluctuations, and with very small production cost margins. However, the ESC calls for a better, more reliable analysis of how much the proposed measures will cost farmers.

3.10.1. The calculations do, however, make some strange assumptions. For example, they say consumers are not willing to pay for better animal welfare when imports from third countries where animal welfare standards are lower cannot be restricted.

3.10.2. Production of any kind can only take place if income covers costs. If binding rules increase production costs, then this must be covered by income, i.e. price. Otherwise production is neither sustainable nor possible. It is both counterproductive and illogical to require European pig farmers to comply with certain legal requirements and standards if consumers are not prepared to pay for these animal protection requirements. Intra-EU requirements must also correspond with those applied to imports.

3.10.3. The Committee feels that the question of animal welfare must be tackled and pushed through in WTO negotiations. Regrettably, the report does not address this, since it is a thorny, complex issue. There is unfortunately reason to fear that the WTO will not respond to European animal welfare concerns.

3.10.4. At the same time, requirements which improve animal welfare can yield better financial returns, as the animal is contented and therefore grows faster and better. However, taken as a whole, the Commission's proposal will lead to increased investment and running costs for pig farmers.

3.11. The Committee would also like to discuss the fact that the communication deals with pig welfare in 'intensive pig-rearing systems'. In a general sense it could be interpreted

to mean large holdings. But it is not entirely logical. Intensity is not always linked to size. Large holdings can have both well-trained handlers and good animal welfare standards. But this is not automatically the case either. Logically, the communication and the proposal should cover all pigs, regardless of production system.

3.12. The Scientific Report also calls attention to the fact that animal health is of vital importance to good animal husbandry and animal welfare. It establishes the fact that infectious diseases are an important problem for animal protection. Many diseases often have several different causes. The ESC feels that the importance of preventive healthcare must be highlighted more clearly, since care for the animal and an appropriate environment can produce healthy animals, thus helping to avoid or reduce the risk of disease outbreaks. These measures also make it possible to avoid preventive antibiotic treatment. The absence of disease is not just an important factor in animal protection; it is also important for good production.

3.13. As stated above, the Commission intends to propose at a later stage amendments to the Annex to Directive 91/630/EEC without going through the usual consultation procedure. The Annex contains a number of rules for different operations on swine such as tooth-clipping and castration. Nose rings are still allowed. Rooting is one of the most deeply-ingrained traits in pigs. The Scientific Report states categorically that nose rings have a negative impact on animal protection, particularly when the animal is surrounded by stimuli which invite rooting. In Directive 98/58/EC on animal protection the Commission endorses the five principles of freedom; these, *inter alia*, lay down that freedom of movement must not be restricted to the extent that it causes unnecessary suffering. The ESC therefore believes there should be a total ban on nose rings for pigs as it runs counter to the spirit of the above Directive, since the animal is subjected for a long time to an interference which directly hampers normal behaviour.

4. Specific comments

4.1. Article 1, amendment to Article 3.2 of 91/630/EEC

4.1.1. The Committee fully endorses the proposal for a total ban on the use of confinement for sows and gilts from 1 January 2002. The ESC also notes that farrowing and suckling sows are not covered by the proposal.

4.1.2. Article 1 also implies that there is to be a transition period for existing buildings until the year 2012 as regards requirements for increased pen size for group-housed sows, and for feed delivery systems which provide sufficient food. Although the transition period might seem lengthy, the Committee can endorse it since rebuilding work will have to be undertaken, which means great expense and practical difficulties for many individual producers. The Committee also endorses the obligation for newly built or rebuilt holdings to comply with regulations from 1 January 2002.

4.1.3. Article 1 also states that the requirements on improved floor area size, for example, shall not apply to holdings with fewer than ten dry pregnant sows. The ESC feels that there could be a case for a derogation for small herds. However, since the proposal refers to 'dry pregnant sows', the question is how this will be defined on the farm. The statistics for the number of pigs per agricultural holding are way out of date, and there is a fairly rapid trend towards larger units. If, however, we take the statistics given in the scientific report, 73 % of EU 15 holdings have between 1 and 9 pigs. If, as it seems reasonable to assume, the same applies to dry pregnant sows, then the improved animal protection regulations will not apply to a large number of pigs. This is unsatisfactory. There is no automatic link between bad animal housing/animal protection and large herds. The ESC therefore calls on the Commission to clarify the derogation. One option would be to provide a derogation for holdings with ten sows in production. Another is to apply the rules to all animals, regardless of herd size.

4.1.4. The Committee welcomes the requirements to provide both manipulable material for all sows, and feed that also satisfies their need to chew.

4.2. Article 1, insertion of a new Article 5a in 91/630/EEC

4.2.1. Here the Commission proposes new requirements for instructions and guidance, and appropriate training courses for any person attending to the animals. The Committee endorses this. But it must be borne in mind that there are already properly trained stockmen. Any new training requirements must be relevant, and build on the stockman's existing skills.

4.2.2. From an employee perspective, it is important to have proper information and training, and to be offered continuous training in animal husbandry and animal welfare. Safety aspects must also be included, since a large number of serious agricultural accidents happen in connection with animal husbandry, animal transport, etc.

4.2.3. Different certification systems must also be taken into account and efforts made in this area. The need for adequate training must also be provided for when framing Member States' rules.

4.3. Article 1, replacement of Article 6 in 91/630/EEC

4.3.1. In this Article the Commission lays down that Scientific Committee on Animal Health and Welfare shall submit a new report to the Commission not later than 1 January 2008. The report shall cover:

- the effects of stocking density on welfare;
- further developments of group-housing systems for pregnant sows;
- space requirements for adult boar;
- loose-house systems for sows in the service area and for farrowing sows;
- development of techniques to reduce the need for surgical castration;
- consumer attitudes and behaviour towards pig meat in the event of no improvement in welfare.

4.3.2. In view of the transition period up to 2012, the 2008 deadline would seem appropriate. The deadline might seem somewhat lengthy, but the ESC would stress that the changes apply to a very large number of holdings which need to comply. The necessary investment will be made in a sector with very small profit margins. As stated above, the economic situation for producers has been very tight.

4.3.3. However, it cannot be excluded that market demands from consumers and from the wholesale/retail sector will drive the change process more rapidly, with demands for better animal protection in return for access to the market.

4.4. Article 2

Article 2 of the proposal requires the Member States to transpose these legislative provisions into national law. On various occasions the Committee has pointed out shortcomings in implementation, e.g. in its Opinion on Sludge in Agriculture⁽¹⁾.

4.5. The ESC calls on the Commission to review Directive 92/102/EEC on the identification of animals, with particular reference to swine. Implementation of this Directive has been particularly lax, and the current state of the market calls for an updating.

4.6. The ESC would also question the Member States' arrangements for monitoring implementation of the provisions of Council Directive 91/630/EEC. So far, only eight inspections have been reported, and without covering all Member States. This weakens the EU's monitoring system.

4.7. Article 6

Not later than 1 January 2008, the Commission is to submit to the Council a report, drawn up on the basis of an opinion from the Scientific Committee on Animal Health and Welfare. The ESC feels that, in addition to the content proposed by the Commission, the report should also cover the technical and economic consequences of implementing the recommendations. A study should also be carried out to ascertain whether the market can bear the extra costs of the new animal welfare measures.

5. Conclusions

5.1. The ESC welcomes and endorses the Commission proposal. The ESC regrets, however, the fact that it has taken so long, and that the ESC has not also been consulted on the Annex to the Directive. Since any proposals to amend Directive 91/630/EEC could lead to a loss of competitiveness for pigmeat production at European level, the various Community bodies, i.e. the Council of Ministers, the European Parliament and the Economic and Social Committee, must always be consulted on the Commission's proposals.

5.2. The ESC regrets that the proposal does not address the problem of minimum space requirements for fattening pigs.

⁽¹⁾ OJ C 14, 16.1.2001, p. 141.

5.3. The ESC endorses the proposed ban on confinement of sows and gilts, and the use of tethers for sows.

5.4. The ESC calls for a better, more accurate analysis of the cost of the proposal. In its view, it is essential that consumers should be prepared to pay for better animal protection and that imports from third countries should be subject to the same animal protection requirements.

5.5. In the international context, production and breeding conditions differ widely from one region of the world to another. Consequently, production and import regulations must be consistent, and these concerns must be taken on board at international level by the WTO.

5.6. The ESC believes that the proposal should cover all animals, regardless of production system.

5.7. The ESC endorses the proposed requirements on advice, guidance and appropriate training for animal handlers, but would stress that this must build on their existing expertise. Safety aspects and accident risks must also be taken into account.

5.8. The ESC would highlight the question of the level at which control is exercised and the shortcomings in implementation of the Directive.

5.9. The ESC would also point out that the next report in 2008 should also contain economic analyses and a study of the impact of the new rules on the market.

Brussels, 31 May 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 laying down the Community Environment Action Programme 2001-2010'

(2001/C 221/12)

On 21 February 2001 the Council decided to consult the Economic and Social Committee, under Article 175 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 10 May 2001. The rapporteur was Mr Braghin.

At its 382nd plenary session of 30 and 31 May 2001 (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 115 votes to one with two abstentions.

1. Introduction

1.1. The Sixth Environment Action Programme 'Environment 2010: Our future, Our choice' sets out to identify overall objectives and priority actions for the EU's future environment policy. It follows on from a consultation procedure which was initiated by the Commission in November 1999 with the Global Assessment of the Fifth Environment Action Programme ('Europe's Environment: What directions for the future?'), and also draws upon the report on the state of the environment prepared by the European Environment Agency ('Environment in the European Union at the turn of the century'). It was further fleshed out with a wide-ranging series of seminars and consultation meetings. The Committee played an active role at this preliminary stage, drawing up a critical opinion⁽¹⁾ which was discussed in the course of a seminar with a number of academic experts and commented upon in detail by the relevant Commission departments⁽²⁾.

1.2. Rational use of the planet's natural resources and protection of the global ecosystem are vital to sustainable development: given the continued existence of a range of problems, the new programme singles out those environmental aspects which must be addressed if sustainable development is to be achieved. These include climate change, the loss of bio-diversity and natural habitats, soil erosion and deterioration, the growing volume of waste, the accumulation of chemical substances in the environment, noise pollution and a number of air and water pollutants.

1.3. Sustainable development means not only a cleaner environment, but the need to take account of the possible socio-economic implications, with the aim of improving the

general quality of life for EU citizens. It also implies the Community reforming its own system of governance so as to reconcile not only socio-economic and environmental objectives, but also the different ways of achieving them⁽³⁾.

1.4. The new programme seeks to define objectives and targets, explains how it is intended to use Community environmental policy instruments to this end, and highlights the action required in other policy fields. Special emphasis is laid on the need to continue to integrate environmental aspects into policies such as transport, energy and agriculture, and on the importance of land-use planning and regional and local initiatives to promote sustainable development.

1.5. The global assessment gave a mixed picture of the efficacy of EU environmental policy, singling out the incomplete implementation of EC environmental directives by the Member States and the need for stakeholders to take more responsibility for environmental protection efforts. The new programme focuses on two aspects in particular: improving the application of environmental legislation, and creating sustainable patterns of production and consumption by bringing in companies and encouraging them to innovate, and by providing more comprehensive, scientifically-based information for the general public.

1.6. The priority areas for action, which the Commission identifies and defines as facing the greatest problems, are:

— tackling climate change. Objective: to stabilise the atmospheric concentrations of greenhouse gases at a level that

⁽¹⁾ OJ C 204, 18.7.2000.

⁽²⁾ Cf. ESC brochure 2001/2002 (available in English, French and German) which includes the Commission's comments on the ESC's proposals.

⁽³⁾ The Committee is presently drawing up opinions on these specific aspects (sustainability and governance), OJ C 123, 25.4.2001.

will not cause unnatural variations of the earth's climate, by means of a comprehensive approach and close international cooperation;

- nature and bio-diversity. Objective: to protect and restore the functioning of natural systems and halt the loss of bio-diversity in the European Union and globally, and to protect soils against erosion and pollution;
- environment and health. Objective: to achieve a quality of the environment where the levels of man-made contaminants, including different types of radiation, do not give rise to significant impacts on, or risks to, human health;
- sustainable use of natural resources and management of wastes. Objective: to ensure that the consumption of renewable and non-renewable resources does not exceed the carrying capacity of the environment, and to achieve a decoupling of resource use from economic growth by significantly improving resource efficiency, dematerialisation of the economy, and waste prevention.

1.7. The strategic approach therefore seeks to move beyond a purely legislative stance, and to induce the necessary changes in our production and consumption patterns, as well as to encourage a consistent approach between policy-makers working on the environment and those in related fields. The programme puts forward five priority avenues of strategic action which may help in meeting the environmental objectives:

- improving the implementation of existing environmental legislation;
- integrating environmental concerns into decisions taken in other policy areas;
- encouraging closer cooperation with the market, by involving both businesses and consumers;
- empowering citizens and helping them to change their behaviour;
- encouraging better land-use planning and management.

1.8. The Sixth Programme will be applied in the context of an enlarged EU. The applicant countries will consequently need to make a start on implementing Community environmental legislation, with the support of Community financial programmes. Subsequent actions will have to reflect this broader perspective. At international level, it will be vital for environmental issues to be fully integrated into every aspect of the Community's external relations.

1.9. The part of the communication entitled 'Policy-making based on participation and sound knowledge' ties the success of Community environmental policy to: regulation stimulating enterprises to innovate profitably, both in terms of their market and the environment; broad dialogue, supported by sound scientific and economic assessment, based on information and data on the state of the environment and on the pressure and driving forces behind environmental problems; the role of research in helping us to understand the nature of our interactions with the environment and their implications; and a systematic evaluation process in order to improve future policy and implementation. Dialogue between the public authorities at all levels, socio-economic actors and environmental and consumers' associations is also emphasised.

2. General comments

2.1. The Committee welcomes the Commission's proposal and agrees with the key points raised, including:

- the importance attached to environmental issues as an integral part of a sustainable development strategy;
- that environmental policy should become a real and integral part of all Community policies with a direct or indirect bearing on the environment;
- the urgent need for greener land-use planning and management;
- the need for stricter compliance with environmental requirements on the part of Member States and regional and local authorities;
- the advisability of involving and cooperating with business, and of encouraging consumers to opt for more eco-friendly products and patterns of behaviour, as part of a more systematic, long-term vision.

2.2. Under the Commission's chosen approach, the environment action programme limits itself to setting general aims rather than quantified objectives; for each of the four priority areas it simply outlines the problems, defines objectives and lists priority actions. The risk that many of the actions described will remain mere declarations of intent — thwarted by inertia, technical shortcomings and political

resistance — must be forestalled, by establishing time-scales for achieving the identified objectives, the practical arrangements for pursuing them, how the various actions are to interconnect and create synergies, and by specifying how interaction and coordination are to be ensured between Community, national, regional and local authorities.

2.3. The Committee backs the aim of integrating environmental protection more fully into other Community policy areas, and appreciates the work recently undertaken to prepare a sustainable development strategy which would enable periodic checks to be made on the overall results achieved. It would urge that this integration be considered a priority at every official level, in view of the gaps and inconsistencies which remain in spite of the efforts made, and that the work on devising indicators and methods to measure results, which began with the Cardiff summit, be continued within each sectoral policy.

2.4. A dialogue was successfully conducted with all the parties concerned during the preparatory phase of the programme, backed up by reliable scientific and socio-economic assessments using information and data on the state of the environment, the pressures upon it, and the causes of its problems. Dialogue of this kind should serve not only as the working method for proper drafting of the planned implementing measures, but also as an opportunity to check on the implementation of the different actions by those responsible — Community, national or local authorities, economic sectors, or representatives of civil society organisations. The Committee regrets the absence of a 'scoreboard', indicating progress in implementing all the planned measures. Similarly, there is no provision for a preliminary series of indicators which could be monitored immediately, in the light of the assessment of the Fifth Programme. The Committee proposes that the annual reports on the main environmental indicators be supplemented with information on the state of implementation of the planned initiatives, allowing better evaluation of their efficacy.

2.5. The Committee agrees on the urgent need to tighten up the implementation of existing legislation, and backs the Commission's intention of taking more vigorous action in cases of non-compliance. The Committee has commented specifically on implementation and monitoring and inspection instruments on previous occasions⁽¹⁾, and welcomes the Commission's recent moves to 'name and shame' non-compliant Member States. It is also very interested in the proposal to harmonise provisions concerning environmental crime⁽²⁾, on which it will issue a separate opinion. However, it believes that in addition to sanctions for infringement or non-

compliance, it is also necessary to adopt a coherent package of measures encouraging compliance and providing incentives for exchange of best practice, transfer of eco-friendly technologies (which should be fostered by every possible means, tapping the wealth of experience accumulated by Community research programmes), and arrangements for identifying and rewarding good environmental performance by businesses and local authorities.

2.6. Progress needs to be made with implementing existing legislation on the product eco-label and on the adoption of the eco-management and audit scheme (EMAS)⁽³⁾ for businesses, but the Committee does not consider this measure in itself to be enough to bring about ever-greater and more comprehensive respect for the environment. A further creative effort is needed to generate the conditions enabling market mechanisms to recognise ecological added value, and for the public authorities to streamline administrative arrangements, apply a green procurement policy, and foster more environment-friendly product design by offering new types of support specifically for SMEs. The Committee will turn to this specific issue in its opinion on the Green Paper on Integrated Product Policy, currently being prepared.

2.7. The Committee agrees with the Commission's view that subsidies must not, even indirectly, encourage environmentally harmful activities, but should favour the development of design and production processes for environment-friendly products. The financial sector's activities should also be geared to this end. However, the Committee feels that the proposed actions are lacking in substance, and calls on the Commission to give closer consideration, in conjunction with the relevant players, to the possible ways of implementing the actions, singling out instruments to foster and reward innovation and technological transfer of more eco-friendly processes and products under both integrated product policy and vertical provisions.

2.8. The Committee endorses the strategic approach of involving all the relevant social players in achieving environmental objectives, especially by means of educational and training activities, including continuous training within companies and sector associations. The Community must not however stop at expressing this view, or imagine that simply disseminating information is enough: it should become an active player in the process, or Europe may become even more fragmented in this area, mirroring the varying degrees of environmental awareness in the Member States.

⁽¹⁾ Cf. ESC opinions CES 455/97 in OJ C 206, 7.7.1997 and CES 448/99 in OJ C 169, 16.6.1999.

⁽²⁾ Proposal for a Directive of the European Parliament and of the Council on Protection of the environment through criminal law (COM(2001) 139 final).

⁽³⁾ Cf. ESC opinion in OJ C 209, 22.7.1999; regulation in OJ L 114, 24.4.2001.

2.9. Land-use planning and management unarguably represent a strategic resource, but must be taken as part of a broader approach ranging from urban development to transport networks, from social activities (e.g. sport and leisure) to those with a direct impact such as construction, agriculture and tourism. The Committee supports the proposal to launch a work programme to spread best practice and sustainable urban development, but will wait until the proposal is implemented before assessing the practical effectiveness of the instrument.

2.10. The Committee has already discussed climate change at length, and considers the objectives and targets proposed to be too general. In particular, it proposes that greater attention focus on those sectors with the greatest emission problems, in terms of either volume (electricity generation) or expected increase (transport, services), and in which the inadequate regulatory machinery means successful results cannot be guaranteed. Practical measures need to be put forward urgently in order to prove effective over a longer time-frame. The Committee is also convinced that priority should be given to innovative energy-saving approaches, at all levels and in all sectors, partly under the sixth framework programme for research currently being prepared.

2.11. While the use of eco-taxes is acceptable in principle, their impact on the environment, economic efficiency, the operation of the single market (also in the light of the significant intra-Community trade, which would require harmonisation of the corresponding tax policies) and European industrial competitiveness must be carefully evaluated, as any discrepancies between Member States or with other parts of the world could generate serious distortions in competition and development. Yields from tax and other fiscal instruments must be channelled towards environmental improvement, stimulating energy-saving and the use of clean energy sources.

2.12. The Committee supports the principle of protecting nature and bio-diversity, but regrets the generic nature of the actions proposed (except for the extension of the Natura 2000 network). It also regrets that the suggestions made in earlier opinions have not been heeded, particularly the opinion on the assessment of the Fifth Programme and the own-initiative opinion on forestry strategy⁽¹⁾. The Committee may subsequently comment in greater detail on the legislation to implement this policy. The Committee is preparing an own-initiative opinion on the state of nature and nature conser-

vation in Europe, largely focusing on the question of how to reconcile agriculture and the protection of natural resources by reversing the purely quantitative approach of the CAP and ensuring more effective consultation between farmers, environmental bodies, consumers and tourists in order to trigger a virtuous circle for conserving resources.

2.13. The Committee welcomes the importance attached to the environment and health issue, and shares the concerns voiced by the Commission, as illustrated by numerous earlier opinions on the subject. It is vitally important to identify the risks to human health of each type or group of pollutants. This must be done on a sound scientific basis, with particular reference to specific population groups and the long-term effects of potentially hazardous substances. It is also important to understand the workings of these substances and how they penetrate the human body, in order to minimise exposure levels and, in each case, to assess the risk/benefit ratio. The Committee would also draw attention to the links between health, food safety, quality of life and the environment, and points to the views expressed in point 3.18 of its opinion on food law and the establishment of the European Food Authority regarding the consequences of pollution on the food chain.

2.14. The Committee agrees with the greater emphasis placed on prevention and precaution, especially where this means encouraging and facilitating the replacement of dangerous substances with less hazardous ones. It recommends applying the precautionary principle in a measured and balanced manner, with reference to the Commission document, the ESC opinion and the relevant resolution adopted by the Nice Council, which responded to a number of points made in the ESC opinion⁽²⁾. In adopting this approach, care must also be taken to avoid distortions in international competition to the advantage of economic activities in less environmentally-aware countries. More particularly, the Committee calls upon the Commission to work in all international forums for the adoption of identical environmental standards as a legislative benchmark throughout the world.

2.15. The Committee supports the Commission's step-by-step approach to assessing chemicals produced in significant quantities and agrees that it is necessary to encourage practices reducing levels of pesticides in the environment which give rise to significant risks to or impacts on human health. It calls for a planned reduction in the use of pesticides, accompanied by use of organic production and biological integrated pest

⁽¹⁾ OJ C 51, 23.2.2000.

⁽²⁾ CES 800/2000 in OJ C 268, 19.9.2000.

management (IPM) techniques, and for the rapid finalisation of the Convention on Persistent Organic Pollutants (POPs) and of the Rotterdam Convention. The Committee also advocates developing a single system for the testing, evaluation and risk management of new and existing produced or imported chemicals. It would however emphasise that this should be backed up by measures to alleviate the harmful effects of using metals, minerals and hydrocarbons. The Committee plans to consider these issues more specifically when it examines the White Paper on the Strategy for a future Chemicals Policy⁽¹⁾, which is one of the programme's cornerstones.

2.16. The objective of ensuring that the consumption of renewable and non-renewable resources does not exceed the carrying capacity of the environment is basically to be pursued by undertaking the necessary analysis in order to establish criteria for setting priorities, and by identifying and implementing specific strategies to reduce consumption of these resources. The suggested measures appear too theoretical, and the Committee is surprised that the assessment of the previous programme has not led to proposals for better targeted and more clearly defined action to translate these concepts into effective actions or incentives within a reasonable time-scale. The Committee considers that all measures must be carefully reviewed to prevent distortions in business competition and competitiveness, and that a balance needs to be struck between supply-side and demand-side action. In a market economy, supply is basically consumer driven, and for this reason the Committee considers that information and initiatives to steer consumers towards more eco-friendly products and suppliers must be a priority.

2.17. In principle, the Committee endorses the challenge of decoupling resource use from economic growth by significantly improving resource efficiency, 'dematerialising' the economy and preventing waste. However, the practical proposals seem lacking in substance, especially regarding prevention and ways of encouraging an approach to design which reduces the generation of waste and pollution throughout the product lifecycle.

2.18. The Committee stresses the importance of checking that the Member States implement the framework directive on waste-management hierarchy, and especially of giving proper weight to energy saving. The Committee also hopes that highlighting quantitative targets will send a signal pointing the general public and the relevant authority in the right direction.

2.19. The Committee notes that energy saving and recovery are only mentioned in passing, although significant results could be achieved in this area, in both industrial and domestic settings, in waste management and in urban and land-use planning. This indicator should be a constant factor in cost/benefit analysis, and warrants close consideration in connection with the introduction of company environmental performance reward schemes.

2.20. The Committee emphasises that this programme is an essential element in facing up to the 'sustainability' challenge⁽²⁾, in which discussion centres on how to combine a dynamic economy with a society offering opportunity to all, and on practical measures permitting economic growth while safeguarding the environment.

2.21. It is now clear that the aim, both locally and globally, should be to usher in an era of fair, sustainable growth which undertakes to conserve resources for future generations. This is the European Union's approach in preparing for the Rio+10 summit to be held in South Africa in 2002. At the same time, it is reviewing its sectoral policies and drawing up a scale of priorities, based on the seriousness of the problems — or rather threats — involved, the time dimension, and the risks of irreversibility.

3. Conclusions and recommendations

3.1. The strategic approach put forward in the communication should be reinforced by an indication of (i) the key objectives around which the work of the Commission itself, the other authorities responsible and stakeholders should revolve, as well as of (ii) the integrated measures enabling these objectives to be achieved. The document is unintentionally undermined by the fact that the proposed list of actions seems to be jumbled together without any apparent order of priority and/or chronology. To remedy this, the Committee suggests:

- providing a summary table of legislative and non-legislative activities for the four priority areas, similar to that contained in the Annex to the White Paper on Food Safety;
- systematically setting out in a separate annex the problems encountered in managing the Fifth Programme and the limits encountered in integrating environmental policy into other Community policies, together with the conduct of the different authorities concerned;
- specifying practical performance indicators for use immediately or in the near future, the bodies responsible for implementing and applying them, monitoring and evaluation timetables and suggestions for action;

⁽¹⁾ COM(2001) 88 final.

⁽²⁾ OJ C 123, 25.4.2001.

- indicating medium- and long-term quantitative objectives where possible, if only to facilitate discussion on realistic targets and integrated actions giving some prospect, over a planned timescale, of achieving the hoped-for results;
- identifying objectives to be attained at Community level according to a pre-established timetable, and how to incorporate them into national objectives, which local authorities must be charged with achieving;
- explaining the higher reference standards proposed, examining their impact on costs and their distribution among the different sectors, together with the implications for competitiveness.

3.2. On-going, systematic involvement of stakeholders is a prerequisite for meeting any environmental objective. The Committee emphasises that involvement should be understood in its broadest sense, covering all decision-makers at all stages of the process and all possible methods and instruments for training and educating authorities, businesses, trade unions, sectoral and consumer associations as well as the individuals concerned: taking the environmental dimension on board as a basic value and encouraging the performance of environmental services will be two of the most effective ways of shifting behaviour towards more environment-friendly patterns. The Committee calls for greater Community support in forging voluntary agreements, including at local level, as part of the announced framework regulation on voluntary environmental agreements.

3.3. Sustainable economic development in the applicant countries, based on new, clean technologies and improved environmental management, is vital to preserving their positive environmental aspects — which are due more to their relatively low level of development than to conscious choices. Raising the awareness of the general public and of the authorities and seeking their full involvement in appropriate economic restructuring, and in plans for urban development and transport — especially public transport — requires coherent action regarding both the full application of the *acquis communautaire* and the necessary funding. The Committee recommends greater clarity in identifying ways of redressing the apparent mismatch between the aim of spreading high environmental standards and the feeble resources made available for carrying out this operation.

3.4. Rewarding more environmentally-aware behaviour, in part through non-economic incentives (along the lines of eco-labelling), is globally a more effective instrument than sanctions, which risk pushing problems elsewhere while failing to provide the coherent environmental protection which is needed as part of a world view. The development of more environment-friendly production systems, processes, technologies and products should be seen as a form of innovation to be encouraged and rewarded, bringing all existing forms of incentive for innovation to bear. The Community and the Member States should engage in a coordinated and sustained effort to disseminate good practice and transfer clean technologies across the various industrial sectors.

3.5. Market instruments such as eco-taxes and environmental tax reforms should be examined more closely in order to assess the real benefits for the environment, and must address the need for a harmonised approach at Community level, without distorting competition within the Community or jeopardising the competitiveness of European industry. The Committee would strongly argue that, in keeping with their name, such forms of taxation should be used to foster more ecological products, technologies and methods and/or to restore the environment.

3.6. Tax incentives to promote technological innovation and guide industrial processes along more environment-friendly lines are also appropriate, provided they do not entail market distortions. In practice, enhancing the quality of life may have repercussions, including higher costs for industry and/or public finances: it must be ensured that this process affects all parts of the EU equally, and does not penalise European development.

3.7. The Commission should step up and accelerate its efforts to achieve consensus among all the Member States on this point, making a more thorough assessment of the socio-economic effects of applying these instruments in order to make a convincing case for them. It should also play an active role in international forums, especially concerning climate change, offering itself as a model and undertaking to press other countries and international organisations too - and not only environment-oriented ones - to meet the highest current standards. The aim should be to ensure fair competition and full compliance with environmental protection requirements throughout the world.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Report from the Commission to the Council on the state of implementation of Regulation (EC) No 2200/96 on the common organisation of the market in fruit and vegetables'

(2001/C 221/13)

On 27 February 2001 the Economic and Social Committee decided to issue an additional opinion, under Rule 23(2) of its Rules of Procedure, on the above-mentioned report.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 10 May 2001. The rapporteur was Mr de las Heras Cabañas.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion by 107 votes to one, with four abstentions.

1. Introduction

1.1. In 1996 the common market organisation for fruit and vegetables underwent extensive reform. When the Council approved the above Regulation, it stipulated that the new system would be assessed after a period of four years. In January 2001 the Commission therefore presented a report on the implementation of this Regulation to the Council.

1.2. Two months before this report was presented, the Council adopted as a matter of urgency a proposal by the European Commission to make a number of changes to the common market organisation for fruit and vegetables, the aid scheme for processed fruit and vegetables and the aid scheme for producers of certain citrus fruits. The Committee has already expressed its views on this proposal in its opinion⁽¹⁾ of 19 October 2000.

1.3. In its opinion, the Committee requested that this report be accompanied by additional proposals or at least guidelines concerning a number of essential points it had failed to address and suggested that the following points, among others, be looked into:

- need to improve knowledge of production and markets;
- improvement of quality standards for fruit and vegetables, and monitoring;
- obstacles to the development of producer organisations and to improvements in their effectiveness. Need to encourage producer organisations to merge and form associations;
- operation of producer organisations' operational funds and programmes, and dovetailing of these with rural development measures. Assessment of the extent to which the aims of improving quality, respect for the environment and food safety have been achieved;

- possibility of harmonising the criteria for environmental measures under the operational programmes;
- operation of the intervention system and assessment of the need to reinstate the concept of 'serious crisis';
- trade and respect for Community preference;
- specific measures needed for products facing stiff international competition. Long-term solution of the problem of shell fruits and carob beans and support for certain processed fruit and vegetables.

1.4. Because some of these suggestions are only described in the report, no conclusions can be drawn concerning what future guidelines should be examined. The report also fails to address a considerable number of issues raised by the Committee in its October opinion. The Committee has therefore taken the initiative of drawing up this additional opinion in order to take a more in-depth look at necessary future guidelines, as discussed below.

2. General comments

2.1. The Committee acknowledges the Commission's efforts to offer as comprehensive an overview as possible of the way in which the common market organisation in fruit and vegetables works. It also welcomes the fact that the report contains a number of proposals and raises questions concerning future guidelines for marketing standards and the development of producer organisations and interbranch organisations. The Committee also realises that it is difficult to assess some aspects of the report when it does not have sufficient data.

2.2. However, the report fails to address many real issues in the sector and is therefore unlikely to meet its objective of guiding discussions and proposals aimed at improving the common market organisation. Its analysis of crucial areas is

⁽¹⁾ OJ C 14, 16.1.2001 (amendment of Regulations 2200, 2201 and 2202)

insufficient and it does not take a sufficiently in-depth look at factors that have prevented a bigger increase in the concentration of supply, better use of operational funds and greater efficiency in using budget resources.

2.3. A number of essential aspects for the fruit and vegetable sector should be included in the report, such as, the opening-up of markets to imports from third countries following the GATT agreements, the weakening of Community preference in recent years and plant health-related barriers to EU exports. The report should also have looked ahead to the potential impact of a further liberalisation of trade in agricultural products agreed at the WTO, concessions made under trade agreements between the EU and third countries, the establishment of free trade areas and EU enlargement.

2.4. The report also needs to analyse problems with border protection mechanisms, such as insufficient Community tariffs for certain products, restrictions on the proper implementation of entry prices, the inefficiency of the special safeguard clause and the application of import certificates.

2.5. Likewise, account must be taken of the complexity of fruit and vegetable policy at international level due to the problems it raises for third countries with regard to sustainable development, food safety and respect for fundamental rights. Guarantees are therefore needed that fruit and vegetables imported into the EU have been produced under proper conditions so as to ensure that due respect is paid to human dignity, the social rights of producers and workers, and the environment in producer countries.

2.6. The Committee notes that the report fails to analyse the situation of processed fruit and vegetables despite the growing importance of this sector (which accounts for more than a third of production) and despite the vital role played by the processing industry in keeping people, jobs and economic activity in producer regions. Given that certain processed fruits and vegetables, such as tinned asparagus, apricots and cherries, are in a critical situation in the face of international competition, the Committee recommends that the effectiveness of current support measures for processed products be examined in greater detail and, if relevant, that these products be included under the rules of the common market organisation for the fruit and vegetable sector.

2.7. The Committee also draws the Commission's attention to the need to develop a Community policy to encourage setting up schemes to insure fruits and vegetables against natural catastrophes, while respecting the systems which already exist in some Member States.

2.8. The Committee would like to point out that the fruit and vegetable sector is currently in a delicate situation due to labour shortages and social problems caused by the surge in immigration in producer regions. Measures therefore need to be taken to regularise and improve the situation of immigrants working in the sector. There is an urgent need for public authorities to draw up policies for the social integration and employment of such workers and consideration should also be given to administrative and tax measures to encourage seasonal work.

2.9. The Committee notes that the fruit and vegetables sector still has to contend with a structurally unbalanced market. In addition it is a fact that the consumption of fruit and vegetables in some Member States is far less than it should be from the point of view of public health. The Committee therefore believes that greater budgetary support is needed for organising information and promotion campaigns for fruit and vegetables in both the horizontal regulations and the common market organisation. Existing restrictions should therefore be eliminated and growers' organisations encouraged to use the money available in the CMO budget for promotion and information.

3. Specific comments

3.1. *Marketing standards*

3.1.1. The Committee reiterates its call for improvements in the quality and variety of fruit and vegetables sold. Consumers now demand more information about their organoleptic qualities, nutritional value, origin and production methods used etc. so they can make a more informed choice, and greater guarantees regarding food safety and respect for the environment. Recognition also needs to be given to producers' efforts to adjust to market needs and to their contribution towards protecting the rural environment.

3.1.2. The Committee welcomes the existence of quality criteria in the distribution sector that are adapted to regulations currently in force, but is concerned by the proliferation of fruit and vegetable quality labelling systems which incorporate environmental values, as these can lead to confusion among consumers. It also raises a number of questions concerning the criteria imposed on producers by the distribution sector, especially as it is unclear whether they are the same for all producers.

3.1.3. Quality standards should be maintained and developed as they are a necessary tool for market transparency and better trade relations, and provide the consumer with

useful information when choosing products. The Committee is also in favour of maintaining the possibility of using standards to manage serious market crises.

3.2. *Producer organisations (POs)*

3.2.1. Producer organisations are still the cornerstone of the common market organisation for fruit and vegetables and yet the report notes that the 1996 reform has not met its objectives of organising and grouping supply, and improving the efficiency of POs in response to increasingly concentrated distribution. An analysis is therefore needed of existing obstacles in producer regions and possible incentives through specific programmes to encourage small farmers to join POs voluntarily, thus increasing their size. Incentives are needed to encourage the setting-up of and cooperation between POs, and to encourage POs to merge and form associations.

3.2.2. Other aspects that should be analysed to provide incentives for forming and joining associations include the suitability of recognition criteria and the involvement of producers in running and monitoring POs.

3.3. *Interbranch organisations and agreements*

3.3.1. The Committee agrees with the Commission that existing restrictions could be reduced to allow interbranch agreements to be implemented with greater efficiency and ease, providing they do not alter the conditions of free competition in the market.

3.4. *Intervention arrangements*

3.4.1. Changes to intervention arrangements have led to a significant fall in the number of products being withdrawn from the market. However, it has also become clear that such withdrawal mechanisms are unsuited to deal with certain crises. The Committee therefore proposes a study into the viability of reinstating the concept of 'serious crisis' to regulate the market in the event of short-term surpluses of certain products, primarily summer fruits.

3.4.2. A lack of awareness of the realities of production leads to structural surpluses. Additional measures are needed to alleviate this problem and help scale and restructure production so it can adapt to the reality of the market.

3.5. *Operational funds and their utilisation*

3.5.1. Despite a number of recent reforms to offer POs greater security with regard to the level of support granted

to operational funds and the fact that operational fund implementation procedures have been simplified, no mention is made of this in the report. However, the Committee thinks that greater consideration needs to be given to making procedures for contributing to operational funds more flexible and to simplifying procedures for presenting and managing operational and monitoring programmes in order to qualify for operational fund support. A clearer definition is also needed of the nature and functioning of POs as recipients of such aid, as mentioned in point 3.2.2.

3.5.2. The Committee is also concerned that the Commission does not possess more detailed information on the nature of the actions carried out under the operational programmes as this could offer guidelines for improving the efficiency with which funds earmarked for such programmes are used.

3.5.3. Consideration should be given to increasing public participation in the aforementioned funds according to a number of specific criteria, such as, the economic dimension of associated producers, the need for greater regional organisation and the low profitability of certain products due to structural crises. Consideration could also be given to actions undertaken in connection with cooperation between POs and mergers between POs and their associations. This should all help to improve the organisation of supply.

3.6. *Eco-conditionality*

3.6.1. The 1996 reform of the common market organisation for fruit and vegetables sought to include environmental protection in actions undertaken by POs. However, the Committee points out that the report only briefly touches on this and recommends an in-depth study into the use of scarce natural resources, in particular non-renewable energy and the use of water in arid regions, and in general the environmental impact of fruit and vegetable production on nature.

3.6.2. The Committee stresses the need to move as quickly as possible towards more ecological production methods for fruit and vegetables providing that due consideration is given to their economic impact on both producers and consumers. The Committee realises that this will only be possible if products imported from third countries are subject to the same requirements.

3.7. *The case of nuts*

3.7.1. The Commission report highlights the poor competitiveness of the nut and carob bean sector due to imports from third countries and this sector's importance in containing

depopulation and desertification in vast rural areas of the Mediterranean. However, the socio-economic dimension, the lack of alternatives and the jobs created by this sector locally should have been studied in greater depth.

3.7.2. Most of the ten-year plans for improving the quality and marketing of nuts and carob beans expire in 2001. This puts nut producers in an unsustainable position and leads to crops being abandoned as common market organisation or rural development measures are either insufficient or unsuited to this sector's particular situation. Analyses of what sustaining the sector has cost and is costing the EU should look beyond mere economics, given the strategic role played by the European sector in international trade in these products.

3.7.3. Given the current crisis in this sector, the Committee therefore regrets that the report does not offer the option of implementing stable agricultural policy measures to help the sector survive and reiterates the need to offer income support, as already mooted in previous ESC opinions⁽¹⁾.

3.8. *Citrus processing aid*

3.8.1. The Committee agrees with the Commission that the new system has proved its validity in most citrus-growing regions, and that processed quantities have remained stable and the industrial fabric has been maintained. However, it considers that the results of its implementation have not been as satisfactory due to the fact that thresholds are not in tune with market trends, and the adverse impact of aid penalties on producer incomes and the complexity and bureaucracy of procedures for implementing the system.

3.8.2. The Commission's analysis of the implementation of mechanisms for citrus-fruit processing fails to explain the reasons behind the recently approved reform, such as the increasing production of and demand for juice and the fact that higher aid penalties encouraged citrus fruits to be withdrawn. This makes the report less coherent.

⁽¹⁾ OJ C 14, 16.1.2001 — OJ C 116, 20.4.2001.

Brussels, 30 May 2001.

3.9. *Coexistence of the fruit and vegetable regime and rural development measures*

3.9.1. Given the efforts needed by the sector to adapt swiftly to market trends, common market organisation measures need to continue to dovetail with rural development measures so that POs can use both sources of funding effectively and coherently. Checks to prevent one action receiving two sources of funding must not restrict potential funding for structural improvements.

3.10. *Budgetary issues*

3.10.1. The Committee believes a more detailed and extensive analysis is needed of all common market organisation financing in order to properly assess spending and how well it responds to the sector's needs. The conclusions drawn can then be used to draw up guidelines to ensure that available resources are used more effectively.

3.11. *National and Community checks*

3.11.1. The report refers to checks carried out by the European Commission's special corps of inspectors on the implementation of marketing standards by Member States. Given the contribution these standards make to transparency in the market, the Committee believes the results of these checks need to be made public.

4. **Conclusions**

4.1. The Committee acknowledges the Commission's efforts to describe the current situation of the sector and considers the report acceptable as an information document. However, it questions its usefulness as the basis for a coherent discussion of the sector's problems and for possible legislation to improve the common market organisation for fruit and vegetables. The Committee also believes that a more detailed and extensive analysis should have been carried out of issues in this sector and suggestions put forward for solving them.

4.2. The Committee urges the European Parliament and the Council to broaden their discussion beyond the content of the report and calls on the Commission to present short-term proposals to adapt the common market organisation, based on the guidelines set out in this opinion.

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 2549/2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)'

(2001/C 221/14)

On 5 April 2001 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 11 May 2001. The rapporteur was Mr Scully.

At its 382nd plenary session on 30 and 31 May 2001 (meeting of 30 May 2001) the Economic and Social Committee adopted the following opinion by 122 votes with 1 abstention.

1. Background and scope

1.1. Scientific advice on cod stocks in the Irish Sea (ICES Division VIIa) in 1999 indicated a very serious situation which, if allowed to continue, would result in a collapse of the stock.

1.2. Emergency meetings were called by the Commission in early 2000, involving the Commission, the relevant Member State administration and the fishing interests concerned to examine the options through which effective emergency measures could be introduced to arrest the decline and to bring about a recovery.

1.3. The first measures were introduced for a limited period in spring 2000 and were based on closed access or restricted access to 'boxes' in the northern part of the Irish Sea. In addition, a number of technical measures involving the design of nets were introduced, as well as a system of on-board observers. These measures, with adaptations, have been carried forward to 2001.

1.4. The purpose of the present regulation is to introduce a further amendment related to the thickness of the twine used in the netting. Instead of allowing nets to be constructed of single twine, of 6 mm maximum thickness, as at present, it is now proposed to allow the option of using double twine at 4 mm per strand.

2. Comments

2.1. It is not clear what positive aspects this measure possesses in relation to stock recovery. Mesh thickness is an important factor for escapement and the dimensions proposed

are likely to lead to a negative result in this regard. Any such measure introduced should be firstly put on trial in real practice and then, following appropriate evaluation, become of a permanent nature if needed.

2.2. In general terms, adjustments in technical measures, in themselves, are unlikely to solve the problem of Irish Sea cod. Neither is it clear that the other measures involved in the recovery programme are adequate to address the fundamental problem of depletion of the stock.

2.2.1. The fact is that too many fish are being caught considering the reproductive capacity of the fishery. The main factors involved are the number of relatively large high-powered vessels targeting the species combined with the use of semi-pelagic techniques which, though legal, catch large quantities of cod at the most vulnerable (i.e. spawning) period. As cod group in large numbers in the water column during spawning, they are easily caught by this method of fishing. In fact, since the introduction of the semi-pelagic method, stocks have fallen consistently to their present level.

2.3. The Committee believes that additional measures are required to deal with semi-pelagic operations in order to provide a reasonable chance for the stock to recover and to protect the economic and social importance of the industry for the adjacent coastal areas.

2.3.1. Such issues will be further examined in the framework of the forthcoming work of the Committee on the Green Paper on CFP.

2.4. In conclusion, having regard to the above-mentioned remarks, the Committee is ready to support the present Commission proposal.

Brussels, 30 May 2001.

The President.
of the Economic and Social Committee.
Göke FRERICHS

Opinion of the Economic and Social Committee on the '11th Annual Report on the Structural Funds (1999)'

(2001/C 221/15)

On 24 and 25 January 2001 the Economic and Social Committee decided, under Rule 23(3) of its Rules of Procedure, to draw up an opinion on the 11th Annual Report on the Structural Funds (1999).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 May 2001. The rapporteur was Mr Burani.

At its 382nd plenary session (meeting of 30 May 2001) the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. In accordance with Article 16 of the Framework Regulation ((EEC) No. 2052/88) governing the Structural Funds, the Commission has drafted the 11th report on the Structural Funds, for 1999.

1.2. The report aims to 'describe how the Structural Funds regulations were implemented during 1999, with a particular focus on Objectives 1 to 6 and the Community Initiatives'. The seventh annual report (1995) introduced an innovation whereby every report is to feature a horizontal theme. The theme chosen for 1999 was equal opportunities for men and women.

1.3. In addition to a description of major structural policy-related events in the Union during 1999, the report provides a detailed picture of the key elements for each country using the funds available for each objective.

1.4. The document is completed by a series of interesting chapters evaluating and analysing the Structural Funds, verifying additionality, looking at coordination with other financial instruments, examining compatibility and complementarity with other Community policies and lastly studying the dialogue between the institutions and with the economic and social partners.

2. The results of the 1994-1999 programming period

2.1. The 1999 report is especially significant as it is the last for the 1994-1999 programming period. It is therefore in essence a final summing up of the use of appropriations during the period in question, before the entry into force of the new regulations which were approved on 21 June 1999 and applied from 2000 onwards.

2.2. A total of 1 134 programmes were set up under the various objectives (610) and Community Initiative programmes (524); in 1999 programming was fully implemented, and for that reason few items of assistance were adopted during the year.

2.3. The final year of the 1994-1999 programming period featured the following results:

- a considerable acceleration in appropriations, as already noted for the previous two years, with a significant reduction in the backlogs that had accumulated during the first part of the period;
- 99 % of the total assistance from the funds for the CSFs (SPDs) had been committed by the end of the year;
- 75 % of payments were made and payments may continue to be made until the end of 2001;
- Objectives 1 and 3 performed best, with almost all available funds committed and 78 % paid; for Objectives 2, 4 and 5b, however, there were considerable payment backlogs;
- the best rates of implementation were recorded in the Cohesion Fund countries, while the more prosperous countries were less efficient;
- the commitment figures for the Community Initiatives (95 %) were also positive, while those for payments were less so (57 %).

2.4. Taking each objective individually, the report highlights major differences in backgrounds and results. In 1999, as in previous years, it was Objective 1 that recorded the best rates for use of the funds, with 100 % of commitments and 78 % of payments made.

2.4.1. The performances of Spain, Portugal, Ireland and Germany were especially good, with above average rates; the results for Belgium, the Netherlands and the United Kingdom, meanwhile, were less impressive. Italy caught up on most of its previous backlog, committing 100 % of appropriations, but it is still behind on payments.

2.5. There were a few problems with Objective 2, as some programmes were only adopted at the end of 1997 or even as late as 1998, and therefore implementation began only in 1999. As a result, the level of payments was lower, at 60 %.

2.6. In the case of Objective 3, relating to human resources and the labour market, financial reallocations were made during the final months of 1999 in order to allocate funds according to criteria that tied in more closely with the objectives of the European Employment Strategy, focusing for instance on young unemployed people, the long term unemployed and those threatened with exclusion from the labour market. Nevertheless, at the end of 1999, Objective 3 recorded commitment and payment rates of 80 %.

2.7. Results for Objective 4, aimed at improving job opportunities in the light of industrial change and new systems of production, confirmed the improvement already noted in 1998, with total commitment of appropriations and payments at 69 %.

2.8. There were improvements for Objective 5a (structural adjustment in agriculture and fisheries) with commitments at 96 % (agriculture) and 100 % (fisheries), and payments at 70 % and 73 % respectively.

2.9. Objective 5b, on the development of rural areas, accelerated considerably in 1999 with a resulting 99 % of commitments and 68 % of payments made.

2.10. The 1998 reallocation of finance among the Community Initiatives, conducted at the request of the European Parliament, brought about a considerable acceleration in implementation. Overall, the figures for the Community Initiatives at the end of 1999 were 95 % for commitments and 57 % for payments.

2.11. With regard to the horizontal theme of equal opportunities, the report describes the progress made over recent years on removing obstacles to genuine and complete equality between women and men in the workplace and with regard to political and social involvement. There are still underlying problems however, which led the Council of Ministers in 1996 to issue a resolution on mainstreaming equal opportunities into the Structural Funds.

2.12. Studies were carried out in 1997 and 1998 on the application of the principle of equal opportunities in the Structural Funds, and on examples of good practice. This served in part to raise the profile of the equality issue in the Funds for the 2000-2006 period.

3. General comments

3.1. As it has already stated in previous years⁽¹⁾, the Committee does not agree with the Commission's decision to simply 'present' the report without formally requesting an opinion.

3.1.1. As this is one of the most important areas in European politics and given that the Treaty recognises the Committee's role in matters relating to economic and social cohesion, the ESC once again reiterates the need — and claims its right — to be formally consulted on future reports on the Structural Funds.

3.2. With regard to content, the report is unquestionably comprehensive in terms of information, assessments and data. It would, however, have been a good idea to change the approach and produce a report on the entire 1994-1999 programming period.

3.2.1. The Commission has announced the publication of a comprehensive report of this kind, but for it to be subject to an effective evaluation, not least for the purposes of the 2000-2006 programming period, it must be drafted as soon as possible. The Committee hopes that publication will be speeded up as much as possible, in order to provide useful pointers for future years.

3.3. The 11th report provides valuable summaries of the performance of each country, but it fails to give a clear and concise overview of Structural Fund management, the problems it raises for each country and for the Union as a whole, and the results obtained with regard to employment and economic and social development. There is no single, comprehensive framework to show the results obtained from Structural Fund use for the year in question or for the overall programming period that ended with 1999.

3.4. As far as the method of preparing and drafting the report is concerned, there is a wealth of quantitative information, but little in the way of analysis and insufficient evaluation.

3.5. Although the information provided in the report is important, it is insufficient and fails to properly illustrate the repercussions of structural policy in Europe and individual Member States.

⁽¹⁾ OJ C 268, 19.9.2000.

3.6. As for assessing the degree to which each objective has been achieved, the report concentrates mainly on financial aspects, commitments and payments, without looking at the way spending has affected growth and progress towards economic and social cohesion in the EU as a whole and in individual Member States.

3.7. It would appear that the Commission's main concern is that of assessing the efficiency of the management of the Structural Funds as opposed to the effectiveness of the choices made. The only analysis is financial, whereas it is also important to ascertain what are the obstacles to better utilisation of the funds, whether there have been shortcomings in planning or implementation, and whether the rules and complex reporting methods have worked or if they have caused delays or even failure to use the funds.

3.8. In short, the Commission's reports seem to be concerned more with fulfilling its formal obligations than with responding to the needs of the public, who should be enabled to make a thorough assessment of the choices made by the Commission, national governments and regional authorities.

3.9. In this report as in the past, the Commission's primary preoccupation with accounts is quite clear from its emphasis on two key elements, the level of commitments and the level of payments, with no sufficient explanation of the reasons for positive or less satisfactory results.

3.9.1. This makes it impossible to understand why payment levels are higher in the cohesion countries, while 'some of the most prosperous Member States in the Union had a lower rate of implementation of payments than the Community average'.

3.10. There is no way of knowing whether the better results achieved by the less wealthy countries are the result of a greater need for finance, better planning, a more effective implementation system, or all these and other reasons.

3.10.1. These important points definitely require detailed attention, explanations and examples, but there are none to be found.

3.11. Furthermore, there is no mention whatsoever of the efficacy of the regulations that were nevertheless covered by the reform approved in Luxembourg in June 1999. The final report for the 1994-1999 period should have been an

opportunity for the Commission to take a critical (and possibly also self-critical) look at monitoring and reporting procedures.

3.12. The Commission argues that it could not make comprehensive evaluations because it does not yet have all the data on spending, for which the deadline is the end of 2001. This does not seem acceptable however, as it is perfectly reasonable to conduct an evaluation of the results with over 70 % of the spending figures available.

3.13. The Commission could adopt more streamlined and concise report formats and complete them more rapidly, in order to enable the relevant institutions to make their assessments in good time, form opinions and suggest changes.

3.14. The results are lacking in terms of physical indicators that would have been very useful for assessing efficiency and impact. For instance, how many hectares of farmland were irrigated using the funds? What growth in national or regional GDP can be attributed to the Structural Funds? How have consumption and saving patterns changed in the region concerned?

4. Specific comments

4.1. *Employment*

4.1.1. More specifically, there is no evaluation of the number of jobs created or maintained, of the most important areas of progress in the various sectors concerned by the objectives, or of the commonest and most serious difficulties encountered in the various countries.

4.1.2. Conversely, the Committee does not see the need for almost all of Chapter 1, which devotes far more space to how things will be and what will be done (2000-2006 period) than to how things have been and what has been done (1999). The report digresses, describing the entire process of preparing for the 2000-2006 programme and detailing the characteristics of the new funds and new regulations.

4.1.2.1. The Committee has the impression that the Commission is simply going through the motions, using a ready-made format, without adding that extra something that from year to year would distinguish the approach or style of the report. The details on the thematic priorities for cohesion, given in Chapter 1.2, are however important, enabling a more comprehensive assessment of the impact of the Structural Funds.

4.2. The paragraphs on the European Employment Strategy, the new map of national regional aid and the ESDP (European spatial development perspective) provide a frame of reference that is essential in order to grasp the interactions and synergy between the various Community policies for economic and social development.

4.3. Useful data are also provided in the section on the territorial employment pacts, one of the most interesting and original initiatives of recent years.

4.4. An example of what the report could have been is actually given by the Commission itself in the section on Objective 2, which reports on the conclusions of an evaluation of the 1989-1999 period, conducted by an independent body.

4.5. This analysis provides an in-depth examination of conversion strategies and strategic options to support specific priorities (job creation, research and development, the environment and equal opportunities).

4.6. The study on Objective 2 showed that:

- significant progress has been made in the last decade, especially with strategic planning, the involvement of organisations and the focus on strategic priorities;
- there is still room for improvement;
- limitations included the fragmentation of programme management responsibilities, the lack of training and information, and the infrequent dissemination of best practice examples.

4.7. Evaluation of Objectives 1, 3 and 4 under ESF and the Adapt and Employment Community Initiatives was also entrusted by the States to third parties, and a number of interesting points were made:

- the transnational elements of projects should be encouraged as much as possible;
- administrative procedures should be simplified;
- closer cooperation is needed between those involved in the national labour-market system and those responsible for the Community Initiatives;
- the mainstreaming strategy should start at project level;
- monitoring procedures and a system of monitoring indicators should be developed to support evaluation processes.

4.8. Other evaluations relate to the rural development programmes and Leader II. Finally, interesting comments are made on the results of the thematic evaluation of the impact of investments made in transport infrastructure in Objective 1 regions in certain countries.

4.9. It would have been extremely useful to conduct a thorough and systematic analytical study on the results obtained from the use of the Structural Funds for all the objectives throughout the 1994-1999 period, as was done for Objective 2. A document of this kind would enable a more thorough evaluation of European policy as a whole and give the public, companies and research institutes a clearer understanding of the choices made by the Commission.

4.10. *Additionality*

4.10.1. Another important theme is additionality. The Commission stresses the importance of verifying additionality, in order to 'prevent the resources of the Funds from serving to replace national structural aid'.

4.10.2. But the report provides no specific information on the verification of additionality, and merely refers to comments made in the Court of Auditors' special report published in early 2000. In this report, the Court highlights shortcomings in the application of the principle, primarily the absence of a penalty system, for which the Commission is certainly not to blame.

4.10.3. The Committee is however concerned by the comment that 'the Commission had to be much more pragmatic in the methodological requirements than for Objective 1, taking into consideration the specific situation in each Member State'.

4.10.4. This comment, which is not supported by evidence or examples, appears to conceal some kind of 'flexibility' on the part of the Commission that should have been more clearly explained and, more importantly, justified.

4.11. *Equal opportunities*

4.11.1. The report chooses equal opportunities as its horizontal theme, and the Commission states that it wishes to look at 'the improvements made incorporating this political priority in the Fund's programmes'.

4.11.2. The report gives useful general indications on the current gender gap in the workplace. For instance, for every Member State it describes the measures taken to promote equal opportunities between men and women in the various regions concerned by the Funds.

4.11.3. The Committee would make a general comment about the value of these horizontal analyses. The decision taken in the 1995 report to choose a horizontal theme to use as a yardstick for all the Structural Fund measures was certainly very important and could add considerable value.

4.11.4. However, the desired result has not been achieved because the approach taken is too general, and lacks detailed facts and figures.

4.11.5. The Commission outlines some of the objectives of the said strategy in each Member State but does not provide a proper background or adequate quantitative data on the results. The objectives therefore represent no more than a declaration of intent as neither the results nor the effects are analysed.

4.11.6. There is no impact assessment and no mention of the results achieved or of possible failures. As a result, the most interesting information — the causal link between structural policy measures and economic and social change — cannot be found. Neither is any comparison drawn between the various production sectors and social spheres in order to understand if and why results and impact vary.

4.11.7. No attention is given to factors that help or hinder equal opportunities, and no assessment is made of the level of part-time or temporary work, or the amount of female entrepreneurial activity encouraged by equal opportunities initiatives financed by the Structural Funds, etc.

4.11.8. It would have been useful to have further comments on the most important problems raised by the Commission when it refers to equality between men and women as a productive factor and regrets the fact that 'the labour market remains very segregated' and that there is still a considerable wage gap (28 % on average in the EU)⁽¹⁾.

4.12. *Partnership*

4.12.1. Partnership is another key element that is not given any special attention in the report although it is a critical factor in the success of the structural policies.

4.12.2. Many questions remain unanswered: how many and which players were involved in using the Structural Funds? In which phases of selecting priorities, and preparing and implementing the structural measures were they involved? How were partnership and subsidiarity combined?

4.12.3. Furthermore, were the partners those closest to the final beneficiaries, enabling all concerned to develop their potential to the full in pursuit of a shared development objective?

4.12.4. Once again, information about the quantity and quality of partnerships would have enabled a more detailed assessment of the impact of the Structural Funds on economic and social trends, of changes in the industrial fabric resulting from the funds, and of the overall impact of Community policies on cohesion.

4.13. *Structural Funds and European policies*

4.13.1. The chapter on compatibility and complementarity with the other Community policies is of great interest as it makes the link between Structural Fund measures and the EU's sectoral policies.

4.13.2. The problem in this instance is not so much the reporting method as the content. Compatibility/complementarity between EU policies is often more theoretical than real. In some regions there is a lack of consistency between these policies, as they have different targets, methods and planning periods and concern different areas.

4.13.3. It is not surprising that this should be so because policies such as the reform of the CAP, the introduction of Economic and Monetary Union and the development of the Single European Market are all designed to achieve desirable broader policy objectives.

⁽¹⁾ OJ C 155, 29.5.2001.

4.13.4. However, that having been said, it is important that the deployment of Structural Funds is seen as one of the important means by which the negative impact of these policies in disadvantaged regions can be mitigated. Without the use of Structural Funds these broader policy objectives might well have a damaging impact on fragile communities and this must be acknowledged when considering future cohesion policy.

4.13.5. Sometimes different European programmes are implemented in a single area with no coordination, and this can lead to confusion and overlaps.

4.13.6. It is true that harmonisation in this area is not easy, as the context in which decisions on the Structural Funds and the various sectoral policies are made commonly involves a multitude of sometimes conflicting players, interests and socio-economic situations.

5. Conclusions

5.1. Although the Committee has felt obliged to criticise the method and content of the report, it recognises the major effort made by the Commission to provide data for evaluating Structural Fund management and policy.

5.2. The Committee considers that the drafting of these reports should not be treated as just an annual ritual that the Commission goes through according to a ready-made format, without adding that extra something that would distinguish the style or approach of each report. The report should focus on evaluation and analysis, paying special attention to jobs generated or preserved, the effects in terms of innovation, and results in the area of equal opportunities and partnership. This approach would make it easier to assess the impact of structural policy.

5.3. Partnership is another important element that needs proper analysis, as it is a basic factor in the success of the structural policies.

5.4. As the representative of the social partners directly affected and concerned by the management of the Structural Funds, the Committee could make a useful input during the programming periods and not just at the reporting stage.

5.4.1. The Committee believes that it would be appropriate for it to be formally consulted on future Structural Funds reports and reiterates its view that it has a right to be consulted in this way.

5.5. The Committee would stress that it is open to opportunities for various forms of cooperation with the Commission, with a view to optimising structural and cohesion policies.

5.6. It meanwhile hopes that the report on the entire 1994-1999 programming period will be published as soon as possible, to allow for evaluation before the end of 2001.

5.7. The Committee is also of the view that a long-term evaluation of the Structural Funds would be very useful, not least in the light of forthcoming EU enlargement.

5.8. The Structural Funds will be crucial for these countries and their economies. It would therefore be useful to pass on experience of past Structural Fund successes and failures to those who will be responsible for administering enormous allocations in the years ahead. The aim should be to draw on successful methods and practices in order to avoid repeating previous mistakes.

5.9. The Committee believes that the principle of additionality should be upheld because, as the Commission itself remarks, it 'is a general principle governing the Structural Funds' operations'. The Committee therefore supports the Commission's efforts to apply the principle rigorously.

5.10. The Committee proposes to assess the feasibility of a public initiative, in conjunction with the Commission, the Parliament and the Committee of the Regions, to involve all those concerned with the management of the Structural Funds, including representatives of the applicant countries.

Brussels, 30 May 2001.

*The President
of the Economic and Social Committee*

Göke FRERICHS

Opinion of the Economic and Social Committee on 'The regions and the new economy: Guidelines for innovative actions under the ERDF in 2000-2006'

(2001/C 221/16)

On 24 and 25 January 2001, the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'The regions and the new economy: Guidelines for innovative actions under the ERDF in 2000-2006'.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 May 2001. The rapporteur was Mr Vinay.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion with 122 votes in favour, no dissenting votes and one abstention.

1. Introduction

1.1. The Committee, which represents many of those called upon to play a significant role in devising and implementing the new innovative actions, intends this opinion to be a practical contribution, looking in detail at the interconnections between the programme and policies on cohesion, employment and, obviously, innovation.

1.2. There are a number of changes in the approach taken for the new innovative actions with respect to previous priorities and arrangements for financial management. The strategic themes have been reduced from eight to three with an approach based no longer on individual projects but rather on programmes. These must tie in with Objective 1 and 2 programmes part-financed by the ERDF, while also complementing measures financed by the ESF under the same objectives.

1.2.1. The budget is 0,4 % of annual ERDF funding, which is equivalent to approximately EUR 400 million for 2000-2006, not including potential funding for the same period under the flexibility instrument.

1.3. The themes of the innovative actions in the 1994-1999 period centred on: the promotion of technological innovation (RIS — Regional Innovation Strategies); the information society (RISI — Regional Information Society Initiative); new sources of employment; culture and heritage; urban pilot projects; spatial planning (Terra); internal interregional cooperation (Recite); and external interregional cooperation (Ecos-Ouverture).

1.3.1. The new themes, reduced by the Commission to three for reasons of simplification and with a view to concentrating resources, are designed to promote innovative methods and practices in the fields of: regional economies based on knowledge and technological innovation: helping less-favoured regions to raise their technological level; e-EuropeRegion: the information society at the service of regional

development; and regional identity and sustainable development: promoting regional cohesion and competitiveness through an integrated approach to economic, environmental, cultural and social activities.

1.4. The resources are divided among three strands: the part-financing of regional programmes of innovative actions and of the pilot projects deriving from them; accompanying measures to support exchange of experiences and the creation of interregional networks; and the organisation of competitions aimed at identifying and developing best practice.

2. The basic elements of the Commission's choices

2.1. The priority themes chosen tie in with the European Union's strategy as defined by the Lisbon European Council, the aim of which is to develop an economy based on knowledge, competitiveness, innovation and full employment. In the most under-privileged regions, promoting programmes that combine research and experimentation, especially in the sphere of the new economy with all its technological implications, can be crucial for sparking a virtuous circle of development, all the more so since these regions invest least in the three strategies chosen.

2.2. The Commission also stresses the importance for companies, especially SMEs, of knowledge, know-how, and the ability to anticipate or adjust to technological changes in the new economy. Investing in the human factor and promoting and supporting training and lifelong learning are indispensable for fuelling regional innovation and competitiveness and sustaining it in the longer term.

2.3. Although they are consistent and tie in with the programmes part-financed by the ERDF, the innovative actions should not duplicate those measures but rather influence them

positively in a context of experimentation which, though in essence more risky, can be the way to identify new strategic markets in the regional economy. It is important to be aware that the programmes under the innovative actions could have a knock-on effect on the entire region, even in areas not covered by Objectives 1 and 2.

2.4. In the Commission's view, one fundamental aspect of the innovative actions is the creation of a stronger partnership involving the authorities responsible in the regions, the authorities responsible for the programmes under Objectives 1 and 2, the ERDF and the private sector.

2.5. When describing possible programmes for the first theme, the communication makes the point that, with increasingly strong demand for competitive development, in relation to the more advanced European regions and in the context of market globalisation, innovation can offer the competitive advantage so crucial to the more vulnerable regions.

2.6. The second theme focuses on promoting the widespread use of information technologies to serve companies, the public and administrations, using an approach that ties in with the strategy and objectives of the eEurope initiative. In short, this means providing on-line access for individuals, households, businesses, schools and administrations, introducing the digital culture, strengthening consumer confidence in on-line commerce, furthering social integration and boosting social cohesion.

2.7. The third priority is designed to encourage the regions to turn their strengths to account and develop a sustainable and competitive economy, by drawing on cultural, environmental and infrastructural features, or specific skills.

2.8. The various programmes will be submitted to the Commission with a strategy agreed in advance between the various regional operators, to provide the frame of reference for launching individual projects. They may be based on one of the three strategic lines or a combination of them. A region may present no more than two programmes in the 2000-2006 period, and the second only after the first has been completed.

2.8.1. The Commission will appraise the programmes for co-financing on the basis of ten specific elements:

- the quality of the proposal, in particular the clarity of the approach, the innovative nature of the work programme and the targeting of resources on a limited number of actions;

- the potential influence on programmes under Objectives 1 and 2 part-financed by the ERDF;
- the feasibility of the proposal and consistency between the goals set and the resources allocated;
- the expected impact in the Objective 1 and 2 areas;
- the private-sector contribution to the financing of the programme;
- the commitment and quality of the regional public-private partnership in preparing the regional programme of innovative actions and ability to enlist other regional and local agents, particularly small firms;
- arrangements for cooperation between the competent authorities in the region responsible for the preparation and implementation of the regional programmes of innovative actions and the managing authorities for programmes under Objectives 1 and 2 part-financed by the ERDF;
- expected sustainability of the actions when the regional programme of innovative actions has finished;
- transferability of the results to other regions;
- synergy and compatibility with the other Community policies such as research, the information society, enterprise, the environment, rural development (common agricultural policy), equal opportunities and competition; consistency with the Commission guidelines for programmes in 2000-2006.

2.9. From 2002, the Commission is to present an annual report on progress with innovative actions to the European Parliament, the Committee for the Development and Conversion of Regions, the Committee of the Regions and the Economic and Social Committee.

3. General comments

3.1. The Committee welcomes the latest proposals for a programme of innovative actions and fully agrees that programmes promoting the widespread introduction of innovative capacity and the technologies of the new economy to all sectors of production and society are crucial to regional development. Moreover, it stressed only recently⁽¹⁾ that the capacity to use information and communication technologies can determine the success of a possible development or the loss of further jobs in a particular area.

⁽¹⁾ Opinion on the Commission Communication 'Acting locally for employment — A local dimension for the European Employment Strategy', OJ C 14, 16.1.2001.

3.1.1. In addition, the best focus for innovative action programmes in the three main source areas of growth — entrepreneurship, training, and the proactive involvement of public bodies, cultural and research institutes and the social partners — is the local level, especially in disadvantaged regions. Geographical proximity, closer understanding of the difficulties inherent in the social and productive fabric, and the increased responsibility of local authorities arising from the decentralisation policies being applied in all EU countries, are all factors that contribute directly to forms of effective participation. The Commission's innovative action programme provides another major opportunity for such participation.

3.1.2. Participation is invaluable in basic organisational terms and also economically and socially: it expands the resources available, increases the flow of ideas, and fuels social cohesion.

3.2. The new requirement of consistency with the other forms of ERDF action in the same areas and complementarity with programmes part-financed by the ESF acts as a further stimulus rather than a restriction. It provides an opportunity, on the one hand, to take on the risk factor always inherent in an experiment and, on the other, to put an idea into practice with faster results, while fitting in with other local development initiatives.

3.3. The Commission states that it was largely if not totally successful in its innovative actions during the 1994-1999 period. However, a complete, in-depth evaluation of their impact or of the durability of their results would be useful. The communication gives details, as mentioned above, of the programme appraisal criteria, but there are no indications of a similarly detailed final evaluation. This is one point on which the Committee intends to make a few proposals.

3.4. Although reducing the number of strategic themes is beneficial in ensuring the various pilot actions are not too thinly spread and in linking up very closely with EU technological innovation, information society, and research and development policies, it has meant giving less than due attention to a theme which is now mentioned just briefly in one of the programme appraisal criteria: 'expected impact in the Objective 1 and 2 areas ... creation of long-term quality jobs ...'.

3.4.1. The employment issue is mainstreamed into all EU policies and is in essence the final objective of every development initiative, whether creating employed work or supporting

entrepreneurial initiatives. Therefore, although the new approach has done away with the previous strategic theme 'new sources of employment', the theme of creating new job opportunities through the innovative actions nonetheless deserves fuller attention than is given in the communication. Moreover, the Commission recently stated that it wanted to promote pilot measures to integrate the employment dimension into all local policies, and to assess their value added in terms of jobs created⁽¹⁾.

3.4.2. This is even more important for regions and areas that are largely cut off from the new technologies and the new economy, regions where there is sometimes the fear that the end of the old system of work organisation may mean the end of work full-stop.

3.5. The decision to favour an approach that supports programmes rather than projects and to entrust responsibility for managing the innovative actions to the same bodies managing ERDF and ESF funding is justifiable from an organisational point of view. Politically, however, it does away with the minimal opportunity for a direct link between the public and the European institutions that was one of the advantages of past practice.

3.6. When the last programme of innovative actions was launched, the Committee welcomed the initiative but felt that the appropriation of MECU 270⁽²⁾ was too low. The Commission, which financed 350 projects in around 40 regions during the funding period, has stated unofficially that from 2001 to 2006 it intends to finance programmes in approximately 100/150 regions. The current overall appropriation is, as mentioned above, EUR 400 million and the various programmes will be granted support ranging from EUR 0,3 to 3 million.

3.6.1. On this occasion too, given the potential importance of innovative actions for trying out new approaches to development in a context that is by definition critical, this sum seems somewhat inadequate; and the danger is that the lack of resources allocated and the complementarity with other structural measures (though justifiable), will mean in practice that these innovative actions will be treated as a mere accessory to the other programmes.

4. Specific comments

4.1. On the subject of innovation, the Commission stresses that SMEs form the basis of the regions' productive fabric and

(1) Communication from the Commission on the implementation of Innovative Measures under Article 6 of the European Social Fund Regulation for the programming period 2000-2006, COM(2000) 894 final.

(2) Opinion on local development initiatives and regional policy, OJ C 18, 22.1.1996.

that their chance of success is determined largely by their capacity for innovation. Later, on the subject of the potential generated by the information society, it states that companies, and SMEs in particular, must be able to harness that potential in order to grow more competitive.

4.1.1. Obviously, no one would argue with those statements, but the generic definition of SMEs conceals one of the basic features of the Union's entrepreneurial make-up. Approximately 98 % of private non-agricultural companies are small enterprises and 93 % of them are micro-companies (fewer than 10 employees)⁽¹⁾. Together they employ approximately two thirds of the entire EU work force and every year they create between 60 and 80 % of new jobs. In the communication, micro-companies are just one possible objective of the programmes under the third theme, but in the ESC's view it is unacceptable to side-line them in this way.

4.1.2. In June 2000, the European Council meeting in Santa Maria da Feira adopted the European Charter for Small Enterprises, implicitly signalling an end to the catch-all concept of the SME. In past years, the Committee has issued several opinions on the strong, vital and specific role of small companies that do not fit neatly into the pattern traced by policy initiatives for companies jumbled together by a generic definition of SMEs⁽²⁾.

4.1.3. As it is often the more structured companies, and medium-sized companies in particular, that exploit Community funding, special and more focused practical attention on small companies would be useful, especially under the innovative action programmes. More specifically, the Committee has already proposed that business and entrepreneurship policies should make explicit reference to the European Charter for Small Enterprises⁽³⁾. The communication meanwhile includes consistency with Commission guidelines for programmes in 2000-2006 among the criteria for evaluating programmes for selection.

4.2. Among the players to involve, the communication mentions the public sector, bodies responsible for RTDI, businesses, universities, advisory services, financial markets and other technology partners. Throughout the text, the term 'private sector' is used to indicate the business sector. It is not clear whether this definition is intended to include what is commonly known as the social economy, which not only is very dynamic in pinpointing and offering new additional, alternative or accompanying services alongside those provided by the public sector, but is also specifically active in fields that have a major impact on social cohesion and are often linked to the information society and new technologies, as well as environmental sustainability⁽¹⁾.

4.3. The poorest sections of the public in the various EU countries (without going deeper into the commonly accepted technical definition of poverty) are oppressed by problems linked to the employment situation, demography and housing. However, as the recent report on economic and social cohesion⁽⁴⁾ points out, in the information society revolution it is likely that low levels of education, i.e. a lack of training in the use of ICTs, will become a more critical factor than poverty measured in economic terms.

4.3.1. Lifelong learning is extremely important and valuable for employment, both in the new economy and in the economy as a whole, but great care must be taken to ensure that the information society does not effectively marginalise older people who no longer work and therefore miss out on the opportunities offered by school and employment. The Committee has already recommended developing methods and strategies to promote digital literacy among specific age groups⁽⁵⁾.

4.3.2. Furthermore, the partnerships needed for regional information society development strategies are broader than those indicated in the communication. Discussing the RISI innovative actions under way at the time, the Commission itself once stressed⁽⁶⁾ that the most innovative aspect was the institutional mechanisms through which the strategy was

⁽¹⁾ Commission Communication 'Acting locally for employment — A local dimension for the European Employment Strategy', COM(2000) 196 final.

⁽²⁾ Additional own-initiative opinion on 'SMEs and craft businesses in Europe'.

⁽³⁾ Opinion on the 'Communication from the Commission — Challenges for enterprise policy in the knowledge-driven economy — Proposal for a Council decision on a Multiannual Programme for Enterprise and Entrepreneurship (2001-2005)', OJ C 116, 20.4.2001.

⁽⁴⁾ Second report on economic and social cohesion. January 2001, COM(2001) 24 final.

⁽⁵⁾ Opinion on 'eEurope 2002 — An information society for all — Draft Action Plan', OJ C 123, 25.4.2001.

⁽⁶⁾ Communication from the Commission on 'Cohesion in the information society', COM(97) 7 final.

developed, i.e. the partnership between regional and local institutions and the associations most representative in the sphere of training and education bodies, unions, chambers of commerce, cooperative movements and the voluntary sector.

4.3.3. In the same communication, in relation to the development of practical applications of information technologies and other information and training activities, the Commission stated that new forms of work organisation should be developed, which, accompanied by training and retraining measures, were vital steps in the process of ushering in the information society.

4.3.4. In another recent document⁽¹⁾, on the subject of education for an entrepreneurial society and high-quality new jobs, it pointed out that training and continuous training programmes should be custom made, in cooperation with the social partners, especially where SMEs are concerned.

4.3.5. Nowhere in the Commission communication are the social partners given a part to play. The promotion of equal opportunities (incidentally, always mentioned alongside competition), in-company training, and new forms of work organisation are seemingly areas void of consultation or negotiation. The Committee clearly hopes that the practical application will differ from the letter of the provision. In the above-mentioned report on cohesion⁽²⁾, the Commission emphasised the active role of the social partners in lifelong training and social integration policies, but now that role is completely ignored. Since the success of this initiative will depend largely on the breadth and quality of partnerships at local level, this mistake will have to be put right when the schemes are implemented.

4.4. Obviously, innovation is at the core of the objectives set by the provision. It is also central to the kind of EU development outlined by the Lisbon European Council and is all the more crucial for under-developed regions, be the reason for their situation economic, geographical or other.

4.4.1. It is useful to note that the official definition of innovation comprises 'the renewal and enlargement of the range of products and services and the associated markets; the establishment of new methods of production, supply and distribution; the introduction of changes in management, work organisation, and the working conditions and skills of the workforce⁽³⁾'. Once again, the social partners have a funda-

mental role to play, but it is necessary to analyse how the innovative actions financed by the ERDF tie in with the EU's overall policy on innovation.

4.4.2. The fifth RTD framework programme, which closes at the end of this year, named innovation as its basic objective and included a horizontal programme specifically designed to promote innovation in SMEs. The recent Commission communication 'Innovation in a knowledge-driven economy⁽⁴⁾' states that a broad strategy is required with firm links to other Commission initiatives, notably regional policies and, in the light of the recently approved European charter, it calls for the best possible environment for small companies and entrepreneurship. Lastly, it states that on average only 13 % of companies cooperate with universities or research institutes.

4.4.3. In response to these communications, the Committee hopes that the programme evaluations will pay attention to the potential link with innovation policy as a whole. Furthermore, in view of the objectives and given the rareness of interactions between academic centres and companies, the scale of the overall financing for innovative actions at regional level appears very limited and restrictive.

5. Proposals and recommendations

5.1. In the light of the limited resources available, there is a danger that extending access to funds for innovative actions to all regions could weaken the impact of the measures.

5.1.1. In the Committee's view it is therefore especially important to define final quantitative and qualitative assessment criteria for all the programmes financed, analysing success stories but also the negative results that may be inevitable given the risk margin but that can also stem from management and organisational limitations.

5.1.2. In addition to including an analysis of the impact in terms of increased competitiveness in the ex post evaluation

(1) Commission Staff Working Paper 'Report on the implementation of the Action Plan to promote Entrepreneurship and Competitiveness' SEC(2000) 1825 vol. I.

(2) Second report on economic and social cohesion. January 2001, COM(2001) 24 final.

(3) Bulletin of the EU, supplement 5/95.

(4) COM(2000) 567 final.

criteria, it would be useful to conduct a second evaluation, at a later point, of the lasting nature of the results and their locomotive effect in relation to the amount of funds earmarked.

5.2. The Commission lists many factors relating to regions' specific characteristics, but the development of skill centres should be based on social, health and environmental considerations in addition to economic, cultural and social potential.

5.3. In the area of sustainable development, reference to Agenda 21 would have been appropriate. Of course, sustainability is not just an environmental issue: 'social sustainability' is another factor that has a major impact on development prospects. However, it is equally important always to reaffirm commitments and obligations to counter environmental decline.

5.4. Training initiatives too can be innovative, not only in the area of the new economy but also in traditional production. The piloting of new training arrangements in micro-enterprises can provide a particular opportunity for organisational innovations. Developing the professional identity of workers and certifying new skills are basic means of promoting positive flexibility and adaptability, both subjectively and objectively. This requirement is all the more important in the areas that fall under Objectives 1 and 2 and it would be useful to include specific training measures among the possible innovative actions.

5.5. The previous innovative actions financed interesting teleworking projects in various regions. There is a trend towards on-line working, either from home or from telecentres, but its development is affected by various elements, the first being the level of use of the new technologies, which still differs enormously from one Member State to another. Another crucial point is the establishment of criteria for governing on-line employment at a distance from company headquarters.

5.5.1. In addition to the technological and economic connotations, teleworking also has other significant social and environmental effects that should be highlighted with regard to the innovative actions. It can contribute to sustainable

transport policies and promote regional cohesion by halting the trend towards depopulation in less privileged areas. Furthermore, it is proving to be of major use in increasing employment levels among women and young people.

5.5.2. The Commission is obviously well aware of these factors, but specific reference to teleworking as a potentially innovative element would have been a useful addition to the indicative selection criteria for which the regions are responsible, not least in the light of the procedural changes introduced (programmes as opposed to projects).

5.6. The Committee believes that interregional networks for the dissemination of good practice are highly valuable, but it would also have liked to see the possibility for joint programmes spanning several regions, potentially generating synergy between regions at differing levels of development. At all events, care must be taken to ensure that the best practice gleaned from the innovative actions is circulated as widely as possible, so that new and effective methods do not remain the preserve of the few.

5.7. In view of the different regional structures in the various Member States, a more precise definition of the authority responsible would have been useful. The Commission should publish and disseminate the precise list of authorities responsible in the various regions. In addition, as the emphasis on programmes means that the authority responsible has to assess and select individual projects, the initiative must be widely publicised, not only at institutional level but also among business, scientific and civil society associations.

5.8. In the management of the innovative actions, the Committee recommends that the Commission keep a constant watch on their consistency with basic mainstreaming policies, especially as regards employment and equal opportunities, which must be integral elements in all EU initiatives.

5.9. Lastly, the innovative actions should also be weighed up in the light of the preaccession policies and special attention paid to the launch of programmes in the island and peripheral regions of the Member States.

Brussels, 30 May 2001.

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 and the European Parliament on the prevention of crime in the European Union — Reflection on common guidelines and proposals for Community financial support', and
- the 'Proposal for a Council Decision establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime (Hippocrates)'

(2001/C 221/17)

On 29 November 2000, the European Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication and the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2001. The rapporteur was Mr Burnel.

At its 382nd plenary session on 30 and 31 May 2001 (meeting of 30 May), the Economic and Social Committee adopted the following opinion with 111 votes for and one abstention.

I. INTRODUCTION

1. Crime is a growing problem both in the European Union and across the world, especially since it is a scourge which can cross borders easily and fast. Some geographical areas in particular provide a favourable climate for its development and proliferation.

2. For this reason, both individual states and the European institutions have a pressing obligation to deal with crime at its roots and in all its forms. To simply say that crime is a social problem would be neither an explanation nor an excuse.

3. The ESC has been asked to give an opinion on the Communication from the Commission to the Council and the European Parliament on the prevention of crime in the European Union — Reflection on common guidelines and proposals for Community financial support.

4. Prevention is only the first step in the comprehensive policy and measures required to combat crime. The Committee's response is therefore framed in broader — although by no means exhaustive — terms. The Committee has already expressed its views on this issue elsewhere, for example in relation to the various forms of criminal exploitation of children, women and immigrants in particular, and of vulnerable and at risk groups and individuals in general.

5. First and foremost, the Committee calls on decision-makers, particularly those in the political sphere, to clarify their approach to safeguarding and promoting the values connected with respect for human rights and defining the measures and resources their enactment requires.

6. Enlargement will increase the length of the EU's land and maritime boundaries. It is therefore to be hoped that the applicant countries will be informed about and involved in Community concerns and actions.

The EU must consult and cooperate with the Council of Europe and the United Nations, particularly in the fight against organised crime, which makes proficient use of the latest technologies in the fields of communication, drug manufacture and espionage.

II. COMMENTS

1. The Commission has adopted a broad definition of crime, which transcends the acts defined as crimes under national law in the Member States.

1.1. If we place crime at the top of the pyramid of malfeasance, we must acknowledge that it is supported by a number of different strata which increase proportionately in severity from apparently banal acts of anti-social conduct right up to mafia activity and organised crime, via all the various levels of individual and collective delinquency.

1.2. The Committee considers that the Commission's broad definition is justified since, by a simple 'snowball' effect, any offence which is not dealt with at its root may lead to more serious offences.

2. The objectives of the fight against crime are to ensure the safety of physical and moral persons, safeguard private and public property, both individual and collective, and restore the rights of victims.

3. This strategy comprises four, interrelated approaches:

3.1. prevention;

3.2. police action and judicial sanctions, exercised in accordance with the law;

3.3. compensation and victim support;

3.4. social rehabilitation of offenders during their sentences and on release;

4. The Commission has opportunely decided to name the programme 'Hippocrates' after the founder of preventive medicine, whose motto was 'prevention is better than cure' — a logical principle that ought to be applied to all situations of injustice.

4.1. The two main objectives of the programme are to:

- alert the public; and
- encourage the public to contribute to the success of public policies on safeguarding persons and public and private property.

4.2. If this appeal for the participation of the general public and political, economic, social and cultural decision-makers is to succeed, two key conditions must be met:

4.2.1. first, the general public must feel that that the participation requested of them is feasible — in other words realistic — and will produce quantifiable results. Crime prevention is not a matter for specialists alone, no matter how indispensable they are. It is at the heart of good citizenship;

4.2.2. second, the crime prevention policy must be comprehensive. In other words, it must tackle all the causes of crime, both its deep roots and their surface manifestations, and mobilise society as a whole. In this sense, policies on urban planning, poverty reduction, unemployment and exclusion, education, welfare, and information, all play a part in crime prevention. To take one example, combating poverty means tackling its causes and effects, not pointing the finger at poor individuals and families as responsible for their situation. Nobody chooses to live in poverty.

4.2.3. Particular attention must be given to education, in the sense of teaching people how to master thought and communication through the practice of different forms of language (speaking, reading, writing and arithmetic) and instilling self-discipline through moral and civic education. Hence the necessity to train teachers to relate to the whole community, both pupils and parents, and to make schools a focus for educational and community initiatives. The street is rarely a good school.

4.3. As the institutional forum for civil society organisations, the Economic and Social Committee is, by definition, concerned with the quality of life and therefore with all the problems resulting from the deprivation of fundamental rights: i.e. the rights to safety, dignity, work, health and social protection, education and training, and family life.

4.4. However, all too often the resources allocated to crime prevention and suppression are outpaced by the rising volume, gravity and sophistication of crime itself. This, in any case, is the prevailing perception in public opinion.

4.4.1. The public authorities therefore need to conduct a large-scale education programme targeted at the general public and the media.

4.4.2. The resources at the disposal of Europol (i.e. EUR 35 million in 2001, an increase of 29 % over 2000) are far from adequate. A similar critique could be levelled against the situation in the Member States, for example with relation to the resources allocated for combating cross-border crime (land and maritime borders). Crime is a scourge which crosses borders increasingly easily and fast; the longer the delay in addressing it, the more powerful its effects will be.

4.4.3. Although the watchword ought to be cooperation, excluding any form of competition, it would appear that the rivalry between different law enforcement agencies is no longer confined to the world of fiction.

4.4.4. Some protracted and complex judicial procedures also contribute to the public's impression that certain cases go unpunished, whereas what is really at issue is the patent lack or inappropriateness of resources. The rights of offenders have to be guaranteed. But so, equally, do the rights of victims.

4.4.5. The public sometimes almost feels that law-abiding citizens are forgotten whilst the agencies responsible for their protection are out of their depth.

5. The Commission:

5.1. in pursuit of the Action Plan adopted by the Amsterdam European Council in June 1997, calls for 'a mechanism for the collection and analysis of data which is so construed that it can provide a picture of the organised crime situation in the Member State and which can assist law enforcement authorities in fighting organised crime' to be set up on the basis of common standards.

Europol and the Member States followed this up when drawing up the annual report on the situation of organised crime in the European Union.

5.2. As regards general crime, the current absence of reliable data sometimes makes it difficult to compare the situation in different countries. The Council of Europe is working on the matter, as is the United Nations, in particular regarding data on general crime.

5.3. The Committee supports these initiatives, aimed at building up a shared, reliable and detailed picture of crime, monitoring its development and accurately assessing the impact of the measures already applied.

6. The Commission calls for the mobilisation and networking of those involved in crime prevention.

6.1. It supports the initiative taken by the French presidency and Sweden proposing 'the creation of a European network of prevention focusing on urban, juvenile and drug-related crime'.

6.2. Initiatives have been taken by industry and certain professions particularly exposed to the risks of corruption or implication in money-laundering and fraud operations.

6.3. The Commission proposes that a European Forum for the prevention of organised crime be established, covering an extremely wide range of fields, such as lawful and unlawful dealings in goods, cybercrime, corruption, and financial and environmental crime. A forum of this kind would have to be able to respond flexibly to requirements, but its primary aim would be to structure prevention work at European level by:

- being available to the European institutions and the Member States to assist them on all questions related to crime prevention;
- helping to identify new crime trends;
- facilitating the exchange of information on preventive action;
- contributing to the operation of expertise centres; and
- helping to identify areas for research, training and evaluation.

The Commission wishes to design the Forum in such a way that it can be managed by a lightweight structure that can be supplied by its own departments.

Brussels, 30 May 2001.

It will examine with the partners concerned the need to set up a web site on prevention.

The Committee endorses this.

7. The Tampere European Council suggested that consideration should be given to EU financial support for the crime prevention strategy. The Commission has come to the conclusion that a financial instrument would add value to the action of the Member States, as it announced at Praia da Falésia.

The financial instrument will comprise two aspects, one devoted to cross-border organised crime and the other to general crime.

The financial instrument would be regarded as a pilot operation, and would be established by decision under Article 34 of the Treaty on European Union for an initial two-year period (2001/2002). The Commission states that 'with regard to financial amounts, there should be a cautious start. An annual budget of EUR 1 million appears reasonable, pending the Commission's general proposals on the programmes that it manages'.

8. The Committee takes note of these decisions. In view of the scale of the problems to be addressed it wishes every possible resource to be committed. The public is extremely concerned and expects strong and concerted action to be taken.

8.1. The Committee stresses the need to involve the public through bodies such as organisations, unions and associations in which they place their trust and to which they are willing to contribute.

8.2. The Committee emphasises the role of the family, teachers, social workers and the media.

8.3. Given that the objective is actively to integrate people into society — one of the strong points of democracy — simply applying a restorative social medicine is not enough. The goal of integration must be mainstreamed in all policies — housing, urban development, employment, training, welfare and health protection, information and culture — in such a way that it is visible to the public at large.

This will be the best form of prevention, although it will not remove the need for vigilance on the part of the police and judicial systems, which uphold the law.

'Any Society which aspires to guarantee liberty, must start by guaranteeing safety.'

The President
of the Economic and Social Committee
Göke FRERICH

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage, and distribution of human blood and blood components and amending Council Directive 89/381/EEC'

(2001/C 221/18)

On 12 February 2001 the Council decided to consult the Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2001. The rapporteur was Mr Ribeiro.

At its 382nd plenary session of 30 and 31 May 2001 (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 114 votes for with three abstentions.

1. Introduction

1.1. Progress in medical science has meant that blood has become more of a key issue in public health.

1.2. The use of blood in medical practice means that it is necessary to draw up rules to guarantee quality, safety and efficacy in the delivery of these services, particularly as regards the protection of donors and recipients.

2. Background

2.1. The Treaty of Amsterdam, in particular Article 152(4)(a) and (5), provided the Community with an opportunity to implement measures ensuring the quality and safety of blood and blood components when they are administered in medical therapy.

2.2. However, any Community legislation must take into account every step in the system for collecting and processing blood, and must respect the Member States' responsibilities for the organisation and delivery of health and medical care.

2.3. Previous Community initiatives in this area must be borne in mind, particularly the Council Recommendation on the suitability of blood and plasma donors and the screening of donated blood in the European Community (98/463/EC) and the Council Directive which lays down special provisions for medicinal products derived from human blood or human plasma (89/381/EEC).

2.4. In view of the Council of Europe's representativity and importance, its recommendations in this sphere ought to be taken into consideration. These include the following: R(96) 11, R(95) 15, R(95) 14 and R(86) 6.

2.5. Directive 98/79/EC, which covers diagnostic medical devices made for in vitro use, should now be supplemented because it does not contain requirements relating to the quality and safety of blood which may be used in the preparation of the above-mentioned medical devices.

3. Limitation of the application of this directive

The Community thinks, and rightly so, that the quality and safety requirements relating to haematopoietic cells must be dealt with in the framework of legislation to be published subsequently and incorporated in the standards relating to tissues and cells of human origin.

4. The aim of this proposed directive

This proposed directive is designed to supplement the Community's current system, guaranteeing an equivalent level of safety and quality for blood in all EU Member States, whatever its intended purpose.

This will go a long way to reassuring the public.

5. Strategy

The present proposal for a directive aims to guarantee the same conditions in all Member States for the system of blood collection and processing.

To this end it proposes to:

5.1. establish regulatory and administrative foundations which can be transposed into Member States' national legislation;

5.2. lay down an equivalent system for attributing responsibility in the Member States for the notification and approval of blood establishments, for the certification of good clinical and laboratory practice, for the accreditation of the staff involved and for the certification of the procedures and

methodologies employed in all the establishments involved in the collection, testing, processing, storage and distribution of whole blood and blood components;

5.3. set up a committee of Member States' representatives, responsible for periodically updating the technical standards, and create a system to monitor adverse reactions and accidents associated with the collection, processing and use of blood and blood components (haemovigilance).

6. Content of the proposed directive

This proposal for a directive comprises nine chapters which can be divided into four distinct parts:

- 1st part — deals with general provisions (chapters I to IV)
- 2nd part — focuses on technical aspects (chapter V and annexes)
- 3rd part — establishes the requirements relating to data protection, exchange of information between the Member States, reports and penalties (chapters VI and VII)
- 4th part — regulates the consultation of committees, the adaptation of the annexes to technical progress and the implementation of the text (chapters VIII and IX).

7. General comments

7.1. The Economic and Social Committee notes that the proposed Directive aims to protect public health.

7.2. The Committee deems it necessary to highlight clearly the social, humanitarian and benevolent contribution made by blood donors and the civil society bodies which encourage blood donation. It underlines the altruism of blood donations which, because they are voluntary, anonymous and unpaid, warrant public acknowledgement.

7.3. The Committee approves the text of this proposal in general, subject to the general and specific comments below regarding some of the provisions it contains.

7.4. The Economic and Social Committee is generally critical of the fact that there are numerous detailed rules in the proposal, particularly in the annexes. It feels that the proposed directive should, in contrast, aim to lay down general principles and objectives. These rules should comprise only one annex with scientific and technical data which can be adjusted to reflect recognised scientific progress, proposed by scientists specialised in this area, meeting in an 'ad hoc' committee. The updating procedure must not lead to formal changes being made to the directive.

7.4.1. In any case, doctors specialised in this area ought always to be properly represented on this committee. There must be maximum transparency in the appointment of these experts.

7.4.2. For this reason, the Committee has decided not to make detailed comments about the technical and scientific components of the annexes.

7.5. The Committee welcomes this proposed directive which consolidates equality of rights for people throughout the Community.

7.6. The Committee considers the wording of Article 4(3) to be ambiguous, since the internal movement of goods in Member States must comply with quality and safety aspects imposed within each Member State. Steps must be taken to ensure that it is not possible for blood or blood components to be used in a Member State unless they comply with any stricter national requirements which might apply in that country. The Commission will have to assess the potential legal impact of this conflict of objectives.

7.7. The Economic and Social Committee notes that this proposed directive respects the individual features of each Member State's health system, by advocating a uniform basis for quality and safety in the system for collecting and processing blood without blocking any ad hoc improvements which individual Member States might wish to introduce.

7.8. The Committee approves of the fact that in each Member State a system has been set up for the notification, approval, accreditation, inspection, monitoring and certification of blood establishments and the accreditation of the staff involved in the process.

7.9. The Committee also welcomes the provisions relating to training and qualifications for professionals in the sector, especially since these will not prejudice legal requirements concerning mutual recognition of diplomas.

7.10. The Committee considers that one of the EU's priority objectives is to lay down the foundations for achieving high safety and quality standards for blood and blood components used within its territory. As a consequence it deems the provisions contained in this proposed directive to be positive, since, taking into account ethical and deontological principles as well as current international standards, they ensure that this objective will be met, necessarily covering the eligibility of donors and the collection, testing, processing, storage and distribution of whole blood and its components.

7.11. The Committee approves of the creation of a quality management and control system for blood establishments.

7.12. The Economic and Social Committee agrees with the establishment of a system for exchanging information on issues cropping up in the course of the system for collecting and processing blood, using a suitable labelling and filing system, so as to secure its traceability.

7.13. The Committee is pleased to see that the proposed directive creates mechanisms for continuous, rapid updates of the annexes, laying down the scientific criteria which determine the approach adopted by those involved in the system for collecting and processing blood.

7.14. The Economic and Social Committee does however feel that this proposed directive should state explicitly that it applies to both public, charitable and private establishments, irrespective of their size or the way they are organised.

7.15. The Committee recommends that it should in some way be made explicit in the proposal that tasks which might involve direct contact with donors or recipients of blood or its components should come under the exclusive technical responsibility of properly qualified health service staff with the appropriate back-up.

7.16. In view of the shortage of blood and given that blood donors make a humanitarian and benevolent gesture which is anonymous and unpaid, the Economic and Social Committee suggests that the Commission urge Member States to carry out more campaigns aimed at enhancing the public image of blood donors and thus providing the best incentive possible to give blood.

7.16.1. Self-sufficiency in the blood sector is one EU objective, which has to be secured. In line with the draft Directive, the Committee stresses how vital it is not to allow a mercenary, profit-oriented approach to blood donations to develop on the part of the establishments which collect and process blood.

7.17. The Committee notes that this proposed directive does not draw a clear distinction between homologous and autologous blood donations.

8. Specific comments

8.1. The Economic and Social Committee proposes that the following be added to Article 1: 'the present directive does not cover the effective therapeutic use of blood and blood components'.

8.2. The Committee suggests that Article 3(e) should read as follows: 'responsible person shall mean a doctor specialised

or with skills in transfusion medicine'⁽¹⁾.

8.3. Article 3(h) should read as follows: 'Adverse event shall mean any untoward occurrence inconsistent with the procedural standards in force, associated with the collection, testing, processing, storage, distribution and transfusion of blood and blood components'.

8.4. Article 4(1) should read as follows: 'Member States shall establish, or designate, the competent authority, not involved in the process, which will be responsible for implementing the requirements of this directive'.

8.5. Article 5(2) should read as follows: 'Where the responsible person is permanently replaced, the blood establishment shall provide immediately to the competent authority the name of the new responsible person and his/her date of commencement. The competent authority must be informed of the name of the stand-in for the responsible person when the latter is temporarily absent'.

8.6. Article 9(1) should read as follows: 'the responsible person must be a doctor specialised or with skills in transfusion medicine¹'. (See point 8.2).

8.7. Article 10(1) should read as follows: 'Personnel directly involved in collection, testing, processing, storage and distribution of human blood and blood components must be suitably qualified for their tasks and shall be provided with timely and relevant training'.

8.8. Article 10(2) should read as follows: 'additional training of the personnel shall be provided on recruitment ...'.

8.9. Article 11(1) should read as follows: 'The competent authority shall take all necessary measures to ensure that each blood establishment establishes and maintains a quality system for blood establishments ("QSBE") in keeping with current quality standards'.

8.10. Article 12(2) should read as follows: 'Member States shall take all necessary measures in order to ensure that access is provided to these documents for officials entrusted with

(¹)		
	Transfusion Medicine	Minimum length: 5 years
	Austria	Blutgruppenserologie und Transfusionsmedizin
	Germany	Transfusionsmedizin
	Denmark	Klinisk immunologi
	France	Transfusion sanguine (*)
	Italy	Immunoematologia
	Ireland	Transfusion Medicine
	Portugal	Imuno-hemoterapia
	Sweden	Transfusionsmedecin

(*) 'After 4 or minimum 5 years of another specialty, e.g. 'Haematology'.

inspection and control measures referred to in Article 8, without prejudice to the privacy of blood donors and recipients'.

8.11. In Article 13(1), second paragraph, second line: 'preferably computerised', should be inserted after the word 'system'.

8.12. At the end of Article 14(1) the following sentence should be inserted: "There will also have to be a procedure relating to "look-back"".

8.13. Article 14(2) should read as follows: "The person responsible for the blood establishment shall notify the competent authority ...". The following should also be inserted:

- a) The competent authority shall analyse and classify serious adverse reactions and events in order to introduce preventative measures.

8.14. In Annex II, Part A, first indent, the e-mail address should also be requested. The fourth indent should read as follows: 'hygiene and safety requirements (e.g. protective

garments, and compulsory compliance with accepted protection and hygiene standards in work area)'.
'

8.15. Part B of Annex II of the original Commission document will have to include an additional indent, to read as follows: 'Number of new donors per year'. The following phrase should be added at the end of the current third indent: 'and the reasons for this'.

8.16. The following should be added to the first column in the table in Annex III: 'Informatics experience applicable to this area'.

The text in the fourth column should read as follows: 'Training in human blood biology and chemistry'.

The text in the fifth column should read as follows: 'Specialisation or with skills in transfusion medicine (see Point 8.2)'.

8.17. It is proposed that in Annex VI an introduction to a Part 4 be inserted, worded as follows:

‘4. Requirements relating to auto-transfusion

Auto-transfusion is not covered by these restrictive criteria and will be subject to specific requirements.’

Brussels, 30 May 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 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer'

(2001/C 221/19)

On 14 February 2001, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2001 by a unanimous vote. The rapporteur was Mr Zöhrer.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion by 118 votes to two with three abstentions.

1. Gist of the Commission proposal

Twenty years have elapsed since Directive 80/987/EEC was adopted by the Council, and the Commission believes that the time has come to take stock of the discussions and deliberations on the problems in enforcing some of the provisions, and to present the Council with a proposal for amendments to the Directive.

The Commission takes the view that the basic structure of the Directive should be retained: its aim of offering protection, the mechanism introduced and the results achieved are beyond dispute. It appears, however, that over the years new conditions on the job market as well as restructuring and reorganisation within firms mean that the Directive should be revised in relation to specific points on which it has got out of step.

The main developments which have shown up gaps or shortcomings concern changes to insolvency law in the Member States, the dynamism of the internal market, the need for consistency with other Community directives on labour law adopted in the meantime, and the recent case law of the Court of Justice.

The following amendments are proposed:

- precise indication of the scope in Articles 1 and 2, with the current Annex being removed;
- new concept of insolvency in Article 2: definition based on that used in the Council Regulation on insolvency procedures;
- simplification of Articles 3 and 4;
- new Article 8a specifying the competent guarantee institution in cases with a cross-border dimension;

- new Article 8b providing for administrative collaboration between the Member States with a view to facilitating the implementation of Article 8a.

2. General comments

2.1. The Committee generally welcomes the Commission's initiative. The Directive was adopted 20 years ago and it now has to be adapted to cater for labour market changes, the dynamism of the internal market, and the restructuring and reorganisation of enterprises.

The simplification and alignment of legal provisions and the use of uniform terms and definitions in Community law generally enhance transparency and legal certainty.

2.2. The Committee underlines the view expressed by the Commission in its proposal that the aim is to continue to afford the protection provided by the original Directive. The purpose of the Directive is, after all, to ensure that employees receive at least a part of their remuneration in the event of the insolvency of their employer.

In the light of the development of insolvency law and the introduction of new forms of employment contracts to take account of greater labour-market flexibility, the Directive, in its current form, appears to be no longer suited to providing employees with full protection.

Above all, particular flexible forms of employment contracts, which have grown in importance in recent times, must not be excluded from the scope of the Directive.

2.3. Since the adoption of the Directive, extensive changes have been made to insolvency law in the Member States. The purpose of these changes is increasingly to avoid the total liquidation of enterprises which have difficulty meeting their financial obligations and to enable such enterprises to continue to operate.

However, if the Directive is interpreted strictly — as the European Court of Justice has done in its rulings — these cases are the very ones to fall outside the scope of the Directive. The Committee therefore supports an updating of the term 'insolvency'. This would not only help the Directive to continue to afford protection to employees but could also make it possible for employees to keep their jobs and to take part in the rebuilding of the enterprise.

2.4. Corporate structures are also taking on an increasingly European character as the internal market continues to develop. This produces more and more cases of employees in other countries being potentially affected by the insolvency of their employer.

Even though the European Court of Justice has already delivered rulings on such cases, the Committee takes the view that, in the interests of clarity and legal certainty, the Directive should also set out provisions governing this matter.

2.5. As regards the legal basis for the Directive, the Committee shares the Commission's view that the entry into force of the Treaty of Amsterdam has created a clear basis for the Directive in the Treaty and that Article 137(2) therefore provides the appropriate legal basis.

2.6. In the interests of providing maximum transparency, the Committee also recommends the publication of a consolidated version of the Directive. For the same reason, the Committee further recommends that Member States should produce a consolidated version of their national legislation when implementing this Directive.

3. Specific comments

3.1. Scope and definitions

3.1.1. The term 'insolvency'

As mentioned above, the proposal for a Directive takes account of the development of insolvency law and the practical application of the Directive in the Member States. The Committee endorses the proposal for a Directive as it also helps to ensure that the Directive continues to meet the goal of affording protection to employees.

Care must, however, also be taken to avoid abuse in the case of the 'rebuilding' of enterprises. It is not part of the protective role of the Directive to facilitate the financial rehabilitation of enterprises at the expense of the guarantee institutions. The Committee proposes that attention be drawn to this possibility in Article 10 of the Directive and that the Member States be given the responsibility for taking measures to prevent such abuse, also in individual cases.

As regards the obligation to notify national insolvency proceedings, incumbent on Member States, the Committee would point out that a list of the proceedings falling under Article 1 of Regulation (EC) 1346/2000 is already set out in Annex A to this Regulation. This raises the question of to what extent it would not suffice merely to refer to this annex. The obligation incumbent on Member States to notify proceedings could therefore be limited to amendments, supplementary provisions or additional proceedings relating to the implementation of the Directive.

3.1.2. Employees covered by the proposal for a Directive

3.1.2.1. The Committee welcomes the fact that the scope of the Directive has been made more precise and is now to include part-time employees, workers with fixed-term contracts, workers with a temporary employment relationship and homeworkers⁽¹⁾.

Consideration should be given to the extent to which persons having a similar status to employees may also come within the scope of the Directive. Such persons work for an employer on the basis of a contract which, whilst it does not in itself establish an employer-employee relationship, does, nonetheless, contain similar features or, to an extensive degree, equivalent features to an employment contract.

As this issue is directly linked to the respective national labour law provisions, the Committee calls upon the Member States to take account of this group of persons when defining the various terms.

3.1.2.2. The Committee also takes the view that inclusion in the Directive of clear provisions spelling out which employees may be excluded from the scope of the Directive, and under what conditions, represents an improvement on the previous provisions, which involved considerable differences between the Member States.

Provision is made for two grounds for exclusion from the Directive. Under Article 1(2) it is possible to exclude employees who receive equivalent protection by virtue of the existence of other forms of guarantee. The Committee endorses this provision.

Article 1(3) authorises Member States to exclude domestic servants employed by a natural person and share-fishermen.

⁽¹⁾ Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 14, 20.1.1998, p. 9). Council Directive 199/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43). Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers (OJ L 206, 29.7.1991, p. 19).

The Committee believes that this constitutes an example of discrimination which is out of step with the Community's social policy objectives. Under the provisions set out in the previous Annex to the Directive, only two Member States were authorised to exclude domestic servants and two Member States also received authorisation to exclude share-fishermen paid in the form of a share of the catch. These employees should therefore be deleted from the list of persons who may be excluded from the scope of the Directive.

3.1.2.3. The Commission does, however, fail to make provision for excluding persons who exercise a controlling influence on the management of an enterprise. The Commission refers in this context to Article 10 of the Directive but this does not, in the Committee's view, fully take account of this issue.

The Committee therefore recommends that the following criteria be included in Article 3(1) as grounds which may be invoked by the Member States for exclusion from the scope of the Directive:

- members of the executive organ of a legal entity who are authorised to act as its legal representative;
- partners who are authorised to exercise a controlling influence on a company, even in the case of trust companies.

3.2. *Time-limit on the guarantee*

The Committee endorses the proposed simplification in principle. It shares the Commission's view concerning the need to

apply the principle of subsidiarity, whilst at the same time stipulating a minimum level of protection. The proposed measures must not, however, result in a lowering of the guarantees currently enjoyed by employees.

Furthermore, the question should also be raised as to whether account should not also be taken of longer standing pay claims by employees where the liability of the employer was recognised by the courts but which were not met because of the onset of insolvency.

The Committee has reservations about allowing Member States to set a ceiling on payments to be made by the guarantee institution (Article 4(3)) as the new wording imposes no restrictions. The following qualification should be added: 'in so doing they shall ensure that the purpose of the Directive, namely to provide protection, is safeguarded'.

3.3. *Transnational cases*

On this point the Commission follows the case law of the European Court of Justice. The Committee endorses the principle that pay claims arise in the Member State in which the employee works; this principle is also in line with the Directive's aim of affording protection. A key prerequisite here is that the insolvency of the enterprise is recognised in the other Member State concerned.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHs

Opinion of the Economic and Social Committee on 'Re-invigorating the transatlantic partnership and dialogue'

(2001/C 221/20)

On 30 November 2000, the Economic and Social Committee decided to draw up an opinion in accordance with Rule 23(3) of its Rules of Procedure on 'Re-invigorating the transatlantic partnership and dialogue'.

The Section for External Relations, responsible for preparing the Committee's work on the subject, adopted its opinion on 17 May 2001. The rapporteur was Mr Ehnmark.

At its 382nd plenary session on 30 and 31 May 2001 (meeting of 30 May 2001), the Committee adopted the following opinion by 119 votes for and two abstentions.

Summary of the opinion

- a) The Economic and Social Committee strongly supports the transatlantic cooperation and recommends that it be reinvigorated and broadened.
- b) The Committee fears that the number of differences of opinion on bilateral and global issues between the US and EU may be growing.
- c) The Committee emphasises that a widened partnership and cooperation must be based on mutual understanding and respect for each other's visions, values, interests and social models.
- d) The Committee recommends that organised civil society is actively and vigorously involved in the partnership. Organized civil society can give important inputs to both preparation and follow-up of events in the transatlantic cooperation. A widened people-to-people profile is particularly important when disputes are becoming more frequent.
- e) The Committee supports the change to a more thematic way of organising the cooperation, taking into account that crisis issues must be tackled in particular forms.
- f) The Committee proposes four priority themes: Globalisation and the multilateral trading system, Environment and climate change, Food safety and consumer protection issues, Social cohesion and sustainable social systems in a demographic perspective.
- g) The Committee strongly supports the continuation and strengthening of the existing dialogues. The setting up of Task Forces as a tool for preparing theme discussions at US-EU summits should also be considered, and the ESC declares its readiness to assist in setting up such bodies.
- h) The Committee intends to be actively involved in the transatlantic cooperation. As European Institution representing organized civil society, the Committee can provide added value to the cooperation.
- i) As part of the Committee's widened involvement, the Committee proposes the creation of an annual or 2-yearly Transatlantic Forum for penetrating topical issues of mutual relevance and interest. The Committee declares its willingness to organise the first Transatlantic Forum in the Spring of 2002.
- j) The Committee calls upon the forthcoming EU-US summit in Gothenburg to take the lead in forming a global strategy for sustainable development.
- k) The forthcoming WTO negotiations in Qatar will illustrate the ability of the EU and the USA to agree on a joint platform and reconcile their differences. The Committee calls on the forthcoming EU-US summit in Gothenburg to take decisive steps in this direction.

1. Introduction

1.1. The transatlantic cooperation between the US and the EU expanded and found new forms during the 1990's, in the wake of the end of the cold war. The new forms and the feeling of mutual benefits made it possible to involve also groups of organised civil society in dialogues and cooperation initiatives. The New Transatlantic Agenda (NTA), adopted in 1995, was a significant step, as it expanded the EU-US cooperation to the full range of political and economic issues.

1.2. The NTA was important also in view of the previous discussions on the possibility of creating a free trade area encompassing both the EU and the US. Those discussions

failed, and are not an issue today, but they indicated a move towards finding new dimensions and forms for the cooperation.

1.3. The NTA marked the beginning of a new equilibrium between the EU and the US. In the Spring of 2001, the growing role of the EU in international affairs and as an international actor has become both obvious and significant. At the same time, significant events in the American hemisphere — particularly the agreement in Quebec to create a free trade area for all American states, except Cuba, have contributed to changing the scene and the conditions for the further development of the NTA and in a wider sense for the whole transatlantic cooperation.

1.4. The NTA added substantially to the problem-solving capacity of the mechanisms for cooperation — without hiding the fact that continuously a number of potential conflicts and/or differences of opinion are emerging, particularly concerning trade. The tackling of these problems before they became really difficult has, however, on the whole worked well, with a few exceptions.

1.5. It is anticipated that this capacity will remain adequate also in years to come. As in all relationships with timespans of many decades, the level of mutual understanding and accord may differ over the years.

1.6. It is possible that we are now witnessing the beginning of a period with an increasing number of differences of opinion between the US and EU on key bilateral and global issues. If so, it will become all the more important that the dialogue between the civil societies on both sides of the Atlantic is working well, and that the problem-solving mechanisms are adequate.

1.7. The European Commission has stated, in a communication on the future of the Transatlantic cooperation⁽¹⁾, that although difficulties arise, the fact remains 'that relations between Europe and the US is the most important strategic relationship in the world'.

1.8. The Economic and Social Committee wishes to express its firm support for this statement. At the same time, the Committee reiterates its opinion that a growing number of differences of opinion may create new strains on the relationship.

1.9. The Committee has not found it relevant to examine all the various issues where differences of opinion are becoming obvious. However, on one issue the ESC is voicing its reaction.

1.10. The Economic and Social Committee deplores the fact that the Kyoto protocol on global climate issues is in a state of implementation crisis, after the announcement that the US is withdrawing from the protocol.

1.11. In this opinion on the future of transatlantic cooperation, the Committee focuses its considerations on the issue of how cooperation and dialogues can be strengthened in the years to come. Where there are differences of opinion on political level, it is all the more important that cooperation and dialogues are reinvigorated, preventing misunderstanding between the two sides, and including organised civil society more than ever.

1.12. With this own-initiative opinion, the Committee is examining the experiences of the past period of transatlantic cooperation, and proposing a number of steps to reinvigorate some mechanisms and dialogues. With the advent of the new US administration, it is timely to consider both experiences of past and priorities for future cooperation.

1.13. At the same time, the Committee finds it relevant to consider the role for the Committee itself in the transatlantic cooperation and dialogues, based on the assumption, as stated previously, that organised civil society on both sides should intensify their contacts.

1.14. The Committee believes that it can give concrete contributions to the cooperation and contacts, by way of strengthening its own dialogue with all parts of the American society. Some specific proposals are put forward to this end.

1.15. With this opinion, the Committee is also giving a contribution to the EU-US summit that is to take place in connection with the EU summit in Gothenburg in June this year.

1.16. The real challenge for the EU-US partnership is to focus on the long-term common values and interests, not the short-term problems, and to seek relevant issues and forms for cooperation accordingly.

⁽¹⁾ COM(2001) 154 final of 20.3.2001.

2. The growth of transatlantic cooperation during the 1990s

2.1. In the early 1990's the deliberations on transatlantic cooperation were coloured by the collapse of the Soviet Union and the end of the cold war. New opportunities for cooperation on bilateral and global issues were seen, and new initiatives taken in order to structure the cooperation.

2.2. The discussion on a possible transatlantic free trade area reflected the feeling in the early 1990's that the opportunities were endless. However, in the end they were not so endless, and the idea of a transatlantic free trade area was abandoned.

2.3. In the middle of the 1990's, a new structure for the transatlantic cooperation was established, the Transatlantic partnership and agenda.

2.4. In 1995, the New Transatlantic Agenda (NTA) was agreed upon, marking a more decisive step forward in identifying the cooperation and the dialogues. The NTA set up four major goals:

- promoting peace and stability, democracy and development around the world;
- responding to global challenges: this included actions against terrorism and actions with regard to environment;
- contributing to the expansion of world trade and closer economic ties;
- building bridges across the Atlantic.

2.5. Under this last headline, a number of people-to-people initiatives were launched. The four specific dialogues, on business, labour, consumer and environment cooperation, date from 1995.

2.6. The structure of the NTA includes two annual meetings at summit level, an elaborate civil servant structure, and a number of informal contacts with the aim of identifying problems and options in the partnership. Organised civil society has only marginally been involved in the NTA.

2.7. In addition, in 1998 the Transatlantic Economic Partnership (TEP) was launched with the aim of giving a new impetus to EU-US cooperation in the field of trade and investment, within the framework of the NTA.

3. Experiences of the transatlantic cooperation during the 1990s

3.1. The European Commission has summarised part of the experiences of past cooperation in the following sentence:

'Although difficulties occasionally arise between the EU and the US on policy matters owing to the differences between them in institutional structures and administrative practices, the fact remains that relations between Europe and the United States is the most important strategic relationship in the world'.

3.2. The Commission has added a pertinent analysis to this general statement, identifying six major reasons for the shortcomings that have occurred:

- the limits placed on the US executive branch by the essentially domestically driven legislative process of the US Congress;
- the institutional limitations placed on the EU by the Treaties and the structural constraints of the EU's decision-making process;
- different levels of willingness to make economic sacrifices in order to advance global environmental standards;
- a different level of consumer tolerance on issues such as the use of genetically modified organisms;
- the constitutional inability of US Federal Administration to commit regulatory agencies and federal states in its dealings with the EU;
- the difficulties both sides face in ensuring the prompt and full implementation of WTO rulings.

High-level political leadership and commitment on both sides should help to overcome these difficulties, the Commission adds.

3.3. The ESC welcomes the clear language of the Commission analysis, and can agree with the contents. A discussion on future cooperation must build on a certain degree of openness and frankness in assessing problems and difficulties past and present. The Commission's communication is providing a stimulating reading for all involved in the transatlantic cooperation.

3.4. The observations made by the ESC on the future of transatlantic relations support the conclusions of the Commission. The combination of constitutional, institutional and public opinion-related factors have sometimes created

strong hindrances to new initiatives. On the other hand, it should be emphasised that the New Transatlantic Agenda has added substantially to the widening of contacts and dialogues, and helped in bringing in new issues.

3.5. At the same time, and regardless of the NTA mechanisms, trade disputes and other problematic issues have appeared. The fact that a substantial number of such issues have required prolonged efforts for solving indicates that the mechanisms have not been adequate. It has been noted that the trade dispute relate only 1-1,5 percent of total volume of bilateral trade. On the US side, it has also been noted that some pending issues, such as for example the issue of genetically modified crops, could quickly develop into a very substantial dispute.

3.6. The ESC, however, could also take note of the fact that representatives of those organizations that are active in dialogues and seminars on EU-US level over the last years have been arguing that it is time to take new initiatives in order to reinvigorate the partnership.

3.7. Representatives of business, consumer movement, and environment have in various degrees pointed to this same need. Representatives of the US trade union movement have forwarded the view that their bilateral contacts are well established within the existing trade union European and global confederations.

3.8. In particular, the ESC, in his contacts with EU and US organised civil society took note of the following comments and observations:

The commitment to transatlantic cooperation on the US side was perceived as weaker than before. This will no doubt result in changes in the atmosphere in the NTA. At the same time, US priority of relations with other parts of the Americas was underlined in various discussions.

Wide consensus was achieved as to the need to reinvigorate the NTA and the dialogues, and to create new mechanisms for cooperation. The issues, however, can not be selected on their likelihood of gaining consensus; it would rather be advisable to select issues where positions and solutions differ, but where a dialogue can be inspiring for both sides.

Active and vigorous participation of civil society organisations was widely supported. However, on the US side, it was noted that contacts domestically between NGOs and organised civil society was far less frequent than on the European side.

The established dialogues within the NTA can not exist without strong government involvement; this refers specifically to the Business dialogue, but the point was echoed also by others. The issue of financial support to the dialogues was brought up, with special reference to the environment dialogue.

The extraordinary growth in productivity in US industry over the last decade was frequently brought up, in the context of heavy investments in ICT and in human resource development. This cluster of issues was mentioned as one possible area for further bilateral analysis and comparison.

Labour relations in the US were affected by growing problems in vis-à-vis business and the new administration; on this issue, it was obvious that the EU could provide inspiring information and aspects.

4. Key themes and issues for the transatlantic partnership

4.1. It seems pertinent to focus on the key issues for the transatlantic partnership over the next four years or more before discussing objectives of extended dialogues and contacts.

4.2. The four dialogues that were established in 1995 — on business, labour, consumers and environment — have not all been successful. It is obvious that the Business dialogue has functioned very well, providing conclusions that have assisted in solving bilateral trade and industry problems. The same can be said about the Consumers dialogue, which has inspired legislation on both sides of the Atlantic. The Labour dialogue has to a large extent been taken place within established bilateral trade union contacts. The Environmental dialogue has only partially achieved its objectives; although it started well, it has later been forced to suspend work due to lack of resources on the US side. For some dialogues, the balance between issues and meeting mechanisms has been difficult. As one of the business representatives has expressed the situation, the mechanism for initiating and organizing meetings have sometimes become more important than the existence of relevant issues to discuss.

4.3. In this perspective, it is of particular importance that the issues — apart from topical crisis issues — selected for future NTA work meet criteria of both long term and mutual relevance. The European Commission has, out of its own analysis, identified eight themes of more strategic dimensions, and suggested that the NTA process should be focused on one or two such themes at any given period.

4.4. The eight themes identified by the Commission are:

- a) Emerging security challenges
- b) Globalisation and the multilateral system
- c) Fight against crime and in particular organised crime
- d) Energy — preparing for the future
- e) Consumer protection issues, in particular food safety
- f) Macroeconomic issues
- g) Fight against poverty in developing countries
- h) Digital economy and its effects on production, working life etc.

To this list, the General Affairs council has added a ninth issue, environment and climate change.

4.5. The Commission proposes that the themes be divided into priority issues, so as to enable the NTA structure to concentrate on a limited number of issues each year, and not move on to new themes and issues before some kind of results have been achieved.

4.6. The ESC can agree that the NTA process could become more focused and thereby increase the potential for reaching some kind of results. The point is, however, that any definition of result must ultimately rely on the mutual willingness and ambition to work for the aim of reaching results — be it in the form of agreements, the starting of new projects or programmes, or initiatives at national level.

4.7. The ESC can also agree that the suggested eight themes are pertinent and relevant. They cover very broad areas and reflect issues of high priority to both sides or to one or the other. The Committee does not have objections to anyone of them being included in a theme list.

4.8. However, from a civil society point of view, the ESC would give particular importance to the following themes, on the basis that these themes in a very specific way reflect

considerations and interests of broad groups of citizens on both sides of the Atlantic:

- Globalisation and the multilateral trading system: this theme should include building EU-US support for a remodelling of the multilateral trading system, to promote sustainable world economic growth and development, including respect for ILO core labour standards, joint efforts to promote, implement and enforce the OECD Guidelines for Multinational Enterprises⁽¹⁾, and preparations for the next WTO round.
- Environment and climate change: this theme should include both preparations for the Rio + 10 Conference and the establishment of renewed strategies for counter-acting climate change.
- Food safety and consumer protection issues: this theme should in particular respond to recent widespread fear among consumers that safe food is a commodity in scarcity.
- Social cohesion and sustainable social systems in a perspective of demographic trends: this theme would respond to the interests of wide groups in organised civil society and takes up issues that are becoming more and more urgent.

The Committee has considered also other themes from the point of view of organised civil society; most of them can be included in the Commission list or in the four above-mentioned themes. Among these themes can be mentioned migration and digital security. When selecting themes for future transatlantic cooperation, the Committee would, however, like to give special attention to the issue of sustainable development, which is specifically commented upon in chapter 8, and the issue of working life developments in the new and ICT-profiled economy.

⁽¹⁾ The OECD Guidelines for Multinational Enterprises are recommendations addressed by the 30 OECD governments together with Argentina, Brazil and Chile to multinational enterprises operating in/or from adhering countries. They are non-binding principles and standards for responsible business conduct. The Guidelines are comprehensive in covering ten different areas: Concepts and Principles, General Policies, Disclosure, Employment and Industrial Relations, Environment, Combating Bribery, Consumer Interests, Science and Technology, Competition and Taxation. For the Guidelines to be effective, they must be properly implemented and enforced. The transatlantic dialogue should encourage this. Governments now have the opportunity to make the Guidelines known and respected by companies world-wide. However, this requires the cooperation between EU-US on the one hand and organised civil society on the other.

4.9. To sum up, the ESC strongly advocates the inclusion of themes that are of broad relevance for organised civil society.

4.10. The Commission is suggesting a rolling programme for the EU-US summits, based on the selected themes and issues, and ensuring a top-down approach focussing on accomplishments and results.

4.11. The ESC is not convinced that a top-down approach in all cases is most favourable if there are to be results with wider implications than for the next summit.

4.12. The ESC would strongly recommend that the evolution of the transatlantic partnership is based on the parallel adoption of bottom-up and top-down procedures. The bottom-up procedure will result in growing involvement by civil society. This aspect should not be underestimated. At the same time, the top-down approach is of course necessary in executive phases of summit considerations.

4.13. The Commission suggests that the outcome of summits could have different forms; the leaders could instruct officials to identify possible solutions to a problem, proposals for cooperation or revert with an EU-US position in advance of international negotiations, all within a specific deadline.

4.14. To this, the ESC would suggest that yet another possible outcome of a EU-US summit could be a decision to involve broad groups in civil society for preparing or sounding out positions, and for monitoring and follow-up of new initiatives.

4.15. There is always a danger that summitry work is too far removed from the lives and horizons of ordinary citizens.

4.16. The ESC would like to add some further comments, particularly with regard to the four dialogues that were initiated in 1995.

4.17. The Business and Industry dialogue has been the most successful of the dialogues initiated. The ESC supports the view that the Business dialogue should continue as has been voiced by a number of participants in this dialogue.

4.18. In the Trade Union sector, considerably more contacts and discussions take place outside the Dialogue than within. The trade union confederations would, however, probably find it interesting to take part in new initiatives.

4.19. The Consumers' Dialogue has been very active and overall successful. Its continued work is more or less indispensable. The Consumers' Dialogue should of course be closely connected to new themes such as the one on consumer protection and on multilateral trading system.

4.20. The Environment Dialogue, which has suspended its work due to financial resources on the US side, should be reinitiated. This dialogue is extremely important, particularly in the light of differences of priorities between the EU and US in the environmental field. This dialogue has a very urgent role to play in contributing to joint positions between the US and the EU. Finding key issues to tackle can not be any problem. It would seem that different viewpoints among participants from each side of the Atlantic has been more of a problem. Anyhow, the ESC would recommend that the Environment Dialogue initially be integrated into a new effort on sustainable development, in the new form of a Task Force.

5. **Reinvigorating the structures and forms of the transatlantic partnership**

5.1. The ESC is reiterating its position that the transatlantic partnership should not predominantly be organised top-down. A bottom-up dimension must be added.

5.2. In accordance with this position, the ESC would like to give some considerations concerning the structures and forms of the transatlantic partnership in the next four years.

5.3. Themes that have been selected for the summit (with or without consultation with organised civil society) could be prepared in parallel by the official channels and by involving organised civil society. In some cases, this could take the form of involving one of the Dialogues. In yet other cases, a suitable form could be to initiate a Task Force with specific mandate and specific working time. Such a Task Force could be given the mandate to contribute to the preparation of a theme for a EU-US summit. The Task Force should be seen as a possibility to bring together various interests from both sides around a common theme. The theme of Sustainable Development could be a good example.

5.4. It should be mentioned that Task Forces — like the Dialogues in past years — should have the opportunity of organizing debates, seminars and hearings.

5.5. As to a possible dialogue between the dialogues, it has become obvious that there is at present no real interest for such initiatives.

5.6. The communication paper from the Commission notes that the European Parliament should be more involved in the transatlantic partnership in the future. The ESC strongly supports this proposal.

5.7. The ESC emphasises that organised civil society should also be involved more actively in the transatlantic partnership in the future. Particularly for establishing a wider public awareness of the issues and themes that are discussed at EU-US summit level, active involvement of civil society organisations is indispensable.

5.8. The role of the ESC in the transatlantic partnership is taken up in part 7.

5.9. Financial resources for the various forms of transatlantic partnership and cooperation will have to be further considered. The fact that the important Environment Dialogue has ceased to operate because of lack of funding is worrying.

5.10. The ESC proposes that annual budget frames be established for the continued transatlantic partnership and dialogues and other forms for preparation and follow-up. The group of senior diplomats in the NTA structure could have a special responsibility for the distribution of the funding.

5.11. Finally, the Committee would like to suggest that consideration be given to initiating dialogues similar to those in the NTA between the EU and Japan.

6. Trade issues

6.1. Controversial trade issues have been the specific hardship of the transatlantic partnership over the last five-ten years. Given the fact that the EU and the US are the two largest economies in the world, with a dominating position in world trade, it is not surprising that trade issues of controversial nature regularly are surfacing.

6.2. It is anyhow somewhat surprising that some trade issues have survived so many attempts at neutralising them. The banana issue is just one of them — however recently — successfully resolved.

6.3. To this picture should be added issues where the trenches are very intact, such as on genetically modified crops.

6.4. The ESC representing a wide spectrum of civil society, has a natural role in assessing the mechanisms for solving conflicting trade issues. The ESC will elaborate on this in a forthcoming opinion in view of the WTO negotiations.

6.5. It is obvious that new efforts must be made in order to establish quicker and more efficient mechanisms for solving trade issues. At the extreme, this is a question of political leadership. The point is that conflicting trade issues very quickly gets to the point of souring wide areas of cooperation, and that is not acceptable.

The Committee is of the opinion that, ultimately, the decisive factor is the commitment of both sides to adhere to and implement the decisions by the WTO, when and if EU-US disputes have to reach the level of WTO. This is a crucial factor, with consequences also for other countries. It would be fatal if the WTO mechanism is undermined by the largest economies in the world. But at the same time, all efforts should be made to resolve disputes before they reach WTO level.

6.6. The initiation of a new WTO round is an urgent topic of common high interest. The ESC finds it particularly important that the EU and the US can create a joint platform in view of the new WTO round, a platform that carries a distinct signal in support of free trade and for the support of core labour rights in trade.

6.7. The EU has decided to abolish customs on all products, except arms, from the 49 most poor countries on the globe. This is a profile decision, regardless of the fact that transition periods are remaining for some products.

6.8. The ESC expresses its firm support of this decision, and is hopeful that the US will be willing to take a similar decision.

6.9. For the poor countries, the abolishing of customs and duties on their products are particularly valuable steps in support of economic growth.

The largest economies of the world should take a joint responsibility here.

7. The role of the ESC

7.1. In this opinion, the ESC is arguing in favour of a widened involvement of organised civil society in preparation and follow-up of new themes and issues in the transatlantic partnership.

7.2. This leads to the question of the role of the ESC.

7.3. The ESC is the only institution in the EU that represents organised civil society in a wide sense. The ESC is developing this role and function, in close contact and cooperation with the other EU institutions, particularly the Parliament and the Commission.

7.4. The ESC finds it logical that the ESC, against this background, should adopt a role also in the context of the transatlantic partnership and agenda.

7.5. One part of such a role could be to organize an annual or 2-yearly Transatlantic Forum on topical issues in the transatlantic partnership. Such a Forum discussion could function as a preparatory tool in view of a forthcoming summit, and likewise serve as a support in the follow-up of previous summits.

7.6. This Forum should bring together representatives of organised civil society from both sides of the Atlantic. The Committee will consider this initiative further, with the aim of presenting a concrete proposal by the end of the year. This could make it possible to organise a first Transatlantic Forum in the Spring of 2002.

7.7. The ESC is willing and ready to assist in initiating Task Forces.

7.8. The active involvement of the Economic and Social Committee would also have another not unimportant result. By way of this involvement, the Committee will be able to assist in identifying upcoming disputes. In line with what has been stated earlier in this opinion, it is becoming more necessary to strengthen the problem-solving mechanisms, and that includes identifying would-be disputes at an early stage.

8. Building the future, for our generation and the next

8.1. One of the dominant themes in EU policy considerations this Spring is about building the future, for our generation and the next. Under the headline of Sustainable development, policy debate centres around the economic, social and environmental dimensions. A first policy decision on EU summit level is planned for June this year.

8.2. Building the future, in our globalised world of work and thought, is not a possible task for just one group of countries. Ultimately, it is a task for global commitments, from all groups of countries.

8.3. Just over ten years after the end of the cold war, and in a period where public opinion is increasingly aware of the unsustainable trends in climate, food and transport, to mention just a few examples, it is time for new efforts to create a policy for sustainable development of global dimensions.

8.4. It has to be a beginning, but a beginning with a long time horizon.

8.5. The Economic and Social Committee calls upon the forthcoming EU-US summit to take the lead in forming a global approach for a policy for sustainable development.

Brussels, 30 May 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 insurance mediation'

(2001/C 221/21)

On 3 November 2000 the Council decided to consult the Economic and Social Committee, under Articles 47(2) and 55 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 10 April 2001. The rapporteur was Ms Konitzer.

At its 382nd plenary session (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 77 votes to 14, with ten abstentions.

1. Introduction

1.1. Independent insurance intermediaries play a very important role on the financial services market. According to figures from the International Association of Insurance and Reinsurance Intermediaries (BIPAR), their share of the market in the distribution of insurance products is over 50 % in many Member States⁽¹⁾.

1.2. For insurance undertakings, the internal market in insurance has largely been completed thanks to the legal framework set in place by the Third Directives⁽²⁾. Since July 1994, each insurance undertaking has been subject to a single regime of official authorisation and prudential supervision by the Member State in which it has its registered office. However, there is as yet no effective and uniform European legal framework for insurance and reinsurance intermediaries. It is not least this absence of a legal framework that prevents full advantage being taken of the freedom to provide services and the freedom of establishment. This is one reason why insurance intermediaries are often unable to meet the wishes of their customers. Examples include liability and risk insurance for motor vehicles and property in another Member State. In the vast majority of cases, such insurance is — and can only be — taken out in the Member State concerned.

1.3. In the explanatory memorandum to the proposed directive, the Commission rightly notes that, while the current Community provisions relating to intermediaries (Directive 77/92/EEC⁽³⁾ and Recommendation 92/48/EEC⁽⁴⁾) have certainly helped to bring national laws closer together, insurance intermediaries are nonetheless still subject to different legal requirements in the individual Member States, and these requirements isolate national markets and hinder cross-border business.

1.4. It should also be pointed out that Commission Recommendation 92/48/EEC⁽⁴⁾ has not yet been transposed in all Member States. Directive 77/92/EEC has proved an inadequate basis for establishing a legal framework which affords freedom to provide services and freedom of establishment, and thus enables insurance and reinsurance intermediaries to engage in cross-border business. In some Member States, intermediaries can still set themselves up in business without any relevant professional training or skills, and the term 'intermediary' as a professional title is often not protected.

1.5. The Commission's Proposal for a Directive of the European Parliament and of the Council on insurance mediation reflects the Community's concern — as voiced in the Financial Services Action Plan⁽⁵⁾ — to establish a truly integrated retail market in which the interests of customers and suppliers in the field of insurance mediation are properly protected.

2. Content of the proposed directive

2.1. The Commission proposal covers admission to the profession of insurance and reinsurance intermediary for all persons (natural or legal) taking up or pursuing this activity within the Community [Article 1(1)].

2.2. The directive is designed to improve intermediaries' freedom to provide services and freedom of establishment within the Community.

2.3. The directive reflects the fact that insurance intermediaries are an essential link in the sale of insurance in the Community. Their share of the market in the distribution of insurance is over 50 % in many Member States.

(1) The statistics on market shares of the various channels of distribution set out on page 3 of COM(2000) 511 final have been expanded by Bipar to include data from the Scandinavian countries — see appendix.

(2) Directive 92/49/EEC (Third Non-Life Directive), OJ L 228, 11.8.1992, p. 1. Directive 92/96/EEC (Third Life Directive), OJ L 360, 9.12.1992, p. 1.

(3) OJ L 26, 31.1.1977, p. 14.

(4) OJ L 19, 28.1.1992, p. 32.

(5) COM(1999) 232 final, 11.5.1999.

2.4. The directive also takes account of the aims of the Financial Services Action Plan⁽¹⁾ — endorsed by the European Council in Cologne in June 1999 and reiterated in Lisbon on 23 and 24 March 2000 — to establish a truly integrated retail market in which the interests of customers and suppliers are properly protected.

2.5. The directive also falls in with the European Parliament's resolution on the Financial Services Action Plan, which states that an overhaul of Community rules on insurance intermediaries is of the utmost importance⁽²⁾.

2.6. The directive establishes an unprecedented legislative framework designed to ensure a high level of professionalism and competence among all independent intermediaries (Article 4). Insurance and reinsurance intermediaries are only to be allowed to operate in the Member States if:

- they possess appropriate general, commercial and professional knowledge and ability;
- they are of good repute and, in particular, have never committed a criminal offence in relation to the insurance and reinsurance business and have never been declared bankrupt;
- they hold professional indemnity insurance or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 000 000 per claim;
- they are subject to safeguards — under customer protection measures set in place by the Member States — to ensure that they transfer premiums to the insurance or reinsurance undertaking and the amount of any claim to the insured party.

2.7. In contrast to independent intermediaries for whom their work is their principal professional activity, Member States may impose lower professional requirements on persons who take up or pursue insurance mediation as employees of an insurance undertaking or of a registered intermediary, or only as a sideline to their main occupation. There is an obligation to provide such persons with relevant basic training and to take on responsibility for their actions (Article 4(1) subparagraphs 2 and 3).

2.8. Moreover, Member States need not apply this directive to persons providing insurance that is ancillary to the supply of a good or service, where no specific knowledge is required,

the amount of the premium does not exceed EUR 1 000 per year and the duration of the insurance contract is less than a year [Article 1(2)].

2.9. Under the directive, the taking-up and pursuit of the profession of insurance or reinsurance intermediary are subject to registration by the competent authority in the intermediary's home country; there must be easy public access to the register (Article 3).

2.10. The directive stipulates that insurance undertakings may use the services only of registered intermediaries [Article 3(5)].

2.11. In order to guarantee the freedom to provide services and the freedom of establishment, the directive lays down prior reciprocal information requirements between the home country and the host country in cases where an intermediary intends to offer services or establish a branch in a Member State other than his or her home Member State. The competent authority of the host Member State is to be required to inform its counterpart in the home Member State of the conditions under which, in the interest of the general good, the business must be carried on in its territories (Article 5).

2.12. The competent authorities which keep the register of intermediaries must be public authorities, bodies recognised by national law or bodies recognised by public authorities expressly empowered for that purpose by national law (Article 6).

2.13. The proposed directive stipulates that Member States must provide appropriate sanctions against non-registered intermediaries offering or arranging insurance, and against insurance undertakings that use the services of non-registered intermediaries. In the event of infringements, the competent authorities of the Member States are to work together by exchanging information (Article 7).

2.14. Member States are required to set up a facility for registering complaints and machinery for the out-of-court settlement of disputes (Articles 8 and 9).

2.15. Intermediaries must comply with the information requirements laid down in the directive (Article 10).

2.16. Member States must transpose the directive by 31 December 2003 at the latest (Article 13).

⁽¹⁾ See footnote 6.

⁽²⁾ Resolution A5-0059/2000, point 11.

3. General comments

3.1. The Economic and Social Committee expressly endorses the Commission's proposal which seeks (i) to ensure a high level of professionalism and competence among insurance and reinsurance intermediaries through the establishment of a legislative framework, (ii) to facilitate the cross-border activities of intermediaries under the freedom of establishment and freedom to provide services by providing a uniform system for their registration and (iii) at the same time, to provide a high level of protection for insurance customers' interests.

3.1.1. The Committee has already made the point that, despite its key importance for the operation of the insurance sector in the single market, the business of insurance agents and brokers is covered by only a single directive, dating from 1976, which ignored aspects such as professional liability, financial guarantees, registration and other business conditions⁽¹⁾.

3.1.2. However, the Committee feels that the proposal for a directive on insurance mediation does not always adequately meet its basic objectives. This applies to:

- the high professional requirements for insurance and reinsurance intermediaries;
- the freedom to provide services and freedom of establishment, and the protection of customers and insured persons.

3.2. According to the Commission's explanatory memorandum, the purpose of the directive is to establish a legislative framework designed to ensure a high level of professionalism and competence among insurance intermediaries⁽²⁾. However, all professional skills are based on appropriate theoretical and practical training, the experience gained in this process and the knowledge acquired as part of continuing training in the course of one's career. The Commission proposes⁽³⁾ that the knowledge and ability of intermediaries should be tailored to the functions they perform and to market requirements and that the Member States themselves should decide and lay down the level and content of such knowledge.

3.2.1. In the light of these objectives and reiterating a point already made in Recommendation 92/48/EEC, the first subparagraph of Article 4(1) requires that insurance and reinsurance intermediaries possess appropriate general, commercial and professional knowledge and ability.

3.2.2. The Committee would refer to its opinion on consumers in the insurance market (Single Market Observatory) in which it pointed out that insurance brokers must have the specialist training needed to perform their important task⁽⁴⁾. In this regard, the Committee would point to BIPAR's Oporto declaration⁽⁵⁾, which leaves it to the Member States themselves to decide the level and content of training, but requires a minimum of 300 hours' theoretical and practical training, although credit may be given for any relevant professional knowledge already acquired.

3.2.3. The Committee proposes that insurance intermediaries who have already acquired experience and knowledge of insurance mediation over a certain period of time should not be required to undergo renewed training under the first subparagraph of Article 4(1), but that an additional provision should be introduced giving them direct access to registration.

3.3. The freedom to provide services under Articles 49ff and the freedom of establishment under Articles 43ff TEC will thus become a reality for insurance intermediaries only if they are able — on the basis of their recognition and registration in their home country — to also offer services in another Member State and/or establish branches there. However, different national rules within the Member States are manifested in the compartmentalisation of the markets up to now. This situation would be perpetuated by the adoption of the Commission proposal — signalled in the last part of Article 5(3) — to make the taking-up of an insurance mediation activity in another Member State subject to conditions that relate to different training practices. The aim should therefore be to lay down a minimum standard for the training required in all Member States under the first subparagraph of Article 4(1), without specifying the content of that training in the directive, and to ensure that the skills thus acquired — which give access to registration in the intermediary's home country — also make it possible (following registration) to take up this activity in another Member State.

3.3.1. The Committee therefore feels that freedom to provide services and freedom of establishment can only be brought about by laying down a minimum level of training for insurance intermediaries wishing to acquire the requisite professional skills, and that such training should culminate in a state or state-recognised examination.

3.4. The Commission proposal also seeks ultimately to improve the protection of customers acquiring insurance products via an intermediary. Such protection is to be provided

(1) Own-initiative opinion on consumers in the insurance market, OJ C 95, 30.3.1998, p. 72.

(2) COM(2000) 511 final, point 1.2, paragraph 1, explanatory memorandum.

(3) COM(2000) 511 final, point 2, comments on Article 4, explanatory memorandum.

(4) OJ C 95, 30.3.1998, p. 72.

(5) BIPAR resolution (Oporto declaration), 7.10.1992, Germany: Insurance mediation 1993, p. 69.

inter alia by guaranteeing that all persons (natural or legal) taking up or pursuing the activity of insurance or reinsurance mediation have been registered on the basis of certain minimum professional requirements. Initially, consideration was given to making the directive applicable only to intermediaries with a certain turnover, but this was quite rightly rejected in the interests of protecting insurance customers. An intermediary selling only one product a day must be no less skilled than one selling ten. The basic skills required of intermediaries in the interests of customer protection cannot be determined either by the number of products sold or by the amount of time this takes.

3.4.1. Unfortunately, the Commission ignores its own conclusion in this regard⁽¹⁾ in the third subparagraph of Article 4(1), where it is stated that Member States need not apply the requirements set out in the first subparagraph of the same article to intermediaries whose principal professional activity is not insurance mediation. The sale of insurance as a secondary professional activity is found in both Portugal and Scandinavia, but is particularly widespread in Germany where some 300 000 people are involved in insurance mediation as a sideline. If the Commission proposal is adopted, however, the opening-up of the market and the freedom to provide services will quickly enable people to take up this sideline in other Member States as well. The issue does not therefore affect just one Member State.

3.4.2. Moreover, the Commission's proposal not to apply the professional requirements to intermediaries for whom this is not their principal professional activity also contravenes the Amsterdam Treaty's consumer protection provisions⁽²⁾.

3.5. The Committee feels that the insurance intermediary's record-keeping requirements under Article 10(3) are too one-sided and, moreover, will fail to achieve the desired consumer protection if, in the event of a claim, the only records available are those of the insurance intermediary.

4. Specific comments

4.1. Article 1 — Scope

4.1.1. The proposal allows Member States not to apply the provisions on professional requirements (Chapter II) or on information requirements (Chapter III) to persons providing insurance if that activity does not require any general or specific knowledge of insurance [Article 1(2)(a)], does not involve life insurance contracts [Articles 1(2)(b)] and does not

cover liability risks [Article 1(2)(c)], but is ancillary to the supply of goods or services as part of those persons' principal professional activity [Article 1(2)(d) and (e)]. The Committee feels that such ancillary contracts should also include, for instance, an insurance contract for a hire car booked together with and for the duration of a holiday. The proposal stipulates that the duration of the insurance contract must be less than a year and that the amount of the premium must not exceed EUR 1 000 [Article 1(2)(f)].

4.1.1.1. Since the life insurance contracts and contracts covering liability risks referred to in Article 1(2)(b) and (c) always require specific knowledge of insurance, they are also covered by Article 1(2)(a). It is thus proposed to combine paragraphs 2(a) to (c). The specific mention of liability insurance stems in the case of motor vehicle insurance from the legal requirement to protect potential victims which exists in all Member States and necessitates compulsory insurance. Another reason for amalgamating the three paragraphs is that other insurance contracts also require general and specific knowledge in just the same way as contracts covering life and liability insurance. The following new wording is proposed:

'(a) the contracts do not involve products relating to retirement provision or investment funding such as life insurance or pension schemes, do not cover any liability risks and do not require general or specific knowledge of insurance;'

4.1.2. The proposal does not make clear whether the figure given for the premium relates to the total number of insurance contracts concluded per year or to each individual contract. Under the proposed directive, the rules are not to apply only where the mediation involves contracts which cover small risks and are provided ancillary to a main product (e.g. loss of or damage to spectacles and certain household electrical appliances, or in connection with travel contracts); hence, it is appropriate to limit the annual premium to EUR 100 with no restriction on the duration of the contract. The following wording is therefore proposed:

'(f) the premium does not exceed EUR 100 per year and contract with no restriction on contract duration.'

4.2. Article 2 — Definitions

4.2.1. Article 2 defines the terms used in the application of the directive. Some of these definitions are not clear.

⁽¹⁾ COM(2000) 511 final, point 2, comments on Article 1, paragraph 5, explanatory memorandum.

⁽²⁾ OJ C 340, 10.11.1997, p. 32, Article 2.17.

4.2.1.1. Article 2(3) defines insurance mediation as 'the activities of introducing, giving information, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or assisting in the administration and performance of such contracts, in particular in the event of a claim'. In the German version of the proposal, the word 'Vorschlagen' (proposing) should be replaced by the term 'Informationserteilung' (giving information) to bring it more into line with the English version. (Translator's note: The English version already makes a distinction between giving information and proposing.) Furthermore, the definition of insurance mediation should also include the actual provision of advice connected with the conclusion of a contract. The Committee considers that the administration of insurance contracts does not constitute insurance mediation within the meaning of the directive. The directive should clearly state that it is not necessary for all the given criteria to be met before an activity can be deemed to constitute insurance mediation. The following wording is thus recommended:

'(3) "Insurance mediation" means the activities of introducing or carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, and giving information and advice in connection therewith, and assisting in the performance of such contracts, particularly by providing advice in the event of a claim. It does not include the establishment of contacts with the customer. In order to constitute 'insurance mediation', only one of the given criteria need be met.'

4.2.1.2. The definition of 'insurance intermediary' in Article 2(5) only covers persons (agents, representatives of one or several firms, brokers etc.) who pursue insurance mediation independently, i.e. not as employees of an insurance undertaking. This clarification obviates the need to exclude from the definition insurance undertakings and their employees. In the light of the proposal for Article 2(3) the following wording is recommended:

'(5) "Insurance intermediary" means any person who, for remuneration or in connection with a product and/or service for which payment is received, takes up or pursues insurance mediation in a self-employed/independent capacity.'

4.2.2. In line with the proposal set out in point 4.2.1.2 above, the following amendment is put forward for Article 2(6):

'(6) "Reinsurance intermediary" means any person who, for remuneration or in connection with a product and/or service for which payment is received, takes up or pursues reinsurance mediation in a self-employed/independent capacity.'

4.2.3. Since the proposed directive does not define the term 'parent undertaking' used in Article 10(1) (c), it is proposed that such a definition be added. The Committee is asked to do this:

4.3. Article 3 — Registration

4.3.1. Given the proposal to delete the third subparagraph of Article 4(1) (see point 4.4.3.4 below), Article 3(2) should be worded as follows:

'2. Member States shall ensure that registration of insurance and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4.'

4.3.2. Registration constitutes a legal act of admission to the profession. Conversely, refusal to grant registration impedes such admission and thus touches on a fundamental right — the freedom to choose an occupation. The directive must therefore require Member States to administer the licensing arrangements according to the rule of law, and must also make provision for an opposition and complaints procedure to challenge any rejection or withdrawal of registration. This can be achieved by rewording Article 3(4) as follows:

'4. Member States shall ensure that an appeals procedure is available to intermediaries whose application for registration is rejected or whose registration is withdrawn on the basis of a sanction under Article 7. Member States shall also ensure that there is easy public access to the register or registers referred to in paragraph 1.'

4.4. Article 4 — Professional requirements

4.4.1. The first subparagraph of Article 4(1) sets out the professional skills required of insurance intermediaries; it does not specify either the duration or the content of the arrangements for acquiring these skills, which give entitlement to state registration as an insurance intermediary. The phrase 'appropriate general, commercial and professional knowledge and ability' does not even make reference to the activity of insurance mediation. By leaving the requirements for intermediaries' knowledge and abilities open to wide interpretation, there may be a risk that, in the event of national rules diverging completely, it will be impossible to meet the objective of securing better protection for insured persons — particularly as regards the requirements for intermediaries' professional competence. Unless basic skills are laid down that provide customer protection, major distortions in competition will ensue for intermediaries under the freedom to provide services which this proposal seeks to establish. It would thus seem that the proposed directive still fails to establish the equivalence of national rules on insurance intermediaries sought by Recommendation 92/48/EEC.

4.4.1.1. On the other hand, however, given the very high professional requirements for insurance intermediaries in some

Member States, it is also impossible to establish uniform standards for insurance intermediaries' professional training by means of an EU directive. Hence, the Economic and Social Committee would not advocate a directive laying down uniform rules for professional training. However, it would recommend an approach along the lines proposed by BIPAR⁽¹⁾, namely to work out at least a 'minimum standard' on which Member States can build their national training courses and which should lay down a basic number of hours of appropriate theoretical and specialist training. It should be left to Member States — in conjunction with professional associations, insurance undertakings, various types of chambers and workers' representatives — to draw up, provide and implement the training programme and to determine to what extent credit can be given for any relevant professional knowledge already acquired. At the end of the training, an objective final examination should be set by the state or — depending on Member States' national set-ups — by a legally empowered state-recognised body. It is therefore proposed that the first subparagraph of Article 4(1) be worded as follows:

'1. Insurance and reinsurance intermediaries shall possess appropriate general, commercial and professional knowledge and ability in the insurance sector, which shall be acquired by completing a total of at least 300 hours' practical and theoretical training. Credit may be given for relevant knowledge acquired by means other than training. The training shall conclude with an examination by a state or state-recognised body.'

4.4.2. The Committee trusts that the provisions of the second subparagraph of Article 4(1) are also applicable to banks and savings institutions which take up or pursue insurance mediation in addition to providing financial services, thereby obliging the management of these bodies to meet all the requirements of Article 4 and to be registered. Employees of these undertakings who are directly involved in insurance or reinsurance mediation, must have the product-related knowledge and ability required for the insurance mediation activities they take up or pursue, and must be supervised by the registered management⁽²⁾.

4.4.3. Under the third subparagraph of Article 4(1), Member States need not apply the professional skill requirements to natural persons taking up and pursuing the activity of

insurance mediation whose principal professional activity is not insurance mediation and whose income does not predominantly depend on it, provided a party equipped with the skills under the first subparagraph, or an insurance undertaking, takes on full responsibility for their actions and provides them with appropriate and relevant training.

4.4.3.1. This exemption runs counter to the Commission's intention 'to guarantee that all persons (natural or legal) taking up and pursuing the activity of insurance or reinsurance mediation ... (meet) a minimum set of professional requirements⁽³⁾'. It also goes against the Commission's view that effective protection of policyholders' interests can be achieved only if the directive and the requirements it contains apply to all insurance intermediaries⁽⁴⁾.

4.4.3.2. The fact that national rules may require different professional skills from insurance intermediaries, constitutes unwarranted practical discrimination and thus contravenes the principle of equality. It is of no consequence in this regard that responsibility for any non-registered persons working for an undertaking or a registered intermediary is to be borne by their 'superiors'. This safeguard helps protect policyholders only after damage caused by incorrect advice or mediation has been done, but does not help prevent that damage from occurring in the first place. To do proper justice to customer protection, this directive must seek precisely to avoid incorrect advice being given or a faulty contact being concluded.

4.4.3.3. It is impossible to draw a clear distinction between a principal and secondary activity. Thus, it is a moot point whether two-hours' mediation a day constitutes a secondary activity for a person with no other employment, or whether a person may be considered to be involved in insurance mediation in a secondary capacity if he or she works half-time as an employee and half-time as an independent intermediary.

4.4.3.4. The Economic and Social Committee therefore calls for the deletion of the third subparagraph of Article 4(1).

4.4.4. The Commission proposal makes no transitional arrangements for intermediaries who have already been working independently in the insurance sector for a long time. The Committee feels it is inappropriate that these intermediaries should also be required to undergo training as a condition for registration and thus for carrying on with their work. The Committee would therefore propose that the following grand-

⁽¹⁾ BIPAR resolution (Oporto declaration), 7.10.1992, Germany: Insurance mediation 1993, p. 69.

⁽²⁾ cf. also comments made by Commission representatives at the insurance mediation study group meeting of the ESC Section for the Single Market, Production and Consumption, 20 February 2001.

⁽³⁾ COM(2000) 511 final, point 1.3, first paragraph, explanatory memorandum.

⁽⁴⁾ COM(2000) 511 final, comments on Article 1, explanatory memorandum.

father clause be included as the third subparagraph of Article 4(1):

'Member States need not apply the requirement referred to in the first subparagraph to persons who, at the time of the entry into force of the national legislation adopted on the basis of this directive, have already been working in the field of insurance mediation for more than three years.'

4.4.5. Under the first subparagraph of Article 4(2), one of the requirements for registration is that the insurance or reinsurance intermediary must never have been declared bankrupt. The concept of bankruptcy is not customary in all Member States. In Germany it was abolished under the 1994 insolvency ordinance⁽¹⁾ and replaced by the term insolvency. Apart from bankruptcy and insolvency, however, other punishable offences are also inconsistent with the reliability required of a professional insurance intermediary. These include in particular money-related offences such as embezzlement or misappropriation. To clarify and amplify this point, the following wording is recommended:

'... in relation to insurance and reinsurance business, they shall not have previously been declared bankrupt, had insolvency proceedings launched against them in court or been sentenced for offences against the property of a third party, unless they have been rehabilitated in accordance with national law.'

4.4.6. In Article 4(4)(b), the Commission proposes that, in order to ensure the transfer of premiums and claims, Member States may require that intermediaries have financial capacity amounting, on a permanent basis, to 8 % of their annual net retained revenue, subject to a minimum of EUR 15 000 .

4.4.6.1. This provision would not only require a profession to publish its income for the first time, but would also impose a considerable economic burden. The provision is also too vague to be workable. To ensure compliance, the competent authority would have to carry out permanent checks, which would require unforeseeable and unaffordable administrative expense. Moreover, the level of the security to be retained appears arbitrary and is not geared to any actual need for protection.

4.4.6.2. The Economic and Social Committee feels it is enough to require intermediaries to strictly segregate customers' monies from company accounts in order to protect client accounts in the event of bankruptcy, as required under

Article 4(4)(c). Moreover, the first sentence of Article 4(4) allows each Member State to take action possible and permissible under national law to protect customers' monies.

4.4.6.3. Since the first sentence of Article 4(4) is very broadly worded, the Committee advocates dispensing with the open-ended list of possible security measures set out in sections (a) to (d), and, in any case, recommends the deletion of Article 4(4)(b).

4.5. *Article 5 — Notification of establishment and services in other Member States*

4.5.1. Article 5 of the Commission proposal provides for a notification system designed to guarantee the freedom to provide services and freedom of establishment within the Community. This article establishes the procedure to be followed by registered intermediaries wishing to pursue their profession in a Member State other than the one in which they are registered. The procedure requires notification on three fronts: (i) from the intermediary to his or her home-country registration office; (ii) from the home-country registration office to its counterpart in the host country and (iii) from the home-country registration office to the intermediary, informing him or her that the host-country registration office has been notified. Moreover, the competent host-country authority must inform the home-country authority of the conditions under which, in the interest of the general good, the business may be carried on in its territories (Article 5(3)). It is then necessary for the competent home-country authority to forward these conditions to the intermediary. Under the proposed directive, it will take at least three months before an intermediary is able to become established in another Member State or offer services there. It also involves several avoidable layers of red tape.

4.5.1.1. Thus the Commission rightly points out that this procedure could be modernised and that, taking into consideration the interest of the general good, the registers could be published on the website of each competent authority. The Commission proposes discussing such a procedure together with the Member States.

4.5.1.2. The Economic and Social Committee fully endorses the Commission's assessment and would advocate pressing ahead straightaway with the proposed simplification using modern media.

4.5.1.3. The Economic and Social Committee thus proposes that Article 5(1) and (2) be reworded as follows:

⁽¹⁾ German insolvency ordinance (Insolvenzordnung), 5.10.1994, (Federal Law Gazette BGBl. I. p. 2866).

'1. Any insurance or reinsurance intermediary intending to carry on business for the first time in one or more

Member States under the freedom to provide services or the freedom of establishment shall inform the competent authority of the host Member State. The competent authority shall confirm to the intermediary within one month that he or she may take up the activity or become established. Failure to provide confirmation or to provide it on time shall entitle the intermediary to take up and pursue business in the host Member State.

2. The competent authorities of the Member States shall gather together the registers of insurance and reinsurance intermediaries on a joint website and update them regularly.'

4.5.2. Article 5(3) of the Commission proposal stipulates that the competent authority of the host country must inform the authority of the home country of the conditions under which, in the interest of the general good, the business may be carried on in its territories. This point makes it clear that the directive will not guarantee either freedom to provide services or freedom of establishment. This, however, is supposed to be the express purpose of the directive. Otherwise, any Member State could isolate its own market by laying down additional requirements that go beyond those set out in Article 4. The directive should therefore make it clear that the conditions set by the Member States may not relate to the training requirements under Article 4(1)⁽¹⁾. The following addition is thus proposed to Article 5(3):

'The conditions set by the Member States may not relate to the training requirements under Article 4(1).'

4.6. Article 10 — Information provided by the insurance intermediary

4.6.1. The German version of the Commission proposal states that 'before any contact is made' ('vor jeder Kontaktaufnahme') an insurance intermediary is to provide the customer with the information listed in Article 10(1). It is in fact impossible, however, to provide information before any contact is made. The English version states that information must be provided 'prior to any initial contract'. The Economic and Social Committee feels that the text must be brought into line with the English version and proposes the following wording:

'1. No later than prior to the conclusion of any contract, an insurance intermediary shall provide the customer with at least the following information: ...'

4.6.2. Under Article 10(1)(e), the intermediary is required to provide information on the parties who may be held liable in the event of a claim. Apart from the insurance intermediary and his/her firm and/or partners, the only other parties to whom this may apply are generally the insurance intermediary's liability insurance and the company with which the insurance contract is established. The Committee therefore recommends that the paragraph be reworded as follows:

'(e) the natural or legal persons (the intermediary's partners or firm, his/her liability insurance or that of his/her partners or firm and the name and address of the insurance company for which he/she operates) to be held liable for any negligence, misconduct or inappropriate advice by the intermediary in relation to the insurance mediation'.

4.6.3. Article 10(3) of the Commission proposal obliges insurance intermediaries, prior to the conclusion of any insurance contract, to specify in writing the demands and the needs of the customer and to clarify the underlying reasons for their advice. (Translator's note: the words 'in writing' — in German: schriftlich — do not appear in the English version of the proposal). In most cases, this requirement is neither useful nor practicable. People take out third-party motor vehicle insurance when they buy or register a motor vehicle. They take out travel cancellation insurance to cover the risk of illness that might prevent them travelling. In most cases, contracts are consistent with the clear, unambiguous will of the party taking out the insurance, so that recording the customer's intention must be considered more as burdensome red tape than useful consumer protection. The Committee therefore feels that insurance intermediaries should only be obliged to record these details if the customer so desires. Customers should in that case also be required to inform insurance intermediaries in writing of their wishes. In the event of any claim, it is only possible to assess fault if written records are available from both parties. Intermediaries should however be required to point out their own obligation to keep records. Hence, the Committee proposes that Article 10(3) be reworded as follows:

'3. The insurance intermediary shall inform the customer that, at the customer's request, the insurance intermediary is obliged to specify in writing the reasons and needs underlying the conclusion of a contract or the advice provided in that connection if the customer also informs the intermediary in writing of his/her wishes and needs.'

4.6.4. The Economic and Social Committee proposes that Article 10(4) be expanded as follows:

'The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks, nor in the case of mediation by reinsurance intermediaries or insurance intermediaries tied to a specific firm in so far as they carry out insurance mediation only for that firm.'

⁽¹⁾ Footnote 17 also applies here. See point 1.3 of the explanatory memorandum to the proposed directive.

4.7. Article 13 — Transposition

4.7.1. The Commission proposes that Member States bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 31 December 2003 at the latest and that they inform the Commission thereof forthwith.

4.7.2. The Economic and Social Committee feels that, in addition to that, Member States should also inform the

Commission about the content and duration of the arrangements they set in place to meet the training and skill requirements under the first subparagraph of Article 4(1). It is therefore proposed that the following sentence be added to the first subparagraph of Article 13:

'They shall in particular inform the Commission forthwith about the duration and content of the national arrangements made for the acquisition of the skills referred to under the first subparagraph of Article 4(1).'

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

Market shares of the various insurance distribution channels in some countries of the European Union

(%)

Country	Brokers		General agents		Banks		Direct insurance		Other	
	Non-Life	Life	Non-Life	Life	Non-Life	Life	Non-Life	Life	Non-Life	Life
A (*)	14	11	5	3	77	31	3	53	1	2
B	70	50	15	10	8	25	3	5	4	10
D	15	12	72	65	12	17	5	5	6	6
DK	15	18			5	5	40	35	41	42
E	18		43		15		20	4		
F	19	7	39	11	5	51	2	6	35	25
FIN	10	15	10	10		45	80	30		
GR	Not available									
IRL	65	50	4	17		15	30	33		
I	18	3	76	42	1	36	5	19		
NL	60				15		20		5	
L	10		80		5		5			
P	16	1	59	12	4	80	14	4	7	1
S	Not available									
UK	70	48	18	5		15	10	2	2	33

(*) Banks can operate as a broker or an agent in Austria

Source: BIPAR 2001

Opinion of the Economic and Social Committee on 'The situation of nature and nature conservation in Europe'

(2001/C 221/22)

On 3 July 2000 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on: The situation of nature and nature conservation in Europe.

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 11 May 2001. The rapporteur was Mr Ribbe.

At its 382nd plenary session, held on 30 and 31 May 2001 (meeting of 30 May), the Economic and Social Committee adopted the following opinion by a unanimous vote.

1. Aim and structure of the opinion

1.1. In drawing up this opinion, the Committee wishes to make its contribution to the debate currently taking place in the EU on the situation of nature, the landscape, and nature conservation in Europe, in general, and on the incorporation of nature conservation into other policy areas, in particular.

1.2. Part 2 of this document draws attention to the importance of Europe's natural heritage and the need for the EU to coordinate nature conservation at a general level. Part 3 looks at the way in which the EU directives on this matter have been implemented. Part 4 — the key part of the opinion — examines the coherence of the policy pursued. It analyses whether greater importance is now being attached to nature conservation in the various fields of EU policy than was the case in past years, and examines where improvements are urgently required. The observations made in this opinion focus on policy areas in which the EU brings a decisive influence to bear.

1.3. There is no doubt that a great variety of measures have an effect on nature e.g. building development, recreational use of land, earth-removal, agriculture and forestry, the development of transport and infrastructure, the building of canals and the damming and diversion of waterways, to name but a few. In this opinion the Committee focuses its attention, in particular, on the CAP, through which the EU brings a considerable influence to bear on the way in which land is utilised and consequently on the state of nature conservation. The incorporation of nature conservation into agriculture is of key importance, since 44 % of the EU's surface area and large parts of the NATURA 2000 areas are used for agricultural purposes.

2. Initial situation as regards nature conservation in Europe

2.1. Europe does not have just an outstanding cultural heritage. The various cultural and natural landscapes also

represent a remarkable natural heritage. The continent of Europe owes its appeal and fascination to its great variety of different types of landscape and animal and plant species. The preservation of this natural heritage has become a key task for politicians, administrations and the general public.

2.1.1. Nature conservation is, however, not just an end in itself. Nature plays a vital role in our lives and in the economy; it provides an important resource for economic activities and is a prerequisite for a variety of sporting, leisure and recreational activities, health care and also some forms of medical treatment.

2.2. The great diversity of animal and plant species has arisen as a result of the different conditions to be found in nature and the corresponding uses which have been made of these natural conditions. Many species and habitats therefore depend directly on how land is managed. Many of the species which now require a higher level of protection came into existence only as a result of what we now regard as the 'extensive' agricultural production methods used over the last few centuries. 'Europe', however, is much too varied to enable us to speak of comparable and transferable conditions in respect of nature and the landscape. As a consequence, nature conservation requirements also differ to a considerable extent: nature conservation conditions and problems in the vast forests of Scandinavia differ from those in the Scottish Highlands, the Alps, the arid Spanish Extremadura or the Member States or regions⁽¹⁾ in which intensive agriculture is frequently practised.

2.3. Preservation of nature and natural diversity is, above all, a task for the individual Member States, regions and local authorities. Every member of the public, too, is called upon to help preserve nature and the environment. The many positive examples of measures which have already been taken by private individuals, nature conservation organisations and farmers, show that many people have an affinity with the conservation of nature and the landscape. This is a classic case

⁽¹⁾ e.g. Brittany, the Netherlands, Belgium, Denmark, north-west Germany, south-east England, the Po valley, etc.

of a task requiring a bottom-up approach but which needs, however, to be backed up by political measures. A coordinated commitment at EU level, too, is therefore not only advisable but also absolutely necessary. Nature conservation in Europe cannot be successful in the absence of top-level coordination by the EU.

2.3.1. This coordination is necessary, on the one hand, because many species are not tied to one single regional habitat but may migrate over thousands of kilometres between their summer and winter quarters. Nature knows no boundaries. Many species, such as migratory cranes, can only be successfully preserved if they are protected not only in their breeding grounds and summer quarters, e.g. in northern Europe, but also in their winter quarters, e.g. in Spain. Furthermore, migratory species — just like human beings moving on foot or by car — require not only resting places but also corridors for their journeys between their winter and summer quarters. Europe also provides winter quarters for Asian migratory birds which breed in the wide open expanses of Siberia, and breeding grounds for migratory birds which overwinter in Africa. Species diversity in areas outside Europe therefore often plays a decisive role in nature conservation in Europe.

2.3.2. The need for general EU-wide coordination also arises because, even though there are animal and plant species which are not common to the whole of Europe, they still form part of Europe's heritage. To put it another way, the protection of these species is in the interests not only of a given nation but also of Europe as a whole, just as it is also generally accepted that particular, national cultural monuments should be protected at EU level. One example of such a species of animal is Europe's largest bird capable of flight, namely the Great Bustard (*Otis tarda*); the last remaining birds of this species are to be found above all in the Iberian peninsula — the c. 15 000 birds living in Spain and the 200-300 birds living in Portugal account for approximately half of the total world population. Further examples are: the brown bear, the wolf, the lynx, the bison and a large number of bats and even insects (for example butterflies, such as the Marsh Fritillary⁽¹⁾ and the Dusky Large Blue⁽²⁾), and the Alpine Sawyer Beetle⁽³⁾). In order to protect these species, special measures are required which frequently involve the maintenance of traditional forms of agriculture that are not viable in today's competitive environment.

2.4. There has been a drastic and rapid decline in the diversity of animal and plant species over the last few years. The suddenness of the decline is particularly worrying: within the space of a few years or decades a number of species have already become extinct, others face grave threats of extinction and yet others are endangered or potentially endangered. Only a small number of species have been able to adjust to the changed conditions of cultivation and are thriving. Generally speaking, however, the state of nature and nature conservation

in Europe is a matter of considerable concern. Some spectacular successes in stabilising the numbers of particular species (e.g. birds of prey in central Europe) cannot hide the fact that the measures introduced in the last few years have regrettably been only partially effective and have been unable to intrinsically halt the overall decline, let alone reverse it. In its second report on the state of the environment in Europe (1999), the European Environment Agency (EEA) pointed out that wild species in Europe continued to be seriously endangered and the number of species in decline was increasing, that in many countries up to 50 % of the known species of vertebrates were threatened and that over a third of bird species in Europe were declining in number.

2.5. The causes of this phenomenon are very varied. The main threat today is clearly the reduction or disappearance of animal and plant species' habitats. In the past, direct persecution of particular species (bears, wolves and lynx) was more widespread than it is today; direct persecution does, however, remain a problem in some respects. Suitable habitats are being lost for a number of reasons: building developments, changes in agriculture and forestry practices, the use of pollutants and the fragmentation of wide areas of countryside as a result of, for example, the construction of roads and tourist infrastructure (in particular in coastal areas); this loss of suitable habitats has not yet been halted. On the contrary, land continues to be built on, wetlands continue to be drained, dry habitats continue to be irrigated and oligotrophic habitats continue to be eutrophicated or hypertrophicated. Responsibility for this lies not only with local and national bodies but also with the EU and its agricultural and structural policies, which focus too one-sidedly on production and growth, thereby bringing about and — in many cases — continuing to bring about these damaging changes. A number of EU Member States have in the meantime introduced measures to tackle this situation but these measures have failed to reverse the overall negative trends.

2.5.1. Fisheries policy constitutes a problem which, if anything, has been underestimated so far. Large fishing fleets are responding to the steadily growing economic pressure by using ever more effective fishing methods. Endangered species of marine turtles or marine mammals, e.g. seals such as the monk seal (*Monachus monachus*), small whales and dolphins, are frequently caught in trawl nets. Sustainable, traditional fishing methods, such as tuna fishing by rod and line, as practised by Spanish fishermen, are, however, finding it difficult to survive economically⁽⁴⁾. The use of bodies of standing and running water for fish-farming is also a potential source of conflict in cases where they provide a habitat for fish-eating species (such as otters) or may suffer damage as a result of, for example: eutrophication caused by feed and fertilizer (and also by household sewage and industrial effluent); the introduction of calcium; stocking with alien species; and construction of ponds.

(1) *Euphydryas* (syn. *Hyprdryas*), *aurinia*.

(2) *Maculinea nausithous*.

(3) *Rosalia alpina*.

(4) It is important to inform the public on this matter. The flesh of tuna caught by rod and line is white, whilst that of tuna caught by trawling is red. Consumers can make their contribution to nature conservation through their choice of product.

2.5.2. Dramatic losses of species and therefore of genetic resources are not, however, confined to the wild; they are also occurring amongst farm animals and plant varieties. Many long-established regional breeds of domestic animals have already disappeared or are threatened with extinction. The situation in respect of varieties of cereals and vegetables which are now rare is equally problematic. This is a nature conservation issue to which neither state nor private nature-conservation bodies have given sufficient thought so far. Although a rethink is starting to take place in this area and a number of measures have been taken in the context of agri-environmental programmes, much remains to be done. It has, nonetheless, been demonstrated that, for example, the marketing of old breeds of domestic animals (such as the Schwäbisch-Hall pig and the Iberian domestic pig) may be economically viable.

2.6. Long over a hundred years ago the differences in types of habitat and species prompted the division of Europe into specific biogeographical regions and the detailed examination of what types of habitat or species were of particular (European) importance in these regions and therefore required special protection. On the basis of earlier scientific work, Article 1c) of the flora/fauna/habitat Directive divided Europe into a number of biogeographical regions.

2.7. Since the early 1970s the Member States, the Commission and, in particular, its Directorate-General for the Environment, have been endeavouring to tackle the critical situation facing nature conservation not only by drawing up (and implementing) Directives but also by formulating special strategies⁽¹⁾ and incorporating nature conservation into other policy areas.

3. Nature conservation legislation in Europe and its implementation

3.1. Two key nature conservation Directives have been adopted at EU level in the last few decades: the Directive on the conservation of wild birds (79/409/EEC) was adopted in 1979 and the flora/fauna/habitat Directive (92/43/EEC) was adopted in 1992. These two Directives have established vital prerequisites for the conservation of endangered types of habitat and species of animals and plants which are of European importance. One of the aims is to establish a European network of conservation areas of particular importance (NATURA 2000). Both of these Directives are therefore vital for the implementation of the 1992 Rio Convention on Biological Diversity, which was signed by the Member States and the EU.

3.2. The Committee would stress that the Directive on the conservation of wild birds and the fauna/flora/habitat Directive are vital pieces of legislation⁽²⁾. It is quite clear that the decimation of animal and plant populations repeatedly cata-

logued by national nature conservation authorities and the EU institutions and lamented by those working in the field of nature conservation cannot be put down to an inadequate legal framework.

3.3. Implementation at national level of the abovementioned Directives is, however, frequently unsatisfactory and sometimes inadequate, as regards both the notification of NATURA-2000 areas and also the administration of areas which are or are to be protected.

3.4. In its opinion on the overall appraisal of the 5th EU Environmental Action Programme (EAP)⁽³⁾, the Committee pointed out that: 'The failure of Member States to apply environmental legislation which they have adopted themselves in the Council of Ministers, or their application of it only under pressure (when taken to court by the EU), is damaging to the environment and impossible to explain to the public at large when an attempt is being made — supposedly — to alert the public to environmental issues.' The opinion goes on to mention, as 'key examples' of such environmental legislation, the two important nature conservation directives, namely the Directive on the conservation of wild birds and the flora/fauna/habitat Directive.

Designation of protected areas

3.5. The Committee criticises the Member States for dragging their heels over the notification and designation of conservation areas. The fact that 22 years after the adoption of the Directive on the conservation of wild birds, the Commission still has to resort to arguing with the Member States over the correct implementation and application of this Directive represents a very sad chapter in the history of European nature conservation. The Commission is still obliged to observe that in several Member States the areas classified as special conservation areas 'are still too few in number or cover too small an area' (even though the procedure for notifying protected areas should have been completed by 1981). Therefore, 'the Commission's present strategy revolves around initiating general infringement proceedings, rather than infringement proceedings on a site by site basis'⁽⁴⁾. Both the legal and technical implementation of the flora/fauna/habitat Directive by the Member States has left and continues to leave very much to be desired. The timetable decided upon under the Directive by national environment ministers for setting up the necessary network of conservation areas under the title 'NATURA 2000' is in complete chaos, thereby having a profoundly detrimental effect on the real issue, namely the maintenance and safeguarding of important habitats and the conservation of rare animal and plant species.

3.5.1. Very considerable differences do, however, exist between the individual Member States in this respect. A number of countries have already, albeit belatedly, met a major part of their commitments and, to a large extent, completed the notification process with regard to their conservation areas. Other Member States have, on the other hand, particularly distinguished themselves in a negative sense although, in the case of these countries too, progress has fortunately been made in recent weeks and months.

⁽¹⁾ Community strategy for the maintenance of biological diversity (COM(98) 42).

⁽²⁾ It should, however, be pointed out that the two Directives do not always pay adequate attention to their actual purpose, namely to promote preventive nature conservation.

⁽³⁾ OJ C 204, 18.7.2000, point 3.4.1.6.

⁽⁴⁾ See the 17th annual report on monitoring the application of Community law (1999) (COM(2000) 92 final), p. 75.

3.5.2. The Commission has made it clear that payments under the Structural Funds, including Regulation (EC) No 1257/1999 on support for rural development, can only be made if the number of notifications is sufficient to ensure, to a large extent, that projects (co-) financed by the EU do not have a detrimental effect on potential areas of importance to flora, fauna and habitat. This clarification has proved to be extremely effective. Despite the fact that the freezing of payments — whatever political interpretation one may wish to place on this — has so far not been carried out comprehensively, it has stimulated the notification of areas⁽¹⁾. In this context the Committee draws attention to the fact that payments made under Regulation (EC) No 1257/1999, for example, represent an important source of income for farmers. It is therefore all the more important to complete the notification of conservation areas rapidly so that farmers do not have to suffer financially because of the authorities' failure to act.

3.6. There is a wide variety of reasons for the delays in implementing the EU Directives. One of the reasons is local opposition to the designation and establishment of the areas from rival parties competing for the use of the land. Local authorities fear that the development of housing or industrial estates will be restricted; transport-planners envisage problems in deciding where routes are to run; farmers — who are also facing growing pressure from housing developments and their consequences (building of estates, roads, leisure centres, etc.) — feel that restrictions are being placed on their use of land and on their future plans.

3.6.1. The conflict between nature conservation and agriculture, in particular, has over the last few years been a major factor in causing delays in the notification of conservation areas. Such conflicts arise as a result of a lack of understanding of the multi-stage procedure specified in the habitat Directive, namely: a preselection process involving the Member State and based on purely scientific criteria; an equally scientific selection process involving the Commission; and only then the actual designation of the area. The lack of public involvement, in some cases, in the initial phase (the preselection based on scientific criteria) has been seen by the parties concerned to show that decisions are being taken over the heads of the owners and users of the land concerned. It is essential to learn from this and make sure that extensive consultations are held at an earlier stage, without waiting until areas are designated and management plans discussed. By failing to consult and making designations that are sometimes incomprehensible⁽²⁾,

(1) The ESC would point out in this context that under EU law the Commission must not release funds which could have a damaging effect on the environment. Potential threats to or the destruction of areas which could form part of the NATURA 2000 network fall into this category.

(2) For example, part of a motorway has been notified as a flora, fauna and habitat conservation area, and in Austria a conservation area has been designated for the roller (species of bird — *Coracias garrulus*) despite the fact that no rollers live in this area — they are to be found in a directly adjacent habitat.

nature conservation officials make no friends for themselves. On the contrary, opposition grows and nature conservation acquires a negative public image.

3.6.2. Owners and users of land have in many cases up to now not been adequately informed about the consequences of the designation of areas for the NATURA 2000 network. This lack of involvement and the consequent uncertainty about the implications for the further use and management of the land has led to opposition. This opposition should be minimised by ensuring that following the conclusion of phase I and the selection of 'special areas of conservation', farmers receive financial compensation in respect of the nature conservation provisions desired by society, as set out in the flora/fauna/habitat Directive. In its capacity as the forum for dialogue between organised civil society, the Committee regards this measure as being of decisive importance in ensuring greater acceptance of nature conservation.

Administration of conservation areas

3.7. With the — albeit sluggish — extension of conservation areas, the focus is gradually shifting towards the administration of these areas in accordance with Article 6 of the flora/fauna/habitat Directive (establishment of conservation measures, measures to avoid the deterioration of natural habitats, assessment of plans or projects to determine whether they are compatible with the conservation objectives set for the respective sites, plans and projects having adverse implications for conservation sites to be implemented only under strict conditions). Here, too, potential conflicts should be resolved, wherever possible, through dialogue with the parties involved, on the basis of existing EU nature conservation laws, and management plans, when required, should be drawn up by agreement. The ESC draws attention to the fact that much fuller account can be taken of economic interests under the flora/fauna/habitat Directive (Article 6) than under the conservation of wild birds Directive.

Recommendations concerning the implementation of the EU nature conservation directives⁽³⁾

3.8. The ESC considers that implementation problems must, under no circumstances, lead to the directives being called into question, having some of their provisions deleted or not being fully implemented.

3.9. The Committee calls upon the Member States to comply at long last with their obligation under Directive 92/43/EEC to incorporate the Directive into national law (cf., for example, the case of Germany) and to submit complete national lists of suitable areas, selected according to technical criteria⁽⁴⁾. Not until this has been done will the Commission be able to draw up a list of areas of Community importance,

(3) Cf. in this context the report adopted by the European Parliament on 17.1.2001, which takes a critical look at the implementation of the Directive on the conservation of wild birds and the flora/fauna/habitat Directive.

(4) The ESC made an identical demand in its opinion on the Commission's White Paper on environmental liability — OJ C 268, 19.9.2000.

thereby making it possible, as provided for under the Directive, for the Member States to designate these areas as special areas of conservation by 2004 at the latest. In this context, the Committee welcomes the fact that the Commission has initiated infringement proceedings against a number of Member States, and it calls upon the Commission to rigorously pursue this course. The Committee also urges the Member States concerned to comply at long last with their obligation under the Directive for the conservation of wild birds (79/409/EEC)⁽¹⁾ to take adequate steps to designate European bird conservation areas.

3.10. The Committee urges the Commission and the Member States to provide more information. To quote an example, Article 6 of the flora/fauna/habitat Directive is not designed to impede all forms of economic activity and land use in and around NATURA-2000 areas. The intention is rather to ensure that such activities are sustainable and do not jeopardise the conservation goals to be attained through the designation exercise. Targeted information — linked to existing initiatives, such as the NATURA-2000 Newsletter of the Commission and the interpretation document in respect of Article 6 of the flora/fauna/habitat Directive — may counter the fears of the parties concerned. It needs to be made clear that a nature conservation policy is not just an end in itself but also has a positive economic and social function within the context of sustainable development, e.g. by creating new jobs. There are many projects, such as those supported under the LIFE Regulation, which demonstrate that, rather than representing an impediment, the flora/fauna/habitat Directive frequently has a positive knock-on effect. These positive examples need to be publicised more widely. It is important that nature conservation is a pleasurable experience and encourages people working in the countryside (primarily farmers) to commit themselves, for nature conservation is a field in which decisions are taken at local level. It is vital in this context that in the future and the long-term, too, appropriate aid instruments are made available for nature conservation in the EU and tailored to fit in with nature conservation requirements. This is particularly important for the post-Agenda 2000 era, including the LIFE IV financial instrument (which has to be confirmed beforehand) and, in particular, its LIFE-Nature component, which should cover a much longer period and have much more funding than under LIFE III.

3.11. Cooperation between land-owners and land-users, nature conservationists, consumers and tourists, should therefore be promoted in order to involve these parties more effectively, on a joint basis, in nature conservation in the NATURA-2000 areas and to strengthen their motivation. Environmental education and training should also include more about nature conservation matters. In European bird reserves in particular, there are a large number of excellent projects with regard to environmental education and sustainable tourism.

⁽¹⁾ Nature conservation associations, in particular BirdLife International, have identified 'Important Bird Areas' (IBA), which present the appropriate technical characteristics and which have been used by the European Court of Justice, too, as a reference in several cases.

4. Incorporation of nature conservation into agriculture

Introduction

4.1. This part of the opinion examines the extent to which nature conservation is incorporated into the Common Agricultural Policy (CAP). The Committee makes a number of recommendations for improving the incorporation of nature conservation into the CAP with due regard to: two own-initiative Committee opinions from 1999 on the agri-environmental priorities for the multi-function agriculture of Agenda 2000 and the European agricultural model⁽²⁾; the Communication from the Commission on guidelines for sustainable agriculture⁽³⁾; and special report No 14/00 of the European Court of Auditors on the greening of the CAP. In making its recommendations, the Committee distinguishes between accompanying measures and rural development (second pillar of the CAP) and 'traditional agriculture' (first pillar of the CAP).

4.2. In addition to other threats, the European Environment Agency (EEA) recognises that nature conservation faces a major threat from particular present-day forms of intensive farming. In its second report on the state of the environment in Europe, issued in 1999, the EEA pointed out that the main reason for this threat to nature conservation was to be found in the loss of habitat due to changed land-use, brought about, in particular, by intensive agriculture, that the threat to species diversity caused by human activity had intensified and that an environment-friendly agricultural sector had hardly been brought any nearer.

4.3. There is no doubting the fact that agriculture which is productive in the agro-economic sense represents a serious threat to natural diversity. The threat is two-fold: firstly, intensively-farmed areas are lost as habitats for most of the threatened animal species, and at the same time, the continued use of extensively-farmed areas — which are valuable in terms of nature conservation — becomes increasingly less attractive in economic terms. From a nature conservation perspective, both the intensification of agricultural production and the abandonment of extensive farming therefore represent a problem.

4.4. The Committee thinks that a positive relationship between agriculture and nature conservation is important if nature conservation and biological diversity (also in respect of breeds and types of productive animals) are to continue to prosper in Europe. Outside the natural landscapes which have not been influenced by man (there are now only extremely few areas of this type left in Europe), biotope diversity in the man-made landscapes of Europe has been created by, and continues to be created by, a number of particular extensive forms of agricultural and forestry land-use. The continued use and development of particular extensive agricultural and forestry

⁽²⁾ Both opinions are set out in OJ C 368, 20.12.1999.

⁽³⁾ COM(1999) 22 final.

production methods (seen today in terms of the inputs used) is therefore a vital prerequisite for maintaining and exerting a positive influence on species diversity. A coordinated and appropriate nature conservation policy may help to maintain such extensive forms of production. Nature conservation and environmental protection can also bring economic benefits; working in tandem with regional policy, ecological development may provide new jobs and promote regional economic development.

4.5. The CAP must provide new incentives in this respect and must help to ensure that nature conservation concerns are discussed with the agricultural sector and that financial compensation is paid. Seen in this light, nature conservation and environmentally-compatible agricultural production may even become a new source of income, as society pays farmers for those services which it demands of them. In order to further this positive contribution by agriculture to nature conservation and at the same time avoid any negative impact on nature, wherever possible, there is a need for a general economic framework which ensures that it is more profitable to preserve nature and the environment than it is to harm them. The more financially worthwhile it is to protect nature and the countryside, the more the land-owners and users concerned will find it acceptable.

4.6. The CAP has so far, however, been geared to an agricultural sector focused on optimum performance and rationalisation. Environmental considerations have frequently been neglected, just as social questions have (e.g. the question of how many farmers society actually needs). Under such circumstances, a species-rich, diverse landscape came to be regarded as a locational disadvantage for agriculture. There is a need to reverse this situation in a manner beneficial to farmers. If society wants agricultural production to take account of nature conservation, it must also be prepared to pay for services which go beyond the social obligations attendant upon ownership of land and also beyond the observance of statutory requirements in respect of 'good business practice'. Possible solutions are for consumers to be prepared to pay a higher price for products or for farmers to be compensated from public funds for the additional expenditure incurred in using methods which are more in tune with the environment and nature. At all events, it is essential that in future environmental diversity and diversity of landscape be regarded as constituting a locational advantage for farmers. This could herald a move away from subsidies towards the remuneration of services of benefit to society (such as the maintenance of biotopes, man-made landscapes, landscape features, etc.). Such a move was envisaged by EC Commissioner MacSharry in the run-up to the 1992 reform of agriculture but has still not been rigorously pursued.

4.6.1. The changes brought about by current agricultural policy are reflected in the changing face of the man-made landscape. It is not just in Germany that, for example, the use of grasslands, which are important for nature conservation, is becoming increasingly less attractive in economic terms. Traditional pastoral agriculture is disappearing more and more,

grassland areas are declining and the remaining areas are being farmed more intensively. Germany used to have 57 different types of grassland used for pasture, comprising different mixes of plant species; there are now only six such pasture grassland types remaining, a factor which is having devastating consequences for nature conservation. Changes are taking place at the same time in arable farming. Birds species which nest in open arable lands and meadows are now systematically being placed on the Red List of Threatened Species or at least being included in the associated early-warning list. In other EU Member States, too, such as the UK, birds which were formerly commonly found on farmland, such as skylarks, partridges, yellowhammers and corn buntings have seen their numbers fall by up to 80 % since the 1970s⁽¹⁾.

4.6.2. There are, on the other hand, examples of the positive effects of extensive farming, such as the use of the 'Dehesas' (pasture) in the Extremadura (Spain) and in Portugal. The coordinated mix of extensive arable farming, extensive pastoral farming and the economic exploitation of the cork oak and the holm oak represents, in conjunction with the historic practice of transhumance (the driving of livestock from the arid south to the summer pastures in the north of Spain), a form of land-use which has brought clear benefits to particular species inhabiting these man-made landscapes. Agriculture in this regions is, however, experiencing considerable difficulties in economic terms.

4.7. The conflict between economic viability, on the one hand, and environmental requirements, on the other hand, has not yet been resolved. The fact that the WTO has so far failed to introduce environmental standards which are applicable worldwide makes it that much more difficult to resolve the conflict at EU level, although since the successful conclusion of the GATT Uruguay Round, it has been recognised that 'green box' measures deserve to be promoted. EU farmers find it difficult, on the one hand, to accept tougher environmental standards whilst, on the other hand, having to compete with producers in countries where climatic conditions are better and where environmental protection and nature conservation are alien concepts.

4.8. Under Agenda 2000 the Commission and the EU ministers stressed the need to improve the competitiveness of EU agriculture on the world market and to maintain the multifunctional character of EU agriculture. The term 'European agricultural model' is now employed. The EU Commission uses this term to mean an agricultural sector which not only provides high-quality products but also upholds rich cultural traditions, maintains the beauty of the landscape, works in harmony with nature and the environment, safeguards employment and creates new jobs, whilst at the same time also being able to compete on the world market without receiving large subsidies.

4.9. In its own-initiative opinion on a policy to consolidate the European agricultural model⁽²⁾, the Committee emphatically reaffirmed the need to safeguard the multifunctional

⁽¹⁾ cf. The State of the UK's Birds 2000: RSPB, BTO and WWT, 2001.

⁽²⁾ OJ C 368, 20.12.1999, point 7.2.

character of agriculture, whilst, at the same time, raising the question of 'how, against the background of increasing competition, a multifunctional agricultural sector can continue to provide the various services It is likely that, apart from some exceptions and cases of particularly favourable market situations, EU farms will continue to be unable to match world market prices for agricultural products on a sustained basis ...'.

Accompanying measures and the second pillar of the CAP

4.10. As long as world-market conditions tend to hinder the widespread adoption of farming practices which are in line with the goals of nature conservation, special policy measures will be required to counteract the negative trends. Regulation (EEC) No 2078/92 on the agricultural environment ushered in the first systematic establishment of agri-environmental programmes in the EU Member States which are co-financed by the EU. Overall, c. 17 % of agricultural land in the EU is affected and influenced by these agri-environmental programmes (which implies that some 83 % of agricultural land is not affected or influenced); there are vast differences between the individual Member States as regards the impact of these programmes on agricultural land and their effectiveness in promoting nature conservation⁽¹⁾.

4.11. In an evaluation of the programmes established under Regulation (EEC) No 2078/92⁽²⁾, the Commission reached a number of conclusions in respect of the measures taken; inter alia, it concluded that these measures:

- had a very positive impact on the development of 'green' agriculture, which it regards as a key environmental objective;
- had met with too little acceptance and consequently had too small an impact in intensively-farmed regions; and
- had not brought about an extensification of livestock farming.

4.12. These views are reaffirmed by the European Court of Auditors in its Special Report on 'Greening the CAP'⁽³⁾. It should be pointed out that many national governments are failing to take advantage of the opportunities open to them to improve nature conservation, and are even failing to take advantage of measures co-funded by the EU. The European Court of Auditors notes⁽⁴⁾ in this respect that only Ireland has made use of the possibility of establishing 'ecological reserves' with land withdrawn from production under the early retirement provisions; in the EU a total of only 54 hectares has been used under this scheme for the establishment of new nature-conservation areas.

⁽¹⁾ In Austria, for example, just under 70 % of agricultural land is affected by the agri-environmental programmes, whereas the corresponding figures for intensively-farmed regions, such as Belgium and the Netherlands, are 1,7 % and 1,9 % respectively — figures which are well below the average.

⁽²⁾ Working document of DG VI (VI/7655/98) on the evaluation of the agri-environmental programmes.

⁽³⁾ OJ C 353, 8.12.2000.

⁽⁴⁾ see point 32 of the report.

4.13. On a general note, however, it should be pointed out that the agri-environmental measures have failed to fully compensate for the economic discrepancies between forms of production which are desirable for promoting nature conservation and forms of production which are desirable for meeting market-economy objectives. The reasons for the low level of success are due, inter alia, to: the inadequate level of funding for the programmes; the inadequate financial incentives; farmers not knowing whether the programmes are long-term, and therefore sustainable; and the fact that other support measures outside the scope of the accompanying measures offer greater financial incentives to farm land more intensively.

4.14. The Agenda 2000 decisions brought a number of further improvements and established rural development as the second pillar of the CAP. As an example of such improvements, funding for agri-environmental measures was further increased under Regulation (EC) No 1257/1999 on support for rural development. It does, however, have to be recognised that the second pillar of the CAP accounts for only some 10 % of expenditure on agriculture and that expenditure on agri-environmental measures amounts to just half of this 10 %; in other words, only 5 % of overall expenditure under the CAP is devoted to classical agri-environmental programmes. The major part of CAP funding therefore continues to be allotted to first pillar measures. Farmers are given no incentives at all or totally inadequate incentives to continue to work extensively-farmed areas or to keep in place hedges or other landscape features. They are therefore not given adequate economic motivation to gear their production methods to nature conservation requirements.

First pillar of the CAP

4.15. The greater part of funding under the Guarantee Section of the EAGGF (i.e. approximately 90 % of the funding) continues to be used to finance market regulation measures under the first pillar of the CAP; here it should be borne in mind that under the co-financing arrangements Member States have to provide substantial sums for rural development measures (second pillar).

4.16. Not all agricultural crops are covered by market regulations. Direct payments are made to producers of wheat and silage maize, for example, but not in respect of areas under clover or grasslands. The fact that particular crops are given preferential treatment over others has consequences for the landscape, which in turn also affect nature conservation. These payments should be scrapped and could be replaced, for example, by per hectare premiums.

4.17. The Committee deplors the fact that a number of proposals which were made by the Commission in the course of the debate on Agenda 2000 and which could have, directly or indirectly, promoted farming methods in tune with nature conservation, were, in the end, not accepted by the Member States. These proposals included the Commission's plan to

scrap the silage maize premium. Also, the fact that the linkage of compensatory payments to the fulfilment of environmental requirements is only to be optional may well be criticised, since it means that those Member States which introduce cross compliance would place their farmers at a competitive disadvantage.

4.18. Regulation (EC) No 1259/1999 of 17 May 1999 sets out EU rules for direct payments under the CAP. Under Article 3 of this Regulation, Member States are to 'take the environmental measures they consider to be important in view of the situation of the agricultural land ... or the production ...' in respect of which direct payments are made. The aim is to give more weight to environmental aspects in connection with the common organisation of the markets (cross compliance). It would be useful if the Commission were to indicate, as soon as possible in a communication to the European Parliament, the Council and the ESC/CoR, how the individual Member States have responded. Furthermore, it would also be desirable for the implementing regulation currently under discussion to be adopted and brought into force as soon as possible.

Recommendations for improving the incorporation of nature conservation into agriculture

4.19. The Committee underlines the fact that the opportunities provided by the forthcoming WTO negotiations, eastward enlargement of the EU and the mid-term review should be used to introduce a new agricultural policy which is more in tune with conservation of the environment and nature. The Committee intends to draw up an own-initiative opinion on this issue.

4.20. The Committee recommends that in the long term all EU financial instruments should provide an incentive to meet the objectives of the nature conservation Directives, or, at the very least, should not undermine these objectives.

4.21. Financial incentives to promote an agricultural sector which pays sufficient heed to nature conservation are at present inadequate in many cases. As long as general world-wide conditions do not permit the whole of the agricultural sector to comply with nature conservation objectives, agri-environmental aid should be increased to a level where all farmers in the EU are prompted to switch to 'green' production methods. The CAP financial instruments should be geared towards the results-oriented promotion of environmental and

socio-cultural interests (biodiversity, positive impact on jobs). To this end, indicators will need to be formulated to gauge the successes of agricultural policy. A consensus between organisations representing farmers, environmental associations and the social partners needs to be achieved. The integrated nature conservation blueprints which the EU should help develop will therefore need to be implemented with the aid of appropriate nature conservation budgets and agri-environmental programmes. The financial arrangements will need to be discussed at a later stage.

4.22. There is generally a low take-up rate for agri-environmental measures in highly-productive, intensively-farmed regions. It is particularly in these regions that species diversity is under serious threat. The Committee therefore recommends, as a matter of urgency, that a review be carried out of aid provisions funded under the first pillar to determine whether they are in line with environmental protection and nature conservation. This review, too, should be carried out as soon as possible so that any conclusions as regards the amending of the agricultural policy can be drawn before the accession to the EU of the CEEC and the WTO negotiations.

4.23. The Member States should set an example to their citizens and, in particular, to land-owners, who are expected to show a commitment to nature conservation. Only if the state tailors the management of the areas under its control to the requirements of nature or turns such areas into nature conservation areas, can landowners (such as district authorities, insurance companies, churches and royal families) be expected to follow suit.

4.24. In this context the Committee would point out that the applicant states still have considerable natural potential, which may be threatened by the adoption of the current agricultural policy legislation. The Committee therefore calls upon the Commission to carry out an immediate review of the likely consequences for nature and the environment of the adoption of the CAP by the applicant states and to submit its findings forthwith. There must be no transitional period for the adoption of EU nature conservation Directives.

4.25. In the Committee's view, interested parties and organised civil society in both the EU Member States and in the applicant states must be consulted much more closely in order to increase the acceptability of political decisions which promote nature conservation. Action should also be taken to meet the general public's demand not only to be informed but also to be actively involved in decision-making processes.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Evaluation Report on motor-vehicle distribution and sales and after-sales service in accordance with Regulation (EC) No 1475/95 (Additional opinion to the opinion on the XXIXth Report on competition policy)'

(2001/C 221/23)

On 23 January 2001 the Economic and Social Committee, acting under the second paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'the Evaluation Report on motor-vehicle distribution and sales and after-sales service in accordance with Regulation (EC) No 1475/95 (Additional opinion to the opinion on the XXIXth Report on competition policy)'.

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 16 May 2001. The rapporteur was Mr Regaldo.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion by 83 votes to 22 with eight abstentions.

1. Introduction

1.1. In accordance with Article 11 of the Commission's Regulation (EC) No 1475/95⁽¹⁾ of 28 June 1995 on the application of Article 81(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, the European Commission has drawn up a report⁽²⁾ intended to provide a full evaluation of the effects of implementing the Regulation, with special reference to the impact of the exempted agreements on the price differentials of new motor vehicles between different Member States and on the quality of service offered to consumers. The report also takes account of the two communications which supplement it and clarify certain points of the regulation: Communication on Regulation (EEC) No 123/85⁽³⁾ and Clarification of the activities of motor vehicle intermediaries⁽⁴⁾.

1.2. The report represents the initial stage of the process through which Community decisions will need to be taken on the future legal regime applicable to motor vehicle distribution agreements following the expiry of the current exemption Regulation (CE) No 1475/95 on 30 September 2002.

1.3. The report is divided up essentially into three main chapters covering:

- current Community rules on motor vehicle distribution agreements;
- the current structure and most recent developments in the sector;
- analysis of the restraints allowed by Regulation (EC) No 1475/95 in relation to the situation and competitive forces operating in the sector.

2. Legal framework for motor vehicle distribution and after-sales service

2.1. Agreements between enterprises which prejudice trade between Member States and limit competition are forbidden under Article 81(1) of the Treaty. However, under Article 81(3), when the four conditions laid down are met, the Commission can stipulate in individual cases or by regulation that the prohibition in paragraph 1 is not applicable to any specific agreement or category of agreements between enterprises.

2.2. The first decision on exemption of agreements for motor vehicle distribution and related after-sales service was taken by the Commission in 1974 in the so-called BMW case.

This decision was a point of reference for subsequent legislation on the subject, since the Commission, by authorising in accordance with Article 81(3) the exclusive and selective form of distribution practised by the manufacturer, was taking into practical account the socio-economic aspects closely connected with the nature of the motor vehicle product, and not just purely legal aspects, thus acknowledging that this form of distribution was sufficiently in the public interest to be authorised.

2.3. The main principles of the BMW decision, which are still valid today, were taken up and incorporated in subsequent sectoral block exemption regulations on the distribution of motor vehicles and related services for assistance to customers: Regulation (EEC) No 123/85, which came into force on 1 July 1985 and remained valid until 30 June 1995, and the current Regulation (EC) No 1475/95, which came into force on 1 July 1995 and is valid for seven years — up to 30 September 2002.

2.4. With Regulation (EEC) No 123/85, covering distribution and service agreements of a selective and exclusive type, the Commission sought on the basis of the BMW decision to find a necessary and reasonable compromise among the plethora of interests involved:

⁽¹⁾ OJ L 145, 29.6.95, p. 25; ESC Additional Opinion OJ C 133, 31.5.1995, p. 27.

⁽²⁾ COM(2000) 743 final of 8.11.2000.

⁽³⁾ OJ C 17, 18.1.1985.

⁽⁴⁾ OJ C 329, 18.12.1991.

- those of consumers, interested in being able to obtain new vehicles and after-sales services, as well as quality products and related guarantees, throughout the territory of the European Union at competitive prices;
- those of the European motor vehicle industry, interested in preserving the brand image by externalising the distribution function in a rational and efficient way, and in increasing their own level of competitiveness on the world market;
- those of dealers, interested in meeting their obligations to customers in the best possible way — supply of new vehicles, spare parts and pre-sales and after-sales service — and in having a favourable framework for a return on the investments which they must make to carry on their activity, as well as in preserving their economic independence;
- those of spare-part manufacturers, interested in access to dealers' networks and in preserving their research and development potential in the EU;
- those of independent repairers, interested in the availability of spare parts to be used only for the repair and maintenance of vehicles.

2.4.1. The essential restrictions included in the agreements to achieve these objectives met the four conditions laid down in Treaty Article 81(3), and were designed to achieve rationalisation and hence a better distribution of motor vehicles and a better after-sales service. These restrictions enabled the manufacturer to bind the distributor inter alia to the following obligations:

- not to sell motor vehicles which compete with those covered by the contract;
- to sell only to final consumers or other dealers in the network;
- not to seek customers outside their contract territory;
- not to make active sales outside their contract territory;
- not to sell or use spare parts which compete with those of the contract or which are not of matching quality;
- to provide contractual products exclusively for final users or authorised resellers forming part of the manufacturer's distribution networks;
- to provide services to assist the consumer.

2.4.2. To protect the interests and economic independence of distributors, the following provisions were laid down:

- a ban on inhibiting the distributor's freedom to determine prices, discounts and reductions for the sale of products covered by the contract;
- a requirement for agreements to have a minimum duration of four years or to be of indeterminate duration with a notice of termination of at least one year.

2.4.3. The benefit of exemption could be revoked in four specific cases:

- lack of competition;
- barriers to parallel trade and hence to integration of the markets;
- excessive differences of price attributable to the Regulation;
- unjustifiable prices or discriminatory conditions.

2.5. The Economic and Social Committee endorsed this Regulation in an opinion adopted during the plenary session of 28 and 29 September 1983⁽¹⁾.

On that occasion, the Committee, while recognising the need for a specific block exemption system for the motor vehicle sector for both selective (qualitative and quantitative) distribution and exclusive distribution, noted in particular positive effects on the intensity of inter-brand competition at that time in the EEC, and stressed how important it was to ensure a good balance between the reciprocal rights and obligations of the parties, in the interests of competition and consumers.

2.6. On the expiry of Regulation (EEC) No 123/85, the Commission adopted a new block exemption system, Regulation (EC) No 1475/95, essentially based on the fundamental principles of the previous regulation in terms of exclusive and selective distribution, but including profound changes with regard to: improving the internal market for motor vehicles and intensifying competition at the distribution stage; achieving a better balance between the parties by allowing distributors greater independence of manufacturers and by giving producers and independent distributors of spare parts easier access to the markets; increasing the consumer's range of choice.

2.7. The main changes and essential objectives of Regulation (EC) No 1475/95 were aimed at:

⁽¹⁾ OJ C 341, 19.12.1983, p. 18.

2.7.1. Ensuring the efficiency of motor vehicle distribution and related services to the advantage of the consumer, and the existence of effective competition between manufacturers' distribution networks (interbrand) and within them (intra-brand).

2.7.2. Further broadening the consumer's choice in accordance with the principle of the single market, through:

- arbitrage between markets through parallel imports;
- active promotion of the sale of new motor vehicles outside the contract territory through advertising, provided that it is not personalised advertising;
- an obligation on dealers to provide assistance and repair for any vehicle sold by another enterprise in the network;
- offering independent producers and distributors of spare parts the possibility of easier access to markets.

2.7.3. Strengthening the independence of the dealer in relation to the manufacturer, and increasing competitiveness through:

- allowing the dealer to sell other competing vehicles in different premises (multi-marketing);
- allowing the dealer to become involved in any form of marketing except for sales to non-authorised resellers;
- prohibiting the manufacturer from unilaterally changing the status of the dealer or the contract territory.

2.7.3.1. With a view to strengthening the economic independence of the dealer, the Regulation lays down:

- an extension from four to five years of the duration of the agreements, and an extension from one to two years of the minimum period of notice for agreements of indeterminate duration, in order to safeguard investments more effectively;
- reference to a third independent expert or an arbitrator in the absence of agreement between manufacturer and dealer on the objectives of sales, the size of stocks and the number of demonstration vehicles.

2.7.4. Increasing competition in the market for customer services through:

- giving authorised dealers the right to acquire from third parties spare parts of equivalent quality to the original parts;

- giving independent spare part producers the opportunity to supply such products to dealers of their choice;
- giving independent repair workshops the opportunity to obtain from the manufacturer the necessary technical information for the repair of motor vehicles (apart from information covered by an intellectual property right or which constitutes confidential know-how).

2.8. The Committee also endorsed⁽¹⁾ the new Regulation (EC) No 1475/95, stressing that it was convinced that the effects would benefit manufacturers, spare part producers, distributors and consumers.

In particular, the Committee stressed the positive role of arbitration, welcomed the extensions of prohibited clauses, emphasised the need to harmonise legislation on intellectual property, and the need to update the Communication of 12 December 1984 on Regulation (EEC) No 123/85 and the Communication on the Clarification of 18 December 1991 on intermediaries, to make them more compatible with the regulation.

3. References to the new Community rules on vertical restraints

3.1. The European Commission has carried out a far-reaching review of competition policy with regard to vertical restraints by adopting Regulation (EC) No 2790/1999⁽²⁾ of general scope and the Communication on guidelines, which constitute the instrument for interpreting the policy.

3.2. The Regulation replaces the Commission's existing exemption regulations on exclusive distribution agreements (Regulation (EEC) No 1983/83)⁽³⁾; on exclusive purchases (Regulation (EEC) No 1984/83)⁽⁴⁾; on franchising (Regulation (EEC) No 4087/88)⁽⁵⁾; and also includes selective distribution, previously excluded from the exemption regulations.

3.3. Although the Commission has specified from the start that these rules did not concern the motor vehicle sector — a view strongly supported by the ESC in its relevant opinions — it cannot be ignored that the review of the specific vertical agreements regime envisaged by Regulation (EC) No 1475/95

⁽¹⁾ OJ C 133, 31.5.1995, p. 27.

⁽²⁾ OJ L 336, 29.12.1999, p. 21; ESC opinion OJ C 116, 18.4.1999, p. 22.

⁽³⁾ OJ L 173, 30.6.1983, p. 1.

⁽⁴⁾ OJ L 173, 30.6.1983, p. 5.

⁽⁵⁾ OJ L 359, 28.12.1988, p. 46.

will have to be looked at in relation to the new legal context brought about by the reform of the Community policy on vertical agreements.

3.4. The new Regulation (EC) No 2790/1999, in order to guarantee sufficient arbitrage channels between non-integrated markets, lays down that the block exemption is not applicable to agreements which impose on the purchaser a ban on active sales together with a ban on sales to intermediaries or unauthorised resellers.

Moreover, the new regime reserves the right for the Commission to declare (through a regulation) that the exemption is inapplicable in situations where networks of parallel vertical agreements cover more than 50 % of the market.

These provisions, together with the lack of any safeguards for SMEs and the absence of minimum provisions for the ending of contracts and for recourse to arbitration — as repeatedly stressed by the ESC in its opinions on the new regime — give rise among other things to serious problems involving the compatibility of motor vehicle distribution agreements — given their nature and widespread occurrence — with the principles and obligations of the new Community rules on vertical agreements.

4. What is at stake for the European motor vehicle sector

4.1. The specific Community rules for the motor vehicle sector, based on the concept of exclusive and selective distribution, have represented for more than 25 years the basic prerequisite for the European motor vehicle system, characterised by a closely integrated and highly competitive chain of production and distribution by brand, which the manufacturers establish with selected partners on a basis of joint plans — component and spare part suppliers upstream, and the distribution and service network downstream of the production stage.

4.2. As a whole, the European system is made up of more than 120 000 firms (98 % of them SMEs in the distribution system) which employ 3 900 000 people (of whom 1 500 000 in the distribution networks), with an annual turnover of approx. EUR 400 billion.

4.3. The European Union produces 16,5 million motor vehicles per year with guarantees ranging from one to three years. A two-year guarantee will become mandatory from 1 January 2002 when Directive 1999/44/CE on the sale of consumer goods and associated guarantees comes into force. Moreover, the 200 million motorists in the European Union are guaranteed the availability of spare-part supplies, servicing

and repairs throughout the territory of the Union, in line with a business-management approach based on quality standards, the constant pursuit of customer satisfaction (CSI), long-term continuous staff training and the adoption of advanced computerisation and communication techniques.

4.4. These significant socio-economic data are complemented by others which help to describe the sector further: the vehicles have implications for individual safety and the integrity of the environment, require both regular and irregular repairs and servicing, and must meet strict technical and environmental standards.

For many people buying a vehicle represents the second most important investment in the course of their lives, and it is estimated that EU citizens spend about 13-15 % of their family budget on their vehicles. All these factors go to make up the challenge which the European motor vehicle system must continually face to meet the needs of all the interested parties and especially those of consumers.

4.5. In this context, larger vehicles for the transport of people and goods by road — industrial commercial vehicles and buses — represent a strategic component both for society and for the economy of the European Union; here the final customer is a professional operator with commercial objectives.

4.6. The Committee therefore calls upon the Commission to consider the question thoroughly, taking all these aspects adequately into account, before setting about the definitive reform of the current Community rules on motor vehicle distribution.

5. General comments

5.1. The Commission's evaluation report on the application of Regulation (EC) No 1475/95 on agreements on motor vehicle distribution rightly demonstrates — by its size and the scale of the analyses carried out — the importance attributed to this important, sensitive sector of the European economy. The Committee congratulates the Commission on this useful piece of work.

5.2. Although it does not have the aim of sketching out proposals on the situation which will follow the expiry of the current regulation, the report still represents a starting and reference point for the Commission's subsequent work on the subject.

5.3. In this connection, the Committee would point out the lack of a summary table of final conclusions on the aspects of the current Community rules on motor vehicles which the Commission regards as most relevant in terms of safeguarding competition and integrating markets.

5.4. It would also have been desirable to draw a distinction between the restraints expressly allowed by the Regulation (such as territorial exclusivity and the ban on sales to independent resellers) on the one hand, and those restraints which result from the practices of operators which violate the limits laid down in the regulation for the applicability of exemption (such as barriers to passive sales to final consumers, or transactions between authorised dealers, relating to the location of those consumers or dealers within the Community territory).

5.5. In general terms, the report shows that the set of rules on selective distribution laid down in the Commission's anti-trust legislation has made it possible, over the past 25 years, for the European motor vehicle industry to restructure itself and become more competitive in relation to global challenges by optimising the production system (lean production, robotics, the 'just in time' approach) and the distribution system through restructuring and ever closer integration with the sales network (lean distribution).

5.6. The preservation of a strong brand image — a basic factor for confronting the global interbrand challenge — and joint responsibility of producers and distributors for meeting the growing quality and safety requirements imposed by the EU directives and regulations in the field, have been made possible precisely through the presence of an exclusive and selective regime in motor vehicle distribution.

5.7. Thus the exclusive and selective distribution regime seems to have enabled the European motor vehicle system to meet the requirements of Treaty Article 81(3) which allows for the authorisation of any agreement or category of agreements between undertakings 'which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit'.

5.8. Moreover, the Commission, strongly supported in this by the Committee, acknowledged in Regulation (EC) No 2790/1999 on vertical restraints that exclusive and selective vertical distribution systems are not only important for the economy but ensure incremental benefits for the consumer.

5.9. In support of the link between exclusive and selective distribution and the automobile sector, the Committee notes that the report shows how the distribution system in the USA is largely comparable to the European one in its practical operation. The Committee would also point out that a feature of the legislative framework in the USA, which is made up of the separate laws of the individual states, is that it is mandatory and not optional as in the EU, and that it views the economic protection of dealers vis-à-vis manufacturers — in terms of both termination of contracts and the requirement that sales be made through the network — as a necessary means of guaranteeing consumer protection.

5.10. As regards the balance between the parties concerned and the benefits for the consumer, the report brings out the fact that, despite the improvements provided by Regulation (EC) No 1475/95, the economic independence of the dealer is still very limited in relation to the producer, and this has effects on the extent to which the consumer's needs can best be met.

5.11. In this connection, the Committee reiterates what it has repeatedly stressed in earlier opinions: the need for future rules in this field to provide effective protection for dealers, by seeking a better balance in the contractual and economic position of the SMEs in the networks through extending as widely as possible the scope of action of the expert or arbitrator in all aspects of the contractual relationship, with special reference to the ending of contracts.

6. Specific comments

6.1. Introduction

6.1.1. The Commission's report⁽¹⁾ makes it clear that the main aims of Regulation (EC) No 1475/95 have been to ensure that motor vehicle distribution takes place in an efficient way to the benefit of the consumer and that effective competition exists between manufacturing systems (interbrand) and within each system (intra-brand). Related to this are the aims of improving choice to the consumer on the internal market and improving the possibilities of parallel trade. A further aim has been to strengthen the dealer's independence from the manufacturer.

6.1.2. The Report indicates that there is currently reason to believe that interbrand competition in the field of motor car sales is effective in the European Union (Report Conclusion 6.1.1.4). The Committee considers that this is also an important background economic fact to the consideration of

⁽¹⁾ COM(2000) 743 final of 8.11.2000.

the degree of intrabrand competition. Prices have been falling consistently over the last five years, and this has been matched by progressive improvements in vehicle technology in terms of greater safety, and by a reduced environmental impact. Distribution has also improved, with greater attention paid by manufacturers and dealers to providing increasingly effective and widespread services. Dealer networks have seen customer satisfaction indices rising constantly.

6.1.3. On the other hand, the Report suggests that there are important questions about the effectiveness of intrabrand competition, as evidenced by the complaints to the Commission and the Commission's own investigations (see Report p. 55 and Annexes III and IV). Here, the Committee believes that the Report focuses too much on the situation in the British market, where there is a risk that factors unrelated to competition policy (tax, currency) might lead to over-hasty conclusions about a system which has functioned well in the rest of the Community market. In addition, the number of complaints (a yearly 200/300 letters for the United Kingdom and 50/60 from other European consumers) represent a modest percentage of the 16 million cars sold every year in Europe, and put the allegation that intrabrand competition is not functioning into proper perspective.

6.2. *The effectiveness of intrabrand competition*

6.2.1. There are two important contributing factors that should be considered here: the legal framework and the producers' commercial controls over the dealers.

6.2.2. The legal framework for intrabrand competition

The main legal provisions introduced into Regulation (EC) No 1475/95 to improve intrabrand competition and the possibilities for parallel imports consist of:

- the entitlement of dealers to actively promote the final sale of new vehicles to final customers — either directly or through an intermediary — outside their contract territory by advertising, as long as they avoid personalised advertising [Article 3(8)(b)];
- the entitlement of dealers to sell to other dealers belonging to the same network;
- the obligation that dealers must carry out maintenance work on vehicles sold by another dealer within the distribution network [Article 5(1)(1)(a)];

- the prohibition of making dealer remuneration dependent on the final destination of the vehicle [Article 6(1)(8)];
- at the same time, however, the Regulation continues to allow manufacturers to prohibit dealers from selling to non-authorised or 'independent' resellers [Article 3(10) and (11)].

6.2.3. Taken as a whole, these legal rules appear to offer a promising basis of legal support for intrabrand competition and parallel imports. The main vehicle for intrabrand competition under the present arrangement seems to be the intermediaries who act on behalf of consumers.

6.2.4. The main legal provisions inserted to strengthen the independence of dealers consist of:

- a reduction in the scope of the non-compete clauses. Dealers can now 'multi-market' under certain conditions [Article 3(3)];
- dealers are allowed to use a common workshop for the servicing of all makes they sell;
- manufacturers are unilaterally prohibited from modifying the status of the dealer or the allotted territory [Article 6(1)(5)];
- distribution agreements with a fixed duration must have a minimum duration of 5 years; and
- distribution agreements of indefinite duration must have minimum notice period of 2 years;
- sales targets and inventory requirements have to be agreed on and independent arbitration is provided for disagreements.

6.2.5. Taken as a whole, these legal rules seemed at the time of the Regulation to be a promising legal basis for improved dealer independence. However, they must be evaluated in the light of the commercial relationship between the car producers and the dealers.

6.2.6. The commercial manufacturer-dealer relationship

In practice, the Report suggests that there are certain features of the commercial relationship between manufacturer and

dealer which inhibit intrabrand competition and reflect continued dealer dependence.

6.2.6.1. The manufacturers remunerate dealers using a system of year-end bonuses which are not based on fully predictable criteria and this discourages lateral sales as well as reinforcing dealer dependence (Report paragraph 257). The Committee would point out that more predictable sales policies on the part of manufacturers might allow dealers to be more flexible in implementing a prices policy designed to increase intrabrand competition.

6.2.6.2. The lack of quantity or volume discounts and narrow margins reduce the scope for dealers to set different prices (Report paragraphs 182 and 265). This limits intrabrand price competition to a certain extent (Report paragraph 182), though it does not prevent other forms of intrabrand competition such as competition based on quality of service (Report paragraph 181).

6.2.6.3. In practice the 'agreement' of sales targets by manufacturers and dealers is based on national sales targets, in practice fixed by manufacturers, which leave little scope for sales to intermediaries, particularly if the targets are combined with a limited product allocation.

6.2.6.4. In practice, the arbitration option is little used. Yet the Report concludes that the possibility of such recourse generally contributes to more serious and balanced negotiations between dealers and manufacturers. The Committee would be in favour of a wider basis for arbitration as a way of improving dealer independence.

6.2.6.5. Multi-marketing, though allowed under the Regulation, is rare in practice except in Northern Europe (Report paragraphs 208-210). This suggests that one theoretical avenue to dealer independence is not being taken. The Committee wonders whether the rarity of multi-marketing is not due in practice to the high structural, management and training costs, particularly in the case of general, broad-reach brands. Except in the case of brands belonging to the same group, multi-marketing is more common where it is to offer a full range of vehicle types or involves complementary products not offering direct competition.

The Commission report takes no account of the type of multi-marketing practised by holding companies controlling a number of dealers in different brands.

6.2.6.6. The threat of termination appears to continue in practice to give power to the manufacturer, particularly in a situation of fewer dealerships where loss of a dealership with a major car manufacturer could mean no prospect of another dealership with another major car manufacturer (Report paragraph 253). The longer periods of security given to the dealer by Regulation (EC) No 1475/95 do not in practice seem to have increased dealer independence.

6.2.6.7. There is evidence of growing concentration, with fewer dealers and larger contract territories (Report paragraph 91). This could add to the risk of reduced intrabrand competition unless it is compensated for by more extensive publicity and Internet use. The Committee stresses that while Internet use cannot be finally assessed, as it is only in its infancy, it has shown its worth as a means of information, but has also shown its limits as a means of direct sales. This is due to the complex nature of motor vehicles and, among other factors, to commercial practice which very often involves disposal of an older vehicle at the same time as acquisition of a new one.

The Committee would also emphasise that this type of Internet use is considered to constitute passive sales under the guidelines on the vertical restraints regulation. If, as seems probable, the same applies to the regulation on motor-vehicle distribution, then intrabrand competition will be boosted.

6.2.6.8. Price differentials remain across Europe for the same makes and models. One of the main causes are tax differences. Another is currency fluctuations. Other influential factors are the manufacturer's historical presence on a national market, distribution and transport costs (Report paragraph 189). The Committee believes that a closer alignment of taxes (tax and VAT levels) and the introduction of the euro should generate greater transparency and reduce price disparities across the Community market.

6.2.6.9. Delivery times particularly for intrabrand orders between member states are frequently longer for foreign buyers than for national buyers (Report paragraph 200). The Committee would agree with the Commission that some method should be found to end this practice of delayed deliveries for inter-state orders, where no reasonable cause is given for such delays.

6.2.7. The Committee would like to recall the fact that a considerable degree of intrabrand competition exists, given the fact that more than 30 % of the dealer's sales (sometimes rising

to 60 % in metropolitan areas) are to consumers outside the contract territory assigned to him. Moreover, the level of intrabrand competition could be significantly increased through a reasonable balance in relations between producer and dealer.

6.2.8. The way forward is to attempt to modify the block exemption and extend it, rather than putting an end to the selective distribution system.

6.3. *The protection of competition in the after-sales service market*

6.3.1. A further aim of Regulation (EC) No 1475/95 has been to protect competition in the after-sales service market. One feature of this aim has been to improve the access of spare part producers to dealer networks. To this end, 1475/95 strengthens the right of dealers to use spare parts of matching quality by introducing a right for spare parts manufacturers to supply spare parts of matching quality to dealers [Article 6(1)(9) and(10)]. It also preserves a right for spare parts manufacturers to exhibit their own trade mark or logo on the spare parts they supply [Article 6(1)(11)]. It also prohibits manufacturers from using bonuses which aggregate car sales with spare parts sales. Finally, it provides independent repairers with a right to technical information and specifies that requests for such information are not to be improperly refused [Article 6(1)(12)].

6.3.2. Again the Report indicates that in practice dealers have tended to continue to rely on manufacturers for supply. Only 5 %-20 % of spare parts are outsourced (Report paragraph 248). The Report suggests that, despite the legal framework, dealers are reluctant to buy parts from other sources because of their dependency on the vehicle manufacturers caused by end of year bonuses linked to turnover figures for original spare parts combined with large discounts for original spare parts, and recommended original spare part inventory holdings for dealers (Report paragraph 249). The Report concludes that the right of spare part producers to supply their product to dealers, as provided for in the Regulation, has not materialised. (Report 6.2.2).

6.3.2.1. It is true that a contributing factor is the belief of many consumers that original spare parts are of better quality and that this may be because of consumer confidence in original products and of inadequate information, mainly on the part of independent manufacturers.

6.3.2.2. The Committee would support the Commission in exploring measures to help encourage dealers to make use of

matching spare parts. Use of equivalent parts could be even more widespread if their quality was certified, enabling dealers to assume full liability towards vehicle users, including for work concerning safety and environmental protection.

The Committee would remind the Commission that in practice, independent manufacturers can only supply dealers with certain types of spare part rather than the full range, for obvious management-efficiency reasons; 20 % market penetration therefore represents a considerable level given that these parts are used outside the usual guarantee period. In this context, the Committee urges the Commission to tackle the equivalent quality issue by means of instruments which can effectively guarantee the equivalent quality of products placed on the market.

6.4. *Has the position of independent repairers been adequately protected?*

6.4.1. Regulation (EC) No 1475/95 made provision for several means of protection for independent repairers. Dealers were enabled to supply original spare parts to independent repairers for the repair and maintenance of a motor vehicle [Article 6(1)(12)], though there is no obligation to supply such parts at wholesale prices. The Report concludes that in general independent repairers have no major problems as regards access to original parts but that the inability to purchase such parts at wholesale prices makes it more difficult to compete.

6.4.2. Secondly, manufacturers were given an obligation to make any technical information necessary for the repair and maintenance of its vehicles accessible to independent repairers. There were limits to this obligation in the case of intellectual property rights or qualifying know-how, but such information must not be improperly withheld [Article 6(1)(12)]. It is clear that technical developments will make such information even more important in the future. However, even though non-compliance constitutes a black practice [Article 6(12)], compliance by car manufacturers is patchy and uneven. Some publish lists. Some release information on a case by case basis. Independent repairers often get information from official dealers.

6.4.3. Most independent repairers report problems of access to technical information. The problems include lack of access to new vehicle information, complex and expensive technical publications, lack of access to information on electronic devices and information systems and diagnostic equipment (Report paragraph 294). The Report comments that the car manufacturers seem not to have created technical and economic conditions that allow adequate access to independent repairers, as is required by the Regulation, and this in turn limits consumer choice.

6.4.4. The Committee would urge the Commission to explore ways of strengthening the obligations of producers to supply technical information to independent repairers: this should be done in a non-discriminatory way, enabling independent repairers to develop and subsequently enhance the quality of their services.

The Committee would, however, remind the Commission that the high levels of investment required of dealers in order to develop and acquire the technology, and provide the training needed to improve their product and related services are far greater than those normally borne by independent repairers. It is reasonable that the latter, in order to boost their competitiveness, should specialise in a number of specific products and offer consumers a transparent service guarantee similar to that provided by dealer networks. Lastly, the Committee emphasises that the one-stop-shop spare parts service that the dealer networks offer consumers involves a high level of investment in stock; in contrast, it is independent repairers' interests to make ad-hoc acquisitions of only a few parts, usually those with the highest turnover.

6.4.5. In this context the Committee recalls the need to take account of the fact that at present the dealer, in order to provide the consumer with guaranteed availability of spare parts and full servicing of all models in the network brand's range, must constantly make considerable investments both in structures and in staff training.

6.4.6. In Regulation (EC) No 1475/95 manufacturers are required, if they are to benefit from the block exemption, to impose on their dealers an obligation to provide after-sales service as well as sales of new cars. The Report indicates that, while there are technical and economic reasons for a link between sales and after-sales service, there is evidence that consumers divide between those who prefer the link and those who prefer, particularly with older cars, to use independent repairers. On balance, therefore, the Committee would rec-

ommend to the Commission that it allow such a link as part of an exempted motor vehicle distribution agreement, but at the same time the conditions should be promoted for raising the level of competition once the guarantee period (minimum 2 years) laid down by the manufacturer and practised by the dealer network has expired.

6.4.7. The Committee consequently regards as essential the link between sales and after-sales service for new vehicles, bearing in mind the nature of the product, since first and foremost it serves the interests of consumers who thus enjoy a service with quality and safety guarantees, and defective vehicles can be returned to suppliers throughout the EU territory regardless of where the vehicle in question was purchased. Secondly, respect for environmental standards is guaranteed and the brand image is maintained.

7. Concluding comments

7.1. The Report presents a case for amending the Regulation to improve the possibilities for intrabrand competition, dealer independence and the provision of technical information by manufacturers to independent repairers.

7.2. The Committee has recommended a number of specific changes in the Regulation, since it must be made to reflect experience, new instruments and technological development — provided this is achieved in full compliance with the unchanged principles acknowledging that motor vehicles are not only a means of mobility, and hence an economic asset, but also a social asset which must be protected in the interests of users themselves. This means safety, and helping to ensure that safety is maintained over time.

7.3. The Report itself suggests that the main inhibitions to intrabrand competition are the limits on personalised advertising and the ban on selling to undertakings not belonging to the network, i.e. to the independent resellers. Nevertheless, the Committee, on the basis of the points made above, would suggest that the best way forward is to strengthen the position of intermediaries in making the most of the opportunities and choices offered by parallel trade rather than to remove the ban on sales to independent resellers.

7.4. The Committee would also like to suggest that the Commission update the Communication on intermediaries and set up guidelines on the use to be made of the Internet by dealers and producers. A further suggestion would be to assess how the Internet — which did not exist when Regulation (EC) No 1475/95 was prepared — may lead to a different view of a number of elements in the regulation.

7.5. On the basis of the general and specific comments set out above, the Committee favours confirming the special

block exemption for motor-vehicle distribution, and urges the Commission to explore methods of amending and extending the current Regulation. The primary aim of the new Regulation should be to raise the overall level of competition in order to improve consumer well-being and safety, and the operation of the single market. In order to achieve these objectives, the new Regulation should have a practical impact in providing greater protection for dealers and promoting the SMEs operating in the European car sector. The Committee looks forward to the opportunity to comment on any changes that are proposed by the Commission.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

APPENDIX

to the opinion of the Economic and Social Committee

The following amendments, which received more than one quarter of the votes cast, were rejected during the course of the deliberations:

Point 5.6

Delete.

Reason

Quite apart from the fact that there are also strong brand images in sectors not covered by Community Regulations, the purpose of the EU legislation cannot be to increase the profile of brands of motor vehicles.

Result of the vote

For: 26, against: 60, abstentions: 6.

Point 5.7

First sentence to read as follows:

'In this respect the Commission has hitherto assumed that the existing exclusive and selective distribution regime makes it possible for the European motor-vehicle system to meet the requirements of Treaty Article 81(3).'

Delete second sentence.

Reason

Exclusive and selective distribution is not the only way in which the motor-vehicle sector can fulfil the EU Treaty.

Result of the vote

For: 31, against: 59, abstentions: 7.

Point 6.1.3

Delete from the second sentence onwards ('Here, the Committee believes').

Reason

The implication is that the report places too much emphasis on the situation on the British market and that the system elsewhere in the single market functions well. The fact is, however, that the Commission has uncovered abusive sales' practices in a whole series of countries and has received appropriate complaints from consumers. The Commission's findings lead one to conclude that intrabrand competition is not functioning throughout the EU.

Result of the vote

For: 37, against: 58, abstentions: 6.

Point 7.2

Delete the reference to the motor vehicle as a social asset in the first sentence.

Reason

If we regard environmental protection as a main political objective, then the motor vehicle, which has been proven to cause damage to the environment, should not be classified as a 'social asset'.

Result of the vote

For: 34, against: 62, abstentions: 16.

Point 7.3

Delete the second sentence and replace with the following text:

'The Committee calls for the lifting on the ban on selling to undertakings not belonging to the network and the application in future of clear, transparent and exclusively qualitative criteria (expertise of the staff) for the selection of dealers which are supplied by manufacturers.'

Reason

Quantitative restrictions which obstruct competition and establish region-wide brand monopolies for a small number of official dealers are not within the meaning of the single market.

Result of the vote

For: 27, against: 70, abstentions: 9.

Point 7.5

To read as follows:

'On the basis of the general and specific comments set out above, the Committee considers the retention of the special block exemption for motor-vehicle distribution to be still acceptable for the time being if it is ensured that the conditions and measures laid down in Regulation (EC) No 1475/95 really are applied in full. In addition, the Commission is asked to examine how the current Regulation can be amplified. The new Regulation's most urgent objective should be to increase competition, albeit without neglecting consumer safety. The Committee looks forward to the opportunity to comment on any changes that are proposed by the Commission.'

Reason

In view of the lack of intrabrand competition referred to in the Commission report and highlighted by consumer organisations — which is due in no small measure to the failure to observe the conditions laid down in Regulation (EC) No 1475/95 — it is not enough to simply continue with the present situation, albeit with one or two minor changes. In the long term the aim should be to abolish the block exemption in the motor-vehicle sector in keeping with the need for a properly functioning single market.

Result of the vote

For: 33, against: 68, abstentions: 11.

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on reporting formalities for ships arriving in and departing from Community ports'

(2001/C 221/24)

On 26 February 2001 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 8 May 2001. The rapporteur was Mr Kröger.

At its 382nd plenary session, held on 30 and 31 May 2001 (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 50 votes to four with three abstentions.

1. Introduction

1.1. A considerable amount of information has to be provided by seagoing ships entering and departing from Community ports. This information mainly concerns the status of the ship, its crew, the nature and size of the cargo, the passengers on board and the ship's stores. Such information is required in connection with: the payment of duties; decisions taken by the port authorities on safety matters; monitoring observance of immigration rules; the compiling of statistics and, generally, the smooth clearance of ships.

1.2. The content of much of the information is the same for every port. The format of the information required by

many ports, does, however, differ. In other ports the content of the information required is also not the same.

1.3. The fact that the information with the same content is formatted differently is both time-consuming and highly costly to the shipping industry. It complicates administrative procedures not just for overseas shipping but also, and in particular, for short sea shipping. The aim is to facilitate clearance of seagoing ships and to make maritime transport correspondingly more efficient, whilst at the same time not reducing the content of the information required by the authorities of the Member States.

2. The Commission proposal

2.1. The Commission proposes to standardise both the content and the format of the information to be provided in respect of ships arriving in and departing from Community ports. The proposal is based on the International Maritime Organisation's (IMO) Convention on Facilitation of Maritime Traffic of 9 April 1965 (IMO FAL Convention). The Convention came into force in 1967 and has since been amended on several occasions. The Convention covers six standardised forms. These forms relate to: basic data in respect of the status of ships on entering and leaving ports; the cargo declaration; the ship's stores declaration; the crew's effects declaration; the crew list; and the passenger list. Under the Proposal for a Directive, the Member States are to enact legislation ensuring that the standardised IMO FAL forms may be used and have to be accepted for the provision of information in the abovementioned fields. The requisite specifications for the individual declarations are set out in Annex I to the Proposal for a Directive.

2.2. The standardised forms are to be used on a uniform basis, except in two cases:

2.2.1. The proposal for a Directive does not stipulate use of the standardised IMO FAL form in respect of the cargo declaration. In practice this information is contained in ships' cargo manifests. The information set out in these manifests is used for both commercial and administrative purposes.

2.2.2. Use of the IMO FAL standardised passenger list is stipulated only in the case of cargo ships which carry passengers. In the case of the carriage of passengers on passenger ships, Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community⁽¹⁾ requires more information to be provided than is the case with the IMO FAL form. In all other cases the provisions of the Proposal for a Directive are based on the use of the IMO FAL standardised forms.

2.3. Use of the standardised forms is to be authorised in respect of all ships arriving in or departing from Community ports, irrespective of their flag or whether they are engaged in intra-European traffic or international maritime traffic.

2.4. When the required data are transmitted electronically, the electronic end-format on the end-user screen and when printed has to tally with the standardised model forms.

2.5. The Proposal for a Directive does not oblige Member States to ratify the IMO Convention. In cases where Member States wish to have information on matters not covered by the standardised IMO FAL forms, they are therefore to be at liberty to require such information.

3. Observations

3.1. The Economic and Social Committee welcomes the Commission's proposal to standardise the format of the information which Member States require from seagoing ships entering and leaving Community ports. This will facilitate the clearance of seagoing ships in a key area.

3.2. The Proposal for a Directive will facilitate the administrative formalities involved in the clearance of seagoing ships. This will be particularly beneficial in the case of European short sea shipping. This trade involves ships regularly serving several European ports in the course of one journey and being repeatedly required to provide them with information. Short sea shipping is in competition with land transport which does not have to meet comparable reporting requirements. The harmonisation of conditions of competition between transport modes is therefore also brought a step closer by the Proposal for a Directive. It will, furthermore, facilitate administrative work in respect of crew members.

3.3. In earlier opinions the Economic and Social Committee repeatedly stressed the important role played by short sea shipping in coping with the growth in traffic in the internal market. This role will become still more important with the accession of east European states to the EU. The Maritime Industries Forum, which brings together representatives of the Commission, the Member States, the maritime transport industry, users, ports, service-providers in the logistics industry and trade unions, has on several occasions called for the removal of bureaucratic obstacles to European short sea shipping in order to make the use of this form of transport more attractive to users. In its resolution on the promotion of short sea shipping of 14 February 2000⁽²⁾, the Council expressly called upon the Commission to present proposals to standardise the use of IMO FAL forms in the EU. The Proposal for a Directive under review meets these demands. It is therefore endorsed by the Economic and Social Committee. The Committee urges the Member States to gear their approach towards the pursuit of these policy objectives and to set aside special national desires as regards the provision of information.

3.4. The Committee welcomes the fact that the Commission has taken over the IMO Convention's international formats, rather than producing separate EU forms. This reflects the point frequently made by the Committee that if maritime transport is to form an efficient global sector of the economy, the application of standard international rules is a vital prerequisite.

⁽¹⁾ OJ L 188, 2.7.1998, p. 35.

⁽²⁾ OJ C 56, 29.2.2000.

3.5. It would be in line with this international approach if the ship's master or the shipping company concerned could choose to provide the requisite information also in English, in addition to providing it in the national language of the respective port. As the Proposal of a Directive rightly encompasses all ships entering Community ports, rather than distinguishing between flags or trades, it seems reasonable also to authorise the communication of the information to the Community ports in English. English is the basic medium for communication in international maritime transport.

3.6. The Economic and Social Committee attaches considerable importance to the streamlining of administrative procedures and the attendant facilitation of maritime transport in the EU. The IMO FAL Convention has so far been ratified by 81 countries. 52 of these have, however, lodged reservations about individual provisions, as a result of which the internationally agreed measures for facilitating procedures and promoting simplification have only been partially incorporated

into national law. The Committee therefore calls on the Commission and the Member States to examine jointly the areas in which further harmonisation provisions could facilitate the procedures for clearing seagoing ships in Community ports. The Committee would draw attention in this context to, for example, the recommendation set out in the FAL Convention that for each port only one central body be appointed to which all the requisite information could be forwarded, even though several different authorities (e.g. customs authorities, health authorities, immigration bodies and others) are responsible for individual information. Administrative formalities would also be further facilitated by (a) implementation of the recommendation that a procedure be introduced for prior clarification of customs regulations in order to cut the time subsequently taken to clear ships and (b) observance of the recommendation that the efficiency and speed of maritime transport operations should not be impeded by the collection of statistical data. The Commission's current proposal should therefore be further developed in future Directives.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on 'the Commission Staff Working Paper SEC(2000) 1973 "Science, society and the citizen in Europe"'

(2001/C 221/25)

On 30 May 2001 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'the Commission Staff Working Paper SEC(2000) 1973 "Science, society and the citizen in Europe"'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2001. The rapporteur was Mr Wolf.

At its 382nd plenary session on 30 and 31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 81 votes in favour and one against.

1. Introduction

1.1. Science, society and the citizen is a subject of great importance in social policy terms. Although its opinion-forming process on the issue is not yet complete, the Commission has drawn up a staff Working Paper SEC(2000) 1973. The ESC takes this Working Paper as a welcome opportunity to set out its own range of views on this highly complex matter in an own-initiative opinion and refers frequently to the Commission document.

1.2. Right at the start, the ESC would endorse the following statements by the Commission:

'Science and technology represent one of the forces most clearly reflecting social change ...' and

'The questions arising in this area are among the most complex facing society, owing to their technical nature, the uncertainties surrounding them, the know-how needed to deal with them and their often diffuse nature.'

1.3. Given its remit as a European Union body, and the fact that its members are drawn from the various social interest groups within the Member States, the ESC is particularly well placed to deliver a detailed statement of principle on the issues involved.

1.4. The ESC is pleased to note that, in its communication, the Commission has also taken up suggestions made by the ESC in its Opinion⁽¹⁾ on the Communication from the Commission: Towards a European research area. Section 5 of the opinion in question is entitled Research and Society and deals with part of this issue.

1.5. Moreover, the Commission's communication looks at various topical issues that are causing growing concern to individuals and policy-makers alike and are encompassed under the general heading of 'Science, society and the citizen':

- How to implement research policy around the real aims of society and fully involve society in seeing through the research agenda?
- How should we manage risks? What implications arise from adopting the precautionary principle? How can ethical issues and the ethical consequences of technological progress be taken into account, at the same time as the need for freedom of research and access to knowledge?
- What needs to be done in order to underpin the dialogue between science and society, to improve the public's knowledge of science, to increase the interest of the young in scientific careers, and to expand the role and place of women in science and research?

1.6. Three main groups of issues are concerned here, namely:

- the importance of scientific knowledge, its social impact, how it is perceived and managed;
- reciprocal understanding and communication between citizens, society and scientists and researchers;
- the motivation for young people to undertake scientific training and to embark on careers in research.

1.7. In order to deal in an organised way with the various issues and formulate recommendations, the ESC has divided its opinion into the following sections:

2. The historical process and its outcome
3. The citizen, society and scientific knowledge
4. Society, researchers and research; mutual understanding
5. Scientific education: a sine qua non for a knowledge-based society
6. Research policy and the interests of society
7. Summary and recommendations.

2. The historical process and its outcome

2.1. One of the characteristics — indeed one of the most important — which distinguishes human beings from animals is the urge to seek for answers to basic existential questions and for the laws governing the world and morality.

2.1.1. In antiquity fundamental philosophical and scientific insights were gained and, together with discoveries in the fields of mathematics, logic and geometry, and the ongoing development of new technologies, contributed to the growth of the great civilisations of the age.

2.2. The Renaissance and the Enlightenment gave a new impetus to this process in Europe and set in motion an even more far-reaching cultural and scientific development.

2.2.1. This process arose from a combination of further technical developments and tools (printing, gunpowder, mining, seafaring, watermills and windmills) and trade, the discovery of unknown continents, new social concepts, the gradual discovery of natural laws unknown in previous ages and, linked to that, a demystification of natural phenomena.

2.2.2. The process was accompanied by tensions, wars and social clashes — the result not only of dynastic or power-based interests and conflicts, but also of the radical shake-up of ideas, shifts in economic policy and new technologies changing the world of work.

2.2.3. Discoverers and harbingers of new knowledge were not always well integrated into society; sometimes, in the course of ideological conflicts, they were also persecuted, giving rise to notion of the freedom of science and teaching.

⁽¹⁾ OJ C 204, 18.7.2000.

2.3. The natural sciences played a key role in this process. An important feature of the natural sciences and the reason for their success is the empirical scientific method developed in Europe and involving interaction between experimental findings and theoretical interpretation and forecasting.

2.3.1. At the same time the branches of science, which initially were lumped together under the overall heading of philosophy, and in particular the natural sciences and mathematics, established themselves as independent disciplines and through an evolutionary growth process yielded an ever increasing wealth of new and often revolutionary discoveries, which also increasingly became the starting point for modern technology.

2.3.2. However, this unavoidable specialisation of scientific disciplines must not blind us to their common features. Interdisciplinary approaches are steadily gaining in importance as science probes ever more deeply into the complex realities of our world. This also includes efforts to re-establish closer links between the natural sciences and the humanities.

2.4. Science has steadily encroached on man's mythical view of the world.

2.5. As a result of this process, the living conditions of the peoples and regions involved in this development have changed and improved as never before in human history.

2.5.1. A further key factor was the development and intensive use of energy-consuming (or, more accurately, energy-converting) machinery and industrial processes: energy 'nourished' prosperity.

2.5.2. The subsequent technical, medical, cultural, social and political achievements are the basis and defining feature of today's mobile, prosperous information society. In this way, people (in Europe) were largely liberated from the burden of sheer physical work and, thus, a freedom which had previously been available only to a small, privileged stratum of society was enlarged to include today all citizens, offering them precious educational opportunities and facilitating the move towards a knowledge-based society.

2.5.3. The degree of prosperity attained in certain countries or regions — measured by gross national product, employment and other indicators — is clearly related to the current level of research and development. Not just economic competitiveness, but also the cultural and political standing of countries and peoples, are dependent on their scientific and technological performance.

2.6. Human beings have to a large extent learnt to protect themselves from many basic threats such as hunger, cold and disease. They act as — and consider themselves — masters of the earth. Therefore, not only have they acquired the skills needed to attain prosperity, freedom and power, but they have also taken on additional responsibilities.

2.7. As a result of the still-rapid population growth across the world and the impact of mankind's action and way of life on nature and environment, human beings have become a critical determinant of the further development of the planet on which they live. A number of commentators (e.g. Stoppani, Crutzen, Stoermer) have proposed the term 'anthropocene' to denote the current period in the history of the world.

2.8. In addition to immanent and non-manmade dangers and (natural) disasters (see also points 2.9 and 3.7.1) such as volcanic eruptions, the ice age, asteroid impact, earthquakes, floods, epidemics etc., new threats are now emerging to the biosphere, where the cause is humans themselves, their way of life and their technology.

2.8.1. Highly developed weapons of mass destruction (NBC weapons), which, if used, would cause unimaginable and possibly global devastation, are a particular case in point.

2.9. It is thus up to Europeans and European society to protect both their own living conditions and the biosphere, to avert dangers and at the same time to secure and enhance prosperity and quality of life and help other nations to do the same. Further research must be carried out into risks emanating from people and their way of life and practical methods and arrangements must be developed to control or avert these risks.

2.10. Both society and the public have recognised that science is a key part of our culture and that Europe's competitiveness is secured through innovation and technical progress. This requires greater input from science and research. Hence, all Member States (albeit to differing degrees) and the European Union make considerable, although not always sufficient, financial resources available for these purposes.

2.10.1. Science, society and citizens have important and difficult decisions to make regarding the scale, distribution and deployment of these resources.

2.10.2. Society, citizens and science must work together constructively to shape the future and establish the knowledge-based society. By virtue of its remit and membership, the ESC has a key role to play in this regard.

3. The citizen, society and scientific knowledge

3.1. One of the features of today's (civil) society is the emergence of formal organisations and structures which reflect citizens' social, professional, ideological or cultural identity and interests.

3.1.1. Scientists are, on the one hand, part of society, but difficulties may arise in communication and mutual understanding — and in clarifying respective responsibilities — because of the distinctive nature of their profession and the impact of their research findings.

3.1.2. The public expects the products of science to secure health, longevity, prosperity (e.g. through innovation), security from danger and quality of life. At the same time, people also have a fear of what they do not know or understand.

3.1.2.1. Moreover, society and the public expect scientists to stick to the rules of their peers, to tell the truth, not to cheat and not to violate accepted ethical values.

3.1.3. However, the public is generally not well enough informed about science and technology, i.e. about latest scientific findings, the opportunities and risks of scientific research, the working methods and operational conditions of science and research and the chances and risks of technologies developed from scientific findings.

3.1.4. On the one hand therefore, the public and society expect a great deal from science — the result both of its revolutionary successes and of promises made by scientists themselves. On the other, the risks and dangers of science and technology, intensified by the excessive and rapidly growing gulf in knowledge between the public and science, may lead to a 'remystification' or even demonisation of science and research. These are the two sides of the Commission's propositions outlined below.

3.1.4.1. Inflated and unrealisable expectations can lead to disappointment and scepticism among the public and thus obscure perfectly justified expectations and realistic opportunities.

3.1.4.2. Any 'remystification' — or even demonisation — would not only deprive society, citizens and science of any rational basis for communication and assessment, but would also run counter to the very essence of science itself.

3.1.5. The Commission addresses some of these factors in the relationship between science, society and citizens in its Working Paper.

3.2. The Commission Working Paper states: 'The relationship between science and society today is something of a paradox. First of all, science and technology are at the heart of the economy and society, and both are having an increasingly positive effect on the lives of people in Europe. Expectations of science and technology are getting higher and higher, and there are few problems facing European society where science and technology are not called upon, one way or another, to provide solutions.'

3.2.1. These expectations of citizens are as a result of experience to date. In the last 200 years average per capita real incomes in Europe (i.e. spending on food, clothing, housing, health, education, travel and entertainment) have increased on a scale which would once have been unimaginable. In the last 120 years alone average life expectancy has more than doubled.

3.2.1.1. An education system now open to all citizens and sections of society has developed to such an extent that the average age at which Europeans now enter into employment is the same as the average life expectancy of 400 years ago. The EU Member States have democratic governments. Legal certainty, social protection and personal freedom have reached unprecedented levels.

3.2.2. Since the current view is that both the scope for further growth — and the availability of resources — are finite, people's expectations of future developments are concentrated more on qualitative improvements, on safeguarding what has already been achieved, on risk control and on sustainable technologies. That said, wholly unexpected discoveries and knowledge could well open up new, cross-border options and outlooks.

3.2.3. Research and development sow the seeds of future innovation, prosperity and peace.

3.2.4. And yet there is insufficient public awareness of the importance and extent of this progress and of the conditions for it. This awareness is often overlaid with disillusionment arising from the failure of unrealistic expectations to materialise and with fear of real or imagined dangers resulting or potentially resulting from the technical application of scientific findings.

3.2.5. The ESC therefore recommends that schools (see also point 5) give greater emphasis to the developments described in point 2.5 ff. to foster public awareness of common European cultural achievements — and thus of the historic importance

of the European research area. Armed with this knowledge, Europeans will also be able to develop a more balanced relationship between society, citizens and science.

3.3. However, the Commission Working Paper also states: 'Conversely, advances in knowledge and technology are greeted with growing scepticism, even to the point of hostility, and the quest for knowledge no longer generates the unquestioning enthusiasm that it did some decades ago. Searching questions are being asked of the social and ethical impact of the forward march of knowledge and technology and the conditions under which the basic choices are made (or are not made) in this area.'

3.3.1. Although the ESC feels that the above statement is no longer generally true — and it does not seem to square with the call for a knowledge-based society and economy — it nonetheless reflects the feelings of a significant section of society. A closer look shows that there are many reasons for this attitude.

3.4. The first of these is the obvious fact — trivial in itself — that as a tool or instrument, properly used, becomes increasingly effective (and here we are talking about particularly effective technologies and procedures which build on scientific discovery), so it also becomes capable of doing increasing damage in the event of accident or deliberate misuse. The proper use and the abuse of scientific discoveries are two sides of the same coin (see also point 3.4.5).

3.4.1. Should mankind therefore be denied the scope to develop highly effective technologies and methods because justified concerns exist as to their destructive potential or as to man's ability to control them if wrongly used? In other words, should we or could we prevent the discovery of natural laws because they can be used to develop ultra-powerful technologies.

3.4.2. Ultimately the question is whether mankind and society have the ability and the strength to lay down standards for the responsible use of their own research methods and results, to update these in the light of new discoveries and to ensure that they are complied with.

3.4.3. Given that extraordinarily effective procedures and technologies have already been discovered and developed and that these could potentially be used for destructive purposes, we are faced with the serious problem and the extremely important task of continuing in the future to develop social, political and — increasingly — global supervisory arrange-

ments which enable us, on the one hand, to exploit opportunities to improve health, the economy and individual development, but at the same time to reduce and contain the possibly disastrous consequences.

3.4.4. The basic right of scientific freedom is enshrined in the European Charter of Fundamental Rights. Thus it can be constrained only by other fundamental rights such as the right to dignity of the person, life and physical integrity (see also point 3.7).

3.4.5. It is an illusion to believe that an 'improved' research policy would allow only research carried out with 'good intentions', thus excluding from the outset any potential for damage or destructive use.

3.5. The ESC therefore supports the Commission's intention to launch a European-level debate on the issues addressed in points 3.2 and 3.3 above and to develop the appropriate instruments for this purpose. Thus, it endorses the following statements made in the Commission Working Paper:

3.5.1. 'Dealing with technological risk and 'science/society' more generally calls for the development of new forms of dialogue between researchers, experts, political decision-makers, industrialists and members of the public, especially at European level' and

3.5.2. 'Such real or imagined threats also have to be put into perspective and balanced against the benefits that science and technology bring to society in general, and to each individual in particular.'

3.5.3. The ESC stresses its obligation and intention to play a major part in this debate as a European Union body. The fact that its members have different fields of expertise and different backgrounds of experience also ensures that, within the ESC, balanced account can be taken of society's diverse views.

3.5.4. The ESC would point out that, for a debate of this kind to be effective and successful, a number key conditions must be met when selecting and dealing with scientific experts to be consulted as part of the process. Among other things, experts should have:

— sound expertise, proven and maintained by continual involvement in active research;

- the freedom to express their views;
- the (broadest possible) external and internal independence;
- the ability to express themselves in a clear and readily understandable way.

3.6. A particular problem is also posed by public anxieties with little objective justification (when related to the latest scientific findings known at the time) which are nourished by ignorance, misunderstanding and the lack of sufficient information for an informed judgement. In particular there is often insufficient training in thinking in quantitative terms, e.g. in assessing the health risk posed by certain substances or radiation doses.

3.6.1. Interestingly it is mainly in those European countries in which elemental dangers and risks (such as hunger, cold, disease, acute poverty, arbitrary government, repression and lack of freedom) have been most successfully banished by technological, social and political progress that minor, or often even imagined, risks are a source of widespread anxiety. (Research could usefully be carried out to establish whether human beings have a certain psychological propensity, largely independent of objective circumstances, to develop fears of the unknown which if need be seek or even create their own object.)

3.6.2. Here, every effort must be made to produce informative assessments by means of comparisons with other — in particular unavoidable and omnipresent — risks.

3.6.3. To arrive at the most objective and balanced assessment possible in each individual case while not losing sight of real threats, it is essential to have adequate expert knowledge of the particular scientific/technical and political/social problems. Sound knowledge is built on sound training. This applies to the issue of 'improving the public's knowledge of science' set out in the Commission Working Paper (see especially Section 5).

3.7. The Commission quite rightly calls for a Europe-wide debate on these problems. Such a debate will have to determine more clearly than in the past

- whether the risks and ethical problems are already present in the process of acquiring the knowledge — i.e. in the research itself, as with in vivo research for instance;
- or in potentially dangerous applications of technologies developed on the basis of new knowledge;

- or whether they are present in population growth (or decline in some regions), or in rising prosperity and the concomitant — often unheeding — consumption habits and lifestyles.

3.7.1. This last point includes above all those — primarily environmental — problems and risks caused by factors such as rapid population growth and increases in resource consumption, emissions, and land use — i.e. material prosperity. Scientific benefits may become a problem because of their impact on human behaviour (e.g. problems caused by affluence).

3.7.2. Mostly it was the members of the scientific community itself who first identified such problems (e.g. hole in ozone layer, greenhouse effect) and proposed solutions, thereby launching a political process (e.g. the Montreal protocol) (see also point 6.3.2).

3.8. In this connection the Commission also raises the question of whether it is possible or even desirable for the EU to strive for a common stance and hence common rules on the associated moral concepts (e.g. embryonic progenitor cells).

3.8.1. The ESC recommends that the Commission take measures to identify and explain as clearly as possible both the factual/scientific and ethical aspects of such problems, so that political decisions can then be taken on that basis (see also point 4.9).

3.8.2. Bearing in mind, however, that the stances of the Member States on some of these issues are quite divergent and even antithetical, the ESC would recommend proceeding very cautiously in the matter of uniform European rules so that potentially avoidable and emotive arguments between the Member States do not get in the way of European integration.

3.9. In addition one sometimes has the impression that the debate on these problems is also marked by a struggle between the arts and sciences (C.P. Snow's 'two cultures') as to which outlook should prevail in society.

3.9.1. The ESC therefore recommends supporting all measures which help to reduce the polarisation, between arts and sciences and bring them closer together. This also includes two-way dialogue on issues such as methodology, conceptualisation, evaluation of results, etc.

3.9.2. The ESC would refer *inter alia* to the increased use of empirical and quantitative methods in social research (less and less tainted by ideologies). A particularly topical example of this is brain research, in which neurology, physics, psychiatry, psychology, linguistics and information technology increasingly converge. Furthermore, there exist certain affinities and common traits between science, mathematics and art, such as the search for simple, harmonious and aesthetic solutions (see also point 4.7).

3.9.3. At this point, the ESC would stress the key role that human sciences play in the (European) social and legal order as well as in language, culture and the formation of an historical and social identity. It therefore endorses the Commission's comment in the Working Paper on 'taking greater account of the contribution that the human sciences can make'.

3.9.4. Key areas where natural sciences and the humanities come together and interact include the responsibility borne by science, scientific theory, ethics — including the ethics of science and research — and people's changing image of themselves in the universe and on earth in the wake of new scientific discoveries.

3.9.5. The primary joint cultural task of the humanities and natural sciences is to broaden and extend knowledge about humankind and the world, to pass that knowledge on and to preserve it for the future.

4. Society, researchers and research; mutual understanding

4.1. Training and keeping researchers — building up and looking after 'human capital' — is the most important precondition for remaining competitive and successful in a knowledge-based society and economy. The current situation gives grave cause for concern.

4.1.1. The ESC therefore feels it is urgent not only to train scientists, but also to make the researcher's subsequent career attractive enough to ensure:

- that a sufficient number of young people go on to study natural sciences; and
- that, against a backdrop of global competition, European science is also able to draw on an adequate supply of 'human capital' from among these new players once they have completed their training.

4.1.2. In the knowledge-based society, research must have a career status that encourages young people to undertake an arduous, long (ultimately lifelong) and challenging period of study (see also point 5.2). In return both women and men must be offered appropriate career prospects — in money terms, too — and a social status commensurate with the importance of this profession.

4.1.2.1. As an example of a first step in this direction, the Committee would point to the Commission communication of 17 February 1999 entitled *Women and science: mobilising women to enrich European research*⁽¹⁾.

4.1.3. This also includes an environment in which science and technology — and the findings thereof — are not met with blanket hostility by large sectors of society, since it is off-putting to anyone considering embarking on a career if the job and its results are perceived as unwanted.

4.1.4. This task requires a political and economic rethink — and appropriate action.

4.2. To achieve competence, efficiency or even a leading position in a particular scientific area, the persons and groups concerned must first undertake a demanding period of training usually lasting several years. In addition, expensive technical equipment must often first be set up and a stimulating environment — research structures — created. This is a valuable and expensive investment in 'human capital' and in research infrastructure.

4.3. Good and successful research cannot therefore be switched on and off or redirected at the whim of economic cycles or current political trends, but requires sufficient continuity and reliability.

4.3.1. It was not least some Member States' political priorities of the past decade that militated against such a view and contributed to the sharp decline in students opting for scientific/technical subjects which now threatens Europe's competitiveness in the global marketplace.

4.4. As important as continuity and gradual development are for successful research, this must not mean that research becomes uncritically stuck in the same groove. However, careful consideration must be given to the room for manoeuvre for, and approach to, any change of direction.

⁽¹⁾ COM(1999) 76 final.

4.4.1. Ideas for promising new directions are as a rule suggested by — often unexpected — research findings and mostly come from researchers themselves who can then take them forward with the necessary expertise.

4.4.2. Most of the great discoveries — in physics, for example, electromagnetic force and induction, electromagnetic waves, x-rays, cathode ray tubes, transistors and lasers, and in biology, for example, DNA structure (double helix) — were the outcome of fundamental research not geared to particular applications.

4.4.3. A single new idea can snowball into an avalanche of innovation and technical advances, penetrating many economic sectors. Recent examples are computer and communications technologies and gene technology.

4.4.4. A targeted planned approach — and the requisite policy decisions that go with it — can only be put into operation if, on the basis of a novel concept, objectives can be defined and the way ahead is sufficiently clear.

4.5. Current knowledge and contemporary technology — i.e. the mainstay of the European public's present-day standard of living — are a result of interplay between basic research, applied research and product-oriented technical development.

4.5.1. Research and development in the EU are thus based on two key pillars: (i) industrial research and development and (ii) research and development carried out in universities and publicly-funded research institutes ('academia'). In an earlier opinion⁽¹⁾, the ESC already outlined in some detail the importance of cooperation and exchange of knowledge between these two pillars, but also pointed out the obstacles which exist and which must be removed as a matter of urgency.

4.5.2. These common features — but also the mutually reinforcing functions of industry and academia in creating today's modern technology — result in a certain division of responsibilities for ensuring that products, when used properly, are useful, pose no danger and indeed do not cause harm.

4.5.3. Science (in academia and industry) delivers the knowledge, industry delivers the products and citizens and society decide on use (cf. also point 3.5.1 and section 6).

4.6. Nevertheless there will sometimes be misunderstandings between society, the public and the scientific community about the nature of scientific research; this must not lead to mistakes in research policy and the instruments used to manage it. Some of these misunderstandings are addressed below.

4.7. Research is a step into the unknown and the approaches adopted by the individual or by the group vary and complement each other according to need, talent and temperament. Researchers are managers, engineers, collectors, hair-splitters or artists. Research is groping in the mist, hunches, surveying an unknown landscape, collecting and collating data, finding new signs, tracing underlying connections and patterns, recognising new correlations, developing mathematical models, developing the necessary concepts and symbols, developing and building new equipment, searching for simple solutions and harmony. But it is also confirming, making sure, expanding, generalising and reproducing.

4.7.1. It is inevitable — necessary even — that during this search and discovery process individual researchers or groups of researchers ('schools') will compete to come up with possible solutions and explanations; they will discuss with each other, contradict each other and even on occasion confront each other. Advances in knowledge come about through the interplay of hypothesis and criticism, the comparison of one set of data with another.

4.7.2. One of the misunderstandings between society and researchers therefore lies in the impression that researchers do not know the answer to many questions themselves and frequently contradict each other (and have not therefore even mastered their own specialised area).

4.7.3. This is only the case when and because researchers are discussing something that is still only suspected, not yet certain, an unknown. Because they are talking about opinions, hypotheses and not yet about methodically secured knowledge. And because often they do not or cannot make this sufficiently clear with the brevity demanded by the interviewer (see also point 4.8.7).

4.7.4. The crucial feature of (natural) scientific knowledge is the step from the scientific quest phase to the reproducibility of findings and demonstration of their range of validity (and its limits). Ultimately, nature decides the accuracy of the statements made.

⁽¹⁾ OJ C 204, 18.7.2000, p. 70 European research area.

4.7.5. Because of the need for proof of reproducibility, parallel or repeated experiments by other research groups, generally using modified techniques or procedures, are often categorised as 'duplication of research'. This is in fact an essential element of scientific method and progress. It is a guarantee against errors or even falsification.

4.7.6. The knowledge thus acquired and confirmed by reproducibility — which, because it has its limits and is incomplete, may be supplemented, broadened or refined by further new findings — then finds its way into the text books and becomes the basis for further research.

4.7.7. Besides the reproducibility of individual results it is, however, also the consistency of the interaction of recognised natural laws — the basis of all technical systems, from magnetic resonance imaging to space travel — which contributes to confidence in the new knowledge and gives rise to further questions where this consistency is still incomplete or its limits are clear. Herein lies the striving 'to unify natural laws' and ultimately for a 'grand unifying theory' (despite the qualification that, in terms of scientific theory, it is impossible to produce 'unequivocal scientific findings').

4.8. A particularly difficult set of problems which gives rise to a great many misunderstandings is the question of the predictability of future developments.

4.8.1. In the case of certain simple patterns of events, such as celestial mechanics, the known laws of nature enable us to make very precise predictions. Even here, however, there are strict boundaries beyond which clear predictions are inherently impossible (deterministic chaos, turbulence).

4.8.2. Another fundamental limit to the predictability of future events resides in the statistical nature of quantum physics.

4.8.3. In addition there are all those problems where the regularity of the individual constituent processes are more or less well known, but where, because of the complex interaction of a large number of components and defining factors, it is not possible to make a long-term prediction of future developments.

4.8.4. While, therefore, established knowledge enables us to make some reliable predictions, e.g. the future position of certain heavenly bodies (eclipses), it is precisely in those areas of key importance for political decisions (e.g. future climate changes or expected economic/ideological/political/population

crises, natural disasters, etc.) that frequently only conjectures or indications as to potential developments or risks are possible. Such prognostications are much more difficult and therefore often at least as unreliable as, for instance, the stock market predictions of financial experts.

4.8.4.1. Clearly there is also a potential for error in the links between the opinion and behaviour of those concerned. This may be the result of insufficient knowledge, particular interests and the desire for consensus and acceptance within the group.

4.8.4.2. This confuses scientific findings with the opinion of the majority.

4.8.4.3. Additional force may be lent to an opinion by exposure in publications and the media.

4.8.5. For a critical assessment of predictions and the likelihood of their being correct, a distinction must therefore be made between the following cases:

4.8.5.1. the necessary, admissible and mostly usable forecasts made by extrapolating from trends or figures (e.g. population figures) — examples: future needs for teachers, roads, housing, energy, etc. — assuming continuity of the trend;

4.8.5.2. the general unpredictability of ('unexpected') revolutionary political, social, technological and similar innovations, upheavals, discoveries, developments, which have a deep impact on the overall scheme of things and change many relationships. Often, after a fairly lengthy period of turbulence and oscillations, a new equilibrium then arises with new trends, etc.

4.8.5.3. suppositions, warnings or fears that the 'predictable' developments of point 4.8.5.1 could subsequently worsen/reach crisis point (climate, population, resistance, revolution, lack of primary materials, etc.) and lead to an unpredictable development as described in point 4.8.5.2.

4.8.6. In view of society's great interest in future developments, 'futurology' has become an independent field of research — despite or even because of the problems associated with predicting the future. The abovementioned limitations mean that the various forecasting procedures must be examined and tested to assess their past success rate in predicting surprising developments. It is extremely important for political decision-makers to know how much certainty or uncertainty to attribute to a prediction or 'scenario'.

4.8.7. While on the one hand it is the duty of scientists to bring such possible risks they recognise (point 4.8.4) forcefully to society's attention and to make clear the current state of knowledge and its limits, there is on the other hand, especially in this area, the temptation to enhance the status of personal opinions or even particular interests by pinning a scientific label on them or selecting appropriate 'experts'.

4.8.7.1. This kind of conduct can also lead to a public loss of confidence in science.

4.8.7.2. Particular communication difficulties may arise — and the corresponding potential for inducement — between the public and scientists when, in a largely political environment, scientists are, for instance, faced with political interests or assertions and the rhetoric that goes with that, or are themselves an integral part of such interest groups — in other words when the division of responsibility between politics and science becomes blurred.

4.8.7.3. Hence, in this field especially, it is particularly important to set high standards for the qualifications, knowledge and probity of the experts involved in the debate (see also point 3.5.4), and possibly also to include these as factors for assessment. That certainly does not mean that discussion (see point 6.8.1) of the issues concerned should be confined solely to experts. However, a clear distinction should be made between interested and possibly concerned citizens on the one hand and experts on the other; attention should be also be paid to the expertise and accuracy underlying experts' statements.

4.8.8. The ESC therefore recommends that the Commission work towards ensuring that the general public has a clearer picture of the issues involved — and is able to make the requisite distinctions — thus securing a better culture of dialogue between researchers and society. The media must also play their part in this process, and act responsibly in their key role as intermediaries. In this area in particular, it is important to make a clearer distinction between rhetoric and expertise and to resist any temptation to proselytise.

4.9. In the relationship between citizens, society and science, the issue of possible professional and/or ethical misconduct by scientists also plays a role.

4.9.1. While both professional misconduct and mistakes made in good faith by scientists can be uncovered and punished largely by means of self-regulation by science itself (the most effective tool being the requirement for reproducibility — see points 4.7.4 and 4.7.5), the issue of ethical misconduct goes to the core of the relationship between society and science.

4.9.2. Ethical misconduct may mean that, when pursuing their scientific activities, individual scientists or research teams violate ethical standards set in place and accepted by society. Motives for such conduct include the thirst for knowledge, hubris, an obsession with profit, the desire for fame etc. Together, science and society must be vigilant to ensure that such misconduct is uncovered, prevented and punished.

4.9.3. Of course, particularly as a result of new discoveries and scientific and technological progress, society's views on ethical standards are the subject of ongoing debate among all social groups (see also point 3.8) and are thus liable to change. The ESC expressly supports the Commission in its efforts set out in the Working Paper to forge 'more structural links between existing ethics committees at national and European level' and to secure 'better co-ordination of research ... into the ethics of science conducted in Europe'.

4.9.4. Misconduct may also emerge — and indeed may be generated by society itself — where society as a whole (or a majority within society) violates ethical or moral principles. Science then becomes, for example, an integral part of the ideological goals and opinions of the society in which it operates; in other words, it acts by mutual arrangement or even to order. This issue goes beyond the scope of this opinion.

4.9.4.1. However, given the current political machinery in the EU and its Member States, and the fundamental rights recognised there, there is currently no cause for concern that this issue might in future surface in the European research area.

4.10. The ESC recommends that the Commission take these points discussed in section 4 into account in all discussions on 'governance' and advocate this approach to policy-makers and business.

5. Scientific education: a sine qua non of a knowledge-based society

5.1. In some Member States at least, the value and importance of science and technology is not directly acknowledged by the public as a whole and by society. The ESC feels therefore that an appropriate Europe-wide educational blueprint should be developed⁽¹⁾ to bring about a change in this attitude.

⁽¹⁾ For further details see OJ C 139, 11.5.2001, p. 85 (European dimension of education).

5.1.1. Foundations and associations can also play an important role here.

5.1.2. This blueprint should also include issues relating to the candidate countries.

5.2. Point 4.1.2 above already noted the importance of demanding, high-quality, academic vocational training for scientists and researchers and the need to make the scientific profession sufficiently attractive for talented young people.

5.3. This section deals mainly with the ESC's concern to ensure that, substantially more than in the past, non-scientists and ultimately all citizens must, as a fundamental part of their education, also acquire adequate basic knowledge of science and mathematics. Natural sciences and mathematics are also part of our cultural heritage.

5.3.1. The current lack of adequate basic scientific knowledge is particularly harmful in the areas of politics and the media: in politics because it is here that decisions are taken which affect society, and in the media, because it is their task to communicate knowledge from specialists to the general public and to report on scientific/technological problems in an accurate and balanced way.

5.3.1.1. If the scientific community and society are to be able to talk to each other, there must be not only the willingness but also the ability to engage in dialogue on both sides. This is essential to bridge the gap in knowledge between science and the citizen — regardless of the somewhat fruitless and polarised debate on reciprocal rights and obligations.

5.3.1.2. The other essential condition is that scientific representatives and institutions endeavour to convey to the public their knowledge and their difficulties in a way that is as clear and as readily understandable as possible and to open up universities, technical colleges and research centres to the public and to society.

5.4. The first task — and a key ESC recommendation — is for science and scientific disciplines, together with mathematical thinking, to be given a place in the school curriculum appropriate to today's knowledge-based society (see also point 3.2.5). Pupils must thereby of course also be proficient in at least their mother tongue.

5.4.1. At the same time teaching methods need to be developed through which knowledge can be better organised, prioritised and communicated. The scope and diversity of knowledge must be presented in a clear and understandable way by teaching pupils about generic links and specific case studies.

5.4.2. The fact that this will involve considerable work and intellectual effort for both teachers and pupils should be seen as an incentive rather than as an excuse. This is the most effective way to achieve the objective set out in the Commission Working Paper of 'improving the public's knowledge of science'.

5.4.3. Moreover, the knowledge, insights and attitudes acquired during school education are a decisive factor in subsequent career choices. The ESC therefore expressly endorses the Commission's statement that 'it is also necessary to step up science teaching in schools in Europe in order to reverse the dwindling attraction among the young of scientific professions and the world of research'.

5.5. Among other things, however, all this also means that the teaching profession — which is essential to the transmission of this knowledge — must be made sufficiently attractive and must be given an appropriate status. Schools should also be adequately equipped.

5.6. In addition, the ESC would point to the overall link that must now be established between basic school education, lifelong learning and scientific knowledge. This link can better and more efficiently be developed as part of a European domain of learning and education. This domain could encompass not only the European dimension of education, but also 'any other current learning-related challenge or procedure of concern to the European citizen'⁽¹⁾.

6. Research policy and the interest of society

6.1. This section deals with a thorny issue which cannot be addressed with complete consistency. Moreover, many of the aspects involved have already been touched on in the previous sections.

6.2. Interaction between the science and society — generally represented by politicians, civil servants or representatives of funding bodies — mostly concerns (i) agreement about research objectives and subjects, (ii) the type and extent of research funding, (iii) the evaluation of research findings and (iv) the people involved in research. However, it also brings in the issue of how far research is or should be able to be steered in a particular direction.

⁽¹⁾ OJ C 139, 11.5.2001, p. 85 (point 2.5).

6.2.1. This issue relates to the question posed by the Commission Working Paper and already cited at the beginning of this opinion (see 1.5), namely: 'how to implement research policy around the real aims of society and fully involve society in seeing through the research agenda'.

6.3. This question touches on a number of misunderstandings between society, science and research. First of all, it implies that research policy to date has failed to serve the real aims of society.

6.3.1. Yet current knowledge about the laws of nature — and the achievements built on it — are predominantly the result of the initiative, creativity and passion for discovery of researchers, inventors and entrepreneurs, and are the basis of present-day prosperity in Europe.

6.3.2. Furthermore, the currently perceived anthropogenic and non-anthropogenic (i.e. untouched by man and his technology) problems affecting, for example, the long-term survival of our ecosystem were recognised and brought to the attention of politicians and public first and foremost by members of the scientific community (see also point 3.7.2).

6.3.3. Hence, we would again point out that society and politicians are normally slower than the scientific community itself to recognise not only upcoming risks and dangers, but also economic opportunities offered by new technologies (e.g. information technology). Hence, science and society must join forces in a bid to ensure that, because of this inherent time lag, politicians do not neglect innovations in favour of tried and tested technologies.

6.3.4. Moreover, the question cited in point 6.2.1 wrongly implies that the findings of a research policy implemented 'around the real aims of society' will necessarily all be 'good', with any subsequent harmful applications or impacts thus ruled out from the start (see also point 3.4.5).

6.4. The question cited in point 6.2.1 also implies that society can and should be fully involved 'in seeing through the research agenda'.

6.4.1. Even though it is not clear who is in a position to conduct research other than researchers themselves, the ESC recognises as constructive and worthy of support the Commission's intention:

- to clearly address the primary competence of politics when awarding the financial resources required for research;

- to bring researchers and the public closer together to their mutual benefit;
- to take into account the diverse aims and interests of society (and its various branches) when framing and implementing the research agenda.

6.4.1.1. Thus objective, external criticism of science (e.g. from citizens' action groups, consumer associations or laymen's organisations) may have quite a beneficial effect. It may lead to a rethink or even scepticism, particularly where internal, institutional-level discussions risk breaking down because of, for instance, centralised machinery or economic and/or political pressures (e.g. BSE).

6.4.2. Accordingly, the ESC backs the Commission's further statement on this point in its staff Working Paper that 'there should be comparative studies of the lessons to be drawn from both European and national experience in this area in order to promote the dissemination and application of best practice'.

6.4.3. The issues raised in point 6.4 above relate mainly to targeted research. The ESC would therefore again stress that the scenario outlined above can only thrive on a broad foundation of diversified fundamental research which is not tied to specific applications. The ESC thereby underlines and extends the Commission's point in its paper that 'research must retain a sufficient degree of inquisitiveness and impartiality'.

6.5. The question cited in point 6.2.1 also implies that 'society' knows what 'real aims' it wants to see research focus on.

6.5.1. 'Society', however, is an abstract concept and in reality is a highly diverse amalgam comprising a whole range of different cultures, religions, perspectives, lifestyles and goals. Initially, the 'interests' of this abstract concept can be determined empirically only as the amalgamation of all individual perceptions, expectations and, if necessary, fears. This amalgamation of all individual interests is both diffuse and fluid and therefore scarcely comprehensible to politicians.

6.5.2. It requires the horizontal and vertical organisation of society (intermediary groups, parties, associations, trade unions, foundations, citizens' initiatives, combines, etc.) to channel and aggregate these interests. The importance of the mass media in this context should not be underestimated.

6.5.3. Not until the completion of this very complicated brokering and condensing operation, in the course of which individual interests are transformed, filtered and merged in a variety of ways, can these interests become the 'interests of society', which trigger and become the subject of political action by superordinated bodies.

6.5.4. Democratic procedures and institutions play a decisive role in this collecting, counterbalancing and condensing operation. This is also where the ESC comes into play at European level as a body of the European Communities.

6.5.5. It is therefore important that every government, administration or party is aware of the difference — which may extend to constituting a conflict — between the individual interests existing at the start and their politically effective amalgamated form.

6.6. This uncertainty with regard to the basis of decision-making, however, does not absolve politicians of their duty to act. Damage must be averted and risks mitigated. This generally requires some knowledge of future developments and this is often limited or, at worst, non-existent (see point 4.8.4).

6.6.1. Politics means acting on behalf of society and inevitably also includes experimenting with society.

6.6.2. This dilemma affecting political action cannot be eliminated, merely defused:

6.6.2.1. by an awareness of the limited predictability of future developments (and the impact of political decisions) and a readiness to take corrective action to counter unwelcome developments or undesirable consequences of earlier action, and

6.6.2.2. by developing the best possible knowledge base ('research policy') for political decisions and recognising not only the conditions under which science operates but also its potential and limitations.

6.7. While detailed statements on overall policy (6.6.1) would go beyond this ESC opinion's scope, brief consideration will now be given to the issue raised in point 6.6.2.2, in part recapitulating what has already been said in sections 2 to 4 above.

6.7.1. The first condition for developing the best possible knowledge base is the maintenance or establishment of an

economic, political, social and cultural environment in which science enjoys broad public support and where creativity and inventiveness can develop most effectively. The key elements of such an environment are:

- to promote communication between citizens and scientists (i.e. the players making up society and the scientific community) and reduce existing barriers;
- to provide information about science in schools, universities and the media; to bring out clearly the research process, the acquisition of knowledge and the inspiration which drives scientists; to show the strengths and limitations of science in order to counter unrealistic expectations (which can result in scepticism towards science);
- to deploy for this purpose 'media information officers' (experienced staff trained in the mass media including the public television stations to be found in some Member States) in order to reach broad sections of the population effectively and to ensure that the information is delivered in an appropriate form;
- to ensure that these media information officers not only have specialised scientific training, but are also educated in the background, methods and history of science in general;
- to make clear the risk potential of any creative venture (even pure science, philosophy and art). (Let us not forget the socio-cultural and intellectual upheavals that resulted from Copernicus' planetary theories, Darwin's theory of evolution, Marxism and Freudian psychoanalysis. The potential for socio-ideological conflict remains great, e.g. genetics, intelligence research, socio-biology or gender studies.);
- to make people aware that the risk potential of new technologies or research programmes cannot in principle be fully assessed on an objective basis. (What would be the impact of successful geriatric research which resulted in the average lifespan rising to, say, 120 years?)

6.7.2. The second condition for developing an optimum knowledge base is the maintenance or establishment of the best possible internal operating environment for science. Independent studies (including Commission-sponsored research) should be carried out into this issue and their findings should be made available to policymakers. Key measures which can be identified include:

- strengthening the interplay between fundamental and applied research in a diverse, multi-polar scientific system;
- protecting scientific freedom;
- securing freedom for applied research as well;

- guaranteeing scientists' independence, for example, from political, ideological or economic pressures;
- protecting and strengthening — within the framework of policy directives — the scientific community's autonomy and its right to run its own affairs;
- studying the impact, administrative burden and effectiveness of the various application and approval procedures;
- taking account of the diverse range of social aims and interests;
- also fostering and being open to knowledge in which 'society' currently has no interest.

6.8. The following points amplify what is said above and also look at some specific aspects of the issue:

6.8.1. The ESC backs Commission moves to conduct regular dialogue — including dialogue at European-level — between representatives of society and the scientific community on research objectives and the associated ethical issues, as well as on potential applications and other aspects of technology that might be developed as a result. This dialogue should bring in representatives both of major scientific societies (e.g. the European Physical Society, Academia Europaea and national scientific societies) and of institutions promoting research (such as organisations, foundations and associations), and include visits to research establishments and discussions with individual researchers on site. Apart from securing the requisite consensus as regards content, expectations, support etc., dialogue can also help foster better understanding between researchers and representatives of society.

6.8.1.1. The ESC would emphasise its intention to be closely involved in this dialogue on the basis of its remit and membership. As a next step, the Committee calls on the other EU institutions to join it in staging a hearing on this issue, attended, *inter alios*, by representatives of academia, industry, consumers and other relevant organisations and by leading figures in the field.

6.8.2. A key principle of any research policy should as far as possible be to adopt a 'bottom-up' approach, with the 'top-down' approach only applied where necessary. Similarly, there should be as much decentralisation as possible and only as much centralisation as required. In the ESC's view, this principle does not thwart the objectives of the European research area, but means that responsibilities and the powers of decision and initiative, etc. are to be delegated as far as possible under the Commission's research policy, too.

6.8.3. Using additional programme-based research resources for support and guidance purposes requires a solid

and sufficient base of top-class institutions which (i) have the requisite experience and the appropriate equipment and infrastructure and (ii) are able to take up new issues and tap into new fields quickly.

6.8.3.1. A balance is therefore needed between institutional and project- or programme-based support.

6.8.4. A key issue here is how to measure teaching and research standards (if indeed this can be done at all) and what resources it would be reasonable and productive to devote to this purpose. There are two sides to this question.

6.8.4.1. On the one hand, the experience and expertise of the best and most successful scientists will be required for this purpose. However, the procedures involved (assessments, applications, meetings, hearings etc.) mean that the scientists concerned are then no longer available for active research. Research policy mechanisms, support schemes etc. must therefore be framed so as to secure a balanced and ultimately productive trade-off between these two considerations.

6.8.4.2. On the other hand, the selected assessment procedures must not rule out support for genuinely innovative or even revolutionary discoveries because, for instance, they fail to meet the criteria of established research priorities, which could not of course have foreseen such developments. (Scientific investigations raise doubts as to whether this is possible at all.)

6.8.5. For this reason too, it is essential to promote and cultivate a diverse range of interdisciplinary research methods, assessment procedures and research structures in order to encourage and draw on the resultant competition for the best ideas and findings. This is the optimum breeding ground for scientific progress.

6.8.6. Good research, especially interdisciplinary research, requires a pluralistic and sometimes, it would seem, even chaotic environment. This fact must be borne in mind by politicians and administrations, for it impedes the requisite insight and overview, which could be gained much more easily from a clearly structured and monothematic research environment.

6.9. The ESC thus strongly recommends that the Commission also make best possible governance a research topic in its own right, bringing in accumulated experience of research, its management and assessment, and scientific theory. The ESC feels that the Commission's paper and this own-initiative opinion are a first important step in this direction.

7. Summary and recommendations

7.1. 'Science, society and the citizen' is a topic of major importance for social policy. The ESC supports the Commission in its efforts to address this issue and to secure ongoing dialogue among all those concerned. The ESC would stress its intention to take part in this dialogue and its suitability for the task as a EU body.

7.1.1. This own-initiative opinion contributes towards this dialogue. As a next step, the ESC urges that the EU institutions stage a joint hearing on the issue.

7.2. This own-initiative opinion deals very comprehensively with the gulf in knowledge and the problems that have arisen in the relationship between citizens, society and science. These involve in particular:

- public expectations of science and what it can achieve;
- the opportunities and risks of knowledge-based technologies, medicine, food etc.;
- the predictability of future developments;
- the nature of science and research;
- the scope and errors of research policy with regard, for instance, to
 - the ability to measure scientific achievement and the effort required to do this;
 - the 'interests of society';
 - the cooperation network — and requisite transparency — between research, development and production and between academia, industry and consumers;
 - the unambiguity of assessing results and the predictability of risks.

7.2.1. Therefore, apart from the topics referred to above, the dialogue between citizens, society and knowledge should also address, inter alia:

- ethical issues;
- environment and energy policy: biosphere, ecosphere, resources, economics;
- research policy, e.g. purpose, organisation and assessment of research;
- research, innovation, industry, consumers.

7.3. The ESC strongly recommends the adoption of measures to reduce this gulf in knowledge.

7.3.1. These measures should include opening-up universities and research establishments even more to citizens and a stronger and firmer commitment on the part of the media to supply understandable and proper information.

7.3.2. Above all, however, schools should do much more than in the past to give citizens a sound educational grounding in science and research — including the operating environment in which successful research can function. For this purpose, an appropriate Europe-wide educational blueprint should be developed, which also includes issues relating to the candidate countries.

7.3.3. This must also cover knowledge both of the historical process and of Europe's unique cultural contribution which led to present-day scientific and technological achievements and established unprecedentedly high living conditions for the people of Europe.

7.4. In addition to science's major contribution to today's prosperity and the opportunities it offers for the future, the ESC also recognises (i) the dangers and risks which may arise from modern, knowledge-based technology and (ii) the potential threat to the biosphere as a result of today's industrial way of life.

7.5. The ESC therefore also recommends that (continued) efforts be made to establish clear standards for the responsible use of ultra-powerful technologies (developed using scientific findings) and to monitor compliance. The ESC would stress its own role in this process.

7.6. The ESC recommends that support be given to all measures which lead to less polarisation and closer ties between the arts and natural sciences. This should also include mutual exchanges about, for example, methodology, the definition of terms and the assessment of results.

7.7. The ESC points out the lack of 'human capital' in science and research. 'Human capital' is the basic element of successful research and development, thus also of innovation and economic competitiveness. The ESC recommends action to remedy this situation. Some key elements here include making research and development more attractive — including to women — and promoting science as a profession with a commensurate status.

7.8. The ESC recommends making the operational environment required for successful and internationally competitive research and development a research topic in its own right, and bringing the findings to bear when discussing the issue of 'governance' in research policy. The points of view and recommendations set out in this opinion should be taken into consideration in this context and defended vis-à-vis politicians and businessmen.

7.9. The following is a summary of some of the main points made by the ESC in this opinion:

7.9.1. Initially, the 'aims of society' are an intangible abstract concept. A more tightly structured, if still diverse and not necessarily contradiction-free set of views can be gained only through complicated democratic condensing processes.

7.9.2. This uncertainty with regard to the basis of decision-making, does not however, absolve politicians of their duty to act. Politics means acting on behalf of society and inevitably also includes experimenting with society. This dilemma affecting political action cannot be eliminated, but merely defused:

- by an awareness of the limited predictability of future developments and a readiness to take corrective action where necessary, and

- by developing the best possible knowledge base ('research policy') for political decisions and recognising not only the conditions under which science operates but also its potential and limitations.

7.9.3. The prerequisites for the best possible knowledge base include, inter alia:

- an ongoing dialogue between the players representing science and society;
- an economic, political and cultural environment in which science enjoys broad public support and where creativity and inventiveness can develop most effectively;
- the best possible internal operating environment for science;
- enough people who are ready and able to choose science as a profession.

Brussels, 30 May 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 1267/1999 establishing an Instrument for structural policies for pre-accession'

(2001/C 221/26)

On 18 April 2001, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

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

At its 382nd plenary session on 30 and 31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 48 votes to one with two abstentions.

1. Introduction

1.1. Council Regulation (EC) No 1267/1999 established an Instrument for Structural Policies for Accession (ISPA) in 1999 to assist the central and eastern European countries (CEEC) which were candidates for membership of the European Union in meeting the requirements of the *acquis communautaire* in the fields of transport infrastructure and the environment. The implementation of this instrument in the following year resulted in the grant of Community assistance to a total of around 80 measures.

1.2. Pursuant to this regulation, measures eligible for Community assistance must be of a sufficient scale to have a significant impact in the relevant field. Experience acquired by the Commission in appraising applications for financing submitted by the beneficiary countries shows that they often have difficulties in part-financing such measures from available public resources.

1.2.1. Accordingly, to ensure that ISPA has more impact in the beneficiary countries, as much funding as possible must be obtained from the European Investment Bank (EIB) or other international financial institutions (the European Bank for

Reconstruction and Development (EBRD), the World Bank etc.) and, where appropriate, from private-sector sources. In 2000, ISPA obtained funding from international institutions in around 40 % of approved measures and was thus able to achieve a multiplier effect of about 25 %.

1.3. However, finding such funding is proving difficult due to the absence in the Regulation establishing ISPA of specific provisions allowing a derogation from the rule laid down in Article 114(1) of the Financial Regulation applicable to the General Budget of the European Communities. Under the terms of this rule, which applies to external aid, invitations to tender for contracts financed by the Community are open only to natural and legal persons in the Member States of the European Union and the ISPA beneficiary countries.

1.3.1. The problem arises because the basic framework of ISPA was modelled on the Cohesion Fund which, being an instrument for Community assistance, required tenders to be open to all comers, regardless of nationality, whereas ISPA is, in fact, an instrument for external assistance and is therefore governed by Article 114(1) of the Financial Regulation which restricts tenders to nationals of the Member States and the CEEC and companies registered therein.

1.4. The problem also relates to the question of co-financing; this may take the form of joint co-financing or parallel co-financing. Under joint co-financing, there is one tender, one control and one supervisory authority. Under parallel co-financing, there may be two or more separate tenders which combine to form a single project.

1.4.1. Under the existing regulations, joint co-financing which incorporated international financial institutions would be open to tender by any persons; in this context, the EBRD is deemed to be an international financial institution rather than a European one by virtue of the fact that it has shareholders from third countries. Under parallel co-financing, each tender is treated as a separate entity and where the Community was involved in financing for one tender, that tender would be limited to natural and legal persons of the Member States and the CEEC, although other tenders forming part of the same overall project could be awarded under different rules if there were no Community financial involvement.

1.4.2. This means, in effect, that, under the existing regulations, the ISPA fund cannot be used for Community participation in either joint co-financing or parallel co-financing of a tender, although it could participate in parallel financing of one or more tenders in a single project provided that those tenders were subject to the requirements of the Financial Regulation.

1.5. The Commission proposes to remove this restriction by inserting into this Regulation an article which mirrors the existing provisions of the Phare programme.

2. The Commission's proposals

2.1. The Commission's proposals are set out in Appendix.

3. Comments

3.1. The Committee notes that the application of Article 114(1) of the Financial Regulation constitutes an insurmountable barrier in some cases to the participation of international financial institutions in the funding of measures eligible for assistance under ISPA.

3.2. The Committee signifies its approval of the Commission's proposal to insert a basic condition in the instrument allowing Article 114(2) to be applied. It considers that this would increase the scope for co-financing by international financial institutions and facilitate the achievement of a higher multiplier effect in ISPA financing.

3.3. The Committee approves the proposal that the Commission be assisted by a committee on the terms set out in the Commission's proposals.

3.4. The Committee believes that eligibility for participation in ISPA should be extended to the other candidate countries of Cyprus, Malta and Turkey.

3.5. The Committee considers that there are certain aspects of the way in which the ISPA fund is structured and operated which warrant more detailed examination. It therefore proposes to draw up an own-initiative opinion on this subject in the near future.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee**Extract from the Proposal for a Council Regulation amending Regulation (EC) No 1267/1999 establishing an Instrument for structural policies for pre-accession COM(2001) 110 final — 2001/0058 (CNS)****Article 1**

Regulation (EC) No 1267/1999 is hereby amended as follows:

(1) The following Article 6a is inserted:

'Article 6a

Award of contracts

1. In the case of measures for which the Community is the sole source of external aid, participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons of the Member States and of the countries referred to in the second subparagraph of Article 1(1).

2. Paragraph 1 shall also apply to co-financing. In the case of co-financing, however, the participation of third countries in invitations to tender and contracts may be authorised by the Commission, after examination on a case-by-case basis.'

(2) The following paragraph 8 is added to Article 7:

'8. Where a measure is co-financed together with international financial institutions, expenditure meeting the rules for eligibility referred to in paragraph 7 but carried out in accordance with procedures appropriate to external sources of financing other than Community assistance and borne by those financial institutions may be used in calculating total eligible expenditure for that measure.'

(3) Paragraphs 1, 2 and 3 of Article 14 are replaced by the following:

'1. The Commission shall be assisted by a committee, composed of representatives of the Member States and chaired by the representative of the Commission (hereinafter referred to as "the Committee"). The European Investment Bank shall appoint a non-voting representative.

2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.

3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.'

Opinion of the Economic and Social Committee on the 'Preparation of a European Union strategy for Sustainable Development'

(2001/C 221/27)

On 24 and 25 January 2001 the Economic and Social Committee decided, in accordance with Rules 11(4), 19(1) and 23(3) of its Rules of Procedure, to draw up an opinion on 'The preparation of a European Union strategy for sustainable development'.

The Subcommittee 'Sustainable Development', which was responsible for the preparatory work, adopted its draft opinion on 17 May 2001. The rapporteur was Mr Ehnmark, the co-rapporteur Mr Ribbe.

At its 382nd plenary session (meeting of 31 May 2001) the Economic and Social Committee adopted unanimously the following Opinion.

0. Summary of the Opinion

- 0.1. The Economic and Social Committee strongly supports the intention to launch, at the Gothenburg European summit in June this year, a long-term policy change in favour of Sustainable Development (SD). The Committee considers that this meets the concerns and anxieties of broad groups of citizens although society as a whole is not sufficiently informed. It is urgent for policy to take new directions and this is the right time to start the process.
- 0.2. The Committee is aware that policies for Sustainable Development contain in part and by their very nature a radical approach to the development of society in the future. Some painful decisions will have to be taken along the road. It is therefore all the more important that the policy shift is well anchored in public opinion. Without strong public support, no policy for Sustainable Development will be a success.
- 0.3. The Committee strongly deplores that the process of public consultation on the initial development of such an important and far-reaching strategy was confined to such a patently inadequate timespan as just over one month. The issue of sustainable development is far too important to handle in such a way.
- 0.4. The Committee recommends that a sustained effort be made after the Gothenburg summit to create public awareness, inspire debate at local level, and channel comments and suggestions concerning the development of the Strategy for Sustainable Development. The Committee sees this effort as an ideal case for creating wider public participation in a key Union policy issue.
- 0.5. The Committee will undertake, in co-operation with organized civil society in general, the work of initiating and supporting a wide public debate on the issues involved. The Committee welcomes the Commission's plan to hold biennial Stakeholder Forums to assess the EU SD Strategy and declares its willingness to be joint organiser.
- 0.6. The Committee underlines that, due to the short deadline, it is at present unable to make the full contribution it would have wished. For the same reason, Gothenburg will, of necessity, be only the start of a strategic process, not the final stage in adoption of an EU policy. The Committee therefore will make further, more substantive, inputs into the evolution of a strategy for sustainable development.
- 0.7. The Gothenburg summit should, bearing in mind the short time for preparation, focus on setting a number of general objectives and call on the Commission and other relevant bodies to present more concrete proposals to the Laeken and Barcelona summits.
- 0.8. The EU SD Strategy must aim to consolidate the inter-relationship between the three pillars — economic, social and environmental — and in this regard the Committee stresses the need for all levels of Government to introduce new horizontal structures for planning and monitoring the SDS.
- 0.9. The Committee proposes that sustainability targets be set in transport, energy production, agriculture and climate change.
- 0.10. The Committee notes that a society profiled by an SDS must be a knowledge-intensive society, with high investments in R&D and in education, training and lifelong learning.

0.11. The Committee is surprised that the issue of the ageing population is not more clearly linked to low and declining fertility rates in Member States. As part of the SDS there is scope for an active family support policy at national level, creating real economic and social opportunities for parents to combine children and career.

0.12. The Committee strongly supports the Kyoto protocol and expects the EU to act forcefully to sustain it as global strategy, pointing at the same time to the need for new and stricter limits.

0.13. The Committee declares its interest to be involved in the assessment and follow-up work of the Strategy for Sustainable Development. Particularly, the Committee is ready to mobilise its member organizations for strengthening communication with grass-roots levels, and to develop a Watch-dog function focusing on quality analysis of the SD implementation.

1. Introduction

1.1. *An EU Strategy on Sustainable Development*

1.1.1. With this Opinion, the Economic and Social Committee seeks to contribute to the discussion and preparation of the planned EU Strategy on Sustainable Development (SDS). This strategy, currently under preparation by the Commission and Council in response to the mandate of the December 1999 Helsinki European Council, will be the centrepiece of the Gothenburg European Council of 15 and 16 June 2001.

1.1.2. This European Council is expected to set in motion an SD process to be carried through under future EU Presidencies, adopting a set of political priorities and targets and agreeing on procedures. The intention is for the EU SDS to be intertwined with the Lisbon follow-up. Thus, the strategy's purpose is not to start up an additional EU process similar to 'Lisbon' or 'Luxembourg' but rather to provide a new and wider dimension to the Lisbon step. In this sense, there is a clear link between the Stockholm summit (March) and the Gothenburg summit (June).

1.1.3. The time perspective of the SD strategy will be long, up to 20-25 years for some objectives. Moreover, the strategy will emphasise the need for continuous evaluation and further development of targets and procedures.

1.1.4. The SDS will also encompass the response to the 1992 Rio summit and the decisions made at Rio+5, serving as the EU's contribution to the Rio+10 World summit in South Africa in 2002. In addition, it should also be considered in the light of the OECD's work in this field, carried out on the basis of a three-year mandate from the OECD Ministerial Council Meeting in 1998. This work culminated in the OECD's Ministerial Council Meeting of 17 and 18 May 2001.

1.2. The Economic and Social Committee has a long record of opinions concerning environmental, economic and social issues. The Committee has contributed to the objectives and targets decided upon at the Lisbon European Council in March 2000 and the follow-up at the Stockholm Council. The Committee, with its broad representativity of organized civil society, is thus in a special position to contribute to the preparation and follow-up of a strategy for sustainable development.

1.3. *The concept of sustainable development*

1.3.1. The 1987 report of the World Commission on Environment and Development (the Brundtland Commission) contained what has become the most widely accepted definition of sustainable development, describing it as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

1.3.2. In line with this, and in accordance with the Helsinki European Council conclusions, the EU SDS will be 'a long-term strategy dovetailing policies for economically, socially and ecologically sustainable development'. It is thereby a concept that aims at reconciling continued economic stability and growth with sustained social welfare and environmental protection requirements including such issues as food safety and public health. Put in another way, the SDS is about trying to solve some unsustainable long-term problems that have economic, social and environmental dimensions.

1.3.3. The Economic and Social Committee adds these comments on the concept of sustainable development:

1.3.3.1. The concept is not new, and the policy implications are not unnoticed. A number of countries have taken decisions — particularly at the Rio conference and the follow-up — concerning the need for policies for sustainable development.

1.3.3.2. However, as to concrete actions not very much has happened. A number of reasons can be given for this. The key one is probably that sustainable development is a very wide concept which involves parallel action at international and national levels as well as at local level, and indicates a change in life and consumer patterns. It is a concept with very clear implications for the individual citizen.

1.3.4. Nonetheless, the process has to begin, concrete policies to be outlined, and the ambition to launch an EU strategy for sustainable development can be, at long last, a real contribution to the implementation of the high ambitions of the Rio conference.

1.3.5. The EU strategy should help ensure a sustained and improved quality of life. It is a vision projecting development of our societies based on a platform of responsibility towards both people and nature. It is a timely theme, bearing in mind the increased attention attributed to issues of quality of life broad by groups of citizens. Sustainable development is a concept and a vision that is gaining in importance, in the EU and world-wide.

1.3.6. The Committee underlines that the concept of sustainable development presents a fairly radical approach to policies for developing our societies over a longer time-span. These policies will inevitably include some uncomfortable decisions. Our societies are however experiencing a number of trends that are simply not sustainable if we are to maintain economic growth, healthy public finances and a welfare system encompassing all.

1.3.7. Essentially, the choice is between taking decisions in a planned, rational way, or being forced to take them in emergencies.

2. The Commission's preparatory work on the SDS

2.1. On 27 March the Commission presented its consultative document on sustainable development. The document aimed to provide a basis for wide-ranging debates and discussions. A deadline for comments was set at the end of April so as to be able to take them into account in the final preparation of the proposal for an EU strategy.

2.1.1. The consultative paper did not include proposals for the forthcoming strategy. It provided instead a structure for analysing and making operational certain relevant issues. It included an analysis of factors that have so far prevented

substantial progress in this field and an outline of a possible 'toolkit' for implementing an SDS. To show the concept in terms of practice the paper focused on a limited number of contemporary crunch issues selected on the basis of three criteria: 'severity/impact', 'timescale' (irreversibility, inter-generational aspects) and 'European/international dimension'. These led the Commission to pick six priority issues:

- social exclusion/poverty;
- public health;
- demography/ageing;
- climate change/clean energy;
- depletion of natural resources;
- mobility and land use.

2.1.2. For each of these six areas, the consultative paper identified unsustainable trends in terms of economic, social and environmental development. The consultative paper was thus inviting broad discussion on positive and negative aspects of trends in society regardless of their connection to an SD strategy.

2.2. The strength of the consultative paper is the analysis of the unsustainable trends. As the paper points out, there is a broad consensus that the SDS should capture two important ideas:

- that development has an economic, a social and an environmental dimension. Development will only be sustainable if a balance is struck between the different factors that contribute to the overall quality of life;
- that the current generation has an obligation to future generations to leave sufficient stocks of social, environmental and economic resources for them to enjoy levels of well being at least as high as our own.

2.3. The Committee has found the consultative paper valuable as a basis for discussion. The key problem is that it came late and offered too little time for broad consultation. The Committee comments on this in part 6.

3. Joint ESC/Commission Hearing

3.1. In cooperation with the European Commission, the Committee organized at the end of April a two-day Hearing on the consultative paper. The Hearing brought together

some 200 representatives of stake-holder and civil society organizations, governments and EU institutions. The debates were lively, concrete, and gave a number of suggestions in view of the Gothenburg summit decisions.

3.2. Three overriding comments stood out:

3.2.1. The first focused on the need for political vision and leadership. It was emphasised again and again that governments and politicians must take the lead in shaping a political vision, in showing political leadership and fixing priorities.

3.2.2. The second centred on the need for extensive R&D work as forming the basis for the SDS decisions. If anything, a society with an SDS profile must be a society with high investment levels in R&D and in education and training.

3.2.3. The third looked to the global dimension, not much discussed in the Commission paper. It is necessary that the EU take the lead in a global context, in deciding on an SDS and giving inspiration to other countries.

3.3. To these comments could be added a few others.

3.3.1. There was no single solution. So the right method was to saturate existing policies with sustainable development above and beyond the Cardiff Process. Important policies would be agriculture and fisheries where bio-diversity, public health and ultimately survival itself were at stake on account of non-sustainable policies.

3.3.2. The role of industry in shaping and implementing an SDS was much discussed. In line with what was said, industry is to-day as a general rule to be seen as an ally in implementing SDS.

3.3.3. The need for sustainable public finances was another important topic, particularly in the context of the ageing population and increasing demands for elderly care.

3.3.4. On the other hand, the issue of low fertility was more or less left out, although it does constitute a very obvious part of the total equation of ageing population and sustained

public finances. The issue of a more active family policy — comprising children, parent(s) and elderly — at national level, was thereby not discussed; yet an active family support policy could give parents real opportunities to combine children, caring and career.

4. Comments on the preparatory work.

4.1. The Economic and Social Committee views the upcoming decisions on sustainable development as the start of a long process.

4.2. Even so, the Committee deplores that the Commission consultative paper is presented late in the preparatory process allowing such a short time for wide-ranging consultation. The Helsinki European summit in 1999 decided that the issue of sustainable development should be a key topic at the Gothenburg summit. The time-span would have made it possible to launch a wide consultation process prior to the decisions. Broad public support could have been established. Organized civil society would have been actively involved in the preparation of the strategy.

4.3. A sustainable development strategy is clearly very difficult to formulate and for this very reason cannot be drawn up and adopted in a rush.

4.4. A broadly-based consultation and participation process should have been set in train. A consultative paper — such as the one presented on 27 March 2001 — could have presented the interim findings of such a process. After the causes of previous failings had been discussed, the framing of a strategy — as part of a dialogue — to remedy these failings would have been the right way to formulate a policy that would have been acceptable.

4.5. The Committee appreciates, however, that the Commission and the Committee have had the opportunity to organize jointly the two-day hearings at the end of April.

4.6. The Commission, however, knows itself how important consultation and participation is as it has just presented a paper on governance dealing with this. Moreover the Strategy Proposal 'A Sustainable Europe for a better World' ⁽¹⁾, written after the joint hearing (4.5 above) insists on the key role of early and systematic dialogue.

⁽¹⁾ Commission Communication of 15th May for the Gothenburg European Council.

5. Wide Public Consultation

5.1.1. The Economic and Social Committee views the decision on a strategy for sustainable development as one of the most important decisions of the European Union in recent years. It will have profound effects on our societies. It will deal with changes in life-style and consumer patterns.

5.1.2. Because of their importance, issues in sustainable development must be supported and implemented from bottom up, not introduced top down.

5.1.3. Rarely has the Union been confronted with policy issues that require grass-roots support to this extent.

5.2. The Committee, bearing in mind the insufficient time for wide-ranging consultation and opinion forming to help build support in advance of the decisions, strongly recommends that the Gothenburg summit be followed by a systematic information and consultation effort in all member countries. In this effort, there would be possibilities for various organizations and the political parties to take part, and to channel views and comments from bottom-up.

5.3. This would have consequences for the decision-making process. The Gothenburg summit could focus on setting a number of fairly general objectives for the next 10-20 years, indicating how the Lisbon objectives should be adapted to the new strategy, and ask for further preparatory work to be postponed to the Barcelona summit in March 2002.

5.4. In this way, the summit in Gothenburg would invite citizens and organizations to take active part in the discussions up until the Barcelona summit, where more concrete decisions could be sufficiently prepared. Of course, the participatory work would have to continue afterwards also.

5.5. The Committee proposes: Make the issue of sustainable development a test case for new and wide participation in key Union policies!

6. Framework of an SDS decision

The upshot of the Commission analysis is that an SD strategy is not only necessary but urgently so if we are to change some trends that de facto pose a threat to our and our children's life potential.

The ESC strongly supports this conclusion. A process of change has to begin somewhere and sometime and now is in all probability the time to initiate it. There is a wealth of analysis on which to base decisions, a considerable potential of research and development and an economic situation in the Union better than for many years.

Moreover, large groups of society are seriously worried over basic issues of health and food, to mention just two aspects. There is thus a window of opportunity to generate wide public support for the beginning of a process of change in the direction of sustainable development.

6.1. *Balancing the three pillars*

6.1.1. The SD concept can be described as the Lisbon strategy (economic and social sustainability) with a third pillar, environmental sustainability, added. The SD strategy should emphasise the interrelationship between the three pillars. The SD strategy should combine a dynamic economy with a society offering opportunities to all, while improving resource efficiency and decoupling growth from environmental degradation.

6.1.2. The consultative paper has listed six areas of possible action. One area that is not expressly mentioned is employment, a key issue in the Lisbon strategy. Without high employment levels, economic and social sustainability will not be possible. Employment is both a means and an objective in itself. The Committee recommends that employment be added to the list, together with the issue of demography.

6.1.3. The social pillar should, moreover, include some other issues. Cohesion within the Union will depend not only on economic factors but also on cultural understanding and exchange. The European cultural inheritance is in fact an integral part of the European social model. A policy for sustainable development must take into account the need for higher awareness of inherited European cultural values in customs and patterns of behaviour.

6.1.4. The European social model is one in continuous development, as times and societies change. Sustainable development will add to this development, in particular on the need for solidarity between peoples and generations.

6.2. *Lead themes*

6.2.1. Because of its complexity, sustainable development is a phenomenon not easily described or identified. There is no doubt a need for some new catch-phrases when presenting it to the public opinion.

6.2.2. One such image could centre around responsibility: Europe should become the most responsible region in the world for environment and mankind.

6.2.3. Another could centre around the two generations, this and the next: Europe should shape the options for a good life also for the next generation, in terms of economic, social and environmental development.

6.2.4. The Committee emphasises the importance of the inter-generational element, particularly with regard to its appeal to large groups of citizens.

6.3. *Relation of the SDS to other policy EU strategies and programmes*

6.3.1. The strategy for sustainable development must emphasise the need for policy coherence between a number of EU strategies and programmes. These include the Luxembourg and Cardiff processes, the VIth Environmental Action Programme, the Broad Economic Guidelines, etc.

6.3.2. Success in co-ordinating and planning these as an integral part of the Sustainable Development Strategy requires constant monitoring. New horizontal structures at all levels of Government will be needed.

6.3.3. The consultative paper mentions that there are now approximately 60 relevant strategies and programmes at EU level. Apart from the obvious fact that strategies and programmes have been permitted to proliferate very generously, the key strategies inherent in an SDS already illustrate the absolute need for better policy coherence in setting objectives and in implementation.

6.3.4. The systematic use of a Sustainability Impact Assessment procedure before initiation of new programmes would also help.

6.3.5. This policy coherence must also include indicators for evaluation and follow-up. There will be a need for indicator coherence: viz. a limited number of indicators that are really vital for evaluation and follow-up of the SDS as a whole and

the various integrated strategies. Seas of statistics of limited use are all too easy to create.

6.4. *SDS and the stakeholders*

6.4.1. The SDS will never be a successful part of the Lisbon strategy without active involvement by stakeholder organisations. This issue has recently been raised by a number of such organizations. The Committee supports their overall view that without active stakeholder support, the SDS will have considerable difficulties to take off.

6.4.2. Stakeholder involvement should include both implementation and follow-up, and revision of previous objectives and targets.

6.4.3. The definition of stakeholders must be very wide. Organized civil society thus has indeed a key role to play.

6.5. *Vision and leadership*

6.5.1. The consultative paper does not discuss issues of vision and leadership. It can be argued that an SD strategy will never be possible in practical terms without vision and leadership. Political parties, civil society organisations and governments will have to take the lead in the debate on possible visions. Even if the visions are supposed to be long-term (20-25 years), they should not go farther than over to the next generation. This is in fact a timespan that most adults find both natural and adequate.

6.5.2. The Lisbon European Council adopted the objective for the EU to be the most competitive and competent region in the world by 2010. This objective brought together a number of issues and values of high attraction: it included growth, employment and competitiveness objectives of a character similar to the Commission White Paper of 1993. The White Paper objectives were approved as both realistic and visionary.

6.6. *Creating a knowledge society*

6.6.1. A society profiled by policies for sustainable development is axiomatically a knowledge-intensive one. New advancements in transport and energy production require major new efforts in research and development. More efficient use of natural resources in production will add to the need for a higher knowledge component in products.

6.6.2. Human resources will be more important relative to financial and natural resources. The demand and need for higher investments in skilling and lifelong learning will be considerable. School systems will be required to take good care of every single child so as to avoid drop-outs, to add another aspect.

6.6.3. The Lisbon strategy has laid down a platform for building a European Knowledge Society. A strategy for sustainable development can only further underline the importance of this platform.

6.7. *A changing working life*

6.7.1. The transitions in industry and productive occupations will have to be matched by considerable and sustained investment in re-skilling and re-training of the workforce.

6.7.2. New and well functioning industrial relations will be a necessity in a working life profiled by high investments in training and research.

6.7.3. Quality of work will be a key topic, as stated already by the Stockholm summit.

6.7.4. Working life issues will also encompass working environment. The ICT sector is already revealing new forms of stress and burn-out. The knowledge-intensive working life will require new efforts for counteracting the potential negative effects. Trades Unions have a particular responsibility here.

6.7.5. In all these aspects, the objectives adumbrated in Lisbon can also integrate objectives and targets of a strategy for sustainable development.

6.7.6. The Lisbon strategy includes the objective of full employment. This objective has to be fully supported within the SD strategy.

6.7.7. The ageing of the population and diminishment of both work force and population create another set of challenges. It is obvious and also consistent with the new Directive⁽¹⁾ against age discrimination that new incentives will have to be developed in order to motivate the older workforce to stay longer in active working life.

7. **Priorities for an SDS for the European Union**

7.1. The Committee has taken note of the final Strategy Proposal from the European Commission. Given the very short notice to examine in depth this important document the Committee limits itself in this Opinion to broad general comments on aims and procedures. It will subsequently state its views in the light of the Gothenburg conclusions.

7.2.1. First the Committee expresses its satisfaction that the strategy is concentrated and focused on a limited number of clearly unsustainable situations, that it clearly indicates this as the beginning of a long policy process and underlines the need for sufficient consultation at every step and for every action.

7.2.2. The Commission has set out in the proposal how the new SD Strategy can be integrated in the Lisbon strategy and be part of the same annual evaluation and follow-up. This is essential because of the need for policy coherence between economic, social and environmental issues.

7.2.3. The Commission rightly emphasises that the ultimate responsibility for the outcome of the work for a more sustainable society cannot be placed on only one or other group but must be shared collectively by all institutions and all citizens.

7.2.4. In a wider sense the Committee would have liked to see more emphasis on Research and Development; the new VIth Framework Programme should be closely targeted to the objectives of the SD Strategy.

7.3.1. As to the Gothenburg Summit the Committee would like to give some overall priorities for an SD strategy for the Union. For obvious reasons, these considerations build upon the Committee's earlier work.

7.3.2. Procedure: The Economic and Social Committee proposes that the Gothenburg summit focus on a limited number of more general objectives for sustainable development and calls on the Commission and other relevant bodies to present more concrete proposals to the Barcelona summit in March next year. This would make it possible to launch a broad consultation and participation process all over the Union, and create satisfactory support for the more concrete actions envisaged.

7.3.3. Time-span: the Committee proposes that the objectives of the SD strategy cover two time horizons, one medium-term (up to ten years), one long-term (20-25 years).

⁽¹⁾ Directive 2000/78/EC of 27.11.2000.

7.3.4. Measurement: the objectives chosen should be capable of definition in such a way that their implementation can be measured. Relevant indicators will have to be identified.

7.3.5. The SD strategy should be integrated into the Lisbon strategy and be part of the annual follow-up.

7.3.6. Sustainable Development objectives: The Committee finds it necessary that targets be set in the four areas of transport, energy production, agriculture, and climate change.

7.3.7. Level of concreteness: the Committee proposes that the decisions at Gothenburg do not go into too many details.

7.3.8. Climate change: The Committee strongly supports the Kyoto protocol and its implementation but at the same time points to the need for going further.

7.3.9. Ageing population: the ageing population presents a number of challenges to the SD strategy. It is a complex issue, including both longer working life and new efforts for elderly care in which member countries have much experience in common. The Gothenburg summit should set a deadline for the Commission to present a benchmark report up-dating best practice with a view to facilitating employment for older workers.

7.3.10. Low levels of fertility: the Commission has indicated, at earlier stages, that it would consider presenting some ideas for stimulating member countries to enact family support action intended to help parents combine children and career. The Committee would welcome an initiative from the Commission, and proposes that the Gothenburg summit includes this in its considerations.

7.3.11. Scientific networks: the strategy for sustainable development has to be vigorously supported also by the scientific community. Through networking between research institutes, the necessary critical mass of science resources can be marshalled. The Committee proposes that one or more scientific network coordinators be identified. One such coordinator could be the university institutions in Gothenburg itself, which already are establishing themselves as a network coordinator.

8. Enlargement and the SDS

8.1. The adoption of a strategy for sustainable development for the EU will have important consequences for the candidate countries. Although the SDS is not part of the *acquis*

communautaire, it is expected that candidate countries become partners in the strategy as members of the Union. In a sense, this is not a new challenge. The countries have already taken part in the decisions at the Rio Conference, and its follow-up.

8.2. However, in its more concrete forms, the EU strategy for sustainable development will no doubt present new challenges and new strains on scarce financial resources. It will also require, among other things, new investment in human resources and in motivating citizens to change life and consumer patterns.

8.3. It would be wrong to underestimate the scope of the challenges that candidate countries may meet in the SD strategy. Any tradition of environmental protection is barely present there. The issues of unsustainable trends are not at the forefront of political debate.

8.4. The Committee proposes that the EU take special steps to enable candidate countries that so wish to be integrated in the SDS process at an early stage, that is even before they have become members of the Union.

8.5. The Committee proposes that earmarked financial resources be considered to assist the candidate countries to integrate fully into the SDS.

9. The role of the ESC in monitoring and follow-up of the SD strategy

9.1. Organized civil society should take active part in preparation, implementation and follow-up of the strategy for sustainable development. The Economic and Social Committee has a unique position among the European institutions, with its broad representativity of civil society.

9.2. The Committee proposes that its participation in support of the SD strategy be identified in three parts.

9.2.1. The Forum role: A successful implementation of the strategy requires good communication from and to the grass-roots level. ESC and its member organizations can play a crucial role here. In the Strategy Proposal the Commission declares its intention of holding a biennial Stakeholder Forum to assess the EU Strategy and invites the Committee to join it in organizing these events. The Committee welcomes the Commission's plan to hold such Hearings and declares its willingness to act as co-organiser.

9.2.2. The Mobilisation role: Closely connected to the Forum role, the ESC member organizations can act at national and local levels in order to raise awareness of the issues, inspire debate, channel opinions and act as communicators in a wide sense.

9.2.3. The quality Watch-dog role: The Commission will have the general responsibility for evaluation and follow-up of

the SDS, including producing statistical base material. However, there will be a need for evaluation work also in other forms. The Committee is willing to take on a Watch-dog role vis-à-vis the SDS, focusing on quality assessments of the implementation work and possibly publishing an annual scoreboard. Such an exercise could feed in to the annual European summit follow-up of the full Lisbon and SD strategy.

Brussels, 31 May 2001.

The President
of the Economic and Social Committee
 Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Broad Economic Policy Guidelines 2001'

(2001/C 221/28)

On 28 February 2001, the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on the 'Broad Economic Policy Guidelines 2001'.

The Economic and Social Committee decided to appoint Mr Simpson as rapporteur-general for this opinion.

At its 382nd plenary session (meeting of 31 May 2001), the Economic and Social Committee adopted the following opinion by 86 votes to one, with one abstention.

1. Introduction

1.1. The Economic and Social Committee welcomes this opportunity to assess and comment on the recently published draft Broad Economic Policy Guidelines (BEPG)⁽¹⁾ for 2001 that will be considered by the European Council at its meeting in Göteborg on 15-16 June 2001.

1.2. This process of an annual review and further refinement of the BEPG has now assumed an important place in the co-ordination and management of economic policy within the European Union. The evolution of an overall strategy in which the Commission and the Governments of the Member States contribute, both to the debate and then accept the obligations of the agreed policies, represents a major strengthening of the

effectiveness of the Union. This annual review also offers an important opportunity for the ESC to influence the decision-making processes affecting the European economy.

1.3. The publication of the Commission recommendations for the 2001 BEPG has coincided with the publication of the economic forecasts for 2001 prepared by the Commission. These forecasts confirm that the background to the preparation of the Guidelines is now less favourable than in 2000 due to adverse developments, and also that the less favourable conditions have evolved, in the main, outside the European Union.

1.3.1. To facilitate the effective consideration of the BEPG by the ESC and the other European institutions, as well as the Governments of the Member States, the economic forecasts should be published in advance of the publication of the BEPG.

⁽¹⁾ Commission recommendations for the 2001 Broad Guidelines of the Economic Policies of the Member States and the Community; ECFIN/228/01 25 April 2001.

1.3.2. In the course of the years 2001 and 2002, an historic and politically important event will occur: the introduction of the notes and coins of the Single Currency, in all twelve EMU Member States in January 2002. Whilst this practical step will itself have little direct impact on short-term economic trends, nevertheless it will give a major impetus to the development of the Single Market with its associated benefits for the Community and symbolises the greater cohesion and relevance of the BEPG for the people and Governments of the 12 Member States now making this change.

1.4. The ESC agrees with the main themes set out in the 2001 BEPG. In this Opinion, the Committee presents some of the issues that merit particular emphasis either to seek a strengthening of these policies or to encourage the Council to give a more operational context to the priorities, as was recommended by the ECOFIN Council on 12 March 2001.

2. The Broad Economic Policy Guidelines and the EU's economic policy goals

2.1. The Broad Economic Policy Guidelines (BEPG) are central to the achievement of the Union's strategic goal for the next ten years: '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'⁽¹⁾. They are the major mechanism for the co-ordination and orientation of Member States economic policy under the Stability and Growth Pact and the Luxembourg, Cardiff and Cologne processes within the Lisbon framework.

2.2. The crucial objective is that the Broad Guidelines should offer a prospect of going beyond purely aspirational statements so that within the European Union there are plans and implementation strategies, both at a community level and in each Member State, to ensure that the goals can be achieved.

2.3. The overarching nature of the Broad Guidelines means that they encompass a wide range of analysis and policy considerations, both for the short and medium-term. This fourfold distinction provides the structure for this opinion which has sections on the EU economy in 2001 and in the medium term, and economic policy in 2001 and in the medium term. Given the breadth of issues in the BEPG this opinion will of necessity be selective. The Committee has

decided to concentrate on the general guidelines for policy within the EU and not on the more detailed implications for individual Member States. However, the success or failure of the BEPG does depend on the actions within the Member States being consistent with the overall guidelines.

2.4. The Committee would, however, wish to state its agreement with the Commission when it suggests that the 2001 BEPG should identify and consider the appropriate policies on a limited number of central themes, including:

- ensuring growth- and stability-orientated macro-economic policies;
- improving the quality and sustainability of public finances;
- invigorating labour markets;
- efficient product (goods and services) markets;
- promoting the efficiency and integration of EU financial services markets;
- encouraging entrepreneurship;
- fostering the knowledge-based economy;
- enhancing environmental sustainability; and would further add, as a horizontal issue relevant to several of these themes;
- the need to monitor and respond to demographic change including that of an ageing population and the implications of falling birth rates.

3. The EU economy in 2001

3.1. The Committee has already commented on the excellent outcome for the economy of the European Union during the year 2000⁽²⁾. EU GDP grew by 3,4 % and 2,6 million jobs were created. Particularly notable was the fact that the employment intensity of growth had increased, so that employment levels now seem more responsive to the expansion of GDP. Despite robust growth, inflation remained subdued at 2,1 %. Although above the ECB target this seems to have been a spike caused by oil price rises and the fall in the value of the Euro, thus underlying inflation, (excluding energy prices and unprocessed food) was 1,3 %. Internal inflationary pressure remained limited, with labour costs only growing by 2,3 %. Since labour productivity grew by 1,5 %, real unit labour costs thus declined by 0,4 %⁽³⁾.

⁽¹⁾ Presidency Conclusions, Lisbon European Council, 23-24 March, paragraph 5.

⁽²⁾ ESC Opinion on the 2000 Broad Economic Policy Guidelines OJ C 139, 11.5.2001.

⁽³⁾ Report from the Commission on the implementation of the 2000 BEPG, 7.3.2001, COM(2001) 105, p. 7 and 37.

3.2. Despite this good progress in 2000 some problems continued. Unemployment remains high at 8,2 % of the labour force, which means that 14,5 million people in the EU are still seeking a job. Towards the end of the year 2000 there were signs that the fall in the external value of the Euro had been halted but most of the gains have since unwound. It seems likely at some stage there will be a rebound in the value of the Euro which would be a further factor ameliorating any inflationary pressure in the Union. Thus, most of the easing of the monetary conditions index for the euro area is the result of the fall in the euro exchange rate. A euro rising too quickly would lead to a tightening of monetary conditions.

3.3. The 2001 BEPGs will have a less favourable economic environment within which to work, the growth of the EU GDP started to slow in the second quarter of 2000. The world economic situation has also deteriorated, with the dramatic slow-down in the expansion of the US economy, further weakening in economic conditions in Japan and continued high oil prices. The Commission remains relatively optimistic for the EU with forecast growth of 2,8 % in 2001 and 2,9 % in 2002. This optimism is based on the limited impact of the world economy on the EU because of the relatively small external trade sector and the continued robust domestic demand. However, even if these growth rates were achieved, they fall below the ambition of an expansion rate of 3 % or more.

3.4. The Committee considers that the Commission forecasts are themselves optimistic. The Committee believes that further EU and national measures will have to be taken if the growth necessary to maintain a significant reduction in unemployment is to continue. In addition, the Commission and the Member States need to adopt a more determined and consistent approach to ensuring the verifiable implementation of the growth and employment promoting measures adopted by the Council.

3.5. Impressive strides have been taken in fiscal consolidation so that in contrast to the situation of a few years ago many Member States have budgets close to balance or in surplus. There is, however, some indication of a lessening of resolve because although the overall budget deficit is still falling cyclically corrected budget deficits are predicted to rise in 2001⁽¹⁾. This situation calls for careful monitoring because several Member States are committed to programmes to make tax systems more efficient and employment friendly. These developments are to be welcomed but reductions in marginal tax rates may reduce revenue, further increasing public sector deficits or reducing any surplus.

4. The EU Economy in the medium term

4.1. The large imbalances in international payments that have built up during America's long economic boom and the continuing problems in Japan mean that in the medium term the international economic environment is likely to remain less supportive of growth in the EU. This could lead to a recovery in the external value of the Euro that would reduce inflation in the euro-area and have a dampening effect on export growth and would thus require a further easing of internal monetary conditions.

4.2. One of the motivations for the development of EMU was to give the EU the ability to act independently in economic policy. Consequently, a more difficult external environment should be seen as a challenge for European policy makers to ensure that the EU economy is able to continue stable growth.

4.3. With the exception of the less favourable external environment, the challenges facing the EU in the medium term have remained essentially the same as those considered in the 2000 BEPG: (1) return to full employment (2) the development of a more dynamic knowledge-based economy (3) improving public finances whilst anticipating demographic trends including preparing for the extra costs of an ageing population (4) the improvement of social cohesion in the Union and (5) enhancing environmental sustainability. Since these are medium term objectives it is inevitable that the scope for improvement from year to year will be limited. The route to the achievement of these goals is seen to be through a stable macroeconomic framework and the creation of a more competitive and flexible EU internal market by: invigorating the labour market; product and service (particularly financial services) market reforms; and in stimulating entrepreneurship, R&D, innovation and improving the skills and qualifications of the workforce.

4.4. Productivity needs to be raised so as to improve living standards and employment; this is to be accomplished by the creation of a knowledge based economy. In view of the recent developments in the USA, estimates of the impact of the e-economy on productivity in the long term may have to be revised. Rapid rates of productivity growth in the US may have been associated with levels of investment and demand during an unsustainable boom.

4.5. Productivity should also be viewed in the wider context where part of the difference in GDP per person employed between the EU and the US is the result of the longer hours worked in the US. Whilst raising productivity is desirable, doing this by raising the number of hours worked would not be attractive.

⁽¹⁾ European Commission recommendation for the 2001 Broad Guidelines on economic policies, COM(2001) 224, p. 9.

5. Economic Policy in 2001

5.1. Although the external environment has changed, the mechanisms to achieve growth and stability remain the same. The European Central Bank (ECB) bears the primary responsibility for discretionary short-term macroeconomic policy adjustment⁽¹⁾. The BEPG provides the fiscal policy framework within which the ECB sets interest rates. Experience with the operation of fiscal policy has led to general acceptance that it is undesirable to make discretionary changes for macroeconomic stabilisation. Policy is oriented towards the medium term balance or surplus but in the short term the aggregate fiscal stance will be determined by the operation of automatic fiscal stabilisers. For this system to operate successfully it is important that the ECB makes timely adjustments to interest rates and that Member States fiscal positions are such that automatic stabilisers can be allowed to function freely.

5.2. With the increasingly unfavourable outlook for the world economy the Committee had a concern that interest rates had not been reduced by the ECB to meet the potential threat of a downturn in the EU. The Committee welcomes the recent decision by the ECB to reduce interest rates by 0,25 percentage points. Given the uncertainty of the current economic developments, the Committee expects the ECB to maintain a flexible approach to the setting of interest rates if the economic outlook deteriorates further.

5.3. There are two aspects of the role of the ECB that cause the Committee some concern.

5.4. First, and on an interpretative issue, the explanation by the Bank of its decisions on interest rate policy has continued to refer to the need, primarily, to maintain price stability by a process of continuous monitoring of inflationary trends. On the evidence already quoted in this opinion, underlying inflation in Euroland in 2000 was 2,1 % (1,3 % excluding energy prices). The concern of the Committee is that inflation forecasts made in the Bank have been too high.

5.5. Second, there remains a critical issue in the regulatory provisions of the ECB. The setting of the maintaining price stability as the primary objective of the Bank is not, in itself, questionable but the Committee believes that the Bank should take a wider view of economic prospects and the balance of monetary interests when determining its attitude to monetary variables, particularly interest rates.

5.6. Consolidation of the fiscal position of the Member States continued in 2000 but this was as a result of the effect

of rapid growth and the fall in unemployment on revenue and expenditure. On a cyclically corrected basis public sector deficits on average were unchanged. The continued improvement in public finances projected in the stability and convergence programmes is predicated upon the continuance of relatively rapid growth in economic activity. This slight easing of the fiscal stance predicted for this year is perhaps fortuitously appropriate because of the likely slow-down in economic activity. It should not, however, be pursued further because in the event of a more severe downturn some Member States could come close to a position of excessive deficit. In the event of such a downturn actual (not cyclically corrected) deficits would expand with lower tax revenues and higher expenditure on social security benefits acting to counteract the downturn. (i.e. as an automatic stabiliser).

5.7. During the last year the Commission and the Council have critically evaluated the fiscal stance in each Member State. This is a necessary part of the monitoring of the discipline of the stability and growth conditions. However, the ESC believes that with the benefit of recent experience, the rationale of the assessment of whether these policies are unjustifiably procyclical might now be reviewed to make such judgements in a wider setting.

5.8. The Committee notes with satisfaction that in 2001, as in 2000, nominal wage increases have been and are expected to remain consistent with price stability and job creation and in line with developments in productivity and thus have supported the overall macroeconomic policy.

5.9. Whilst for the euro area it is necessary to ensure that overall real wage increases do not exceed productivity growth⁽²⁾, this is not the case for individual countries. Average wage increases can exceed average productivity growth in areas with below average income levels, provided that the wage growth does not exceed productivity growth in industries subject to international competition. But more importantly, wage increases above productivity changes can be an important part of the adjustment between countries in a monetary union. Thus, whilst a country with low growth and high unemployment may have wage increases below productivity to restore competitiveness, a country with high growth and low unemployment may adjust by reducing competitiveness in part through wage increases in excess of productivity. The ease of adjustment for an uncompetitive country in a monetary union will be facilitated by more competitive countries losing some of their cost advantage as a result of differential rates of domestic inflation.

⁽¹⁾ ESC opinion on Coordination of economic policies as a consequence of EMU OJ C 139, 11.5.2001.

⁽²⁾ 2001 BEPGs p. 10.

5.10. In aggregate, of course, the euro zone overall wage and price increases should not be, and need not be, inflationary.

6. Economic Policy in the medium term

6.1. Short term monetary policy, determined by the ECB, and fiscal policy within the BEPGs, modified by the external economic conditions, are the key influences within the remit of the official institutions that can cause changes in the macroeconomic environment for the medium term. Economic policy in the medium term is therefore concerned with measures to try to improve the EU economy's growth potential. This potentially encompasses all aspects of economic activity but the following are particularly important:

1. invigorating labour markets;
2. ensuring efficient product (goods and services) markets;
3. promote the efficiency and integration of EU financial services markets;
4. fostering the knowledge-based economy;
5. encouraging entrepreneurship;
6. enhancing environmental sustainability;
7. improving the quality and sustainability of public finances;
8. monitoring and responding to demographic trends, including making preparation for an ageing population.

6.2. *Invigorating labour markets*

6.2.1. Despite continuing high levels of unemployment there are indications of labour shortages in some regions and sectors. In addition to unemployment there are also high levels of inactivity among certain groups of workers particularly women and older workers. Higher economic growth is vital to the achievement of higher employment levels and to reduce the burden of an ageing population. The Committee welcomes the decision of the Stockholm summit⁽¹⁾ to set intermediate targets for employment for 2005 of 67 % overall, 57 % for women and 50 % for the 55-64 age group.

6.2.2. The current tax and benefit systems must be reformed to secure effective benefit systems for current and future generations and to offer incentives to increase employment.

⁽¹⁾ Presidency Conclusions, Stockholm European Council, 24 March 2001, paragraph 9.

The Committee has already considered these issues in relation to the European Employment Strategy⁽²⁾ and Member States' employment policies⁽³⁾, suggesting that the tax and benefit systems need to be reformed to provide incentives for the low paid, older workers, women to seek employment and to integrate vulnerable groups into the labour market.

6.2.3. In an earlier opinion⁽⁴⁾ the Committee emphasised the problems of trying to increase the employment of older workers. It is particularly important to change attitudes and the policy must be forward-looking involving all workers with measures to encourage life long learning and adaptability and to encourage employers to offer flexibility in working arrangements. This should include measures to enhance the health and safety of all employees in the work place.

6.2.4. The Committee welcomes measures to promote labour market participation, to encourage education and training, and to encourage capital and labour mobility. The Committee is concerned however whether even the currently rather slow rate of progress to fulfil these objectives can be maintained in the potentially more difficult economic circumstances that the Union faces in the near future.

6.2.5. The Committee particularly notes the acknowledgement of key skills shortages affecting the labour market. There had been an expectation, based on a conclusion reached at the Stockholm European Council⁽⁵⁾ for the creation, by the Commission, of a high level taskforce on mobility and skills with the challenge to present an Action Plan to the Economic Council in the Spring of 2002. The Committee regrets that this proposal has not been included in the 2001 BEPG.

6.3. *Ensuring efficient product (goods and services) markets*

6.3.1. A long standing EU policy central to raising efficiency is the completion of the Single Market. The fact that it has still not been realised is due to the ambitious nature of the objective, its expanding scope over time and some reluctance on the part of national governments to fully embrace the

⁽²⁾ The Mid-term review of the three processes that underpin the European Employment Strategy (OJ C 139, 11.5.2001).

⁽³⁾ Proposal for a Council Decision on guidelines for Member States' employment policies for the year 2001 (OJ C 14, 16.1.2001).

⁽⁴⁾ OJ C 14, 16.1.2001.

⁽⁵⁾ Presidency Conclusions, Stockholm European Council, 24 March 2001, paragraph 15.

project. Particular problems remain in the liberalisation of network industries (telecommunications, energy), transport, financial services, public procurement, establishing a Community patent, competition and state aids. Generally progress has been limited in all these areas since Lisbon but only the more important policies can be considered here.

6.3.2. Telecommunications are central to the emerging knowledge economy and liberalisation is necessary to reduce prices and to encourage investment and innovation. The progress of further liberalisation measures contained in the proposal for the 'Single Communication's Market' is seen by Commission as essential for the establishment of the knowledge-based economy. Unfortunately the inability of the Council⁽¹⁾ to meet the Stockholm summits call for the telecommunications package to be 'adopted as soon as possible this year in order to offer the sector a level playing field ... across the Union' is a worrying development. Similar problems are also apparent in the European Energy and European Sky initiatives. The Committee regrets the slow rate of progress in these industries particularly as they are interdependent with the development of the knowledge-based economy to which the European Council is committed.

6.3.3. The Committee also strongly endorses the call on Member States to cut the deficits in the transposition of internal market measures and to reduce the incidence of state aid where this can increase fair competition in the Single Market.

6.4. *Promote the efficiency and integration of EU financial services markets*

6.4.1. The establishment of a European financial market is another essential element for enhancing competitiveness. Besides being an important industry in its own right, efficient financial markets are vital to encourage investment and the integration of financial markets provides an important means of adjustment within monetary unions. The holdings of assets and the provision of loans across borders provide an important mechanism for stabilising incomes in response to shocks. Here again the Member States' practical commitment to reform has been less than wholehearted. The compromise agreement reached on the Lamfalussy proposals at Stockholm could make the regulation of financial services more cumbersome.

6.5. *Fostering the knowledge-based economy*

6.5.1. The encouragement and enhancement of a knowledge-based society and economy is now a vital process. Important elements in its realisation include: the size and effectiveness of R&D, the use of new technologies particularly the Internet, and education and training of the workforce to use the new technologies. The Committee has already considered some of the issues involved in the knowledge economy in its report on the Lisbon European Council⁽²⁾ and more particularly the employment implications⁽³⁾. These opinions emphasise the rapid development and all pervasive nature of the knowledge society and thus its profound effects on the economy and society. This means that the use of new technology is a basic skill needed by everybody, and this has to be reflected in education and training at all levels. It also means even greater emphasis on R&D and innovation, as well as entrepreneurship.

6.5.2. The Committee, therefore, welcomes the proposals to stimulate R&D, strengthen the legal framework for intellectual property, implement the e-Europe action plan and improve ICT skills at advanced and basic levels. The chequered development of the EU patent again points to the gap between rhetoric and achievements in this area. There is also room for improvement in the targeting and operation of the EU's research programmes.

6.5.3. Investment both public and private is crucial to the development of a knowledge-based economy. In its report on the 2000 guidelines⁽⁴⁾ the Committee noted that investment as a proportion of GDP had fallen significantly since the early 1970s. The absence of new initiatives to stimulate private investment is of concern since existing policies have failed to boost the investment rate in the EU. The Committee remains concerned that public investment, which has been severely constrained during the process of fiscal consolidation, should be restored as a vital contribution for the development of the necessary infrastructure and skills. In support of this argument, the Committee endorses the Commission recommendation that Member States should redirect public expenditure towards human and physical capital accumulation.

(1) Council of the EU, Transport and Telecommunications, 2340th Council meeting Luxembourg, 4-5 April, 2001, 587/01 (Presse 131).

(2) ESC Opinion on 'Employment, economic reform and social cohesion — Towards a Europe of innovation and knowledge' (OJ C 117, 26.4.2000).

(3) ESC Opinion on 'New knowledge, new jobs'. OJ C 14, 16.1.2001.

(4) ESC Opinion on the 2000 Broad Economic Policy Guidelines (OJ C 139, 11.5.2001).

6.6. *Encouraging entrepreneurship*

6.6.1. One element Europe lacks for a truly dynamic economy is sufficient entrepreneurial activity. There was some upturn in activity during the dot.com boom in 1999 and 2000 but this has since waned. The Commission's failure to produce an effective report on reducing start-up costs for business is indicative of slow progress in this area. Provision of venture capital is vital for enhanced entrepreneurial activity and this is another area where the development of a single financial market is essential. The regulatory environment in most European countries is also a problem for the dynamism of the EU economy, although there are some small signs of change such as the development of Societas Europaea, often known as the European Company Statute.

6.7. *Enhancing environmental sustainability*

6.7.1. The Committee acknowledges that sustainability is a horizontal issue that should inform EU policies generally but this is the subject of a separate opinion. Only the environmental aspects are mentioned in this opinion. The Committee welcomes the proposal that Member States should introduce and strengthen the market based approach to environmental issues. Permanent increases in fuel costs should be incorporated in prices to achieve the necessary market adjustments in use. The different responses to fuel price changes highlights the problem caused by the failure to agree on a framework for energy taxation at the Community level. Where increased energy prices have very adverse social implications for some sections of the population, then the scope for finely targeted compensation, within the constraints of the other EU policies, should be examined by Member States.

6.8. *Improving the quality and sustainability of public finances*

6.8.1. The short term features of the management of public sector finances are discussed, briefly, in paragraph 5.6. The Committee acknowledges that the rules developed as an integral part of the new framework have brought a useful discipline to the Member States of the Union.

6.8.2. There are, however, two aspects of policy relating to the management of public sector finances that merit further refinement.

6.8.2.1. First, the longer term management of public sector finances must take explicit account of the probable budgetary consequences of demographic change. This will impact on

aspects of pensions planning, health care and community services. The Committee commend this as a specific problem to be tackled with greater urgency.

6.8.2.2. Second, the BEPG endorse efforts to further reduce the level of public sector debt outstanding in Member States. Whilst the benefits of lower debt re-payments are acknowledged. There is now a possible need to consider a refinement of the rules. Some public sector borrowing is incurred for actions that directly contribute to economic growth and compare, logically, with investment decisions made by private firms. Other borrowing may simply be a substitute for what might be taxation. The Committee suggest that public sector debt management policies should be reviewed to allow a more flexible approach.

6.9. *Monitoring and responding to demographic trends, including making preparation for an ageing population*

6.9.1. The European Union faces an ageing population as a result of increased longevity and lower birth rates. Any approach to the problem of an ageing population must target both of these elements as well as considering the implications for immigration policies. An ageing population will put pressure on public finances through increased spending on pensions and also as a result of greater demands on health and social services, and hence affecting taxation.

6.9.2. Preparations for an ageing population are basically of three kinds: firstly seeking to ensure a high employment rate within Europe, secondly the reform of pension systems and thirdly ensuring the sustainability of public finances. The issue of employment rates has already been the subject of section 6.2 in this report so no further consideration is necessary here. Progress in pension reform has been patchy, the Committee is well aware of the problems and would endorse the need to build consensus among the social partners for reforms, but this should not be used to delay the process. Delay merely makes the problem more severe and more difficult to resolve.

6.9.3. The Committee notes with concern the trend towards limiting entitlements to state pensions, which is for many people the main source of post-retirement income. Failure to reform pensions policies adds to the difficulties of ensuring sustainability of public finances already noted in Section 4.3. The Committee acknowledge that satisfactory solutions may need actions related to occupational and private pensions as well as state pension schemes.

7. Conclusion

7.1. The Committee welcomes the new 2001 Broad Economic Policy Guidelines and the general thrust of the strategy to make the Union the most competitive and dynamic knowledge based economy in the world. These aspirations must be converted into real achievements.

7.2. The Commission assessment for the economy of a slight slow-down in the rate of economic growth is, in the view of the Committee, over-optimistic. Rapid action may be necessary to offset any sudden worsening of the external economic environment's potential impact on the EU. Given this change in the balance of risks it is important that the ECB should maintain a flexible approach to the setting of interest rates, as one flexible element of the policy mix in the EMU.

7.3. The Committee is also concerned that the Council's rhetoric on structural reform and the development of the knowledge-based economy should be matched by commensurate policy actions. Thus the slow pace and limited reforms agreed in such areas as telecommunications, the Community

patent, and financial services give cause for concern over the Union's ability to meet its ambitious targets.

7.4. These problems of turning words into action also exist at the national level with the very uneven progress of tax, social security and pension reform.

7.5. Whilst the Committee support the goal of ensuring the sustainability of public finances, this should not be at the expense of public investment that is essential for the infrastructure and human capital required for a knowledge-based society. It is also essential that companies, as well as Governments, should continue to invest in the education and training of their workforce and this should also be encouraged by European Union and national policies.

7.6. Without a more dynamic process of implementing the policies of the 2001 BEPG, the risks are that the overall objective of being the most dynamic knowledge-based economy will not be achieved. In turn, this would adversely affect progress to the employment targets and the ability to cope with the demographic challenges ahead.

7.7. The Committee, therefore, commends the 2001 BEPG for early and effective implementation.

Brussels, 31 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS
