ISSN 1725-2423

Official Journal

of the European Union

C 61

Volume 46

14 March 2003

English edition

Information and Notices

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Price: 34,00 EUR

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II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

393rd PLENARY SESSION, 18 AND 19 SEPTEMBER 2002

Opinion of the Economic and Social Committee on:

— **the 'Proposal for a Regulation of the European Parliament and of the Council laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products',**

— **the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC on the Community code relating to medicinal products for human use', and**

— **the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products'**

(2003/C 61/01)

On 7 January 2002 the Council decided to consult the Economic and Social Committee, under Articles 95 and 152(4)(b) of the Treaty establishing the European Community, on the above-mentioned proposals.

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 11 September 2002. The rapporteur was Mr Fuchs.

At its 393rd Plenary Session (meeting of 18 September 2002) the Committee adopted the following opinion by 112 votes to two with three abstentions.

0. Summary of the opinion

The Committee welcomes in principle the Commission proposals for revising and developing EU legislation with regard to medicinal products for human and veterinary use. It attaches great importance to the point that the protection of human and animal health must take precedence over all other areas of regulation.

The Committee

— supports the Commission in its efforts to enhance the safety of medicinal products by improving patient and consumer information about such products and to improve pharacovigilance by involving health professionals and patients as partners in the reporting of the risks associated with medicinal products;

— welcomes the Commission's efforts to promote new developments in the field of medicinal products and make them available as soon as possible for patient therapy. However, data protection must be guaranteed and competition between the manufacturers of generic medicinal products must not be hampered unduly;

— thinks that a balanced relationship must be maintained between the various authorisation systems (centralised authorisation, authorisation with mutual recognition and national authorisation) and that in principle applicants must be entitled to choose between the various systems;

— considers that it is necessary to improve and extend the supply of veterinary medicinal products and that a programme is required to promote the development of medicinal products for treating rare animal diseases;

— recommends that a clear distinction be drawn between medicinal products and other products such as medical devices, foodstuffs (including food supplements) and cosmetics;

— welcomes the Commission's intention to extend the rules on good manufacturing practice to starting materials and especially active substances;

— considers that it is necessary to harmonise the rules for the prescription of medicinal products in the Member States;

— proposes that the Commission accede to the European anti-doping convention as the Community's contribution to the fight against drugs in international sport.

1. **Background**

1.1. A Community procedure for the authorisation and supervision of medicinal products was introduced for the first time on 1 January 1995 on the basis of Regulation (EEC) No. 2309/93 ([1]). The European Agency for the Evaluation of Medicinal Products (hereinafter called the Agency) took up its work at the same time.

1.2. The Commission — acting on the basis of Article 71 of the aforementioned Regulation — has drawn up a report on the operation of Community procedures for authorising the placing of medicinal products on the market, which is now to serve as the basis for the further development of the legislation governing medicinal products.

1.3. European Parliament and Council Directive 2001/83/EC ([2]) consolidated — for reasons of clarity — the various directives on the approximation of legislative and administrative provisions for proprietary medicinal products adopted in the wake of Council Directive 65/65/EEC of 26 January 1965 ([3]). The wording of the text was also adapted as a result of the consolidation exercise.

1.4. For the same reason, and with the same objective in mind, various directives on the approximation of legislative and administrative provisions for veterinary medicinal products adopted in the wake of Directive 81/851/EEC ([4]) were brought together in Directive 2001/82/EC ([2]) on the Community code relating to veterinary medicinal products.

1.5. The Commission has now presented three proposals for the further development of Community legislation on the basis of its report on the operation of Community procedures for authorising the placing of medicinal products on the market. Regulation (EEC) No. 2309/93 is to be recast and the two recently adopted directives on Community codes for human and veterinary medicinal products are to be amended.

2. **Gist of the Commission proposals**

2.1. *Gist of the proposed regulation on medicinal products for human use*

2.1.1. The proposal states that the centralised procedure for the authorisation of medicinal products is to be extended beyond the present framework to all new substances appearing on the Community market.

2.1.2. The composition of the Scientific Committee is to be amended (one representative per Member State) to take account of EU enlargement.

2.1.3. The centralised procedure itself is not to be changed substantially. One change concerns the appeal procedure for applicants who contest the scientific opinion of the committee. The purpose of this is to make it possible to clear up problems with the assessment of authorisation data at expert level, tighten up the formal authorisation procedure as a result and avoid legal disputes in the courts. The Commission is thus responding to the repeated criticism of the amount of time it takes for decisions to be reached.

2.1.4. The Commission proposes that the five-yearly renewal of marketing authorisations be abolished.

2.2. *Gist of the proposed regulation on medicinal products for veterinary use*

2.2.1. A large proportion of the amendments with regard to procedural matters have been aligned on the amendments for medicinal products for human use. Important changes have also been made to the scope and the general terminology.

2.2.1.1. For example, the definition of a veterinary medicinal product has been amended in order to ensure that the directive applies to preparations that must meet quality, safety and efficacy requirements, and new definitions have been added in order to harmonise and simplify conditions in the field of medicinal products.

([1]) OJ L 214, 24.8.1993.
([2]) OJ L 311, 28.11.2001.
([3]) OJ P 22, 9.2.1965, as most recently amended in OJ L 229, 15.8.1986.
([4]) OJ L 317, 6.11.1981, as most recently amended in OJ L 87, 2.4.1992.

2.2.2. It is proposed that the application of the centralised procedure be adapted to the specific context in which certain veterinary medicinal products are used. This applies in particular to the regional occurrence of certain infectious diseases.

2.2.3. It is vital in the field of veterinary medicine to make it easier to use non-veterinary products, e.g. human medicines, if no approved veterinary products are available for a specific animal species or disease.

2.3. *Provisions on the Agency and general provisions*

2.3.1. The amendments concern the adaptation of the administrative and scientific structures to the new tasks.

2.3.2. The Commission proposes that the scientific advice provided for companies during the research and development of new medicinal products be strengthened and systematically developed in order to:

— stimulate pharmaceutical research in Europe;

— allow European patients to benefit earlier from more effective medicinal products; and

— promote the burgeoning of small and medium-sized enterprises.

2.3.3. The Commission proposes that the Agency participate in the compassionate use programme at Community level.

2.3.4. The Commission proposes that the Agency participate in international scientific cooperation. The Agency is to increase and develop its technical and scientific support for the Member States and the Commission.

2.3.5. The aim of a further proposal is to prevent or solve potential conflicts between the scientific opinions of the Agency and those of other scientific bodies in the Community.

2.3.6. The Commission thinks that the changes made to the Agency and the planned enlargement of the Community make it necessary to change the structure of the Agency's committees and the composition of the Management Board and to set up an Advisory Board.

2.3.7. Finally it is proposed that the 1993 Regulation's general provisions be amended and new provisions be introduced in order to create the requisite legal certainty and guarantee the Agency's proper functioning.

2.4. *Gist of the proposed directive on medicinal products for human use*

2.4.1. The definition of medicinal product is to be adapted to take account of new therapies and their particular method of application. Other necessary adaptations are to be made.

2.4.2. A definition of generic medicinal product and its reference medicinal product is to be introduced, the administrative protection of data is to be improved and the harmonisation of existing reference medicinal products is to be facilitated.

2.4.3. The proposal states that any medicinal product not compulsorily subject to the centralised procedure is to be covered by the decentralised or mutual recognition procedure on condition that it is intended for the markets in more than one Member State. The procedures are to be simplified as a result of the criticism that has been expressed.

2.4.4. The inspection and surveillance of medicinal products' manufacture and quality assurance is to be improved. The provisions regarding compliance with good manufacturing practice are to be extended to starting materials, and especially active substances used as starting materials.

2.4.5. Pharmacovigilance is to be improved by making greater use of electronic information technologies, and the exchange of data between all parties involved in the trade in medicinal products and the authorities is to be made easier.

2.4.6. Patient information is to be improved. By way of experiment, information about a limited number of prescription medicinal products is to be authorised.

2.5. *Gist of the proposed directive on veterinary medicinal products*

2.5.1. Definitions are to be adapted by analogy with the proposed directive on medicinal products for human use.

2.5.2. The aim of the proposal is to improve the supply of medicinal products for animals and to solve the special problems associated with the lack of availability of veterinary medicinal products, with due regard to health and consumer protection.

3. **Aims**

3.1. The general aim of the Commission proposals is to develop further the Community's legislation governing medicinal products for human and veterinary use on the basis of

— the report on the operation of Community procedures for authorising the placing of medicinal products on the market,

— the experience acquired between 1995 and 2000, and

— an analysis of the comments made by all the parties concerned (competent authorities from the Member States, doctors' and pharmacists' organisations, patient and consumer associations and associations representing the pharmaceutical industry).

3.2. The Commission thinks that the revision of the Community's legislation must be guided by the following objectives:

3.2.1. To guarantee a high level of health protection for the people of Europe, particularly by providing patients, as swiftly as possible, with innovative and reliable products and through increased market surveillance thanks to a strengthening of monitoring and pharmacovigilance procedures. In the case of veterinary medicinal products, to improve animal health, particularly by increasing the number of medicinal products available.

3.2.2. To complete the internal market in pharmaceutical products taking account of the implications of globalisation, and to establish a regulatory and legislative framework that favours the competitiveness of the European pharmaceuticals sector.

3.2.3. To meet the challenges of the future enlargement of the European Union.

3.2.4. To rationalise and simplify the system as far as possible, thus improving its overall consistency and visibility, and the transparency of procedures and decision-making.

3.3. The purpose of the Community provisions concerning the placing on the market of medicinal products for human and veterinary use is to guarantee a high level of public health protection and to enable the rules of the internal market to operate effectively. No medicinal product may be placed on the market unless its quality, safety and efficacy have been previously demonstrated. These guarantees must be maintained when it is actually placed on the market.

4. **General comments**

4.1. The Committee attaches great importance to the point that the protection of human and animal health must take precedence over all other areas of regulation. It welcomes in principle the Commission proposals for revising and developing EU legislation with regard to medicinal products for human and veterinary use.

4.2. The Committee has carefully examined the Commission proposals and decided to focus on the following points in its opinion:

— the safety of medicinal products for patients and consumers, including the provision of comprehensible objective information on such products;

— the promotion of the development of new and better medicinal products as the sine qua non for therapeutic progress;

— the rapid availability of new medicinal products;

— effective and equivalent authorisation systems and procedures;

— effective risk monitoring with the aid of a comprehensive pharmacovigilance system.

4.3. The changes proposed by the Commission will be of great importance and consequence in future for

— the supply of safe medicinal products to EU citizens;

— the extension of the provisions to the new Member States;

— the functioning of the common market in medicinal products;

— competition worldwide and especially with the US and Japanese markets.

4.4. The Committee is well aware of the complexity of the subject-matter. This applies in particular to the difficulty of finding balanced solutions wherever a number of legitimate interests are at stake. These interests concern:

— the protection of patient and consumer health;

— the healing professions;

— pharmaceutical research;

— the pharmaceutical industry;

— trade in medicinal products.

4.5. The proposals for recasting the EC Regulation and amending the recently consolidated directives on medicinal products for human and veterinary use have been closely coordinated in terms of substance and form and together constitute a self-contained and transparent body of rules and regulations.

4.6. *Safety of medicinal products*

4.6.1. The Committee welcomes the Commission's efforts to make information about medicinal products more transparent, especially at a time when there is a growing desire on the part of patients to be involved in decisions about their health. They receive information from a variety of sources — both written and oral — and therefore need to be advised by

doctors and pharmacists about the benefits and risks. Doctors, veterinarians and pharmacists are called on to advise consumers and patients about the benefits and risks of medicinal products.

4.6.1.1. There is therefore no reason why members of the medical and pharmaceutical professions — or even lay persons — should not be provided on request with the texts checked and approved by the relevant authority which serve as information for users or professionals or as the official assessment reports.

4.6.2. These texts, which have been officially checked and approved by the authorising authorities, are already available on the Internet in some cases and may be regarded by patients as being of a more objective and therefore reliable standard than information from other sources. Being able to receive objective, balanced and comparative information is very important because in some Member States medicinal products can already be ordered on the Internet. Also needed are studies into how to make information about medicinal products more intelligible for the lay person and, above all, to make it easier to read and understand.

4.6.3. The Committee attaches great importance to a clear de facto and de jure distinction between information that is vetted by the relevant authority about medicinal products — such as instructions for use, package leaflets and assessment reports — and commercial advertising material. It supports the Commission in its efforts to continue to ban public advertising of prescription medicinal products. Even in the case of those illnesses where information on certain prescription medicinal products is authorised under strict conditions in the interest of patients, such information must be objective and balanced and may not claim any benefits for the product that go beyond those set out in the official product information.

4.6.4. The Committee assumes that patients also need additional information about certain medicinal products in cases where these are prescription-only or available without prescription. The Committee is aware that the packaging insert leaflets (PILs) for all medicines are public documents and that several medicines agencies publish them on their websites. In addition the EMEA publishes on its website both PILs and a Summary of Products Characteristics (AmPC) of the medicines authorised via the centralised procedure. The Committee believes that it is necessary to increase the visibility and accessibility of this authorised and objective information to patients.

4.6.4.1. The Committee supports the principle expressed by the Commission to increase the availability of information especially in relation to prescription-only medicines. However, it believes that the Commission's proposal in Article 88(2) of the proposed directive does not provide the necessary guarantees to ensure complete, objective and comparative information in the best interest of the patient. Self-regulation of the industry and the establishment of guidelines do not seem to provide strong enough guarantees to prevent information becoming advertising in face of weakness in the implementation of the control mechanism.

4.7. *Promoting the development of innovative medicinal products*

4.7.1. The Committee welcomes in principle all the efforts made by the Commission to promote the development of new active principles in medicinal products. These represent a vital prerequisite for therapeutic progress — including the treatment of rare diseases. In order to make such medicinal products available as soon as possible for use in treatment, the provision of advice to applicants prior to authorisation by the authorising authority and the abridgement of testing and administrative procedures are very important for the authorisation process. The Committee would point out that speeding up the substantive testing procedure must not undermine the safety of medicinal products.

4.7.2. The Committee attaches great importance to the protection of the data setting out the findings of the tests for developing new medicinal products or extending the fields of application of existing products.

4.7.2.1. Given the high development costs, it is necessary to provide various incentives — not only of a financial nature — to induce the pharmaceutical industry to develop innovative medicines, research new therapeutic indications and carry out new studies into the therapeutic doses for known medicinal products. This applies in particular to their use with certain categories of patients such as children and the elderly.

4.7.2.2. The Committee would point to the need for the industry to make package leaflets more patient-friendly. These instructions for use should be tested on patients to see whether they find them clear, intelligible and easy to understand.

4.7.3. The Committee accordingly welcomes the Commission's efforts to extend data protection and in particular approves the extension of the protection to data which support new therapeutic indications for known preparations. However, it would like the period of protection to be extended from one to two years in such cases.

In this context no distinction should be made between the various authorisation systems in the Member States with regard to the duration of the data protection.

4.7.4. The Committee supports the Commission's proposal that, in order to improve competition for manufacturers of generic medicinal products, it be made easier to draw up authorisation data before the expiry of the data protection period.

4.8. *Authorisation of medicinal products*

4.8.1. In the Committee's view the division of tasks between the central Agency and Member States' authorities has proved on the whole to be a success. Responsibilities must be clearly allocated in this context (transparency).

4.8.2. In accordance with the rules on subsidiarity, only those tasks should be performed centrally which, by their very nature, are better performed by the Agency for all the Member States using a uniform procedure.

4.8.3. Centralised authorisation should be restricted in essence to medicinal products which have already been authorised by the Agency hitherto under existing laws. Applicants wishing to put medicinal products containing new substances on the market should be able to choose between centralised and decentralised authorisation. The decentralised mutual recognition procedure should be simplified, thereby making it more attractive.

4.8.4. National data banks should be networked. It should be the responsibility of the Agency to coordinate the assessment and upkeep of data — including data on pharmacovigilance.

4.8.5. Individual Member States' safety decisions should be coordinated by the Agency.

4.8.6. National authorities for medicinal products — with their expertise — should continue to exist and operate in order, in particular,

— to guarantee the safety of medicinal products at national level;

— to collate and assess the risks associated with medicinal products and to coordinate national measures;

— to facilitate national authorisations;

— to promote the mutual recognition of authorisations;

— to monitor trade in medicinal products;

— to observe the distinctive features of national prescribing habits and the market in medicinal products;

— to advise the government in the particular Member State;

— to provide the Agency with expert support in the performance of its tasks;

— to improve public awareness of the need to use medicinal products sensibly involving patients groups and health professionals.

4.8.7. The Committee thinks that an appropriate division of labour based on specialisation between the national authorities responsible for medicinal products is both possible and desirable.

4.9. *Pharmacovigilance*

4.9.1. The Committee welcomes the Commission's intention to improve pharmacovigilance through the use of modern information technologies. All parties handling medicinal products (doctors, veterinarians, pharmacists) should play an active part in providing advice about, and collecting information on, the risks associated with medicinal products and form part of the information network. Patients, too, should be involved as partners in the reporting of such risks.

4.9.2. The Committee welcomes the Commission's decision to exclude provisions from the proposals which primarily concern the cost of medicinal products and reimbursement by social security schemes. Such provisions would be out of place in this context. Nevertheless it is recognised that variations in costs for medicinal products and their reimbursement have a pervasive influence on the common market in medicinal products and competition. The Committee would therefore encourage the Commission to continue its efforts to improve the single market in medicinal products in the interest of patients.

5. **Specific comments**

5.1. The definition of 'medicinal product' given in the proposal for a directive on medicinal products for human use seems to be very general and could be interpreted and applied differently in individual Member States. The Commission has attempted to provide a definition that takes account of new therapeutic methods. It should be made clear, the Committee thinks, that plant-based products which claim to deal with certain indications should be regarded as medicinal products. The definition is intended to make it possible to distinguish more easily between medicinal and other products, especially medical devices, foodstuffs (including food supplements) and cosmetics, since the legal consequences of being classified in a particular category are considerable. Given the cross-border trade in such products between Member States, the national differences in classification according to legal categories should be kept to a minimum in order to guarantee legal certainty for both consumers and businessmen.

5.2. The Commission proposal states that the marketing authorisation for a medicinal product does not need to be checked after five years and therefore it is not necessary to apply for an extension of the authorisation. Improvements in pharmacovigilance are the main reason given for this.

5.2.1. The Committee thinks that this proposal goes too far. The Committee broadly agrees with the Commission that it is not necessary to apply for an extension after five years, since adaptations to the state-of-the-art can be made at any time during that period by modifying the authorisation data. Nonetheless, this possibility should as a rule apply only to specific changes with regard to the quality or safety of the medicinal product. There is no doubt that this proposal would simplify the administrative formalities. However, the Committee thinks that a comprehensive check should be made after a longer period of time on the authorisation of the data and their adaptation to the state-of-the-art in terms of quality, efficacy and safety. It therefore considers that conducting such checks every ten years is an acceptable compromise.

5.3. The Committee does not agree that the marketing authorisation should be revoked if it is not used within two years of being granted. Such a measure would seem to make sense in terms of market transparency, but experience with such provisions has shown that it is difficult to prove the facts and hardly possible to implement measures.

5.4. The Committee welcomes the proposals regarding compassionate use so that patients can be treated with innovative medicinal products which are still being clinically tested or have been clinically tested but are still awaiting authorisation. However, it is absolutely necessary to stop a situation arising where the supply of unauthorised medicinal products cannot be checked. Therefore, this provision should be confined to absolutely necessary cases. The Committee would point out in this connection that the treatment of patients with medicinal products that have not yet been authorised requires arrangements to be made for having the costs reimbursed by social security systems.

5.5. The Committee welcomes the extension to active substances of the rules governing proper manufacture and quality controls. This will improve the quality of medicinal products. Member States have recognised the need for this for many years, and the European Pharmacopoeia already contains such a requirement.

5.6. The Committee welcomes the Commission's efforts to extend and improve the supply of veterinary medicinal products. This applies in particular to cases where there is a shortage of medicinal products which are authorised for special indications or where there is a regional need for the supply of medicinal products (e.g. special vaccines, emergency medicines).

5.7. The Committee considers that the Commission's proposal asking for prescription only status for officinal preparations for animals (Article 67(iv)(d) proposal to amend Directive 2001/82/EC) is confusing. Officinal preparations are by definition prepared in a pharmacy according to a prescription as indicated in the relevant pharmacopoeia. The Committee does not see any justification for such a change, which would conflict with existing Community and national legislation and does not appear justified on public health grounds.

6. **Additional proposals**

6.1. The Committee is worried that there is still a long way to go before the free movement of goods comes into being in the field of medicinal products and before the conditions governing all EU citizens' access to medicinal products are progressively aligned, in keeping with the calls made by the Committee in all its earlier opinions.

6.2. The Committee therefore calls upon the Commission once again to ensure that rapid progress is made in EU legislation so that the necessary objectives can be achieved. These objectives were set out by the Committee some time ago in its own-initiative opinion on the role of the European Union in promoting a pharmaceutical policy reflecting citizens' needs: improving care, boosting innovative research and controlling health spending trends [1]. In view of developments in the sector, the Committee would like to highlight once again a number of aspects which a Community pharmaceutical policy can no longer ignore.

6.3. The Committee recommends in particular that the labelling of medicinal products authorised prior to Directive 92/27/EEC and the accompanying package leaflets be standardised within an appropriate timeframe in order to put an end to the differing presentations for one and the same product which are to be found in the Member States at the moment. The Committee thinks that there is a particularly urgent need to press ahead with the standardisation of the summary of product characteristics and the package leaflets accompanying generic medicines. In addition to the standardisation of package leaflets, the Committee thinks that better use should be made of the recommendations contained in Directive 92/27/EEC so that medicinal products can be used on the basis of detailed and comprehensible information.

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[1] OJ C 14, 16.1.2001.

6.4. The Committee notes that the differing arrangements for fixing prices and reimbursing costs are mainly to blame for the fragmentation of the single market, although it admits that the Member States themselves must keep a watch on their expenditure in the field of medicinal products. However, this problem cannot be avoided if the competitiveness of the European pharmaceutical industry is to be guaranteed. It therefore calls on the Commission to continue to do what it can to obtain more satisfactory results than the G-10 pharmaceutical group of high-ranking representatives.

6.5. The Committee welcomes the planned revision of Directive 89/105/EEC on transparency, for the authorisation and price-fixing systems used in some Member States have proved not to be transparent or consistent with the basic aims of the current reform of the Community procedures.

6.6. In view of the growing movement of persons between Member States and the need to guarantee uniform protection for patients' health, the Committee recommends the gradual introduction of uniform rules for the mandatory prescription of medicinal products in the Member States. The general criteria classifying substances and preparations as prescription-only have already been laid down in the consolidated directive ([1]). These criteria are not applied uniformly by the Member States. This confuses the general public and generates uncertainty with regard to the safety of medicinal products. The concrete provisions for the mandatory prescription of substances and preparations could be specified by EC regulation. In order to avoid unintentional repercussions on social insurance systems, the harmonised provisions should apply only to medicinal products which are brought onto the market after the EC regulation enters into force.

6.7. The Committee recommends that the Community contribute to the fight against drugs in international sport ([2]). It therefore proposes that the Commission formally accede to the European anti-doping convention of 16 November 1989. With reference to the list appended to this convention, a ban should be introduced on medicinal products which are used for doping purposes in sport. This ban should cover these products' marketing, their use to treat third parties and their prescription by doctors.

6.8. The Committee recommends that a programme for developing veterinary medicinal products for rare animal diseases be drawn up and implemented. This programme should be similar to that already launched for medicinal products for human use ([3]).

([1]) Article 71 of Directive 2001/83/EC of 6.11.2002 (OJ L 311, 28.11.2001); cf. the relevant ESC opinion in OJ C 368, 20.12.1999.

([2]) Cf. the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Community support plan to combat doping in sport (COM(1999) 643), ESC opinion, OJ C 204, 18.7.2000.

([3]) Cf. the ESC opinion (point 3.1.7) on the proposal for a European Parliament and Council Regulation (EC) on orphan medicinal products (COM(1998) 450 final), OJ C 101, 12.4.1999.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards traditional herbal medicinal products'

(2003/C 61/02)

On 22 February 2002, the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 September 2002. The rapporteur was Mr Braghin.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted the following opinion with 124 votes in favour and two abstentions.

1. Introduction

1.1. The proposal for a directive specifically concerns herbal medicinal products that have been well-established over time (defined as 'traditional'), not the use of substances or herbal preparations which do not come under the definition of a medicinal product contained in Directive 2001/83/EC [1], i.e. substances or preparations that do not have 'properties for treating or preventing disease in human beings' or for 'restoring, correcting or modifying physiological functions' [2].

1.2. The market for herbal substances and preparations (plants, parts of plants, algae, fungi, lichen and related preparations obtained from various methods of treating herbal substances) has grown rapidly, and in some Member States it is not yet subject to satisfactory regulations. Furthermore, there is an increasing supply of non-traditional substances on the market in Europe, often associated with the spread of alternative therapies from other cultures.

1.3. Several factors have contributed to this development: the perception that 'natural' substances present fewer health risks, dissatisfaction with certain mainstream medical treatments for minor illnesses, the availability of such substances in alternative outlets (herbalists, health shops, mail order businesses — especially over the internet — etc.) and the rising trend for patients to opt for self-treatment. The public is particularly attracted by the suggestion that such products can improve their health or physical appearance. These products are advertised in all forms of media, but especially in publications targeting groups of the population particularly sensitive to such forms of advertising, as well as in retail outlets with the use of apparently scientific leaflets. Often, however, there is no evidence to support the claims made, which are often based upon a supposed result of combining substances rather than on scientific studies. In addition, consumers do not always follow the recommendations for dosage in the erroneous conviction that herbal products do not present any health risks.

1.4. The use of herbal substances and preparations should be regulated as soon as possible to avoid public health risks (resulting from substandard preparation techniques; chemical, physical or biological contamination of raw materials; possible traces of undesired plant material; or interaction with food or other medicinal products, of which consumers are often unaware) and also to avoid unfair competition practices and unwarranted barriers to the free market.

1.5. The legal and practical status of such products varies significantly from one Member State to another. More comprehensive action is needed at Community level to deliver increased public health protection and to ensure the free and undistorted supply of these products within the EU. This would also aim to close legislative loopholes and remove the various 'grey areas' in the field of dietetic products, food

(1) Directive 2001/83/EC (OJ L 311, 28.11.2001) lays down the new Community code on medicinal products for human use, incorporating into one text the previous directives on medicinal products, which are hence repealed. On 26 January 2001 the Commission presented the Proposal for a Directive of the European Parliament and the Council amending the above Directive, regarding both medicinal products for human use and veterinary medicinal products (COM(2001) 404 final).

(2) Proposed amendment of Article 1 of Directive 2001/83/EC contained in COM(2001) 404 final.

supplements, herbal products and herbal medicinal products as well as to regulate or at least harmonise the use of claims to boost health or well-being, which sometimes mislead consumers or even amount to outright deceptive and fraudulent practice on the part of manufacturers.

1.6. The EESC therefore welcomes the Commission proposal which seeks to harmonise the market for traditional herbal medicinal products and close a loophole in existing legislation. Nevertheless, it calls on the Commission to speed up the tabling of proposals to regulate the whole sector of herbal substances.

2. **Gist of the Commission proposal**

2.1. The proposal for a directive aims to amend Directive 2001/83/EC [1] as regards traditional herbal medicinal products, the legal and practical situation of which varies significantly between Member States. The proposal provides for a special registration procedure which does not require particulars and documents regarding tests and trials on safety and efficacy, unlike the above-mentioned directive. Sufficient published scientific literature is not available for many such medicinal products, and new tests and trials cannot be justified since the traditional use of the medicinal product is of such a nature as to allow sound conclusions on its safety and efficacy.

2.2. The main objective of the draft directive is to establish a harmonised legislative framework for traditional herbal medicinal products, introducing those provisions considered indispensable to attain a sufficient degree of harmonisation while ensuring the utmost protection of public health and respecting the principles of proportionality and subsidiarity.

2.3. The proposal covers those traditional herbal medicinal products which are not eligible for authorisation under the simplified or normal registration procedure. It lays down the conditions to be fulfilled for a product to be authorised, concerning indications, ways the product can be administered, specified strength, and minimum period of traditional use. It also confirms the need for adequate documentation of results of physico-chemical, biological or micro-biological tests and quality of the medicinal product (the same criteria required by Directive 2001/83/EC). The conditions under which registration is to be refused are also laid down.

2.4. Under this proposal, the mutual recognition procedure cannot be applied to registrations of traditional herbal medicinal products, but Member States are invited to take due account of authorisations or registrations of certain products. To further facilitate such applications, a list of herbal substances fulfilling the conditions of eligibility is also to be drawn up.

2.5. The proposal contains the obligation to include in the labelling, the package leaflet and in any advertising the information that the product is a traditional herbal medicinal product and that its efficacy has not been clinically proven.

2.6. A new Committee for Herbal Medicinal Products is to be set up within the European Agency for the Evaluation of Medicinal Products. The committee's tasks will relate to the scientific issues with regard to herbal medicinal products and herbal substances, and it should work in close cooperation with the Committee for Proprietary Medicinal Products. It has the specific task of establishing Community herbal monographs (to be used as a basis for any application for registration under the new provisions) and of drawing up a list of herbal substances which can be considered traditional herbal medicinal products.

3. **Comments**

3.1. *Harmonisation and the internal market*

3.1.1. The EESC endorses the need for action to progressively harmonise the regulatory framework for traditional herbal medicinal products and first and foremost guarantee public health and safety. The aim is to remove the grey area surrounding traditional, well-established medicinal products and to some extent predating the first EC directive on medicinal products.

3.1.2. The specific inclusion of traditional herbal medicinal products in the recent consolidated legislation on medicinal products for human use [1] certainly encourages greater protection of public health and safety as it imposes minimum quality standards for manufacturers, harmonised and coherent systems for pharmacovigilance — and therefore more efficient data collection on potential negative side-effects — and lastly harmonised procedures by national authorities in classifying corresponding products which are not considered medicinal products across the board.

[1] Directive 2001/83/EC, (OJ L 311, 28.11.2001) lays down the new Community code on medicinal products for human use, incorporating into one text the previous directives on medicinal products, which are hence repealed.

3.1.3. The EESC considers the proposal to be appropriate and timely in that it will also apply to candidate countries, some of which have specific therapeutic traditions involving herbal medicinal products. The EESC invites the Commission to consider the case for transitional agreements in this specific field and to identify particular aspects that should be incorporated into the acquis communautaire.

3.1.4. The EESC endorses the need to keep traditional herbal medicinal products on the market which, despite their long tradition, do not fulfil the regulatory criteria laid down in existing legislation and welcomes the fact that by effectively incorporating these products into Directive 2001/83/EC, they will be subject to the same conditions guaranteeing the safety and quality of all medicinal products for human use.

3.1.5. The EESC considers, however, that the proposal does not resolve all the difficulties encountered which render the internal market for such products excessively fragmented and lacking in common or at least harmonised regulations. The EESC advocates taking a more decisive course of action to encourage the marketing of such products in countries other than those where they were originally marketed and/or registered, provided they fulfil the minimum criteria as laid down in the proposal.

3.1.6. The EESC also considers that the real state of the market has not been adequately gauged. In practice, essentially corresponding products are classified in some Member States as medicinal products and in others as foodstuffs. The EESC recommends applying the precautionary principle to unclear cases, thereby classifying them as traditional herbal medicinal products throughout the European Union, in order to guarantee a greater level of control on the quality and safety of such products.

3.2. *Definitions*

3.2.1. The definition of a 'herbal medicinal product' does not appear sufficient to redress the current discrepancies between Member States. Firstly, it refers to 'active ingredients' as if these were easily identifiable and distinguishable, when in fact all such medicinal products contain several active ingredients. The effect of each ingredient cannot always be readily identified or defined with precision, nor often can the cumulative effect of such ingredients be proven. Secondly, 'herbal preparations' are rather loosely and generically defined, without highlighting the properties necessary and sufficient for their authorisation, and thus for comparing medicinal products obtained from the same plant.

3.2.2. The EESC considers this aspect particularly important in order to differentiate between preparations obtained from the same plant in cases where some of these preparations are classified as medicinal products while others are not, because the concentration and dosage of the active ingredient does not give rise to a therapeutic effect that would warrant their classification as a medicinal product.

3.2.3. The definition of 'herbal substances' and 'herbal preparations' as referred to in new points 31 and 32 respectively is inconsistent with the definition of herbal substances laid down in Article 1(3) of Directive 2001/83/EC.

3.2.4. Another shortcoming is the absence of any statement specifying whether the term 'traditional herbal medicinal products' can also apply to products containing not only one or more herbal substances or herbal preparations or a combination of them, but also non-herbal ingredients, for example vitamins, minerals or mineral substances.

3.2.5. The words 'also in combination with non-herbal ingredients' should therefore be added at the end of Article 1(30). The EESC considers that, in order to avoid the persistence of an extensive grey area in the pharmaceuticals market, such products should be included in the definition of traditional herbal medicinal products if the main pharmacological action derives from herbal substances or herbal preparations contained in them.

3.2.6. The EESC considers the concept of 'corresponding medicinal products' (Article 16c(2)), referring to products containing the same active ingredients and an equivalent strength, to be inadequately defined and in any case difficult to apply, unless it is specified whether this refers to substances derived from the same plant.

3.2.7. In this context, it is useful to refer to monographs contained in existing and officially recognised Pharmacopoeia to define products containing herbal substances with properties listed therein as corresponding products. A reference to such Pharmacopoeia is thus advisable here.

3.2.8. As the conditions guaranteeing full safety of use are laid down in the monograph itself, the EESC considers that the following phrase in recital 11 should be deleted: 'unless there

are major objections of public health'. This has led to significant discrepancies in application and abuse.

3.3. *Period of use and other procedural aspects*

3.3.1. The requirement to show medicinal use throughout a period of thirty years seems excessive. Well-established use for twice the amount of time needed for simplified registration, i.e. a twenty-year period, could be considered sufficient to guarantee a good level of safety of use. However, the EESC welcomes the provision that the thirty-year period may be completed by a period of well-established use in territories outside the Community of at least the same duration as use within the EU, since this enriches the European medicinal arsenal with plants from other territories.

3.3.2. Transitional measures for products of well-established use in candidate countries should be introduced upon accession of these countries into the EU, so as to encourage the use of their traditional herbal medicinal products while ensuring that these meet Community standards of quality and safety.

3.3.3. Article 16e lists the conditions which would warrant refusal of the application for registration. The EESC recommends that if a product is refused for being potentially harmful under normal conditions of use, immediate measures should be in place to withdraw it and corresponding products from the market in other Member States, appropriate and reasoned measures should be taken to inform the public of the decision to refuse registration, and there should be an arbitration procedure to deal with disagreements between national authorities.

3.4. *The Committee for Herbal Medicinal Products*

3.4.1. The EESC endorses the proposal to set up a Committee for Herbal Medicinal Products under the European Agency for the Evaluation of Medicinal Products, with two main tasks: drawing up a list of herbal substances with the information needed to guarantee the safe use of such substances, and establishing Community monographs to be used as a basis for all applications for registration.

3.4.2. However, the EESC calls for deadlines to be set for the completion of such work in order that the framework for all operators in the sector is established within a reasonable timescale.

3.4.3. The EESC urges the above committee, when drawing up Community monographs, to take into account material contained in existing official Pharmacopoeia, which are the result of centuries of work. This should lead to the creation of a database of medicinal herbal products and the safe use thereof, especially regarding pharmacological interactions and contraindications.

3.4.4. According to the EESC, in order to attain the objectives laid down concerning health protection and the free movement of herbal medicinal products, the new committee should have the task of assessing existing documentation on products and pharmacovigliance results in particular concerning interaction between foodstuffs and medicinal products — as well as playing an arbitration role in the case of disagreement between national authorities.

3.4.5. The responsibilities of the above committee should also be further clarified concerning the assessment of all medicinal products derived from herbal substances (not only traditional products), the possibility of issuing a prior scientific opinion on request, the binding nature of its opinions as well as the lists and monographs that it must provide as an institution.

3.4.6. Decisions made by the above committee (addition to or deletion from the list of herbal substance, monographs drawn up) are to become binding on registration holders without having previously been the subject of a Community decision to make them binding in EU territory. The EESC points out that this is inconsistent with the general regulatory framework, as it creates a risk that the work of the Committee for Herbal Medicinal Products will be considered as a non-binding scientific opinion and will be thwarted by non-recognition on the part of national authorities, who retain the final say in decisions on the authorisation and registration of medicinal products.

3.5. *Classification and labelling*

3.5.1. Article 16a(a) should be simplified as follows: 'indications consolidated by use, therefore may be sold without a medical prescription'.

3.5.2. As traditional herbal medicinal products are sold without a medical prescription, it is essential that the user package leaflet is clear, simple, readable and comprehensive in listing warnings, known contraindications and interactions in order to serve as a guide for the correct use of the product. The EESC believes that the Committee for Herbal Medicinal Products should also take these aspects into consideration when drawing up monographs.

3.5.3. In addition, the EESC emphasises the importance of including a specific reference in the Directive that labelling must contain an exact definition of the product (e.g. if it is a medicinal product in powder form or made from a dry or liquid plant extract, how it is standardised, etc.) since the different methods of preparation can change the bio-availability of active ingredients.

3.5.4. The user package leaflet and the packaging must clearly state that the user should consult a doctor or a pharmacist or seek professional advice from a qualified herbalist if symptoms persist. The EESC considers that Article 16g(b) should be supplemented with the above-mentioned details to give the patient a clearer course of action to follow.

3.5.5. The labelling provisions appear unsuitable for this type of product, since they refer to 'a specified indication' in the singular, whereas the products usually have several specific indications. In addition the phrase 'the efficacy of the product has not been clinically proven' could provoke unjustifiable concern amongst consumers over the safety of the product, and subsequently shift demand towards herbal products with even less documentation and control.

3.5.6. Article 16g(2)(a) on labelling and the user package leaflet should be amended as follows: 'the product is a herbal medicinal product for traditional use in specified indications and that the efficacy of the product is based exclusively on long-term use and experience'.

3.5.7. The EESC calls for the following sentence to be added to the second paragraph of Article 16h(3): 'If appropriate, the registration holder may however refer to other monographs from official Pharmacopoeia, publications and supporting data'.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Working together for the future of European tourism'

(2003/C 61/03)

On 15 November 2001, the European Commission decided to consult the Economic and Social Committee, under Article 362 of the Treaty establishing the European Community on the above-mentionned 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 11 September 2002. The rapporteur was Mr Liverani.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted the following opinion with 123 votes in favour and two abstentions.

1. General background: observations on the concept of proximity

1.1. Recent events and the international climate of heightened tension in 'high risk' areas of the world since the terrorist attacks of 11 September have provided a dramatic reminder of the extent to which peace, understanding and mutual respect amongst populations and the safety of transport and people influence the tourist industry.

1.1.1. Tourism is highly sensitive to the above values. Absence of these values leads to severe short-term effects on the industry and long-term changes in travel and holiday habits and lifestyles.

1.1.2. Tourism (for leisure and business) thrives in an atmosphere of untroubled international relations and a spirit of friendship, cooperation and exchange amongst different populations and cultures.

1.1.3. A deep-seated wariness is taking root in international relations, generating mistrust that could irretrievably blight relations between people and populations. It is essential to ensure that deep, unbridgeable divides do not open up between north and south or between east and west. Now is the time to build bridges, to revive international relations and restore trust and a sense of security. This is the intelligent and effective response to international terrorism, to the criminals who have sought to sow panic and unrest in people's daily lives.

1.2. However, there is no doubt that long-distance tourism to exotic and faraway places could suffer for some time (through concern about air transport safety, political instability etc.), despite early signs of an upturn. For these reasons, the public will favour destinations closer to home, with the added incentive of the single currency. In this context, there is all the more reason to promote the huge range of destinations and local attractions that Europe has to offer. In this challenging period, European local tourist industries can do much to:

— restore their local community's trust in meeting and mixing with different people and cultures;

— boost market confidence, both within Europe and overseas, that the EU offers safe and peaceful holiday destinations;

— improve the capacity of European destinations, from the largest cities to the smallest villages, to welcome visitors and provide suitable facilities for them;

— exploit the wealth of local identities, cultural and artistic heritage, local products, wine and speciality-food regions, cooking and traditions, social and natural environments, landscapes, lifestyles and customs and extend the horizons of time and space, whilst at the same time conferring a sense of peace, familiarity and reassurance;

— promote employment and, more broadly, other sectors of the economy, by developing a form of tourism that enables visitors to find out about local businesses.

2. The significance and values of tourism: new instruments for governing European tourism

2.1. The importance of the tourist sector for the economic, social and cultural development of Europe is now generally acknowledged. However, this has not yet been backed up by

an equal emphasis in EU policies. The Commission has made great efforts to bridge this gap, considering the lack of a clear legal basis.

2.2. The Commission Communication defines a more open strategy and proposes a new Community approach to tourism in the form of ten specific measures. These measures form the basis of a process designed to promote this important economic and social activity in EU programmes. They focus on coordination and cooperation between the various actors involved in tourism policy; harmonising the standards that regulate tourism in the Member States and promoting policies of quality, accessibility and promoting the right for all people to have a holiday; improving research and understanding of the mechanics of tourism on a statistical, economic and social level; encouraging a network culture by creating new networks and exchanging good practices; promoting tourist resorts as a hub for public-private sector interaction and as places where resources are turned into tourism products; and making optimum use of Europe's large and diverse range of tourist destinations, while respecting the principle of subsidiarity.

2.3. Following the conclusions of the June 1999 Council, a period of closer cooperation based on the open coordination method was initiated between the main interested parties (Member States, the tourist industry, civil society, the European Commission). This closer cooperation is in line with the recommendations contained in the Committee's previous opinion on this subject [1].

2.4. This method, as highlighted in the Commission document, is consonant with the guidelines laid down in the recent White Paper on European governance. The complex nature of the tourist industry and the interdependence between the various players make the sector a useful testbed for this.

2.5. However it is worth underscoring that good governance of the tourism sector implies a bottom-up approach, which means putting the emphasis on local tourist industries as the focus for applying the Commission's guidelines, developing coherent strategies and fostering understanding between local stakeholders. (See Resolution of the European Parliament A5-0030/2000, point N.)

2.6. The Commission's strategy respects the conditions and the positions that emerged during the course of the consultations and debates held upon completion of the work carried out by the five working groups. This important work could, however, yield even greater results if the above-mentioned resolution were acted upon, in particular Points G and H: 'whereas the European Parliament has been urging the Council for some considerable time to adopt a multiannual programme on tourism, which is needed on the one hand to improve coordination between the various Community actions and, on the other hand, to reinforce synergies with the Member States' policies on tourism'.

3. **Destination Europe**

3.1. The 'Europe' brand-name (with the diversity and values associated with it) represents added value to the attraction of individual countries, regions and local tourist resorts in the Union.

3.2. The European Community must make itself more competitive and attractive for tourists as a macro tourist region. It can thus attract tourists from other continents to different locations in Europe, thereby boosting the status of these destinations within the internal market.

3.3. The current moves to create a free trade area in the Mediterranean should also promote cooperation projects to develop tourism in the countries on its southern shores, while ensuring these projects comply with EU regulatory standards in the tourist industry and espouse respect for fundamental human rights, the natural environment and local cultures and traditions.

3.4. When considering the European Community's position as a macro tourist region, attention must also be paid to the development and the promotion of the most outlying regions, from the far northern part of the continent to the islands.

4. **The centrality of destinations and local identities in the context of cooperation: encouraging the development of local tourist industries**

4.1. The Commission Communication defines the specific features of tourism as a factor for local development, correctly identifying the centrality of destinations in the provision of services and tourist attractions: 'The tourist destination is the main place of consumption of tourist services and, therefore, the location and place of activity of tourist businesses. Tourists

[1] OJ C 75, 15.3.2000.

identify the product with both the businesses providing a service and the destination visited. (...) The destination is the hub of tourist activities and the focus of the tourist image. It is the melting pot where public and private entities interact and where almost all SMEs in the tourist industry are active'.

This is confirmed by the Council of Ministers Resolution of 21 May 2002.

4.2. The identity of a particular area is the result of a complex combination of unique factors: relics of its past, economic opportunities, networks of relations and services, meeting places, specific features of the urban and rural environment and of the people who live there, landscapes, nature, local products, food, traditions, culture, flavours, encounters and exchanges, art, artists and characters past and present who experienced the atmosphere and described it in their works.

4.3. Identity gives a place its soul (genius loci) — everything that makes it unique and irreplaceable. However, identity is not static and unchangeable, but the result of a continuous process of adapting to different needs, expectations and lifestyles. It is self-awareness when faced with change and relations with others. A place where visitors are always welcome, and where personal relations are the lifeblood, is a place whose structure is constantly in the throes of change, and these changes may be difficult. Such places embrace trends, inspire fashions and offer different and personal experiences to each individual. Welcoming tourists to destinations therefore means promoting the best a place has to offer and building distinctive itineraries based upon exchange and sharing.

4.4. Promoting destinations provides an opportunity to highlight the quality of life and relations in a local community. The higher and more authentic this becomes, the more this place becomes attractive and popular for tourists. Tourism policies foster the constant extension and upgrading of infrastructure and service networks with the emphasis on respect for the individual. They can thus create a user-friendly system of relations and services designed to ensure a pleasant stay, albeit temporary, for people who visit an area for culture, business or leisure.

4.5. In the final analysis, what makes a tourist destination attractive is the system of values it stands for. While also putting forward minimum standards as regards quality, EU tourism policy should foster the development of local identity and produce and the creation of a network of local theme-based tourist routes. These would pool common values (hospitality, providing common experiences, history, art, culture, monuments, architecture, lifestyle, nature, traditions, gastronomy and so on) as well as highlighting the main attraction of each place (with particular attention to niche markets). This could lead to the creation of a 'catalogue of good practice, hospitality and the promotion of local identity'. The catalogue could key into and stimulate demand, which is increasingly adventurous and attentive to local values and specific features. It could also be made available on an interactive European tourism website. In this context, attention should be given to the needs of those who travel for business or conferences who, together with holidaymakers and cultural tourists, account for the bulk of European tourism.

4.6. The Committee believes that a culture of tourism should be encouraged, based upon:

a) the key notions of respect and the individual;

b) self-awareness and identity;

c) the principles of responsibility and sustainability;

d) hospitality.

4.7. There is a clear reference here to the code of ethics for tourism drawn up by the World Tourism Organisation. This could, however, be supplemented with the approval and distribution of a European charter of the principles and values of tourism in the European Union, which could preface a quality charter for Europe's tourist destinations (see point 9.4). A working group made up of experts nominated by the Member States could be set up to draft such a charter. The results of this working group could then be discussed with European interest groups from the tourist industry during one of the forthcoming European forums on tourism.

5. The Tourism and Employment process: stance and thoughts of the Committee

5.1. The Commission has focused on many of the points made in the Committee's previous opinion [1], and has incorporated them into interesting proposals, but some issues have yet to be explored in depth. In particular, the matter of

[1] OJ C 75, 15.3.2000.

restructuring holiday periods should be subject to further analysis with a view to reducing the concentration of tourist activity during peak periods. This would help optimise business activity and improve working conditions in the industry. Certain forms of tourism are particularly well suited to this type of seasonality, for example tourism for schools and for older people. Another factor to bear in mind is the drive within European society to reorganise working time by reducing working hours and introducing new forms of flexibility ('vertical' part-time spread throughout the year, temporary work etc.). In other words, an increase in free time (or non-working time) does not always equate with a desire to visit new places, seek out new opportunities etc. It could be said, therefore, that the conditions are in place in society today for reorganising the tourist season and transcending past models born out of the Fordist approach to work.

5.2. The Committee underscores the importance of effective action to support SMEs in the tourism sector in the process of completing the Single Market. Measures to ensure convergence and transparency should be stepped up in order to avoid inequality, market distortion and unfair competition practices.

5.3. Whilst endorsing the horizontal and inter-sectoral approach to ensure a coherent use of Community programmes to support tourism, the Committee underscores the objective difficulty of putting the general guidelines into practice. For example, the Commission document mentions that 2003 is the European Year of People with Disabilities, but the Council Decision of 3 December 2001 on the European Year of People with Disabilities ([1]) does not contain specific goals on tourism for people with special needs.

6. **Employment in the tourist industry**

6.1. The Tourism-Employment process forms the hub of all EU policies on tourism. A modern tourism policy fosters the creation of new jobs, new businesses and professions and reinvents existing professions in both the public and private sector. However, when considering the development of employment in tourism, it is important to reflect not only on how many new jobs can be created but also which new professions and trades will be needed, by either restructuring or even replacing current forms of professions. In this context the Committee particularly supports the Commission proposal on 'Learning Areas'.

6.2. Tourism is characterised by close interpersonal relations. This means that the value of human input is paramount, and difficult to replace with technology. Policies fostering employment in tourism should be closely linked to measures targeting training. Hospitality policies and services promoting the cultural and natural heritage of Europe's tourist destinations can generate new skilled employment opportunities.

6.3. Such policies should aim to correct the precarious nature of employment in this sector (characterised by seasonality, low skills, illegal unemployment, insecure working conditions etc.) and foster horizontal and vertical mobility in the tourist sector, inter alia by applying the directives to promote equal opportunities and to combat child labour and the exploitation of minors.

6.4. Promoting new forms of cultural, environmental, rural, conference and sport-related tourism, and tourism for young people, students and older people, can help prolong the peak season for businesses and thus increase the number of working days and provide more long-term employment.

6.5. The Committee endorses the priorities identified by Working Group B which focus on the need to:

a) attract skilled labour into the sector;

b) encourage them to stay in the sector and develop their skills;

c) support micro-enterprises at regional and local level to boost their competitiveness.

6.6. It would also be useful to devise actions to improve working conditions in tourism, taking care not to mistake job insecurity for flexibility. Firstly working conditions could be improved by developing innovative organisational methods and offering incentives (tax or contribution-related benefits, etc.) to SMEs that meet the pre-defined goals.

6.7. Lastly, the status of professional qualifications should be harmonised and upgraded by improving social representation and the status of professions and trades in the tourist industry (e.g. by means of awareness-raising campaigns).

([1]) OJ L 335, 19.12.2001.

7. **Training human resources**

7.1. A network of training centres should be set up, and universities and research centres should be encouraged to monitor the changing face of tourism and hone the mechanisms needed to adapt the sector.

7.2. In order to offer the best possible advice for young people entering the job market and promote tourism professions, there must be an effective link set up between schools and employment. Ongoing training facilities and career guidance should be made available and should focus in particular on vocational skills and refresher courses.

7.2.1. Training standards should be laid down in accordance with the requirements of the various tourism-related vocations. In addition to the relevant technical skills, training curricula in the Community should also cover language skills, the development of communication skills and practical work experience, where possible acquired in the Member States, and curricula should be coordinated. In this connection, there should be mutual recognition of vocational qualifications and diplomas [1].

These training measures can both improve worker mobility and in the longer term also raise quality standards in European tourism.

7.3. It must be emphasised that training programmes (for workers, entrepreneurs and managerial staff) should be of a permanent nature to create the conditions to support the development of quality employment. A concerted drive to boost training would encourage the hand-over of businesses to the next generation and would truly modernise the sector by building up human and technical assets in the context of sustainable tourism development.

7.4. Continuing training should be geared towards:

a) creating new professions;

b) defining new roles;

c) creating new opportunities for employment;

d) creating a European, national, regional and local network of institutional and social partners designed to promote innovation in training and research into sustainable development of tourism;

e) coordination of basic, specialist and vocational training, to help devise new curricula to equip students with the skills needed in the tourist industry.

8. **SMEs in tourism**

8.1. The overwhelming majority of European businesses operating in the tourist industry are small (if not very small) or medium-sized. Many of them are also characterised by traditional structures in the way they both manufacture and provide services. It is therefore necessary to put SMEs in the tourist industry on the same footing as those operating in other sectors of the economy, while respecting their specific features.

8.2. The strategic importance of SMEs in European tourism is not confined to their economic value and substantial potential to boost employment. They also underpin the stability and prosperity of local communities, safeguarding the values of hospitality and local identity that are the hallmark of tourism in Europe's regions.

8.3. Globalisation of the economy and society can represent an opportunity but also a risk for SMEs in the tourist industry as they are exposed to the dangers inherent in the concentration of world markets. Therefore, policies designed to boost the competitiveness of such SMEs should encourage ways in which tourist businesses can work together, including in consortia or cooperatives.

8.4. The EU must therefore step up its action to support SMEs in the tourist industry by implementing the action lines drawn up at the Llandudno conference (Wales, UK) in May 1998, which were further developed at the conferences held in Lille (F) in 2000 and Bruges (B) in 2001.

8.5. Tourism SMEs must be provided with the information and advice needed to access the opportunities available through Community programmes. Here the Committee would draw attention to the paragraph on creating TICP networks (Tourist information and consultancy points).

8.6. In addition, incentives must be put in place to enhance the quality of tourism SMEs by widespread use of comparative certification tools such as ISO and EFQM and by developing ad hoc measures in the framework of EU programmes and funding for SMEs.

[1] Opinion CES 1020/2002.

8.7. Changing tourism demand and the emergence of new needs bring a call for new and original businesses. Setting up companies should be made easier, especially for young people and women, by establishing consultancy and assistance mechanisms during the planning and 'start-up' phases. At the same time, it is necessary to foster the adoption of structures designed to improve working conditions, increase added value and boost creativity. Credit facilities to support innovation and retraining could be a means by which to achieve this.

9. **The host city: quality of services and interpersonal relations: a quality charter for European tourist destinations**

9.1. The tourism product is a combination of goods, services and experiences provided by businesses and public entities in a given location. There is an ongoing exchange of values between business and the local area. The tourism product relies on the added value gained from its particular geographical identity and context.

9.2. Tourist destinations are thus testbeds for the tourism product. The quality of a tourist resort is measured against its ability to coordinate the public and private sector, which together help determine its attraction and facilities. Quality is a pervasive factor across the whole spectrum of tourist services. The primary goal of providing goods, services and experiences is to satisfy those who in one way or another buy into the tourist experience.

9.3. These concepts can be summarised by two words: responsibility and hospitality. Whilst responsibility denotes a new selling and purchasing ethic (conscious consumption), hospitality broadens the conception of relations between places and peoples, if only temporarily. In other words, new strategies must be devised to improve the role of tourist resorts as host cities/towns and to regularly monitor processes by piloting specific programmes and initiatives to foster a culture of quality. (The quality system applied to tourist resorts.)

9.4. All factors determining quality and their relative indicators, together with the principles and values of hospitality (vision of the host city), should form part of the Quality charter for Europe's tourist destinations. The charter, adopted by European tourist destinations on a voluntary basis, would form a quality pact between the various local operators (public and private) and between operators and tourists. It would underpin the Europe brand-name, provide added value for individual resorts and form the basis of a European benchmarking system. Point 11 of the Resolution of the EU Council of Ministers of 21 May 2002 specifically refers to this matter in its call to: 'promote actively the use of quality indicators of tourist destinations on the basis of a European manual agreed by all Member States' and '*work towards tools and an approach of quality benchmarking and their implementation on a voluntary basis...*'.

9.5. The interaction between providers and users in the tourist industry is particularly intense. The pact regulating relations is a veritable citizenship pact (the tourist being a temporary citizen with full rights and duties).

9.6. For this reason, the content of the pact must be publicised and accessible to tourists and must provide them with a clear yardstick.

9.7. Quality factors and indicators can be used to benchmark the overall quality of a tourist resort and at the same time to provide a 'dynamic map of progress' that will be useful both for tourists and local operators (public or private) in the tourist industry. To a large extent, this will tie in with the methods used to measure the quality of places and quality of life of inhabitants. It is no coincidence that the most popular local tourist resorts and areas also offer the highest quality of life.

9.8. The challenge faced by local resorts is now greater than ever. Destinations must maintain a high level of awareness and respond to changes on several levels, in particular by strengthening the identity and authenticity of their products, forming alliances to provide joint initiatives and networks, cooperating, improving the quality of supply and the culture of service provision and ensuring that customers remain the focus of their efforts.

10. **Tourism for all and the accessibility of services and sites**

10.1. Everybody has the right to a holiday. However, physical, social and economic limitations mean that only just over half of Europe's population is currently able to take full advantage of this right. In particular, it should be emphasised that the number of people with special needs is rising significantly, due to the spread of particular incapacitating diseases, temporary and permanent disabilities etc., in part linked to an ageing population.

10.2. Tourist destinations and businesses must be able to respond effectively to the requirements of people with special needs, and not treat them as second-class citizens.

10.3. Opting to provide tourism for all upgrades a tourist resort and is based on important ethical reasons. However, considering the large number of people with special needs, it is also significant in market terms.

10.4. The European Union must take a leading role in stimulating and encouraging the removal of physical, cultural and social obstacles to the full enjoyment of tourist resources.

10.5. Programmes under preparation for the 2003 Year of People with Disabilities represent an important opportunity to define strategies in support of tourism for all.

11. Tourism and the environment: impact and sustainability of developing tourism

11.1. The concept of sustainability in developing tourism covers not only the safeguard and renewability of natural resources but also the analysis and management of the social and cultural impact on tourist resorts and on the fundamental values of the local community.

11.2. Poorly-managed mass tourism has a negative, and at times even devastating impact upon the social and natural environment of the tourist destination, and can lead to an emergence of anti-tourist sentiment and behaviour amongst local residents.

11.3. The process of drawing up a European Agenda 21 for tourism should be accelerated.

12. Tourism and culture

12.1. A modern vision of tourism must draw on the full range of cultural resources in a given place, including its historical, artistic, environmental, gastronomic, industrial and craft heritage and local traditions.

12.2. Sustainable and responsible tourism is a cultural phenomenon in itself, as it encourages understanding and exchange between peoples and is a key factor in the development of conscience, European citizenship and feelings of belonging to a common community. Conversely, if tourism development is left unchecked, speculative and profit-driven factors will prevail, wreaking serious consequences on the natural and social environment.

12.3. Cultural events encourage mobility of people and the spread of tourist seasons. They represent a means by which to promote local identity and diversity, increasing awareness of Europe's rich cultural heritage, in both its diversity and its unity.

13. A new approach to free time and the tourist season in the context of restructuring working time

13.1. Modern society has reached a turning point: for the first time in the history of mankind, work is no longer the main factor determining the role of individuals and groups. Free time and the ability to make the most of it is the real factor which shapes the cultural and indeed economic destiny of individuals.

13.2. The reorganisation of work will increasingly lead to more free time. At the same time, the fact that, on average, people are living longer and that increasing numbers of active and energetic people are no longer directly involved in production will lead to a restructuring of society and of leisure time.

13.3. To make use of this surplus of free time and to transform it into responsible tourism, the tourism product should be made more meaningful and authentic, bringing it closer to daily life and striving to make it available throughout the calendar year.

13.4. EU action could play a part in alleviating the seasonal nature of tourism, which is a serious obstacle to the full development of the sector. This could be achieved by encouraging the creation of new forms of tourism that can be enjoyed all year round (for schools, older people, cultural and sport tourism, active holidays etc.) and diversifying supply. This will help relieve the pressure faced by tourist resorts in peak seasons and give a greater degree of stability to employment and business activity. The Committee underscores the need to make this matter a priority in European tourism policy.

14. Increasing analysis of tourism by stimulating and supporting research

14.1. Available EU data to assess the contribution of tourism to national and regional economies are qualitatively and quantitatively insufficient. The Committee therefore

endorses the proposal to create a European tourism observatory as the end product of coordinated action between a network of research centres and other relevant bodies on a European level.

14.2. The observatory should provide statistical and economic data, including data on the effects of national tourism policies, while also ascertaining the impact of Community programmes in support of tourism.

14.3. Satellite accounts are the best tool for assessing the economic and social impact of tourism.

15. Tourism as a testing ground for the use of new communication technologies

15.1. Tourism provides an ideal testing ground to experiment and put into practice the new opportunities presented by the information society.

15.2. New communication and information technologies offer increased scope for self-tuition for tourist operators and businesses, who can try out new methods of exchanging information and marketing their products.

15.3. The Committee welcomes the research carried out by Working Group E and its conclusions identifying the services that can be exchanged via the network and the consequent actions for B2B and B2C relations.

15.4. The Committee considers that the 6th RTD framework programme should include tourism measures open to businesses and destinations.

16. The complexity and horizontal nature of providing services and tourist experiences: creating a European network of Tourist information and consultancy points (TICP)

16.1. Tourism is a particularly complex industry, and the various links of the chain are closely interconnected. The provision of services and tourist experiences is particularly sensitive to critical elements which may only be apparent in one link of the chain.

16.2. In the provision of tourist experiences, the site of production and consumption coincide in both time and space. This distinguishes tourism from other industries and emphasises the importance of local infrastructure and local features and the need for coordinated action between the public and private sector.

16.3. The various public and private operators should therefore be encouraged to join forces in a drive to promote a network of coordinated action.

16.4. In addition there is an urgent need to foster convergence on a European level of the legal and fiscal rules governing tourism and related professions, thereby achieving a real single market in tourism.

16.5. The Committee believes it essential to encourage the access of tourist operators to information on the support available to them through Community programmes. In practice, this means providing operators with basic advice on accessing Community opportunities. To this end, it would be useful to set up a European network of Tourism information and consultancy points (TICP) for businesses and operators in the sector, using the existing network of Infopoints with TICPs set up preferably in the most popular European tourist locations.

17. Conclusions and proposals

Reiterating the points made in previous paragraphs and in accordance with its previous opinions on tourism, the Committee:

17.1. endorses the Commission Communication and applauds the method used and the content of the work carried out hitherto, considering it a sound basis upon which to consolidate EU policies on tourism;

17.2. endorses the conclusions and proposals put forward by the five working groups composed of international experts appointed by the Member States, and associations of operators in the industry and civil society;

17.3. welcomes the Council of Ministers Resolution of 21 May 2002 on the Commission Communication as a further sign of political will to set up a programming structure for European tourism;

17.4. therefore calls on the Commission and especially the Council to identify the legal basis needed to strengthen Community strategies on tourism. This is all the more urgent given the economic and social importance of this sector in Europe, the consolidation of the European economic area, the process under way to reunify Europe and the project to create a free trade area in the Mediterranean.

17.5. A legal basis would foster the full development of the sector and facilitate the establishment of a framework programme for tourism that could harness Community programmes and initiatives in other policy areas in support of tourism, where relevant. Organised civil society, the social partners and national and Community institutions must all be closely involved in defining such strategies and measures during the annual European forums organised by the Commission.

17.6. As its specific contribution to the first European Forum on tourism scheduled to be held in Brussels in December 2002, the Committee highlights the need for action to:

a) temporarily boost the financial and human resources available to the Commission's Tourism Division, pending the definition of a wider Community policy on tourism;

b) create a basic network of Tourism information and consultancy points (TICP);

c) set up a group of experts to develop a Quality charter for Europe's tourist destinations and coordinate its application.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Life sciences and biotechnology — A Strategy for Europe'

(2003/C 61/04)

On 25 January 2002 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentionned 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 11 September 2002. The rapporteur was Mr Bedossa.

At its 393rd Plenary Session of 18 and 19 September 2002 (meeting of 18 September), the Economic and Social Committee adopted the following opinion by 124 votes to none with one abstention.

1. **Introduction**

1.1. As part of its follow-up to the consultation document on a strategic vision of life sciences and biotechnology, to which the Committee contributed with its opinion of 21 February 2002 [1], the Commission is now briefing the EU institutions on its definition of this strategy.

1.2. The Committee welcomes this initiative, noting that the strategy is accompanied by a well-constructed, precise, dynamic and proactive action plan.

1.3. The comprehensive consultation underpinning the Commission's action of course forms part of the rules of governance which are intended to bring EU bodies closer to organised civil society, NGOs and all actors in the life

[1] OJ C 94, 18.4.2002.

sciences: the relevant public and private professional sectors, institutions, and national and European organisations.

1.4. The Committee's analysis matches that of the Commission: it is clear that analysing the strategy cannot be a simple task since the many challenges must be looked at one by one if a response is to be formulated.

1.4.1. The essence of the communication lies in its wide-ranging approach, seeking to create sufficient impetus for all actors to focus on identifying strengths and weaknesses and agree on what action should be taken immediately and what action needs further discussion and fine-tuning. This global approach is the only one possible in this field.

1.4.2. However, the political authorities must have the final say in sounding out and taking the necessary strategic decisions.

1.4.3. The Committee stresses that it is vitally important to create a structure for the governance of the life sciences and biotechnology, integrated into the Union's broader system of democratic government. This structure will, in any event, have to be compatible with Europe's scientific heritage and clearly acceptable to European society.

1.5. The challenges relate to the quality of research in the life sciences in the various EU countries, and the extent to which it meets current social expectations; the effectiveness of the innovation process, translating discoveries into practical development of applications and the obstacles to the process; the role of public authorities in promoting the development of life sciences and biotechnology; the situation of the downstream sectors, which have a vital part to play in developing 'valuable' research — the pharmaceuticals industry for health, agri-foodstuffs industry for GMOs; compatibility with the legal framework, particularly for all aspects concerning (i) supervision of research and placement on the market, and (ii) industrial property rights (one part of the wider body of intellectual property); the amount of information provided, involvement of and acceptance by the general public; and society's necessary ethical limits.

1.6. The EU fell behind significantly during the 1980s, but is now attempting, with some success, to catch up. Where human health or agriculture are concerned, countries which are either on the move or experiencing upheavals are as much concerned as the richer countries, even if they are currently (China, Australia, etc.) in a marginal position in this field. This gap should be highlighted, as it represents a new form of inequality regarding the 'right to life'.

1.7. Where biotechnology is concerned, scientific and industrial developments — and, of course, the markets — are played out at a global level, as for all leading-edge technologies. It is therefore logical that they should be paralleled by the growth of a body of legal standards, especially at European level. Two areas are involved: supervision of experimental research and clinical trials in human health; and industrial property rights, especially the thorny problem of how far living organisms can be patented.

1.8. A debate focused on the ethical issues arising from advances in biology and biotechnology developed early on — largely at the initiative of the scientific community itself. The debate has been on an international scale from the outset, but has underscored significant differences in approach between the EU and the United States.

1.9. A technological revolution is taking place with regard to biotechnology, the economic consequences of which are reshaping certain features of our society:

— freedom of research may only be allowed within a framework of well-defined rules;

— guidelines are needed in order to give education and training an interdisciplinary character;

— the administrative requirements for pursuing research must be simplified.

2. **General comments**

2.1. The Committee notes that the Commission gives a precise description of the problems arising from the need to implement a genuine, useful and effective strategy in response to this technological revolution, to which a political response must be provided:

2.1.1. The implications are profound and far-reaching: the response must be political.

— New scientific disciplines and their applications represent a common foundation of knowledge.

— The prospective applications may produce profound upheavals in our societies and economies, far beyond GMO crops.

— These sciences seem likely to help achieve the objective set at Lisbon of making the EU a leading knowledge-based economy, as confirmed by the Stockholm Council.

2.2. The EU seems to be holding back.

2.2.1. Securing public backing for these sciences is difficult: the EU must therefore devise a responsible policy with a worldwide focus on the future. The EU must have a part to play. Its voice will only be heard if it is a major player in this sphere.

2.3. The European Commission notes that responsibilities are fragmented, but that respecting the subsidiarity principle should not prevent Europeans from working together towards common goals. The Committee shares this view.

2.4. The three strategic priorities which the Commission identifies should enable sustainable and responsible policies to be developed:

— The opportunities provided by the life sciences must harness human, industrial and financial resources in order to boost competitiveness.

— The support of informed, educated public opinion is essential, consequently ethical and societal concerns must be addressed.

— The EU faces a global reality, and must be capable of responding in the way most appropriate to its best interests. The Commission therefore proposes an integrated strategy, deploying a concrete, realistic action plan, flanked by recommendations which respect the subsidiarity principle.

2.5. New solutions to real problems are brought to bear in the following areas:

— health care;

— the agri-food sector;

— non-food uses of crops;

— improving the environment.

2.6. Harvesting the potential of the life sciences and biotechnology is likely to engender a new economic dimension, creating wealth and skilled jobs.

2.6.1. In order to bring this about:

— the knowledge base must be mastered, disseminated and new knowledge applied;

— in the context of effective and innovative research, the EU's leadership in this field should be restored, and European efforts should focus on the new prospects opened up through multi-disciplinary research, since biotechnology is yielding innovative approaches in all these areas;

— if research must be based on the needs of citizens, then it must enjoy societal consensus;

— applying science in practical terms is essential. Developing new capacity involves encouraging the entire research and innovation process. The fragile condition of SMEs is evident.

2.6.2. In this regard, the Commission points to a number of problems:

— the insufficient supply of skilled personnel must be remedied;

— the need to eliminate all bottlenecks.

2.6.3. Three areas for action are identified:

— reinforcing the (financial or human) resource base for this knowledge-based sector;

— networking Europe's biotechnology communities;

— a pro-active role for public authorities.

2.7. *Managing the life sciences*

2.7.1. The Committee fully agrees with the conditions described by the Commission. This technological revolution calls for governance based on the following:

— Inclusive, informed and structured dialogue with society.

— Developing these sciences in harmony with ethical values and societal goals, balancing benefits against disadvantages, guided by the Charter of Fundamental Rights.

— Giving consumers and economic operators the information to make free choices. The new, revised framework legislation on GMOs, applicable from October 2002, should overcome the present standstill in authorising new products.

— All actors making the necessary efforts to build confidence, with science-based regulatory oversight.

2.7.2. The Committee welcomes the Commission's stance that patent protection is the only effective means of creating a crucial incentive for R&D and is essential for protecting investment.

2.7.3. In order to reconcile the policy objectives in regulation of life sciences, the Commission puts forward four principles:

— risk governance and product authorisation;

— safeguarding the internal market;

— proportionality and consumer choice;

— predictability, modernisation and impact assessment.

2.8. *The EU in the world*

2.8.1. The Commission describes its agenda for international collaboration, in response to international diversity. The Committee agrees that open, multilateral and rules-based trading systems should be set up. The EU already possesses a wealth of experience in this area, particularly in connection with the OECD and the Codex Alimentarius. The role and efficiency of EU participation should be enhanced.

2.8.2. The Committee notes with satisfaction that the Commission considers the EU to bear a special responsibility towards the developing world to meet its urgent needs and to put Europe's capacities to the service of these countries.

2.8.2.1. For this purpose:

— the EU should support negotiated multilateral frameworks;

— the EU should contribute to technical assistance, capacity-building and technology transfer;

— the EU should encourage equitable and balanced North-South partnerships;

— the Committee believes, as does the Commission, that dispersed responsibilities must be overcome, on the basis of a shared vision for a cooperative approach.

2.8.2.2. This strategy should be implemented through:

— monitoring of progress;

— coherence of EU policies;

— coordination and benchmarking;

— and, above all, ongoing attention entailing vigilance and political impetus.

2.8.2.3. The Committee endorses the Commission's proposal to set up a permanent forum, if possible involving stakeholders, to which the Committee would aim to contribute.

2.9. *The action plan*

2.9.1. After describing the challenges raised by the life sciences and biotechnology strategy, the Commission sets out its 30-point action plan, explaining the commitments and tactics required if the strategy is to attain its goals. The Committee appreciates the helpful way in which each action comprises:

— a detailed description;

— a list of implementers;

— a specific and/or open-ended timeframe.

2.9.2. The Commission's proactive approach is the more remarkable in that the action plan takes account of the subsidiarity principle.

3. **Specific comments**

The Committee welcomes the strategic plan, the scope of which can be gauged from the description. However, in the Committee's view two particular aspects are not made completely clear:

3.1. *Life sciences research*

3.1.1. In the biological sciences, a key role is played by public research, conducted by:

— major public scientific or technological establishments;

— large associations, largely in receipt of private funding;

— businesses, usually in the pharmaceuticals, seed production or agro-chemical sectors.

3.1.2. However, the accelerating rate of knowledge, and the speed with which the potential applications of scientific progress are subject to intellectual appropriation, oblige more and more entrepreneurs to engage in upstream research, which is not necessarily located in the EU.

3.1.3. In order to meet the challenge laid down by the Commission, the examples drawn from the United States — even if they are not directly transferable to the EU — point out the way to develop biotechnology. Biotechnology must be developed vigorously and in closer cooperation between players and the EU.

It is necessary to:

— stimulate life sciences research, particularly in the area of applied genetics;

— improve the link between research and innovation by generating the right legal, financial and even psychological conditions for rapid progress from knowledge to innovative applications;

— intensify industrial involvement at the upstream stages, by expanding cooperation with outside laboratories and with biotech industries;

— ensure the EU plays its intended role: to give impetus to biotechnological development without trying to control everything, to remove statutory and regulatory obstacles and cut through red tape deterring or hampering initiative, to ensure that industrial choices are consistent and, above all, to organise for a united, dynamic and durable policy.

3.2. *Challenges relating to ethics and acceptability*

3.2.1. Biotechnology raises major and complex ethical issues.

3.2.1.1. These ethical questions relate firstly to the very nature of genetic research and its applications, particularly with regard to human health: the stakes are life itself, our genetic heritage which is gradually revealing its wealth and complexity, the potentialities it heralds, and the almost unlimited horizons it offers in particular to medical applications and to the cognitive sciences.

3.2.2. Thanks to the breakthroughs of the last few decades, the discoveries and initial applications are accelerating at a rate which encapsulates the race underway to complete the sequencing of the human genome and commence unlocking the secrets of the human proteome.

3.2.3. Differences of ethical approach extend beyond the bounds of biotechnology, and often involve more than bioethics alone. They concern the values, stated or underlying, of different human societies. A distinction is often drawn between western European society's Kantian, normative approach and the more utilitarian approach of the English-speaking world, which is suspicious of pre-established principles, preferring to judge the morality of an act in the light of its practical consequences. This difference in the hierarchy of values is an example of why American government and opinion is reluctant to introduce specific legislation governing biotechnology.

3.2.4. Even within the EU, sensibilities vary appreciably according to historical background:

— one of the great unknowns of the future ethical debate on biotechnology is the stance which countries such as China or India will adopt once they are directly involved;

— the ethical debate has become simultaneously more necessary and more difficult as a result of fiercer scientific and economic competition. This applies to the ethics of both scientific communication and experimentation. Since Dolly's birth, the many declarations on the 'progress' of cloning clearly point to the need for more urgent and deeper ethical reflection.

3.3. *Transgenesis, the environment and public perceptions*

3.3.1. It is in order to wonder why transgenesis provokes so much questioning, whereas conventional selection has never aroused any reaction. This may be explained by the particular features of transgenesis. Being faster, and able to cross the species barrier, it is more likely to upset the ecosystem. For some, however, environmental problems are simply a pretext for rejecting all GMOs without admitting their real motives, which may be ethical, religious or ideological.

3.3.2. Environmental protection is a matter of concern to a growing number of consumers. They are no longer interested only in the quality and price of food, but also in how it is produced and its environmental impact. The BSE saga has suddenly revealed to them that agriculture is capable of leaving behind material contingencies in order to satisfy the

requirements of downstream industries. They have lost some of their faith in science, and attach greater importance to the risk factor. They are demanding guarantees.

3.3.3. The problem lies in knowing where to draw the line between the safeguards which the public is entitled to demand and those which researchers cannot provide. Scientific progress entails risk which is difficult to evaluate. Society accepts risk when it can discern its own interest in such techniques, describing this as 'acceptable risk'.

3.3.4. In the case of plant and animal transgenesis, the risk/benefit ratio is unclear: hence the complex nature of the debate.

3.3.5. It would seem crucial that a case-by-case social evaluation of the risk/benefit ratio be made for each OMG if they are to possess legitimacy and hence be accepted by the general public.

3.4. *Education*

3.4.1. The Commission's strategy, however, does not appear to take sufficient account of the pressing need to make all the peoples of Europe, and young people in particular, aware of this body of knowledge. The entire educational system should reflect this need.

3.4.2. As in its opinion on the Communication from the Commission — Towards a strategic vision of life sciences and biotechnology: consultation document ([1]), the Committee suggests that the Commission:

— assume responsibility for encouraging pilot education programmes to inform the general public about progress achieved in the life sciences and biotechnology;

— devise a plan involving a range of Community policies, in particular by means of:

  — measures to introduce a school curriculum that is more open to the life sciences and biotechnology;

  — efforts to remove obstacles that prevent European citizens having access to this knowledge.

4. **The Committee's proposals**

4.1. While the Commission's communication appears balanced and well-structured, and the action plan clearly set out, proactive and practical, a certain number of principles and objectives are either understated or insufficiently explicit in the light of the overall objective, which is of vital importance to the EU's future and especially sensitive in terms of public opinion, mainly due to the questions and polemics it arouses in all the EU Member States and all sectors of society.

4.2. The Committee calls for two general principles to apply before detailed responses are framed, and for consolidation to ensue.

4.2.1. Prevention and the precautionary principle ([2])

4.2.1.1. The precautionary principle must prevail and be applied consistently, also in the context of biomonitoring. It must be applied at every stage. The difficulty is that it must be recognised in the same way by the entire international community, and be applied uniformly at international level. This is clearly not the present picture. The EU should propose an international conference to consolidate application.

4.2.2. Accountability

4.2.2.1. This principle (damage/inconvenience) should be appropriately stated in the Proposal for a Directive of the Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage ([3]).

4.2.3. The Committee considers that the proposed action plan should be fleshed out with the following points, which it considers to be of major significance:

4.2.3.1. Educating all young Europeans to be aware of these sciences, by setting up a framework programme and earmarking the necessary funds.

4.2.3.2. The responsibilities of each of the players must be more precise, specifying those of:

— the European institutions;

— the Member States, in keeping with the subsidiarity principle. The public authorities must define their responsibilities before making any decisions and ensure the decisions are implemented once taken;

— experts or expert groups on which the decision-making process relies.

([1]) OJ C 94, 18.4.2002.

([2]) OJ C 268, 19.9.2000.

([3]) COM(2002) 17 final.

4.2.3.3. Information for choice:

— aiming to achieve transparency at every stage in research;

— ensuring the establishment of traceability and clear and legible labelling for all products;

— implementing statutory labelling provisions;

— supplementing European legislation by adopting Community rules on seeds and animal feedstuffs containing GMOs;

— labelling intermediate products;

— ensuring that consumer expectations are recognised at international level, calling for risk-benefit criteria to be adopted in all negotiating forums.

4.2.3.4. An ongoing debate:

— to ensure proper evaluation and assessment of scientific advances;

— to define a communication strategy to enhance the coherence and transparency of EU policy in this area, which must be constantly renewed and broadened, especially by informing and educating young people;

— information must be objective, and the public authorities must guarantee the plurality of debate.

4.2.3.5. The duty to share must be recalled at every stage.

— the developing world is unfortunately more of an onlooker than a direct participant. This is all the more worrying since these countries are affected by food insecurity, health requirements and by problems of pollution and the environment;

— the EU must address the issue of solidarity as an essential criterion: solidarity between rich and poor countries, and solidarity with regard to the shared responsibility to protect the environment, which will require more public funding to combat poverty and to ensure food self-sufficiency.

Brussels, 18 September 2002.

4.3. *A Community patent*

4.3.1. Rapid scientific and technical progress, coupled with the explosion in research, is helping to drive developments in industrial property law, as questions about innovation and about the morality of 'patenting' various advances are added to more traditional questions.

4.3.1.1. Property law is geared to protecting inventions internationally as effectively as possible. Trade-related intellectual property rights agreements lay down a set of rules, some of which specifically address biotechnology.

4.3.2. In addition to the World Intellectual Property Organisation (WIPO), there is a European Patents Office (EPO), which however provides only a common procedure for filing patents: implementation procedures remain in the hands of individual countries.

4.3.2.1. A single Community patent must therefore — at last — be brought into being as a matter of urgency.

4.3.3. The essential difference with American patent law is that in the USA, only the 'first to invent', rather than the 'first to file', is entitled to a patent.

5. **Conclusion**

5.1. It is essential that the EU play its part: its voice will only be heard if it is a major player in the sphere of biotechnology and it is imperative that there should be greater awareness in the EU of the implications for competitiveness, growth and job creation. Thus the various stakeholders must mount a strong and sustained effort to cooperate, and there must be a shared strategy and instruments, such as, in particular, a Community patent. Innovation clearly demands new, dynamic, constructive and transparent forms of management in order to reflect the scale of the new fields being opened up by research and the speed at which this is occurring. A creative approach is called for, with greater emphasis than before on stimulating and providing incentives and opportunities. Ensuring the EU's place in the biotechnology sector means acting with determination and resolve.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices in the supply of airline services from countries not members of the European Community'

(COM(2002) 110 final — 2002/0067 (COD))

(2003/C 61/05)

On 3 April 2002 the Council of the European Union decided to consult the Economic and Social Committee, under Article 80(2) of the EC Treaty, 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 2 September 2002. The rapporteur was Mr Green.

At its 393rd Plenary Session of 18 and 19 September 2002 (meeting of 18 September) the Economic and Social Committee adopted the following opinion by 130 votes in favour, with four abstentions.

1. Background

1.1. The Commission notes in its explanatory memorandum to this proposal that the airline industry in the Community is faced with a critical challenge: the need for it to compete with third-country airlines which benefit from generous subsidies, while the Community industry is subject to strict rules on government aid [1].

1.2. The EESC opinion on the Commission communication of 20 May 1999 backed the wish to strengthen the competitiveness of European airlines, particularly vis à vis their US competitors, and to eliminate their structural disadvantages [2]. The Committee also agreed that the transitional period for the granting of state aid was now over. State aid should, therefore, no longer be granted.

1.3. The EESC opinion saw the need for harmonisation of European and US competition policy and endorsed Commission efforts to reach an open skies agreement between the EU and the USA.

1.4. The Commission communication on the repercussions of the terrorist attacks in the United States on the air transport industry [3] notes, among other things, that the US Congress adopted an emergency package of measures on 21 September as part of an overall programme that could amount to $18 billion. The Commission wanted to examine whether the support given to US airlines could affect markets where American and European airlines were in intense competition, i.e. primarily the transatlantic routes.

1.5. It is also evident from the communication that the possible distortions of competition caused by direct aid to US airlines cannot be addressed in the absence of a contractual framework for relations between the Community and the United States. The Commission therefore reserves the right to make proposals where appropriate to offset the loss the Community airlines might suffer as a result. The Commission also intends to propose to the United States that a code of conduct be drawn up in this area.

1.6. In terms of relations with non-EU countries, the communication concludes that the Commission will make proposals to offset the loss Community airlines might suffer if support granted in a third country results in unfair advantages at the expense of EU competitors.

1.7. The starting point for the current proposal is that some third countries have instruments to deal with such situations while, in contrast to the position in the maritime transport sector, the Community has not provided for redress in case of unfair pricing practices in the airline sector [4]. The only

[1] Communication from the Commission of 20 May 1999 on the European airline industry: from single market to world-wide challenges (COM(1999) 182 final) and 1994 guidelines on state aid to the air industry (OJ C 350, 10.12.1994, p. 5).

[2] EESC opinion on the Commission Communication of 20 May 1999 on the European airline industry: from single market to worldwide challenges COM(1999) 182 final (OJ C 75, 15.3.2000, p. 4).

[3] Communication from the Commission to the European Parliament and the Council — The repercussions of the terrorist attacks in the United States on the air transport industry (COM(2001) 574 final).

[4] Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986).

currently available means are bilateral agreements which often lack, both in terms of coverage and remedies, the potential to provide swift and comprehensive protection against subsidisation and unfair pricing practices.

2. **The Commission proposal**

2.1. The proposed instrument allows action against subsidised or certain unfairly priced and injurious air services supplied by non-Community carriers on certain routes to and from the Community. It contains rules of substance and procedure but, at the same time, does not require the EC to go below the tested standards applied to goods ([1]).

2.2. The proposal uses the subsidy definition of the WTO Agreement on Subsidies and Countervailing Measures. Trade-distorting subsidies granted by foreign governments, i.e. subsidies targeted at certain enterprises or sectors and export subsidies are actionable. (Generally available subsidies, e.g. to all service providers including airlines, are considered not to be trade-distorting). Additionally, the definition covers 'unfair pricing practices' , i.e. charging at fares below those charged by established and representative carriers (or, if this information is not available, below the constructed rate, i.e. costs plus profit of other comparable carriers), but is limited to such practices conducted by state-controlled air carriers.

2.3. The proposal provides for all the steps of a trade-in-goods-type investigation but in a simplified and less binding manner. An investigation would be defined by two parameters:

— subsidies given by a certain government to eligible foreign carriers or unfair practices by certain state-controlled foreign carriers,

— certain routes where the Community air industry faces problems.

2.4. The draft introduces a definition of 'like air service' which is, however, less restrictive than in trade in goods. The EC carriers would have to fly on the same or almost the same routes as the foreign carriers but there are no restrictions concerning the type of service supplied.

2.5. The Community has a right to initiate an investigation if the duly substantiated complaint is made on behalf of the Community industry. Additionally, the Commission can open one ex officio if there is sufficient evidence.

2.6. Public notice in the Official Journal is given at initiation and foreign carriers and other interested parties have the right to be heard. Adverse inferences may be drawn from non-cooperation.

2.7. Member States will be consulted at every stage of the proceedings in a committee under the advisory procedure, in line with Council Decision No 468/1999/EC of 28 June 1999 ([2]). The 'droit de regard' of the European Parliament is also ensured in accordance with Article 8 of that decision.

2.8. Measures (duties, undertakings or other appropriate measures e.g. restriction of landing rights) will be imposed on a per-carrier basis. The level of the measure is capped at the amount of subsidy in terms of benefit to the recipient (or the difference between the actual fare charged by a state-controlled foreign air carrier and the 'normal fare') or at a level which is sufficient to remove the injury, whatever is the lower. Provisional measures have a duration of six months. Measures may be reviewed if warranted. In a similar way to the goods area, there is no provision on how duties are levied. In practice, the Member State authorities collecting an 'airport tax' could also collect the duty. Duties collected will be remitted to the Community budget in line with existing provisions applied within the European Union on redressive and countervailing duties.

2.9. The proposal does not replace air transport agreements with third countries where these can be used to deal effectively with distortion issues. In cases where a legal instrument exists which would enable a satisfactory response to be made, that instrument will therefore take precedence over this regulation, which will be subsidiary to it ([3]).

([1]) Council Regulation (EEC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ L 288, 21.10.1997).

([2]) OJ L 184, 17.7.1999, p. 23.

([3]) The English-language version incorrectly refers here to 'airline agreements'.

3. General comments

3.1. The Committee considers it vital to boost European airlines' competitiveness, particularly in relation to their US rivals. Hence, tools to protect the Community industry against subsidisation and unfair pricing practices in the supply of airline services from non-member countries can be of key importance.

3.2. The Committee has previously also endorsed the Commission's efforts to reach an open skies agreement between the EU and the USA, recognising a need to harmonise European and US competition policy. As we know, no such agreement has yet been reached, and there is uncertainty as to when — potentially — that might happen.

3.3. It is unclear how the proposal stands in relation to the consultation and arbitration clauses contained in the many existing bilateral air transport agreements — binding under international law — that the individual Member States have entered into with non-member countries, including how to resolve any clashes that may arise between the proposal and bilateral agreements of this kind (cf. inter alia Treaty Article 307).

3.4. In overall terms, state aid to companies, whether domiciled inside or outside the Community, may be very damaging for commercial development in the sector or area concerned. In principle, therefore, the Committee backs the aims set out in the proposal to counteract such contributions to airlines from governments in non-EU countries and state-controlled non-Community air carriers. Attention should focus on the massive financial aid given to certain companies after 11 September to save them from bankruptcy. Such aid takes many different forms: compensation for increased insurance premiums, straightforward federal or state subsidies etc. Without having the effect of price-dumping, the absence of comparable measures for companies within the EU, especially in the area of insurance, may eventually lead to their disappearance. On the other hand, it should also be mentioned that, in some instances, such counteraction may be a double-edged sword and, at any event, must be seen in conjunction with overall relations with the countries against which it is potentially directed.

3.5. Also, it is very often difficult to establish unequivocally any impact of damage, particularly in relation to unfair pricing practices.

3.6. With that in mind, consideration might be given to whether the committee proposed in Article 12 to assist the Commission instead of the suggested advisory procedure, should apply the safeguard procedure laid down in Article 6 of Decision No 468/1999/EC. This secures the Member States more direct influence than the advisory procedure.

3.7. A determination as to whether the Community interest calls for intervention should be based on an appreciation of all the various interests taken as a whole, including the interests of users and consumers (cf. Council Regulation (EC) No 384/96). The current proposal fails to make such a specific reference [1].

4. Specific comments

4.1. *General remarks*

4.1.1. The Commission proposal does not make clear its position in relation to the bilateral air transport agreements which — it must be assumed — will continue to be applicable for some time to come and, until then, are binding under international law.

4.1.2. Recommendation

The proposed regulation should specify its position on Member States' competence in relation to the air transport agreements — binding under international law — entered into with non-member countries.

4.2. *Article 3*

4.2.1. The term 'normal fare rate' and the proposal's definition thereof appear somewhat vague.

4.2.2. Recommendation

Instead, the definition of unfair practices could be based on whether the total ticket revenue on a particular route covers the average costs of that route over, say, a six-month period. The term 'average costs' must thereby be taken to mean the costs involved in operating the route in question, but excluding overhead expenses and a reasonable profit margin.

4.3. *Article 12(2)*

4.3.1. Given the very fragmented aviation market in the Community and the comments in point 3, and the proposal's reference to the advisory procedure, consideration could be

[1] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community.

given to applying the safeguard procedure until such time as the obstacles in question have been removed even though, all other things being equal, the advisory procedure can usually be implemented more quickly — a fact that may be of importance for the matter in hand.

4.3.2. Recommendation

Consideration should be given to whether the committee proposed in Article 12 to assist the Commission, should apply the safeguard procedure laid down in Article 6 of Decision No 468/1999/EC instead of the suggested advisory procedure.

5. **Conclusion**

5.1. In principle, the Committee backs the proposal for a regulation.

5.2. The proposal should make clear how the new provisions are to operate in accordance with the existing bilateral and internationally binding air transport agreements between the Member States and third countries.

Brussels, 18 September 2002.

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 amending Decision No 276/1999/EC adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks'

(COM(2002) 152 final — 2002/0071 (COD))

(2003/C 61/06)

On 12 April 2002 the Council decided to consult the Economic and Social Committee, under Article 153 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 2 September 2002. The rapporteur was Mrs Davison.

At its 393rd Plenary Session of 18/19 September 2002 (meeting of 18 September), the Economic and Social Committee adopted the following opinion by 132 votes in favour and four abstentions.

1. **Introduction**

1.1. The European Economic and Social Committee has given youth policy a special priority [1], one which it believes should be reflected by the EU generally. An overall coherent policy on children's issues is badly needed in Europe.

1.2. The EESC has produced several opinions which refer to the need for child protection on the Internet in particular. They have helped to pave the way for the Internet Action Plan (IAP), which reflects many EESC proposals. The first such Opinion was produced in 1997, with Dame Jocelyn Barrow as

[1] See, for example: Opinion of the Economic and Social Committee on 'Exploitation of children and sex tourism'; OJ C 284, 14.9.1998 and Opinion of the Economic and Social Committee on 'European Cultural Policy for Children'; CES 250/1996.

rapporteur ([1]), and the most recent, 'A programme of child protection on the Internet,' finalised November 2001 ([2]) was one of the EESC's highest profile Opinions, reaching around 20 million consumers through national and regional media. This shows that the Committee's concern to see the necessary child protection put in place on the Internet is strongly reflected in the public at large.

1.3. In that Opinion, the Committee made suggestions for strengthening the IAP, some of which, such as establishing an EU Safer Internet Forum and addressing hate and racist content, have been taken up by the Commission. The Committee also recommended here, and in its Opinion on the Green Paper on Consumers Protection, a legal background to the IAP to ensure that all players use the excellent codes of practice and other schemes developed under the IAP but currently entirely voluntary and in some cases lacking the support of a critical mass.

2. **Extent of the challenge**

2.1. Around 38 % of EU homes had internet access at end of 2001 and schools throughout the EU are gradually coming fully on-line. Children learn about IT at school and take to the new medium easily, often ahead of their parents. When they use the Internet at home, they are generally unsupervised and unfortunately paedophiles have found that the anonymity of the net provides an opportunity for approach, sometimes ending in rape. Parents often understand the Internet less than their children. In a new Greek survey half the children using the Internet report that their parents never use it and about the same percentage say they do not know how to protect themselves on line ([3]).

2.2. A recent US survey of girl scouts ([4]) found that 30 % had been sexually harassed in a chat room. Only 7 %, however, told their mothers or fathers about this, as they were worried that they would be prevented from going on-line again. The Assembly of Madrid was presented with a similar 30 % figure of unpleasant approaches ([5]). One in five Irish 10-14 year olds report having been asked for personal details such as phone number on-line. This increases for teenage girls ([6]). Third generation mobile phones will allow even easier access to children.

2.3. The Internet has also provided an opportunity for the exchange of child pornography. There are estimates of 1 million pornographic images of children ([7]) and police report thousands of children being abused for photos and videos to be shown on line. Harmful content is also readily available on-line. Around 30 % of visits to the Internet are estimated to be to pornographic sites. Most of the girl scouts reported that they tried to avoid pornographic sites but frequently received pornographic spam or accidentally ended up on a porn site. In the Irish survey, eight out of ten parents agreed strongly or slightly with the statement 'I am concerned that my child/children might access harmful material, such as sexually explicit or violent material on-line'.

2.4. Racist sites are also proliferating. In Germany, which has an internal security watchdog and some of the world's toughest racism laws, the number of extreme right-wing homepages has nonetheless jumped to 330 in 2000, about 10 times more than four years ago, the watchdog says. The European Monitoring Centre on Racism and Xenophobia tracked one racist site in 1995, 600 in 1997, 1 430 in January 1999 and 2 100 by July. Such sites may receive 20 000 to 30 000 visits per day ([8]). There is evidence that the number of racist sites has grown since 11 September with sites supporting suicide bomber reaching around 100 ([9]).

([1]) Opinion of the Economic and Social Committee on the 'Green Paper on the protection of minors and human dignity in audiovisual and information services'; OJ C 287, 22.9.1997.
([2]) Opinion of the Economic and Social Committee on 'A programme for child protection on the internet'; OJ C 48, 21.2.2002.
([3]) EKATO, the Hellenic Consumers Association, Spring 2002.
([4]) http://www.girlscouts.org/news/presrel/NetEffect_021302.pdf
([5]) European Consumer Day — Madrid 13-15 March 2002. http://www.Delitosinformaticos.com
([6]) Research of Internet Downside Issues, submitted to the Irish Internet Advisory Board by Amarach Consulting August 2001.
([7]) Wellard (2001).
([8]) Simon Wiesenthal Centre. See http://www.wiesenthal.com
([9]) Simon Wiesenthal Centre. See http://www.wiesenthal.com

2.5. An increase in gambling sites and their use has been reported in most of Europe [1]. Online gamblers tend to be young unmarried and have low income and education levels. A much higher percentage of online gamblers (74 %) than offline gamblers were classed as having either problematic or pathological problems [2].

2.6. The US Federal Trade Commission found that many child-orientated online game sites carried ads for age-restricted gambling websites. The Commission also visited over 100 popular gambling websites and found that it was easy for minors to access the sites because few effective blocking mechanisms. The study also found that a large number of gambling sites had inadequate or hard-to-find warnings about underage gambling prohibitions, while 20 % of sites had no warnings at all.

2.7. Children can easily find violent computer games and videos, hate and race sites on-line. In a recent survey, almost two fifths of UK and Austrian children aged 11-14 said they had found 'nasty' sites and a further two out of five in the UK and nearly a third in Austria said they had found violent sites [3]. A thorough US trawl of research on the subject found that violence in the media made children more fearful, more aggressive and less sensitive.

2.8. The presence of harmful material is acting as a deterrent to families going on-line. Just over one in five of the parents surveyed in Ireland gave this as the main reason for not getting home Internet access, so there is a commercial interest in better protection of human dignity. The EU Safer Internet Action Plan is part of the response to these challenges, along with the Council of Europe Convention on cybercrime [4].

3. **Summary of the Commission's proposals**

3.1. The current Safer Internet Action Plan ends on 31 December 2002. The Safer Internet Action Plan has four action lines:

- *Creating a safer environment*
  - — Creating a European network of hot-lines for consumers to report any suspicion of child pornography [5].
  - — Encouraging self-regulation and codes of conduct.
- *Developing filtering and rating systems*
  - — Demonstrating the benefits of voluntary filtering and rating such as ICRA [6].
  - — Facilitating international agreement on rating systems.
- *Encouraging awareness actions*
  - — Preparing the ground for awareness actions.
  - — Encouraging implementation of full-scale awareness actions.
- *Support actions*
  - — Assessing legal implications.
  - — Co-ordination with similar international initiatives.
  - — Evaluating the impact of Community measures.

3.2. The Commission proposes to extend the Action Plan for another two years and to have closer links between the activities in these different action lines. Coverage would be extended to new on-line technologies, including mobile and broadband content, on-line games, peer-to-peer file transfer, and real-time communication such as chat rooms and instant messaging. A broader range of illegal and harmful content would be covered, including racism and violence and awareness of consumer protection issues, data protection/privacy and network security. Discussion has begun with candidate countries, with a view to their future involvement.

(1) http://www.netvalue.com
(2) http://www.nua.com/surveys
(3) www.net-consumers.org/erica/policy/survey.htm. See also Council resolution of 25 March 2002 on the eEurope Action Plan 2002: accessibility of public websites and their content, OJ C 86, 10.04.2002.
(4) http://conventions.coe.int/Treaty/en/Treaties/Word/185.doc
(5) Reports can be made to any of melding@stopline.at in Austria, http://www.childfocus-net-alert.be in Belgium, redbarnet@redbarnet.dk in Denmark, contact@pointdecontact.net in France, hotline@jugendschutz.net or hotline@fsm.de in Germany, report@hotline.ie in Ireland, crimino@unige.it in Italy, meldpunt@meldpunt.org in the Netherlands, a.acpi@terra.net in Spain, minor@press.rb.se in Sweden and report@iwf.org.uk in Britain. Portugal has a website on www.pgr.pt/.
(6) ICRA: Internet Content Rating Association.

3.3. The aim is to involve industry and governments more closely in the new Plan and to progress towards an integrated European network, linked to the Safer Internet Forum and an international Round Table. Improved visibility is a key target. A web-portal would be created and sociological research into on-line child protection continued.

3.4. The self-regulatory model is continued and examined, with the creation of an 'observatory' for legal and technology/market watch. Work on rating will take account of convergence, filtering systems will be benchmarked and the Community R&D programme will be used.

4. **General comments**

4.1. The Committee agrees with the generally favourable assessment of the Internet Action Plan itself. It should benefit from greater governmental and industry support.

4.2. The Committee also welcomes the mention in the Commission document of the need for positive space on-line including for children. The availability of more exciting, positive content can gradually change the media environment. Children have much to gain from the information, entertainment, education and communication opportunities on-line. For example, a list of 20 top recommended kids sites in French and in German have just been published under the IAP ([1]). The EESC welcomes the Commission's intention to encourage Internet content for children and the best practice of industry in signposting children's areas. We need to transfer the best traditions of public service broadcasting over to the new medium. It may be that an enlarged walled garden could be created and moderated for children under a.kids.eu domain as envisaged in the US. However, it would have to be protected from paedophile activity and the need for more filtering and 'notice and take down' on the rest of the Internet would remain, since children could not be expected to be limited to such an area (they would want to visit museums etc. at least) and since adult views on taste and decency also require a response.

4.3. *Hot-lines*

4.3.1. It is to be hoped that hotlines can be set up in the remaining countries. Action to trace and help child victims of on-line abuse is being sponsored by the EU, but must be redoubled and especially in those candidate countries where child protection is still weak. EU guidelines are needed on NGOs dealing with children and for cross-border adoption agencies in order to reinforce protection.

4.4. *Self-regulation*

4.4.1. The Committee is sceptical about the sufficiency of self-regulation. In particular, self-regulation has not achieved content protection for children, because rating systems have not been adopted by a critical mass, although Microsoft and AOL have recently followed EESC advice to put pressure on content providers to rate their material.

4.4.2. The Committee sees Internet protection as a consumer issue (the Internet is a service) and believes that classing it as such would reinforce protection. The Commission Green Paper on Consumers Protection provides an opportunity to do so. It could be used to create a legal backdrop to give force to voluntary rating/filtering and 'notice and take down' systems on the Internet to protect children from the harmful content the Committee has shown to be reaching them in large quantities ([2]). A general legal duty on ISPs to protect children on-line would also imply safety messages and systems to reduce paedophile approaches and child pornography on-line.

In sum, the Committee would recommend a background of legislation with supporting codes, in other words co-regulation rather than self-regulation.

([1]) See the site of the European Research into Consumer Affairs at 'www.net-consumers.org/erica/policy/topsites.htm'.

([2]) See ESC opinion on 'A programme for child protection on the Internet'; CES 1473/2001 annexe II p 15. EKATO, the Hellenic Consumers Association has revealed alarming cases of on-line gambling by children and also found that 36 % said that they misled their parents to use their credit cards on-line.

4.4.3. Racism on the Internet also needs a much firmer approach, as called for in the EESC Opinion on cybercrime [1]. Ninety per cent of the sites operate through US ISPs, safe in the knowledge that the EU authorities cannot compel US providers to reveal the identity of the site provider [2].

4.4.4. The E-Commerce Directive 2000/31/EC requires ISPs to take action to remove or block access if they are put on notice of illegal material. This means that a company hosting Websites on its computers is not liable for distributing illegal material if it is not aware of its existence. But if an ISP, or any web host, becomes aware that information is illegal, it must immediately remove it or bar access. The implementation of the EU E-Commerce directive should have taken place on 17 January 2002 [3], but only five member states have enacted it so far.

4.4.4.1. The Committee is very concerned that this is being undermined by the US courts. In France two cases have been brought under Section R 645-1 of the French Criminal Code, which prohibits the exhibition of racist propaganda and artefacts for sale. They required ISPs to block racist sites. However a US court, in San José ruled on 7 November, 2001 that the ISP does not have to comply with the French court ruling. An international agreement is urgently needed that the law of the user applies.

4.4.5. Content providers should always register real world addresses so that police access to potentially suspicious on-line material can be improved. Whilst freedom of expression is to be valued, it should not be an excuse for allowing crime to flourish.

4.5. *Filtering and rating systems*

4.5.1. No filtering software can replace the need for parents to keep an eye on what their children see on-line, and it is currently difficult to find protection against violent sites especially. However, recent testing by Test Achats, co-financed by the EU Internet Action Plan, shows good filters are probably the best way to block at least most 'adult' sites and the Committee considers their further development an important priority [4].

4.5.2. Filtering systems work in a number of ways

4.5.2.1. 'No' lists: A 'No' list of sites that should be avoided is drawn up (containing rude, violent or racist material for example) and if a child clicks on one of these sites, his or her access is blocked. Some programmes also work on lists of banned words. Once these words have been found in an address or in the site itself, access to the site is blocked. The problem with 'No' lists is that they need to be updated very often.

4.5.2.2. Real-time filtering: the filter checks words and/or pictures as they are called up and stops a page with an unwanted text or picture from being shown. The problem is that a page can be partially seen before the filter finds the offending word or picture. Also, the system can slow down access to websites.

4.5.2.3. Site labelling/rating: Owners of sites voluntarily give their web pages a label which shows whether their site contains certain material (e.g. violence, nudity, gambling, 'adult' , etc). The label and categories have been created by ICRA. The filter reads these labels and decides whether to allow access, depending on what parents have chosen to allow their children to see. The problem with this system is that it depends on owners of web sites voluntarily rating their own sites and so far not many sites are rated.

4.5.2.4. Walled gardens: Lists of websites that are suitable for young children are drawn up and then access is only allowed to a site which is on the list. This is the safest way to protect younger children.

4.5.3. Many of the filtering products are American. This means that the criteria for filtering can be very much influenced by American values, for example very strict about nudity, but

(1) ESC opinion on 'Information society/Computer-related crime'; OJ C 311, 7.11.2001, p. 12.

(2) Simon Wiesenthal Centre. See http://www.wiesenthal.com

(3) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) OJ L 178, 17.7.2000.

(4) For results see www.net-consumers.org/erica/policy/tafilter.htm

not so strict about weapons or violence. Many of the filtering products work mainly in English. There can be a big difference in price between filtering products and the more expensive ones are not necessarily better.

4.5.4. Recently consumer organisations in Belgium, Spain, Italy and Portugal carried out tests into 18 filtering software packages currently on the market and their best-buy was a free download. In general, pornographic sites were found to be filtered out rather well. At the same time, the programmes did not generally filter out inoffensive sites, including those where the name could have caused confusion. On the other hand, weapons sites, violence, hate, racism, drugs or sects passed fairly easily through the filters. Another problem was that filters tested were in general not able to withstand attempts by cyber-savvy children to switch them off. Many of the programmes were also not very user-friendly.

4.5.5. Efforts in the new plan should therefore focus on telling consumers what is available (for example, simple advice on filtering should be available with computers at point of sale) and on making systems easier to use (in a range of languages) as well as more effective against violent content. The Committee also repeats its call for all content providers to label their sites e.g. with ICRA (the Internet Content Rating Association). As stated in its Opinion on cyber crime, the Committee believes that the definition of illegal content should be expanded to include hate and racist material and dangerous sites such as bomb-making/suicide.

4.5.6. The Committee believes that the ICRA system, which relies on sites to rate and label themselves will only reach the critical mass needed if governments and industry support it much more strongly. It is vital that this should happen.

4.6. *Awareness raising*

4.6.1. The Committee has actively supported the IAP's efforts in this area, including through its Opinion on a programme of child protection on the Internet and its related hearing of industry and other interested parties. We offer to host one of the sessions of the new Safer Internet Forum. In addition, the Committee will use its network of Joint Consultative Committees with many of the candidate countries to inform them about this initiative. Policing cannot on its own solve the challenges of the Internet.

4.6.2. The Committee has often found that comparative pan-European statistics are lacking to provide the needed back-up to action plans and legislation. This area is no exception. The new awareness raising projects should be used to help generate statistics on the level of risk to children on-line. For example, the EU should have readily available comparative data on the number of internet related crimes against children. Data from hotlines only indicate the number of reports of on-line child pornography.

4.6.3. Industry should take an active part, for example posting safety messages especially at entrances to chat rooms, providing information on and downloads of effective filtering systems ([1]), promoting rating of sites and providing 'notice and take down' systems including for children. The example of the Irish code of conduct which provides that 'customers may not use the ISP's services to create, host or transmit any unlawful, libellous, abusive, offensive, vulgar or obscene material' should be followed ([2]).

4.6.4. The Commission can maximise the impact of awareness raising messages by incorporating them in existing programmes such as E-Europe and E-learning and through decentralisation. IT training for parents and children should incorporate safety training. The schools have a key role to play.

([1]) Sample safety tips to print off and stick to the computer:
'It's a really bad idea to meet someone from the Internet — unless your parents go with you, in a public place.'
'Remember, people can pretend on-line, no-one can see them.'
'So do not give them personal stuff like your address, school name, photo or password either. They might be a freak!'
'If you spot something really rude, or get someone bothering you on-line, it's not your fault. Tell your parents.'
Source www.net-consumers.org.

([2]) Internet Service Providers of Ireland Code of Practice and Ethics, point 5.1.1, p. 11; available on www.iab.ie/Publications/Reports/d33.PDF.

4.7. *International co-operation*

4.7.1. The Committee supports the proposed programme of international co-operation. It recognises however that the US feels constrained to some extent by the first amendment in favour of 'free speech' whereas the EU is seeking to balance this with safety needs and human dignity. In the end, the EU is a big enough market to take action on its own and this is an important example where citizens are looking to the EU to protect them.

Brussels, 18 September 2002.

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 adopting a multiannual programme for action in the field of energy: "Intelligent Energy for Europe" Programme (2003-2006)'

(COM(2002) 162 final/2 — 2002/0082 (COD))

(2003/C 61/07)

On 6 May 2002, 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 September 2002. The rapporteur was Mr Morgan.

At its 393rd Plenary Session held on 18 and 19 September 2002 (meeting of 18 September) the Economic and Social Committee adopted the following opinion by 127 votes for, three against and one abstention.

1. **Introduction**

1.1. The Commission has made a proposal for a Decision of the European Parliament and the Council on a multiannual programme for action in the field on energy — the 'Intelligent Energy for Europe' programme — for the period 2003 to 2006. With a budget of EUR 215 million, the programme implements the strategy outlined in the Green Paper on security of energy supply, founded on renewable energy sources and energy saving.

1.2. This proposal does not relate to the whole of EU energy policy but specifically to actions in the fields of energy efficiency and renewable energy. It deals only with the EC treaty and not with Euratom and it excludes consideration of research and development which will be covered by the 6th Framework Programme. Intelligent energy is about the improved use of energy (energy efficiency) and encouraging the use of renewable sources of energy.

1.3. The programme aims to complement and help implement the various legislative measures agreed by the Community in the fields of energy efficiency, renewable energy sources and transport. These include the Directive for the promotion of electricity produced from renewable energy sourcesin the internal market (Directive 2001/77/EC); proposal for a Directive on the promotion of the use of biofuels for transport ([1]); proposal for a Directive on the energy performance of buildings ([2]); proposal for a Directive on the promotion of co-generation based on a useful heat demand in the internal energy ([3]).

1.4. The programme is designed as the main Community instrument for non-technological support in the field of energy. This is a new programme but it also provides continuity for the actions under the Altener, SAVE and Synergy

([1]) COM(2001) 547 final.
([2]) COM(2001) 226 final.
([3]) COM(2002) 415 final.

programmes. It aims to strengthen the renewable energy sources and energy efficiency strands of these programmes, introduces a third strand on energy in transport and a fourth strand on international collaboration with developing countries, promoting renewable energy sources and energy efficiency. It also aims to strengthen measures to disseminate and encourage best practice through awareness campaigns, education and promoting investment in new technologies.

1.5. The programme is structured in four specific areas: rational use of energy and demand management (SAVE), new and renewable energy sources (Altener), energy aspects of transport (Steer), and promotion at international level in the fields of renewable energy sources and energy efficiency (Coopener). Actions to be funded will include: implementation of strategies; development of standards; creation of structures and financial and market instruments; promotion of systems and equipment to ease the transition from demonstration to marketing; development of information and education structures and utilisation of the results; monitoring and assessment.

1.6. The Commission is also considering delegating certain programme management tasks to an executive agency and the document sets out the range of tasks that such an agency would undertake. However, there is no formal proposal on this at present. This will be subject to a separate proposal for a Decision as soon as the Council Regulation laying down the statute for executive agencies, to be entrusted with certain tasks in the management of Community programmes, has been adopted.

2. **General comments**

2.1. The Economic and Social Committee welcomes the Intelligent Energy proposal, as this accords with a number of earlier recommendations made by the Committee about the need to promote energy efficiency, renewable energy sources and the transfer of energy saving technology and know-how to developing countries (ref: ESC Opinion on Green Paper — Towards a European strategy for the security of energy supply ([1])). The proposed Intelligent Energy programme brings together four key elements of energy policy that need to be tackled effectively to deliver energy security in the present political context and to enable the Community to meet its sustainability goals and its international obligations on climate change.

2.2. There is substantial unmet potential for energy efficiency in buildings and industry — estimated by the Commission to be 18 % of current total consumption ([2])). The Commission's action plan to improve energy efficiency (which includes the measures proposed in this Intelligent Energy programme) is designed to achieve two-thirds of this potential by 2010. To do this it will need to achieve an improvement of 1 % a year compared with an average of 0.6 % over the past ten years. This would contribute about 40 % of the CO_2 emissions reductions needed to meet the EU's Kyoto commitment.

2.3. Renewable energy sources currently represent 6 % of energy supply and 14 % of electricity production in the EU. The Committee has previously noted that renewable energy sources have a significant role to play in combating climate change and that they will help to diversify energy sources to provide energy security, in particular, by lessening dependence on imported energy sources (Opinion on renewable energy sources 2000). The Committee has emphasised the need for strong action to make optimal use of renewable energy sources and sees a clear need for incentives to increase their use (Opinion on renewable energy sources 2000). The Communication from the Commission entitled 'Energy for the future: renewable sources of energy — White Paper for a Community strategy and action plan' ([3]) sets an indicative target of 12 % of energy (22 % of electricity production) supply from renewable energy sources by 2010.

2.4. Transport policy must be a priority for action as transport absorbs over 30 % of total final energy consumption (ref: Action plan to improve energy efficiency in the European Community). The long-term EU target is a 50 % reduction in CO_2 emissions per passenger-kilometre and per payload-kilometre. In the shorter term the aim is 5-10 % energy savings to achieve aggregate reductions in CO_2 emissions. The EU has reached a voluntary agreement with car manufacturers to reduce the average CO_2 emissions of new cars by one-third by 2005/2010 compared to 1995 levels.

2.5. In its Opinion on the Green Paper on security of energy supply the Committee stressed the need for action by the EU to support developing world countries' efforts to achieve sustainable development. Developing countries currently use far less energy per capita than do the countries in the developed world, largely due to their much lower living standards. It is right that living standards and energy use should rise in developing countries, but the challenge will be to achieve those

([1]) COM(2000) 769 final.

([2]) COM(2002) 162 final, p. 21.
([3]) COM(97) 599 final.

higher standards without substantial increases in emissions. There will be temptations for developing countries to seek short-term cheap energy sources rather than adopt long-term sustainable efficient and renewable structures. However, such measures can be more cost effectively provided at the development stage rather than later. The need to promote best practices in the fields of renewable energy sources and energy efficiency and to transfer them to developing countries in particular, is thus rightly one of the Community's priorities as regards international commitments, along with strengthening co-operation on the use of flexible mechanisms of the Kyoto protocol.

2.6. The evaluation of the previous programmes (Altener and SAVE 1991-97 and the first two years of the First Energy Framework Programme 1998-2002) recognised the value of these programmes and the contributions that they had made to reducing CO_2 emissions, but also identified areas where improvements were needed. These included: the need for better co-ordination and consistency between the various programmes; the need to improve methods of selection, evaluation and management of the programmes and the dissemination of results. The evaluation recommended that in future there should be a single programme rather than separate ones for energy efficiency, renewables etc.

3. **The main issues**

3.1. In order to assess this proposal the Committee therefore has to determine: whether the Commission's proposal meets the challenges set by climate change, and the need for sustainable development, economic competitiveness and energy security; and whether it will realise the potential for energy efficiency and renewable energy sources to contribute to these challenges both within and beyond the EU in industry, buildings and transport.

3.2. The Commission's energy efficiency target of a 1 % per annum reduction up to 2010 will be challenging. The 0.6 % annual improvement over the past ten years may not be easily sustainable (let alone easy to beat) as much of this has come from a switch from energy intensive industry to services. Industrial use now accounts for less than one-third of the non-transport total and this will continue to decline as the economy restructures further towards services and the remaining industry becomes more energy efficient. Energy use is actually increasing in what are now the two largest sectors (households and the service/public sector) although it is falling in the industrial sector. These sectors are particularly increasing their use of electricity for appliances and equipment and air conditioning is another growth area.

3.3. The Commission's target for renewable energy is ambitious as, on a business-as-usual basis, renewable energy sources would be expected to meet only 8 % of energy supply by 2030 ([1]). Many renewable energy sources are far from competitive with traditional energy sources when externalities are ignored and therefore, if left to the market, their uptake will be difficult to increase at the level needed to meet the Commission's target.

3.4. CO_2 emissions from transport are expected to increase by about 40 % between 1990 and 2010. Turning this around, in the absence of further specific measures to tackle transport use, will be extremely challenging, especially if externalities continue to be discounted.

3.5. As noted above, energy demand will need to increase in developing countries in the future and there is a danger that opportunities to build in energy efficiency and renewables could be lost if action is not taken swiftly enough.

3.6. In view of these challenges there is also a question about whether the legislative package at Community level is complete. Whilst there is a need to strike a balance between regulation and the market, effective legislation is required in a number of areas. Although there is a broad range of measures in place or in the form of draft directives, some are not legally binding (e.g. household appliance and office equipment labels and standards). Others set indicative targets (e.g. for renewable energy sources) but effective realisation of these at least in some Member States remains in question.

3.7. There is also a need for a greater commitment to intelligent energy at Member State level. As the Commission notes (p. 21) most Community measures on energy efficiency are not binding on the Member States. This support programme is therefore a useful means of securing greater commitment at Member State level, but it can only make a

([1]) COM(2001) 769 final.

small contribution. Member States must therefore be encouraged to step up their commitments to improve energy efficiency and use of renewable energy sources through appropriate legislative and support mechanisms. Indeed, some legislation may be more appropriately developed at the national rather than EU level to take account of specific circumstances in individual countries. The key test for this programme therefore will be the extent to which it can harness and share the knowledge and capabilities existing in Member States.

3.8. At Member State level there are also economic opportunities to promote energy efficiency and CO_2 reduction. They can be achieved both by favourable tax policies and support measures for renewable energy sources.

3.9. In the view of the Committee, the Intelligent Energy programme can make a valuable contribution towards the goals of energy security, sustainable development and tackling climate change. However, in order for the programme to deliver a step change of the level required there are a number of other preconditions. Firstly, in some situations, according to the different circumstances in each country, there may be a need on a selective basis for legislation and economic instruments to bring about change. Secondly, advances in transport, energy efficiency and renewables all depend upon successful research and development and the effective implementation of the 6th Framework Programme. In this context, the Committee draws specific attention to its Opinion 'Research needs for a safe and sustainable energy supply' (CES 578/2002). Finally, the role of the proposed Agency will be critical: it has to have the mission and scope to bring about change of a kind that we have not yet seen.

4. **The programmes and the budget**

4.1. The Committee supports the proposal to bring together the different aspects of intelligent energy — energy efficiency, renewables, transport and international work — into a single programme. As the evaluation of the programmes to date found, this should make efforts more effective and cohesive and help to avoid conflicts and duplication. The benefits of having a single programme will come not just in terms of more efficient administration but also in the easier facilitation of cross-programme opportunities — e.g. programmes and projects that tackle energy efficiency and renewables, or buildings and transport, for example.

4.2. SAVE and Altener are programmes that have been in existence for some time. However, Steer and Coopener are essentially new programmes and it would therefore have been helpful if the Commission had provided more information on what they are intended to achieve. This is particularly so given that they have relatively small indicative budgets and will therefore need to be well focussed if they are to make any impact.

4.3. The Committee welcomes the proposal to define key actions, which should help to focus the programme and enable it to have a greater impact. Without this there is a danger that resources could be spread too thinly and that dissemination of results becomes too unwieldy. The evaluation of the previous programmes found that there had been too many small programmes with limited impact.

4.4. The Committee approves the Commission's emphasis on the need 'to bring about a genuine change in consumer behaviour'. This must be the focus of key action programmes in all Member States. Likewise, the Committee approves the Commission's recognition of the importance of education and training. It also stresses the need to appeal to young people with energy integrated into the school curriculum and into competition and award schemes.

4.5. The document (table p. 19) talks of the possibility of combined key actions covering several specific areas. The Committee considers it would be valuable to ensure that key actions and projects that combine two or more of the four fields of action can be developed. For example, there is an opportunity to make better links between actions to utilise renewable energy sources and improve energy efficiency in buildings so that a co-ordinated approach to low emission or zero emission buildings can be developed.

4.6. There are three further areas where the Committee would like to see a key actions. Firstly, in the role of energy suppliers — in particular to encourage them to offer comprehensive energy services to customers that include both renewable energy sources and energy efficiency. Secondly, to ensure that architects and developers realise opportunities to maximise energy efficiency in new buildings. Thirdly, to develop, where appropriate, the role of energy efficiency and renewable energy in carbon valuation and emissions trading schemes.

4.7. The Committee welcomes the increase in budget for Intelligent Energy compared to its predecessor programmes. There is of course a question, given the scale of the task, as to whether even this increase in budget is likely to be adequate. However, given the findings of the evaluation of previous programmes about the need for improvements in programme management, it would seem unwise to increase the budget too substantially too rapidly as pressures to spend the money might lead to inefficiencies. The Committee expects appropriate financial controls to be applied. The Committee believes that the budget level proposed by the Commission represents a sensible compromise. In arriving at this conclusion the Committee takes into account the commitment for additional funding when enlargement takes place and also the presumption that the Agency will be able to lever effectively the skills and resources of the Member States.

4.8. The Commission says that the programme aims to link the support initiatives (SAVE etc.) with the legislative actions. This is welcome, but it is unclear how this will be done. One option might be to consider, in determining the key actions, how these might link to specific pieces of legislation such as the proposed energy in buildings directive.

5. **Executive Agency**

5.1. It is difficult for the Committee to make fully informed comments on the idea of an Executive Agency without seeing the proposal for a Decision on the agency alongside this proposal.

5.2. It is the Committee's understanding that the Executive Agency envisaged in this proposal will have the following characteristics. Firstly, its work and in particular the selected action programmes will be determined by a committee led by the Commission and involving Member States. Secondly, a small number of Commission staff will be seconded to the Agency to manage the action programmes. Thirdly, the action programmes themselves will be staffed by staff recruited on a contract basis. The concerns to which this proposal gives rise are that: the know-how generated will be lost if staffing is transient; the work of the Agency will be narrowly specified and will ignore the full scale and scope of Member State activities.

5.3. Currently, there is no organisation at EU level that performs the crucial role of promotion and dissemination to the level that is required. These tasks require an improved effort by the Commission as the evaluation of the previous programmes concluded. It is not something that individual Member States can easily perform, as it requires good networks throughout the Member States. Such a role would add considerable value to individual Member State action. It could have a particularly important role to play post enlargement, as the new members will particularly need the information that it could provide.

5.4. The Intelligent Energy programme needs to achieve more than just demonstration projects; where projects and programmes lead to successful outcomes these need to be widely implemented. In particular, it must become its key interface from its 6th framework programme into the market.

There is also an important role to be played in the delivery, dissemination and promotion of the Intelligent Energy programme by relevant energy agencies and centres at Member State and regional level. In particular, such agencies could provide the link between the Commission and the Agency and local organisations, providing a more cost effective and responsive method of supporting smaller projects which may be difficult for the Commission to support directly.

5.5. The Committee recognizes that the Executive Agency has three advantages: it is 'off-budget' , it facilitates a 'quick start' and it allows necessary skills to be recruited. However, these are short-term palliatives and ignore the long-term issues. The Committee feels that the Commission must go further than is presently proposed and choose one of the two following options: either establish a fully fledged traditional agency with a wide-ranging brief for leveraging country skills, competencies and resources; or locate such a mission within the Commission staff with the necessary resources and objectives. This is because it is a sector of considerable strategic concern which must have the full weight of the Commission behind it.

6. **Conclusion**

There are unresolved issues relating to the agency proposal — in the Committee's view there is a need for more than an executive arm for a limited number of action programmes, if the full opportunity of Intelligent Energy is to be realised. Furthermore, the Intelligent Energy proposal itself will not achieve the scale of change needed for the EU's strategic and

sustainable energy goals unless other preconditions are met: Member State commitment; selective legislative support; economic instruments; successful research and development outcomes. The case for a full EU strategic energy initiative still needs to be answered. Nevertheless, the Committee believes that the programme proposed by the Commission is valuable. It needs to be put in place by the end of 2002, so this decision should be made forthwith.

Brussels, 18 September 2002.

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 the Council on additives for use in animal nutrition'

(COM(2002) 153 final — 2002/0073 (COD))

(2003/C 61/08)

On 10 April 2002, the Council of the European Union decided to consult the Economic and Social Committee, under Articles 37 and 152(4)(b) 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 29 August 2002. The rapporteur was Mr Scully.

At its 393rd Plenary Session on 18 and 19 September 2002 (meeting of 18 September) the Economic and Social Committee adopted the following opinion by 129 votes to one, with five abstentions.

1. **Background**

1.1. Anti-microbials have been used as growth promoters, especially in pig and poultry farming for more than four decades. The use of growth promoters leads to 4 — 5 % more body weight for animals receiving them. Much larger amounts of antibiotics are used in this manner than in medical applications: in Denmark in 1994, 24 kg of the glycopeptide vancomycin were used for human therapy, whereas 24 000 kg of a similar glycopeptide avoparcin were used in animal feed.

1.1.1. The use of antibiotics, in various states of purity, as feed additives has increasingly come under regulation, first nationally and then, with the adoption of Council Directive 70/524/EEC [1] and 96/51/EC [2], on an EU-wide basis.

1.2. In 1999, the Scientific Steering Committee (SSC) expressed great concern about increasing health threats due to anti-microbial resistance and recommended immediately to reduce the inappropriate use of anti-microbials. The core strategy of reducing anti-microbial use should apply equally across each of the areas of human medicine, veterinary medicine, animal production and plant protection.

1.3. Emergence of anti-microbial resistance is a multifactoral problem and thus requires a multifaceted solution and it has

[1] OJ L 270, 14.12.1970, p. 1-17.
[2] OJ L 235, 17.9.1996, p. 39-58.

therefore been subject of debate at various national and international bodies such as the World Health Organisation ([1]), the World Organisation for Animal Health (OIE), the 'Copenhagen' conference ([2]), the EU Consumer Committee ([3]) etc. The Economic and Social Committee produced an own initiative opinion ([4]), that was explicitly welcomed by the June 1999 EU Health Council Resolution, that followed most of its recommendations.

1.4. Since the 1970s the European Commission has banned the use of more than 20 antibiotics for use in animal husbandry. In addition, the Council of Ministers by its Regulation (EC) 2821/98 ([5]) of 17 December 1998 accepted the European Commission's proposal to ban four antibiotics used as animal growth-promoters (bacitracin zinc, virginiamicyn, thylosine phosphate and spiramycin) entering into force since 1 July 1999.

1.5. In June 2001, the European Commission published a Communication on a Community Strategy against antimicrobial resistance ([6]). The strategy details priority actions in four key areas: surveillance, prevention, research and product development, and international cooperation. It also included a recommendation on the prudent use of antibiotics in human medicine, which has been adopted by the EU Health Council on 15 November 2001.

1.6. The Commission has now proposed to phase out by January 2006 the four remaining antibiotics (monensin sodium, salinomycin sodium, avilamycin and flavophospholipol) currently authorised for use as growth-promoters in feed. The proposal ([7]) represents a major streamlining and simplification of the existing rules on the safety evaluation and marketing authorisation of feed additives. The proposal concerns additives intended for use in feedingstuffs and in drinking water for animals.

1.7. The Commission proposes in the draft regulation on additives for use in animal nutrition the following improvements of the status quo:

— new authorisations for feed additives to be granted for a ten-year period only;

— the re-evaluation of feed additives authorised under existing legislation within the next seven years;

— an obligation on companies to demonstrate the efficiency of the product and the absence of a risk for human health, animal health and the environment;

— evaluations by the European Food Safety Authority;

— maximum residue limits for some feed additives, to be controlled through a post-monitoring system;

— a clear and transparent authorisation procedure;

— stricter measures in the case of coccidiostats, if they were of antibiotic origin; a new dossier for re-evaluation to be presented by the applicant within a four-year period.

2. **General comments**

2.1. The debate whether animal husbandry can do without antibacterial growth promoters continues. Sweden has demonstrated that procedural modifications can decrease the use of antibiotics as feed additives; the antibacterials are prohibited as growth promoters since 1986 ([8]). Learning from the Swedish experience, agricultural science should define conditions for animal rearing without use of antibacterial growth promoters and without sacrificing productivity.

2.2. The Committee welcomed the White Paper on Food Safety ([9]) aims in respect of upgrading food safety in Europe (applying the farm to fork approach), consequently recognising

([1]) WHO Global Principles for the Containment of Anti-microbial Resistance, Report of a WHO consultation with the participation of the Food and Agriculture Organization of the United Nations and the Office International des Epizooties Geneva, Switzerland, 5-9 June 2000.

([2]) The Copenhagen Recommendations. Report from the Invitational EU Conference on The Microbial Threat. Copenhagen Denmark, 9-10 September 1998, http://www.sum.dk/publika/micro98/ws_2.htm

([3]) Opinion of the Consumer Committee adopted on 1 March 1999 on 'Resistance to antibiotics — a threat to public health' http://europa.eu.int/comm/consumers/policy/committee/cc08_en.html

([4]) Resistance to antibiotics as a threat to public health CES 1118/98, OJ C 407, 28.12.1998 and Council Resolution, OJ C 195, 13.7.1999, p. 1-3.

([5]) Council Regulation (EC) No 2821/98, OJ L 351, 29.12.1998, p. 4-8.

([6]) COM(2001) 333 final.

([7]) Proposal for a Regulation of the European Parliament and the Council on additives for use in animal nutrition COM(2002) 153 final.

([8]) Weirup M. 1998. Preventive methods replace antibiotic growth promoters: ten years experience from Sweden. APUA Newsletter 16(2):1-4.

([9]) COM(1999) 719 final.

the importance of feedingstuffs for the safety of food and any possible threat to human health linked to food consumption.

2.2.1. In this respect, the Committee particularly welcomes that the European Commission has chosen in this occasion as legal instrument a regulation (instead of a directive), which has clear enforcement advantages.

2.3. The EESC supports the Commission proposal aiming to streamline the authorisation procedure for feed additives and to phase out the remaining four antibiotics used for growth promotion. While for some Member States the delay in phasing out the remaining antibiotics for growth promotion might not be acceptable, for other countries this might be of major concern since comparable, effective alternatives might not be available or not developed yet. The Committee thinks that the European Commission offers an acceptable compromise. In no case, however, would any further delay be acceptable.

2.4. The Committee particularly welcomes the safeguard clause foreseen in the legislation with respect to the renewal of authorisation.

2.5. The current procedure for authorising new additives or new uses of additives is upon request of the applicant company or, if the applicant is located in a third country, of a selected Member State acting as rapporteur. This evaluation will now be transferred to the EFSA. The EESC is in favour of a centralised procedure and supports indeed the linkage between feedingstuffs, food safety and human health as expressed in the EESC opinion on the White Paper on Food Safety ([1]). The Commission proposal correctly centralises the authorisation procedure.

2.6. In addition to the measures proposed, the Committee suggests the introduction of symbols/logos to clarify the target use of such substances either as feed additives or as medicinal products.

2.7. Use and licensing of animal additives or veterinary medicines varies tremendously worldwide. In developing countries, which are responsible for about 25 % of the world-meat production, policies regulating veterinary use of antibiotics are poorly developed or absent. In Southeast Asia, use of anti-microbials in shrimp farming is hardly regulated. The problems caused by inappropriate use of antibiotics reach beyond the country of origin. Meat products are traded worldwide, and bacterial populations evolve independently of geographical boundaries.

2.7.1. The EESC is therefore concerned that this proposal does not sufficiently identify the obligations of applicants from third countries and not least multinational companies acting from outside Europe but of EU origin. The EESC suggests to include more precise provisions in this proposal covering such areas of ambiguity.

2.8. The EESC agrees that action by the Community relating to human health, animal health and the environment should be based on the 'precautionary principle'. The Committee assumes that the authorisation procedure is strictly following this principle already and consequently any subsequent action should be based on new emerging evidence on risks to human or animal health or the environment. The Committee would prefer further detailed consideration in this draft legislation with regard to the application of the precautionary principle, in order to avoid improper use.

2.9. The general objectives of this draft regulation set out that the European Food Safety Authority (EFSA) will have the competence and responsibility to provide a single address for dossier evaluation for all feed additives, bringing clarity, efficiency and transparency to the process. The adoption of an assessment report and a public consultation process have been mentioned. It is also recognised that scientific risk assessment alone cannot, in some cases, provide all the information on which a risk management decision would be based, and that other factors relevant to the matter under consideration should legitimately be taken into account, such as ethical factors, feasibility of controls and the benefits for the animals or for the consumer of animal products. It is therefore suggested, that the authorisation of an additive should be granted by the European Commission.

2.9.1. The EESC is concerned that the text provides no information how this scheme should function in practice. The process of public consultation, which might actually bring other legitimate factors to the attention of the stakeholders and politicians involved, has not been further considered. The European Commission should therefore further explain the actual implementation process of this draft regulation.

([1]) Opinion CES 585/2000, OJ C 204, 18.7.2000.

2.10. Veterinary medicinal products as defined in Directive 2001/82/EC [1] could be considered to include coccidiostats. The latter are in-feed agents administered throughout the life of a broiler chicken, for example, to prevent the disease of coccidiosis. The Directive defines a Veterinary Medicinal Product as: 'Any substance or combination of substances presented for treating or preventing disease in animals.'

2.10.1. The Committee considers that all agents used for disease treatment and/or prevention should be licensed as veterinary medicines in accordance with the definitions provided in Directive 2001/82/EC. The Committee is aware that several widely used coccidiostats, none of which have application in human medicine, are produced wholly by fermentation processes and are considered of non-human pharmaceutical quality (so called 'feed grade').

2.10.2. The Committee recognises that as a consequence of the latter, the classification of coccidiostats as veterinary medicines may at present pose bureaucratic difficulties in the EU. Nevertheless, the Committee wishes to encourage the European Commission to look again into this subject and to propose any necessary changes required, in the EU Veterinary Medicines legislation and/or in Pharmacopoeia, which would be necessary to accommodate the coccidiostats, including those based on feed grade antibiotics.

2.10.3. The Committee also favours the approach of dealing with the coccidiostats within the scope of Directive 2001/82/EC in agreement with the Federation of European veterinarians (FVE) which believes that these products must be maintained on the market but it would recommend subjecting their use to a veterinary control through a veterinary prescription. This would follow the recommendations from many international bodies such as the OIE or the WHO and would offer additional guarantees for a rational and prudent use of these substances, along the lines of the principles developed by the FVE in its guidelines on 'The prudent use of antibiotics in veterinary medicine' communicated in 1999.

2.11. The Committee thinks however that alternative substances to replace cocciodiostats should be considered and dealt with in this proposal; in particular, emphasis should be granted on research on the irreversibility of resistance among protozoa. The Committee endorses the FVE recommendation to the European Commission to give priority to research projects into alternatives to coccidiostats (through its 5th and 6th Research Programme), as coordinated efforts between European scientists could be decisive for a long-term solution to this problem.

2.12. Additives that are either genetically modified or produced from a GMO should first comply with the requirements of and be evaluated according to the Regulation on genetically modified food and feed, prior to undergoing the authorisation procedure under this proposed Regulation. GMOs, which contain genes expressing resistance to antibiotics in use for medical or veterinary treatment, should not be released into the environment. This position is affirmed in the past by the EESC: 'As a precautionary measure to protect the environment and health, the ESC is of the view that no antibiotic-resistant marker genes should be used when genetically modified organisms are deliberately released into the environment' [2].

2.13. The Commission acknowledges that detailed labelling of the product should be required since it enables the final user to make a choice in full knowledge of the facts. Particular rules for the labelling of feed additives are laid down in this draft legislation. The Committee is concerned that no explicit links are made to other important labelling requirements, such as for the labelling of additives consisting or being produced from GMOs.

2.13.1. The EESC finds it important that based on meaningful feed additive information, properly indicated, the farmers would be able to perform their duties as regards to the appropriate use of such substances in order to avoid inducing any harmful effects to public health. The latter requires adequate labelling measures.

2.14. For certain categories of additives the proposal foresees a post-marketing monitoring program. It is not clear who is going to decide whether such monitoring will be necessary. The EESC supports full transparency regarding any monitoring requirements. The results of monitoring should be made available to the public.

2.14.1. The Committee, in agreement with FEDESA (European Federation of Animal Health), believes that a post-marketing surveillance system, as laid down in the relevant EU legislation, should be used for in-use monitoring of any adverse effects of these products after the marketing authorisation has been granted.

[1] OJ L 311, 28.11.2001, p. 1.

[2] See point 2.8.1 of the Opinion CES 1117/98, OJ C 407, 28.12.1998.

2.15. A proposal for the establishment of MRLs in the relevant foodstuffs of animal origin is foreseen as part of the authorisation procedure. The Committee strongly believes that the risk assessor, the EFSA, should not decide whether or not to establish an MRL. This should be a decision to be made by the risk manager, in this case the European Commission, reacting on the advice of the risk assessor.

2.16. There are indications that the therapeutic usage of antibiotics has increased recently, since the ban on the use of some antibiotics as growth-promoters. Some of these antibiotics, such as amoxicillin, are also used in human medicine. At a WHO meeting with experts in this field, in October 1997, the group of experts considered that attention must be given to the risks associated with the widespread use of fluoroquinolones as medicines for animals, especially as these drugs are an important group of antibiotics in human medicine.

2.16.1. In this respect, the EESC demands that the monitoring of anti-microbial consumption should not be limited to human medicine but extended to veterinary medicine and agricultural use together with strict control of the therapeutic use of antibiotics. This is in order to ensure that existing legislation is strictly respected and not undermined by increased and uncontrolled use of antibiotics that should only be used to cure sick animals.

2.16.2. The Committee finds it important to keep a close link to the monitoring and control of zoonoses and zoonotic agents with regard to the recognition of antibiotic resistance.

2.17. Proper enforcement of the legislation is crucial. The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are fully implemented. These penalties should be harmonised and laid down in the appropriate EU Regulation. The EESC wishes to stress the importance of controls carried out by qualified inspectors and strongly believes that the strict application of penalties in case of non-compliance is the key for effective implementation of the legislation. The EESC wishes to have a strong link made with the legislation proposed by the European Commission on 'Official Food and Feed veterinary controls' ([1]).

2.18. The EESC expresses its concerns regarding the rising costs of livestock production due to this European Commission proposal, tackling compensation measures if necessary, as EU livestock production would become less competitive on the world market.

2.19. The provisions on imported meat from animals must fully comply with EU-rules in order to avoid distortion of competition and assure the EU consumers' protection. The EU should make a serious effort to get the latter endorsed by the WTO. In fact this point relates also to animal welfare conditions and the use of growth hormones and additives in general.

2.20. The EESC would like to note that in addition to coccidiostats other medicinal substances authorised today as feed additives should be moved under the EU legislation covering veterinary medicinal products.

2.21. The EESC wishes to ask the European Commission to anticipate the phasing out date (2006) foreseen in Article 12 of this proposal, serving so the interest of all parties involved.

3. **Specific comments**

3.1. The proposal defines various technical terms or expressions used in the text.

3.1.1. The Committee is concerned that the proposal fails to define coccidiostats.

3.2. As the MBMs' ban is temporary, the EESC believes that this proposal should clearly indicate the risk involved by the use of additives of animal origin and should foresee comprehensive policy measures.

3.3. The EESC misses more detailed information on how to guarantee transparency of the authorisation procedure as the Committee considers it insufficient just to publish the opinion of the EFSA. The process of establishing the opinion is crucial with regard to the transparency of the system and therefore at least the summary of a dossier (after deletion of any information identified as confidential) should be available to the public for a defined period of time to allow for comments.

3.4. The establishment of MRLs should be an integral part of the authorisation procedure. The suggestion of the EFSA for the non-application of MRLs should not prevent the European

([1]) COM(2002) 377 final.

Commission from requesting further research into the area with the aim to establish MRLs. In any case the MRLs should be fixed before an authorisation is granted.

3.5. The risk assessment procedure will be carried out by the EFSA. The Committee finds it important that the risk assessment procedure should follow a codified modus operandi, which should be publicly accessible.

3.6. The status of existing products needs to be checked and therefore notification and accompanying particulars as explained in this proposal need to be supplied to the EFSA. The proposal refers to a Regulation that needs to be applied in case of non-notification or incorrect submission of particulars to the EFSA. The Committee is concerned that no further details are given as to the content and timeframe for adoption of such legislation.

3.6.1. Moreover the Committee is concerned that the timeframe for the withdrawal of products, not notified in time or for which the dossier was considered deficient, has not been defined.

3.7. For carrying out controls on the authorisation of animal feedingstuffs the draft legislation makes certain provisions. The EESC believes that these provisions are insufficient to carry out effectively such controls.

3.7.1. The Committee therefore suggests properly defined assignment of duties undertaken by the national Control authorities.

3.7.2. The Committee is also in favour of the establishment of a clear reporting procedure from the MS to the European Commission referring to incidents of non-compliance.

3.8. This draft legislation explains the tasks of the Community reference laboratories. The Committee finds it important to spell out the need for the establishment and publication of validated test methods in order to perform necessary substances testing as it is a precondition for any efficient controls.

3.9. The Committee regrets that the proposal fails to include special labelling requirements resulting from special legislation dealing with GMOs and asks for appropriate amendment of the proposal.

3.10. The Committee urges the EU Commission to seek for an agreement on internationally accepted rules, regarding the application of the precautionary principle, under the umbrella of Codex Alimentarius.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Towards a Thematic Strategy for Soil Protection'

(COM(2002) 179 final)

(2003/C 61/09)

On 12 April 2002 the Commission decided to consult the Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 August 2002. The rapporteur was Mr Nilsson.

At its 393rd Plenary Session on 18-19 September 2002 (meeting of 18 September), the Economic and Social Committee adopted the following opinion by 139 votes in favour, with no dissenting votes and one abstention.

1. Gist of the Commission's communication

1.1. The 6th Environmental Action Programme and the Strategy for Sustainable Development presented by the Commission in 2001 stated that soil must be protected against erosion and pollution and pointed out that soil loss and declining fertility are eroding the viability of agricultural land. This Commission communication [1] is a first step towards the framing of a Thematic Strategy for Soil Protection.

1.2. The components of this communication are both descriptive and action-oriented. It details the impact on soil of both external and manmade factors, such as erosion, decline in organic material, local and diffuse soil contamination, soil compaction, decline in soil biodiversity, salination, floods and landslides, etc.

1.3. Soil is defined in this connection as the upper layer of the earth's crust, and as being of key importance for all human activities and for society as a whole. Soil also plays a major role in water protection and exchange of gases with the atmosphere.

1.4. In addition, the Commission comments on the interrelationship of soil protection with other spheres of Community policy (the Nitrates Directive and Water Framework Directive, the Air Quality Directive, the Common Agricultural Policy, Transport Policy and Research Policy).

1.5. The Commission gives a thematic overview of the situation in the applicant countries.

1.6. In its conclusions on threats to soil, the communication observes that soil deterioration is caused, or aggravated, by human activities. All countries are affected, albeit to different degrees and for different reasons; this trend is worsening and climate changes are tending to exacerbate the effects.

1.7. In the communication the Commission deals solely with soil as defined for the purpose of the communication and does not cover land use, which will be studied in another communication on the geographical dimension, in 2003.

1.8. The communication also states that the development of an EU soil protection strategy will take time. Soil protection objectives must be integrated into several areas of EU policy but they will have both a local and a regional dimension. From the current year (2002) onwards, the Commission intends to propose a series of environmental measures designed to prevent soil contamination related to mining waste, sewage sludge and compost. By June 2004 at the latest the Commission intends to present a progress report on the technical measures taken and legislative proposals and initiatives for soil protection.

1.9. One major component of the Commission's communication is the proposal to establish a future monitoring system with a view to collecting data and knowhow with a view to future action and proposals. The Commission announces a concrete proposal on this matter, again by June 2004.

2. General comments

2.1. A natural resource which has been built up over many years, soil provides the basis for food production, has been taken over by cities and densely populated areas and serves

[1] COM(2002)179 final.

for the construction of modern infrastructure, distribution networks, roads, etc. We occupy and use soil for many different purposes. Frequently there is a clash of objectives when a change occurs in soil use. The laws of many Member States recognize that society can invoke rules to expropriate land when it is in the general interest. Soil protection therefore concerns both soil and soil properties and the use to which it is put.

2.2. Though the European Union has framed common strategies for water and air preservation and protection, there are no common long-term strategies for soil protection. In its own-initiative opinion on the use of sewage sludge in agriculture, the EESC called for a proposal on an EU soil protection strategy ([1]).

2.3. In the light of the above, the EESC welcomes the Commission's communication on a thematic strategy and is keen to support this work in the shape of the following comments.

2.4. The recent very heavy rains and floods in many European countries show the need for a carefully prepared soil protection strategy. Flooding is often made worse because the water absorption capacity of the soil has deteriorated in areas that formerly were flooded naturally or land use has been changed. This must be taken into serious consideration when the EU is working out strategies for soil protection and land use.

3. **The EESC's views on the communication**

3.1. The EESC regards the Commission's description of the various threats that could degrade soil quality as an acceptable basis for the future, more action-oriented, proposals referred to in the communication.

3.2. It is not clear which of the various threats described in the communication the Commission feels should be tackled at EU level or the reasons why a common initiative would be more successful than national action. A strategy for future soil protection can reasonably be expected to provide such justification, even if only to promote understanding among persons currently working on soil protection at national level.

3.3. It is difficult, and even perhaps of little interest, to go into scientific definitions of exactly which soil quality type is desirable. On the other hand, the EESC regrets the absence of any discussion of possible thematic objectives for soil protection or reasonable aspirations for such work. The communication states that soil must be protected from different types of threat — but does that include improving degraded or naturally poor land? In the EESC's view, the Commission should detail the priorities to be pursued rather than specifying how many hectares must meet a particular standard. One key priority could be to protect the most vulnerable soil from further degradation. A European strategy should spell out common aspirations for European soil.

3.4. The Commission regards erosion, decline in organic matter and soil contamination as the three main threats. As the communication contains no assessment of the various threats which could help us to establish priorities, it is difficult to confirm or deny this premise. In any future work the Commission should preferably assess the environmental and social impact of the various threats. One way of doing this is to specify the socio-economic value of the soil functions likely to deteriorate.

3.5. In order to be able to assess different types of threat it is also interesting to include a timeframe in the appraisal — which the report fails to do. In this connection, 'timeframe' does not mean merely taking account of the status quo but also the speed at which soil is improving or deteriorating, along with the long-term consequences. It is possible that our current knowledge of impact on soil is too inadequate for a full analysis but it would be helpful in those areas where it is possible. The key threats identified by the Commission as most dangerous may very well be the most important but in certain regions totally different threats can be of greatest danger. For instance, acidification of forest land can create problems for soil fertility in northern Europe whereas forest fires can result in erosion in southern Europe.

3.6. The Commission is proposing a monitoring system, combined with standardisation of existing national systems, as pillars of the soil strategy. As mentioned above, the communication does not specify which threats to soil should preferably be tackled at EU level and what the common measures should consist of in such cases. If we do not know

([1]) CES 1199/2000, OJ C 14, 16.1.2001, pp. 141-150.

what soil is to be monitored, and why, there is a greater risk of the system proving ineffective. We can expect the need for soil protection in the applicant countries to be at least as great — perhaps even greater — as in the Fifteen. Hence it is important for the monitoring systems and proposals for practical measures that the Commission intends to present also to encompass the applicant countries.

3.7. The EESC notes that several different European projects relating to soil protection already exist (e.g. the Water Directive and the forthcoming legislation on sewage sludge and compost). Here too a common monitoring system and standardised methods of data collection may be necessary. The EESC therefore supports the introduction of proposals to this effect. The EESC presupposes that any future proposal for a common monitoring system give due heed to how best to take advantage of existing national systems.

3.8. For purposes of improving soil protection, education and information need to be integrated into a soil strategy in order to boost understanding and awareness of the impact on soil of different types of treatment. As regards soil contamination, the EESC has issued an opinion [1] on the Commission's proposal on 'environmental liability with regard to the protection and remedying of environmental damage' [2], in which the Commission proposes, among other things, a Community scheme when land damage through contamination involves liability.

Thought must also be given to whether infringements of the existing legislation on matters relating to soil should lead to penalties.

3.9. As the Commission points out, soil is different from the air or water in that there is more obviously a natural or legal person as owner. Soil degradation is therefore of two fundamentally different types.

3.9.1. Firstly, there is the traditional environmental impact where actors (through discharge, etc.) cause damage which does not directly affect them but affects landowners.

3.9.2. The other type of situation is where an owner degrades (or improves) his own soil. The soil can then be intended for biological production, such as arable farming and forestry. The soil can also be used for industrial purposes, roadworks, etc. and the damage done does not affect the user's production.

3.9.3. When soil strategy is gradually translated into action, it is important to take account of these fundamental differences between different types of soil variety and ownership relations.

3.10. The Commission states that soil is under steadily increasing pressure from human activities and that its quality is deteriorating. It would also seem important to mention such improvements as sharply reduced input of metals and less acid rain; in many areas the quality of arable land is high; it is scarcely true that all arable land is steadily deteriorating.

3.11. The first paragraph of chapter 8.1.2 describes the impact of agriculture well; here the Commission notes that some farming practices can result in soil degradation, while others can be beneficial to soil protection. From the viewpoint of agriculture, soil protection is a natural component of use to be seen more as an opportunity than a threat.

3.12. The Commission claims that spreading of sewage sludge should not raise any problems provided that pollution is prevented and that one possible use would be to spread it on arable land. The EESC strongly questions this claim. The essential problem of sewage sludge today is that it is heavily polluted. The EESC has called on earlier occasions for a revised directive with more stringent ceilings and the Commission has announced such a proposal for 2003. The EESC regards this delay as unfortunate.

4. **Conclusions**

4.1. The EESC welcomes this Commission communication as a first step towards a European strategy for soil protection. For the purpose of future work it would draw attention to the following points:

— the EESC regrets that no description is given of the types of measures that should preferably be implemented at EU level, or the justification for such common action;

[1] OJ C 241, 7.10.2002.
[2] COM(2002) 17 final.

— the EESC would also point to the lack of a strategic discussion of the aspirations to be pursued, and hence the objectives to be set for European soil;

— future proposals for measures should be based on an assessment of the threats applicable to different EU regions, including the applicant countries;

— future proposals for monitoring systems should be linked up with ongoing measures so as to provide better justification and give a detailed account of national monitoring systems;

— future proposals for practical measures to improve soil protection should incorporate action covering education, information and suitable penalty arrangements;

— soil differs from the air or water, which are mobile elements. Soil has an owner, and the strategy must take account of the right of ownership;

— a balanced description of the threats involved is important in all circumstances so as to enlist the support of all players for the initiative.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation correcting Regulation (EC) No 2200/96 relative to the starting date of the transitional period for the recognition of producer organisations'

(COM(2002) 252 final — 2002/0111 (CNS))

(2003/C 61/10)

On 15 July 2002 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 August 2002. The rapporteur was Mr de las Heras Cabañas.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted the following opinion with 129 votes in favour and three abstentions.

1. **Introduction**

1.1. The proposal for a Council Regulation modifies Article 13 of Regulation (EC) No 2200/96 [1] concerning producer organisations (POs) recognised under Regulation (EEC) No 1035/72 [2] but which, on the date of entry into force of Regulation (EC) No 2200/96, were unable to qualify for immediate recognition under the latter. Article 13 of Regulation (EC) No 2200/96 therefore allows these POs to continue operating for a transitional period of two years, extendable to five if the PO submits an action plan. These transitional periods are calculated from the date of entry into force of this regulation, i.e. 21 November 1996.

1.2. The modification proposed by the Commission is intended to correct an error in the starting dates of these transitional periods, postponing them until 1 January 1997 — the date of application of Regulation (EC) No 2200/96 — in order to avoid any negative repercussions on the rights of the POs concerned and safeguard the legal security of their actions.

[1] OJ L 297, 21.11.1996.
[2] OJ L 118, 20.5.1972.

2. General comments

2.1. The Committee wishes to point out the general issues affecting producer organisations, which are still the cornerstone of the common market organisation for fruit and vegetables since the 1996 reform has not fully met its objectives of organising and grouping supply, and improving the efficiency of POs in response to increasingly concentrated distribution.

2.2. Incentives are therefore needed to encourage the setting-up of and cooperation between POs, and to encourage POs to merge and form associations.

2.3. To provide incentives for forming and joining associations, and improve the efficiency of POs, the recognition criteria should be adapted and producers involved in running and monitoring POs.

2.4. An analysis is therefore needed of existing obstacles in producer regions and possible incentives through specific programmes to encourage more farmers to join POs voluntarily, thus increasing their size.

3. Specific comments

3.1. The Committee welcomes the spirit of the Commission's proposal but points out that both transitional periods have now ended. It therefore regrets the Commission's delay in correcting the error in the starting date of the transitional period for the recognition of POs recognised under Regulation (EEC) No 1035/72 but which, on the date of entry into force of Regulation (EC) No 2200/96, were unable to qualify for immediate recognition.

3.2. The 'a posteriori' modification of the Regulation is retroactive and may give rise to discriminatory treatment between POs which complied with the provisions in force and did not carry out the withdrawals to which they would be entitled under the proposed correction, and those POs who did carry out such withdrawals.

3.3. With this correction it will not be possible to alleviate the negative repercussions on POs' attempts to qualify for recognition in the allowed time or potential logistical problems owing to the lack of continuity between action plans and operational programmes.

4. Conclusions

4.1. The Committee welcomes the spirit of the Commission's proposal but questions its advisability, owing to the fact that it establishes the principle of discriminatory treatment between POs and will not alleviate the potential negative effects for POs affected by the delay in correcting the error.

4.2. The Committee calls on the Commission to present short-term proposals to adapt the common market organisation, based on the guidelines set out in this opinion.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EC) No 1258/1999 on the financing of the common agricultural policy'

(COM(2002) 293 final — 2002/0125 (CNS))

(2003/C 61/11)

On 19 July 2002 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 Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 August 2002. The rapporteur was Mr Strasser.

At its 393rd Plenary Session (meeting of 18 September 2002), the Committee adopted the following opinion with 128 votes in favour and three abstentions.

1. Introduction

1.1. The proposal extends the period in which financing from the EAGGF Guarantee Section can be refused. Under Article 7(4) of Council Regulation (EC) No 1258/1999 on the financing of the common agricultural policy, a decision to refuse financing may not involve expenditure dating back more than 24 months before the Commission's written communication of the results of its checks to the Member State in question.

1.2. The Commission is proposing that this period be extended to 36 months. The explanatory memorandum accompanying the proposal states, inter alia, that:

— the restriction should be applied in a manner which takes better account of the European Union's financial interests;

— 'non-conform expenditure' is to be reduced by extending the reference period.

1.3. A working group set up by the Commission in 1993 to study the reform of the clearance of the EAGGF Guarantee Section accounts called for corrections to expenditure to be possible over a period of 36 months. The Council did not follow this recommendation, and came out in favour of 24 months.

2. Comments

2.1. It is the Committee's firm belief that the Commission must be able to recover money that has been spent improperly in order to avoid financial losses to the Community budget. It should be borne in mind that there are various reasons for the improper use of payments. One reason could be deficiencies which crop up when a new scheme is introduced or a substantial change is made to a scheme, as the Commission notes itself. Frequent changes to regulations or directives, as has been the case in recent years, exacerbate this problem.

2.2. The Committee would therefore urge that the Commission be equipped with the requisite resources to strengthen its preventive checks in order to, on the one hand, eliminate deficiencies in good time and, on the other hand, improve administration in the Member States if that should prove necessary.

2.3. The Committee nevertheless doubts whether extending the reference period for corrections will appreciably reduce the number of improper payments, as more breaches of the rules are not likely to be unearthed. It may, however, considerably increase the danger of Member States facing accusations and make it more difficult to collect evidence.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'The impact of enlargement on EMU'

(2003/C 61/12)

On 1 March 2001, the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'The impact of enlargement on EMU'.

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 3 September 2002. The rapporteur was Mr Vever.

At its 393rd Plenary Session of 18 and 19 September 2002 (meeting of 19 September), the Economic and Social Committee adopted the following opinion by 42 votes to one with four abstentions.

1. Summary

1.1. EMU and enlargement, the two major changes facing the EU, are bound to pose new and interlinked challenges. A global and cooperative strategy, taking both economic and social concerns into account, is needed in order to adapt.

1.2. The Committee would stress that to prepare effectively for EMU, the applicant countries must successfully complete all the preparatory stages, while ensuring that they can abide by the Maastricht criteria in the long term, on the basis first and foremost of the Copenhagen criteria, i.e. a healthy and competitive economy that has assimilated all the requirements of the Community acquis. This means, inter alia, promoting dialogue with social partners' organisations and with effective, representative socio-occupational structures.

1.3. The Committee would therefore note that the enlargement of EMU must be conducted in a rigorous manner, with a strict assessment of each country's merits, so as to avoid placing new members in structural difficulties and so as not to upset the Euro's internal and external equilibrium.

1.4. In addition, to avoid prolonging the EMU accession process excessively for new Member States, the Committee would repeat its recommendation that these countries should join the European exchange rate mechanism, ERM2, as soon as they join the EU.

1.5. The Committee hopes that the procedures for the effective reform of the ECB's management structure to make it ready for enlargement will be in place by the time the accession negotiations are completed, and that the reform will not have to be postponed.

1.6. The Committee would stress the need to strengthen the independent resources of the Eurogroup, with the imminent prospect of a sharp increase in the number of non-euro Member States in the Council.

1.7. The Committee notes the increased budget transfer problems entailed by an enlarged EMU. This means that the reforms under way in many Community policies (e.g. agricultural policy and regional policy) must be carried out within a global perspective and that plans must be made to bolster the European Union's own resources for the post-2006 period.

1.8. The Committee calls for attention to be paid to the effects of EMU on economies neighbouring or close to the EU.

1.9. The Committee invites the Convention on the future of Europe to include the issue of EMU enlargement (e.g. institutional concerns, subsidiarity in practice, forms of cooperation) in its discussions and in the drafting of its conclusions.

2. Preliminary comments

2.1. EMU and enlargement are both major changes that will significantly mark the development of the EU over the coming years. If they are well managed, both will strengthen the EU. In combination, they are bound to influence each other, and will certainly complicate many factors. However, in the long term, they should prove to complement each other rather than conflict. All will depend on the capacity of the European Union and its Member States to adapt to the new demands and to manage the situation in a synergistic manner.

2.2. In contrast to enlargement, which will tend to have a centrifugal effect, inevitably putting the European Union's cohesion to the test, the main attraction of EMU will be that it will act as a centralising, structuring and reassuring force, working to strengthen that cohesion on a sound and stable basis, also encompassing the Member States that are outside the euro zone but that should join at a later stage.

2.3. Enlargement will provide new opportunities for EMU to develop, prospectively doubling the number of euro zone members over the longer term (bringing in Poland, Hungary, the Czech Republic, Slovakia, Estonia, Lithuania, Latvia, Slovenia, Cyprus, Malta, Romania and Bulgaria; and also Turkey, with which accession negotiations have yet to begin). The euro will offer these future members a number of economic benefits, boosting their capacity to attract investment, stimulate financial markets and secure trade. But enlargement will also bring the EU as a whole greater political security. The enlarged EU will be an important area in the world economy, based on the principles of the rule of law and legal certainty. Whether this enlargement will strengthen or affect the European currency's clout and international cachet, especially vis-à-vis the dollar, will depend on the way it is conducted and assimilated (as well as on other possible developments in the three EU States that are currently outside the euro zone: the United Kingdom, Denmark and Sweden).

2.4. Enlargement will clearly pose new challenges for EMU. Initially, the accession of new Member States to the European Union will radically alter the terms under which the euro and non-euro zones coexist, as non-euro zone members will be greater in number. Whereas in the EU-15, the 12-member euro-zone coexists with three non-euro States, in a Union of 25 it will have to coexist with 13. Subsequently, as the new Member States enter the euro zone, the situation for EMU will change, with a much greater internal diversity (the applicant countries' GDP is equivalent to only 6 % of that of the 12-member euro-zone), which will also complicate the coordination and control of economic and budgetary policies.

2.5. The Committee would therefore stress the need for a global strategy in preparation for managing the predictable interactions between enlargement and EMU. This strategy must be political, cooperative and contractual, drawing on:

— the current Convention on the future of Europe (which rightly involves all the applicant countries), for institutional reform and the organisation of responsibilities;

— the Member States and EU institutions, for the political management of EMU;

— economic interest groups, the social partners and other organised civil society players, which must exercise all their freedoms independently and responsibly, using approaches often based on partnership and contractual agreements, for the consolidation of EMU's economic and social foundations.

2.6. This strategy should centre on two key issues:

2.6.1. preparing the applicant countries effectively for EMU, which means agreeing and implementing appropriate EMU accession strategies for each of the applicant countries;

2.6.2. on the other, successfully adapting EMU to the enlarged Union, which means starting to give some thought now to an overall programme to concern all future Member States.

3. **Preparing the applicant countries effectively for EMU**

3.1. *The legal and political prospects*

3.1.1. The Amsterdam Treaty and the pre-accession commitments made by the applicant countries clearly stated that they would not be allowed any form of opt-out clause, of the kind exceptionally granted to the United Kingdom and Denmark. Although the new Member States will clearly not join EMU immediately on accession, they will have to make every effort to join as quickly as possible, by meeting the various preliminary requirements. The Committee welcomes the fact that the EU has made this official link with the applicant countries, confirming their aim to join EMU as soon as they meet all the criteria.

3.1.2. Integrating the applicant countries into EMU will be a four-stage process:

3.1.2.1. During the current pre-accession period, the applicant countries should already be working to adopt the Community acquis, not least in the areas that are key to EMU: namely the free movement of capital, the renunciation of any State financing privilege for the public sector, and guaranteed independent status for central banks.

3.1.2.2. When they join the European Union, the new Member States will already be required to abide by many Community economic rules, although they will not at that stage be ready to join EMU. They will thus have to accept the objectives of EMU, recognise that their exchange and economic policies will from then on be matters of common interest in the context of the EU, be sure to prevent excessive deficits, accept the growth and stability pact, and gradually apply all the Maastricht criteria. Like all Member States, they will be subject to an annual audit at the autumn European summit, with regard to the broad economic and employment policy guidelines. At the spring European summit, they will be assessed on the basis of the commitments made in Lisbon regarding the implementation of structural reforms in economic, social and administrative areas (e.g. policies relating to education, innovation, the labour market, social welfare and the public sector, etc.).

3.1.2.3. Another obligatory preliminary stage will be participation in ERM2, the euro exchange-rate mechanism (following Denmark's current example). The applicant countries will have to remain in ERM2 for at least two years before joining EMU.

3.1.2.4. For every new participating State, the last stage in joining EMU will be a reasoned decision by the Council on a proposal from the Commission, taking into consideration economic capacity and more particularly compliance with the Maastricht criteria, namely:

— an inflation rate not exceeding by more than 1,5 % the average of the rates of the three Member States with the lowest inflation rates,

— long-term interest rates not varying by more than 2 % from the average of the three States with the lowest inflation rates,

— a budget deficit close to or less than 3 % of GDP,

— public debt not exceeding 60 % of GDP unless it is descending towards that level,

— a stable national currency exchange rate within a margin of 2,25 % above or below the euro.

Furthermore, the national central banks must have formally guaranteed independence from the national governments and must pursue the objective of price stability with due regard to the objectives listed in Article 2 of the EU Treaty.

3.2. *The economic and social requirements*

3.2.1. Just as the political and legal conditions written into the Treaty and the European summit declarations provide for an ordered approach to preparing the applicant countries for EMU, so too the economic and social requirements associated with the stability and growth pact must be addressed strictly step by step. Sound preparation for EMU within the applicant States means not racing ahead. Otherwise, growth and investment in the new Member States could be hindered by excessively strict monetary and fiscal policies, and the very cohesion of EMU in the enlarged Union could be affected. There must be no danger of later arriving at a dead-end, discovering after one or another new member has entered EMU that it is not able to apply all the rules. There are also other reasons for proceeding in an orderly way and not rushing in. The external value of the euro, a key factor in its stability, must not be affected by EMU enlargement. Neither would it serve the interests of the euro zone Member States to generate excessive internal tensions owing to extreme or asymmetric differentiations. Similarly, budget constraints on the Member States and on the EU would make it impossible to respond to increased requests for support following the accelerated integration of the new States into the Euro zone.

3.2.2. Special emphasis must be placed on the need for the applicant countries to consolidate the liberalisation of their economies and their competitive capacity. Key requirements include the smooth, obstacle-free running of the capital market (for investments in real estate as well as in securities), a stronger banking and finance sector (with the growing participation of EU establishments), the absence of any public sector financing by the national central bank, and effective watchdogs able to monitor the implementation of laws and regulations and supervise the smooth running of the markets. These requirements may justify EU inspections in conjunction with socio-occupational interest groups.

3.2.3. Great care must therefore be taken to build solid and lasting foundations for the successful introduction of the euro in these countries by ensuring, long before the Maastricht criteria are met — which will also require comparable statistics —, that the economic and social fabric is strong (e.g. productivity, social climate, adaptation of the public sector, SME development). 'Nominal' convergence must be backed up by 'real' convergence in order to be sustainable and profitable. There can therefore be no hope of meeting the Maastricht criteria on a sustainable basis until a critical threshold of economic growth and liberalisation has been crossed. It may even be the case that an applicant country that appears to be further than another from meeting the Maastricht criteria is in reality more advanced in consolidating its economic liberalisation and thus in progressing with the real preparation for its future integration into EMU. It should also be noted that after accession, certain new factors may temporarily make it more difficult for the new Member States to meet the Maastricht criteria. New inflationary pressures are for instance to be expected owing to the impact of new agricultural prices and Structural Fund transfers. For this reason, sound preparation for later joining EMU will hinge on thorough preparation to meet EU accession requirements on the one hand, and successful adjustment to the economic and social consequences of accession on the other.

3.2.4. In addition to adapting to new economic and legal factors, close attention will have to be paid to strengthening the institutional and social infrastructure of the applicant countries. First and foremost this means promoting the role of the social partners and improving the functioning of the labour market. The development of representative organisations and consultation between social partners and with the government should make a very direct contribution to the effective coordination of macroeconomic policies and social adaptation policies, especially in the context of the Cardiff, Cologne and Lisbon processes. The social partners of the current Member States and the European Economic and Social Committee, through its joint consultative committees, have a part to play in supporting the socio-occupational organisations in the applicant countries by organising exchanges and information and training programmes.

3.2.5. The Commission's latest annual report of November 2001 on progress made on preparation and more specifically on adoption of the Community acquis is encouraging for 10 of the 12 applicant States conducting accession negotiations. Romania and Bulgaria still have some distance to cover before they will be in a position to join (and thus still more before ultimately joining EMU).

3.2.6. Accession will clearly raise the issue of keeping up the momentum for preparing for enlarging EMU. This gives rise to two comments:

3.2.6.1. On the one hand, it is important to be aware that the 'big bang' represented by the simultaneous accession of ten new Member States into the European Union, while opening up the direct prospect of EMU enlargement, will not necessarily accelerate it: the 15 Member States, the Commission and the Central Bank may be inclined to return to a stricter differentiation for the subsequent EMU accession stage. Whereas it is to be expected that certain new EU Member States will manage to move quickly to join EMU, other new members will almost certainly remain in the non-euro zone for longer.

3.2.6.2. However, while it is important not to race through the stages on the road towards EMU, it is also essential not to be hemmed in by a wait-and-see attitude that allows new Member States to stay too long in the non-euro category. The risk in the long run would be to fragment the single market, while to a greater or lesser degree encouraging a relaxation in the standards required of those countries to join EMU. A balance must therefore be found between these differing requirements.

3.2.7. An effective response would be to ensure that, on accession, the new Member States join the revised EMS exchange rate mechanism (ERM2). The Committee made this recommendation in its opinion of April 2001 [1] on the economic indicators for accession. It is now repeating it, as it would make it possible for:

3.2.7.1. the exchange rate policies of the new Member States to be placed in a Community framework from now on;

3.2.7.2. pressure to be exerted on these countries to continue active preparation for EMU;

3.2.7.3. an essential preliminary legal condition to be met, removing all risk of one or other of these countries opting out of EMU, which would go against the previous renunciation of any political opt-out;

3.2.7.4. a substantial margin of exchange rate flexibility to be maintained, as this is still authorised within a 15 % band under ERM2, thus avoiding premature rigidity and safeguarding significant economic and social flexibility.

3.2.8. When, after at least two years of exchange rate mechanism participation, the time comes to decide on actual entry into EMU, not only will it be necessary to check whether the Maastricht criteria are genuinely being met, but also whether they are being met in a sustainable manner.

3.2.9. Well in advance of joining EMU, many of these countries will already have been using the euro as a vehicle currency alongside their national currencies, as some already did with the German mark before there were euro notes and coins. This freedom to use the euro in commercial transactions can offer these countries a number of practical advantages, boost international appeal of the euro and also help to familiarise their populations with the currency that will eventually become their own. However, it will not be enough to bring them into the EMU, as that will depend on all the other economic, financial, budgetary and social criteria mentioned above.

3.3. *Support from the Union*

3.3.1. Under Agenda 2000, the Union earmarked significant budgetary support for the pre-accession period and for the first few years of membership: the March 1999 Berlin agreement earmarked EUR 20 billion for pre-accession instruments from 2000 to 2006 inclusive and EUR 50 billion for new Member States accessible from 2002 if necessary.

3.3.2. On 30 January 2002 [2], the Commission presented an update of these provisional budget figures to take account of two new developments:

— first, the target date for the first wave of accessions had been shifted to 2004;

— second, there are now likely to be not five or six new Member States in the first wave of accessions but 10.

3.3.3. In preparation for the accession of 10 new Member States in 2004, these new Commission guidelines also envisage EUR 40 billion of commitments and EUR 28 billion of payments for the 2004, 2005 and 2006 period. This projection remains within the upper limits of the EU's budget ceiling and, in particular, the Berlin multi-annual agreement.

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[1] EU enlargement: the challenge faced by candidate countries of fulfilling the economic criteria for accession — OJ C 193, 10.7.2001.

[2] SEC(2002) 102 final.

3.3.4. This budget will not affect future agricultural, regional and budget policy reform. It does however involve a gradual withdrawal of Structural Fund aid from certain former EU priority regions, a 10-year transition period before direct payments are made to farmers in the new States, and the payment by the new members of their contributions to the Community budget as of the first year of membership (figures that have still to be confirmed in the accession negotiations). It is also clear to theCommittee that accession will mean stepping up the adaptation of agricultural, regional and budget policies.

3.3.5. A second report [1] submitted by the Commission on the same day looks at the future of cohesion policy from 2007. In a Europe of 25 to 27 Member States, regional disparities in GDP will double, moving from 1:3 to 1:6. In addition to transfers for the east, the Commission is also calling for a support policy that is not restricted to the least developed regions of the EU, even if this means refocusing (i.e. cities, upland areas, border regions, peripheral regions). The Committee notes that from 2007, and possibly earlier, the cost of enlargement could raise new issues in the area of Member State contribution levels and EU resources. The reforms under way in many Community policies (e.g. agricultural policy and regional policy) must be carried out within a global perspective and plans must obviously be made to bolster the European Union's own resources.

3.3.6. In the first half of 2001, the Ecofin Council agreed to begin cooperating more closely with the applicant State finance ministers and central bank governors by inviting them once during every six-month presidency, and by means of regular reports to the Ecofin Council on the economic situation in those countries. The Committee welcomes the development of this cooperation on economic convergence and suggests that it should be extended to other Councils directly concerned by this objective, first and foremost the Employment and Social Affairs Council (especially regarding the applicant countries' preparations for implementing the employment guidelines).

3.3.7. The Committee is also pleased to note that contacts between the European Central Bank and the applicant countries, already well-established and regular, have been stepped up with operational support programmes (e.g. bilateral contacts, traineeships, methods for updating statistical data). Most of the applicant country central banks can be considered independent (although in some cases more time is needed to anchor a genuine culture of independence and stability). This independence will in any case be required of each applicant State on joining the EU.

3.3.8. Lastly, the Committee welcomes the involvement of the applicant countries in the March 2002 Barcelona summit. This EU initiative is in total harmony with the recommendations made by the Committee in its opinion of April 2001 on the economic indicators for accession, where it proposed involving the applicant countries in the implementation of the March 2000 Lisbon mandate. The only way to optimise the applicant countries' preparation for EU accession and later for membership of EMU is to involve them directly in the economic, social and administrative reforms required by the Lisbon mandate, seeking to turn Europe into the most dynamic and competitive knowledge-based economy in the world by 2010.

4. **Successfully adapting EMU to the enlarged Union**

4.1. *Institutional changes*

4.1.1. The prime challenge will be about numbers: from the time of accession, the governors of the central banks of the new Member States will be required to sit on the ECB's General Council but not on the Governing Council (which they will not join until they are EMU members). More specifically, the membership of the Executive Board of the European Central Bank will have to be reformed and restricted in order to remain effective subsequent to enlargement. It must be noted that the Nice Treaty did not deal with the issue of the reorganisation of the European Central Bank following enlargement, in particular the revision of the 'one man, one vote' principle. It simply referred the issue back to the Council by means of an enabling clause. It is not certain that the governors of the national central banks will manage to find a solution, while discussion among the Member States appears to have come to a standstill. Time is short however, inasmuch as it would be preferable to settle this matter by the time the accession negotiations are concluded, rather than waiting another few years for the first EMU enlargement. The Committee therefore hopes that the procedures for the effective reform of the ECB's management structure to make it ready for enlargement will be in place by the time the accession negotiations are completed, and that the reform will not have to be postponed. Special consideration must be given to the fact that in the enlarged EMU, the central bank will operate less and less by unanimity and increasingly by a majority. All the institutional resources must be set in place as of now.

4.1.2. The second challenge will be that of diversity, with major development gaps that will lessen or disappear only very gradually.

4.1.2.1. Initially, the European Union will have to face up to the challenge of a greater quantitative and qualitative difference between the Member States in the euro zone and those outside it, whose numbers will swell considerably from a current membership of only three (the United Kingdom, Denmark and Sweden). With the forthcoming accession of ten new States into the EU, the 12 States in the euro zone will be outnumbered by the 13 in the non-euro zone. This prospect immediately poses the question of whether the Eurogroup should be made into an institution, in order to give it the legal status and decision-making powers it is currently lacking, so that decisions that concern it directly are no longer under the responsibility of the Ecofin Council.

[1] COM(2002) 46 final.

4.1.2.2. Subsequently, as new members join EMU, there will be major diversity among the EMU Member States. In a 25-member EMU, it will be necessary to review such basic issues as the application of subsidiarity, the role of national parliaments, and cooperative management between members. New forms of cooperation will have to be devised, almost certainly including European tax reform. The Convention will have to address a number of issues including how these reforms can be applied, how to strike a democratic balance, what powers and what counterbalances are needed, and what compromise can be found between the Community and intergovernmental methods. These are all issues that will also demand very close attention from the European Central Bank, the Council and the Commission.

4.2. *New economic and social factors*

4.2.1. The additional economic weight that EMU enlargement will bring must not of course be overestimated, bearing in mind that the GDP of the 12 applicant countries barely accounts for 6 % of that of the 12 euro zone countries. However, the fact that EMU will have to develop under more diverse economic and social conditions will raise many issues, at first regarding coexistence between the euro zone and the non-euro zone, and later regarding how to manage a single currency in more diverse economies. These issues will centre on the variables for adjustment to these situations.

4.2.2. These will include varying levels of competitiveness and economic productivity, pay differentials, and migratory movements, in particular across borders, that could develop within the euro zone. In a decade or more, the effects of acculturation will help to give greater uniformity to this enlarged euro zone (cf. methods of government, co-responsibility of economic players and social partners, effects of the economic and social reform process agreed at Lisbon for the 2000/2001 period). However, in the meantime, it will be necessary to manage the contrasts and frictions between these widely differing national systems and economies.

4.2.3. In this context, budget transfers within the enlarged EMU will be a particularly thorny issue. Until now, the EU has opted for an EMU characterised by little central intervention, few shared budgetary resources and the absence of any significant degree of tax harmonisation. The increased diversity among the Member States making up EMU will certainly unearth new problems to which the current set-up may have difficulties responding, such as the above-mentioned issues of major differences in production factors, risks of economic or social tensions, or the effects of asymmetric shocks. For the post-2006 period, the EU will therefore have to take a fresh look at:

— the issue of EU budget transfers (Cohesion Fund, aid, etc.)

— the issue of EU budgetary resources (steps towards a European tax?)

— and other related issues, relating in particular to taxation in Europe (disparities and competition between tax regimes and also the overall tax burden).

4.3. *International repercussions*

4.3.1. The euro is destined to become an international currency with world-wide importance. Care must be taken to ensure that the enlargement of EMU takes place in conditions which support — rather than threaten — the international prestige of the euro, as this is an indispensable condition for its success.

4.3.2. It will also be necessary to monitor the effects of the enlargement of EMU on nearby and neighbouring economies, especially in Russia, Ukraine, Belarus and other former Soviet Union as well as Mediterranean and ACP countries.

Brussels, 19 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Green Paper on a Community return policy on illegal residents'

(COM(2002) 175 final)

(2003/C 61/13)

On 11 April 2002 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'Green Paper on a Community return policy on illegal residents'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 September 2002. The rapporteur was Mr Pariza Castaños.

At its 393rd Plenary Session on 18 and 19 September 2002 (meeting of 18 September) the Economic and Social Committee adopted the following opinion by 126 votes, with three abstentions.

1. Gist of the Commission proposal

1.1. This Green Paper contains a range of proposals, observations and questions on the subject of illegal status and the various steps that may be taken to ensure that illegal residents return to their countries of origin. It is consistent with the conclusions of the Laeken European Council of December 2001 and is based on the illegal immigration action plan adopted by the Council on 28 February 2002.

1.2. The Green Paper raises numerous questions, and suggests a number of ways of addressing the problems involved. It is a discussion paper which is intended to initiate a wide-ranging debate involving the whole of European society — not just the European institutions, but also the applicant States, non-governmental organisations, academic circles and civil society organisations.

1.3. Part I discusses return as an integral part of Community immigration and asylum policy. It distinguishes between two categories of persons: persons who are legally resident, who, for various reasons (retirement, wish to participate in development projects in their country of origin, refugees able to return home, etc.), decide to return on a voluntary basis and need help to do so; and those who are illegally resident (illegal immigrants, asylum seekers whose applications have been rejected but who have remained, etc.).

1.4. In the case of illegal residents, the Commission favours voluntary return wherever possible. However, in cases where voluntary return is not possible, forced return will be necessary.

1.5. The Commission states that illegal residents must return to avoid admission policy being undermined. As far as possible, returns should be voluntary, both for humanitarian reasons and because voluntary returns require less administrative efforts than forced returns. It also suggests that forced returns might serve to dissuade potential illegal immigrants.

1.6. On the subject of asylum, the Green Paper describes various situations where persons must be returned: asylum seekers whose applications have been rejected, persons who have benefited from protection but no longer require it, etc. In such cases, voluntary return should again be given priority, but forced returns might be necessary as a last resort. In all cases, the obligations imposed by international treaties must be respected, including prohibition of collective expulsions and expulsion to countries where the individual concerned would be exposed to serious risk.

1.7. The Commission stresses that human rights must be respected in all procedures, and emphasises that illegal residents must have adequate possibilities to lodge an appeal before a court during the return procedure.

1.8. Part II discusses at length cooperation on returns between the Member States. The Commission suggests a range of proposals and questions on the subject of return procedures, conditions, etc.

1.9. A person who has been legally resident may only be returned by means of an expulsion order, and only if one of the following circumstances applies: expiry or revocation of the residence permit, conviction of a crime punishable by at least one year's imprisonment, the existence of serious grounds for believing that serious criminal offences have been committed or solid evidence of intention to commit such offences.

1.10. The Commission points out that long-term residents benefit from special protection from expulsion, and asks whether such protection should be extended to other groups. It also discusses the conditions under which residence permits may be revoked.

1.11. The Commission believes that detention or internment centres where people are held pending removal must be subject to rules governing their operation and to minimum standards of accommodation and infrastructure. It also raises a number of questions concerning the establishment of common rules on these matters at EU level.

1.12. The Member States should cooperate on all aspects of the transit of returnees through other States and work to improve operational cooperation at technical level.

1.13. In Part III, the Commission suggests that a common policy on readmission should be put in place, pointing out the difficulties of reaching agreements with countries of origin, given that in the current circumstances readmission agreements are not in the interests of many countries. It considers that such agreements should be included as part of future association and cooperation agreements.

2. **Preliminary considerations**

2.1. The EESC believes that a person 'without papers' is a human being with the same basic rights and dignity as other people. In its opinion on the Commission communication on a common policy on illegal immigration ([1]), it thus expressed the view that an immigrant without papers is not a person without rights:

— '... Some clarification is needed when the term "illegal immigration" is used to refer to individual migrants. Although it is not lawful to enter a country without the required documents and authorisation, those who do so are not criminals. (...) Irregular immigrants are not criminals, even though their situation is not legal.'

— 'The Committee's other main objection to the content of the communication concerns the way irregular immigrants in the EU should be treated. The communication speaks only of return policy: (...) [but this] cannot be the sole response to irregular situations.'

— 'Within the framework of policy coordination, the Commission should urge the Member States to prepare regularisation measures, averting the risk of irregular immigration being considered as a "back door" to legal immigration. In regularising the situation of those involved, consideration should be given to the degree to which they have settled in social and employment terms.'

— 'Turning to readmission and return policy, the Committee would emphasise that the voluntary aspect should be encouraged, and the utmost consideration given to humanitarian values. The Member States of the EU must not enter into readmission agreements with third countries where serious political instability or human rights' violations are rife. The Committee will scrutinise the green paper on a Community return policy with great care.'

— 'A common policy against illegal immigration must take account of all its contributory factors. It must not be restricted to law enforcement and judicial policies alone which, although certainly necessary, cannot by themselves diminish irregular immigration.'

— 'The Committee calls for greater speed and responsibility on the part of the Council in its legislative work concerning immigration and asylum. The present delay in drafting the directives and regulations proposed by the Commission makes it difficult to ensure that migration takes place through legal channels.'

2.2. On the basis of these considerations and those set out in other opinions ([2]), the EESC believes that compulsory return should not be the EU's only or prime response to immigrants currently in the EU in an irregular situation. What is needed is a comprehensive policy incorporating both return and regularisation.

2.3. Making return the only option for persons in an irregular situation is not only unfair and inappropriate for the persons concerned, but, given that several million human beings may be involved, it is also unrealistic. Even of those persons who are the subject of expulsion orders, only a small percentage is effectively expelled — expulsion is a costly and difficult process, and many of the States of origin refuse to readmit the persons concerned.

([1]) OJ C 149, 21.6.2002.

([2]) See the opinion on Community immigration policy, OJ C 260, 17.9.2001, opinion on the status of third-country nationals who are long-term residents, OJ C 36, 8.2.2002, ESC opinion on the open coordination method for immigration and asylum of 29/30.5.2002.

2.4. If the policy of compulsory return is not combined with regularisation measures, the numbers of people in irregular situations will remain unchanged, feeding the hidden economy and leading to increased exploitation in employment and social exclusion.

2.5. The Committee wishes to stress that the Commission, the Parliament, the Economic and Social Committee and various experts concur in the view that the Union needs a large number of immigrants to fill both skilled and unskilled jobs. The Union needs legal immigration to enable its economic and social system to function, but the Member States are closing the door on this possibility, causing illegal immigration to rise. Most of the immigrants currently in the Union illegally are engaged in economic activities and employment which have a positive impact on the economic and social development of the European Union.

2.6. The real victims of the current unfair situation are people without papers. The total legal and administrative uncertainty to which they are subject drives them into the hidden economy, and in some cases into exploitation at work or social exclusion.

2.7. Human rights considerations and economic and social needs dictate that under certain conditions, the situation of many immigrants currently in the Union illegally ought to be regularised, although illegal immigration should not become a 'back door' to legal immigration.

3. **The Seville European Council**

3.1. At Seville, the European Council decided to give a fresh impetus to the common immigration and asylum policy, establishing timetables for the adoption of political and legislative decisions in the second half of 2002 and 2003.

3.2. With regard to policy on expulsion and repatriation, the Council agreed to adopt a framework for a repatriation programme based on the Commission Green Paper, by the end of the year.

3.3. The Council also agreed to integrate immigration policy into the Union's relations with third countries. It agreed new commitments aimed at furthering progress on the common immigration and asylum policy, in particular timetables for the adoption of legislation on family reunification, changes to the Dublin Convention, refugee status and the status of long-term residents.

3.4. The Committee would remind the Council and Commission that it has issued opinions on these legislative proposals. It hopes that these will be studied and that Community legislation will incorporate the views expressed therein. The Council must seek to ensure that the legislation adopted on immigration and asylum is not minimal and far removed from the substance of the opinions of the Parliament and the Committee. The Union needs adequate legislation on immigration and asylum which addresses economic, professional and humanitarian factors, international conventions and the Charter of Fundamental Rights in a balanced manner.

3.5. As the Committee has stated in previous opinions, in order to combat illegal immigration, appropriate channels for legal immigration must exist. The Committee is surprised and disappointed that the Seville European Council failed to agree a timetable for adoption of the directive on conditions of entry and residence for persons entering the Union for economic purposes. It is essential that means of legal immigration function if illegal immigration is to be prevented. In this regard, the Seville Council failed to send out the right message to promote steady progress on the common immigration and asylum policy.

4. **Comments**

4.1. The Committee welcomes the Commission's decision to present this Green Paper as a discussion document paving the way for a wide-ranging debate. It has approached this opinion with an open and constructive spirit, and hopes that other institutions and organisations will also draw up opinions.

4.2. *Voluntary return*

4.2.1. The EESC supports the existence of EU and Member State policies to assist and cooperate in voluntary return aimed at ensuring that persons who are legally resident but decide to return have the necessary means to enable them to return under satisfactory conditions.

4.2.2. The Committee would stress that organisations such as the IOM [1] or the UNHCR [2] must always be involved in the voluntary return of illegal residents. These organisations can provide confirmation of exit and re-entry of the returnee to his or her country of origin and monitor the conditions of re-entry. Internationally recognised NGOs can also play a role in these activities.

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[1] International Organisation for Migration.
[2] United Nations High Commission for Refugees.

4.2.3. Voluntary return must be combined with the granting of favourable conditions for future migration. Persons who have returned voluntarily should be given preference if they subsequently apply to migrate to the Member State which they left.

4.2.4. Both the EU and the Member States must ensure that adequate resources are available to support voluntary return. There must be ongoing programmes with sufficient funding for the reintegration of returnees in their countries of origin. The Committee would welcome the creation of a European return programme based on support for reintegration. Internationally respected NGOs, which have a great deal of experience in managing return and social integration programmes, should also be involved in managing these programmes.

4.3. *Forced return*

4.3.1. The Commission proposal rightly gives priority to voluntary return and treats forced return as a last resort. The EESC shares the Commission's view that this is an extremely harsh measure, and a very significant encroachment on the freedom and wishes of the individuals concerned. The people concerned have often sold all of their possessions to emigrate and have acquired debts. Return can thus put them in a desperate situation.

4.3.2. The Commission itself points out that under Article 19 of the Charter of Fundamental Rights of the European Union, collective expulsions are prohibited, and no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. But the fact remains that the UNHCR and various NGOs have drawn attention to a number of collective expulsions and expulsions of illegal immigrants and asylum seekers to countries where human rights violations are rife.

4.3.3. The EESC supports the Commission's view [1] that a European return policy should respect human rights and fundamental freedoms. It points out that Articles 3, 5, 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 3, 4, 19, 24 and 47 of the Charter of Fundamental Rights of the European Union contain provisions which are applicable to a policy on return of illegal or irregular residents. It is important to stress that many of these immigrants are in a difficult humanitarian situation, and that the rules and practices that are agreed must be drawn up and implemented in accordance with criteria based on human rights law and the moral principles of solidarity.

4.3.4. The Commission announces its intention to draw up a proposal for a directive on minimum standards for return procedures. The EESC supports common legislation on the basis of the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights. A number of internationally respected NGOs have pointed out that some aspects of current legislation and practice in the Member States run counter to human rights and the Charter of Fundamental Rights of the European Union [2].

4.3.5. Return by means of an expulsion order of persons whose residence permit has expired must be considered an extreme measure. It must first be considered whether such persons have indicated a wish to renew their residence. If such is the case, any possibility of regularisation must always be given priority over expulsion.

4.3.6. When residents in an irregular situation have been resident legally under special protection status, any family, social or employment ties they have developed must also be taken into account, and a harsh procedure of expulsion or forced return avoided.

4.3.7. The Committee considers that it is reasonable to expel third-country nationals who have been convicted by the courts of a crime punishable by imprisonment of at least one year, in accordance with Directive 2001/40/EC of May 2001. However, it does not support expulsion for suspected crimes that have not been tried in court. The presumption of innocence must always prevail, in line with Article 48 of the Charter of Fundamental Rights.

4.3.8. Expulsions in connection with crimes must be subject to all the legal safeguards which normally apply under the rule of law. Thus, the Committee considers that the Green Paper must rule out the possibility of expulsion for crimes which have not been tried and are thus not proven. The Committee would refer in particular to the possibility of expulsion on the grounds of 'the existence of serious grounds for believing that a third-country national has committed serious criminal offences' and 'the existence of solid evidence of his or her intention to commit such offences.' It must always be the job of the courts to pass judgment on whether a crime has been committed and to issue expulsion orders.

4.3.9. As the Commission states, expulsion decisions must take account of the type of residence permit concerned. Long-term residents, family members of a citizen of a Member State, refugees and persons under other forms of international protection must be expelled only where there are serious risks to public safety and public order. Effective judicial protection must be a guaranteed part of the expulsion process. The EESC believes that minors and other vulnerable persons must always benefit from the highest possible levels of protection.

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[1] Green Paper, paragraph 2.4 on human rights and return.

[2] Amnesty International, the Red Cross and other NGOs have drawn up a number of reports.

4.3.10. Harmonisation of Community legislation must avoid forced return in a certain number of specific situations:

— If return would separate the person concerned from family members, whether from a spouse who is a national or legal resident or from children or relatives in the ascending line.

— When return would be harmful to minors dependent upon the person concerned.

— When the person concerned suffers from a serious physical or mental illness.

— When the safety, life and freedom of the person concerned would be at serious risk, either in his country of origin or in the transit country.

4.3.11. The right to appeal against an order of expulsion or forced return must always have suspensive effect, since this is the only means of guaranteeing the rights of the individuals concerned.

5. **Detention pending removal**

5.1. Detention pending removal is a significant encroachment on personal liberty. Any minimum standards drawn up at EU level must ensure that detention orders are issued by a judicial authority and may be subject to appeal.

5.2. Persons awaiting removal or expulsion must not be detained in ordinary prisons, since illegal residents are not criminals ([1]). Detention centres should be set aside for this purpose, and prisons may only be used where the expulsion is the result of crimes having been committed.

5.3. Conditions in such centres should be the subject of rules at EU level. The detainees must be able to exercise their human rights, with the exception of freedom of movement. Detention pending removal should not exceed 30 days. Minors not accompanied by parents or guardians should be cared for by the authorities, and should not be held in detention centres.

5.4. Detention centres should be combined with an alternative solution whereby the person awaiting removal may remain in his usual residence, provided that he complies with an obligation to present himself regularly to the authorities. Decisions on whether or not an individual is to be detained must take account of the situation of the person concerned. For example, a person with family or employment ties who is to be forcibly returned owing to expiry of his or her residence permit should not be detained.

5.5. The EESC asks that the Commission and Council clarify the purpose of detention prior to expulsion in the case of people who cannot be expelled, be it due to the absence of the necessary agreement with their country of origin, because their country is at war, because they are subject to persecution or due to lack of respect for human rights. The situations of prolonged internment which occur in some Member States are not acceptable from a human rights perspective.

5.6. In addition to drawing up minimum standards, the EU should also keep an up-to-date list of countries to which people may not be removed owing to lack of freedom or war or humanitarian crisis.

5.7. Persons who are seriously physically or mentally ill should be neither detained nor expelled, since they require medical care.

6. **Readmission agreements**

6.1. The Commission and Member States are currently finding it difficult to reach readmission agreements with third countries. Clearly, readmission agreements are in the interests of the EU alone. The EESC considers that such agreements should be complemented by other political and economic instruments which are in the interests of third countries. The EU's relations with third countries should always be based on humanitarian criteria.

6.2. The EU's association agreements with third countries should include clauses designed to regulate migratory flows in a legal manner and to ensure that European immigration policy plays a positive role in the economic and social development of these countries. In this regard, consideration should be given to readmission agreements.

6.2.1. The EESC supports the decision of the Seville European Council to maintain the objectives of development cooperation, ensuring that any penalties applied to third countries do not affect cooperation commitments. The best way of easing migratory pressure from developing countries is to step up European Union policies to assist their development.

6.3. The Committee would point out that a previous opinion ([1]) expressed the view that respect for human rights is an essential precondition for the signature of readmission agreements.

([1]) OJ C 149, 21.6.2002.

7. **Return and development aid**

7.1. European return policy vis-à-vis third countries must be positive for the development of these countries. It must not create additional problems. Returnees must be integrated into society and play a positive role in its economic and social development. Aid for return must enable returnees to be integrated in the labour market and promote the development of economic activities.

7.2. The positive link that should exist between return and development must apply to both voluntary and forced return, although success will always be greater when return is accepted on a voluntary basis.

7.3. Returns should be accompanied by programmes tailored to personal situations, reflecting the financial, professional, social and family circumstances of the people concerned and the economic and social situation in the country to which they are returning. The programme should incorporate actions by organisations cooperating in the process.

7.4. Funding for Community return programmes must not take away from Community or Member State development programmes. They must be new programmes which add to the resources currently available.

7.5. Internationally recognised international organisations (IOM, Red Cross, UNHCR, etc.) must be associated with the EU and the Member States in the management of these programmes.

7.6. The Commission has announced the impending publication of a Communication on immigration and development aid. The EESC considers this a necessary initiative and hopes that the Commission will take its views into account.

8. **Final comments**

8.1. The Council is rightly stepping up the pace of its work on combating illegal immigration. A number of EESC opinions have expressed the view that it is largely the responsibility of the Council and the Member States that the EU still lacks common laws on immigration and asylum, which hampers lawful management of migratory flows.

8.2. All EU institutions and bodies must stand firm against extremist political behaviour that is developing in some areas, particularly that of a racist nature. They must act in a highly responsible manner and seek to educate citizens politically as to the reality of migratory flows. Information and opinions broadcast by the media must be based on objective foundations and be presented in a responsible manner. Some unscrupulous politicians use citizens' concerns to whip up racism and xenophobia. The EESC supports action by civil society organisations to combat racism and xenophobia.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications'

(COM(2002) 119 final — 2002/0061 (COD))

(2003/C 61/14)

On 22 March 2002, 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 4 September 2002. The rapporteur was Mr Ehnmark.

At its 393rd Plenary Session of 18 and 19 September (meeting of 18 September), the Economic and Social Committee adopted the following opinion by 135 votes, with no votes against and no abstentions.

1. Summary of the opinion

1.1. The Lisbon European Council in 2000 set a very ambitious goal for the development of the Union, with vast implications not only economically but also socially and environmentally. The Lisbon strategy emphasised that the overall objective for the advancement of the Union should be to become the most competitive and dynamic knowledge-based society in the world by the year 2010. Later European Summits have confirmed this objective.

1.2. One of the most important fields of action in order to reach the Lisbon objective is education and training, and in general terms development of the human resources. Another essential field of action is development of the labour markets and their functioning. In the interface between these two fields are the efforts to promote quality education and training, as well as to safeguard the mutual recognition of professional qualifications across the borders. Only in this way can the labour market and the education systems make their full contribution to meeting the Lisbon objective.

1.3. The European Economic and Social Committee (EESC) welcomes the new proposal from the European Commission for consolidating and simplifying the legal framework for mutual recognition of professional qualifications. It is a timely proposal, and far-reaching. Although it focuses on the regulated professions, it will de facto encompass both regulated and non-regulated professions, and professions based on both shorter and longer periods of education particularly because a lot of professions are regulated in some EU countries and not regulated in other EU countries. In this respect, mobility within the non-regulated area of professions could also be positively affected, even if the draft directive doesn't officially deal with it. The proposed new directive represents a very considerable simplification of present legal structures. The EESC gives its support to these intentions.

1.4. A system for recognition of professional qualifications must be based on active support and involvement from the relevant professional associations and the social partners. The present system guarantees that, to some extent. The proposed new system does not guarantee that. The EESC proposes amendments to the draft directive in order to safeguard this involvement.

1.5. Mutual recognition of professional qualifications must be based on presumptions of comparable high quality in the qualifications. It is essential that the consumers and citizens at large can have confidence in the quality of the services offered by migrant as well as national professionals. The EESC finds that the draft directive does not sufficiently cover the problems inherent in establishing a good consumer service. This is not only a question for the public authorities but also for the professional associations and the social partners. The Member States must ensure that the main concern should be the protection of consumers.

1.6. The new system for recognition of professional qualifications must be both simple and flexible, and ready to adapt to changes in the labour market or in the education systems. The proposed directive does not clarify to which extent the provisions in the directive can be subject to revisions as a result of changes in education policies. The EESC further recommends that the European Commission give attention to the need for policy coherence in the interface between education policy, labour market policy and internal market policy.

1.7. The new system opens the door for European professional associations to propose Europe-wide common platforms for recognition of professional qualifications. The EESC finds it very positive that this opportunity is included in the draft directive. However, the EESC is of the opinion that the criteria for submitting such proposals should be better elaborated in the directive. The EESC proposes a set of such criteria.

1.8. The proposed new directive poses a considerable number of information and communication challenges, both for national authorities and for professional associations. The EESC finds it absolutely necessary that a high quality service to citizens be established with regard to recognition of service providers.

1.9. The EESC represents organized civil society, including the social partners, and thereby also professionals and consumers. The EESC intends to be closely involved in the follow-up of the directive, as part of EESC's work concerning the internal market and the developments of the education systems.

2. The need for enhanced mobility in the labour markets: recognition of diplomas in the context of the Lisbon strategy

2.1. Geographic mobility between EU Member States remains relatively low, which is illustrated by the fact that 225 000 people — or 0,1 % of the total EU population — changed official residence between two countries in 2000. However, the pattern of mobility has changed. When the Community regime for professional recognition was conceived 40 years ago geographic mobility mainly took place among unskilled workers. Today skilled employees are the most movable group on the internal labour market.

2.2. Mobility, both geographic and occupational, is regarded as one of the key measures to increase employment and enhance the overall competitiveness of the EU. Removing obstacles to mobility has become a key policy issue. With the changing trends in labour-market mobility, it has become important to make it easier to move within the Union — instead of moving out of the Union.

2.3. The Lisbon strategy identified the lack of labour-market mobility as an essential obstacle to achieving economic and industrial growth. The strategy also emphasised the need for preserved high quality in the services offered. The quality aspect is likewise one of the key issues in the present debate on the development of the educational systems.

2.4. Both in higher education and in vocational education and training efforts are presently being made to achieve a degree of convergence as to curricula and standards. Although it is too early to talk of harmonisation, it is obvious that the education systems have identified a need for a degree of convergent planning. Convergence in academic and vocational qualifications will no doubt further contribute to additional skills mobility.

2.5. The legal framework for recognition of professional qualifications is a tool for achieving an open and flexible internal market. The same professions are often organized in very different ways in different Member States. The main approach must be to maintain the general rule of the right of establishment based on national provisions. Provision for partial access to the profession or the cross-frontier provision of services should only provide a limited or exceptional liberalisation. The directive has not managed to express clearly this aspect. The EESC recommends that a statement to that effect is included in the directive.

2.6. It is relevant to point out, in this context, that it will become even more important to look out for 'degree mills' and other bogus providers of documents of qualifications, and to take necessary measures.

3. General comments

3.1. The EESC welcomes the proposal for a new directive for recognition of professional qualifications. The purpose is to create a more coordinated, transparent and flexible regime of mutual recognition for regulated professions based on the existing General System and the sectoral Directives on recognition. The Committee notices that the proposal constitutes the first comprehensive modernisation of the Community regime for professional recognition since it was conceived forty years ago.

3.2. The wholesale consolidation of the systems for recognition of qualifications for regulated professions should make it easier to manage and clearer, quicker and more friendly for the users in order to facilitate the free movement of qualified people between the Member States. This is all the more important in view of an enlarged European Union.

3.3. In creating a coherent set of principles for mutual recognition, the Commission has tried to side-step possible areas of conflict with regard to national systems. This is particularly the case in countries where there exist public organisations of professional boards, with built-in responsibilities for pension funds as well as other social security funds. The EESC recommends that the draft directive, in its preamble, clearly states that the provisions in the directive do not imply any changes in the basic structures of professional associations in the Member States. The purpose of the directive is exclusively to promote and simplify mobility, not to change structures in the Member States.

3.4. Information about recognition of diplomas and qualifications concerning both regulated professions and any initiatives on non-regulated professions must be enhanced, building on existing information and communications networks, as well as on current work on improving transparency of qualifications, to ensure that citizens can rely on a more comprehensive service providing information and advice specific to their individual interests and rights. The EESC would have welcomed an elaborated analysis of how to establish a good information service to citizens.

3.5. The directive would replace fifteen existing Directives in the field of recognition of professional qualifications, that is twelve directives covering the seven professions of doctor ([1]), general care nurse ([2]), dental practitioner ([3]), veterinary surgeon ([4]), midwife ([5]), pharmacist ([6]) and architect ([7]) adopted mainly over a twenty-year period in the 1970s and 1980s, plus the three General System directives ([8]), all of which were updated by the SLIM Directive in 1999 and 2001. It would thus cover the whole range of professions from higher education to crafts and trade professions.

3.6. The EESC supports the approach taken by the Commission. It is essential that new efforts are made to simplify the regulatory framework for recognition of qualifications. Particularly in view of the enlargement of the EU, it is vital to set in place a new regime that takes into account the need for simplification as well as for continued high quality in the services offered.

3.7. In the proposal, specific obligations are placed on service providers to provide specified information to their clients and to the contact points in the Member States. More general obligations are placed on the Member States as to exchange of information. The EESC would have welcomed more specific proposals as to the obligations of Member States to integrate existing national systems.

([1]) OJ L 165 of 7.7.1993, p. 1, and last amended by the SLIM Directive.
([2]) OJ L 176 of 15.7.1977, p. 1 and p. 8, and last amended by the SLIM Directive.
([3]) OJ L 233 of 24.8.1978, p. 1 and p. 10, and last amended by the SLIM Directive.
([4]) OJ L 362 of 23.12.1978, p. 1 and p. 7, and last amended by the SLIM Directive.
([5]) OJ L 33 of 11.2.1980, p. 1 and p. 8, and last amended by the SLIM Directive.
([6]) OJ L 253 of 24.9.1985, p. 34 and p. 37, and last amended by the SLIM Directive.
([7]) OJ L 223 of 21.8.1985, p. 15, and last amended by the SLIM Directive.
([8]) OJ L 19 of 24.1.1989, p. 16, and last amended by the SLIM Directive. OJ L 209 of 24.7.1992, p. 25, and last amended by the SLIM Directive. OJ L 201 of 31.7.1999, p. 77.

4. **Specific comments**

The EESC stresses that it should be made clear in the title of the Directive that it is addressed only to regulated professions.

4.1. *Title I — General provisions*

4.1.1. The scope of the proposed directive

4.1.1.1. The EESC has noted that the wording does not cover third-country nationals who have obtained their education in a EU Member State. It is the opinion of the EESC that this category of third-country nationals with residence permits should have the same right to recognition of qualifications as EU citizens ([9]).

4.1.1.2. With regard to EU Member State nationals, the Committee would recommend that, in the interests of maintaining high standards of consumer services, the host Member State be accorded the option of requiring that an aptitude test be taken by an applicant in possession of evidence of formal qualifications obtained in a third country and with three years' professional experience certified by the Member State which recognised that evidence in accordance with Article 2(2).

4.1.2. Effects of recognition

4.1.2.1. The EESC welcomes the clear and straight wording in the first two sub-paragraphs.

4.1.2.2. However, the Committee has some reservations about the application of Article 4(3) which stipulates that, where the applicant's profession constitutes an autonomous activity of a profession covering a wider field of activities in the host Member State and where the difference cannot be made up by a compensatory measure, the applicant has access to that activity alone in the host Member State. In this particular case, the Committee fears the risk of consumer confusion as to the competence of the professional whose services are being sought. The Committee feels that the professional concerned should be required to provide the consumer with clear and precise information about the exact scope of his or her field of activity.

([9]) Cf. the High Level Task Force on skills and mobility, 14 December 2001 and Commission's Action Plan for skills and mobility, COM(2002) 72 and the Draft Directive on conditions of entry and residence of third-country nationals for the purpose of paid employment and self-economic activities, COM(2001) 386 final.

The EESC has already made the comment (cf 2.5) that it should be clearly stated in the directive that partial access to a profession should be an exception and not the general rule.

4.1.2.3. In this context, the EESC has taken note of fears from some national professional associations that the wording in Article 4, paragraph 3 — and elsewhere — could be interpreted as a signal for more uniform structures for national professional associations. The EESC recommends that the directive in its preamble include a statement that the purpose of the directive is to promote and simplify mobility, not to interfere in any way with the structures of national professional associations.

4.2. *Title II — Free movement of services*

4.2.1. Article 5, Principle of free provision of services

4.2.1.1. The EESC stresses that the aim of free provision of services should be a high quality of services for European citizens and the protection of safety and health of European consumers, both in public and private services. The consumer must be correctly informed in his/her mother tongue about the provider and the conditions under which the service is provided.

4.2.1.2. Generally speaking, it is impossible for the recipient of a service to ascertain the country in which a service provider is established. The recipient must therefore be able to trust that the service he or she is offered meets the consumer-protection standards of the country in which it is provided. The Committee thus feels that the specific professional rules of the host Member State must also be binding on service providers from other Member States.

4.2.1.3. The proposed directive envisages a lighter regime for the provision of cross-frontier services than for establishment, albeit with a safeguard clause. The mobility of service providers within the Member States will be easier by giving them the opportunity to work temporarily up to 16 weeks in the host country under their own home title. The EESC emphasises that this should not be interpreted as indicating a difference as to the quality of services; it should instead be a way of solving an administrative question. In this context, the EESC would like to refer to Article 7 about the obligation for the service provider to inform, in advance, the contact point of the Member State of the establishment. This obligation is valid also for temporarily arranged service provision.

4.2.1.4. Article 7 of the proposed directive states that where the service provider moves in order to provide services, he shall, in advance, inform the contact point of the Member State of establishment. This provision will no doubt create some information and administrative problems, but would function as a quality control mechanism.

4.2.1.5. Under Article 9, Member States must ensure that service providers fulfil their information obligations. To be able to meet this task, the authorities of the host Member State must be informed about the service provision. Also, the right — established under Article 8 — of authorities of the host Member State to seek information from the authorities of the Member State of establishment is meaningless unless the host Member State authorities are aware of the service provision. The Committee therefore feels that the contact point of the host Member State should also be informed about any planned provision of services.

4.2.1.6. With regard to Article 8, the Committee also thinks that a time limit should be set for replies from the competent authorities.

4.2.1.7. In addition to the information required under Article 9 of the proposed directive, steps should also be taken to ensure that the service provider furnishes the recipient of the services with information about any insurance he or she may have taken out against the financial risks potentially arising from his or her professional liability.

Consumers should also be informed about the length of the professional's stay in their country, as they have to know whether or not to expect a follow-up to their treatment, file or case. They must also be informed about what means of recourse they have should problems arise.

4.2.1.8. To avoid ambiguities and difficulties, the Committee feels that it should be made clear whether the sixteen-week period is calculated on the basis of calendar days or working days. The Committee suggests opting for calendar days, given that some professionals may also provide their services at weekends.

4.3. *Title III — Freedom of establishment*

4.3.1. Chapter I, General system for the recognition of evidence of training

4.3.1.1. This section essentially takes over the principles set out by Directives 89/48/EEC and 92/51/EEC. The general system is based on the principle of mutual recognition according to which any qualified professional following an occupation in a Member State is entitled to the recognition of his/her diploma to satisfy the requirement of the same profession in another Member State without being required to re-qualify from scratch. Since there is no coordination of the minimum training requirement, the general system does not generally permit automatic recognition. The host Member State can require compensatory measurers if there are substantial differences between the training acquired by the migrant and the training required in the host Member State. The principle is retained in the draft directive.

4.3.1.2. That said, applying the general system on a subsidiary basis to members of professions that come under the sectoral system is incompatible with the harmonisation of minimum training requirements. Moreover, there is no further point to the sectoral system if non-compliance with the minimum training requirements laid down therein automatically triggers application of the general system.

4.3.1.3. Ultimately, this would create a two-tier profession of those whose training meets the minimum requirements of the sectoral directive, and those whose training does not. It is, however, impossible for consumers to make that distinction and they themselves have no way of differentiating between qualified and less qualified providers.

4.3.1.4. The Committee feels that current practice — whereby Member States assess applicants' knowledge and skills individually and stipulate appropriate, proportionate compensation measures based on ECJ case law — is adequate and consumer-friendly. It should therefore be retained.

4.3.2. Article 11, Levels of qualification

4.3.2.1. Five levels of professional qualifications are set out in theoretical terms. Levels I to III correspond to the three levels of qualifications covered by Directive 92/51/EEC. Directive 89/48/EEC has been split into levels IV and V. Recognition is granted on the basis of the draft Directive only if the level required in the host Member State is no higher than the level immediately above that attested by the applicant's evidence of qualifications. The present system allows bridge mechanisms between the general Directives 92/51/EEC and 89/48/EEC.

4.3.2.2. It is a step forward that the draft takes into consideration the distinction between different levels of higher education. The EESC, however, notices that the levels of qualification do not correspond with general EU education policies and the trend in the so-called Bologna process for higher education.

4.3.2.3. The EESC proposes the following amendments to Article 11:

— Level 5 corresponds to training at higher education level and of a minimum duration of four years and less than five years.

— Level 6 corresponds to training at a higher education level and of a minimum duration of five years.

4.3.3. Article 13, Conditions for recognition

4.3.3.1. The contents are essentially taken over from Article 3 of Directives 89/48/EEC and 92/51/EEC.

4.3.3.2. The EESC notices that certified regulated training makes it unnecessary for a migrant worker coming from a Member State, which does not regulate the profession in question, to demonstrate two years' professional experience.

4.3.4. Article 14, Compensation measures

4.3.4.1. Statistics show that more than 80 % of the applications are accepted without compensatory measures. There must however be a possibility for compensatory measures, such as an aptitude test or an adaptation period, if there are substantial differences in the education and training of the applicant and that one required in by the host. The EESC emphasises that the host Member State should have the right to deem which of the two compensatory measures should be required from an applicant, with respect to the principle of proportionality.

4.3.4.2. The EESC notices that substantial differences are interpreted in the draft, in terms of duration and content of the training required by the host Member State, and stresses that the relevant authorities should concentrate on the current competencies not the initial training of the applicant. There is a need for common methods for taking into account the professional experience and competencies acquired through continuous training.

4.3.4.3. In Article 14, the Commission would abolish the possibility for a Member State to require professional experience rather than a compensation measure in the event of substantial differences relating to the duration and not the content of training. The key words here are obviously 'duration and not the content' of the training. This means that it will not be possible for an applicant to compensate shorter training with a substantial period of professional experience. The EESC would have welcomed an analysis of the possible effects of this proposal.

4.3.4.4. The draft directive stipulates that if a Member State considers that it can or will not give an applicant a choice between an adaptation period and an aptitude test, it shall inform the other Member States and the Commission in advance and provide sufficient justification for the derogation. The EESC sees the merit of such a stipulation, since it will make it more difficult to introduce new obstacles for the mobility. The stipulation illustrates the need for the build-up of a very efficient network of national contact points for the implementation of the directive.

4.3.4.5. The respect for the code of conduct approved by the group of coordinators for the general system of recognition of diplomas should be ensured.

4.3.4.6. The increasing mobility together with efforts to encourage it are already stimulating increased comparison and convergence of qualifications and training. This makes it all the more important to provide increased clarity and simplicity in the conditions applicable to temporary and occasional cross-frontier provision of services.

4.3.5. Article 15, Common platforms

4.3.5.1. The EESC strongly welcomes the introduction in the draft directive of common European platforms, to be proposed by the relevant professional associations at European level, and after necessary consultation with Member States adopted by the Commission. According to the draft directive a common platform means a set of criteria of professional qualifications which attest to a sufficient level of competence for the pursuit of a given profession and on the basis of which those associations accredit the qualifications obtained in the Member States. When, on the basis of existing or future common platforms, qualification criteria are set by a decision taken at Community level (the Committee on Recognition of Professional Qualifications), the Member States will no longer impose compensatory measures. This coupling between common platforms and compensatory measures is highly interesting, and should be supported.

4.3.5.2. The EESC thinks that this form of active involvement by European professional associations might be a good way to make professional recognition simple, more automatic, predictable and transparent. The method must, however, provide adequate guarantees as regards the applicant's level of qualification.

4.3.5.3. Therefore the EESC requires clear criteria for the European professional associations that may apply for common platforms. Such a European professional association must:

— cover as far as possible all EU countries;

— promote and maintain a high standard in the professional field concerned by providing for the upward convergence of initial training and for requirements regarding continuing training;

— promote regular external evaluations of the standard of its members' services in the Member States;

— award an attest of a certain level of professional qualifications where this is not the responsibility of the Member State;

— ensure that the members of its member associations respect the rules of professional conduct which it prescribes; and

— be representative for its respective professional group at the national level (within the Member State).

4.3.5.4. The European Commission should establish a European register of common platforms. The register should be inserted on the One-Stop Mobility information site with links to the organisations setting up the platforms.

4.3.5.5. Some European federations of professional associations (such as the European Federation of Psychologists' Association (EFPA), the European Council of Geodetic Surveyors (CLGE), the European Communities Confederation of Clinical Chemistry (EC4) etc.) have declared their support of the draft directive, and at the same time announced that they will submit a proposal for a common platform in accordance with Article 15. The EESC welcomes these first opportunities to test the procedures envisaged in the draft directive.

4.3.6. Chapter II, Recognition of professional experience

4.3.6.1. The principle from the present system is retained. The draft provides for automatic recognition of qualifications on the basis of the applicant's attested professional experience in the case of the craft, industrial and commercial activities. The EESC feels that the distinction between years 'on a self-employed basis or as a company director' and years 'on an employed basis' needs careful consideration.

4.3.7. Chapter III, Recognition on the basis of coordination of the minimum training conditions

4.3.7.1. The training for the professions (general practitioner and specialised doctor, nurse responsible for general care, dental practitioner, veterinary surgeon, pharmacist and architect) covered by the present sectoral directives has to a certain extent been harmonised at the EU-level Therefore national qualifications have in principle been recognised automatically. This section takes over the principle governing automatic recognition of evidence of training. However, the scope of the new directive may put a new focus on existing more general differences such as the number of years needed for a specific profession.

The Committee emphasises that the objective of establishing high quality in education and training and patient/client services must be maintained.

5. **Comments on specific professions**

5.1. The proposed directive includes an important change in the number of medical specialisations that will be included in an annex to the directive. From the present 52 specialisations administered by way of the present sectoral directive, there would in the future be only 18 specialisations included in the annex, whereas the other 34 would be regarded as part of the general system. As there seems to be some confusion as to the number of specialisations the EESC recommends that the European Commission makes an update of the annex in question.

5.2. A number of medical professional associations have underlined that this would mean a separation of the medical specialisations in two groups, one with clear quality guarantees, one with more general quality marks. The EESC understands the need for including in an annex only those specialisations that are identified in all Member States. On the other hand, there is no doubt a risk that this separation of the medical specialisations could have negative effects for those specialisations that are treated under the general system. The EESC is of the opinion that this separation is not good, and recommends that all present specialisations be listed in the annex.

5.3. Pharmacists have expressed their wish to maintain the derogation provided under Article 2(2) of Directive 85/433/EEC whereby Member States need not give effect to the diplomas, certificates and other formal certificates awarded to nationals of Member States by other Member States with respect to the establishment of new pharmacies open to the public. Pharmacies which have been in operation for less than three years are also regarded as new. In order to maintain high standards in the pharmaceutical services provided to the European public and to ensure a good geographical distribution of pharmacies, the Committee recommends that this derogation be incorporated into Article 41 of the proposed directive.

5.4. The architects are inclined to favour standing outside of the new directive. The quality aspects are regarded as particularly important in this regard. On the other hand, the introduction to the draft directive emphasises at some length the quality aspects of the profession of architect. Bearing in mind the extent to which the Commission is trying to meet the interests of the architects in the draft directive, the EESC would recommend that the architects are included in the new directive.

5.5. Another example is the veterinary profession which has to provide a high level of consumer protection, prevent and combat animal diseases and guarantee animal welfare. Therefore the quality aspects of the new directive are of particular importance.

6. **Documentation and procedures**

6.1. *Article 46*

The EESC has noticed that administrative formalities tend to be implemented in varies ways in the Member States. The Code of Conduct approved by the group of coordinators for the general system of recognition of diplomas has made it possible to define, through the experience gained by the Commission and the Member States, which practices are preferable, which are acceptable and which are not. The code of conduct might need updating in line with the new framework directive.

6.2. *Article 47*

The EESC notices that competent authorities must give a reasoned decision not later then three months after the date on which the applicant's complete file was submitted. For the general system this means that the time has been cut down from the current four months, which is positive from the applicant's point of view.

6.3. *Article 48, Use of professional titles*

The EESC notes that where, pursuant to Article 4(3), access to a profession in the host Member State is partial, the Member State may add a reference to that effect to the professional qualification. The Committee considers it vital to ensure that this reference is not understood by consumers as indicating any specialism, but, on the contrary, as a restriction on the professional's field of competence.

6.4. *Article 49, Knowledge of languages*

The EESC is of the firm opinion that certain knowledge of the language/s of the host country is essential for the pursuit of a profession. Language requirements, however, must not affect the basic freedom of movement for workers guaranteed in the Treaty. Language requirements must be necessary and imposed in a proportionate manner, and always coupled with relevant measures for arranging additional linguistic training.

6.5. The EESC stresses the importance of language training as part of mobility and therefore endorses the proposal in the Commission Action Plan on Skills and Mobility that Member States should provide for the early acquisition of foreign language skills in pre-primary and primary schools and for its strengthening in secondary schools and in vocational training institutions.

6.6. In doing so, it will be of high importance to take full account of the needs of the European labour markets. Social partners should make provision for suitable language training for workers where appropriate as part of their competence development plans. The efforts for mobility-promoting language training will obviously have to encompass all groups in the labour market. Following the European Year of Languages, the Commission will come forward with proposals for action with a view to promoting foreign language learning. The EESC will in due course have the opportunity to comment on these plans.

7. Title V — Administrative cooperation and responsibility for implementation

7.1. *Competent authorities and contact points*

7.1.1. The draft directive underlines the need for substantially improved information and consultation services at national level. In the course of the establishment of the Internal Market, various forms of contact points and information services have been built up. The amount of questions and contacts from enterprises or from the broad public have been rather limited so far. When the new directive is in force, and the envisaged more ambitious information on service providers will be more widely known, it can be expected that the Internal Market information networks will have a radically new amount of contacts. In the field of education and specifically higher education, some well established information centres already exist: the NARICS (National Academic Recognition Information Centre) which are the contact points on higher education professions and the NRCVG's (National Resource Centre for Vocational Guidance) and the national reference points for vocational training.

7.1.2. However, the EESC must make the observation that the new directive will give the Member States a quite considerable new administrative challenge.

7.1.3. The proposed new procedures will also necessitate, particularly in the beginning, substantial administrative efforts by the European Commission. The EESC would have appreciated an overview of the total administrative costs for the new directive.

7.1.4. The EESC assumes that the existing initiatives administered under DG Market such as The Europe Direct Call Centre Signpost service and the Dialogue with Citizens will be linked to the One-Stop European Mobility Information Site as proposed in the Action Plan on mobility and the Barcelona conclusions.

7.1.5. Direct links to the Internet sites of European professional associations and of social partners should provide authoritative information on specific professions. Applicants should be helped to navigate to other private Internet sites dealing with recognition of qualifications; a number of such sites are available and can offer additional information.

7.1.6. The EESC supports the proposal in the Action Plan on skills and mobility and the Barcelona conclusions that the Commission and Member States should launch an information campaign on mobility in 2003. Social partners and other interested parties are invited to initiate sectoral information campaigns.

8. Article 54, Committee on the recognition of professional qualifications

8.1. One single committee to administer the Directive and its updating is proposed. All committees set up under the current system should be abolished.

8.2. The EESC notes that the scope of this committee should be very wide ranking, from doctors to architects, plus the whole range of professions from higher education to craft and trade under the general system. The EESC agrees that comitology procedures are suited to the updating of technical requirements, but doubts that they can be appropriate for the adoption of reliable guarantees on the quality of education and training. The Community action/regime in the area of professional recognition is focused on free movement. The advisory committees have focused on training. The future regime must provide for a mechanism that guarantees a similar input from the profession in question as advisory committees to the updating of education and training. This does not only concern the professions that follow the principle of automatic recognition but other professional groups as well. The professions must have the opportunity to be both proactive and put forward proposals for change and reactive to respond to a request from the Committee.

8.3. It is essential, in the opinion of the EESC, that any arrangement made for a consultation mechanism is confirmed in an appropriate legal form which guarantees that the consultation is maintained in the future. The key aspect is to shape the guarantee for consultation in an appropriate and binding form.

8.4. The EESC proposes that Article 54, a new third subparagraph is included with the following wording:

— 'The Committee shall, in appropriate forms, regularly consult professional associations, the social partners and other relevant stakeholders on matters concerning implementation and development of the directive. Initiatives for such consultation may also be taken by the relevant professional associations and social partners.'

8.5. When the Community regime for professional recognition was conceived 40 years ago geographic mobility mainly took place among unskilled workers. Today skilled employees are the most movable group on the internal labour market. Mobility is regarded as a means to increase employment and the competitiveness of the EU. In order to build stronger links to the real world of work it will be important to involve actively the social partners in the recognition process.

9. **Conclusions**

9.1. *Need for an overall strategy*

9.1.1. The EESC is aware that the formal competence of DG Internal Market concerning professional recognition lies within the field of the EU regime for recognition of regulated professions. At the same time it is aware that an increasing proportion of the labour market operates outside the regulated area where transparency and mutual trust are the key elements for recognition of qualifications and competences.

9.1.2. Therefore the EESC has chosen an overall perspective on the issue of recognition and endorses the invitation of the Employment and Social Policy Council to the Commission on 3 June 2002 to promote, in close cooperation with the Council and the Member States, increased cooperation in education and training based on the issue of transparency and quality assurance, in order to develop a framework for recognition of qualifications (ECTS, diploma and certificate supplements, European CV), building on achievements of the Bologna process and promoting similar action in the area of vocational training. Such cooperation should ensure the active involvement of the social partners, the vocational education and training institutions and other relevant stakeholders.

9.1.3. With considerable pleasure, the EESC has noticed that actions in the field of recognition have recently been given high priority on the European policy agenda. Synergies between these actions should be strengthened in order to achieve an overall strategy.

9.1.4. So far many recognition initiatives have been developed in isolation from each other. Common platforms will be created under Article 15 in the consolidated recognition directive monitored by DG Internal market. DG Education will monitor the issue of voluntary minimum standards in education and training in order to facilitate professional recognition of non-regulated professions. Will the non-regulated professional groups create their common platforms as well? The Forum on Transparency for vocational training will coordinate the issue of recognising informal and non-formal learning. The sector committees established through the European social dialogue may be used to pursue work on sectoral qualifications.

9.1.5. A number of industries such as the ITC, automobile and aeronautics are developing their own European or international approaches to qualifications' standards. Some of them aim at European diplomas to be offered on a voluntary basis. There are a number of Socrates and Leonardo da Vinci projects dealing with recognition issues. The Tuning project is aiming at convergence within certain higher education subjects.

9.1.6. Because of the Bologna process aiming at a European area for higher education by the year 2010 and the similar so called Bruges process for vocational training, there will be two parallel convergence and harmonisation processes in the field of European education and training. The social partners will be involved in the Bruges process, but have so far been kept out of the Bologna process. The EESC thinks that the parallel instruments and services for vocational education and training and higher education should be coordinated, since the boundaries between the two fields have been blurred, and the social partners ought to be integrated in actions in both the fields. The national reference points for vocational qualifications need to be closely integrated with the parallel NARIC service related to higher education.

9.1.7. The EESC strongly emphasises that there is a need for synergy and policy coherence between DG Internal Market, which deals with mobility issues, DG Education and Culture, which is responsible for European projects concerning quality of education and training and DG Employment which has a number of social dialogue committees.

9.1.8. In the view of the EESC, it is imperative to reach a policy framework for the whole field of recognition. The present draft directive is only a step in this direction. The EESC strongly advocates the setting-up of a joint European platform or round table with the objective to draw up guidelines for coordination of recognition of regulated and non-regulated higher education professions and vocational education and training as well as informal and non-formal learning. Such a joint European platform or round table, being composed of the European Commission and other European institutions, the Member States and other relevant partners, such as educational institutions, social partners and professional associations, would give a new impetus to the overall efforts to promote and stimulate mobility in the European Union. In the perspective of Enlargement, such efforts will be all the

more essential — and so will the need for good policy coordination.

9.1.9. The EESC will give these issues high priority in its future work on education and employment policies.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance'

(COM(2002) 222 final — 2002/0110 (CNS))

(2003/C 61/15)

On 28 May 2002, 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 4 September 2002. The rapporteur was Mrs Carroll, the co-rapporteurs were Mr Retureau and Mr Burnel.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted the following opinion by 129 votes in favour and two votes against with three abstentions.

1. **Background to the proposal**

1.1. In September, 2001, the Commission put forward a Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility [1]. The Committee gave its opinion on this proposal in January 2002 [2]. This was not the only Community instrument in the area of jurisdiction and recognition and enforcement in relation to matrimonial matters and parental responsibility for children. Accordingly, the Committee urged the Commission to consolidate all such legislation into one instrument. The Council was already considering this matter and the current integrated proposal is the result.

1.2. Given the increase in movement within the EU, there has been a concomitant increase in the number of marital and other family relationships between citizens and residents of EU Member States. Unfortunately, this has meant an increase in the numbers of divorce, annulments and separations involving citizens of different Member States. Disputes arising in judicial or administrative proceedings — always difficult — can be complicated by issues of jurisdiction, with parties to the proceedings forum shopping or seeking to have judgments handed down in one Member State overturned in their own Member State.

1.3. Disputes relating to access to and/or custody of children following the divorce or separation give rise to a limited, but not negligible number of cases of child abduction, both to other Member States and to third countries by parents or other relatives. Even where there has been no forceful abduction, rights of access for a parent may be compromised by the fears of parents or guardians with custody that, if they allow a child to leave their own jurisdiction, it will be difficult or impossible for them to enforce the judgment giving them custody, if the child fails to return. This is to the detriment of both the child and the other parent.

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[1] COM(2001) 505 final.

[2] OJ C 80, 3.4.2002, p. 41.

2. Existing legislation — EU instruments

2.1. The Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters did not cover issues relating to personal law, such as matrimonial breakdown and the resultant civil issues, such as custody of and access to children.

2.2. The Brussels Convention of 28 May 1998 on jurisdiction, recognition and enforcement of judgments in matrimonial matters provided for limited mutual recognition and enforcement of judgments on parental responsibility and custody of and access to children. This Convention did not enter into force, however, and its provisions were, to a large extent, taken over by Regulation (EC) No 1347/2000.

2.3. Council Regulation (EC) No 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses is directly applicable in the Member States and came into force on 1 March, 2001 ([1]). It does not apply in Denmark which does not participate in the common judicial area. The Committee gave its opinion on this Proposal in October 1999 ([2]).

2.3.1. The Committee welcomed the Proposal but felt that it could have been more ambitious in its scope. In particular it considered that the Regulation should be extended to include children of previous marriages and adopted children. Provisional and fall-back arrangements written into the proposal were felt to allow too much leeway for the application of national law. In this regard and in relation to procedural matters, the Committee recommended more precise wording of the proposed Regulation. The Committee recommended that attention should be paid to the European public's growing demand for guarantees equivalent to those they hold before the courts in their own country in all other Member States.

2.4. Maintenance is excluded from the scope of this Proposal. It is already covered by Council Regulation (EC) No 44/2001 ([3]), which offers a more advanced system of recognition and enforcement. This Regulation will remain in force as a separate instrument, amended as regards jurisdiction by Article 70 of the current Proposal, to take account of the provisions of the latter.

3. Important extra-EU instruments

3.1. The 1996 Hague Convention ([4]) covers jurisdiction, recognition and enforcement and cooperation in respect of parental responsibility and measures for the protection of children. It is not yet in force.

3.2. The Hague Convention on the Civil Aspects of International Child Abduction 1980 is in force in all Member States. It has as its aims the prompt return of children up to the age of 18 years, wrongfully removed to or retained in any Contracting State and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States. The current Proposal is inspired by the terms of the 1980 Convention, but the European Court of Justice will interpret it in relation to disputes between citizens of Member States.

4. A framework for improvement

4.1. The current proposal 'aims at the recognition and enforcement within the Community of decisions in matrimonial matters and in matters of parental responsibility based on common rules on jurisdiction'. In this respect, it is following Article 34 of the Conclusions of the Tampere Council of October, 1999. The Justice and Home Affairs Council meeting on 30 November 2000 adopted a programme for the progressive abolition of exequatur in four areas of work: (i) Brussels I; (ii) Brussels II and family situations arising through relationships other than marriage; (iii) rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple; and (iv) wills and succession.

4.2. An Initiative of the French Republic with a view to adopting a Council Regulation on the mutual enforcement of judgments on rights of access to children was aimed at facilitating, through the abolition of exequatur, the exercise of cross-border rights of access in the case of children of divorced or separated couples, aged up to 16 years. This initiative is integrated into the current Proposal.

4.3. In September 2001, the Commission put forward a Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility, on which the Committee gave its opinion in January, 2002. The Committee was pleased to note the extent to which its recommendations have been incorporated into the current Proposal. However, there remains the important issue to be dealt with, viz.- non-marital family situations and, in particular, the children of non-marital family situations.

([1]) OJ L 160, 30.6.2000.

([2]) Opinion on the Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (OJ 368, 20.12.1999).

([3]) Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ 12, 16.1.2001.

([4]) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children 1996.

5. **Comments on the Proposal**

5.1. The provisions of Regulation (EC) No 1347/2000 which covers matrimonial matters have been taken over into the new proposal but extended in relation to parental responsibility by severing the link with matrimonial proceedings. The provisions of the Proposal relating to parental responsibility are also inspired by the provisions of the 1996 Hague Convention. The Hague Convention on the Civil Aspects of International Child Abduction, 1980 is already in force in all Member States. The new Regulation will not be identical to the 1996 and 1980 Hague Conventions, as it introduces stricter rules on jurisdiction for intra-EU cases. The Committee welcomes this broader approach to the implementation of the Convention.

5.2. The term 'matrimonial matters' covers divorce, legal separation or marriage annulment by civil proceedings or other proceedings recognised in a Member State as being equivalent to judicial proceedings. The Proposal does not cover measures taken as a result of penal offences committed by children. 'Parental responsibility' means rights and duties given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect and relating to the person or the property of a child. In particular, the term includes rights of custody and access.

5.2.1. The Committee is pleased to note that the current Proposal is wider and more ambitious in its scope than Regulation (EC) No 1347/2000. It is also pleased to note that its scope is no longer limited to issues of parental responsibility arising before the final judgment or decision has been handed down in divorce or separation proceedings. In accordance with the provisions of the French Initiative, ongoing disputes are now covered.

5.2.2. The issue of non-marital family situations and disputes arising from them upon separation and, in particular, in relation to parental responsibility, however, still remain to be dealt with. The Committee again urges the Commission to put forward proposals covering non-marital situations, as it did in its Opinion on the Proposal for Regulation (EC) No 1347/2000.

5.2.3. The Committee is concerned at the wording used in Article 1.1 covering the scope of the Regulation. The wording is ambiguous and could suggest that all children are covered by the Regulation. Equally, however, it could suggest that only children of a married couple or of one of them are covered. In the interests of clarity and of the widest possible scope for the Proposal, the Committee recommends that the Article should be amended as follows and, in relation to parental responsibility, should be closer to the wording of its 2001 Proposal:

— This Regulation shall apply to:

(a) civil proceedings relating to divorce, legal separation or marriage annulment;(and)

(b) all civil proceedings relating to the attribution, exercise, delegation, restriction or termination of parental responsibility, whether in connection with civil proceedings under (a) above or otherwise.

5.2.4. The Committee welcomes the more precise definitions in relation to parental responsibility and child abduction.

5.2.5. In its Opinion on the parental responsibility Proposal, the Committee urged the Commission to ensure the child was heard in disputes on access/custody. It is pleased to note that this aspect has been incorporated into the Proposals in Article 4 and in particular to note Article 3 of the Proposal which states the child's right to maintain on a regular basis a personal relationship and direct contact with both parents, unless it is contrary to his/her interests. The Committee would go further and say that a child has the right to maintain a personal relationship and direct contact with his wider family, e.g., brothers and sisters and stepbrothers and sisters, grandparents, etc.

5.2.5.1. The interests of the child are difficult to define but there is no doubt that they should be paramount. Whilst it can be sometimes difficult to establish the best interests of a child by listening to him/her, because of age, immaturity or undue parental influence, it is always important to seek to establish the child's best interest. The opinion of the (often warring) parents may not always be useful in determining the best interests of a child, as they may be confusing their own emotional needs with those of the child. They may also be using a child as a bargaining counter.

5.2.5.2. An effort should, therefore, be made by the Commission through cooperation in the European Judicial Network to coordinate approaches to this question among the judiciary of the Member States. The Committee would also recommend to national Governments that they should ensure that judicial and legal training encompasses training in dealing with children's rights as a part of the web of personal human rights.

5.2.5.3. Speedy procedures should, however, be the main aim of this Proposal. The Committee believes that speed is of the essence in dealing with issues of parental responsibility. A child's interest, particularly that of a young child, is not served by long-drawn-out procedures, during which the child may lose even the memory of the other parent or guardian.

5.2.6. The Committee notes with some concern the wide range of grounds for decisions on jurisdiction in matrimonial matters. It is aware that differing legal situations have to be accommodated but hopes that, in the future, it will be possible to restrict the number of grounds, so as to ensure the maximum clarity and speed of proceedings.

5.2.7. In relation to jurisdiction in parental responsibility proceedings (Article 15), the Committee welcomes the fact that the habitual residence of the child is the normal basis for decisions on jurisdiction. The limited provisions made for emergencies and for recent changes of habitual residence of the child and a holder of parental responsibility, in general, should be useful. The Committee has, however, some reservations as to the place where property of the child is located always being a sound reason for transfer of jurisdiction, even though this is only in exceptional circumstances. It is concerned that this ground could be abused and urges further protection for the child in relation to the use of this ground, if not its deletion from the Proposal.

5.2.7.1. The Committee feels that the property provision may be based on a somewhat outdated notion of property being generally immovable property or else tangible movable property, where its location may be important. However, a trust in one Member State may administer a property, movable or immovable, tangible or intangible (e.g. financial products), belonging to a child located in another State or having connection with several other States, including non-Member States (e.g. financial instruments of one kind or another). There may be no particular reason why the jurisdiction of the Member State in which property is located should be chosen in the vast majority of cases. If the Member States decide to retain this ground, it should be made absolutely clear that only issues of property should be concerned and not any other matters covered by this Proposal.

5.2.8. On the question of grounds for non-recognition of judgments (Article 28), the Committee is concerned that the issue of public policy should be allowed as a valid ground. This is open to abuse and, in the case of parental responsibility proceedings, may act in direct contradiction of the spirit of an otherwise child-centred Proposal. In some jurisdictions, public policy or constitutional provisions may lay greater emphasis on parental rights than on parental responsibilities and thus act to the detriment of the child concerned.

5.2.9. The Committee is pleased to note that the grounds of costs have been addressed by the Commission in the current Proposal, as recommended by it in its Opinion on the 2000 Parental Responsibility Proposal.

5.2.10. The provisions on child abduction take precedence over the 1980 Hague Convention, but the Convention remains in force in the Member States for the purposes of dealing with extra-EU abductions. These remain the vast majority of abductions and the Committee urges the Commission to use its influence to ensure adherence to this Convention by all countries and to conclude bilateral agreements with third countries where possible.

5.2.11. Where mediation is a feature of national proceedings, there is always a risk that one party may negotiate in good faith while the other is using mediation merely to delay proceedings. This position should be provided for and the Committee recommends that, where the parties agree to mediation, time limits shall run from the date on which the mediation is declared to have failed.

5.2.11.1. The proposal should specify that Central Authorities may work in specific cases either directly or through public authorities or other bodies.

5.2.12. The Commission should work to improve the depth and quality of cooperation between Central Authorities and within the European Judicial Network.

6. **Further recommendations**

6.1. As it noted in paragraph 5.2.2 above, the Committee feels that the Commission and Council should give urgent consideration to the issues arising from the breakdown of non-marital relationships and the cross-border aspects of this, particularly relating to parental responsibility issues.

The Committee appreciates that progress on this issue cannot be made within the scope of the present Proposal. It considers the adoption of this Regulation to be an urgent matter and, therefore, does not propose that it should be extended to include non-marital relationships. However, in the interests of the people concerned in the breakdown of non-marital relationships and, in particular, in the interests of their children, the Committee considers that a legal framework at both national and EU level is necessary and urges the Commission to initiate work in this area.

6.2. The Committee notes with interest that France treats child abduction as a criminal offence. While not wishing to criminalise marital or ex-marital relations, treating child abduction as a crime can help in the speedy location of the child, as police authorities in the Member States are generally more efficient at locating people than are civil authorities. The Committee recommends that this approach might be considered by other Member States, as a means of improving the speed with which return of the child can be effected to his/her lawful custodian.

6.3. Attribution of parental rights, as well as access and visiting rights, etc., are covered by the current Proposal. Adopted children are on the same footing under the Proposal as are natural children. The Committee understands, however, that it is not currently the intention to include the actual adoption procedures within the scope of the Proposal. This seems somewhat contradictory, as adoption could be considered as the ultimate 'attribution ... of parental responsibility'. The Committee recommends that adoption procedures should be covered by this Proposal.

6.4. Maintenance remains covered by a separate instrument. As maintenance is almost invariably a matter of urgency, it recommends that jurisdiction, recognition and enforcement in maintenance cases should be on the same footing as the proposed instrument for recognition and enforcement of commercial agreements.

6.5. A significant problem exists within the European Union (although sometimes emanating from without) of abandonment of children and abuse of parental authority in relation to a child. The Committee requests the Commission to consider this issue, by means of research into the problem and to take appropriate action suggested by the results, with the aim of producing child-centred measures.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'Latvia and Lithuania on the road to accession'

(2003/C 61/16)

On 16-17 January 2002 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'Latvia and Lithuania on the road to accession'.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 September 2002. The rapporteur was Mr Westerlund.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted unanimously the following opinion.

A. **COMMON BACKGROUND**

1. **The road towards EU accession**

1.1. *From self-government to referendum*

When Latvia and Lithuania gained their independence in 1991, both countries speedily set their sights on EU membership. Milestones on the way were:

— 1993: the meeting of the European Council in Copenhagen, where it was decided that countries having concluded a Europe Agreement could become members;

— 1995: both countries sign Europe Agreements with the EU;

— 1995: both countries introduce their applications for accession;

— 1998: both countries are recognised as candidate countries;

— in March 2000 the actual negotiations started.

Latvia and Lithuania embarked on negotiations after the first wave of candidate countries. The negotiations have, however, progressed quickly because substantial efforts have been made and nothing now lags behind. The Laeken European Council in December 2001 stated that Latvia and Lithuania were

among the ten countries with which negotiations should be concluded at latest by the end of 2002, in order that they shall be able to participate in the 2004 European Parliament elections as members.

1.2. *Involvement in the Baltic Sea area and the EU's Northern Dimension*

Development since 1991 has been strongly influenced by the steadily increasing contacts at all levels between Latvia and Lithuania and their neighbours in the Baltic Sea area. The three Baltic States have also developed structures for cooperation with each other. They participate actively in the Council of the Baltic Sea States (CBSS) and there has been close cooperation in key areas with Russia, the Nordic countries, Poland and Germany. Through the EU's Northern Dimension initiative, geographically defined as the Baltic Sea area, problems and scope for development of major interest to both countries have been the focus of attention, as well as in the debate within the EU.

This development has made it possible for Latvia and Lithuania to participate in increasingly strong networks in the Baltic Sea area, which includes northwest Russia and Kaliningrad. These networks consist of political institutions, towns and regions, enterprises and business contacts, civil society organisations and private persons. The ministers for trade and economic affairs are making efforts to facilitate economic cooperation, including achievement of the target of a maximum two hours cross-border passage for transport of goods within the region ([1]).

When the CBSS met in Kaliningrad on 5 March 2002 under Russian chairmanship, the role of civil society received special attention. The Declaration of the Foreign Ministers stated: 'The Council encourages the intensified cooperation among non-governmental organisations and other civil society structures of the Baltic Sea Region. This process of networking helps to identify priority tasks to be solved in common'. The need to develop civil society in the region was also emphasised at the Baltic Sea States summit in St Petersburg in June 2002.

1.3. *EESC contribution*

The EESC contributes to this development in several ways ([2]). The EESC considers it very important that political, economic and social relations with Russia should continue to make progress, also after enlargement. The entire EU has a keen interest in positive development in Russia. Lately, the EESC has stated its view in its Opinion on 'Strategic Partnership EU-Russia'. In preparation for the ministerial meeting on the EU's Northern Dimension in August 2002, the EESC has prepared a statement, in conjunction with representatives of organised civil society in other countries concerned. As part of the work on a new action programme for the EU's Northern Dimension, the EESC will organise, in 2003, a conference with representatives of organised civil society in the Baltic Sea area. A similar conference took place in Umeå in February 2001. The EESC is therefore ready to pursue its efforts to bring about, and take responsibility for, more active cooperation with voluntary organisations and other civil society bodies in the Baltic Sea area.

1.4. *Kaliningrad*

In this context it is very important to pay attention to the special situation of the Russian enclave of Kaliningrad. On earlier occasions the EESC has emphasised that developments in Kaliningrad are of vital importance for the whole region as well as for EU relations with Russia. The EESC has pointed out that special efforts must be made to facilitate economic cooperation and narrow the economic, social and environmental gaps between the Kaliningrad region and the surrounding areas in Lithuania and Poland. Cooperation between the Commission and the Council of the Baltic Sea States therefore needs to be further stepped up.

Today the population of the Kaliningrad 'oblast' can travel through Lithuania and Poland without a visa. The EESC is keen that visa and transit questions should be solved to the satisfaction of all parties prior to Lithuania and Poland joining the EU. The aim must be to find flexible technical solutions which do not compromise Schengen Agreement rules. In this context the EESC is happy to note that Sweden is the first EU country to decide to open a consulate-general in Kaliningrad and it recommends that the other EU countries follow suit so as to make it easier, for instance, to obtain a Schengen visa.

2. **Starting points**

2.1. *Scope*

Civil society is the focus of the following assessment — an assessment based on progress made in relation to the Copenhagen political criteria, which were a precondition for negotiations getting under way. It takes a closer look at certain specific areas which are among the conditions for obtaining membership. A major source is the Commission's regular progress reports.

([1]) This target was set in 2000 and should have been attained in 2001. As this did not happen, the matter was a priority issue at the Moscow ministerial meeting on 20 March 2002.

([2]) Opinion on 'Relations between the European Union and Russia, Ukraine and Belarus' OJ C 102, 24.4.1995; Opinion on 'Relations between the European Union and the countries bordering the Baltic Sea' OJ C 73, 9.3.1998; Opinion on 'Northern Dimension: Action Plan for the Northern Dimension in the external and cross-borders policies of the European Union 2000-2003' OJ C 139, 11.5.2001; EU/Russia Strategic Partnership: what are the next steps? OJ C 125, 27.5.2002.

2.2. *Conditions for a civil society*

Between 1944 and 1991, Latvia and Lithuania were part of the Soviet Union. The Soviet Union saw civil society as a threat. It therefore tried to stop people from organising themselves independently of state control.

The events that led to independence for the Baltic states are usually referred to as 'the singing revolution'. Organised in thousands of choirs, choral societies, local associations etc., people voiced their reactions to a menacing superpower, thereby also demonstrating the potential for building a civil society. Since independence a huge expansion of civil society has taken place in Latvia and Lithuania, with the encouragement of targeted cooperation with sister-organisations in the EU Member States, and especially on the other side of the Baltic Sea, including Norway. The United States has provided substantial financial support.

Development has brought radical changes in its wake on many fronts. The trade unions are one example.

Trade unions certainly existed in the Soviet Union, but their role was entirely confined to the system. Often they acted as the Communist Party's extended arm in controlling individuals.

Wages were set through administrative procedures. Strikes were prohibited. The trade unions' duty was to protect workers' interests by striving to improve working conditions and to provide workers with free time activities. The Communist trade unions therefore took care of a wide range of leisure facilities of different kinds. Almost 100 % of the workforce were affiliated.

Trade union participation in Latvia and Lithuania fell dramatically when the transition to democracy and a market economy started, and it continues to fall. The low level of trade union organisation in the 'transition economies' is often a sign of progress towards a market economy and democratically viable organisations. Now the conditions exist to build further on a stable basis. The organisations are now generally less dependent on the revenue they derived from property and other financial assets which they had inherited from the old system.

2.3. *Adaptation to EU membership*

Latvia and Lithuania were fully integrated in the centrally-governed Soviet Union. Since their independence they have had to build up a new administration, their own judicial system and other bodies necessary to an independent state.

The industrial sector's shift from centrally planned production, structured in large state-owned units and tailored to the requirements of the Soviet Union, to the diversification necessary in a modern state with an open economy is a laborious process and has resulted in high unemployment.

The agricultural sector has undergone the same restructuring. Splitting up the large 'kolkhozy' and 'sovkhozy', restoring land to previous owners and returning to privately-run holdings is a huge legal venture. On the other hand, the large number of new small private holdings producing foodstuffs have provided some measure of social protection for many people in Latvia and Lithuania, especially during the initial stage of the tough transitional period.

The EU Member States must not only adapt national legislation to the EU rules, i.e. transpose EU rules. The 'acquis communautaire' must also be implemented, i.e. observed in practice. A large part of the rules governing the internal market are in fact about products and product safety, production processes, the working environment, labour law etc. and can be implemented in practice only in enterprises and by their personnel.

The membership negotiations are thus not only a question for civil servants and politicians. The social partners and other representatives of civil society, such as organisations representing farmers, consumers, environmentalists etc., must also be involved and informed.

The EESC is convinced that the early involvement of the social partners and other NGOs will ensure a better understanding of the EU rules and proper implementation of them.

B. **LATVIA**

1. **The situation in Latvia**

1.1. *Population*

Latvia has a population of 2,37 million. According to the 1998 population census, 56 % were Latvian and 32 % Russian. Other language minorities included White Russians (4 %), Ukrainians (3 %), Poles (2 %) and Lithuanians (1 %). The majority of the Latvian population lives in rural areas whereas the Slavonic population mostly lives in urban areas. In the capital, Riga, where half the population lives, 47 % are Russians. Communities are mixed. No region in Latvia can be said to be Latvian or Russian. The town of Daugavpils in south-east Latvia, where 80 % of the inhabitants are Russian, must be regarded as an exception.

The Latvian language is most closely related to Lithuanian, but the differences are so great that it is impossible for a Latvian and a Lithuanian to communicate with each other in their respective languages. The Protestant, Catholic and Russian Orthodox churches are strongly represented in the country.

Latvia is a typical Baltic Sea state. Because of its geographical situation Latvia is rather more interested in Baltic cooperation than Estonia, which identifies itself with the Nordic countries, and Lithuania which has historical ties with Poland. Because of the large Russian minority, Latvia feels the 'pressure' from Russia much more than Lithuania does.

1.2. *Political conditions*

Since 1999, Latvia has had a woman president, Vaira Vike-Freiberga, with an academic and international background (though without a knowledge of Russian) and having worked previously in Canada. The political situation of the country must be seen as unstable. The current government under the former mayor of Riga, Andris Berzins, dates from May 2000, when the controversial Andris Skele was forced to resign. It is built on a broad conservative tripartite coalition in parliament (the Saeima) and has contacts with different business interests.

Ordinary parliamentary elections will be held in October 2002.

1.3. *Economy*

Latvia was hit hard by the 1998 Russian economic crisis but has had a high growth period since 2000. Growth is expected to be 5 % or more in 2002 and 2003. The service sector accounts for more than two-thirds of the economy and is growing fastest, whereas manufacturing industry's share of GNP continues to fall. The expansion of transport, including transit of Russian oil products, is of great importance. This source of income is very likely to dwindle, however, as Russia, for political reasons, is building a new transport route to the Gulf of Finland. The rise in real earnings is expected to give a substantial boost to consumption. The downside of the expansion is that the balance of payments deficit is increasing, with growing risks to the currency (Lat), which is linked with the International Currency Fund basket of currencies (SDR). Inflation has been under 3 % since 1999 and is not expected to increase substantially up to 2004. Unemployment is high — around 13 % — and in certain parts of the country it is very high. However, the trend is downwards.

The trend in foreign direct investment during the five-year period 1996-2000 was as follows: EUR 301, 460, 318, 324, 443 million. This corresponds to 5-6 % of GNP, which is relatively high; the annual average per capita GNP is EUR 156. A major share has gone to the banking sector.

One major problem is the black economy. Undeclared earnings deprive the state of substantial sums in revenue. There is a clear interconnection with the fact that the nation-building process is still in progress and many non-citizens therefore feel disaffected vis-à-vis the Latvian state.

1.4. *Foreign Policy*

Latvia's foreign policy is completely dominated by its aspirations to join the EU and NATO. At the same time Latvia has tried to expand cross-border cooperation with Russia. Relations with its neighbour to the East have from time to time been tense. Russia has not yet ratified the border agreement with Latvia. To date, no senior Russian government representative has visited the newly resuscitated state.

2. **The Copenhagen political criteria**

2.1. *Democracy and the rule of law*

In the partnership decision for 2002 it is stipulated that Latvia must take different kinds of measures to secure a stable public administration capable of applying the EU acquis. To satisfy the criteria relating to the rule of law, a certain number of measures also need to be taken in the judicial system. In both cases the need to increase investment in education and officials' salaries is stressed.

Corruption is highlighted as being a major problem. This negative picture is reflected, for instance, in a 2001 report by the UN body, UNDP, which points out that influential people have exploited privatisation for their own personal interests ([1]). The Council insists that Latvia must finalise its legal framework for combating all forms of corruption and ensure that both legislation and anticorruption strategies are effectively implemented.

2.2. *Human rights and protection of minorities*

The requirements for obtaining Latvian nationality were eased considerably after a referendum in 1998. These concessions also paved the way for the negotiations on EU membership. Now almost everyone living in Latvia may apply for citizenship. However, around 22 % of Latvia's population has no citizenship; the vast majority are Russians, White Russians or Ukrainians.

Support measures have been taken in the form of reduced fees for obtaining citizenship, more information and better access to language studies. Yet there is no significant increase in the number of naturalised persons.

([1]) Latvia. Human Development Report 2000/2001. The public policy process in Latvia, Riga 2001.

Most non-citizens now have separate passports to replace the Soviet passports, which expired in March 2000. With this passport it has become easier and cheaper to get a visa to Russia than with a Latvian passport. In other words Russia favours the Russian speaking population at the expense of the Latvian speakers.

About 42 % of the population speak a language other than Latvian as their first language. The EU has pushed for minorities to be integrated into Latvian society and, in particular, has demanded, and funded, language education programmes. In 2001 the Latvian state itself started to finance parts of the integration programme. The lack of teachers is a big problem. However, low teacher salaries have improved somewhat, which seems to make it easier to recruit teachers. The 2000 language act formally does not discriminate but there are many examples of discrimination on the part of the authorities.

The Council calls, in the partnership agreement, for further measures to integrate non-citizens and lays stress on language courses. The Council also points the finger at discriminatory application of the language act and demands changes.

2.3. *EESC comments*

The EESC notes that Latvia has admitted that it is necessary to improve the efficiency, responsibility and openness of the public administration. From the angle of the individual citizen and civil society, the EESC encourages Latvia to step up its efforts in this direction. The EESC, like the European Parliament ([1]), would stress that a key feature of countries with minimal corruption is a large degree of openness, a clearcut demarcation between the exercise of power in politics and business respectively, a politically neutral administration and high professional standards within the judiciary.

The EESC welcomes the measures that have been taken to facilitate the naturalisation of non-nationals. A decision in May 2002 to waive the requirement of fluency in Latvian in order to stand for parliament is a positive step. However, in the long term it is unsustainable — politically, economically and socially — for a large section of the population to have no citizenship.

Discrimination by the Latvian authorities against Russian speakers as well as discrimination on the Russian side against Latvian passport-holders is unacceptable. Generally, Latvia should make further efforts to step up anti-discrimination laws and measures so as to comply with the acquis based on Treaty Article 13.

([1]) A5-0252/2001 (16.7.2001).

3. **Organised civil society**

3.1. *Trade unions*

Latvia has a single central trade union organisation (the LBAS). The new state transferred to the LBAS and some of its affiliated unions property that was considered to belong to them. The LBAS immediately declared its independence of political parties. The initially strong factionalism within the organisation between the social-democrats and other tendencies now seems to have been overcome.

LBAS membership has fallen to around 200 000. Unions for employees in the public sector predominate.

Hardly 20 % of the workforce are union members. Large-scale recruitment drives have been made, very often with Swedish trade union support, but the results have so far not been encouraging. Hopes are now centred on a coordinated campaign to attract young workers.

3.2. *Employers' and sectoral organisations*

The Latvian Employers' Confederation is the largest employers' organisation in Latvia. It was formed in 1993 with the merger of two organisations and has developed very positively. Its members are either sectoral associations or individual companies. Roughly a third of the workforce in Latvia works in companies affiliated to the Confederation. One of its priority areas of work is to assimilate the grey economy into the regular economy. Currently eleven of Latvia's twenty largest taxpayers are Confederation members.

The absence of organisations for small businesses is a problem.

The Latvian Chamber of Commerce and Industry has just over 900 members all over the country and it is growing apace. In early 2001, according to a joint survey conducted among the candidate countries, companies were poorly informed about conditions under EU membership ([2]).

Agriculture and the food industry play a major role in Latvian economic and social life. Farmers in Latvia are active in several organisations but cooperation among these organisations is not yet fully developed. The Latvian Farmers' Federation, which was set up in 1990, has the largest membership (1 460 paid up members) and largely represents family farm holdings. The Latvian Farmers'Parliament was established in 1999. The average size of its members' farms is 240 hectares. There is also an organisation for the previous 'kolkhozy' (over 1 000 hectares large) ([3]).

([2]) CAPE 2001. Summary report, Eurochambres and SBRA, Brussels 2001.

([3]) There is a special organisation for forest owners.

3.3. *Other organisations*

Since 1996 there has been a Centre for Non Governmental Organisations (NGO Centre) in Riga. The Centre receives external financial support from UNDP, the Soros Foundation Latvia and US and EU authorities and organisations, including the European Commission. To date national support for NGOs has been very limited and no organisation has the administrative resources necessary to apply for EU aid. There are an estimated 1 000 or so NGOs in Latvia, most of them local.

Since independence there have been major changes, notably in political party structures. However, party membership is low — the largest party has around 5 000 members. In recent years there has been a clear trend towards people forming organisations and voicing their demands, as opposed to standing on the sidelines and criticising.

The consumer movement in Latvia needs reinforcing. An authority attached to the Ministry for Economic Affairs — the Consumer Rights Protection Centre — is responsible, among other tasks, for servicing voluntary consumer associations.

3.4. *EESC views and recommendations*

Organised civil society in Latvia has made impressive progress. Ongoing closer cooperation with sister-organisations, particularly in the Baltic Sea area, including Russia, plays a key part, as does cooperation within the European framework. One major objective should be to increase the membership of organisations and member activity, thereby reinforcing democratic structures and counteracting the risk of organisations becoming financially dependent on external aid on a long term basis. Better coordination on a national scale would also in certain cases facilitate greater political impact.

The government must take various steps to stimulate the further development of organised civil society and hence anchor democracy firmly in Latvia.

It is vital for the social partners to step up their efforts to comply satisfactorily with the demands of the European social model.

Joint consultative committees bringing together representatives of organised civil society in the candidate countries and the EESC are the EESC's main means of carrying the enlargement process further. The EESC regrets that the Latvian organisations feel that they lack the resources to take part in such a committee. It looks forward to future joint activities within its framework.

4. **Specific areas**

4.1. *Market economy*

The market economy operates in Latvia. The privatisation of public enterprises has almost been completed: some larger companies in the energy, telecommunications and shipping sectors remain. The privatisation of land and forests is under way and the market for agricultural holdings has started to function. The legal framework for business operations is largely in place. Restructuring of the banking sector has made great progress and the capital market is operational.

Small and medium-sized businesses play a major role in the Latvian economy. They generate more than 50 % of GNP and provide employment for more than 70 % of the workforce. Public programmes and new financial facilities have contributed to a positive development.

Trade is increasingly integrated with the EU. Imports from the EU and exports to the EU are both on the increase. In 2000 commodity exports to the EU accounted for 64,6 % of total commodity exports.

4.1.1. EESC comments

There is a risk that confidence in the market economy could be undermined when social gaps are aggravated in tandem with widespread corruption and tax evasion. It is incumbent on the governing bodies in Latvia to ensure that the benefits of the market economy are reaped by the entire population.

4.2. *Social dialogue*

The tripartite dialogue is well established in Latvia. Back in 1993, a tripartite consultative committee was created, with a maximum of 12 representatives from the public sector, employers and trade union organisations respectively. The committee was consolidated in 1999 through a tripartite agreement which stated that the goal is to reach agreements in the interests of society as a whole. The labour-market partners take co-responsibility for decision-making and the implementation of decisions. Under this committee there is a tripartite committee for training and employment. There are also tripartite consultative committees for worker protection and insurance questions.

The tripartite dialogue has proved constructive and is appreciated by all partners. However, this dialogue must achieve more effective consultation and results.

The Commission observes, on the other hand, that bilateral dialogue between the labour market partners is still weak, both at national and regional level. However, there are signs of improvement. In this context it is worth mentioning that the LBAS since 2001 has been organising training for its sectoral organisations and regions. Collective bargaining agreements on pay and employment have also been concluded within

certain sectors, with the result that more than half of companies with union representation are covered. In 2000 there were 39 sectoral agreements and 2 018 agreements at company level. This means that approx. 25 % of the workforce in Latvia is covered by collective bargaining agreements, which means an increase of about 2 % compared with 1999. However, dialogue must be stepped up further, especially at sectoral level.

4.2.1. EESC comments

The EESC welcomes the positive development of bilateral and tripartite dialogue but notes that much remains to be done before the workforce in Latvia is reasonably protected by collective bargaining agreements. The government should monitor the application of such agreements more closely. Like the Commission, the EESC would stress the government's responsibility for helping the parties to prepare for the active role they will be required to play in the EU context and to promote collective bargaining and social dialogue structures in general. EU companies should also feel a responsibility ([1]).

4.3. *Labour market and social policy*

Unemployment differs widely from region to region. It is worst in the eastern part of the country, where it is several times higher than in Riga. There is a large amount of concealed unemployment, especially in the agricultural sector. The Russian population has often been badly hit, since Russian companies have been affected most by the restructuring process. There is a serious generation and educational gap on the labour market. Young people with up-to-date training have very good job prospects, whereas workers with an old-style highly specialised training land up in long term unemployment. More resources for training purposes are also a priority in the Latvian budget.

In early 2001 Latvia adopted its second employment plan in accordance with the guidelines of the EU's common employment policy. The employment office network has been greatly expanded, with noticeable success, especially as regards finding jobs for unemployed young people. The focus is on an active labour market policy but, in the Commission's view, adequate resources have not been earmarked.

The unemployment insurance scheme was reformed in 1999. To obtain such cover, contributions must have been paid for nine months of the previous 12-month period. The level of benefit now depends on the period of insurance and most recent earnings. For instance, in the case of someone who has been insured for 20-29 years, the insurance provides 60 % of the previous six months' level of earnings. This benefit is payable for no more than nine months and gradually drops to half the original amount. The reform resulted in a cut of around 20 % in the number of people eligible for benefit. At the start of 2002 more than 50 % of jobseekers were receiving unemployment benefit. This figure is set to rise, further to the law of 1 July 2001 which entitles jobseekers to unemployment insurance cover even if the employer has not paid contributions.

There has been a rise in real earnings. Between 1996 and 2000 the per capita GNP increased from 4 700 to 6 600 Purchasing Power Standards in current prices. That means that the gap vis-à-vis the EU has narrowed. At the same time there are significant differences from region to region. In 1998 average earnings in Riga were 32 % of the EU average, but were under 20 % of the EU average in three of the other four regions of Latvia. However, a third of the working population does not earn more than the guaranteed minimum wage of Lat 60 per month, and the local authorities often lack the resources to pay that.

There are major shortcomings in social welfare policy, as reflected among other things in the very low birthrate: 1,09 per woman, against the EU's already low average of 1,45. A large proportion of the population, both employed and unemployed, lives below the minimum subsistence level. The grey economy and small holdings producing food for domestic consumption — 172 000 according to 1997 statistics — are obviously still of major importance for the survival of many people.

4.3.1. EESC comments

Action to combat unemployment must be top priority. That presupposes that high growth rates continue and that economic policy and social policy measures are more effectively coordinated. The EESC would draw attention to the key role played by the social partners in the employment strategy.

The EU now prioritises measures to fight social exclusion and an anti-poverty programme has been adopted. Latvia must make great efforts to halt social exclusion, especially in certain regions.

4.4. *Rural and regional policy*

In 2000 the agricultural sector accounted for 4,5 % of Latvia's GNP and 13,5 % of employment, though that is 2 % down on 1999. Consolidation of land into larger parcels is progressing slowly. The Sapard programme for aid to development projects in agriculture, the food industry and rural areas has got off the ground slowly but has been operational since the end of 2001. Most resources are channelled into processing and marketing, modernisation of agriculture and diversification of the rural economy, and infrastructure improvements. The EU provides just under 40 % of the total projected expenditure for the years 2000-2006.

([1]) The European Parliament has observed that individual EU companies are hostile to trade unions and collective bargaining agreements and it has asked the Commission to carry out an in-depth inquiry into this situation.

The absence so far of effective central coordination and regional structures is holding back structural policy. Minor progress has been made in the spheres of regional policy and coordination of different structural instruments. The key partnership principle for management of EU structural aid has made no impact. However, the central authorities have given an undertaking to administer structural aid on the basis of this principle, and a major conference with the parties concerned was held in March 2002. The Commission has insisted that a single programming document must be submitted by the end of 2002.

4.4.1. EESC comments

In the agricultural sector, the EESC particularly stresses the need for a rural development policy. The authorities must support the agricultural organisations and cooperate with them, especially as regards disseminating information effectively to the more disadvantaged sections of the population, who are often opposed to EU membership.

As regards regional policy, the EESC underlines the importance of ensuring the breakthrough of the partnership principle. This principle holds the key to success when framing and implementing regional aid programmes ([1]).

In the EESC's view both rural and regional policy in Latvia must focus as far as possible on investment in human resources, i.e. education/training and lifelong learning, as well as promoting vocational and geographical mobility on a national and cross-border scale. A deliberate political choice to invest in the knowledge society should also make it easier to achieve long-term positive results in the negotiations on EU agricultural and regional aid. Concurrently investment is needed to restructure the industrial sector and to develop infrastructure.

5. **Conclusions and recommendations**

The EESC congratulates Latvia on its rapid progress on the road to EU accession and is convinced that the remaining negotiations can be wound up by the end of 2002 at latest and will pave the way for a referendum. The democratic process requires this referendum to be preceded by extensive information and public debate, thus making major demands on contributions from the authorities, the media and civil society organisations.

In the EESC's view, the results of the forthcoming referendum will be greatly influenced by the extent to which Latvia manages, with the support of the EU and the Member States, to solve the political, economic and social problems connected with nation-building and the transition from a centrally planned economy to a market economy. The EESC calls on all parties concerned to concentrate their efforts on solving these problems.

([1]) ESC opinion CES 1480/2001 makes particular mention of the social partners.

C. **LITHUANIA**

1. **The situation in Lithuania**

1.1. *Population*

With its 3,7 million inhabitants, Lithuania is the largest of the three Baltic republics. The country is also ethnically the most homogenous, with 80 % Lithuanians, 11 % Poles (most of them living in the capital, Vilnius) and 8 % Russians, with small White Russian and Ukrainian minorities.

Lithuania differs from both the other Baltic States in that it can claim a proud history, much of which it shares with Poland. All Lithuanians know that the nation once stretched from sea to sea, i.e. from the Baltic to the Black Sea. Before the Second World War Lithuania had a large Jewish population and Vilnius was an important Jewish centre. Roman Catholicism is now the dominant faith.

1.2. *Political conditions*

Since July 2001 Lithuania has had a centre-left coalition government which succeeded a conservative-oriented government. It is headed by Algirdas Brazauskas, who has mobilised the support of several social-democratic groups and also established a coalition with a small liberal socialist party. The conditions for this government to last the full term (i.e. until 2004) seem good.

The current President, 74-year-old Valdas Adamkus, has lived most of his life in the United States. It is still not clear whether he will be a candidate in the presidential elections at the end of 2002, when the popular Brazauskas is expected to stand as candidate.

1.3. *Economy*

The Russian crisis hit Lithuania rather late and the result in 1999 was a downturn of about 3 %. Agriculture was very badly affected by the decline in demand from Ukraine and Russia and the abolition of protective duties. Drastic financial measures were necessary to restore confidence and create the base for recovery. Though the upward economic trend has been sluggish, the Lithuanian GNP is expected to rise by 4,5 % in 2002 and by 5 % in 2003. This upturn is essentially due to increased exports of refined oil products in particular — a trend which can, however, be quickly reversed. The energy sector as a whole enjoys a special status in Lithuanian society, which is heavily dependent on crude oil and gas from Russia.

Though private consumption is only increasing slowly, real earnings are rising. The balance of payments is now more healthy than for a long time. Inflation, which for several years was around 1 %, is now expected to increase to 2,5 % in 2002 and to 3 % in 2003. It is not expected to be influenced by the linking of the currency (Lit) since February 2002 to the EUR instead of the dollar. The unemployment rate is high — 16 % — but is expected to drop slightly in 2003.

Foreign direct investment has not been encouraging and is largely connected with privatisation. In 1999 it accounted for 5,5 % of GNP and in 2000 for 2,5 %. However, this trend is set to change. The annual average per capita for the period 1996-2000 was EUR 115.

1.4. *Foreign policy*

Lithuania's foreign policy is completely dominated by its aspirations to join the EU and NATO. In relations with Russia the Kaliningrad issue is of key importance. Here Lithuania plays a role as mediator between the EU and Russia. A clear sign of Moscow's appreciation of this role was the visit paid by the Russian foreign minister to Vilnius in March 2002 — the first Russian visit at such a high level to any Baltic State.

1.5. *The Ignalina nuclear power plant*

1.5.1. The current situation

One EU requirement is the shutting down and dismantling of the Russian-built nuclear power plant of the Chernobyl type, Ignalina, in the town of Visaginas in north-east Lithuania. Lithuania agreed early on to close down one of the reactors in 2005, and an agreement in principle was reached on the other one in June 2002 which entails closure in 2009. The EU is willing to compensate Lithuania financially. The Ignalina plant's two reactors produce more than three-quarters of Lithuania's electricity consumption besides generating export revenue.

The population takes a very negative view of EU demands regarding Ignalina. Quite apart from the practical and social aspects, there is a psychological factor. These demands symbolise external control of the kind that, it was hoped, would cease on independence. The trade unions are heavily critical of the fact that almost nothing has been done to prepare the retraining of the 7 000 or so persons who currently work at Ignalina or who are indirectly dependent on the power plant. One special problem is that most of the workforce is Russian-speaking and has major difficulties in finding jobs in other parts of Lithuania. The town of Visaginas with its 33 000 inhabitants is threatened with bleeding to death and the whole Utena region with 200 000 inhabitants could be seriously affected.

1.5.2. EESC comments

Ignalina is not only a vital national issue for Lithuania but also of key importance to the whole EU and its neighbour states. The EESC believes firmly that Ignalina must be closed in line with the established plan. This plan must, however, be executed in a way that allows the population of Lithuania, and especially in the areas around Ignalina, to be provided as speedily as possible with constructive, realistic economic and employment alternatives. This presupposes joint efforts by, in the first instance, Lithuania, and by the individual Member States and the EU. The EESC would emphasise that the whole process must be conducted with total transparency and in constant dialogue with all parties concerned, especially the social partners.

2. **The Copenhagen political criteria**

2.1. *Democracy and the rule of law*

The latest Council partnership decision stipulates that Lithuania must adopt a variety of measures to secure a stable public administration capable of applying the EU acquis. To satisfy the criteria relating to the rule of law, a certain number of measures in the judicial system also need to be taken. In both cases there is clearly a need for investment in education and for an increase in civil servants' salaries.

Corruption is highlighted as being a major problem. The Council insists that Lithuania must finalise its legal framework for combating all forms of corruption and ensure that both legislation and the anti-corruption strategy are effectively implemented.

The Council makes no special demands on Lithuania as regards human rights and protection of minorities.

2.2. *EESC comments*

Central administration is impeded by the confused dividing line between politics and administration, which causes a lack of clarity and continuity. Another problem is constant staffing changes stemming largely from civil servants' conditions of employment. There is little cooperation between central government and the regional and local level. It is vital for the bodies concerned to tackle these problems seriously, paying careful attention to the Commission's proposed measures. A plan to redraw regional boundaries should wait.

The European Parliament has noted that corruption in the political sphere does not seem particularly prevalent, but that, on the other hand, administrative corruption is a big problem [1]. The EESC encourages those responsible in Lithuania to pursue their efforts to remove the causes for citizens' distrust of the authorities and legal system, including the police.

3. **Organised civil society**

3.1. *Three central trade union organisations*

The trade union movement in Lithuania is at present coordinated in three central organisations. The largest and most representative, the Lithuanian Trade Union Confederation, was established as recently as 1 May 2002, through the merger of the Lithuanian Trade Union Centre and the Lithuanian Trade Union Unification. The new organisation has around 100 000 members. The European trade union movement — especially in the Nordic countries — has supported this trend away from fragmentation in different ways; membership of ETUC is a natural consequence. The Workers' Union, which changed its name in 2002 to the Lithuanian Trade Union Solidarumas, was set up with support from the United States (AFL-CIO). The union is based on direct subscription and its membership is estimated at 52 000. The Lithuanian Labour Federation dates back to the time between the two World Wars and was revived by the christian-democrat party. It has 2 000-3 000 members.

The Commission's report for 2001 estimates that 13 % of the workforce are union members, which means a slight increase. Some restrictions apply as regards permission for civil servants to join trade unions. Rights over property inherited from the communist trade union have blighted trade union relations in Lithuania for many years. Different political factions have tried to favour their trade union friends. However, the matter now rests with the trade unions, which will have to work out a solution for themselves.

3.2. *Employers' and sectoral organisations*

The largest employers' organisation, the Confederation of Lithuanian Industrialists (LPK), was set up in 1993. It comprises sectoral associations and individual companies and embraces a total of 2 800 companies, most of them small and medium-sized businesses. There is no direct recruitment drive. The Confederation has a well structured secretariat, including an international section. It has observer status in Unice and will shortly become a full member. One of the Confederation's main aims is to achieve more effective dialogue between the social partners and the government.

The Lithuanian Chambers of Commerce, Industry and Crafts are organised in five regional chambers and have a total of around 1 600 members. At the start of 2001 ;companies were relatively poorly informed about conditions under EU membership [2]. The Chambers have taken the initiative of drawing up a company register which is updated regularly.

In recent years the farmers' organisations have cooperated to some extent, especially on EU issues. The Lithuanian Farmers Union (LFU) with 15 000 paid-up members was set up back in 1989 and represents private holdings. The LFU is well set to become a modern, democratic and representative organisation for private farmers. The Landowners Union has limited membership and influence. The Association of Agricultural Companies (Bendroves) represents the large agricultural companies. The *Lithuanian Chamber of Agriculture*, with its compulsory membership and state funding, enjoys a special status. It was set up in 1925 and re-introduced under a 1997 law.

3.3. *Other organisations*

Since 1995 a Non-Governmental Organisation Information and Support Centre(NISC) has been active in Vilnius. It receives financial support from UNDP, the Soros Foundation and US and EU authorities and organisations, including the European Commission. The government gives some support to NGOs, and donors can claim tax deductions. There are an estimated 5 000 active NGOs in Lithuania, about half of which (mostly local) have contacts with the NISC. During the initial post-independence period there was an NGO bloc in parliament; in 1991/1992 these NGOs formed political parties. A process of stable development is now under way, enhancing this sector's potential influence on policymaking. The NISC specifically mentions public health care.

Under its 1996 charter, the Lithuanian Consumer Association is an official organisation with individual membership. It is divided into 13 regions and has received financial support from the European Commission and the Nordic Council, among others, and now, most recently, from the Lithuanian government.

3.4. *EESC views and recommendations*

Organised civil society in Lithuania has made impressive progress. Ongoing closer cooperation with sister-organisations, particularly in the Baltic Sea area, including Russia, plays a key part, as does cooperation within the European framework. One major objective should be to increase the membership of organisations and member activity, thereby reinforcing democratic structures and counteracting the risk

[1] A5-0253/2001 (16.7.2001).

[2] CAPE 2001, Summary report, Eurochambres and SBRA, Brussels 2001.

of organisations becoming financially dependent on external aid on a long-term basis. Better coordination on a national scale would also in certain cases facilitate greater political impact. The EESC welcomes the increased cooperation among trade unions and the agricultural organisations.

The government must take various steps to stimulate the further development of organised civil society and hence anchor democracy firmly in Lithuania.

It is vital for the social partners to step up their efforts to comply satisfactorily with the demands of the European social model.

The EESC welcomes the Lithuanian organisations' readiness to set up a joint consultative committee with the EESC and looks forward to future joint activities within the EESC.

4. **Specific areas**

4.1. *Market economy*

The market economy operates in Lithuania. The privatisation of public enterprises has made good headway, as have preparations to privatise what remains. The right of ownership is well established. The handing back of land and forests is under way and the market is starting to function in this area, which is conducive to sustainable agriculture. Restructuring of the banking sector is far advanced and the capital market is operational.

Trade is increasingly integrated with the EU, even if more slowly than in other countries. The second most important trade partner is the other candidate countries. Exports to the EU are rising. Trade with the Newly Independent States has dropped sharply after the Russian crisis in 1998. Lithuania joined the World Trade Organisation in 2001 (Latvia has been a member since 1999).

96 % of Lithuanian companies are regarded as small or medium-sized. The state budget now includes a separate heading for promotion of SME development, but very little has been done to implement the planned programme.

4.1.1. EESC comments

Major sacrifices have had to be made in order to create a stable economy, resulting in growing social gaps. Confidence in the market economy could well be undermined if these social gaps become wider. It is incumbent on the governing bodies in Lithuania to ensure that the benefits of the market economy are reaped by the entire population. The energy sector's dominance of Lithuanian society must be kept under control.

4.2. *Social dialogue*

Tripartite cooperation at national level operates within the national tripartite council set up in 1995. It has 15 members with equal rights, five from each party. The chairmanship is rotated on a four-monthly basis. The government is represented by delegates from the ministries concerned.

Existing cooperation is based on an agreement from February 1999 which aimed to improve quality and efficiency. It was signed by the prime minister at the time, the four central trade union organisations and three employers' organisations. The government promised among other things to take up relevant legislative questions in the council and to inform the Seimas about the council's conclusions. The social partners, on their side, promised not to take action against the government in matters on which the council had reached agreement. Cooperation and exchange of information in the preparations for EU membership are a special point.

One of the tripartite council's major tasks is to propose the legal minimum wage. This indirectly affects wages within the public sector in particular, since these are frequently expressed in multiples of the minimum wage.

The Commission notes that the tripartite dialogue needs to be stepped up and to operate in such a way that the partners are consulted in key economic and social areas.

Bilateral dialogue has made very little headway — only 10 % of the labour market is covered by collective bargaining agreements, and these are mainly in the public sector. There are hardly any agreements at sectoral or company level. The Commission stresses that efforts must be made to strengthen bilateral dialogue, especially at sectoral level. It calls on the government to support the parties in preparing for the active role that they will be required to play in the EU context and in order to participate in social dialogue and negotiations at all levels.

The government, for its part, is worried that the lack of collective bargaining between the social partners at different levels could give the minimum wage undue influence. The labour code adopted in summer 2002 includes a more positive collective bargaining framework, covering training in negotiation techniques for social partners. The code also aims at better representation, information and consultation for the workforce.

4.2.1. EESC comments

The EESC regrets that bilateral and tripartite dialogue in Lithuania leaves much to be desired. Only a very small proportion of the workforce is protected by collective agreements, and the tripartite dialogue on political issues, including matters relating to EU accession, would seem more theoretical than real. Like the Commission, the EESC would stress the

government's responsibility for helping the parties to prepare for the active role they will be required to play in the EU context and to promote collective bargaining and social dialogue structures in general. The EESC expects new labour legislation to improve matters.

4.3. *Labour market and social policy*

Average unemployment, estimated at 16 % in 2000 according to ILO criteria, varied significantly from region to region. Widespread long-term unemployment is a major problem. In May 2001 the government adopted an active labour market programme which aims to substantially reduce registered unemployment. This includes dynamic action to find jobs for workers through a well developed network of employment offices. One target for 2004 is that anyone who is still unemployed after three months should be offered an active support measure. Over 5 % of the plan's funding comes from the EU [1].

Unemployment insurance in its present form is limited. In order to receive benefit, contributions must have been paid for 24 months during the previous 36-month period. The level of benefit depends solely on the length of the insurance period and varies between 19 % and 34 % of the average monthly wage. Latest statistics indicated that 15,2 % of registered unemployed persons received benefits under the insurance scheme.

The social welfare policy includes means-tested forms of assistance which are managed by the local authorities. These consist of social help, contributions to home heating costs and free access to health care and child care (nursery school and school), etc. A large proportion of the population lives under the minimum subsistence level.

The government is planning a reform of both components of the social welfare system.

Real earnings have risen. Between 1996 and 2000 they increased by 36 %, but growth was more sluggish the last two years. The gap vis-à-vis the EU has therefore narrowed. The minimum wage (Litas 430 for 1999) corresponded in 2001 to 40 % of the average wage. It will not be increased in 2002. Instead tax will be reduced for low income earners under a tripartite council agreement.

A large section of the population, both employed and unemployed, lives under the minimum subsistence level. Both small holdings producing for domestic consumption (average 2,2 hectares) and family holdings (average 7,6 hectares) are of major importance for the survival of many people. (However, the figure of a total of 539 000 such holdings in 1997 is exaggerated since a large proportion of smaller holdings lease land to larger holdings.)

4.3.1. EESC comments

Lithuania has the highest unemployment rate of all the candidate countries. Action to combat unemployment must have top priority. That presupposes that high growth rates continue and that economic policy and social policy measures are more effectively coordinated. The EESC would draw attention to the key role played by the social partners in the employment strategy. They need to coordinate their efforts in order to be in a position to participate effectively. The EU now prioritises measures to fight social exclusion, and an anti-poverty programme has been adopted. It is important to involve candidate country players in this programme. Lithuania must make great efforts to halt social exclusion in the country.

4.4. *Rural and regional policy*

In 2000 the agricultural sector accounted for 8 % of Lithuania's GNP and 18 % of employment — down 2 % on 1999. The consolidation of land into larger parcels is progressing slowly, partly because of a delay in the handing back of land: however, a July 2002 deadline has been set for the submission of claims. The average size of holdings has increased to 12,76 hectares. Prospects in Lithuania are good for agricultural production and some rationalisation of holdings.

The Sapard programme prioritises investment in agriculture, followed by processing and marketing, along with diversification of the rural economy and infrastructure improvements. The EU funds just under 40 % of total investment.

Central management of structural policy has recently improved considerably. However, it has to contend with the fact that regional structures still do not operate satisfactorily and the two levels distrust each other. The key partnership principle applicable to management of EU structural aid has failed to make an impact. The Commission has insisted that a draft single programming document must be submitted by the end of 2002.

4.4.1. EESC comments

On the agricultural sector, the EESC particularly stresses the need for a rural development policy. The authorities must support the agricultural organisations and cooperate with them, e.g. on the effective distribution of information to the more disadvantaged sections of the population, who are often opposed to EU membership.

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[1] Programme of the Republic of Lithuania for increasing employment for 2001-2004 (approved by Resolution No 529 of 8.5.2001 of the Government of the Republic of Lithuania).

As regards regional policy, the EESC underlines the importance of ensuring the breakthrough of the partnership principle.

In the EESC's view, both rural and regional policy in Lithuania must focus heavily on investment in human resources, i.e. education/training and lifelong learning, as well as promoting vocational and geographical mobility. A deliberate political choice to invest in the knowledge society should also make it easier to achieve long-term positive results in the negotiations on EU agricultural and regional aid. Concurrently investment is needed to restructure the industrial sector, especially the food industry, and to develop infrastructure.

5. **Conclusions and recommendations**

The EESC congratulates Lithuania on its rapid progress on the road to EU accession and is convinced that the remaining negotiations can be wound up by the end of 2002 at latest and will pave the way for a referendum. The democratic process requires that this referendum to be preceded by extensive information and public debate, thus making major demands on contributions from the authorities, the media and civil society organisations.

In the EESC's view, the results of the forthcoming referendum will be greatly influenced by the extent to which Lithuania manages, with the support of the EU and the Member States, to solve the political, economic and social problems connected with the transition from a centrally planned economy to a market economy. The EESC calls on all parties concerned to concentrate their efforts on solving these problems.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Financial assistance for Pre-accession — Phare, ISPA and Sapard'

(2003/C 61/17)

On 17 January 2002 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on the 'Financial assistance for Pre-accession — Phare, ISPA and Sapard'.

The Section for External Relations, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 5 September 2002. The rapporteur was Mr Kenneth Walker.

At its 393rd Plenary Session (meeting of 19 September 2002) the Economic and Social Committee adopted the following opinion by 23 votes to 1 with 2 abstentions.

1. Introduction

1.1. As part of its pre-accession strategy, the EU makes financial assistance available in various forms to the applicant countries. The ten Central and Eastern European countries (CEECs) receive direct financial assistance from the Phare, ISPA and Sapard instruments; in addition, they participate in co-financing with the European Investment Bank (EIB) and international financial institutions. The remaining applicant countries, Cyprus, Malta and Turkey, do not benefit from Phare, ISPA or Sapard but are eligible for EIB facilities, including the EUR 6,42 billion EIB facility for Mediterranean countries under the MEDA programme. The applicant countries also gain useful experience by being allowed to participate in EU programmes (such as Erasmus, Socrates and Leonardo), agencies and committees.

1.2. The Phare programme has operated since 1989, delivering assistance to the CEECs, and is focused on institution building — the strengthening of candidate countries' capacities to put the acquis communautaire into effect. Through this programme, the EU makes experts available for short-term advice and through twinning — longer-term secondments of officials from Member State ministries, regional bodies, public agencies and professional organisations. It also provides for investment to help the candidate countries to implement the acquis. Other allocations for economic and social cohesion assist in developing the mechanisms and institutions that each country will need as it joins the EU, particularly to implement EU regional funding. In 1999, the Phare programme was re-orientated in the context of the imminent introduction of ISPA and Sapard, in order to avoid overlapping and to ensure the greatest possible coordination between the three instruments. Phare has also made assistance available to some nations in Eastern Europe which are not applicant countries. The annual amount available for disbursement in 2001 was EUR 1 620 million (EUR 1 590 million at 1999 prices).

1.3. Under ISPA (Instrument for Structural Policies for pre-Accession), which came into force on 1 January 2000, the EU provides assistance to the CEECs for:

— environmental measures to enable these candidate countries to meet the requirements of the acquis;

— transport infrastructure measures to promote sustainable mobility and, in particular, projects of common interest based on the criteria in the Council Decision No 1692/96/EC establishing the Trans-European Networks (TENs).

The latter includes the inter-connection and inter-operability of national networks as well as with the TENs. Each of the eligible candidate countries has prepared national strategies for transport and the environment for EU funding under ISPA. The EU allocates EUR 1 080 million per annum (at 1999 prices) to infrastructure assistance under this programme.

1.4. The Sapard (Special Accession Programme for Agriculture and Rural Development) programme was introduced by Council Regulation (EC) No 1268/1999 and came into effect on 1 January 2000; to promote agricultural and rural development in the beneficiary countries. Aid granted under this programme has to be in the form of a financial contribution, subject to financial rules reflecting in part those established for the financing of the Common Agricultural Policy (CAP) as well as those relating to structural instruments. The programme allocates EUR 540 million per annum (at 1999 prices) to the CEECs, co-financing projects selected by the candidate countries themselves on the basis of rural development plans approved by the EU. The fully-decentralised implementation structure for each country includes a Sapard Agency, responsible for management and payments, accredited and approved by the European Commission.

1.5. The financial assistance under all three instruments is given in the general legal framework of the Association Agreements with the beneficiary countries and taking into account the contents of the relevant Accession Partnerships. For Phare and ISPA, the Commission exercises systematic ex-ante controls; i.e. decisions concerning procurement and the award of contracts are taken by the Contracting Authority and referred for prior approval to the Commission Delegation. Sapard operates under an ex-post control system in which the Sapard Agency takes these decisions without prior reference to the Commission Delegation.

1.6. The aim of pre-accession funding is twofold:

— to provide financial assistance in meeting EU standards and complying with the acquis communautaire;

— to provide learning experience and prepare countries for effective future utilisation of the EU Structural and Cohesion Funds.

1.7. The three pre-accession instruments are precursors to the Community funding which will be available to the candidate countries after accession; they necessitate capacity building in relevant institutions and new organisational and administrative structures. Phare is a precursor to the Structural Funds, ISPA to the Cohesion Fund and Sapard to the agricultural funds ([1]). Phare is the sole instrument to provide support for institution building.

1.8. The three instruments are controlled by three different Directorates-General of the Commission. Phare is administered by DG Enlargement, ISPA by DG Regional Policy and Sapard by DG Agriculture. The three instruments also have different rules. The process for ISPA is quite different from Phare, while Sapard is very different from Phare and ISPA ([1]).

1.9. The EU also promotes large-scale infrastructure projects through co-financing arrangements with the EIB and with international financial institutions with which the European Commission has signed a coordination memorandum.

1.10. In addition to its pre-accession assistance, the EU will also make available compensatory post-accession budget payments to new Member States in the period 2004-2006 in order to prevent them from becoming net contributors to the EU budget. Despite the low levels of GDP in the accession countries compared to the EU average, there is a danger that, without these payments, some countries could contribute more to the EU budget than they receive in aid because they will be required to make contributions to the EU budget from the date of accession but the lack of absorption capacity in their administrative structure and the reduced levels of payments proposed under the CAP will curtail the amount of financial assistance actually received.

1.11. The proven ability to handle the pre-accession funds and, by implication, the much larger Structural and Cohesion Fund assistance which will follow accession, is likely to be a criterion for the final closure of Chapter 28. Both the European Parliament and the Council have indicated that this should be seen as a key indicator of a country's readiness for accession.

1.12. In the preparation of this opinion, the Committee has visited four of the candidate countries (Bulgaria, Estonia, Poland and Slovakia) and conducted hearings there with representatives of the social partners and a wide range of civil society organisations. In addition, members of the study group held talks with some of the European Commission's delegations in the candidate countries. A questionnaire was sent to civil society representatives in those candidate countries with which the EESC has a Joint Consultative Committee. Input has also been received from Commission documents, from officials of the Directorates General involved and from civil society organisations at the European level.

2. **The operation of the pre-accession instruments**

2.1. *Phare*

2.1.1. Phare is an enormous and extremely complex programme, which represents a huge challenge both for the European Commission and for each of the beneficiary countries. In its early stages, it concentrated on the public finance sector, agriculture, the environment and privatisation. Support for regional development was also a priority, complemented by cross-border cooperation programmes. SMEs were another area of particular concern. Support measures mainly took the form of technical assistance, with limited investment support ([1]).

2.1.2. In this phase it was mainly demand-driven. The governments of candidate countries proposed projects to the European Commission. As long as they met the Phare objectives, they could be in any field or sector, for varying amounts and for whatever purpose. This resulted in a large number of small projects, which were complicated and time-consuming to manage.

([1]) Proceedings of a seminar held in September 1999 at the EU Information Centre in Budapest. Presentation given by Mr Alain Bothorel, Head of Phare Unit, Budapest Delegation.

2.1.3. In 1997, when the other two pre-accession instruments were being planned, the Phare programme was refocused to form part of a comprehensive pre-accession strategy. The Commission prepared an opinion on each of the applicant countries, indicating areas where action was needed before accession could take place. These opinions became the basis of the respective Accession Partnerships. Phare support was now geared to the accession priorities listed in the relevant Accession Partnership. It thus became accession-driven.

2.1.4. In this form, Phare provides two types of support, institution building and investment support. The former accounts for 30 % of the total funding and is divided between twinning and technical assistance. Twinning involves the secondment of a Member State civil servant to a counterpart organisation in a partner country on a long-term basis (more than one year). It may be complemented by specialised technical assistance and equipment-investment support; the latter focuses on the equipment necessary to support institution-building projects. There are no minimum levels for institution-building projects but the average value is about EUR 1 million. Investment support projects, which account for the bulk of the remaining 70 % of the funds, are focused primarily on rehabilitating/modernising infrastructures and have a minimum project value of EUR 2 million.

2.1.5. The refocusing of the programme took virtually two years to complete, a fact that has been the subject of some criticism by both the European Court of Auditors [1] and representatives of the beneficiary countries. In the process, it imposed a heavy additional workload on their national administrations and the European Commission's delegations alike [1]. It also initiated a process of progressive decentralisation that is still on-going. Under the old rules, all contracts exceeding EUR 500 000 had to be sent to Phare headquarters in Brussels for authorisation; under the new rules, heads of delegations can endorse projects up to a value of EUR 5 million.

2.1.6. Approximately 78 % of Phare funding is allocated to national programmes, which are agreed bilaterally with each candidate country. The remainder goes to multi-country, horizontal and cross-border cooperation (CBC) initiatives. Following its re-orientation in 1998, Phare no longer makes new commitments to environmental projects, which have devolved upon ISPA, or agricultural projects, which have been subsumed into Sapard.

2.1.7. Phare has been criticised by the Court of Auditors [2] for the limited impact of the programme, due in large part to inadequate harmonisation with Interreg. It was also claimed that an effective management-information system was lacking and that the Commission had failed to demonstrate that the twinning process offered value for money [1]. This led to a review of the process.

2.1.8. At the end of 1998, Phare had delivered some EUR 5,8 billion of aid against a total commitment of nearly EUR 9 billion of funds. On average, some 95 % of the sums committed are eventually delivered. Some 500 twinning projects are currently in place.

2.2. *ISPA*

2.2.1. The management of the programming phase and implementation of ISPA is the responsibility of DG Regional Policy; the European Commission's delegations play an important role during implementation. Like the other pre-accession instruments, ISPA targets accession and must conform to the priorities of the relevant Accession Partnership. The fund is reserved for transport and environmental projects in equal proportions.

2.2.2. The beneficiary countries are required to produce national strategies for both the transport and environmental aspects. ISPA projects must have co-financing and Community support is limited to 75 % of the national contribution (or 85 % in exceptional cases); they are also required to be leveraged to the greatest possible extent. ISPA requires a financing memorandum for each project rather than a financing memorandum covering an entire programme (as is the case under Phare).

2.2.3. Transport projects must constitute either an extension of a TINA (Transport Infrastructure Needs Assessment) network, one of the priority corridors which the Commission is recommending or an access route to such a network. Before a project can be selected by the Commission, a cost-benefit analysis and an environmental-impact assessment must be carried out. It must further be financially sustainable, particularly in terms of the ability to ensure continued maintenance provision, and fit in with the relevant national strategy. In the case of ISPA environmental projects, priority is given to those that will benefit the greatest number of people; hence, urban projects tend to predominate. The minimum size of an investment is EUR 5 million but a number of smaller projects can be grouped to achieve the qualifying limit [3].

2.2.4. Like Phare, ISPA is based on an ex-ante control system. The Commission can waive the requirement for ex-ante controls but would only do so within the parameters of the Extended De-centralised Implementation System (EDIS) as outlined in Article 12 of the Coordination Regulations.

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(1) Court of Auditors 1999 sector letter on Phare.

(2) Special Report on Phare Cross Border Cooperation (CBC) 1994-1998.

(3) European Commission: Enlargement Directorate General, February 2002 'The enlargement process and the three pre-accession instruments; Phare, ISPA and Sapard'Proceedings of the conference organised by DG Enlargement and the Permanent Representations of Sweden and Austria to the European Union on 5 March 2000.

2.2.5. Implementation of ISPA is quite low. Against more than EUR 1 billion per annum allocated in the years 2000-2002, nothing was spent in 2000 and only EUR 200 million in 2001. The figures for 2002 are not yet available but are likely to be higher than for 2001.

2.3. *Sapard*

2.3.1. Sapard functions along the lines of the European Agriculture Guidance and Guarantee Fund (EAGGF), the agricultural subsidy system for the Member States [1], and requires a paying agency to be set up in the candidate country, which, on accession, could be responsible for the Community's agricultural funds. To date, such agencies have been established in all but one of the eligible countries. The Commission approves a programme for each candidate country based on a plan drawn up by the national authorities. Due to the system of fully decentralised management, it is not involved in project selection or management and comes on the scene on an ex-post basis during a clearance of accounts exercise (as for the EAGGF), in order to ensure that implementation is in accordance with the Sapard rules. The rules require co-financing, with the EU paying up to 75 %, and exceptionally 100 %, of the total eligible public expenditure.

2.3.2. The programme supports, in particular, farming and rural development projects, regional tourism projects and food-industry projects. The beneficiaries tend to be private sector operators (often SMEs) but public beneficiaries are also involved, particularly with infrastructure. Calls for proposals are made by the Sapard Agency in the beneficiary country, which conducts the selection process and manages the criteria set in line with the overall Sapard rules.

2.3.3. Whereas ISPA support is at the government level and goes to ministries, Sapard funding tends to go to numerous other beneficiaries, such as individual farmers, many of whom cannot speak any Community language, and municipalities. Because of the large number of individual cases, and in order to contribute as much as possible to the capacity-building objective, a decentralised system was justified from the start. Beneficiary countries are required to set up an administrative system to exert effective controls. Strict audits are conducted and, unlike the situation in Phare, the Commission can demand reimbursement if the project is not implemented properly; it can also decide that the amounts concerned can be offset against payments due under any Community instrument.

2.3.4. To the end of 2001, some EUR 30 million of aid has been delivered against the total of more than EUR 1,5 billion allocated for the years 2000-2002, although the programme did not get under way until May 2001 with the first conferral-of-management Decision. Two thirds of the total Community contribution is allocated to Poland and Romania.

3. **Developments in the pre-accession instruments**

3.1. The Commission has identified [2] five key actions to improve the operation of the pre-accession instruments:

— Programming and administrative capacities in the CEECs need to be strengthened through institution building and associated investment, as well as pilot-testing approaches for Objective 1 actions.

— National Development Plans (NDP) need to be strengthened.

— An appropriate mix of national and regional schemes will be chosen by the candidate country.

— The use of the programmatic approach will be expanded and the management of such measures tightened-up.

— As for economic and social cohesion, programming for CBC will follow the NDP and will move towards Interreg.

3.2. As part of the continuing process of extended decentralisation, all Phare funds will be channelled through one single body, the National Fund, in the CEECs. The National Authorising Officer will bear full responsibility and liability towards the Commission for the use of the funds.

3.3. The new implementation mechanisms reflect the experience from the implementation of the Phare programme over the years and, in particular, the lesson that it is necessary to ensure that a limited number of 'centres of excellence' be responsible for handling the funds [2]. This is an essential precondition for the full transfer of responsibility for tendering and contracting from the Commission to the candidate country.

3.4. Instead of stand-alone projects, Phare is now moving towards a more programmatic approach. This should lead to a further alignment of the Phare CBC programmes with the Structural Funds' version of these programmes (Interreg).

(1) European Commission: Enlargement Directorate General, February 2002 'The enlargement process and the three pre-accession instruments; Phare, ISPA and Sapard'Proceedings of the conference organised by DG Enlargement and the Permanent Representations of Sweden and Austria to the European Union on 5 March 2000.

(2) Phare Annual Report 2000.

3.5. Adoption by the Phare programme of the Interreg III guidelines has provided additional guidance for preparing and submitting joint PhareCBC/Interreg programming documents for EU/CEEC border regions, covering the 2002-2006 period.

3.6. An appropriation has been made in the PhareCBC budget line for Small Project Funds (SPF). These are now in place on all borders ([1]).

3.7. There has been a significant increase in the activities of the TAIEX (Technical Assistance Information Exchange) office ([1]).

3.8. A need was identified for a new medium-term instrument to fill the gap between the long-term twinning process and the short-term TAIEX assistance. This has been termed 'twinning light' and was introduced in 2001; it should provide increased flexibility for these measures ([1]).

3.9. A SME finance facility has been introduced into the Phare programme to encourage financial institutions to expand, and maintain in the long term, their financing of SME operations ([1]).

4. **Perspectives on progress to date and the current situation**

4.1. *EU Perspectives*

4.1.1. The Commission accepts that the amount of aid delivered, compared to the sums allocated under each of the three instruments, is disappointing but lays the blame for this squarely on the governments of the beneficiary countries. 'The instruments used in the Phare programme risk being undermined by systematic failings in national administrations.' ([2]) The Commission takes the view that nothing can be paid out until a country has demonstrated that it is capable of managing the funds. The Commission is engaged in building this capacity, mainly through the Phare programme, but progress has been slow in some countries. The Commission is constrained in what it can do by the requirements of the financial regulations.

4.1.2. The Commission considers that a coherent long-term view should guide policy. As a prerequisite for obtaining pre-accession funding, candidate countries must prepare national plans and strategies for sectoral development. The guidelines for the pre-accession funds do not provide a mandatory requirement for public consultation. The Czech Republic is the only candidate country that consistently conducts a Sustainable Environmental Assessment (SEA) for prepared strategies and plans.

4.1.3. It is not only a question of ensuring that the partner countries have instituted adequate control systems. It is also essential that they should develop satisfactory mechanisms for delivering the projects. Thus, it is necessary to build up a bureaucratic infrastructure which will be able to manage the implementation process, liase with EU officials and exercise a coordinating function within the country concerned. The creation of this infrastructure is required for inter-facing with the pre-accession funding process but is also a prerequisite for attracting inward investment.

4.1.4. Criticism has been levelled at the fact that the three instruments all have different rules. The Commission contends that this is inevitable because the various instruments have different target beneficiaries. In addition, one of their functions is to prepare candidate countries for participation in the Structural and Cohesion Funds, which also have different rules.

4.1.5. Small, localised projects may appear to have a more direct and immediate impact on regional living standards but larger projects, and particularly those with a cross-border infrastructure dimension, have a greater macro-economic impact and are more likely to improve the quality of life for everyone in the long run.

4.1.6. National Development Plans are often prepared in a rush, with inadequate consultation between the responsible ministries and other government departments and even less consultation with the representatives of civil society ([3]). The applicant countries are being asked to adjust to current models in all aspects of EU policy, even if their planned date of accession is still somewhat distant and where the existing policy is presently under review. The result, in many cases, is an exercise limited to outdated policies and methods of operation. The shortcomings and mistakes of EU policies are being replicated in the candidate countries. It is unsatisfactory for both the EU and the accession countries if all the past mistakes in the current Member States are repeated by future Member States, who thus become locked in to unsustainable positions. According to Friends of the Earth, this is particularly

([1]) Phare Annual Report 2000.
([2]) Phare 2000 Review COM(2000) 3103/2, 27 October 2000.
([3]) Friends of the Earth Europe/CEE Bankwatch: Billions for Sustainability? Second briefing on the EU pre-accession funds and their environmental and social implications.

true in relation to the CAP, which has not fulfilled the conditions for sustainable development; therefore, Sapard is not promoting sustainable development in the applicant countries ([1]).

4.1.7. The key problem areas are:

— the undeveloped nature of the business environment;

— the lack of administrative capacity;

— the weakness of the judiciary;

— the lack of neutrality and accountability in the civil service.

4.1.8. The following is a synopsis of the views expressed by representatives of the European Commission delegations in the various countries visited during the discussions held with them.

4.1.8.1. Projects have often fallen through due to weakness of the national administrative structure. This is sometimes the result of the project being too ambitious for the current state of the national administration. The right types of projects are not being formulated and this is creating a log-jam of funds. It is frequently difficult to set up monitoring bodies of sufficient quality. Corruption is also an issue; in many cases, it is exacerbated by lack of efficiency in the judiciary.

4.1.8.2. In many national government ministries, the necessary institutional standards and administrative capacity are not yet in place. The ministries need fewer, but more motivated and better paid, staff. There is a lack of implementing agencies at regional level, primarily because of weaknesses in the regional administrations.

4.1.8.3. In most candidate countries, there is a weakness in the social dialogue and, frequently, an imbalance between the two sides of the social partnership.

4.2. *Perspectives of the governments in the beneficiary countries*

4.2.1. Most government agencies feel that substantial progress has been made with the development of the administrative infrastructure, that there is now a full capability to plan, present and implement projects and that there is capacity to absorb a very high proportion of the allocated funds.

4.2.2. There is a tendency for government departments which are not involved in the process to exhibit indifference or even hostility towards it.

4.2.2.1. Views on the success or otherwise of the twinning programme vary considerably from country to country. In general, the introduction of the 'twinning-light' programme has been well received. It is seen as being more flexible, cheaper, quicker and easier to implement than the conventional twinning programme.

4.2.3. There is a need for greater motivation of the target beneficiaries, particularly in relation to Sapard, in order to encourage them to bring forward more projects. This could be improved by enhanced publicity; EU assistance in this direction would be useful. There is also a need to improve the capacity of the private sector.

4.2.4. Government officials consider that, in general, NGOs and other civil society organisations are well represented in the process and carry equal weight with government officials.

4.2.5. The requirement under Phare and ISPA that tendering companies should have at least two years' experience in the relevant sector militates against the participation of national companies unless they form consortia with multi-national organisations.

4.2.6. It sometimes appears that the EU applies pressure to appoint certain firms of consultants in order to obtain project approval. This is particularly the case under ISPA.

4.2.7. The insistence on the initiation, implementation and completion of a Phare project within a three-year timescale (the N+3 rule) is overly restrictive and should be relaxed.

4.2.8. The social and cohesion elements of the Phare programme should be strengthened.

4.2.9. There is a tendency for the EU to be late in fulfilling its responsibilities but to hold national government officials strictly to the deadlines. There is often a lack of communication between EU officials and the government ministries.

4.2.10. Phare is administered by DG Enlargement but other line DGs are often involved. It appears that there is frequently a lack of coordination and cooperation between them.

4.2.11. It frequently appears that there is a lack of communication between the Commission in Brussels and the Commission delegations in the candidate countries.

([1]) Friends of the Earth Europe/CEE Bankwatch: Sustainable Theory — Unsustainable Practice? Third briefing on the EU pre-accession funds and their environmental and social implications.

4.3. *Perspectives of civil society representatives in the beneficiary countries*

4.3.1. Respondents said that major problems are encountered when preparing proposals for pre-accession funding. The links with the consulting agencies are weakest in those remote regions that are most in need of assistance. Too often, attention is concentrated on large national and cross-border projects when smaller, localised projects could effect a more immediate improvement of peoples' daily lives. There is a lack of transparency and information of the public on the state of negotiations. The socio-economic actors are not adequately involved in pre-accession aid schemes. There is a perception that the participation of NGOs and voluntary organisations is not always appreciated. This could be alleviated by the creation of a database of information that could be accessed by NGOs and other civil society organisations; if this cannot be done at national level, it should be done at the European level.

4.3.1.1. Representatives felt that the social and civil dialogues need to be strengthened. Phare is engaged in capacity building within the public sector but assistance is necessary to build the capacity of NGOs and other elements of civil society in order to enable them to participate more effectively in the process. Government ministries do not recognise civil society representatives as partners or stakeholders. Even where civil society is represented on monitoring committees and other bodies, it can be difficult for them to make a real contribution. Monitoring committees often deal only with purely technical questions; they do not address substantive issues, such as whether or not the project objectives are being achieved. Meetings are called at short notice and papers are frequently not available sufficiently in advance of the meeting to allow for adequate preparation. When consultation with civil society does take place, the deadlines set for the submission of representations are often so short as to undermine the validity of the process. The criteria for the selection of the civil society organisations to be consulted are not clear. It often appears that 'consultation' is merely an exercise to endorse a fait accompli. Many civil society representatives state that, 'We only find out about things after they have happened'. Even where documents are publicly available by law, the procedures for obtaining access to them are so cumbersome and protracted that they seem to be designed to discourage people from exercising their rights. Too often, government officials simply do not comply with the regulations.

4.3.1.2. Public participation and, in particular, the involvement of the representatives of civil society should take place at the earliest possible stage.

4.3.2. People find that the pre-accession aid programmes are far too complex. The problem lies not so much in a lack of information as in a surfeit of it. There is a plethora of information but a lack of knowledge. In the jumble of data it is difficult to find that which is appropriate to a specific situation. Moreover, the language is often too sophisticated and verbose. Project guidelines are frequently unclear, confusing and easy to misinterpret. There is a need for rationalisation, simplification and a reduction in volume. Frequently, project proposals are abandoned or not put forward in the first place because there is so much work involved in preparing them with no guarantee that they will be accepted.

4.3.2.1. There is a perception, particularly under Sapard, that, in order to have a project selected, it is necessary to employ one of a limited number of firms of consultants to prepare it. Projects are often prepared by one European firm of consultants and then assessed in Brussels by another European firm of consultants, who disagree with the first firm.

4.3.2.2. Under Sapard, the condition that the beneficiary must finance 50 % of the project cost is preventing small and medium-sized farms from participating. Because the Sapard funds are only made available once the project is up and running, the beneficiary must, in fact, finance 100 % of the cost initially. Only the larger farmers can obtain the necessary bank support or fund it out of their own resources. Smaller farmers, who are most in need of assistance, are, therefore, effectively excluded from the programme. Another constraint is the requirement that, in order to qualify, beneficiaries must derive at least 50 % of their income from farming. This also has the effect of excluding many potential beneficiaries, particularly in those countries where there are large numbers of very small farms operated on a part-time basis.

4.3.2.3. Under the transport dimension of ISPA, there is a perception that the orientation of the programme towards the TENs is limiting access for other projects which would be of greater immediate benefit.

4.3.3. Civil society organisations argue that better coordination is needed between the agencies involved. Too often, projects are put forward simply because the funds are available, without a proper assessment of their impact and effectiveness. For example, some water purification plants are running at only 20 % of capacity. There is a need for in-depth analysis of completed projects to ascertain why some things work and others do not. There is also a need for regional operational plans in addition to national strategic plans. The regional dimension is lacking, which leads to apathy amongst regional authorities.

4.3.3.1. In several countries it was stated that there is corruption in all areas but chiefly in the corridors of power. Project contracts are sometimes awarded to surprising tenderers. People are involved in project selection who have a vested interest in the outcome. Impact analyses are prepared by supposedly independent experts, appointed by the government ministries. It is difficult, if not impossible, to ascertain how these experts have been selected or appointed. Frequently, their role appears to be to 'rubber-stamp' decisions which have already been taken. Nor is it always easy to understand the basis on which projects are selected. The regional distribution of projects sometimes appears to owe more to political influence than to an objective assessment of project value. Civil society organisations have reported apparent irregularities to politicians, government officials and Commission delegations but with no response.

4.3.3.2. The situation in one country was summarised as, 'There is no public control, no accountability and no transparency'.

4.3.3.3. Respondents said that projects are being implemented that are not sustainable because they do not reflect the needs or the characteristics of the country.

4.3.4. The process of project selection is seen as long-winded, formalised and ritualistic. The preparation of a project for pre-accession funding is an art form in itself. The drawing-up of plans is a very expensive and time-consuming process, requiring the extensive use of highly-paid foreign experts and consultants. Too much attention appears to be paid to the content of the project rather than its likely impact in terms of the level of unemployment or living standards. Projects are frequently rejected for trifling errors in the formal presentation. There is a tendency to focus on larger projects because they are easier to manage.

4.3.5. There is a perception that the beneficiary countries are having to adjust their policies to conform to the priorities of those who are dispensing the funds. This leads people to feel that there is an agenda to which they are not privy and which does not reflect their primary concerns. Projects are based on procedures rather than needs and there is no sense of partnership. The approach is essentially top-down and not bottom-up.

4.3.6. The availability of pre-accession funding assistance is too often seen as a prerequisite for taking remedial action to deal with identified local problems, even where these could be addressed within the limitations of national resources.

4.3.7. There are sometimes problems with the availability of documentation in the national language of the beneficiary country, including strategic plans drawn up within the country.

4.3.8. There is a general feeling that the systems by which the pre-accession aid is being delivered or, more often, not delivered, are fundamentally flawed and in need of a thorough-going, root-and-branch revision. This should involve greater transparency and a mandated requirement for the intervention of the social partners and other civil society organisations.

4.3.9. The public sector does not possess the administrative capacity to absorb the available funds. The issue of absorption capacity is an ongoing problem and will be for many years.

4.3.10. Project administrators frequently have problems with documentation being delayed for lengthy periods by the Commission in Brussels or in the local delegation. There are also extended delays in receiving payment for work done.

4.3.11. There is no formal mechanism for feedback from civil society to the national administrations and the Commission on the ex post evaluation of project impact and success.

5. **Results of the questionnaire**

5.1. A questionnaire was sent to respondents in nine candidate countries.

5.2. Responses to the first four questions varied widely:

— opinions of the results achieved ranged from 'Very positive' through 'Quite good' to 'Poor' with several respondents saying that they had insufficient information to form a judgment;

— the degree of involvement of the respondents in the aid programmes also varied significantly;

— there was a wide disparity in their views on how easy it is to obtain information; some said that it was relatively easy, others that it was difficult and still others that the information is available but that it takes considerable effort to unearth it;

— in some countries it is said that there is a great imbalance between regional and national involvement in the process while in others the situation is deemed to be reasonably balanced.

5.3. On a weighted average of responses, the priorities for aid programmes in the future, in descending order of importance, are:

— reductions in economic disparities (infrastructure, environment, entrepreneurship) between your country and the Member States of the EU;

— reduction of economic disparities within your country;

— education and training;

— access to new information technologies;

— reduction in social disparities and combating exclusion;

— better administration and capacity-building in government and amongst the economic and social players;

— softening the impact of economic disciplines required by the EU;

— meeting the acquis communautaire;

— the question of minorities;

— promoting the social dialogue.

5.4. Most of the mechanisms for financial assistance were deemed to be appropriate, depending on the circumstances, but the one most frequently mentioned was public/private co-financing.

5.5. On a scale of one to ten, the average rating for how well the aid programmes had performed was 6,25.

5.6. The answers to the remaining questions are incorporated in sections 4.2 and 4.3 above.

6. **Comments**

6.1. Undoubtedly, the pre-accession funds have contributed significantly to the development of the candidate countries and have been largely responsible for the Commission being able to say [1] that, 'negotiations are progressing satisfactorily and negotiating countries are generally meeting their commitments up till now,'. However, the same document identifies the management of Community funds as being one area which still requires particular attention.

6.1.1. The aggregate sums allocated to the candidate countries under the three pre-accession instruments are substantial. This amount of financial aid will create profound changes in the economies of the countries concerned; it will also have an irreversible impact on the societies of the CEEC countries, where civil transformation is still an ongoing process that sometimes seems to lack both impetus and direction. It is, therefore, of paramount importance, as the Commission itself has acknowledged [2], that these instruments should operate in line with the principles of sustainable development.

6.2. There are wide disparities in the rate of progress made by the different candidate countries. All of the countries concerned are on a learning curve but their positions on that curve are widely dispersed.

6.3. Important differences also exist in the perspectives of different participants. While the Commission still points to fundamental administrative weaknesses in many candidate countries, which are limiting their capacity to absorb the allocated funds, government departments in those same countries take a more sanguine view of the situation and their ability to design, implement and control projects in the remaining pre-accession period. Most probably, this difference reflects the gap between an assessment by the national government ministries of how far they have come and the knowledge of the Commission of how far they have still to go. The view of civil society organisations in the countries concerned is most often aligned with that of the Commission; in several instances, they have expressed reservations about the absorption capacity of their national government administrations.

6.3.1. It seems clear that the Commission assessment most closely reflects the realities of the situation and that the view of the government ministries is coloured by wishful thinking. Questions arise, however, of why this state of affairs continues to exist. Phare is a programme which is specifically designed to assist in institution-building. Why, after so many years of operation and the expenditure of not inconsiderable sums of money, does the administrative capacity in so many candidate countries remain so weak?

6.3.2. This also calls into question the role of experts in the preparation of projects and the conduct of impact assessments. From all accounts, experts are widely involved in all stages of the projects and frequently play a decisive role in project selection. These experts are usually drawn from firms of consultants based outside the beneficiary country or with only a token presence within it. The relatively high incidence of rejected, failed or withdrawn projects raises doubts about the quality of their contribution to the process.

[1] COM(2002) 256 final.

[2] EU Sustainable Development Strategy.

6.4. There is also widespread disagreement between the government ministries and the representatives of civil society concerning the nature and extent of civil society involvement. While the situation obviously varies from country to country, it would appear that, in many of the candidate countries, there is a lack of true public participation. Civil servants deem it politic to pay lip service to the principle of consultation but generally regard it as an obstacle to the smooth and quick preparation of projects. In such cases, public participation remains a formal exercise without substance. This is in part the legacy of regimes in which the questioning of government officials was actively discouraged.

6.4.1. In order to improve the quality of public participation, it will be necessary to strengthen the social dialogue and the civil dialogue in many of the beneficiary countries. In this context, it is disturbing that respondents to the questionnaire attributed the lowest priority to this function of the aid programmes.

6.4.2. Quite apart from the question of the participation of the social partners and other elements of civil society, there is often a lack of involvement by regional administrations. This is variously attributed to apathy and weakness in the regional administrations and a desire by national authorities to retain these matters within their own purview.

6.4.3. Representatives of civil society claim that Phare is directed too much towards central government and that more could be achieved if it were refocused to provide institution-building assistance for local government and for civil society organisations. However, given the relatively slow progress made with central government administrations, this might be impractical in most countries.

6.5. There is a broad measure of unity between government ministries and the representatives of civil society on the complexity of the procedures laid down for access to funding under all three instruments. Almost without exception, they agree that they are unnecessarily complicated and time-consuming. On the other hand, there are legitimate concerns in some countries about the representativity of civil society organisations.

6.6. As in other areas, there is a tendency for the players involved to blame each other for the shortcomings in the system and to overlook their own responsibility for ensuring that it works efficiently. There are also some popular misconceptions that result in misplaced criticisms; for instance, it is claimed by some environmental NGOs that public transport has not been supported by ISPA but this contention is not reflected in the statistics. This points to a clear need for improvement in the quality and quantity of information being made available to the public and in the methods of its dissemination.

6.6.1. In many countries, it is clear that civil society organisations such as NGOs, trade unions, chambers of commerce and employers' associations, could do more to provide information to their members and to assist them in other ways with project submissions.

6.7. A worrying factor is that SMEs do not appear to be benefiting from the pre-accession instruments to the extent that is desirable, given their importance to these emerging economies. Particularly in relation to Sapard, SMEs are failing to derive benefits due to:

— lack of capacity to fulfil the formal criteria;

— lack of knowledge about the programme;

— lack of means to fund the co-financing element.

6.8. The most important criterion in relation to the assessment of any project is not its fulfilment of stated objectives but its impact on the real economy. Projects have a dual function — to achieve the project objectives and to provide the candidate countries with experience in project management.

6.9. Transparency and public participation in decision-making should be one of the key and obligatory rules for pre-accession funding under all three instruments. The public participation process should be used to improve the quality of plans and projects and to build up a sense of 'ownership' amongst the citizens of the beneficiary countries.

6.10. One of the objectives of the Council Regulation establishing Sapard was to set the framework for Community support for sustainable agriculture and rural development. However, the CAP, which is in need of reform, should be orientated more towards fulfilment of the criteria for sustainable development. The question thus arises of the extent to which Sapard, which is aimed at CAP implementation, can promote sustainable development in rural areas of the accession countries.

6.11. The relatively low levels of aid actually delivered in comparison to the sums allocated result from a number of factors, including the lack of administrative capacity in some countries and problems in meeting the complementarity requirements. However, the lack of visible aid is fuelling anti-European sentiment in some candidate countries.

6.12. There are concerns in several countries with very low levels of per-capita GDP that it will be difficult to obtain private sector funding for ISPA projects because of the inability of people to pay the higher prices for energy supplies and public transport that would be needed to provide an adequate return to the private-sector investors. A study in one country by independent experts from an international firm of consultants estimated that the necessary water treatment and sewage facilities would require water charges equivalent to 5 % of average wages; it was thought that this would be sustainable but this evaluation did not take into account the likely additional burden of similarly increased charges for energy and public transport.

7. **Recommendations**

7.1. The Committee makes the following recommendations (not necessarily in order of importance) for improving the operation and effectiveness of the pre-accession instruments:

— The transparency of the pre-accession funds needs to be increased in all beneficiary countries.

— The funds should be reorientated to promote more sustainable solutions and the guidelines of the instruments, especially ISPA and Sapard, should be revised in the spirit of the EU Strategy on Sustainable Development.

— There should be a mandatory requirement for the active involvement of the social partners and other elements of civil society; this involvement should take place at the earliest possible stage.

— The social and civil dialogues need to be strengthened in every country concerned; one effective way of promoting this would be the creation of a civil society forum on the model of the European Economic and Social Committee in each country which does not currently have one.

— Information is too often spread through personal, informal contacts between government ministries and other agencies; there is a need for clear and binding guidelines on access to information; these can only emanate from the EU.

— There is a need for more effective dissemination of information and wider publicity in general; if this cannot be provided by the authorities in the countries concerned, it should come from the EU.

— The social partners, NGOs and other civil society organisations in the candidate countries need to be more proactive in seeking information, providing assistance for their members and making their voices heard.

— The procedures imposed by the EU in relation to all three instruments should be reviewed with the object of streamlining and simplifying them. A clear set of unambiguous, binding and enforceable rules and guidelines should be drawn up, which should remain stable over time.

— The capacity and quality of performance of Western-based consultants and experts should be closely monitored, both to ensure project quality and improve their credibility. Non-performing consultants should be blacklisted.

— The eligibility rules for Sapard should be reviewed to improve access for small and part-time farmers, who stand to derive the greatest potential benefit; in addition, either the co-financing requirements should be relaxed or a system of government-backed guarantees should be provided for bank loans. Romania has recently taken positive steps to address this issue.

— The question of corruption should be tackled openly, frankly and fearlessly, wherever it arises.

— The Commission should set and publish targets for the amount of aid to be actually delivered to each beneficiary country in each year for each of the three instruments.

— Formal processes should be established for obtaining ex post feedback from civil society organisations on project impact.

— The system of communication and coordination between the relevant DGs in Brussels and the European Commission delegations in the candidate countries should be reviewed.

— The various players involved need to learn to work together in closer cooperation rather than blaming each other for the lack of results.

— The concentration of the transport element of ISPA financing on TENs should not be to the exclusion of the development of local and regional transport infrastructures.

7.2. The Committee proposes to prepare a follow-up Opinion in due course in order to assess the extent to which these recommendations have been implemented and to update its evaluation of the operation of the pre-accession funds.

7.3. The Committee believes that, after the first wave of accession in 2004, the pre-accession funds should be restructured to deliver aid to all the applicant countries remaining outside the Union at that time.

8. **Conclusions**

8.1. The pre-accession funds have provided valuable assistance to the beneficiary countries. Without them, it is doubtful in the extreme whether so much progress could have been made towards accession. The importance of their role is likely to continue to increase. Nonetheless, it is clear that there is room for considerable improvement in the way these funds are administered and operated. It is unfortunate that continuing lack of capacity in the administrative structures in the beneficiary countries should still be acting as a severe constraint on the ability of the instruments to actually deliver aid. There is a need for greater transparency and accountability. It is not acceptable that public participation and access to information should be at the whim of government ministers and civil servants.

8.1.1. Civil society organisations have a great deal to contribute to the process, especially in the analysis of potential project impact, but they need to adopt a more proactive stance. In particular, the social partners and other elements of civil society need to strengthen their dialogue with each other and present a common position to their national governments. This process would be facilitated by the creation of national Economic and Social Committees, based on the European model.

8.2. There must be a greater focus on the funds as an instrument for promoting sustainable development. Access to Sapard should be facilitated for small and part-time farmers; an improvement in their situation offers the greatest potential benefit to agriculture and rural development in the countries concerned.

8.3. The public perception in most, if not all, of the candidate countries is that there are fundamental problems with the operation of the pre-accession funds and that these stem in large part from the overly-bureaucratic nature of the structures laid down by the EU and the insistence upon the involvement of external firms of consultants. However misplaced these perceptions may be, it is a fact that they exist and, while they do, they will undermine support in the beneficiary countries for the objective of European accession. It would be dangerous to ignore these views simply because they appear to be misconceptions. There is a pressing need for a public relations exercise to convey the true picture to the peoples of these countries.

8.4. It might seem that the imminence of the first wave of accession, which is planned to enlarge the Union by up to ten new Member States, renders it unnecessary to address these issues. Nothing could be further from the truth. Not only is it essential to restore credibility and efficiency to the disbursement of large amounts of public funds but it is also vital that the candidate countries should acquire sufficient expertise in the handling of these funds and the delivery of the related projects. This is far from being the case at present in most countries and, without this, their ability to absorb the much larger amounts of Structural and Cohesion Fund assistance post-accession must be called into question and, hence, their state of preparedness for membership of the Union. To bridge the gap between their present condition and the required state of readiness is, in most cases, a daunting task and there is not much time left in which to complete it.

8.5. The Committee has set out a number of specific recommendations for improving the status quo. The list is not exhaustive; it needs to be tackled with energy and celerity; time is of the essence. To be effective, any action plan must be a shared agenda between the Commission, the governments of the beneficiary countries and civil society in those countries. It is to be hoped that the political will exists to achieve this.

Brussels, 19 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Trends, structures and institutional mechanisms of the international capital markets'

(2003/C 61/18)

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 'Trends, structures and institutional mechanisms of the international capital markets'.

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 3 September 2002. The rapporteur was Mr Sepi.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted the following opinion by 58 votes to none with three abstentions.

1. Introduction

1.1. The world financial market, which has been progressively consolidated over the last decade, has a key role to play in the process of economic globalisation.

1.2. Its importance stems from its position as the first economic sector where globalisation has come into real play: there are no spatial boundaries to transactions, since they can take place on all world financial markets across five continents, and neither are there time constraints since transactions can be made round the clock, day and night, from anywhere in the world.

1.2.1. The purpose of the present opinion is for the Committee to join the debate on how the international capital market works and on the European and international proposals for reform. The Committee believes that the debate has grown in importance as a result of recent events, which have not been purely economic: the bursting of the US-generated speculative bubble in the second half of 2000 and its effects on the real economy; the terrorist attacks of 11 September together with the need to cut off funding to terrorist groups and organised economic crime; and Argentina's financial crisis.

1.2.2. The Committee considers the EU's contribution to stabilisation and to world development to be crucial. Accordingly, and notwithstanding the fact that the existence of a single currency protects the eurozone against certain shocks, the Committee emphasises how important it is for the institutions of the eurozone to play an active part on the international scene in seeking to identify effective, common approaches capable of promoting more robust financial systems.

1.3. The combination of two factors has brought about the present state of affairs, marked by fresh bouts of instability: the almost total liberalisation of capital markets, accompanied by the growth of derivative financial instruments, and the development of telecommunications — which is the other substantially integrated sector at world level.

1.4. The present opinion's starting point is the belief that the acceleration brought about by these two globalised sectors is generating profound contradictions in a world where an awareness of a shared future is beginning to grow among a range of global civil society sectors.

1.4.1. Free movement of capital is politically irreversible, and has some positive aspects. In theory, a free worldwide investment market could optimise capital placements and strike a better balance in world development.

1.4.2. Liberalisation could also produce a major spin-off in terms of preventing systemic crises such as those which have occurred in the past, by broadening the range of players and resources involved.

1.4.3. The new financial resources thus generated could have a significant impact on productive growth, by extending the geographical scope of development and also channelling savings to countries unable to generate sufficient volumes themselves.

1.4.4. The Committee feels that these positive effects are not yet evident: on the contrary, over recent years in particular, globalisation — especially financial — has been the target of heavy criticism.

1.4.5. Such criticism often reflects a one-sided point of view and shallow analysis regarding the difficulties involved in more balanced development of the global economy. The glaring contradictions within political systems, which have had a hand in the development failure of the poorest countries, are frequently overlooked. These countries are often marked by corruption, mis-spending and inappropriate taxation policies.

1.4.6. These criticisms are not, however, baseless: the current crises, which directly or indirectly also affect millions of EU citizens — and threaten the whole democratic edifice of the countries concerned, as has occurred in Argentina — are only in part the result of local political shortcomings. Argentina was scheduled to repay US $ 750 million in the course of 2001, and more than US $ 2 000 million by the end of January 2002. The resulting capital flight triggered a liquidity crisis in the banks, with all the ensuing institutional and social repercussions. The ending of peso-dollar parity has occurred against a backdrop of violent social unrest: 14 million of the country's population of 37 million are living below the poverty line. The social crisis has in turn triggered a political and institutional crisis.

1.5. This is, perhaps, happening because the onward march of financial globalisation has not been matched by either growth of world institutions, an overall policy direction, or global administrative bodies. When nation states were formed, institutional integration came before market integration: the current process is the exact opposite.

1.6. Spurred by fierce competition, the growth of credit and rapid financial change, the international drive for a 'new financial architecture' proposes reform of (i) the rules of governance, starting with the identification of best practices which can minimise instability and its spill-over effects, and (ii) the powers of the IMF and the World Bank.

1.7. The Committee believes that the 'new financial architecture' must be underpinned by new insights, broadening the paradigm that has guided the liberalisation of the capital markets hitherto.

2. **Analysis of debate at EU level**

2.1. On 2 February 2002, the Commission published a communication [1] in which it analysed existing documents and studies in this field. Its two main objectives, as previously put forward by the Ecofin Council, were to discuss a response to financial crises and to consider the issue of 'financing (...) development as a means to reduce global inequality'.

2.1.1. The communication does not make specific proposals. It simply looks at existing ideas about the new world financial architecture, thereby launching an EU and world-level debate. Through the present opinion, the Committee intends to take part in the debate launched by the Commission.

2.1.2. The Ecofin Council of 5 March 2002 adopted the communication from the Commission. Among other points, it argued that 'globalisation (...) is essential for promoting growth and development', but concurred with the Commission's view that its 'benefits (...) are not evenly shared'.

2.1.3. The Council statement concluded by listing a series of objectives to be brought into the debate [2].

2.1.4. The European Parliament resolution on the international monetary system [3] argues, among other points, that 'necessary financial stability is a public good ... the real economy bears the cost of financial instability, and the crises it brings about ... the central role played by financial engineering and innovation ... permits risk to be broken down (but) leads at the same time to increasing complexity of financial transactions and risk-taking channels'. It also 'takes the view that the aim of the reforms of the international financial institutions under way must be to make them more efficient and more transparent (and) advocates globally integrated prudential supervision and oversight'.

2.1.5. In an information report adopted in May 2001 [4], the Committee remarked that: '(...) total liberalisation of capital movements has fuelled international financial crises which have particularly affected the developing countries. A major contributory factor here has been the way that some developing countries have used purely speculative short-term capital flows from the industrialised countries to finance their public deficits in an unorthodox, high-risk manner.'

2.1.6. The Committee felt that an own-initiative opinion could lend greater vigour to the pursuit of a new architecture for the monetary and financial market, which would reduce the impact and prevent a recurrence of the crises the market underwent in the 1990s. The Committee therefore notes with interest the publication of the communication from the Commission in February 2002, and will return to certain of its points. In any case, the Committee agrees that during the 1990s, financial variables exercised a decisive influence on the dynamics of the real economy.

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[1] COM(2002) 81 final.

[2] Ecofin Council of 5 March 2002 (6591/02 (Presse 46) C/02/46).

[3] European Parliament resolution on the international monetary system — how to make it work better and avoid future crises (2000/2017 (INI) — A5-0302/2001).

[4] CES 326/2001 fin.

3. **General comments**

3.1. *Short-term trends*

3.1.1. The current cycle is marked by a widespread slowdown in production. The slowdown set in suddenly in the USA in the second half of 2000, following a decade of uninterrupted economic expansion, in which growing financial deregulation was accompanied by ready supply of low-cost risk capital. This resulted from expectations of higher than average returns, especially in the ICT (information and communication technology) sectors. The recent revelations of fraud on the part of senior management in major corporations have also done much to undermine confidence among savers.

3.1.2. The US economic slowdown has spread to other parts of the world in which other factors were at work: these included rising oil prices between 1999 and 2000, action by the major central banks on short-term interest rates to damp down inflationary pressures, and continuing 'structural' difficulties in Japan. The simultaneous effect of these factors has been to accentuate a general reduction in both production and aggregate demand.

3.2. *Cyclical features and phases of third-wave globalisation*

3.2.1. The Committee would emphasise that one of the more positive effects of the liberalisation of international capital movements has been the growing ability to counterbalance the huge differences in the savings capacities of the various national systems. However, especially following the vigorous deregulations of the last decade, this liberalisation has increased the risk of serious fluctuations in financial cycles, with a significant impact on the real economy. Financial variables have assumed an increasingly decisive role in shaping macroeconomic results and projecting them beyond their own area. The Committee recalls that the BIS now estimates capital flows to be forty times greater than trade flows.

3.2.2. This 'contagion effect' has therefore led to synchronisation and accentuation of the financial and economic cycles. The seriousness of the final results can vary in line with the economic and financial importance of the country where the process is triggered, and with the structural and management capacity of the various parts of the world to which it spreads. The role of US variables in determining economic and financial trends in many other countries is also increasingly clear.

3.2.3. The Committee agrees that the reasons for these cycles running concurrently include those set out by the Commission in its most recent short-term analyses. The extension and proliferation of channels conveying external shocks are key elements. This refers not only to the contraction in trade flows, which is prejudicial to all areas which tie their own potential for growth to exports: other channels have grown in importance, including the company one (by means of fluctuations in multinational profits) and have increased diversification in portfolio management. Neither, lastly, should the confluence (between the USA and Europe, for example) of consumer and business expectations be overlooked.

3.2.4. Argentina represents an eloquent instance of vulnerability to a volatile financial system. Negative expectations were fuelled by the unreliability of its macroeconomic benchmarks (increasing public debt, external balance, etc.) and by the progressive loss of control over the currency system. This triggered a cycle which reversed the previous link between cause and effect, and a combination of factors intensified the pressures on Argentina's interest and exchange rates: the world economic slowdown, the increasing reluctance among private operators everywhere to assume risks (compounded by the events of 11 September) and the way this has modified their preferences and decisions (with some evidence of 'herd behaviour'), the resetting of international interest rates, etc.

3.2.5. In less immediate terms, it can be argued that globalisation has not only broadened the channels for exogenous shock but has also complicated relations, inside the different systems, between private operators and public bodies, and between micro and macro factors. This complexity is driven by the multiple interests and interactions which revolve around private operators (each of them with their own aims, rationales and interests).

3.3. *The new conceptual architecture*

3.3.1. As the Commission states, reform designed to create a new financial and monetary architecture is needed both (i) to foresee and manage financial crises more effectively from the outset, and (ii) to enable the financial market to cope with the glaring developmental inequalities around the world. This is a need which, even before appealing to a sense of solidarity, engages the direct interests of all countries — developed, developing or almost wholly marginalised. In practice, the contagion and simultaneity aspects mentioned above entail 'aggregate risks' for the credit and money market: they indicate that even industrialised countries should not concentrate exclusively on their own domestic problems.

3.3.2. The Committee nevertheless believes that governing the financial market requires the application of 'extended rationality', given the broader objectives which better functioning of the market is intended to pursue. This entails fleshing out the model for economic analysis against which the 'new financial architecture' is to be viewed. The purpose of this new architecture should be to achieve a disciplined financial market in which competition mechanisms are backed up by regulatory and supervisory instruments. In order, however, for reform to be both effective and fair, it must be built into a wider and more comprehensive 'conceptual architecture' which reflects not only factors inherent to the financial market, but also the links between this market and other areas of the real economy.

3.3.3. For the general economic framework, 'extended rationality' means focusing on both demand- and supply-side factors. Macro issues concerning the public authorities can thus be correlated with micro issues, and the simplistic barrier between economic decisions and mechanisms and the social rules governing the community on which they impact can be broken down.

3.3.4. At macroeconomic level, the rate of GDP growth is not by itself a sufficient indicator with which to assess the system's development. Domestic demand, in all its various aspects, plays a key part in the stability of growth and the way it is distributed. When it is at the right level, it makes for an easier trade-off between export competitiveness and the need to stabilise exchange rates. In this connection, there needs to be a thorough re-think of the prevailing fiscal policy model, which has preferred to use fragmented tax relief moves for specific categories of operator and tax bases. As well as being inequitable, this undermines economic growth and social development when public expenditure commitments are not met.

3.3.5. Macroeconomic recovery schemes must be responsive to the demands for a gradual approach emerging from the wider economic and social system. The quickening pace, invariably explained in emerging countries by their desire to speed up their participation in the financial capital markets, has triggered negative chain reactions on these markets. This has highlighted how the volatility of the financial system can manifest itself during the opening-up of a market — i.e. in the short term — rather than when it has been open for some time. All other conditions being equal, the process of opening up the capital market can itself push up prices where the national financial authorities do not have the necessary control capacity.

3.3.6. The choice of foreign exchange system is closely tied in with the gradual approach. Argentina opted for a fixed parity arrangement because it considered this the most appropriate foreign exchange regime. It should be clear that in so doing, it rendered national monetary policy endogenous, with the aim of activating 'automatic deflation'.

4. **Specific proposals and considerations**

4.1. The Committee stresses the importance of the procedures which the international community plans to put in place in order to create a new financial economy. The objective is two-fold: to make foreign investors more familiar with conditions on the markets they intend to enter; and to strengthen these markets through legislative, economic and institutional reforms, together with new financial infrastructures.

4.2. This calls for a number of steps, including codes to ensure transparency in macroeconomic policy, principles and guidelines to protect creditors, international accounting and auditing standards, banking controls, market integrity safeguards, and rules which emerging and/or developing countries should also comply with, in close coordination with the appropriate international financial institutions, first and foremost the International Monetary Fund (IMF) and the World Bank (covering 183 countries). These two bodies intend to step up their joint reporting and surveillance work under the new world Financial Sector Assessment Program.

4.3. The Committee stresses that maximum transparency and information must also be ensured where the international institutions are concerned, so that comparison and discussion are possible. The rules of democratic governance should apply within globalisation structures too. The bodies operating within these structures are specialised in terms of their powers and at the same time independent — even though they manage public funds — once their establishment has been decreed by international decision.

4.3.1. The Committee emphasises that the rules mentioned above must enable the countries concerned to achieve balanced internal development. The reform process is a lengthy one: this means that further variables, conventionally left out of the models and procedures applied hitherto in relations between debtor nations and credit providers, must be included so as to ensure that financial vulnerability really is reduced. This entails breaking down the separation between the 'needs of the market' and the aspirations of civil society within each national community.

4.4. To achieve this aim, the Committee does not believe it is sufficient to state that the standards proposed by the international community should be adopted by individual countries on a voluntary basis, or that it is up to them to decide on the content of action programmes and deadlines for their implementation. Loan conditions — starting, for example, with the 'Contingent Credit Line' devised by the IMF — must take account of how far they can in practice be borne in terms of the real economy, social conditions and international robustness. This may reassure private creditors, and prevent liquidity crises turning into full-blown solvency crises. In other words, it may safeguard a project's viability and effectiveness.

4.5. In addition, the Committee would point out that the state of play between the three international currencies — the dollar, the euro and the yen — also plays a significant role. Less fluctuation in their rates of exchange would reduce the risks and uncertainty which influence international finance. Greater coordination between these monetary zones could bring exchange rates and basic aspects of the real economy into closer line with each other, imparting more continuity to general economic growth.

4.6. The financial economy must reflect the logic not only of the financial system, but also of the monetary economy. The traditional tension between them, which has been exacerbated by the rapid liberalisation and increasing deregulation of the capital market, must be set against a broader framework for governance than the mono-dimensional one prevalent so far. Only in this broader framework can proposals be put forward on whether or not to boost the role of the IMF, on extending its remit to the balance of payments capital account, on the scope for systematic involvement of the private sector in dealing with financial crises, etc.

4.7. Proposals under discussion include the introduction of a 'Tobin tax', which would be levied on cross-currency transactions in such a way as to deter currency speculation and protect capital flows destined for productive investment. Alternative solutions, such as non-yield time deposits, have also been proposed. In the Committee's view, the question of whether or not the Tobin tax is desirable or practicable comes under the broader issue of how to ensure international fiscal coordination which can prevent 'unfair' competition, confront the problem of tax havens and off-shore markets (both of which combine tax evasion and complete anonymity), and facilitate measures to combat both laundering of the proceeds of organised economic crime and funding for international terrorism. The Committee should devote further attention to the issue of international capital taxation.

4.7.1. Money laundering and the funding of terrorism are two areas of great concern, and involve large amounts of money (the UN calculates the proceeds of crime at some 500 billion dollars annually). Both are beyond the reach of individual states. They originate from a range of sources (only in the case of organised crime are the initial funds always illegal) and take full advantage of transnational opportunities, globalisation and technological progress.

5. **EU proposals**

5.1. The European Union has a clear picture of its role and the contribution it can make in all the areas mentioned. The Committee would draw attention to the value of the following initiatives and trusts that the working deadlines will be met.

5.1.1. The EU called for new forms of democratic governance at the Laeken European Council. These require a collective view of the rapid changes affecting the world, identification of priorities, matching of human and financial resources, and acknowledgement of the crucial role of civil society in orderly financial liberalisation. The Commission's proposal on governance [1] must lead to legislation and to robust, coordinated political action by the entire European Union.

5.1.2. With regard to the tax issue, the Helsinki and Santa Maria da Feira European Councils (December 1999 and June 2000 respectively) launched a package of initiatives, in compliance with the principle of subsidiarity and of a barrier-free European market, to be implemented on a voluntary basis by the Member States (code of conduct on company taxation), together with a coordination drive guided by European directives on taxation of savings income. The first results should be available in the course of 2002. Progress towards tax harmonisation has only just begun.

5.1.3. The EU is engaged in integrating its own financial market, in accordance with the decisions of the Lisbon European Council (March 2000) setting 2005 as the deadline for implementation of the Financial Services Action Plan, and with the decisions of the Stockholm European Council (March 2001), which brings integration of the securities market forward to 2003, in keeping with the views of the Committee of Wise Men chaired by Mr Lamfalussy. The Committee has already welcomed this approach and the stages into which it is divided, and will not return to it in the present opinion. It does however wish to emphasise that the financial market can act as an engine for growth and a force for stability only if the optimum balance between efficiency and security can be achieved.

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[1] COM(2001) 428 final.

5.1.4. More specifically, with regard to the state of progress of the action plan, the Committee would stress the importance of relaunching the takeover bids directive and the need to make progress on the supplementary pension funds directive.

5.1.5. With regard to the current world economic slowdown, the Committee urges the EU to boost its own internal growth and intra-Community trade. This could in part be achieved by launching European infrastructure projects, with the project funding drawn from the market and the banking system in combination with new public investment.

5.1.6. By boosting the contribution of internal demand to European GDP growth, these types of action would provide necessary structural reforms. They should not be included among the Stability Pact accounting mechanisms. If implemented as part of a system of efficient cooperative development between Member States, these steps would enable each country to take account of the decisions of its partners and therefore to limit the volume of the financial resources needed, while obtaining the same economic results as with initiatives taken in isolation.

6. **The international financial institutions**

6.1. *The European Central Bank*

6.1.1. The ECB has restated its — primarily methodological — objection to adopting short-term discretionary monetary policies, considering that these would inject even greater volatility into cycles. In the ECB's view, a medium-term policy — if based on clear objectives (price stability) and information — broadly matches the expectations of private operators, who will then make the necessary adjustments.

6.1.2. For this reason, the ECB views the euro exchange rate as an indicator, not an objective. In comparison with the Bretton Woods agreements, the ECB points out that the liberalisation of capital and application of market criteria have, over the last two decades, ironed out the disadvantages in the allocation of financial resources and savings. It does however acknowledge that this can make it more difficult to maintain stable exchange rate regimes. At all events, the ECB feels that the best way of letting the fundamental principles of market discipline govern the system is to comply with them.

6.1.3. Cooperation agreements between the major monetary areas can only be an option under entirely exceptional circumstances, such as the 11 September attacks — as in fact occurred immediately after those events. In general terms, agreements are viewed by the ECB as potential triggers for crises, in view of the difficulty of comprehensively covering all the different variables when drawing up their internal rules.

6.1.4. The Committee is fully aware of the difficulty that an exchange rate agreement with the leading currencies would pose, but nevertheless emphasises the positive effects it would have in making the markets less volatile and more predictable. The ECB must also have a recognised role as the representative of its monetary area at the international institutions.

6.2. *The Financial Action Task Force (FATF)*

6.2.1. For the FATF, the common element in all the various aims of economic crime is the need to be funded through efficient financial structures. Their individual characteristics, however, influence the channels through which the money passes. Economic crime involves procedures for laundering funds generated by illegal activities (dirty to clean), drawing lawful funds into unlawful activities (as can happen in funding for terrorism), i.e. clean to dirty, or channelling unlawful funds (from contraband, drugs, etc.) to other criminal activities (terrorism), i.e. from dirty to even more dirty.

6.2.2. The particular gravity of the terrorist attacks of September 2001 has prompted the FATF to draw up fresh recommendations which, in conjunction with those on money laundering, provide a basis for detecting, preventing and suppressing terrorist funding and acts. The Committee fully supports the content of the recommendations, and stresses the need for all states to ratify the UN's 1999 Convention for the Suppression of the Financing of Terrorism, and to implement the related resolutions, in particular Security Council Resolution 1373 (financing terrorism, terrorist acts and forming terrorist groups are considered to be crimes; all countries are to make the necessary changes to their own laws and regulations in order to freeze and confiscate without delay funds or other resources, and submit reports to the appropriate authorities where there is a suspicion that funds are linked with terrorism).

6.2.3. The Committee notes that the globalisation of financial markets, the ever-increasing diversification of new payment instruments and financial derivatives, and the introduction of the euro make it increasingly difficult to control this phenomenon. This state of affairs requires not only bilateral and multilateral agreements between the various national systems, but the effective acceptance of an international framework for governance, based on uniform criteria and procedures.

6.2.4. The Committee's concern also derives from the difficulty of applying these rules effectively in widely varying institutional and legal settings.

6.3. *The International Monetary Fund (IMF)*

6.3.1. The Committee agrees with the IMF regarding the implementation and strengthening of the Code of Good Practices on Transparency in Monetary and Financial Policies, initiated in 1998. Voluntary acceptance (and application) of the code can be regarded as a necessary stage in crisis prevention. Under the code, two criteria are to be applied when framing national monetary and public finance policies:

a) private operators and the public should be informed of the macroeconomic goals of policies and the instruments for achieving them;

b) the monetary authorities and financial institutions operating with a high degree of autonomy should undertake to respect the commitments and rules adopted, thereby confirming their reliability.

6.3.2. The Committee would therefore strongly advocate strengthening the IMF's new International Capital Markets Department, and bringing greater transparency to the IMF's operational choices, as well as to the economic policy debates and decision-making procedures preceding and accompanying such choices.

6.3.3. However, the Committee believes that improvements to the method of analysis, and the preparation of new indicators by the IMF itself, should form part of a broader approach. Under this approach, steps for readjusting variables, and the timetables for implementing them, should take account of the development needs of the real economy and of their social acceptability. The Committee is convinced that this is the only way for the necessary stability policies — which every country should feel duty bound to pursue — to be strengthened and made more credible in terms of feasibility and structural consolidation. In the Committee's view, this also implies direct and broad involvement of all the different political strands and of civil society in the preparation of national debt repayment or recovery plans.

6.3.4. In 2001, the IMF called for the establishment of a new external debt restructuring mechanism using procedures similar to those adopted at national level for bankruptcies. The IMF also considered the issue of how to define its own role in this new framework of collective action clauses.

6.3.5. The alternatives currently under discussion concern:

a) a statutory approach giving the IMF further powers in defining debt restructuring mechanisms;

b) a statutory approach based on decisions by a majority of creditors;

c) a contractual approach based on market rules, under which collective action clauses could be incorporated voluntarily.

The IMF has not yet specified which of these options is considered the most suitable for adoption.

6.3.6. The Committee notes this uncertainty and the expectation of a three-year wait before the new mechanism is introduced. It takes a serious view of the present situation of certain countries with severe difficulties (e.g. Argentina), which are unable to refer to new rules or, in agreements currently being concluded, to count on clauses similar to those to be contained in the solution eventually adopted. Regarding the current debate, the Committee believes that the approach whereby decisions are taken by a majority of creditors allows the macroeconomic financial institutions and private operators to be involved in a carefully considered way and, at the same time, to offset any aggressiveness on the part of the strongest creditors.

6.3.7. In the Committee's view, preventing and resolving crises also means looking again at the Enhanced Heavily Indebted Poor Countries Initiative. In the first months of 2002, of the 21 countries (from a total of 42) which had started using debt reduction payments, eight were subsequently excluded by the IMF because the agreed macroeconomic and reform-related commitments were not met. The Committee would emphasise that assessments of non-compliance must take account not only of traditional structural difficulties, but also of overall economic growth which is lower than that (always) assumed by agreed debt repayment programmes, and of the fall in certain commodity prices.

6.4. *The World Bank*

6.4.1. The first point for consideration with the World Bank was the feasibility of the UN programme, confirmed by the Monterrey Consensus which, as well as setting out the action to be taken, aims to halve the number of people living in poverty by 2015 (from 29 to 14,5 % of the world's population).

6.4.2. The Committee points out that:

a) the feasibility of many of the objectives set (including the economic policies which the countries involved must follow) depends on abstract initial assumptions, such as a basic GDP growth rate, at international level, of 3,6 % a year to 2015;

b) in its own reports, the World Bank emphasises that economic downturns and widening inequalities in many parts of the world are impeding the structural reforms that countries are supposed to carry out;

c) all these factors mean that the World Bank must, in the light of the experience acquired, fine-tune its own analytical model and the associated economic and social statistical indicators.

6.4.3. Thought was also given to the practical ways in which future commitments are to be implemented. The Monterrey Consensus envisages a new partnership for sustainable development between the developed and developing nations, on the basis of shared accountability and obligations. It sets out to ensure good governance and application of macroeconomic stabilisation policies (surveillance of the financial sector, public finances and the exchange rate system) on the part of the developing countries, matched by greater and more efficient assistance from the developed countries, who must also comply with the trade liberalisation decisions reached at Doha. Against this backdrop, the role of the World Bank is to help the developing nations to overcome existing obstacles of a strategic, institutional or infrastructural nature.

6.4.4. The Committee considers that a dynamic private sector, liberalisation of the financial markets and an integrated trade system are essential for the economic growth of the developing countries. However, the Committee is convinced that the experience of the last 30 years clearly shows that if such steps are introduced without proper regard to the wide variety of specific local economic and social conditions, they upset the balance of power between economic operators and, when compounded by structural imbalances, frustrate rather than facilitate movement towards development, reform and social progress.

6.4.5. In the light of the points confirmed at the Seville European Council of 21 and 22 June 2002, the Committee calls upon the European Union to propose the adoption of new criteria in the appropriate international forums geared to:

— delivering greater impetus to the development of the real economy;

— providing safeguards for the essential goods and services necessary for such development;

— supporting local economic activity.

6.4.6. There is at present a damaging degree of ambiguity between the declarations of principle made by major figures at the World Bank on the need to review the criteria thus far adopted (e.g. in backing privatisation uncritically), and the continued adherence to these criteria in programmes.

7. **Conclusions**

7.1. The Committee notes the growing importance of the international capital market, which is no longer bound by limits of time or space.

7.1.1. Activity on this market has a huge influence on developments in the real economy, affecting production, employment, and private and public supply and demand. Its impact in transmitting financial crises to the real economy is bound up with its capacity to synchronise and extend financial crises across geographical regions, triggering and amplifying not only economic, but also social and institutional instability.

7.1.2. For this reason, a broad debate is developing on the new architecture of world finance, as one possible means of bringing good governance to a field where the rules are either outdated or are of too limited territorial scope to tackle the situation.

7.1.3. The Committee is convinced that a new financial architecture capable of anticipating or managing crises has to be based on new concepts, on a new conceptual framework reflecting not only financial, but also economic and social aspects, and the institutional and democratic solidity of the countries affected.

7.1.4. The Committee calls for governance along the lines set out in the Commission's white paper [1], under which the involvement of civil society and the reduction of global economic disparities are set objectives.

7.1.5. The European Union must therefore adopt a higher profile in the debate, bringing this new vision to institutional forums and presenting a united front.

7.2. The international institutions must be thoroughly overhauled. The Committee notes that while the World Bank is progressively broadening its methods of analysis and introducing new elements in line with European governance, the IMF remains firmly anchored to its traditional criteria. It is in any case difficult to see these bodies implementing substantial changes purely on their own initiative.

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[1] COM(2001) 428 final.

7.2.1. But reform is only possible if the balance of power between the international institutions is altered: this however presupposes an understanding between the European countries to break the present mould and speak with a single voice, resolving the myriad political problems which this entails.

7.2.2. Lastly, the Committee calls on all the international organisations (IMF, World Bank, FATF, Global Forum on Fighting Corruption, etc.) to enter into close and effective cooperation with each other and with national systems. The political will to strengthen control of off-shore markets and of links between off-shore and on-shore markets is crucial in this regard.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'The future of upland areas in the EU'

(2003/C 61/19)

On 16 January 2002 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'The future of upland areas in the EU'.

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 25 June 2002. The rapporteur was Mr Bastian.

At its 393rd Plenary Session (meeting of 18 September 2002) the Economic and Social Committee adopted the following opinion by 66 votes to one with 12 abstentions.

1. **Introduction**

1.1. Now that the UN General Assembly has designated 2002 the International Year of Mountains, the European Union should give thought to its policy for upland and mountain regions.

1.2. The European Economic and Social Committee, the European Parliament and the Committee of the Regions have all expressed their concern for upland and mountain areas on a number of occasions, and have called on the European Union to recognise the special nature of these areas and to conduct a proper cross-sectoral policy for them. These views are set out in the following documents:

— EESC opinion of 28 April 1988 on A policy for upland areas;

— EESC opinion of 25 April 1996 on The Alpine Arc — an opportunity for development and integration;

— CoR opinion of 21 April 1995 on the European Charter on Mountain Areas;

— CoR opinion of 18 September 1997 on A policy for upland agriculture in Europe;

— report of the European Parliament's Committee on Agriculture and Rural Development of 16 October 1998 on A new strategy for mountain regions, based on an earlier study by the EP's Directorate-General for Research entitled Towards a European Policy for Mountain regions (AGRI 111/FR — available in French only);

— European Parliament resolution of 6 September 2001 on 25 years' application of Community legislation for hill and mountain farming.

1.3. The Committee is pleased to note that in its first progress report following the second forum on economic and social cohesion, the Commission has turned its attention to the future of the Structural Funds and is considering the possibility of setting new eligibility criteria which take account of physical problems, including those faced by upland regions. The seminar held by the Commission on 27 and 28 May 2002, on The Union's regional priorities — Defining Community value added, offers encouraging confirmation of the Commission's efforts to steer Structural Funds policy in this direction.

2. **The special position of upland areas in the EU**

2.1. The main feature of upland areas is that they suffer from a serious geophysical handicap as a result of slope, altitude and climate and their generally isolated situation. These areas also have outstanding but fragile natural assets and resources. They are thus of unique concern, and a public policy is needed to curb over-speculation in such areas.

2.2. Upland or mountain areas cover 30 % of the EU and are home to 30 million of its inhabitants. This percentage is set to increase with enlargement.

2.3. Broadly speaking, and subject to sometimes major variations from one upland area to another, these areas face a number of common problems which have a marked transnational character and call for a public assistance or financing policy:

2.4. *Demographic situation*

Despite the existence of some particularly dynamic areas, uplands tend to have a vulnerable demographic structure (low population density, and ageing population as the younger generations move away and/or pensioners move in). This is also the case in the more mountainous of the candidate countries.

2.5. *Public services*

By virtue of their social impact, public services (e.g. postal services, schools, medical care) play a crucial part in determining the vitality of upland areas. These services must be available close to the user and must be adapted to local needs (in terms of versatility of the service providers and/or the type of services provided). However, these services are directly threatened by the liberalisation of public services under Community competition law. A deliberate policy of using public services for regional development purposes is only possible if universal public service provision is wide enough to include profitable services that go at least some way to offset the inevitable extra costs of such a policy.

2.6. *Communication links*

Communications infrastructure and networks are a key issue in upland areas, where isolation seriously impedes competitiveness and the rise in intra-Community freight traffic puts pressure on mountain routes and on their populations. This pressure must be controlled and counterbalanced.

2.6.1. There is an increasingly urgent need to develop combined transport, particularly piggyback transport. This can only be done within a Community framework, partly in order to get a proper overview of the problem, notably in the context of the European Spatial Development Perspective (ESDP) [1], and partly in order to guarantee EU co-funding of the requisite infrastructure.

2.6.2. Access to new information and communication technologies is a serious problem in upland areas, where physical relief creates a number of technical difficulties (poor reception, distances to be covered on the ground). This brings significant extra costs and puts upland areas at a serious disadvantage vis-à-vis other areas.

2.7. *Tourism*

Although upland areas offer obvious attractions for tourism, this type of development must be carefully controlled so that it complies with sustainable development principles. This remark is particularly pertinent in the case of the applicant countries of central and eastern Europe, where upland tourism potential remains largely untapped. Like agriculture, tourism cannot be the sole mainstay of the upland economy, which must be diversified and multi-layered.

2.7.1. To this end, and with due respect for the need for sustainable development, upland tourism must become more diversified so that it is spread out more evenly over the year (better seasonal balance of visitors) and spatially (better spatial distribution of visitors).

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[1] ESC opinion on the European Spatial Development Perspective (ESDP), OJ C 407, 28.12.1998.

2.8. *Land use*

Agriculture is a mainstay of the upland economy and plays an irreplaceable role in the upkeep of upland areas. It also helps in the production of premium agricultural and food products. Upland agriculture must therefore have a specific place within the Common Agricultural Policy, so as to ensure its continued existence in these areas.

2.8.1. The creation of man-made landscapes poses special challenges in upland areas, in terms both of town planning (risk of urban sprawl) and of natural hazards.

2.9. *Natural heritage*

The EU's upland areas are rich in outstanding fauna and flora, and this can put pressure on land development.

2.10. *Soil*

The sloping terrain makes upland areas especially vulnerable to erosion, making soil quality a particular concern both within the area (impoverishment of the soil) and downstream (risk of natural disasters).

2.11. *Water*

Upland areas play a major role in the production of water resources, both qualitatively and quantitatively. This important role involves a service of general interest, and the regions concerned must be compensated for the constraints which it places upon them.

2.12. *Energy*

Full account must be taken of the contribution which upland areas make to energy production from sources other than fossil fuels (principally hydro-electric power, but also wind and solar power), as this helps to meet the commitments made in the Kyoto protocol for cutting greenhouse gas emissions. An incentive policy involving preferential tariffs for renewable energy sources should be encouraged, with subsidies for regions which supply this type of energy.

2.12.1. The considerable potential which upland areas offer for wind power must be developed with great care to prevent widespread disfiguration of the upland landscape. Local communities must be given a legal framework obliging them to establish an overall strategy for infrastructure and guaranteeing them a fair quid pro quo in terms of local taxation.

2.13. *The built environment*

Town planning in upland areas faces special challenges. Management of the built environment must provide for new buildings and see that existing ones do not become derelict, while also protecting the integrity of outstanding natural landscapes and ensuring that the development of holiday homes in these areas does not sap the vitality of permanent settlements. Steps must be taken to involve second-home owners more closely in the life of the area.

2.14. *Natural hazards*

A number of major natural hazards are specific to upland and mountain areas (avalanches, torrential floods, rockfalls). These areas are thus especially vulnerable and potentially hazardous, bringing a need for permanent information, forecasting and prevention activities.

2.15. *Economy*

The upland economy enjoys a certain number of advantages but also has vulnerable aspects which need special treatment, e.g. the highly seasonal nature of key activities such as agriculture and tourism, which encourages multi-jobbing, innovation and in some cases excellence (e.g. micromechanical industries); and the predominance of small businesses in an environment made difficult by their relative isolation from suppliers or advisory services.

3. **Stocktaking of Community action to help upland areas**

3.1. *Identification of upland and mountain areas: A variable approach based on very different situations*

3.1.1. The importance attached by Community policies to upland areas has varied over the years. Under Community law as it currently stands, and in the absence of any recognition of their special characteristics, there is no uniform Community concept of upland or mountain areas. The concept appears only in one landmark directive — directive 75/268/EEC on hill farming — where it is used to identify potential beneficiary areas for the compensatory allowance for permanent natural handicaps. By providing a basis for the payment of compensatory allowances in these areas, the directive formed a long-term initiative and was backed by specific implementing and

development measures. However, Member States' commitment to the directive has been very uneven, largely because of the considerable latitude they have in setting detailed parameters for applying the altitude, slope and climate criteria specified in the Community definition. As a result, quantitative and qualitative divergences remain to this day.

3.1.2. There are thus significant discrepancies between Member States. Objectively speaking, these are justified on the grounds that two areas with the same altitude may have very different climates and vegetation. However, in France, Germany and Italy, the qualifying altitude for a hill or mountain area is 700 metres. In Spain, it is 1000 metres. France and Spain also take slope into account (gradient of over 20 %), while Italy does not quantify slope and Germany does not consider it at all. It is surprising to note that the UK has no mountain or hill areas under the terms of directive 75/268/EEC although the Scottish highlands, for example, fit most people's picture of an upland region. The accession treaties placed Sweden and Finland north of the 62nd parallel on a par with upland areas on the grounds that the problems and conditions of these regions are the same as in upland areas.

3.1.3. The main features which distinguish upland areas from other disadvantaged regions are their particularly harsh climate and topography. For this reason, the slope, altitude and climate criteria remain highly relevant for grasping the upland situation, as all upland areas have to face problems relating to these criteria. However, it is clearly neither logical nor desirable that an area should be recognised as an upland in one Member State and not in another. Whilst a certain amount of subsidiarity should be retained in the final designation of the areas concerned, it would therefore be advisable to standardise the concept of an upland area by adapting the current EU definition and specifying a range for each of the three criteria (or at least for altitude and slope).

3.1.4. Topography and climate have a permanent influence on the economy of disadvantaged upland areas. Compensatory measures are thus needed to preserve the multifunctional nature of these areas. With a view to distinguishing the common features of the EU's upland areas more clearly and providing a more consistent classification of the various categories of disadvantaged area, it would therefore be helpful, with due respect for the subsidiarity principle, to include climate and topography among the typical features shared by upland areas.

3.1.5. Nonetheless, conditions in the different upland areas vary considerably (pasturage systems, hill farming, arid uplands, high mountains, etc.). With a view to making more diversified use of individual upland areas, it would be worth exploring the possibility of subdividing current zoning systems, for instance in order to distinguish between upland and high mountain ranges or between arid areas and areas with snowfall. Such distinctions already exist in some Member States (e.g. in the Austrian land registry) and it would be helpful if they were better known at Community level so that they could be used to optimum effect when drawing up a harmonised Community framework.

3.2. *A multitude of measures but no guiding thread*

3.2.1. Although the Community has no explicit common upland policy, many Community measures and regulations have a more or less direct impact on upland areas.

3.2.2. The first and most explicit instrument is the compensatory allowance for natural handicaps established under directive 75/268/EEC. To this day, the directive provides the basis for upland zoning within the EU and, despite its undoubtedly wide implications for spatial planning, it remains under the umbrella of the CAP.

3.2.3. Three other types of Community measure are of special importance for upland areas, although not particularly targeted on them. Firstly there is the Structural Funds policy; secondly, within that policy, there is the Interreg programme; and thirdly, there are the Wild Birds and Habitats Directives.

3.2.3.1. Structural Funds policy

The EU's Structural Funds seek to help less developed or structurally disadvantaged regions to bring their economic performance up to the Community average. These funds have had (former Objective 5b) — and continue to have (current Objective 2) — a major impact on many upland areas, 95 % of which are currently eligible for Objective 1 or 2 support. However, it must be remembered that their eligibility is not due to the typical disadvantages they face as upland areas. The programmes financed may not therefore fully match the problems that need tackling.

3.2.3.2. Interreg

As obvious natural frontiers, most of the EU's upland areas qualify for Interreg A programmes. For the same reason, a number of regions on the EU's external borders participate in Phare and Tacis programmes as regards transport, tourism, changes in land use, and conservation of the natural heritage. Although upland areas also take part in some of the Interreg B transnational cooperation programmes (especially in south

west Europe and the Alps), their participation is more incidental, and upland areas within these very large regions have to take very forthright action to secure recognition of their status. Finally, although the very open interregional cooperation framework of Interreg C would appear conducive to the establishment of technical cooperation networks between upland regions, these still have to be set up from scratch [1].

3.2.3.3. The Wild Birds and Habitats Directives

A large part of the Natura 2000 network — the importance of which has been stressed by the Committee [2] — consists of upland areas. This is not surprising, given the rich and fragile biodiversity of these areas. The most obvious biogeographical example is the Alps, but many other Natura 2000 upland sites have been proposed: a 'continental' system (e.g. the French Massif Central), a 'Mediterranean' system (e.g. the Pindus mountains in Greece or the Italian Apennines), a 'Moroccan-type' system (Gibraltar) and an 'Atlantic' system (e.g. the Cantabrian mountains in Spain). This bears witness not only to the high quality but also to the rich diversity of the EU's upland heritage.

3.2.4. Two other types of Community action concern upland areas: water policy and the Common Agricultural Policy.

3.2.4.1. Upland areas are the main source of water production, and conservation measures obviously have to be taken there to safeguard water quality and supply. It follows that such areas should be compensated for the constraints that this may impose on them.

3.2.4.2. Many CAP measures (apart from the hill farming directive) are relevant for upland areas and can provide useful support for upland agriculture. Examples include the agri-environmental, forestry and rural development measures, the rules on labelling of farm products, organic agriculture, sectoral modernisation, and the Leader programmes.

3.2.5. It is clear from this brief overview that there is a whole battery of Community measures either designed for or, more commonly, relevant to upland areas, whether directly or potentially. Nevertheless, there is as yet no systematic EU policy comprising measures targeted specifically at upland areas, recognising their special features and forming a deliberate cohesive strategy. This is why the Commission's current spatial planning review is so important; the European seminar on mountain areas which the Commission is to stage on 17 October 2002 will be a key event for the future of the areas concerned.

3.3. *The international context*

3.3.1. International law is showing increasing concern for upland and mountain areas, primarily with a view to conserving their environment.

3.3.2. The Alpine Convention was signed in Berchtesgaden in 1989 and entered into force in 1998. Despite the interest which the EU has shown in the convention, difficulties in the negotiation and implementation of truly operational protocols have highlighted the over-technocratic and insufficiently transparent nature of this instrument.

3.3.3. Chapter 13 of Agenda 21 adopted at the Rio Earth Summit in 1992 commits signatory states to improve their information and observation systems regarding mountain areas and ensure appropriate management of watershed areas. The conference held in Johannesburg in August 2002 took stock of Agenda 21 and renewed the Rio international commitments in this field. On this occasion, the EU delivered a message of support for sustainable development. The application of this for upland communities could draw inter alia on the final declaration of the first world forum of upland communities held in Chambéry (France) in June 2000. The forum is holding its second meeting in Quito (Ecuador) from 17 to 22 September 2002.

3.3.4. The UN General Assembly has designated 2002 as the International Year of Mountains.

3.3.5. Other steps have been taken in international law to address both the development and protection of upland areas. The Council of Europe's draft European convention on mountain regions is one example. The EESC and the Committee of the Regions have both called on the EU to draw on this draft convention and establish an EU policy for upland areas.

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(1) EESC opinion on the Draft Communication from the Commission to the Member States laying down guidelines for a Community initiative concerning trans-European cooperation intended to encourage harmonious and balanced development of the European territory (OJ C 51, 23.2.2000). EESC opinion on European policy on crossfrontier cooperation and experience with the Interreg programme (OJ C 155, 29.5.2001). EESC opinion on SMEs in EU island regions (OJ C 149, 21.6.2002).

(2) EESC opinion on the situation of nature and nature conservation in Europe (OJ C 221, 7.8.2001).

3.4. *Enlargement*

3.4.1. From a more Community-related standpoint, uplands represent one of the key challenges in enlargement:

— firstly, because a number of the candidate countries have upland areas and communities, and in Bulgaria, Poland, Czech Republic, Romania, Slovakia and Slovenia these are quite large;

— secondly, because the EU's financial framework from 2007 could drastically reduce the amount of Community funding for the upland areas of the current Member States.

3.4.2. While aware of the overriding considerations in this context, and in particular the massive needs of the future Member States for local and regional economic development aid, the Committee points out that:

— in 2006 the economic performance of many EU regions currently in receipt of aid under Structural Fund Objectives 1 and 2 will still not have reached the Community average;

— Structural Funds policy will have to adopt a new approach to the regions, on a necessarily selective basis, so that certain regions beset by particularly chronic structural difficulties that are incompatible with the basic principles enshrined in the Treaties retain their eligibility.

4. Inclusion of upland areas in future Structural Funds policy

4.1. *Controlled development of the Structural Funds to avoid abrupt change*

4.1.1. Budgetary limits must not lead future Structural Funds policy to focus on the new Member States simply because they have a high concentration of areas with low per capita GDP. The scale of the challenges posed by enlargement must not lead the Union to sideline its chosen development model because of emergency situations which call for exceptional measures relating to a very specific catching-up operation. It is thus vital that Member States make an additional budgetary effort in support of enlargement. This should involve the Cohesion Fund first and foremost, which should provide the main instrument for this problem (thereby necessitating a shift in its intervention provisions), and thus relieve the burden on Structural Fund resources.

4.1.2. Although there is no suggestion of systematically phasing out Structural Fund support, it is essential that the GDP level used as a means of qualifying for this policy must not artificially exclude regions in the current Member States which have higher average GDP only because of the inclusion of the new candidate countries. Otherwise a drastic downward revision of the initial policy objectives would be necessary.

4.2. *Developing a real Community spatial planning policy*

4.2.1. Regional policy has hitherto had a socio-economic objective. If, however, this policy is obliged to be more selective in future, it could form part of a wider vision of spatial planning designed to ensure the harmonious and balanced spatial distribution of people and activities. Such an idea is already inherent in the objective of 'harmonious development' enshrined in Article 158 of the Treaty, under Title XVII Economic and Social Cohesion [1].

4.2.2. The definition of spatial planning principles and objectives at Community level is increasingly important if the EU is to take on a locomotive role in this field, rather than just a coordinating role. EU spatial planning principles in support of harmonious development should include the following:

4.2.2.1. The principle of balanced distribution of people and activities throughout the EU area. This means:

— controlling overconcentrated urban development, as this creates serious problems in terms of employment, security, the environment and quality of life. Without calling into question the leading role which urban areas play in national economies, this means deploying appropriate instruments to ensure that upland dwellers are not driven to relocate to urban areas simply because of a lack of local facilities and services for businesses and residents. In other words, the aim is positive action for the uplands rather than the penalisation of urban areas;

— not letting certain areas lie abandoned or become American-style natural sanctuaries, as this would be incompatible with the history of the European continent, virtually all of which has been shaped by man;

— positive interaction between human activities and the land, insofar as such activities serve to ensure the upkeep, accessibility and even biodiversity of that land.

[1] Article 158: In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

4.2.3. Retention of this link between people and land must therefore be a prime objective of the new policy, with a view to ensuring sound spatial management. This means that the new policy must be active in areas where the balance is particularly fragile or threatened.

4.2.4. Such areas generally face major spatial challenges and/or objective disadvantages which this policy should address.

4.2.5. These areas also have significant assets (which generally go hand in hand with the spatial challenges mentioned above), such as the unique nature of the upland environment and the quality of local products and expertise, which make them regions of excellence. However, these assets can only be fully exploited if proper account is taken of the concomitant handicaps.

4.3. *A policy targeted on areas facing serious handicaps*

4.3.1. The criteria for identifying areas eligible for Structural Fund support (as a spatial development, and no longer solely as a local development, tool) should be as follows:

4.3.1.1. Public interest of the areas concerned: this would be assessed not only in the light of the quality of the natural heritage, and of the local population structure, but also in terms of the amenities offered to the community at large (ranging from the production of goods or infrastructure facilities to the provision of recreational areas or presence of natural resources). Under no circumstances must this approach simply mean taking account of natural resources. It must also reflect the value which the public attaches to the amenities provided, and the views of the local communities concerned.

4.3.1.2. Current or potential threats: it is these threats which form part of the justification for public intervention. The pressures suffered may vary but would include overfrequentation (by tourists or by freight traffic), desertification caused by the rural exodus or by neglect and over-forestation of the landscape, and the risks of uncontrolled economic development.

4.3.1.3. Special nature of anticipated measures: a specific strategy or policy is justified by the fact that the practical measures to be funded or organised will be intimately bound up with the identity of the particular regions concerned and therefore cannot be replicated in other regions (e.g. measures to counter the risk of natural disasters in upland or mountain areas).

4.3.2. These considerations may apply to certain non-upland areas too (e.g. the outermost regions, islands, coastal regions, boreal regions or isolated rural areas, on which the Committee has issued a number of opinions [1].

4.3.3. As some Member States already use this type of approach (e.g. the public service schemes in France), it would be helpful for the EU to harmonise and ensure consistency, not least with the approach taken in the ESDP.

4.4. *A different view of local prosperity*

4.4.1. While a region's future eligibility for Structural Fund support must be based first and foremost on a physical appraisal of the disadvantages and problems it faces, the appraisal must not overlook the question of local prosperity as this is an important yardstick for gauging the results of regional policy. The new approach to be espoused by the Structural Funds should therefore combine spatial and socio-economic criteria.

4.4.2. The local prosperity criterion should not lead to a region being denied any form of compensation for permanent objective handicaps that generate permanent higher costs, such as the compensatory allowance for upland areas.

4.4.3. However, in order to make assistance more effective by intervening where the need is greatest, the assessment of a region's level of prosperity should be conducted at the lowest possible level, i.e. NUTS V (local authority level). All necessary steps must be taken to ensure that Member States' statistical instruments are suitable for this. Nonetheless, bearing in mind the difficulty and risks of imprecision inherent in such an approach, it is important to safeguard upland areas' eligibility for specific aid on a non-discriminatory basis by setting a ceiling to ensure that it does not provide support which is disproportionate to the difficulties that it is designed to offset.

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[1] EESC opinion on future strategy for the outermost regions of the European Union (OJ C 221, 17.9.2002). EESC opinion on SMEs in EU island regions (OJ C 149, 21.6.2002). EESC opinion on extending the trans-European networks to the islands of Europe (OJ C 149, 21.6.2002).

4.4.4. The establishment of a European observatory for upland areas could be helpful here, on the basis of the zoning provisions which the Commission has for upland authorities.

4.5. *Transcending compensation for disadvantages*

4.5.1. Permanence and limits of the right to compensation for disadvantages. A system of direct income support to offset the economic disadvantage directly linked to physical disadvantage is justified in the case of physical disadvantages that cannot be remedied (e.g. lower agricultural yields owing to poor soil quality and shorter growing seasons). It can also be justified as a transitional accompanying measure for disadvantages which, although structural, can be remedied (e.g. isolation, which can be eased by installing efficient transport and NICT networks).

4.5.1.1. All the particular handicaps facing these regions must therefore be identified in order to decide which ones call for permanent financial compensation and which ones merely need temporary help to eradicate or at least reduce them.

4.5.2. In other words, upland areas expect a policy that seeks to physically reduce their disadvantages rather than just offer them financial compensation. This means measures in the following fields:

4.5.2.1. As regards structural facilities, these areas have to reconcile the free movement of goods with the fragility of their natural and human environments. They must be equipped with the tools for tackling the pressures they face (notably as regards rural transport) but also for putting their residents on an equal footing with those of other areas (local services that link up with the main communication routes, or with high speed networks, or providing mobile telephony coverage).

4.5.2.2. In the regulatory field, recognition of the special situation of upland areas should mean that certain rules (e.g. technical standards) can be adapted so as not to block innovatory schemes and solutions which, although modest in scale, are often crucially important in local terms. However, under no circumstances should this mean granting exemptions that weaken safety or quality standards. Such initiatives could also make these regions into testbeds for schemes that could provide useful lessons for other regions.

4.5.2.3. Also in the regulatory field, the adoption of specific measures that are limited to the target areas provides a means of positive discrimination that can help these areas to exploit their identity through their own special products and expertise.

4.5.3. Providing a return for compensation for disadvantages. Compensation for geophysical handicaps is justified not so much by the need for fair treatment as by the public interest and the practical return it provides for the community. This return must be assessed from the overall standpoint of the spatial development objectives being pursued.

4.5.3.1. This principle forms an argument for fine-tuning the cross-compliance provisions of the compensatory allowance system for natural handicaps, as the good practices which are currently required in order to qualify for the premium do not necessarily take account of the upland situation and are an agri-environmental, rather than a spatial planning, measure.

4.5.3.2. The return should therefore be assessed on the basis of the practical functions which these regions perform, so that compensation for disadvantages becomes a form of remuneration for these services. The main services provided by upland and mountain areas include:

— agricultural and/or forestry production: these two essential activities require a lot of space, and must retain a primarily economic purpose. However, direct income support may be justified when they are no longer financially viable, if this is necessary in order to safeguard the role they play in the occupation and upkeep of the land and in helping to prevent the risk of natural disasters;

— safety: an area which is carefully tended is protected from the degradation that can trigger natural disasters, the effects of which may be felt in neighbouring areas. This role is particularly important in upland areas;

— shaping of the landscape: these landscapes have been moulded over hundreds of years and form an important part of our natural and cultural heritage. They are now recognised as a service in themselves;

— provision of recreation areas: the attraction of upland areas as a destination for tourists from other areas or simply for recreation is to a large extent thanks to their intrinsic qualities. Nonetheless, this role must be nurtured and adjusted to changing demand;

— production and holding of natural resources: although all natural resources are necessarily linked to the land, some areas are more naturally suited to producing them and storing them. Obvious examples are air in the case of the forests, and water in the case of the mountains. These are the two main natural resources in terms of immediate consumption issues, without forgetting the question of biodiversity.

5. **Towards a model EU uplands policy**

5.1. Moving on from the above analysis, and from the principles which have been drawn from it to set out the scope for a specific EU uplands policy, the next step is to pinpoint measures that can be taken on the basis of existing Community legislation for furthering this goal.

5.2. *Instilling a common vision of upland areas*

5.2.1. The first step towards instilling a common vision of upland areas is to enshrine their special position within the Treaties, as has already been done for island and peripheral regions in Article 158 of the EC Treaty (and in Declaration 30 of the Amsterdam Conference). Such recognition is justified by the disadvantages and challenges facing these areas, which could be given the right to solidarity, difference and experimentation.

5.2.2. As has also been suggested by the Committee of the Regions, the EU should also adopt the spirit and content of the Council of Europe's draft Convention for Mountain Regions and, mainly with an eye to enlargement, should encourage the Member States and candidate countries to do likewise, so as to ensure convergence of national policies for upland areas.

5.3. *Implementing a strategy based on three lines of action*

5.3.1. Compensation for irremediable handicaps

In view of the fact that some of the geophysical disadvantages faced by upland areas are permanent and insurmountable, upland policy must compensate for these. The system of compensatory allowances for hill farmers should therefore be made permanent. In this context, and bearing in mind the WTO international trade negotiations, this aid should be decoupled from production so that it does not fall victim to the cuts which will be approved at the end of the WTO negotiations.

5.3.1.1. Moreover, given that the constraints and additional costs caused by altitude, slope and climate can hamper other types of activity too, the case should be considered for extending the compensatory allowance system to other activities which play an important role in keeping people on the land and maintaining the upland landscape, or of setting up a similar system for them.

5.3.2. Active reduction of handicap factors

An equally important step is to combat those disadvantages which can be significantly allayed. For example, isolation can be reduced by building appropriate infrastructure. Here the Committee would stress the urgent need to connect these areas to the new ICT networks, as these are already becoming the key factor for a region's future competitiveness.

5.3.2.1. National regional aid has a role to play here, notably for the many small businesses which are a mainstay of the upland economy and whose physical and technical environment puts them at a serious disadvantage vis-à-vis businesses in other areas. EU recognition of the special position of upland areas is vital if this form of public aid is to comply with Community competition law.

5.3.2.2. Another important objective which will help to provide more secure conditions for the development of upland economies is to make upland areas safer by adopting a proper policy for identifying and preventing the risk of natural disasters.

5.3.3. Exploitation of the identity and assets of upland areas

However, resolute and positive action to develop the many assets of upland areas is just as important as measures to allay and compensate for their handicaps. The positive image which people have of upland and mountain areas, and the quality and originality of their products and expertise, offer huge potential, and merit a suitable development strategy. Immediate steps might include:

— EU recognition of the term 'upland' or 'mountain' when used to describe products produced and processed in such areas. Used alongside upland-related geographical indications of PDO or PGI (referring to a particular mountain or valley), these terms could help to boost the positive image of these areas;

— strengthening the cohesion of upland regions by encouraging cooperation between them and networking, in particular under strand C of the current Interreg programmes;

— adopting a specific approach towards upland areas in EU policies, by providing derogations or specific programmes where necessary, especially under each objective of the Structural Funds;

— making it easier to pursue activities in upland areas, by taking account of the special features of the upland economy, more especially by:

  — harmonising and simplifying conditions for multi-jobbing,

  — promoting the development of local services for businesses,

  — encouraging the establishment and development of SMEs and craft businesses.

5.4. *Making upland policy a model of fair and sustainable development*

5.4.1. The EU's upland areas have proven their ability to make the most of their assets, on condition that other areas show solidarity by helping them to allay the handicaps they face. Today they demand recognition that will enable them to build on the basic principles which will in turn allow them to realise their full potential as regions of authenticity and diversification.

5.4.2. A full-scale Community regulatory and financial strategy is thus needed for upland areas in order to guarantee them conditions of relative economic autonomy, as this is the only way to retain their dynamism — and thus ensure their upkeep — in the long term.

5.4.3. This strategy should be aimed primarily at upland residents, because they are the vital link in the chain, whether as workers or as members of particular social groups (women, young people, older people), and because the actions to be put in place must strive to involve them as closely as possible, first and foremost by providing them with information that will give them a clear picture of the objectives being pursued and enable them to take the ensuing measures.

5.4.4. At a time when economic and environmental issues are becoming increasingly globalised, upland areas can offer a model of fair and sustainable development (i.e. a form of development that takes care to contribute to the economic management of the local area and its resources and to respect the interests of local residents). This model should not only be preserved and safeguarded, but also promoted as a reference point both for other areas and at international level.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council concerning certain aspects of the organisation of working time (codified version)'

(COM(2002) 336 final — 2002/0131 (COD))

(2003/C 61/20)

On 19 July 2002, the Council decided to consult the Economic and Social Committee, under Article 137 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Economic and Social Committee decided to appoint Ms Giacomina Cassina as rapporteur-general for its opinion.

At its 393rd Plenary Session (meeting of 18 September 2002), the Economic and Social Committee adopted the following opinion by 68 votes to none with one abstention.

1. The Proposal for a Directive of the European Parliament and of the Council concerning certain aspects of the organisation of working time [1] is the codified version of directives 93/104/EC [2] and 2000/34/EC [3].

2. The codification process is a response to the need to make the Community's legislation a source of legal certainty, as indicated by the Edinburgh European Council in December 1992.

3. The simplification and codification of texts is not a new concern. Back in April 1987, the Commission decided to instruct its staff to codify legislation after no more than ten amendments. Last year, the Commission [4] published a programme aimed at speeding up the codification of the corpus of Community legislation.

4. If possible, laws ought to be codified as soon as the first amendments are made. In the case of the directive concerned by this opinion, the codification follows the Court of Justice ruling [5] on the action brought by the United Kingdom in 1994, confirming the legal basis and amending Article 5.

5. A codification must not make any changes to the content. Having examined the proposal, which combines the texts of the two directives named in point 1 in a logical manner and makes them clearer, the Committee believes that the text in question fully upholds this basic principle and has no issue to raise.

5.1. The Committee therefore endorses the proposal and hopes to see its swift approval by the Parliament and the Council.

(1) COM(2002) 336 final.
(2) Council directive of 23 November 1993 concerning certain aspects of the organisation of working time.
(3) Directive of the European Parliament and of the Council of 22 June 2000, amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive.
(4) COM(2001) 645 final of 21.11.2001 'Communication from the Commission to the European Parliament and the Council — Codification of the acquis communautaire'
(5) Judgment of 18 November 1996 (Case C-84/94).

Brussels, 18 September 2002.

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 the Council on working conditions for temporary workers'

(COM(2002) 149 final — 2002/0072 (COD))

(2003/C 61/21)

On 22 April 2002, the Council decided to consult the Economic and Social Committee, under Article 137 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 4 September 2002. The rapporteur was Mrs Le Nouail-Marlière.

At its 393rd Plenary Session (meeting of 19 September 2002) the Economic and Social Committee adopted the following opinion by with 83 votes in favour, 75 against and 12 abstentions.

1. Introduction

1.1. Since the beginning of the 80s, temporary work has become an increasingly prominent feature of the European labour market. The Council and the Parliament responded to this trend by adopting resolutions ([1]) in which they emphasised the need for Community action to provide a framework for temporary work and to ensure that the workers in question were protected. In 1982, the Commission submitted a proposal for a directive to them to meet this need, which was amended in 1984 but never adopted.

1.2. In 1990, the Commission put forward a set of basic rules to ensure that there was a minimum degree of consistency between the various types of contracts for atypical employment: part-time work, fixed-term contracts and temporary work ([2]).

1.3. This was part of the action programme associated with the Community Charter of the Fundamental Social Rights of Workers, which stated that these new living and working conditions should be 'harmonised from above'.

1.4. The only proposal adopted, taking the form of Council Directive 91/383/EEC of 25 June 1991, concerned temporary workers and was designed to guarantee the same conditions of health and safety as for workers in the user undertaking.

1.5. Since no progress was made in the Council on the initiatives described above, the Commission decided to implement the procedure under Article 3 of the Agreement on Social Policy annexed to the Protocol (No 14) on Social Policy annexed to the Treaty establishing the European Community (new Treaty Articles 137 and 138 on social dialogue). Agreements on part-time work and fixed-term contracts reached by three representative organisations, UNICE, CEEP and ETUC ([3]), were implemented by Council Directives 97/81/EC of 15 December 1997 and 1999/70/EC of 28 June 1999 respectively. The latter emphasised the principle of non-discrimination of workers on the basis of their work contract.

1.6. In May 2000, the social partners decided to start negotiations on the third section of the Commission's initiative on atypical employment, flexible working time and worker safety, concerning temporary work. However, on 21 May 2001 they had to acknowledge that they were not able to reach an agreement.

1.7. The stalemate came when attempting to lay down the terms of comparison for the possibility of equal treatment between a temporary worker and a permanent employee of the user undertaking in question, including working conditions and pay, or of equal treatment between salaried temporary workers even within a temporary agency.

1.8. After ten months, the Commission has taken up its right of initiative once again by submitting the present draft directive ([4]). The Committee would point out that two reports may be consulted to ascertain the specific aspects of working and employment conditions and health and safety at work ([5]) as regards temporary workers.

([1]) OJ C 2, 4.1.1980, p. 1 and OJ C 260, 12.10.1981, p. 54.

([2]) Three proposals for Council Directives on atypical work, COM(90) 228 final of 29.6.1990, OJ C 224, 8.9.1990, p. 8.

([3]) Union of Industrial and Employers' Confederations in Europe (UNICE). European Centre for Public Enterprises (CEEP). European Trade Union Confederation (ETUC).

([4]) Explanatory Memorandum, section 3.1.B.

([5]) Temporary agency work in the European Union, Donald Storrie, the European Foundation for the Improvement of Living and Working Conditions (2002) and New forms of contractual relationships and the implications for occupational safety and health, European Agency for Safety and Health at Work.

1.9. In addition to the differing legal situations in the Member States, which the social partners and the Commission are aware of, temporary work also differs widely in structural and social terms. In countries whose national economies are predominantly service-based, temporary workers are primarily employed in the service sector, at managerial level and below, in some cases accounting for the majority of temporary staff. In other countries, however, where industrial or agricultural development is still mainly dependent on sectors using 'casual' labour, the use of temporary work and the conditions under which it is resorted to are structured differently. Of course, in all cases, temporary labour is used to replace absent workers (sickness, maternity, leave), but that is no longer the most common instance in which it is used. Since the late 1980s, the reasons for employing temporary workers have ranged from dealing with seasonality in some farming, agrifood or large-scale distribution sectors to making working conditions more flexible in various industries and the widespread introduction of 'just in time production'. The Committee's recommendations quite specifically take account of these varying conditions, without losing sight of the objectives of 'full employment' set by the Lisbon Council.

1.10. The Committee would add that the biggest temporary agencies in the European marketplace are Swiss or American holding companies, followed by Dutch, British, Belgian or French groups ([1]).

1.11. Depending on the country and the source, temporary work accounts for between 2 and 10 % of the wage-earning population and between 30 and 50 % of labour market entrants (under 25s).

2. Content of the draft directive — Preamble and Chapters on general provisions, employment and working conditions and final provisions

2.1. The scope of the draft directive covers 'a contract of employment or employment relationship between a temporary agency', deemed the employer, and 'a worker posted to a user undertaking to work under its supervision'; it applies to 'public and private undertakings engaged in economic activities'. 'Employment contracts concluded under a specific public or publicly supported training, integration or vocational retraining programme' may be exempted.

2.2. Chapter I Article 2 sets out the aim of the directive: to improve the quality of temporary work by ensuring that the principle of non-discrimination is applied to temporary workers, and to establish a framework for the use of temporary work to contribute to the smooth functioning of the labour market. Article 3 defines the terms used, while Article 4 introduces provisions on the review of restrictions or prohibitions in operation in the Member States.

2.3. In Chapter II, Article 5 sets out a principle of non-discrimination and equal treatment, four derogations and implementing procedures.

2.4. Article 6 contains provisions on access for temporary workers to vacancies for permanent posts in the user undertaking and prohibits temporary agencies from charging workers any fees. It also states that temporary workers shall also be given access to the social services of the user undertaking and that temporary workers' access to training should be clearly defined by the Member States or the social partners.

2.5. Article 7 provides for the representation of temporary workers at the temporary agency and for temporary workers to be taken into account for the purposes of calculating thresholds at the user undertaking. Article 8 provides for the information of workers' representatives on the bodies representing workers in the user undertaking regarding the use of temporary workers within their company.

2.6. Chapter III contains the final provisions, including the minimum requirements (Article 9), which deal with the non-reversal of more favourable provisions in the Member States, improvements and amendments permitted through collective agreements and respecting the general level of protection of workers in the fields covered by the draft.

2.7. Lastly, Articles 10, 11, 12 and 13 are standard provisions.

3. General comments

3.1. At the international level, ILO Convention C 181 1997 concerning private employment agencies was adopted on 19 June 1997 and ratified by Spain, Finland, Italy, the Netherlands and, since 23 March 2002, Portugal. Of the candidate countries, the Czech Republic has also ratified this Convention. While lifting the ban on private employment agencies, the Convention aims to protect workers using the services of private employment agencies and specifies the type of measures which States must take in order to guarantee adequate protection of temporary workers. The Committee encourages Member States who have not yet done so to ratify this Convention.

([1]) Travail temporaire, diagnostic et prévisions 2002, Institut Xerfi (France).

3.2. At the European level, it is worth bearing in mind the principle of equal treatment among workers, specifically the various directives and decisions on non-discrimination on the grounds of gender, nationality, ethnic origin, group affiliation, political or religious convictions, disability, age or sexual orientation [1], which testify to the high degree of harmonisation achieved by the EU in this field.

3.3. It is also worth pointing out that the (revised) Council of Europe Social Charter, the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights, as well as the fundamental ILO Conventions ratified by all Member States [2] guarantee trade-union freedom and equality in work and employment for all workers.

4. **General provisions**

4.1. *Title of the directive*

In the interests of consistency throughout the text, the Committee suggests that the title should read '... on working and employment conditions for temporary workers'.

4.2. *Scope*

4.2.1. Article 1.1

The Committee points out that only the contract of employment falls within the scope of the draft, and not the commercial contract between temporary agencies and user undertakings. Nevertheless, the Committee feels that the provisions of these contracts on the terms of posting temporary workers must not conflict with the provisions of the present directive. This must be explicitly stated, either as an exemption to the scope or in the final provisions so that there are no juridical inconsistencies in the internal law of the Member States when this legislation is transposed.

4.2.2. Article 1.2

The Committee would point out that, under national law, some public administrations are not allowed to recruit staff on temporary contracts. It therefore proposes that there should be a distinction between public 'enterprises' and public 'administrations', depending on the situation in each country.

4.2.3. Article 1.3

The Committee proposes amending the wording of this point, replacing 'after consulting the social partners' with 'when there are agreements with the social partners'.

4.3. *Aim (Article 2)*

Given that Article 2(a) entails human consequences while 2(b) deals with the economic aspect of the labour market, the Committee endorses the principles of equal treatment, i.e. non-discrimination with respect to other workers, as mentioned in the preamble and set out in Article 5 of the draft directive. But it would add as a further objective the raising of social standards and protections to reinforce social and economic cohesion.

4.4. *Definitions (Article 3)*

4.4.1. 'comparable worker'

The seniority referred to here is taken to mean seniority within the user undertaking. In order not to be discriminatory, account should also be taken of the seniority of the temporary worker in his occupation, in addition to his qualifications and skills, because when taking people on as temporary workers, the agency also makes its recruitment choice based on the work certificates submitted. The national legislation or conventions of certain Member States contain provisions referring to 'an equivalent level of qualification, after a trial period, to a full-time employee in the same post'. However, these provisions do not take account of the seniority of temporary workers in their occupation or area of activity. This constitutes a basic inequality of treatment deriving from the status of temporary workers which could be rectified by the social partners and at Member State level if the draft directive were to prompt them to do so.

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[1] Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16-22. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, pp. 22-26. Council Decision establishing a Community action programme to combat discrimination (2001 to 2006), OJ L 303, 2.12.2000, pp. 23-28.

[2] Especially Conventions C 87, C 98, C 111 and C 135.

4.4.2. 'basic working and employment conditions'

The Committee notes that basic working and employment conditions include pay (cf. Article 3(d)(ii)). Although Article 137 of the EC Treaty allows the Member States to retain the prerogative on basic social protection and pension rights, the Committee would point out that, for temporary workers, these rights prove to be basic working and employment conditions, both in terms of qualifying for these rights and the length of time that has to be worked to qualify for them and in terms of piecing together job histories to gain access to these rights [1]. As was the case with the directive on fixed term contracts, the Member States should be urged to take supplementary measures to adapt their social security systems to this form of working so as to ensure equal treatment, since the discrimination which exists hinges largely on these factors (thresholds and conditions for entitlement to unemployment benefit, payment of social security contributions).

4.5. *Review of restrictions or prohibitions (Article 4)*

4.5.1. The provisions of the EC Treaty (Article 137.6) do not allow the directive to place a formal ban on using temporary workers to replace workers involved in a collective dispute (strikes in particular). However, the Committee would point out that there is a voluntary commitment on the part of agencies not to post temporary workers to replace workers involved in collective action [2] and that some Member States have introduced such a ban in their national legislation. A commitment of this kind should become the norm both for temporary agencies and for user undertakings.

The directive should at least contain a provision ensuring that the national right to strike is not undermined. One proposal would be to provide for Member States themselves and/or the social partners to introduce regulations ruling out the use of temporary workers in undertakings where workers are on strike.

4.5.2. The Committee notes that the draft directive is rather vague about the existing restrictions which Article 4 proposes to review. It should be possible not only to lift such restrictions, but also to impose new ones if the particular conditions require it in certain areas of economic activity. The evolution of new technologies, health and public safety [3], and the current degree of knowledge in the field of biotechnologies make it impossible to rule out the possibility of having to introduce new ones where they have become essential between reviews. The Committee is thinking, for example, of the treatment of hospital waste and the threats of bacteriological pollution. The Committee would point out that provisions which either impose or lift restrictions must also comply with Council Directive 91/383/EEC [4], especially as regards radiation.

5. **Working and employment conditions**

5.1. *The principle of non-discrimination (Article 5)*

5.1.1. The Committee endorses the principle of non-discrimination which conforms to the norms of fundamental human rights.

The Committee recognizes that, in order to achieve the objective of improving the protection of temporary workers, it is important to lay down a general principle. However, the Committee regrets that the derogations provided for in Article 5 itself effectively cancel out this principle of non-discrimination.

5.1.2. As regards the problem of cross-border workers posted by temporary agencies in a Member State other than that whose law governs the contract, the law on working and employment conditions to be applied should be that of the Member State where the posting is located, unless that is less favourable that the contract law of the country of origin.

5.1.3. As regards permanent employees originating from a third state seconded to provide cross-border services and sent to work at a location in a Member State by an undertaking with its head office in another Member State, the directive on the posting of workers is the one to be applied [5].

5.1.4. The Committee regrets that the impact study appended to the draft directive does not make a detailed study of the effects of cross-border temporary work on national employment markets (locations in St-Nazaire in France, Berlin in Germany and Trieste in Italy, for example) or regional ones (border regions).

5.1.5. It is important to stress that the wide distribution of temporary workers must not lead to a situation where their representation within the social dialogue is seen as completely separate from that of other workers.

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(1) CES 686/2002 of 29 May 2002 on Options for the reform of pension schemes.

(2) CIETT, International Confederation of Temporary Work Businesses.

(3) CES 843/2002 of 17 July 2002, on the control of high activity sealed radioactive sources. CES 1495/2001 of 29 November 2001, on market access to port services, (OJ C 48, 21.2.2002).

(4) Council Directive 91/383/EEC, OJ L 206 E, 29.7.1991, pp. 19-21.

(5) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997, pp. 1-6.

5.1.5.1. The Committee suggests that it should be specified that the derogation (Article 5(2)) regarding temporary workers who have a permanent contract of employment with a temporary agency applies only to pay and on condition that the workers concerned receive a level of payment between postings in line with that laid down by collective agreement and/or legislation.

5.1.5.2. The Committee would like to see the most favourable national practices which are enshrined in legislation or collective agreements continuing to be applied in a more clearly defined way than that suggested by Article 5(3). 'An adequate level of protection' is not sufficiently well defined, and the Committee would suggest that it could only be defined in the final analysis by the Court of Justice or the European Court of Human Rights, which would involve temporary workers and employers in the vagaries of procedures which could take many years. The Committee calls on the Commission to specify how this paragraph is to be interpreted in the light of Article 9 of this draft. For example, if 'an adequate level of protection' is accepted as such by minority unions, would this be considered 'sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive'?

5.1.5.3. The Committee is not in favour of the derogation defined in Article 5(4) of the draft directive, which in fact excludes the majority of temporary workers from the purview of the principle of non-discrimination and introduces a criterion of duration which is in itself discriminatory and in contradiction with the principle of non-discrimination.

5.1.6. The derogation defined in Article 5(2): 'temporary workers who have a permanent contract of employment with a temporary agency [and] continue to be paid in the time between postings' and that defined in Article 5(4): 'assignments... not exceeding six weeks', once part of Community law, might be introduced in the Member States through a review of the legislation or collective agreements negotiated by the social partners, if these less favourable Community provisions were considered to constitute an 'adequate level of protection' (Article 5 (3)).

5.1.7. The existence of a specific statute or agreement concerning temporary employees who have a permanent contract of employment with a temporary agency must not prevent such workers from benefiting from more favourable provisions which may be in force within user undertakings.

5.1.8. The freedom to choose the means of achieving the objectives of the directive means that it is left entirely up to the Member States to decide how exactly to implement the principle of non-discrimination, as provided for in Article 5(6). The Committee endorses these provisions.

5.2. *Access to permanent quality employment (Article 6)*

5.2.1. The Committee emphasises the importance which must be given to incorporating temporary workers in associative groupings within the enterprise and endorses Article 6(1) as a means of promoting equal opportunities and equal treatment among workers.

5.2.2. The Committee also approves the provisions of Article 6(2) which serve to render null and void any obstacles preventing temporary workers being taken on by the user undertaking at the end of their posting, thereby ensuring that workers are not forced to remain in insecure employment ([1]).

5.2.3. The Committee recognises that the continuing training of temporary workers should be a responsibility shared between the user undertaking and the temporary agency, in line with national practice, and that such practices may be improved by the Member States (public responsibility) and by the social partners (shared responsibility) ([2]).

5.3. *Representation of temporary workers (Article 7)*

The Committee would stress that the representation of temporary workers must be guaranteed and reinforced in compliance with the universal principle of respecting trade-union freedom. It therefore approves Article 7.

6. **Final provisions**

6.1. *Minimum requirements (Article 9)*

6.1.1. It is important not to undermine provisions protecting temporary workers in countries where they are protected in a way suited to the social norms prevailing in the Member States, and where collectively agreed and balanced arrangements are already in place at the time of transposition.

6.2. *Implementation (Article 11)*

The Committee proposes a new paragraph 2 in Article 11, to read as follows: 'The Member States shall consult the social partners prior to any legislative, regulatory or administrative initiative taken by a Member State to comply with the present Directive.'

([1]) Commission Communication on combating exclusion and poverty, (COM(2000) 368 final — 2000/0157 (COD)).

([2]) EESC Opinion on the Memorandum on Lifelong Learning, OJ C 311 of 7.11.2001.

7. **Concluding comments**

7.1. On the one hand, the Committee feels that the principle of non-discrimination in relation to a comparable worker in the user undertaking, which is fundamental, is in danger of being eroded by the derogations the draft allows, specifically in Article 5(4), concerning temporary workers who complete assignments with a user undertaking over a period not exceeding six weeks. The Committee fears that, in some countries, this derogation will have the effect of depriving temporary workers of the protection afforded by the principle of non-discrimination in relation to comparable workers in the user undertaking. It considers this protection essential to ensure the legal safety of the temporary worker and so as not to undermine the conventional arrangements for setting working conditions and pay within the user undertaking.

7.2. On the other hand, the Committee realises that the principle of non-discrimination, a fundamental principle of the European treaties, must not be put at risk. This is to be guaranteed using the point of reference chosen in the directive, i.e. in terms of basic working and employment conditions, a comparable worker in the user undertaking. But it would suggest that, to ensure that this principle is implemented effectively by the Member States, bearing in mind the differing legal and social circumstances which apply and the triangular nature of temporary work, which is one of its specific features, the Member States should be allowed the option of how to achieve it while avoiding a reference system involving restrictive interpretations or derogations and complying with national legislation, conventions and practices.

7.3. These two recommendations take into account the aim of simplifying Community legislation which the European institutions have expressed [1], and which the Committee has already addressed in three opinions [2].

Brussels, 19 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

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[1] Communication from the Commission on the Action plan 'Simplifying and improving the regulatory environment', COM(2002) 278 final.

[2] EESC Opinion on Simplifying rules in the single market (SMO), OJ C 14, 16.1.2001. EESC Opinion on Simplification, OJ C 48, 21.2.2002. EESC Opinion on the Communication from the Commission 'Simplifying and improving the regulatory environment', OJ C 125, 27.5.2002.

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendment, which obtained at least one quarter of the votes cast, was rejected during the discussion:

(COUNTER-OPINION)

Replace the whole of the section opinion with the following:

'The Committee endorses the principle of a directive on temporary working with the twofold objective of ensuring the legal safety of temporary workers and boosting the employment potential of this sector. However, it feels that the Commission proposal constitutes a poor compromise.

The Committee wishes to point out that the key principle of non-discrimination towards temporary workers is not in question. However, it feels that this principle can only be effectively applied by placing responsibility with the Member States, allowing them the option to implement it either in relation to a comparable worker in the user undertaking, or in relation to a comparable worker in the temporary agency. The arrangement advocated in the Commission proposal amounts to regarding comparison with a comparable worker in the user undertaking as the only form of reference, any other constituting a derogation and therefore subject to restrictive interpretation.

The solution advocated by the Committee is dictated by the diversity of legal situations in the Member States. The specific nature of temporary working stems from the triangular relationship it involves. In contrast to the fixed-term contracts cited as a reference, which are two-way relationships, temporary working involves three partners: the temporary worker, the temporary agency and the user undertaking. The Member States have addressed this specific aspect using a variety of legal options. In the Committee's view, it follows that the Member States should be allowed a degree of autonomy in implementing the principle of non-discrimination, which is in no way contested.

The Committee fears that solutions imposed from above may prove counterproductive as regards promoting employment, which the Commission presents as an argument in favour of its proposal. It also points out that the over-exacting nature of the proposal will give rise to new administrative burdens affecting SMEs first and foremost.'

Result of the vote

For: 82, against: 90, abstentions: 6.

Opinion of the Economic and Social Committee on:

— **the 'Proposal for a Directive of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification',**

(COM(2002) 21 final — 2002/0022 (COD))

— **the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system',**

(COM(2002) 22 final — 2002/0023 (COD))

— **the 'Proposal for a Regulation of the European Parliament and of the Council establishing a European Railway Agency', and**

(COM(2002) 23 final — 2002/0024 (COD))

— **the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways'**

(COM(2002) 25 final — 2002/0025 (COD)) [1]

(2003/C 61/22)

On 21 and 22 February 2002 the Council decided to consult the Economic and Social Committee, under Articles 71(1) and 156 of the Treaty establishing the European 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 2 September 2002. The rapporteur was Mr Konz.

At its 393rd Plenary Session of 18/19 September 2002 (meeting of 19 September) the Economic and Social Committee adopted the following opinion by 118 votes to eight with 12 abstentions.

1. Introduction

1.1. In its Resolution on the White Paper A Strategy for revitalising the Community's railways of 13 January 1998 the European Parliament argued in favour of upgrading the railways to a priority means of transport and for gradual liberalisation of access to European railway infrastructure, subject to the provision of social flanking measures.

1.2. The Stockholm and Gothenburg European Councils assigned priority objective status to the continued reform of the European rail transport sector by means of a second package of measures to be drawn up by the end of 2001.

1.3. The Commission's White Paper of 12 September 2001 [2] mapped out the path. In the strategy proposed by the Commission for re-establishing a balance between the various modes of transport the revitalisation of the rail sector plays an important part.

1.4. Despite numerous positive experiences, new market initiatives and the restructuring of long-established railway undertakings in a number of Member States, the Commission feels that the process of change is not progressing fast enough, given what is at stake. The Commission points out that the railways' share of overland goods transport has fallen from 35 % in 1970 to 14 % today.

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(1) The second railway package, which is submitted by the Commission for decision, also includes:
   a) a Communication from the Commission to the Council and the European Parliament — Towards an integrated European railway area (COM(2002) 18 final, and
   b) a Recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the Convention concerning International Carriage by Rail (COTIF) (COM(2002) 24 final),

which the EESC has taken into account in its opinion in view of their importance.

(2) COM(2001) 370 final.

1.5. The precondition for further initiatives is the implementation in national law (deadline: 15 March 2003) of the first railway package, also known as the infrastructure package, which comprises Directives 2001/12, 13 and 14 (EC) ([1]). These directives spell out the role and responsibilities of the various rail-sector players:

a) the railway undertakings are responsible for transporting passengers and goods by rail;

b) the infrastructure managers are responsible for building and maintaining infrastructure, ensuring that services can be operated as safely as possible and providing a) with access to railway infrastructure under clearly defined, non-discriminatory and appropriate conditions;

c) the regulatory bodies are responsible for settling any disputes between a) and b).

The relations between these three players must be part of a legal framework which guarantees the transparency of the information provided to operators, legal certainty in contractual relationships and neutrality in the fundamental tasks:

a) licensing of railway undertakings;

b) allocation of infrastructure capacity and

c) levying of charges for the use of infrastructure.

1.6. Directive 2001/16/EC ([2]) on the interoperability of the conventional rail system is to be integrated into this body of rules.

1.7. The Commission feels that the problems of the rail sector, which still suffers from the conservatism and protectionism of another century (with cross-border rail traffic still mainly managed in the old way, by national operators handing over trains and responsibilities at the borders), must be tackled more speedily with the aim of establishing an integrated European railway area.

1.8. In order to achieve this objective as rapidly as possible and implement the principle of free movement of services, the Commission proposes that all railway undertakings established and licensed in the European Union should have access in all Member States to the railway network for both domestic freight services (i.e. regular domestic transport services performed by foreign railway undertakings, including cabotage, i.e. occasional domestic transport services combined with cross-border services) and cross-border freight services.

1.9. As preconditions for this the Commission sets out to ensure:

a) maintenance of the safety standard of European rail transport, which is generally very high, particularly in relation to its main competitor, road transport;

b) more rapid progress on interoperability, as the lack of this on the European rail network is, alongside infrastructure bottlenecks, one of the main obstacles to pan-European rail services;

c) establishment of an integrated European railway area.

1.10. To this end the Commission has simultaneously submitted to the Council and the European Parliament five proposals in the form of legislative measures which will pass through the legislative process together as the second railway package. The aim of the package is to iron out legal and technical shortcomings.

2. **General comments**

2.1. Ten months after the entry into force of the first railway package, the infrastructure package, the Commission is submitting a second package of measures.

2.2. In its Communication entitled Towards an integrated European railway area ([3]) which accompanies the legislative texts the Commission lists three essential types of measure for revitalising the railways:

a) a fair system for charging all modes of transport for the use of infrastructure;

b) development of the trans-European transport network, with the emphasis on railways, and removal of bottlenecks in the European rail network;

c) completion of the legal framework.

2.3. The EESC also draws attention to the key importance of the harmonisation of labour and social legislation as a contribution to balanced competition between rail, road and inland waterway.

Even if there is some progress in this area following adoption of Directives 2000/34/EC and 2002/15/EC, which must be implemented in national law by 1 August 2003 and 23 March 2005 respectively, excessive working hours and inadequate rest periods will continue to be prevalent for road haulage drivers and inland waterway workers.

([1]) OJ L 75, 15.3.2001, pp. 1, 26, 51 — ESC Opinion OJ C 209, 22.7.1999, p. 22.

([2]) OJ L 110, 20.4.2001, p. 1, ESC Opinion OJ C 204, 18.7.2000, p. 13.

([3]) COM(2002) 18 final.

The EESC also considers that the application of labour and social legislation should be encouraged and harmonised by means of appropriate inspections and sanctions.

In an own-initiative Opinion of 25 February 1987 ([1]) the EESC called for 'the harmonisation of certain social provisions governing working conditions between the different modes of transport'.

2.4. The second railway package now submitted by the Commission deals exclusively with the third issue, the completion of the legal framework. In the Communication the Commission has already announced the submission of a third package.

2.5. According to the Commission, the second package will contain a series of urgently needed measures to flank the opening up of the international rail freight market introduced by the first package (the infrastructure package).

The most important of the proposed measures, the Directive on safety on the Community's railways, is designed to maintain the high level of safety in the rail sector.

2.6. It is also clear that a European internal rail transport market will remain a theoretical concept until interoperability of the European rail network is achieved. The adaptation of the Directive on the interoperability of the trans-European high-speed rail system (Directive 96/48/EC ([2]) to bring it into line with the Directive on interoperability of the trans-European conventional rail system (Directive 2001/16/EC) with regard to staff qualifications and the health and safety of workers, with the social partners being consulted, is welcome. It is also recognised that interoperability does not only concern technical systems but also the staff working in and with that system. The definition of necessary qualifications is only one aspect of staff interoperability. This approach is entirely consistent with the process, initiated by the Lisbon European Council, of comprehensively involving the European social partners at all levels.

2.7. A European Railway Agency is a useful instrument to flank and support both safety in the rail sector and the achievement of interoperability. But this must not mean the creation of a new bureaucracy which sets up obstacles rather than providing support. Moreover, it will be effective only if all players are consulted.

2.8. The proposed new amendment of Regulation 91/440/EEC ([3]) raises the question of the appropriateness of accelerating the opening of the market for goods transport on the European rail network. From 15 March 2003 there will be open market access for international rail freight transport on the trans-European rail freight network (TERFN), including port feeders. Thus, over the next six months, 50 000 km, or some 80 % of the EU rail network, will be opened up.

From 15 March 2008 there is to be free and non-discriminatory access for international goods transport to the entire European rail network.

2.9. The opening of the market introduced by the infrastructure package is the result of a laborious compromise process between the Council and the European Parliament. During the discussions it became clear that capacity bottlenecks and a need for high levels of investment in order to achieve technical interoperability posed real obstacles. It was also clear that further measures were needed in relation to rail transport safety and staff interoperability.

2.10. To this end, the EESC feels that experience should first be gathered of the implementation of the liberalisation measures which entered into force only on 15 March 2001 and which must be implemented in national law by 15 March 2003. The proposals put forward by the Commission in the Directive on safety on the Community's railways ([4]) will in particular require the reorganisation of powers and responsibilities in a number of areas, and a number of new authorities and competent bodies will have to be established without delay and made operational.

2.11. The conditions for a liberalised internal rail transport market quoted in the Commission's communication will need to be created: a fair system of charging all modes of transport for the use of infrastructure, the development of the trans-European transport network, with the emphasis on railways, the removal of the bottlenecks in the European rail network and the completion of the legal framework. The infrastructure package contained some far-reaching decisions to which the railway undertakings and railway workers first need to adapt.

3. **Comments on the individual legislative texts**

3.1. *Market access — amendment of Directive 91/440/EEC* ([5])

3.1.1. The proposed new amendment of Directive 91/440/EEC is aimed above all at accelerating the liberalisation process in the international rail freight sector.

([1]) Own-initiative Opinion on the stocktaking and prospects for a common rail policy, OJ C 105, 21.4.1987, p. 13.
([2]) OJ L 235, 17.9.1996, p. 6, ESC Opinion OJ C 397, 31.12.1994, p. 8.
([3]) OJ L 237, 24.8.1991, p. 25, ESC Opinion OJ C 225, 10.9.1990, p. 2.
([4]) COM(2002) 21 final.
([5]) COM(2002) 25 final.

3.1.2. The first railway package (infrastructure) and the second package together require the establishment in many Member States of a number of authorities, competent bodies and new areas of responsibility (see Article 20(1) of the proposal for a safety directive):

— regulatory body (Directive 2001/14/EC)

— charging body (Directive 2001/14/EC)

— allocation body (Directive 2001/14/EC)

— notified body (Directive 96/48/EC and Directive 2001/16/EC)

— safety authority (proposal for a Safety Directive)

— accident investigation body (proposal for a Safety Directive)

as well as the European Railway Agency (proposal for a regulation).

3.1.3. The railway sector is to be reorganised in the short term. People working in the industry know that the establishment of new bodies, the adoption of new legislation and its implementation and supervision will take a number of years, particularly if the aim is complete restructuring of the sector. In an extremely safety-sensitive system such as rail transport, with millions of passengers and large quantities of goods being transported daily, this is, in the absence of a proactive policy for the railways and investment in them an immense undertaking, and there are likely to be considerable practical difficulties.

3.1.4. Particular attention will need to be paid to safety requirements.

3.1.5. With the exception of Article 1(2), which proposes that Article 7(2), as it appears in Directive 2001/12/EC, be dropped, all the other changes relate to abandonment of the principle of gradual market opening for international goods transport on the European railway network.

3.1.6. Under the gradual approach, market opening for international rail freight is required from 15 March 2003 in respect of the trans-European rail freight network (TERFN), as defined in the annex to the directive, and from 15 March 2008 in respect of the whole European rail network.

3.1.7. The new Commission proposals would mean bringing forward market opening for international goods transport on the whole European rail network by one or two years, depending on the length of the legislative procedure. The Commission proposals also provide for the introduction of 'cabotage': occasional domestic transport services combined with cross-border services.

3.1.8. The Commission proposes that, from the date of implementation of the proposal for a directive in national law, all railway undertakings based and authorised in the European Union should have access to the railway network for domestic and cross-border rail freight services in all Member States.

3.1.9. Article 7(1) of Directive 91/440/EEC, as amended by Directive 2001/12/EC, requires the Member States to lay down safety standards and rules and to ensure that their application is monitored. These provisions are fleshed out in the Commission's proposal for a Directive on railway safety [1] In the interests of legal consistency this article should be dropped from the Directive on market access. This change alone will not, however, necessarily require amendment of Directive 91/440/EEC or Directive 2001/21/EC. Rather, it can be done via the safety directive itself. This procedure is already used in relation to Article 27 of the draft safety directive, which proposes the amendment of Directive 95/18/EC [2].

3.1.10. In general terms, the EESC points out that in view of:

— the requirements for restructuring of the national railway systems arising from the measures adopted in the framework of the railway infrastructure package,

— the delay in adopting and implementing the provisions for the harmonisation of safety rules, and

— the lack of harmonisation of social conditions for cross-border railway workers,

it would be premature to accelerate the opening-up of the market at this point, without the effects of the measures already adopted being known.

3.2. *Amendment of Directives 96/48/EC and 2001/16/EC on the interoperability of the trans-European rail system* [3]

3.2.1. The proposed amendments to the two interoperability directives are a further development, an adaptation to the experience gathered and an approximation of the two directives, taking into account staff qualifications and worker health and safety, including consultation of the social partners in the Sectoral Dialogue Committee established by Commission Decision 98/500/EC [4]. The scope of the directive is also extended to cover the whole conventional rail network. The drawing-up of technical specifications for interoperability (TSIs) is also entrusted to the new European Railway Agency.

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[1] COM(2002) 21 final.
[2] OJ L 143, 27.6.1995, p. 70, ESC Opinion, OJ C 393, 31.12.1994, p. 56.
[3] COM(2002) 22 final.
[4] OJ L 255, 12.8.1998, p. 27.

3.2.2. The EESC welcomes these adjustments in principle, whilst making comments on a number of individual articles, as the interlinking and interoperability of the European rail network will provide easier access to this transport system and improve traffic flow. It calls, however, for transparency and openness with regard to the future role of the AEIF [1], which at present acts as the joint representative body made up of representatives of UIC, UNIFE and IUPT [2]. This question also arises in relation to the new European Railway Agency, which will be a public body with a public-sector remit.

3.2.3. The EESC would like to point out that the achievement of interoperability is a long and costly process. The necessary financial resources will have to be made available. The Commission and the Member States have a particular responsibility here, as the achievement of the objectives of European rail policy depends to a great extent on the progress made on interoperability and the elimination of bottlenecks in the European rail network.

3.2.4. It should also be borne in mind that the requirements for interoperability of the high-speed network on the one hand and the conventional rail network on the other differ significantly. The multiple use of infrastructure by passenger and goods trains, i.e. trains of differing speed, composition and tonnage, is a feature of the conventional rail network. Moreover, the transport of dangerous goods takes place exclusively on the conventional rail network.

3.2.5. Amendment of Directive 96/48/EC

3.2.5.1. Article 1(1) (Amendment of Article 1)

The scope of the directive is extended to cover the maintenance of components of the high-speed network. This ought logically also to apply to staff qualifications and health and safety requirements. A reference to maintenance staff should therefore be added to Article 1.

3.2.5.2. Article 1(3)(a) (Amendment of Article 5(1))

It is not clear what is meant by technical specifications for the carriage of high value-added goods or applications necessary in order to interconnect the high-speed rail system with airports. Clarification is needed.

3.2.5.3. Article 1(3)(b) (New Article 5(3)(h))

Failure to take account of qualifications and workplace health and safety was a shortcoming of Directive 96/48/EC. This urgently needs to be remedied. The TSIs already adopted under the directive should be revised/amplified in order to take account of these factors.

3.2.5.4. Article 1(4) (Amendment of Article 6(7))

The EESC welcomes consultation of the social partners on staff-related issues. This consultation should not, however, take place only at the end of the process of drawing up the relevant TSIs. The drawing up of qualification, health and safety standards at European level is a considerable task involving not only technical expertise but also expert knowledge of railway staff and employment. The European social partners should therefore be involved throughout the process through the Sectoral Dialogue Committee.

3.2.5.5. Article 1(8) (Amendment of Article 14(3))

It needs to be made clear here when this requirement applies to the infrastructure manager and when its applies to the railway undertaking. It should also be made clear which state body is responsible.

3.2.5.6. Article 1(16) (Insertion of new Article 22(a)(1))

In relation to the register of infrastructure, it should be made clear whether what is required is a classification of the infrastructure or rather a list of all the technical details of the infrastructure.

3.2.6. Amendment of Directive 2001/16/EC

3.2.6.1. Article 2(2) (Insertion of new Article 1(3))

This paragraph should be expanded to state that from 1 January 2008 an inventory of the relevant conventional rail infrastructure will be drawn up and published.

3.2.6.2. Article 2(5) (Article 6(9))

The social partners should not be consulted only after submission of a completed draft TSI, but rather they should be involved throughout the process of drawing up the TSI.

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[1] AEIF: European Association for Railway Interoperability.

[2] UIC: International Union of Railways. UNIFE: Union of European Railway Industries. IUPT: International Union of Public Transport.

3.3. *Proposal for a Directive on safety on the Community's railways* [1]

3.3.1. The EESC wholeheartedly welcomes the safety directive submitted by the Commission. It is one of the preconditions for ensuring the highest possible level of safety of rail transport in a European internal market. On reading the Commission draft three main points arise:

a) The proposed provisions rest to a large extent on measures which are initially to be implemented in the Member States. Only in the second phase (the Commission proposes a period of five years after the entry into force of the directive) are European harmonisation of safety targets and procedures or a European safety licence to be envisaged. Even then some areas (staff (Article 12(1) and (2), aspects of safety certification (Article 10(2)(a) and (3)) will straight away be dealt with by means of mutual recognition. This raises the possibility of gaps and inconsistencies in the European approach to safety.

b) The Commission itself quotes statements by safety experts that a sharper separation between rolling stock and rail infrastructure and in the organisational and regulatory superstructure will bring with it greater risks, necessitating clear cooperation between all players. It should not be forgotten that the European legislation calls existing operational practices into question, thus placing on the European legislative authorities a heavy responsibility for the careful shaping of the safety framework.

However, the Commission also points out that experience in Member States which have completely separated infrastructure management and traffic management shows that this division of operational responsibility can indeed be implemented without endangering the system's safety.

c) The importance of staff and staff qualifications and other skills in relation to safety is referred to at several points in the safety directive, as well as in the interoperability directives and the European Railway Agency regulation. And yet the worker representatives at national and European level are assigned a secondary role. The safety directive does not even mention the European social partners. Provision is made for late-stage consultation in the interoperability directive and the European Railway Agency regulation. This is far from sufficient.

3.3.2. The provisions of the safety directive need to be carefully and regularly reviewed.

3.3.3. The EESC would make the following specific comments and recommendations in relation to the proposal for a safety directive:

3.3.3.1. The European Community should set its own target for the level of railway safety in the European internal market. The proposal for a directive should begin with a chapter entitled Objectives, stating that the aim should be the highest possible level of safety.

3.3.3.2. Article 3(c) Railway undertakings

The definition of 'railway undertaking' should be identical with the definition in Directive 91/440/EEC, as it appears in Article 1(4) of Directive 2001/12/EC of 15 March 2001. This is necessary in the interests of legal certainty. If the provisions of the safety directive are intended to be applied to undertakings which have no licence, this should be made clear in a separate paragraph.

3.3.3.3. Article 3(k) Serious accident

There should be a definition of near-misses here, as referred to in Annex I. This is important for accident prevention.

3.3.3.4. Article 4(1) Development and improvement of railway safety

Here too the goal of the highest possible level of safety should be set for the Member States. The general goal should be the prevention of all accidents. The Commission proposal on the other hand makes the prevention of serious accidents the priority. It is important that these high requirements should be made a general objective, as Article 5 on common safety targets (CST) and common safety methods (CSM) provides for the drawing-up of harmonised minimum levels of safety on the basis of risk acceptance criteria and in accordance with cost-benefit considerations. In an internal market with fifteen and more different levels of national risk acceptance there is a danger of lowest-common-denominator harmonisation.

3.3.3.5. Article 4(2), second paragraph

Infrastructure managers and railway undertakings are not only responsible for the safety of users, customers and third parties, but also for that of their own staff. A reference to staff should be added. Account is correctly taken of staff in Article 5(3)(a).

[1] COM(2002) 21 final.

3.3.3.6. Article 5 Common safety targets, common safety methods

A theoretical approach is set out here which leaves many questions unanswered. The common safety targets and methods should, however, be the cornerstone of a harmonised safety system. The details are left entirely up to the Member States, and an attempt is to be made within five years to introduce European harmonisation.

The EESC has doubts about the scope allowed for cost-benefit analyses in the formulation of safety targets, as well as about the risk acceptance provision. European dialogue between the social partners is particularly necessary in relation to the risk acceptance issue and the methods and content of cost-benefit analyses. It seems inappropriate first to call on the Member States to introduce national systems and only then to introduce European harmonisation.

3.3.3.7. Article 9 (1) and (3) Safety management

Railway undertakings and infrastructure managers are to establish safety management systems on their own, individual responsibility. It is not clear, however, how safety management and emergency measures are to be coordinated, particularly in the case of cross-border trains, even if the infrastructure manager is declared responsible for coordination with the other railway undertakings. This is everyday practice in an integrated railway undertaking.

3.3.3.8. Article 10 Safety certificates

Article 10(3): Making safety certificates valid throughout the Community raises doubts in relation to safety management as long as no system of common safety management has been established. The elements of the safety management system listed in Annex III are very general and provide no guarantee of compatibility with a different network.

Article 10(5): The possibility of the safety certificate being revoked is rightly mentioned. The directive contains no list of criteria for revocation, however. Non-compliance with conditions could be interpreted in very different ways in different Member States. And particularly where there is free access to infrastructure in cross-border traffic, this would lead to distortions of competition.

Article 10(6): The Agency should also be informed of the issue of safety certificates under Article 10(2)(b) and it should maintain an appropriate register.

3.3.3.9. Article 11 Application requirements

In Article 11(2) the clause 'in order to facilitate the establishment of new railway undertakings and the submission of applications from railway undertakings from other Member States' should be deleted. This is a general objective of Community rail policy. The safety directive should provide assistance to all in obtaining safety certificates.

3.3.3.10. Article 12 Training and certification of train staff

Article 12(1) deals with the recognition of train drivers and staff accompanying the trains in another Member State. As in relation to Article 10, the principle applies here too that recognition should take place only when harmonised European rules have been established for these staff members who are important from a safety aspect.

The interoperability directives require rules to be laid down on vocational qualification in the process of drawing up TSIs. In Article 12(1) recognition should be made dependent on the adoption and implementation of the relevant provisions in the interests of consistency.

A reference to technical knowledge should be included in the second paragraph of Article 12(2).

In Article 12(3) the concept of a 'reasonable and non-discriminatory price' should make allowance for costs incurred by the railway undertaking in establishing and maintaining in-house training facilities.

3.3.3.11. Article 19 Status of investigation

Article 19(2)(e) and (f) allows investigators, when conducting inquiries into accidents and incidents, to question railway staff involved and to have access to the results of interviews. Here it must be ensured that staff members questioned have the right to support from their trade union representatives, and that these representatives are present in every case. Affected staff members must have the right to decline to participate in initial inquiries at the site of the accident.

A new Article 19(2)(h) should be added making provision for the psychological counselling of staff involved in serious accidents or attacks.

3.3.3.12. Article 21 Accomplishment of investigations

Article 21(3) requires investigations to be open and for the results to be shared. The union representatives of the affected staff should always be involved.

Moreover, in the event of an accident or incident occurring in a country other than the country of residence of the staff of the affected train, trade union representatives should be informed and involved in the country in which the accident occurred and at the undertaking employing the staff members concerned.

3.3.3.13. Annex I Common safety indicators

Verbal and physical attacks on train drivers can pose a serious safety risk and should be taken into consideration in drawing up indicators, e.g. under the second point, dealing with incidents.

3.3.3.14. Annex III Safety management systems

The holding of a social dialogue at the undertaking must be part of the safety management systems, in relation to the risk of both operational and workplace accidents.

3.4. *Regulation establishing a European Railway Agency* [1]

3.4.1. The EESC welcomes the establishment of a European Railway Agency as an instrument for technical support for improving interoperability and as a contribution to ensuring a high level of safety in the European rail transport sector. This is a logical consequence of the increased importance of the European level in guaranteeing the highest possible level of transport safety, which was also recognised with the proposals for a safety agency in the maritime shipping and civil aviation sectors.

3.4.2. Article 2 Type of acts of the Agency

The powers of the Agency are restricted to recommendations and opinions addressed to the Commission. The EESC feels that the establishment of the Railway Agency should not give rise to new bureaucracy which would merely place new obstacles in the path of the sector, and that at this time the Agency should not be assigned decision-making or regulatory powers.

3.4.3. Article 3 Participation of professionals from the sector

This article governs the participation of the sector in relation to the membership of working parties on the basis of the work programme of the European Railway Agency. The EESC welcomes this involvement. It is essential that the expertise of sector professionals be exploited with a view to drawing up well founded opinions and recommendations.

The EESC feels that the social partners are part of the rail sector and should have the same opportunities for participation as other players. This should be made clear in Article 3, particularly in view of the specific reference to the AEIF, which is made up of UIC, UNIFE and IUPT and has only technical competence.

3.4.4. Article 4 Consultation of the social partners

Provision is made for consultation of the social partners only after the Agency has drawn up its recommendations, i.e. with no provision for their participation, for example, in the working parties. The activity of the Agency (particularly in implementation of Articles 16 and 17 and of numerous provisions of the safety and interoperability directives) will have a significant impact on the social environment and working conditions of railway employees. The social partners should, therefore, be more closely involved and at a much earlier stage.

It should be made clear that safety concerns not only the technical and organisational side but also the working environment.

The end of the first paragraph of the Article should be amended to read '... the social partners in the Sectoral Dialogue Committee established by Commission Decision 98/500/EC [2]'.

3.4.5. Article 7 Safety certificates

Harmonisation of safety certificates for certain kinds of transport is a goal worth striving for in the long term. However, before the Agency can be instructed to draft a harmonised format for safety certificates, the provisions of the safety directive must first be adopted and implemented in practice and in national law. This is also stated in the safety directive.

An assessment should first be carried out involving all the players in the sector including the social partners. This requirement should be incorporated into the text of the regulation.

3.4.6. Article 13 Inspection

It is not clear from the text what consequences will follow for the Commission from the inspections and checks carried out by the notified bodies or from the Agency's opinions. Is the Agency to perform the function of a supervisory authority?

[1] COM(2002) 23 final.

[2] OJ L 255, 12.8.1998, p. 27.

3.4.7. Article 17 Vocational qualifications

In drawing up the requirements for the qualifications of train drivers, physical and psychological fitness are also highly relevant, as is the frequency with which certificates are required to be renewed. Account should also be taken of the additional staff qualifications needed for cross-border services and activities for which the railway undertaking requires separate safety certificates.

It should also be borne in mind that it is not only train drivers who are relevant to the safety of rail transport. A number of other functions are also directly concerned with rail transport safety, such as train crew, movements inspectors, train composition planners, carriage and wagon examiners, maintenance workers etc.

The EESC welcomes the exchange of train drivers and training staff between railway undertakings in different Member States.

3.4.8. Article 24 Staff

The EESC is glad that the Agency is to be staffed by railway professionals. The 'professionals from the sector' (Article 24(3), first indent of the proposal for a regulation) should include persons with proven qualifications in the safety and health of workers at work [1] and in vocational training in the railway sector.

3.5. *Negotiating mandate for Community accession to the COTIF* [2]

3.5.1. The EESC supports the accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.

3.5.2. The Committee has no comments on the provisions contained in the annex to the Recommendation for a Council Decision.

4. **Final comments**

4.1. The EESC supports the Commission in its efforts to maintain and further strengthen the high level of safety of the European railways, press ahead with interoperability, eliminate the shortcomings in the trans-European rail network and guarantee all railway undertakings authorised for the transport of goods free and non-discriminatory access to the entire European rail network.

Ultimately, the aim is to create the main conditions for the further development of continuous, cross-border transport of goods on the European rail network. The revitalisation of Europe's railways is all the more urgent, given that it will not be possible for the road haulage sector alone to absorb the generally forecast increase of at least 40 % in goods transport over the next ten years — and more than doubled volumes of cross-border goods transport.

4.2. The EESC also agrees with the Commission that the current situation in the transport sector is unsatisfactory, both for the majority of the population and for manufacturing industry, and that society is no longer willing to accept the social costs of road traffic, which are estimated at between 3,5 and 5 % of the GNP of the individual Member States.

But as the transport sector is an important component of a country's overall economy, it needs to operate efficiently, reliably, safely, and in an environmentally friendly and energy-saving way, in order to ensure the balanced development of the other sectors of the economy, balanced land use and the harmonious development of society. The transport of goods and passengers by rail could offer a real alternative, if we succeed in revitalising Europe's railways and in harnessing the railways' specific characteristics such as safety, reliability and a high level of efficiency in high-volume, long-distance transport.

The key to this lies in the development of an efficient and demand-orientated infrastructure by government, in the improved competitiveness of rail transport vis-à-vis its competitors, and in a drastic improvement in the quality of services offered, e.g. with cross-border services from point A to point B being offered by a single railway undertaking, as well as in unrestricted cooperation between railway employees at stations and on board cross-border trains.

And the overriding concern in railway operation must continue to be safety!

4.3. In this spirit the EESC shares the concern of rail safety professionals and railway employees, as well as of many rail users, that forced liberalisation could lead to large-scale deregulation. The breaking-up of long-established national railway undertakings into small units, the outsourcing of major areas and routes and the withdrawal of government from necessary investment in rail infrastructure and rolling stock would run counter to the generally declared objective of revitalising Europe's railways, impede the development of uninterrupted cross-border rail services and destroy many established synergies between infrastructure and operation of services.

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(1) Council Directive 89/391/EEC of 12 June 1989 — OJ L 183, 29.6.1989, p. 1

(2) COM(2002) 24 final.

4.4. In the light of this and in accordance with the subsidiarity principle, it should continue to be left to the discretion of the Member States whether to go further than the accounting separation required between infrastructure and operation of services and the transfer of the main functions to an independent body, as provided for in Directive 91/440/EEC.

4.5. In general terms, railway workers and their trade unions must also be fully involved at an early stage in procedures to ensure operational safety and in any necessary restructuring of their railway undertakings, as these issues are closely bound up with the everyday working practices of these workers.

Railway users (and customers) should also be consulted on this process at an early stage.

4.6. In the event of an accident the prime concern must be to identify the causes with a view to preventing future tragedies, rather than to apportion blame.

4.7. The EESC will continue to advocate improved working conditions for professional road haulage drivers and mobile inland waterway workers — not only in the interests of general transport safety and the safety and health protection of the workers concerned, but also in the interests of equal competition with other modes of transport.

The EESC would also draw attention to the crucial importance of uniform and strict application of social legislation, and it calls for the Directive on the enforcement of driving and rest periods in road haulage (Directive 88/599/EEC) to be amended and strengthened accordingly.

In point 23 of the Presidency Conclusions the Barcelona European Council of 15-16 March 2002 stressed 'the importance of safety in heavy goods traffic and the need to ensure compliance with and the further development of the social provisions' and requested the Council 'to conclude its work on the relevant draft regulation before the end of 2002'.

4.8. As long as these social distortions of competition persist and until fair prices are charged for the use of infrastructure for goods transport, the choice of mode of transport will continue to be made on the basis of the lowest cost of freight, which will inevitably work to the disadvantage of rail freight volumes and railway employment. In the period 1990-1999 alone half of all jobs at the EU's national railway undertakings were lost, the total falling from 1.3 million to 694 000.

The EESC can well understand railway workers' fears for their jobs and for the future of their companies. It therefore calls on the social partners of the rail sector to conduct an ongoing social dialogue in the Sectoral Dialogue Committee, at and with the help of the Commission, and to extend this to the individual Member States.

4.9. Against this background the EESC welcomes the announcement by the Commission that it will shortly be submitting a framework directive on fair pricing of infrastructure use in the transport sector. In contrast to other modes of transport, the inclusion of environmental costs is already required in relation to the rail sector by Directive 2001/14/EC. The EESC points out that there has still been no specific follow-up to the 1995 Green Paper or the 1998 White Paper, and that this is essential if there is to be a credible rail transport policy.

4.10. For this reason the EESC has long advocated fair competition between the various modes of transport and liberalisation (but not uncontrolled deregulation) of access to the European rail network, without however denying the advantages of suitable, voluntary and transparent cooperation between old-established and new railway undertakings.

4.11. Cooperation of this kind, as exemplified by the pan-European Belifret 'freightway' (a continuous cross-border corridor established in November 1997 for the transport of goods by rail from Antwerp (Muizen) via Luxembourg, Metz and Lyons to southern Spain and Italy, with a one-stop shop with Luxembourg railways (CFL)), promotes the competitiveness of the participating railway undertakings and serves the interests of quality, reliability and safety in rail transport. The services offered are closely geared to the demands of industrial customers, freight forwarders and logistics companies.

4.12. The EESC considers improved quality and greater customer and rail network user-orientation to be essential preconditions for revitalising Europe's railways. The keys to success are the establishment of fair conditions of competition and considerable strengthening of inter-modal transport in the framework of a comprehensive technological and organisational modernisation and innovation strategy. The Galileo programme [1] could have a key role to play here in the future. But first, the political will must be there, the necessary resources for investment must be available and the commitment and cooperation of railway workers, users and customers created.

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[1] See also EESC Opinion, OJ C 311, 7.11.2001, p. 19.

4.13. For the EESC the revitalisation of the European railways, with a high degree of safety and reliability, remains an important precondition for the urgently needed restoration of the balance between the various modes of transport, and this is essential for a sustainable transport policy and the completion of the internal market.

Brussels, 19 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

(in accordance with Rule 54 of the Rules of Procedure)

The following amendment, which received at least a quarter of the votes cast, was defeated in the course of the discussion of the text of the opinion:

Point 3.1.10

Amend to read as follows:

'The EESC welcomes the Commission proposal to accelerate the opening-up of rail freight markets. The timescales appear to be well balanced, between two requirements: (a) to bring about, as soon as possible, a revitalising liberalisation before too many large parts of the railway system are excluded through insufficient competitive capacity, and (b) to set up the new, integrated system for safety and interoperability which is needed. The Committee wishes to stress in particular how important it is for the Member States to devote the maximum effort to implementing the measures required for safety harmonisation.'

Reason

Self-evident.

Result of the vote

For: 42, against: 73, abstentions: 18.

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — Environmental Agreements at Community Level Within the Framework of the Action Plan on the Simplification and Improvement of the Regulatory Environment'

(COM(2002) 412 final)

(2003/C 61/23)

On 18 July 2002, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 August 2002. The rapporteur was Mr Gafo Fernández.

At its 393rd Plenary Session on 18 and 19 September 2002 (meeting of 18 September) the Economic and Social Committee adopted the following opinion with 83 votes in favour and two abstentions.

1. Commission proposal

1.1. This communication concerns a system for voluntary environmental agreements at Community level. It examines their various features and explores possibilities for recognition by the Community institutions alongside the traditional legislative process. The communication follows on from a similar text published in 1996 on voluntary environmental agreements at national level [1], which resulted in hundreds of voluntary agreements in countries such as the Netherlands and Germany.

1.2. This communication cannot be viewed in isolation. It must be examined in conjunction with two communications published on 5 June 2002, on simplifying and improving the regulatory environment [2] and impact assessment [3]. It is also an integral part of action planned under the Sixth Community Environmental Action Programme.

The communication lays down the minimum requirements that voluntary agreements must meet to be considered as being of Community interest (most importantly, they must tie in with the Commission's priorities for action) and which may be acknowledged in some way by the Community. The criteria concern:

— cost-effectiveness of administration;

— representativeness;

— well-defined and quantified objectives;

— involvement of civil society at the drafting stage;

— the monitoring and reporting system;

— sustainability;

— compatibility with other incentives and actions.

1.3. There are two ways in which the Community institutions may acknowledge agreements:

1.3.1. Under the self-regulation procedure, the Commission notes the existence of the voluntary agreement by means of an official recommendation, or the simpler method of an exchange of letters. This in no way prevents the Commission from initiating a legislative process at a later date, particularly if the voluntary agreement does not achieve the intended objectives.

1.3.2. Under the coregulation procedure a directive is used. The most important feature of the directive is that its content is limited to a description of the general objectives to be attained and the requirements concerning the monitoring and public information systems. Implementing arrangements are the subject of a pre-existing voluntary agreement. As specified in the communication on improving and simplifying the regulatory environment, it would thus be used 'where flexible and/or urgent measures are necessary, provided that they do not require a uniform application in the Community and that they do not affect the conditions for competition.'

As the communication states, the content and scope of environmental agreements and means of monitoring and publicising their results are not negotiated with the Commission.

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(1) COM(1996) 561 final.
(2) COM(2002) 278 final.
(3) COM(2002) 276 final.

2. Comments and proposals

2.1. The Economic and Social Committee has always been in favour of improving legislative methods to make them less complex, more flexible, closer to Union citizens and easier for the public to understand. It welcomes this communication which seeks to promote the adoption of voluntary environmental agreements at Community level, and hopes that after a short trial period it can be extended to other areas of economic and social activity as an alternative (which may be quicker and more flexible) to the traditional legislative process.

2.2. By definition, voluntary agreements must always go beyond the minimum standards required by law. In no circumstances must they conflict with minimum standards adopted at national or Community level.

2.3. Nonetheless, the Committee believes that some aspects of this initiative could be improved to make it more accessible and transparent, and in particular to give greater certainty in terms of the final outcome for stakeholders proposing voluntary agreements. To this end, it suggests the following amendments to the approach adopted in the Commission document.

2.4. The concept of 'stakeholders' must be defined more clearly. Although the Committee understands that this concept does not apply exclusively to industry, a significant proportion of voluntary agreements will clearly originate from the latter. By definition, it is industry that will be the most able, in the short term, to act at Community level, since it can guarantee sufficient coverage and thus representativeness and, of course, the 'added value' which is one of the Commission's priorities.

2.5. Proposal 1: Within the concept of 'stakeholders', make a clear distinction between the parties which are the driving force behind the agreement, such as industry and, where relevant, other civil society organisations, whose role is confined to the public information stage of voluntary agreements.

2.6. The communication makes no mention of the benefits to stakeholders of voluntary agreements, aside from a reference to seeking alternative methods to the traditional legislative process. However, there are other clear advantages, such as being seen by users, and the public in general, to adopt an open and committed position to environmental conservation. It may even be possible to link participation in such voluntary agreements to award of the eco-label or EMAS certification, or to provide for official inclusion in the annual accounts reports of participating firms. Likewise, a firm's participation in a Community level voluntary agreement could count in its favour in the award of public works and supply contracts, provided that the environmental aspect of the voluntary agreement is a relevant additional criterion in the award of the contract, and subject to the final provisions of the directives currently in the process of adoption by the Council and European Parliament.

2.7. Proposal 2: Environmental quality certificate. Make participation in a voluntary environmental agreement a criterion in the award of an eco-label or EMAS certification.

2.8. Proposal 3: Relation to public procurement. Press for the directives on the public procurement of works and services currently in the final stages of adoption by the European Parliament and the Council to indicate the merits of such agreements with regard to the award of these contracts.

2.9. A clearer distinction must be made between the different kinds of voluntary agreement in relation to pre-existing legislation in the area concerned, since some voluntary agreements seek to make new advances of a general nature. Others are concerned with specific sectoral problems where there is no pre-existing legislation and where the Commission does not intend to legislate (which the Commission communication describes as grounds for not acknowledging the agreement). Others still may concern areas or subjects where there is already pre-existing legislation and where the agreement enables it to be implemented more effectively.

2.10. Proposal 4: Acknowledgement procedures. Articulate the instruments for acknowledgement of voluntary agreements as follows:

— Exchange of letters between the European Commission and the stakeholders proposing the voluntary agreement. Applicable to voluntary agreements where there is neither pre-existing legislation nor an immediate interest on the part of the Commission in introducing legislation. This recognition would in no way affect award of the eco-label or EMAS certification, or confer any advantage with regard to the award of public contracts.

— Formal acknowledgement of a voluntary agreement by the European Commission. In cases where the Commission considers that all criteria have been fulfilled, including the ability to replace planned legislation, at least on a temporary basis. Under certain conditions, acknowledgement of this kind could affect award of the eco-label, EMAS certification and, possibly, could confer an advantage with regard to the award of public contracts.

— Coregulation procedure. Applicable in cases where legislation already exists, as a means of improving its implementation at national level and making it more flexible, and thus as a step on from those voluntary agreements where a formal Commission recommendation has been issued and where the agreement in question has failed to reach the proposed objectives in a satisfactory manner.

2.11. The Committee considers that the added value for the environment of any potential voluntary agreement must be taken into account, provided that the criteria for representativeness and effective monitoring and reporting systems are met. Likewise, the three available instruments would have to be adapted to these situations, so as to ensure in all cases that voluntary agreements at Community level benefit both stakeholders and the public.

2.12. Proposal 5: Criteria for the internal operation of voluntary agreements. Make a fair distribution of effort and an automatic internal penalty system for participants who commit serious and repeated breaches of the agreement conditions for acknowledgement of such agreements.

2.13. Remove the requirement for cost-effective administration from proposed voluntary agreements on the grounds that it is restrictive, and introduce tighter criteria on monitoring and dissemination of results. In this way internal management of the voluntary agreements would become automatic, with maximum guarantees of external evaluation of fulfilment, and the work of the Community institutions (the Commission and, possibly, the European Environment Agency) would be minimised.

2.14. Proposal 6: Criteria for approval. Support the urgent publication of a European Parliament and Council recommendation laying down precise, detailed criteria that voluntary agreements must meet before approval will be granted. These should cover such aspects as the monitoring of the objectives to be achieved, verification by a recognised independent body and publication of results, in particular in the case of agreements which are the subject of a formal recommendation or coregulation. Particular emphasis should be placed on the administrative self-sufficiency of the agreements so as to ensure that the Community institutions are not involved in verification.

2.15. Compatibility between these voluntary agreements and Community competition law must be made clearer, since in some cases voluntary agreements may involve joint action on technological matters, the exchange of confidential information or even joint public information activities, which, as the communication notes, may involve certain tax benefits. In view of this, it seems appropriate to insist that such voluntary agreements comply with the 'Guidelines on the Applicability of Article 81 of the EC Treaty to Horizontal Cooperation Agreements.' [1]

2.16. Proposal 7: Relation to Community competition law. The European Commission must insist that such agreements respect these guidelines, in order to ensure that they are in compliance with Community competition law during negotiations within sectors or specific to the agreement in question. These guidelines would not preclude the possibility of action by the Commission where a clear breach of competition law has occurred.

2.17. The procedures described in the communication, which provide for the possibility of participation by the European Parliament and the Council in the non-legislative phase of a formal recommendation, make the process extremely complex and costly. This could have a very damaging impact on cost-efficiency for partners in the voluntary agreement, and may thwart the good intentions expressed in the Commission communication.

2.18. Proposal 8: Written acknowledgement procedure. The public information criteria for voluntary agreements whose sole final objective is written acknowledgement of their existence by the Commission (through an exchange of letters) could be confined to publication of the project in the EC's Official Journal and creation of a web page to allow for suggestions on the project, which the partners could subsequently incorporate if they so wish. In all other respects, they must comply with all the same requirements as agreements which are the subject of a formal recommendation process.

2.19. Proposal 9: Formal recommendation procedure. With regard to public information, voluntary agreements which are the subject of a Commission recommendation must comply with the requirements described above, but the partners must also inform the Commission of the suggestions received and, where relevant, their reasons for not including them in the final draft voluntary agreement. The Commission will examine in detail the comments received and the stance taken before it makes the formal recommendation. This would go some way towards compensating for the fact that the Commission is not involved in negotiating voluntary agreements prior to approval. The Committee does not consider it necessary for the European Parliament and Council to be involved in the approval process, given that acknowledgement of these voluntary agreements has no direct legal effect.

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[1] OJ C 3, 6.1.2001, p. 2.

2.20. Proposal 10: Coregulation procedure. In the case of voluntary agreements which are drawn up under the coregulation process, with the involvement of the European Parliament and the Council, when the proposal for a legislative act (by definition a directive) is made, it must be made clear which aspects are to be regulated directly by the directive and which are the subject of a request for a voluntary agreement between stakeholders for the purposes of implementing certain measures designed to achieve the objectives of the directive. Given the voluntary nature of the agreements, additional measures would be needed for those individual cases where the parties concerned directly by the directive do not wish to participate in a voluntary agreement at Community level.

Brussels, 18 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Lisbon — Renewing the Vision?'

(2003/C 61/24)

At its plenary session on 16 January 2002, the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an own-initiative opinion on the 'Lisbon — Renewing the vision?'

In accordance with Rules 11(4) and 19(1) of its Rules of Procedure the Committee set up a sub-committee to prepare its work on this above-mentioned subject.

The sub-committee adopted its draft opinion on 29 July 2002. The rapporteur was Mr Morgan.

At its 393rd Plenary Session (meeting of 18 September 2002) the Economic and Social Committee adopted the following opinion by 86 votes in favour with one abstention.

1. **Introduction**

1.1. High hopes were raised by the Portuguese Presidency during the preparation for the Lisbon European Council held in March 2000. In its Opinion prepared for Lisbon ([1]) the EESC shared the optimism associated with the event and offered its own agenda.

1.2. In the process of preparation for the Barcelona European Council held in March 2002, it was clear that although everyone accepted that the Lisbon targets were very ambitious, many observers and many participants felt that insufficient progress was being achieved against the Lisbon agenda.

1.3. The EESC decided to wait for the report of the Barcelona Council before giving its opinion on progress, and its view of the priorities going forward.

2. **The Vision**

2.1. The Vision for the Lisbon Council meeting was eloquently expressed by the Portuguese Presidency in a letter dated 17 January 2000 addressed to the members of the European Council. The following is an extract from Prime Minister Guterres' letter:

'A new period is beginning in European construction.

([1]) OJ C 117, 26.4.2000, p. 62.

Despite the economic recovery, serious social problems continue to exist, such as unemployment, social exclusion and the risks of a future imbalance of the social security systems — which are also the reflection of deeper-seated structural difficulties calling for courageous reform. These difficulties are heightened by the unavoidable challenges posed by globalisation, technological change and an ageing population. The European social model can only be sustained by building new competitive factors and the renewal of the social model itself.

There is a central issue which I would like to raise as a starting point. A new paradigm is emerging: that of the economy of innovation and knowledge, which is becoming the main source of the wealth of nations, regions, enterprises and people. Europe is lagging behind significantly and should define its own path for a new competitive platform, while also fighting the new risks of social exclusion. It is necessary to combine innovation with social inclusion.

I believe that we have the conditions to define a new strategic goal for the next ten years; to make the European Union the world's most dynamic and competitive economic area, based on innovation and knowledge, able to boast economic growth levels, with more and better jobs and with great social cohesion.

An economic and social strategy to renew the basis of growth in Europe, must combine macro-economic policies, and the modernisation of social protection.'

2.2. Before the Lisbon Council everyone knew that this was a hugely ambitious undertaking. In effect, the Council set out a ten-year agenda for economic and social renewal, subsequently complemented by an environmental dimension. The interaction and synergy between these three dimensions is vital, because they are clearly interdependent. To fulfil its potential for improving employment and economic growth, and be the leading region, Europe will clearly need to perform at or beyond the targets set across all three dimensions of the Lisbon strategy. In Section 2 of the Communication from the Commission — 'The Lisbon Strategy — Making Change Happen' ([1]) — Table 2 details the progress towards the Lisbon Goals made in the last two years. The best Member States are already performing at the target levels. The challenge is to bring the EU average up to this level.

2.3. To put these economic goals into perspective, here are some EU:US comparative data. Two caveats must however be expressed: first, that economic data may not reflect actual quality of life comparisons and, second, that the quality of economic activity may also vary considerably by country, especially if measured against the standards of good corporate governance and corporate social responsibility.

2.3.1. The ambition from Lisbon is to achieve a growth rate of 3 % p.a. during the decade. Against that target of 3 % per annum aggregate GDP here are the average annual percentage growth rates in real GDP over recent periods ([2]):

	EU	US
1975-1985	2,3	3,4
1985-1990	3,2	3,2
1990-1995	1,5	2,4
1995-2001	2,6	3,9

2.3.2. These differentials versus the USA have contributed to a huge gap in aggregate figures over the period 1992-2000 ([3]):

EU-15: 20,7 %;

USA: 38,7 %.

Again, Member States' performance in this context is mixed, with many of the smaller states outperforming the larger. To close this gap, something radical has to be done: 'courageous reform' in the words of the Portuguese Presidency.

2.3.3. An important component of GDP is the rate of employment. In 2001, the EU ran at 66 % while the US was at 75 %. The employment rate at any one time is the outcome of previous employment growth. The annual average percentage employment growth over recent time periods is as follows:

	EU	US
1975-1985	0,1	2,2
1985-1990	1,4	2,0
1990-1995	− 0,5	0,9
1995-2001	1,2	1,4

([1]) COM(2002) 14 final.

([2]) *Source:* European Competitiveness Report 2001, p. 19.
([3]) *Source:* EUROSTAT, 2002.

2.3.4. This inability to create enough jobs goes to the heart of the EU dilemma. There needs to be a greater demand for workers and the employment market needs to work effectively. Much is being done throughout the EU in respect of workforce skills, quality of work and equal opportunity. More remains to be done to get people into work.

2.3.5. The following facts are widely understood, but the issue does not get effectively addressed and so the problem does not get resolved: employment growth in the business sector over the period 1980 to 2000 has been 5 % in the EU and 43 % in the USA ([1]). The EU does not have the necessary job creation dynamics and this is at the heart of the challenge expressed in the Lisbon Vision.

2.3.6. It is instructive to consider the industries involved in job creation. The technology driven industries have had a higher share in total manufacturing in the United States compared with the EU throughout the period since 1985 and the divergence has risen considerably ever since. By 1998, for example, technology driven industries represented about 35 % of manufacturing value added compared to around 24 % in the EU ([2]). The United States share has risen by almost 9 percentage points over the period (1985-1998), while the EU share has increased by only 1.5 percentage points.

2.3.7. In the EU services account for 69 % of all jobs and 70 % of total output. This is an increase of about 6 % in each term since 1990 ([3]). In the US the services share of jobs is about 74 % and the share of output about 78 %. In the business services sector, the relative data as a percentage of the total are:

	EU	US
Value added	52,3 %	54,8 %
Employment	46,1 %	53,7 %

2.3.8. Because of the rising demand for services as incomes grow, the EU must ensure that the potential employment goals associated with the growth of the service sector are realised. This requires that the obstacles to service sector growth be removed ([4]).

2.4. This need to create more new jobs was why the EESC stated in its Opinion for the Lisbon Council that the key requirement was to take a strategic view of Europe in the context of the new paradigm 'The current cyclical economic recovery could provide an excuse for not taking the fundamental action which is needed if the cyclical recovery is to be translated into a structural renaissance leading to sustained growth in employment ([5]).'

2.5. We also said that: 'It is our conviction that in Europe we do have the necessary innovation, creativity, knowledge and enterprise to excel in the new paradigm. But we must release these capabilities. Obstacles must be replaced by opportunities. Penalties must be replaced by incentives. The last decade saw the liberalisation of European industries. Now we have to liberate the energies of European men and women.'

2.6. The issue which is now being faced in most Member States is how to do this. They need to get the balance right between social security and economic flexibility and between the short term and the long term. The US results demonstrate that the overall economic and employment performance of the EU can and must be substantially improved. Models for how this may be done are available in Europe, notably in the examples set by the few EU Member States that match or outperform the US in employment and other areas. Moreover, as demonstrated by the experience of some of these countries (e.g. Denmark, The Netherlands and Sweden) there need not be any contradiction between a high level of social protection and a high level of employment. In fact, if — as is the objective of the Lisbon vision — economic, social and employment policies are made mutually supportive, the traditional trade-offs between growth and security can contribute positively to the strengthening of existing synergies.

3. **Presidency Conclusions — Lisbon European Council — March 2000**

3.1. The Vision was carried forward into the Presidency Conclusions:

'The Union has today set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.'

3.2. In order to give effect to this goal, two main courses of action were outlined:

a) preparing the transition to a competitive dynamic and knowledge-based economy;

b) modernising the European Social Model by investing in people and building an active welfare state.

([1]) *Source:* OECD 2000.
([2]) COM(2002) 206 final — Section 4, 4th paragraph.
([3]) European Competitiveness Report 2002, Chapter III.
([4]) COM(2002) 206 final — Section 5 — 6th paragraph.
([5]) OJ C 117, 26.4.2000.

3.3. The detailed items proposed to prepare the transition of the economy were:

— an information society for all;

— establishing a European area of research and innovation;

— creating a friendly environment for starting up and developing innovative businesses, especially SMEs;

— economic reforms for a complete and fully operative internal market;

— efficient and integrated financial markets;

— consideration of macro-economic policies, fiscal consolidation, quality and sustainability of public finances.

3.3.1. These decisions were important for two reasons: first, they signalled the intent to complete the internal market in respect of the sections still to be opened up; second, in the context of the theme of innovation and knowledge they represent a framework for the transformation of the economy.

3.4. The detailed items proposed for modernising the European Social Model were:

— education and training for living and working in the knowledge society;

— more and better jobs for Europe: developing an active employment policy;

— modernising social protection;

— promoting social inclusion.

3.4.1. The Social Agenda was further developed at the Nice European Council — see Section 4 below.

3.5. In addition to the two programmes referred to above, there was a focus on putting decisions into practice:

— improving the existing processes;

— implementing a new, open method of coordination;

— mobilising the necessary means.

3.5.1. The striking aspect of the Lisbon process is the interaction between Member States acting at the national level and the coordination of this activity culminating in the Spring Summits. Targets are designed to be achieved through a combination of peer pressure and open coordination, with the Spring Summits acting as an annual checkpoint on progress. For the Lisbon vision to become a reality, it is essential that Member States recognise this co-responsibility and the need to achieve reforms at the national level.

3.5.2. In addition to the 'vertical' coordination between the EU and Member States, a 'horizontal' dimension is added through the involvement of the social partners, culminating in the social summit in advance of the Spring Summit. Involving the social partners also means involving business, so that business is also expected to play a part in making change happen.

3.6. In the view of the ESC the vision outlined at Lisbon is correct. The challenge is for the Union to make happen all the changes envisaged, both at Member State and EU levels.

4. **Presidency Conclusions — Nice European Council — December 2000**

4.1. At Nice the Council approved the European Social Agenda which defined, in accordance with the Lisbon European Council conclusions, specific priorities for action for the next five years. 'This Agenda constitutes a major step towards the enforcement and modernisation of the European Social Model'. At Nice the Council also undertook, at each Spring meeting, in examining progress on the Lisbon Strategy, to look at how the Agenda is being implemented. The social partners were invited to play their full part in implementing and monitoring the Agenda, particularly at an annual social summit to be held before its Spring Council meeting.

4.2. The main chapters of the Social Agenda are:

— more and better jobs;

— anticipating and capitalising on change in the working environment by creating a better balance between flexibility and security;

— fighting poverty and all forms of exclusion and discrimination in order to promote social integration;

— modernising social protection;

— promoting gender equality;

— strengthening the social policy aspects of enlargement and the European Union's external relations.

4.3. The EESC underlines the need to modernise social protection and create a better balance between flexibility and security in the working environment while stressing the individual responsibilities of employees and employers.

5. Presidency Conclusions — Gothenburg European Council — June 2001

5.1. At Gothenburg the Lisbon strategy was expanded:

'The European Council agrees a strategy for sustainable development which completes the Union's political commitment to economic and social renewal, adds a third, environmental dimension to the Lisbon strategy and establishes a new approach to policy-making.'

5.2. The main themes supporting the environmental dimension were:

— a new approach to policy-making;

— the global dimension;

— targeting environmental priorities;

— integrating environment into Community policies.

The EESC has prepared an Opinion on sustainable development strategy as its contribution to the Barcelona European Council ([1]) and built on this work in an Opinion on the Global dimension in view of the World Summit on Sustainable Development in Johannesburg in August/September 2002 ([2]).

5.3. The four targeted environmental priorities were:

— combating climate change;

— ensuring sustainable transport;

— addressing threats to public health;

— managing natural resources more responsibly.

5.4. The priorities are stated at a rather conceptual and multi-discipline level. It remains to be seen how they can be converted into action. More than that, the real issue will be the 'sustainability' of the EU policies in the social, economic and environmental fields and the extent of policy coherence.

6. Commission Communication: — The Lisbon Strategy — Making Change Happen — January 2002

6.1. In this Communication the Commission provided its assessment of the progress in the two years since Lisbon:

'Achieving the Lisbon objectives requires a sustained EU growth rate of 3 %. [Data provided in the Commission's report shows a growth rate of 1.6 %]. Given the slow down that the European Union is going through, it is all the more important to be successful in implementing the reforms leading to a continued rise in the employment rate and a higher labour productivity.

Since Lisbon, the gap in GDP per capita between the European Union and the USA has remained unchanged. According to the latest data, GDP per capita was equivalent to 64 % of that of the USA. The difference in labour productivity per hour explains around one-third of the gap. The other two thirds are due to the smaller number of yearly working hours per worker and the lower employment rate in the Union. Progress across the whole of the Lisbon Strategy is needed if this gap is to be narrowed substantially.'

6.2. Elsewhere it went on to say: The Barcelona Council will be a critical moment for the Lisbon Strategy...

— The Commission has now tabled most of the main policy proposals.

— The second phase of agreeing and adopting these policies is well under way. Success or failure is largely in the hands of the European Parliament or Council, who must take decisions in key areas of strategy.

— The final phase, where agreed policies are implemented and start to have an impact on the ground has barely begun.

6.3. 'Transforming new policies into visible results, as this report shows, needs action from all the parties involved. There have already been important successes but in some other crucial areas of economic and structural reform, progress has been slow or disappointing.

The European Council must overcome this "delivery gap" before it grows any wider. It must send a signal of confidence and give a clear political impulse in those areas where the need for progress is most urgent.'

6.4. The EESC notes that after the emphasis at Lisbon and Gothenburg on putting decisions into practice, the Commission still felt the need to take the politicians to task. Nevertheless, the EESC recognises the progress that has been made in closing the delivery gap in the months since the Barcelona meeting.

([1]) OJ C 94, 18.4.2002.
([2]) OJ C 221, 17.9.2002.

6.5. Preparations for and expectations of the Barcelona Council were clouded by the fact that election campaigns were in progress in a number of countries. Politicians did not want to prejudge at Barcelona those issues which were being debated in the electoral campaigns.

6.6. The EESC welcomes a greater use of open method of coordination and it notes the efforts made by social partners in the field of their responsibilities at the European level. However, the Committee believes that it is essential for the success of this approach that public and systematic evaluation of progress is made in the Member States. The EESC recommends that an assessment of the efficiency and effectiveness of this approach is performed by the Commission in its preparation for the next Spring Summit.

7. **Presidency Conclusions — Barcelona European Council — March 2002**

7.1. The conclusions focussed on two main programmes:

— maintaining the momentum behind our long-term strategy (i.e. the Lisbon Strategy);

— priority actions in three areas.

7.2. Maintaining the momentum had four themes:

— coordination of economic policies;

— sustainable development;

— a more favourable environment for competitiveness and entrepreneurship;

— rigorous social cohesion — the Social Agenda.

7.3. A statement in the section on coordination of economic policies was noteworthy:

'Focal points will be the quality and sustainability of public finances, pursuing further necessary reforms in product, capital and labour markets, and ensuring coherence with policies established in each domain.' The key question is how the reforms highlighted in italics would be translated into proposals in the Action Programmes.

7.4. The three Priority Actions are:

— active policies towards full employment — more and better jobs;

— connecting European Economies;

— a competitive economy based on knowledge.

7.5. The first Action Priority invites active policies towards full employment. There is no discussion of boosting economic activity, and the demand for employment. However, paragraph 28 of the Conclusions states: 'Full employment in the European Union is the core of the Lisbon Strategy and the essential goal of economic and social policies, which requires the creation of more and better jobs. It is therefore necessary to continue paying special attention to the reforms of employment and labour-market policies'.

7.6. The general theme of a Reinforced Employment Strategy is to increase employability and the employment rate; in other words, to improve the supply side of the employment equation via skills development, social inclusion, etc.

7.7. There is one specific guideline relating to the working of the labour market:

'In order to strike a proper balance between flexibility and security, Member States, in line with national practice, are invited to review employment contract regulations and, where appropriate, costs with a view to promoting more jobs.'

This issue is now central to the political debate in a number of Member States.

7.8. The second Action Priority involves Connecting European Economies. The themes are:

— financial Markets (Financial Services);

— integrating European Energy, Transport and Communications Networks;

— quality Public Services.

7.9. All of these items are desirable although their execution will face considerable difficulties. These measures are expected to stimulate the demand side of the employment equation, although they will take time to work through.

7.10. The third Action Priority is a Competitive Economy based on Knowledge. It has two dimensions:

— education;

— research and frontier technologies.

Both of these are very desirable. The slow realisation of the Lisbon R&D programme is one of the major disappointments to date. The EESC urges priority action in this field. It is, however worried, about the R&D target of 3 % of GDP. There is a danger of shortfall from both the public and the private sectors.

7.11. The European Council also took decisions to improve Union working methods. The preliminaries to Barcelona demonstrated that improvements are needed in the implementation of the open method of coordination especially with regard to the execution of the Lisbon programme at national level.

7.12. The key political question is the extent to which the social model will be reformed. There are two aspects. First, the ways in which social security systems either encourage or discourage people to seek work. Second, the ways in which they either encourage or discourage employers to add jobs. In a social market economy both aspects must work well. It is necessary to balance security with flexibility for both employees and employers. This is the ongoing debate which the Lisbon process needs to resolve.

8. **Renewing the Vision?**

8.1. The EESC would like to re-emphasise the main agenda themes which it submitted to the Lisbon European Council in point 3.2 of its Opinion

8.1.1. Adapt the social model(s) to the new paradigm

'While retaining social protection, the social model in its different manifestations needs adapting to remove barriers to employment, avoid social exclusion in all age groups and reinforce equal opportunities, especially for women.'

In the EESC Opinion to the Lisbon Council we highlighted the existence of Rhenish, Nordic, Mediterranean and Anglo Saxon social models and observed that they produced different economic and social outcomes across a wide range of measures. In the Communication from the Commission prior to the Barcelona Council, Table 2 showed progress towards certain Lisbon goals and also indicated that the average of the best three Member States was now often at or above the 2010 target. It is instructive to look at which social models produced these better than average results. The Nordic model seems to produce the best results and also, arguably, produces the best quality of life. The open method of coordination provides the means by which the best from each model can contribute to a higher level of achievement overall.

8.1.2. Achieve mass training in Information Society Technologies

'To ensure employability and avoid social exclusion, specific consideration needs to be given to each generation of men and women.'

While a wide range of significant initiatives are underway, the mismatch between job opportunities and skills in each age band remains a fundamental impediment to the achievement of the Lisbon goals and, in particular, full employment.

8.1.3. Popularise and facilitate the growth of the enterprise culture

'Issues include skills and employability for all, incentives for entrepreneurs and employees and recognition of the social value of enterprise. By entrepreneurs we mean the founders and managers of SMEs, including social economy firms, exploiting new technologies and addressing new markets.'

In the Lisbon Opinion, the EESC was particularly concerned about the formation and growth of new businesses as the generators of new employment. There is, of course, the overall issue of entrepreneurship in enterprises of all sizes and in society at large. In the two years since Lisbon there have been a number of Commission initiatives to create a friendly environment for starting up and developing innovative businesses, especially SMEs. However, there remains a general need to stimulate entrepreneurial culture and support entrepreneurial activity.

8.1.4. Help established companies to convert to the new paradigm

This theme can involve considerable change at the enterprise level. A consensus has now developed that the resurgence of productivity growth in the second half of the 1990's in the US and in some EU Member States is closely related to the use and diffusion of Information and Communications Technologies (ICT) that featured a wide and ever increasing set of economic activities ([1]). With ICT now playing a crucial role in the modernisation of our economies, it is essential to create conditions so that its diffusion is the widest possible ([2]).

([1]) COM(2002) 262 final — Section 3, 2nd paragraph.
([2]) COM(2002) 262 final — Section 3, last paragraph.

In paragraph 29 of the Barcelona European Council Conclusions, social partners were urged to place their strategies at the service of the Lisbon Strategy. 'The multi-annual programme which they will submit in December 2002 should already include that contribution, particularly with regard to the adaptability of businesses in matters such as collective bargaining, wage moderation, improved productivity, life-long training, new technologies and the flexible organisation of work'.

The EESC emphasises the need for social partners to facilitate such change at the enterprise level as will allow ICT to have the necessary impact on competitiveness and growth.

As was highlighted at Barcelona, the next Spring Summit will be an important check-point for these concerns.

8.1.5. Adapt education and training to the new paradigm

'While education and training is central to the whole concept of the new paradigm in general, and employability in particular, it is remarkable that the new paradigm in the USA is emerging from a base of generally low educational achievement. Given the support of governments and companies, the EU has an opportunity to create new employment of quality as well as quantity as a result of higher educational achievement. Investment in human capital is the basis for a society of innovation and knowledge.'

There have been a number of Commission initiatives for education and training for living and working in the knowledge society. Since this is such a fundamental issue, it would be good to see more focus and more progress with the relevant indicators at the next Spring Summit.

8.1.6. Harness sustainable development for innovation and growth

'Fully adapting the economy and culture of the EU to the principles and precepts of sustainable development involves radical change, fundamental discontinuity and both technological and behavioural innovation. Such developments are consistent with the new paradigm.'

The EESC, taking a holistic view, had already anticipated in Section 9 of its Lisbon Opinion the need to incorporate the environmental and sustainable dimensions. On reflection, the need for political leadership to bring about the scale of change needed should have been given more emphasis.

8.2. The following was the sustainable development agenda proposed by the EESC in point 9 of its Opinion.

'8.2.1. It would be difficult to conceive of a new paradigm which did not encompass sustainable development. It must be a "sustainable" paradigm, and to be so, it must be based on innovation and knowledge. Amongst the major concerns are:

— The control and reduction of waste and pollution on land, in water and in the atmosphere.

— The sustainable use of land and water, involving agriculture, forestry, horticulture, urbanisation, industrialisation, transport, tourism and sport.

— The development of sustainable fuel resources and the use of organic fuel and other limited natural resources.

— That food production on land and at sea be better balanced to demand and sustainability, with increased attention to the quality of the good chain.

— A better balance between public and private transport, supported by a more rational approach to spatial planning and land use.'

8.3. The EESC commends the above structure as a way of giving effect to the Commission's own priorities which are more conceptual, less concrete, and less focussed.

— combating climate change;

— ensuring sustainable transport;

— addressing threats to public health;

— managing natural resources more responsibly.

8.4. Since Gothenburg, the Commission has introduced a number of initiatives aimed at adding an environmental dimension. Again, the EESC would emphasise that the key issue is sustainability in all dimensions. In this context, we repeat sections of our Opinion relating to sustainability:

'8.4.1. Development of the relevant knowledge base provides the means for improved management of sustainability. There are opportunities for public and private research but public initiatives are imperative.

8.4.2. There is a vast potential for job creation arising from the exploitation of technologies for environmental protection and sustainable development.

8.4.3. Technical, industrial, behavioural and cultural innovations will all be needed if the concerns detailed in 8.1 above are to be achieved. Successful innovation should lead to the revival of existing companies and the formation of new and successful SMEs. Member States will need to establish appropriate incentives (both carrots and sticks) to stimulate such innovation.

8.4.4. The prospects for a durable economic, ecological and socially stable future will improve if a broad basis of technological and organisational expertise can be built up and developed further. One of the requirements for this is a functional and effective system of innovation in which the interplay between research and education, between training, production and organisation, and between technology transfer and state policy on innovation takes on a variety of forms.

8.4.5. It is also necessary for this purpose to give more support in Europe, in terms of breadth and depth, to research and development as the seedbed and basis for future innovations [1]. At the same time the associated careers must be made so attractive that the most gifted candidates can be attracted and remain in Europe. Already in schools there must be more qualified teachers of mathematics and science subjects (and also, if need be, of technical subjects).

8.4.6. The Lisbon Summit should charge the Commission with the responsibility for examining the issues raised in point 8.1 (point 9.1 of the initial EESC submission) in the context of existing EU programmes and commitments, so that the Council can consider further actions to ensure that the new paradigm is sustainable.'

[1] See also Commission Communication "Towards a European research area" (COM(2000) 6 final).

Brussels, 18 September 2002.

9. **Conclusion**

9.1. It is our opinion that good progress has been made in many areas especially those where the Commission has had the initiative.

9.2. It is our opinion that in areas which require political leadership, only a few Member States have made the necessary progress. In particular we urge politicians to incorporate environmental protection and sustainability considerations in all their major initiatives in every field. The sustainability of existing social models needs to be addressed in a number of Member States.

9.3. The EESC has received the Commission Communication [2] entitled 'Productivity: The key to Competitiveness of European Economies and Enterprises'. In this document the Commission itself underlines the challenge and the importance of achieving the Lisbon Goals. The EESC will produce its own Opinion on this Communication in due course.

9.4. Progress on Lisbon depends heavily on the open method of coordination and the progress reported at each Spring Summit and the involvement of the social partners at the prior social summit. This process needs objective appraisal in the context of the 2003 Spring Summit, when the Lisbon timetable will already be 30 % complete. The EESC will submit its own report to the Council and the Parliament prior to the Spring European Council in 2003.

9.5. In the Opinion submitted to the Lisbon Council, the EESC asked whether it might not be the case that in order to address the challenges of the new paradigm, we might not need a new paradigm for government itself. It is clearly appropriate to ask that question again, if we are to get the action needed to fulfil the Lisbon Vision. The new paradigm should be defined by the Convention on the Future of Europe. The EESC requests the Convention to do so.

[2] COM(2002) 262 final.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions'

(COM(2002) 92 final — 2002/0047 (COD))

(2003/C 61/25)

On 4 March 2002 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 September 2002. The rapporteur was Mr Retureau).

On 19 September 2002, at its 393rd Plenary Session, the Economic and Social Committee adopted the following opinion by 43 votes to 18, with 9 abstentions.

1. Introduction to intellectual property regimes

1.1. Industrial patents create temporary operating monopolies for their inventions, subject to specific conditions, and for the benefit of and within the limits of the claims made by patentees. The conditions for patentability generally accepted in Europe apply to an invention of a technical nature, which is not obvious to a person skilled in the art, and thus makes a 'new contribution to the state of the art'. An invention must also have 'industrial applicability'. It may be a technical object or a (manufacturing) process in the material world, as opposed to the immaterial world of theories and ideas.

1.2. Obtaining a patent implies proof of progress with respect to the state of the art. The major patent offices keep databases on patents issued, which must include descriptions and explanations to make it possible to reproduce the protected invention. An essential feature of the patent concept is that the temporary monopoly awarded to the patentee (contrary to ideas of free competition and free markets) is compensated by making public the technical know-how and new knowledge brought to bear by the invention, which thus directly contributes to technology transfer and the dissemination of knowledge.

1.2.1. The quality of a patent depends, apart from the significance of the innovation, on the quality of the manifold skills and expertise implemented, firstly by the inventor and then by the patent experts and advisors and the patent office examiners (in-depth knowledge of the state of the art and the search for precedence, backed up by top quality databases which are constantly kept up to date). Given the territoriality of substantive law, registration must take place in the various countries for which protection is requested. These are cumbersome and costly procedures, which were only partially simplified by the 1973 Munich Convention on the European Patent (EPC) for its member countries in Europe and at international level by the PCT (Patent Cooperation Treaty) which can extend protection to member countries of the relevant conventions and treaties of the World Intellectual Property Organisation (WIPO). The EPO deals with registrations made under the Patent Cooperation Treaty.

1.2.2. The Committee would like to take this opportunity to repeat how crucial it is to have effective protection of intellectual and industrial property to step up investment, competitiveness, innovation and therefore growth for businesses and the creation of skilled jobs in the Community. The Committee has already insisted, and reiterates its request to the Council, that the registration costs and periodic dues remain moderate, so that patents are accessible in particular to SMEs-SMIs. As these costs increase with the number of countries of registration and translations, it is therefore important for the Community patent to be truly accessible.

1.3. It is clear and universally accepted that intellectual creations, fundamental discoveries and scientific theories about the properties of matter, mathematics (equations, algorithms, set theory, the calculation of probabilities, matrix operations, fuzzy logic, etc.), which are applied directly in data processing or software programming are not patentable. The theories of relativity or quantum mechanics, the discovery of radioactivity or nuclear fission cannot be protected by law, as they are abstract ideas, fundamental scientific discoveries, although radioactivity or nuclear fission, for example, may provide the theoretical basis for industrial applications with considerable social and economic value (energy, medicine).

1.4. Some intellectual creations, such as the works of literary authors, painters, photographers, sculptors, film-makers, musicians, lyricists, etc. which can be marketed in various material forms (publication in different media) or publicly performed, are protected by the copyright regime. For a good thirty years, computer software has been covered at international (WIPO, then WTO) and European (national rights or exclusion from the EPC) level by copyright. Some countries, however, (United States, Japan, etc.) have changed their laws and have recently allowed patents on software and even on intellectual methods. In these countries 'novelty' and 'utility' are sufficient criteria, which means that many patents, are issued for 'inventions', which, in Europe would come under the utility model (confirmation of internet purchases with a mouse click, but also — and by the EPO — a patent on a computerised programme for choosing music to play in supermarkets).

1.5. Author's rights have per se a more directly international impact, as they do not require filing fees or dues to be paid, although substantive law, like patent law always comes under the national jurisdiction of each country. They are therefore easily granted, sometimes on condition of registration in some countries (Latin America, etc.) or first publication in others ('copyright' in English law) or any other way of proving the work's precedence and the author's identity. Author's rights are thus protected almost freely and universally compared to patents, which in general are quite costly (EUR 50 000 to EUR 150 000 for a European patent).

1.6. Given the increasing role of fundamental and applied research in industry, the ever growing contribution of knowledge and 'immaterial' components in new technologies (embedded software, programmed electronic components, 'intelligent' or 'virtual' machines, etc.), it now sometimes seems more difficult to draw a line between the two main legal systems for intellectual property without calling into question their essential premises. With adaptation and greater flexibility in some areas, the patent should continue to be applied to procedures and inventions which produce material effects in the physical world, even if they comprise tailor-made software to do so (ABS braking, digitally controlled machines, guiding instruments, etc.), which is implemented by sets of electronic components and input/output extensions (for which the assembled whole is similar to a computer). As for copyright, it should continue to be applied to intellectual creation and publications in the fields of culture, literature, science or software programmes, even if the material media for these works has profoundly changed in some instances (multimedia, electronic networks, television), and although their copying and illegal use have become relatively easy, which affects the ways and means in which rights are protected — and which have been enhanced in recent years — overall the legal arrangements for property remain, subject to adaptation, adequate.

1.6.1. Nonetheless, the question is to provide better definitions of the most suitable adaptations to the traditional forms of protection or to define the protection sui generis in order to provide the best guarantees for intellectual property rights that affect the new technologies and the information and communication society without obstructing the dissemination of knowledge and technology. Depending on the case, discussions have focussed either on sui generis regimes (semiconductor topography, new plant varieties) or on more or less extensive overhauls of the traditional legal regimes, to make them more flexible and better suited to the nature of the technologies and the general interests of society (for example, the imposition of 'national licences' or cheap, compulsory licences for patents on medicines, in order to fight epidemics; limits to the scope of application in the protection of biotechnologies, etc.). It is a question, and one that is a classic legal and ethical problem, of striking a balance between exercising a legitimate right (right to intellectual property, recognised as a right of the human person) and the legitimate rights and interests of other people and society, to promote the general interest.

1.7. An embryonic body of Community law on intellectual and industrial property is developing (software directives, biotechnologies, electronic circuit board designs, EU trade mark, geographical indications and designations of origin, etc.). However, the lack of a Community patent, which the Community failed to introduce in the 1970s, is regrettable and has led to the legal vacuum being filled by the strictest of all regimes, that of intergovernmentalism: the 1973 Munich Convention on the European patent — EPC — and the establishment of the European Patent Office (EPO), The arrival of a Community patent has been delayed yet again by serious political and legal difficulties in the Council — due in particular to linguistic issues (pretexts) and objections to the creation of a specialist European jurisdiction [1] — which the Committee would like to see overcome in the Council.

1.8. With the development of the NTICs, particularly the open and universal interoperable network, i.e. the internet, the permanent creation of programmes to operate the different hardware which make the network an area of freedom, expression and communication as much as a medium for the net economy, together with the creation of applications for communication, trade, capital flows, education or administration, it is appropriate to ask whether the patent system is suitable for these new technologies. Although copyright has

[1] ESC Opinion 282/98, OJ C 129, 27.4.1998.

been applied to computer programmes (compilers, languages, operating systems and applications), the internet has not been patented, its regulatory bodies are establishing standards and preserving the universality and interoperability of the world network, which is undeniably an essential aspect of the development of the new technologies of the knowledge-based society and the growth of numerous industrial and service sectors.

1.9. But universality and interoperability together with the low cost of internet access, which are essential for democracy and for the economy, are sometimes threatened by the registration of patents that affect internet standards and the software essential for it to operate, and which must remain, as far as possible, open and, whatever happens, free of charge. This is a fundamental question and Europe should play a more active role to protect a tool of universal value as an inalienable public asset, as much for businesses, universities and research centres, who play an essential role in its development and for software innovation, as for administrations or private individuals.

1.10. Software programmes are essential both to the development of these network technologies and to the improvement of data processing tools or various automated machines in industry. They are used in an increasing number of services or innovative technological objects, some of which are profoundly affecting everyday life, culture and social relationships.

2. **The Commission proposal**

2.1. The proposal requests Member States to introduce 'the patentability of computer-implemented inventions' (Article 1, Scope) into national legislation, either through statute law or case law, and thus oblige patent offices in all the Member States to grant patents for such inventions, as the EPO does, despite the exclusion allowed in the EPC, in order to 'unify' the jurisprudence of the national courts.

2.2. The definitions set out in Article 2 state what such inventions and their characteristics are understood to mean in the draft directive.

2.3. The performance of such an invention involves the use of a computer, computer network or other programmable apparatus (Article 2(a)).

2.4. The definition of 'technical contribution' as 'a contribution to the state of the art in a technical field which is not obvious to a person skilled in the art' (Article 2(b)) is a standard one, but this 'prima facie' novel technical contribution is 'realised wholly or partly by means of a computer program or computer programs'.

2.5. Given that a programme is a series of instructions, the purpose of which is to process digital or analogue data, the technical contribution is therefore inseparable from and largely, if not wholly, dependent on the execution of one or several programmes in a programmable computer or similar apparatus.

2.6. However, any 'computer-implemented invention' is 'defined as belonging to a field of technology' (Article 3). This means that items of software, (the invention may be entirely implemented by software, i.e. comprise software and the method or result of data processing, or perhaps include databases), are automatically related to a technical field and are thus considered de facto to fulfil some of the fundamental requirements for patentability (technical invention, contribution to the state of the art).

2.6.1. In addition to the requirements outlined above, Article 4 (conditions for patentability) also demands the additional, traditional requirement for a patent to be issued, whereby the invention must have 'industrial applicability'.

2.7. Article 5 (Form of claims) provides that inventions may be claimed as 'products', i.e. as programmed computers or programmed networks or as 'processes' through the execution of software.

2.8. Article 6 maintains the provisions on the legal protection of computer programmes by copyright in Europe, as set out in Directive 91/250/CE, which allow reverse engineering, decompilation, for the purpose of interoperability or personal software backup copies. The provisions concerning semiconductor topographies and trade marks also remain unaffected.

3. **General comments**

3.1. The Directive makes it possible to patent a programmed computer or programmed network or a process implemented through the execution of a programme. Any innovation made in this way is automatically considered 'to belong to a field of technology', even if the result is derived entirely from software operations. The door thus seems wide open to a software patent, as no programmable electronic hardware can operate without software and as the distinction between software 'by itself' and 'software producing technical

results', the product of legal casuistry, is indefinable in practice as all software is made to run on a computer or an electronic component, either as a system or as an application. This extension of the scope of application of patentability could thereafter be extended without limit to software programmes and intellectual methods at successive legal rulings of the technical chambers of the EPO, irrespective of the exclusion provided for in Article 52 of the EPC.

3.1.1. Although for the time being the scope of application of the Commission's proposal for a directive concerns computer-implemented inventions, to which are attached the classic, cumulative criteria limiting the field of application of patentability — which will not satisfy those in favour of purely and simply abolishing all limits on the field of application of patent law — the text is, nonetheless, a de facto acceptance and justification of the a posteriori drift of EPO jusriprudence. While at first glance the directive seems to advocate something less extreme than the pure and simple abolition of Article 52(2) of the EPC, which is what the EPO executive and some Council members want, it does nonetheless open the way to the future patentability of the entire software field, in particular by the admission that the 'technical effect' can amount to the simple fact of a program running on a standard computer.

3.1.2. The step towards patenting business methods has already been envisaged by the EPO executive, using the model of internal interpretation applied to software programmes (Appendix 6 of the internal rules for examiners, entitled 'Business Methods', is unambiguous in this respect). By analogy, other methods could progressively be included in the scope of patentability, such as teaching methods, which can also, like business methods, be implemented through software programmes or on electronic networks, particularly the internet.

3.2. An increasing number of apparatuses contain electronic components and software programmes: digital video cameras and camcorders, aeroplanes, satellites, cars, industrial analysing instruments, automatic surveillance and warning systems, industrial robots, programmable machine-tools etc. The complete list would be long and it is constantly growing. It therefore seems essential to consider that a 'technical effect' can only be a creation or an effect of a material nature, that is an action in the physical world.

3.3. Otherwise, as every computer-implemented invention [and therefore totally or partially implemented by software] is ipso facto considered by the proposed directive to belong to a field of technology, this is likely to mean that all software used will be treated as technical inventions subject to patents, which would seriously blur the distinction between the legal arrangements applicable to software, depending on whether it is considered 'by itself' or 'totally or partially implementing a technical invention'.

3.4. This muddle is made worse by Article 6, which seems to maintain the legal copyright arrangements for programmes implementing inventions with a new 'technical effect', while at the same time including them in patent law, But the arrangements authorising decompilation, the development of interoperable applications and copying for personal use, provision for which is made in the software directive and more generally by the copyright regime, would amount to counterfeiting or illegal copying under the patent regime.

3.5. One may well wonder what the real objective of the Directive is, in particular given the explanatory memorandum, which begins with considerations about the need to protect the software industry against piracy, and in the documents appended to the Directive discusses almost exclusively software and the 'software industry', whose influence on the proposal seems excessive yet entirely irrelevant, if the scope of application was really as limited as the Commission maintains.

3.6. Software programmes are the result of modular processes, which often re-use entire portions of code and are also incremental, building on existing functionalities. Furthermore, interoperability requires older computers, components and applications to have sufficient upward compatibility so that they do not have to be replaced with each new version of the operating system or processors.

3.7. Software is now so complex because it is the natural outcome of a process whereby knowledge has been accumulated and broadened, the usual process for intellectual and scientific activities, which build on previously accumulated knowledge (or on criticism of them). The scientific and technical knowledge contained in technical objects is not of the same nature as the hardware components. Knowledge can thus be shared, disseminated or given without losing its value. As far as software is concerned, the cooperative processes whereby programmes are produced in universities or in public research laboratories, for example, form part of the dissemination of knowledge, which is indispensable to the knowledge-based society. The patents regime could obstruct this cooperation and the free circulation of free or open source software.

3.8. Given the nature of software, together with the lack of in-depth examination and the lack of a requirement to register source code in countries which use a software patent, the door would be open in Europe, as is already the case in other countries, to hostile legal proceedings for counterfeiting, which would be unverifiable unless the code was published, and even in this case, large blocks of code would necessarily be the same (current instructions in programmes, algorithms to sort or

compress images or text, file formats, etc.). The risk of a proliferation of lawsuits requiring costly and time-consuming technical and legal expertise, as can be seen in the United States, would not be beneficial to SMEs, who might go under despite winning a legal action brought by a competitor with sufficient financial resources or who could be taken over or forced to give out overlapping licences, sharing the innovation with a dominant company, which would not have had to lay out the initial research investment. These processes favour anti-competitive practices and concentrations.

3.9. Moreover, the Commission gives no explanation as to how the patent would provide better protection than copyright against the unauthorised copying of proprietary software. No effective economic analysis has shown the alleged benefit for SMEs-SMIs of patents for 'computer-implemented inventions'. Feedback from the free/open source software sector, which includes opinions in favour of a sui generis regime, has been dismissed on the pretext that only the proprietary model can create wealth and employment, whereas up until now in Europe, this sector has developed economically under the copyright regime, which has not been a hindrance to investment. For the most part, the opinion that has been credited is that of a dozen large software houses, most of which are not European. Furthermore, an opposing opinion from other large firms has been ignored, as have some counter-proposals which advocate a sui generis regime or an adapted utility model.

3.10. Neither does the proposal clearly define the concept of a network, i.e. this could mean the internet. A patent for an invention implemented on the internet, a public arena, and which cannot therefore consist exclusively of software, could become possible under the draft directive. The freedom of the internet, the essential medium of the communication, information and knowledge-based society, is at stake.

3.11. The Commission proposal thus makes decisions about a democratic issue and a market in which consumers still have choices to make. Patents will enhance monopolising positions. They would threaten the continued existence of the free/open source model and the disinterested shareware forms of development, offer innovations and a competitive alternative, which give invaluable service to society and the economy.

3.12. Is it wise in today's world to widen the scope of patents, tools of the industrial age, to intellectual works which are immaterial, such as software, and to the results of running software on a computer? The reply is quite explicit and partisan in the presentation of the proposal for a directive and the impact assessment form. The narrow field of vision that has been adopted, based on the legal regime for patents as the sole motivation, without sufficient consideration of the economic factors, the impact on research or on European companies, which therefore lacks a view of the whole, is not consistent with the importance of the implications for society, for development and indeed for democracy (e-administration, education, citizens' information), which in the longterm is what is at stake.

3.13. It is hardly plausible to have us believe that the directive would only be a sort of reversible three-year experiment, at the end of which an assessment would be made. Rights would have been acquired and in any event there would be uncertainty and perhaps even legal chaos. In fact the process would be irreversible, with largely unknown effects on our economies and societies, although certain trends can already be deduced: brakes on innovation and interoperability, risk of internet segmentation, increase in access costs, pressures on the choice for consumers of open source software and its type of profitability for authors and providers of internet and network services and applications adapted to use this type of software

3.14. The Committee considers that given the lack of independent, in-depth, serious economic and impact studies, in particular on SMEs-SMIs, employment and long-term social impact, it would be dangerous to rush legislation through to extend the arrangements for patents to an indefinite number of software programmes considered to produce a 'technical effect', but that it would be more appropriate to harmonise laws and, by a knock-on effect, the jurisprudence of the member countries by confirming, as is already the case in most member countries, the possibility of allowing patents for technical inventions that include specific dedicated code indispensable for them to operate (but not those solely or mainly in the software) or which would use standard software almost exclusively).

3.15. In its present form, the proposal clearly runs the risk of overturning the legal arrangements for software and other intellectual works, which would be in breach of the conventions administered by the World Intellectual Property Organisation (WIPO) and the WTO agreements on intellectual property rights in trade. The patents system, applied extensively in some countries to new technologies, has helped to eliminate or marginalise into 'niches' numerous creative players, in particular SMEs, in markets that are essential to growth and

the achievement of an information and knowledge-based society. This has also led the patents system to include other forms of intellectual property, such as business methods, teaching methods and algorithms (encryption, compression).

3.16. The Economic and Social Committee considers that the proposal also runs the serious risk of exacerbating divergent practices in national offices and jurisprudence, if common legislation became more ambiguous in the internal market. Now it seems that national jurisprudence is currently moving towards greater homogeneity. In the future — and, in particular, once a clear Community framework for intellectual property has been established — this harmonisation should be studied and encouraged appropriately, for example, by using an open method of coordination.

3.17. One important way in which software is protected and which has not been discussed, is the market itself. An innovative creation can conquer a market and stay on top long enough to make up for expenditure on research and marketing before competitors come up with competing solutions. This occurs quite frequently, given the nature of the software market. Conversely, if the competition is more innovative or better value for money, it can in time establish itself in the market. Competition thus widens consumer choice and reduces the price of licences.

4. **Specific comments**

4.1. A number of difficulties and specific features inherent to software are an obstacle to patentability using the same model as technological inventions.

4.1.1. There are difficulties inherent in knowing what the 'state of the art' is. Unlike the existing databases of technological inventions, such as those belonging to the EPO or the USPO (United States Patent Office), which are accessible over the Internet or on CD-ROM, there are no databases of software programmes. The concept of 'state of the art' is practically impossible to define for software programmes.

4.1.2. For the most part SME-SMIs do not have the technical, legal and financial resources to register patents, nor, above all, to fight hostile legal actions for counterfeiting, which are particularly easy to bring to court where software is concerned. A European fund or national funds should be set up for this purpose, but without them, introducing software patentability would leave these enterprises in a very vulnerable — indeed critical — situation when faced with hostile lawsuits.

4.1.3. Software programmes consist of sets of instructions (source code), increasingly independent of the technical platform or system (cross compatibility), which facilitates portability and interoperability, particularly over the Internet. There are great similarities in the programmes written independently in the same programming language as a result of the constraints specific to each programming language, to their algorithmic nature — a number of languages derive from previous languages or combinations of languages —, to the programmes produced using development kits, some of which require practically no code to be written. This is also the case for database or website management.

4.1.4. The concept of 'innovation' is not therefore easy to define. It often boils down to a greater or lesser number of features included in different programmes applied to similar aims or to the way in which they are called up. User interfaces are often similar, either because they use the same software development programs for one or several platforms, or because they aim at interoperability. Otherwise users would have to learn a new interface for each application.

4.1.5. Code must be constantly maintained to correct bugs and security failures or to make improvements in response to users' needs. Maintenance has become an essential responsibility for software publishers and IT service companies against what has become the strategic backdrop of network security. In the defence world, in military production and — increasingly — to develop e-administration and guarantee the security and durability of software, the confidentiality of information or payments, governments ask for open software, so that they know the source code and can therefore guarantee it is maintained, stable and secure, even if the publisher goes out of business. A patent-based regime for software would be ill-suited to these legitimate priorities, unless extensive provision was made for waivers, whereas the copyright regime seems more flexible and adaptable (software directive).

4.1.6. Code is not a traditional 'technical object', which can be subject to an existing legal standard for material technologies. In countries which accept software patents there are no clear concepts of 'technical effect', 'inventive activity' or 'change to the state of the art', which in fact is impossible to define. In the United States the idea of creating a software database has been abandoned. As the state of the art is indefinable, conclusions need to be drawn for patentability in Europe.

4.1.7. It has also to be recognised that the current conditions for registering 'computer-implemented inventions', in particular those which consist entirely of software, do not meet the normal examination and registration requirements in line with European patentability requirements, as the software source code, or at least its user interface or file formats are not subject to publication for the sake of interoperability. In addition, the question of whether licences for inventions that affect the way the internet operates should be free of charge is not raised.

4.2. Software, like multimedia products, suffers from illegal copies, which are relatively easy to make, despite the various technical and software protection devices sometimes used. The problems of protecting copyright against the making and distribution of copies, from the technical and legal point of view are quite similar, with respect to the solutions to be implemented, to other intellectual and artistic multimedia productions, as well as with respect to illegal copying and distribution which are particularly well-developed, especially over the internet. There are, however, much greater differences in the methods to combat the counterfeiting of technical objects or hardware products ([1]).

4.3. It is perfectly acceptable that a complex technical object, in which non-standard embedded software plays an essential role in real time (braking, ABS, robotics) and is, in fact, inseparable from the object, justifies the registration of a patent for the entire invention. But nothing would prevent these components being separated legally, as each is subject to a distinct legal regime. In fact, in practice this is most often the case. A technical invention, such as an electronic pocket computer diary (Personal Digital Assistant, PDA) can be subject to several distinct intellectual property laws: name and trademark, design, copyright for the embedded software system, optical character recognition software and other applications, distinct patents for various components such as touch screens, battery type, electronic components (some of which are pre-programmed or programmable), etc. There are standard embedded software programmes that can be used in several fields, from the pocket computer to the space shuttle or vehicle guidance systems (such as QNX, an industry standard, open source programme based on Eclipse, which is a software engine created and put in open source by IBM; there is also, for example, an embedded Windows XP, a Windows-CE, an embedded BSD, an embedded Linux, some of which are proprietary, others open).

4.4. Furthermore, some robots and software used for heavy industrial production are often not even patented and remain internal production secrets of a company (and as such are protected in some countries and could be in Europe, too).

4.5. No comparative study and no argument has shown that the patent would offer more protection than copyright for software, whether embedded or not. The BSA (Business Software Association) estimates that more than 40 % of professional software used by businesses is pirated. In some countries, this figure can climb to 90 %, not to mention copies made for private use by company staff. Multimedia, music, cinema and electronic games, which are protected by copyright, also have similar problems with illegal copying. It is not clear, nor has it been shown, that the copyright regime, which makes it possible to gather together considerable amounts of capital in the cinema and music industries, would not be able to do the same for software, and that to do so would require changing the legal arrangements.

4.6. The reasons why European SME-SMIs do not make greater use of patent registration are known, but will not be solved, even partially, by the draft directive on computer-implemented inventions. In the first place, as the Committee stressed in previous opinions ([2]) the problem is the lack of a real Community patent that is technically and financially accessible.

4.7. The Committee urges the Council to take a decision quickly, but some existing texts need to be revised or completed, while respecting international standards in force, though this should not rule out specific regimes, for example those which may provide greater protection.

4.8. Finally, on the issue of innovation, the Committee has already pointed out that the financial efforts made for basic research and R&D were notoriously insufficient.

4.9. These are the Committee's real priorities. The Committee therefore considers that more detailed, independent economic and legal studies, together with the opinions of all the sectors and actors concerned, must be re-examined in a truly objective manner, without prejudice, before irreversibly changing the law on intellectual property, even in a manner limited to part of the software sector, given the profound impact the initiative would have on the scope of application of patentability.

([1]) ESC Opinion 701/2001, OJ C 221, 7.8.2001.

([2]) ESC opinion 411/2001, OJ C 155, 29.5.2001 and ESC opinion 921/2001, OJ C 260, 17.9.2001.

5. **Conclusions**

5.1. The question of which legal regimes should protect all types of software against undue appropriation, illegal copying or counterfeiting is, as in other sectors, to be posed. However, should this also mean irreversibly modifying the applicable legal regime, as was also planned for the removal of software from the exclusion clause in Article 52 of the EPC, without first holding more detailed and equitable discussions among all stakeholders and in the general interest? The Committee considers that a comprehensive discussion about the European approach and the principles for harmonisation on intellectual property issues should take place before any fundamental changes are made, so that a coherent set of rules for the single market can be devised.

5.2. The Committee is of the view that the Commission, the Council and the Parliament have to consider intellectual property issues as part of a coherent overview of industrial and intellectual property in its diverse forms, and in the context of the EU's political and economic objectives, in particular those set out in Lisbon. The Internal Market Council in May 2002 again highlighted the priority nature of the Community patent.

5.3. It has not been shown in the Commission's presentation and impact documents, nor by the only study commissioned from a national patent office, that the legal protection conferred by copyright would be less effective, as far as software programmes are concerned, than the industrial patent. Nor has the impact on users (consumers) been assessed. How would they benefit from a change in the legal arrangements, which would be very costly for businesses? Neither has the impact on employment been determined. The protection of inventors, whether working as salaried employees or sub-contractors, has not been raised, although they play an essential role in these immaterial 'productions'.

5.4. The Committee would prefer that the draft directive be seriously revised, and believes that the Commission would do better to initiate a truly political and legal process of harmonising issues of intellectual and industrial property at Community level, keeping abreast of research, innovation and financing. It could also make the Community patent a priority project, fully respecting the EU's international commitments with respect to the WTO and those of the Member States with respect to the WIPO and the EPC in its current form. But would it not be more suitable to make the EPC and the EPO EU bodies? Failing this, attempts at EU harmonisation will remain backward and dependent on a non-EU organisation, which is competent in only one area of intellectual property and is naturally attempting to extend its own particular area of competence and sources of revenue. However, given its specific point of view, it cannot readily perceive the overarching nature and complexity of intellectual property issues, nor the need for greater flexibility or more variety in the legal arrangements for the new technologies.

5.5. There are certainly new legal solutions that can be adapted to the ongoing increase of intellectual/scientific input, i.e. the 'immaterial' component of technological innovations, which require in-depth examination and consultation with all the parties and interest groups concerned, including end users, keeping in mind international commitments to the WIPO and the WTO, both to protect innovation and ensure technology transfers and the dissemination of knowledge, which are the essential pillars of legal protection for technological innovation and their only justification for exemption from competition law. These goals should not be abandoned to create unsuitably long monopolies or control mechanisms over developing countries or the newly industrialising countries.

5.6. The Committee believes that only the quality of the legal instruments, patents or copyright, the effectiveness of their protection and above all the quality of the innovations, can attract the capital that would be seriously interested in developing them. It is therefore important for the European legislator to lay down uniform rules on the patentability of computer-implemented inventions, which can be the basis for maintaining the high level of European patent rights.

5.7. With respect to the Commission proposal, the Committee feels that the laws and, by a knock-on effect, the jurisprudence of courts in the Member States must be harmonised in such a way that it will be possible to allow patents for technical inventions that include a specific dedicated code indispensable for them to operate, insofar as the patentability requirements of an invention have been met. However, on the issue of technical inventions for which innovation arises principally or indeed wholly from the software or which are technically innovative but rely exclusively or principally on standard software, the Committee feels that detailed legal investigations are necessary, with particular reference to the questions of definition and delimitation, so that application of each of the respective legal regimes for the protection of innovation in Europe may be harmonised. Economic studies should also be carried out, cost-benefit analyses for instance, and on the financial impact of protection and its effectiveness,

particularly for SMIs-SMEs, as well as on the costs to consumers and their rights and guarantees.

5.8. The Committee fully endorses the views of the businesses, industries and services based in Europe and the views of authors and users, who expect true consistency in economic and research policy with the necessary legislation to ensure effective, harmonised protection of the various forms of intellectual property.

5.9. Political and budgetary measures and legal instruments must guarantee increased encouragement of scientific and technological innovation, which are now indissociable, and thus stimulate sustainable growth and competitiveness — which create skilled jobs through innovation — in order to promote the knowledge-based economy that Europe aims to achieve, which the Committee fully supports, and which should be shared more equitably with the developing countries.

Brussels, 19 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the opinion of the Economic and Social Committee

The amendments below were rejected, but received at least one quarter of the votes cast:

Point 3.12

Delete.

Reason

The scope of patents is not widened by the proposed directive. The EPO has already granted thousands of patents for computer implemented inventions. The directive is proposed to unify interpretation because divergent national rulings have been made in some countries, particularly Germany and the UK.

Point 3.13

Delete.

Reason

The text is misleading. As stated above, the EPO has granted thousands of patents for computer implemented software (according to the Commission representative at the TEN-section meeting approx. 25 000). Rights already exist and have existed in Europe since the EPO began granting such patents after the Sohei decision published in T-769/92 (Sohei). The 'legal chaos' that the directive is said to threaten us with must therefore already exist, yet it does not. The purpose of the directive, as stated, is to codify in intellectual property law the existing practice under which patents for computer implemented inventions, including patents for computer software, are already granted in large numbers.

Point 3.14

Delete.

Reason

Here again the directive is said to change the arrangements for patents, but it does not change arrangements. It codifies the existing practice under which patents for computer implemented inventions have been granted by the EPO (similar to the USPTO and JPO).

Point 3.15

Delete.

Reason

The text contains misleading generalisations. Business methods are patentable in the US, but not under the EPO nor through the JPO. An algorithm in the sense of a mathematical formula by itself is not patentable anywhere in the world. The use of an algorithm in a new invention that solves a technical problem is a patentable invention in most jurisdictions. Paragraph 3.15 says that the directive is leading to patents for business methods, teaching methods and (pure) algorithms. No, it is not. It codifies the existing practice under which patents are granted for computer implemented inventions that are new, inventive, and have a technical effect. The directive does not change the present practice, and neither does it change the patentability of business methods or algorithms.

Result of the vote

For: 27, against: 27, abstentions: 6.

Opinion of the Economic and Social Committee on the 'Transport/Enlargement'

(2003/C 61/26)

On 17 January 2002 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an own-initiative opinion on the following subject 'Transport/Enlargement'

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 2 September 2002. The rapporteur was Mr Kielman.

At its 393rd Plenary Session (meeting of 19 September 2002), the Economic and Social Committee adopted the following opinion by 40 votes to one with one abstention.

1. Introduction

The so-called 'Europe Agreements' constitute the framework for bilateral relations between the European Community and its Member States on the one hand and the applicant countries on the other. A total of 10 applicant countries signed these Agreements, while three applicant countries (Turkey, Malta and Cyprus) signed Association Agreements. The Appendix lists the countries which have signed Europe Agreements and Association Agreements. The Europe Agreements can be regarded as the framework within which the preparations for becoming a member of the European Union are made. They are therefore the basis for negotiations with the applicant countries. Transport is only one of the many subjects covered by the Community acquis. Other important aspects include agriculture, the internal market, the environment, safety and competition. In these fields the acquis has a direct influence on transport as such, e.g. with regard to the free movement of goods on the internal market, air quality standards, the environment and decision-making on state subsidies and mergers in the transport field.

2. Transport policy

In the transport sector the applicant countries face the challenge of transposing and implementing a considerable part (about 10 percent) of the total acquis legislation. Chapter 9 of the acquis is based on Articles 70 to 80 of the EU Treaty and consists mainly of hundreds of regulations, directives and decisions. For the applicant countries, taking on board the acquis means not only transposing it into legislation, but also implementing it in practice. Considerable administrative organisation and support is needed for this. The transport acquis has been discussed with 12 applicant countries and already thoroughly negotiated with 9 of them, but not yet with Romania, Bulgaria or the Czech Republic. Negotiations have not yet begun with Turkey as an applicant country.

The road transport sector acquis covers a wide range of social, technical, fiscal, safety and environmental requirements. The rail transport acquis has recently been subject to substantial changes, and the liberalisation of this sector will mean that the national railway markets will be opened up to competing railway companies from other Member States. In air transport, subjects such as market access, safety and infrastructure organisation will be on the agenda. In the maritime sector one of the main challenges will be effective implementation of the maritime safety acquis.

For all transport modes, failure to adopt and apply the acquis would lead to distortion of competition, which the EESC sees as unacceptable.

The Committee is also of the view that an increase in the share of rail and inland waterway transport in the applicant countries would be desirable, not only on environmental grounds, but also to alleviate congestion (see also 3.7.1).

Leaving aside the above considerations, in every sector there is an economic need to bring the transport infrastructure in the applicant countries up to standard. Yet from the date of accession the main infrastructure of the applicant countries will form part of the trans-European network. Community funds are available for the necessary upgrading. Of course lessons must be drawn from past experience. In building new infrastructure or extending existing infrastructure, just as in transport policy itself, it will be necessary to take account not just of economic considerations, but particularly of social and environmental consequences. Since a number of applicant countries are land-locked, special attention will need to be given in their case to infrastructure for combined transport.

The current situation is that most of the applicant countries have almost completed the process of transposing EU legislation into their national legislation. The most important thing to be done after that is to check whether it will also be implemented in practice. For this a properly functioning monitoring system is essential.

3. Consideration of key issues, broken down by transport mode

3.1. *Community acquis*

3.1.1. Road transport

Implementing the Community acquis will mean that the applicant countries will have to strengthen the structures of government bodies and the capacity of those concerned with this task at government level and in other implementing and monitoring bodies. These people will also have to be prepared and trained for the task. In a number of fields, applicant countries have asked for derogations, mostly in the area of weights and measures or the application of the credit-worthiness requirement for national transport.

3.1.2. Inland waterway transport

Inland waterway transport is a relevant policy area for only some applicant countries: all the Danube countries (Slovakia, Hungary, Romania and Bulgaria), the Czech Republic, Poland and to a limited extent Latvia and Lithuania.

There is indeed a fairly complete acquis for inland waterway transport on the EU's side, but still dominated by the rules of the CCR (Central Commission for the Navigation of the Rhine, to which Switzerland, France, Germany, Belgium and the Netherlands belong) which adopts them on the basis of the Revised Rhine Navigation Treaty (Mannheim Act). As a result of the so-called second additional protocol to that treaty, ships from the applicant countries at present have limited market access to the Rhine waterway area: they are not allowed to ply between Rhine ports. Immediately after accession this restriction will be automatically lifted, since the second additional protocol to the Mannheim Act lays down that ships having a real link with the EU have access to the Rhine. Nonetheless, even after accession, separate legislation will continue to apply on the Rhine to various aspects (e.g. building and fitting-out of ships, crewing requirements, professional skills), with which ships from the Member States will still have to comply in order to gain actual access to the Rhine.

On the other hand, market access to applicant countries for EU countries is at present still limited by bilateral agreements, but is expected after accession to be completely free, since no candidate country has asked for transitional periods on this point. Nor are any problems expected with regard to the remaining EU legislation on inland waterway transport. All applicant countries assume that they can meet the technical requirements applying to ships. So far only Hungary has asked for a transitional period for the so-called 'old-for-new' arrangements — up to 31 December 2004.

3.1.3. Rail transport

At present the Committee is working on an opinion on European Commission proposals for the further reform of the rail sector in the EU. These are known as the rail infrastructure package. Once accepted, this will become part of the acquis. In the rail infrastructure package, the following 3 directives are amended:

— 91/440, to create an organisational division between transport and infrastructure and to separate the infrastructure authority from the government;

— 95/18, to make professional authorisations apply to all rail transport;

— 95/19, to lay down rules for all rail transport on payment for use/pricing and capacity management.

The most important aspects of the proposed amendments are opening up the market and separating infrastructure functions from transport operations. The obligatory organisational separation of infrastructure functions (including authorisation, payment for use, capacity management and safety) from transport operations is a sine qua non condition for the applicant countries.

Poland and Hungary, in particular, have indicated that they have problems with the restructuring and privatisation of the railways. They have indeed asked for a derogation from Directive 95/19 with regard to infrastructure capacity allocation and infrastructure charges.

3.1.4. Maritime transport

The most important subjects in the maritime sector concern market access, competition, crewing, and state support, safety and environment in so far as they influence competitiveness. It is important to avoid a situation in which EU shipowners are faced in one of these areas with unfair competition from the applicant countries. The applicant countries will have to take on the acquis in all these fields completely and without transitional periods at the moment of accession. This will not be a simple task, given the inadequate supervision of the implementation of the acquis in the applicant countries. In particular, maritime safety gives cause for concern. In recent years safety has been high on the agenda. Thus the European Commission very recently concluded an agreement on a signalling and information system for maritime traffic. The system is intended to prevent accidents arising from heavy traffic along important European routes. The applicant countries must also adapt themselves to these recent developments.

3.1.5. Air transport

Even before the start of the accession negotiations, discussions began between the EU and the applicant countries about the latter's integration into the internal air transport market.

The same approach was chosen as for the integration of Norway and Iceland, namely a multilateral agreement between the EU and the applicant countries and between the applicant countries themselves, in which the basic principles were laid down. In addition there are separate protocols for each country laying down the derogations from the basic agreements in each case. These are mainly concerned with transitional periods for parts of the air transport acquis (all aspects: market access, safety and environment). Given that this approach covers all aspects of the air transport acquis, no separate accession negotiations are necessary in the air transport sector.

3.2. *Definitions and statistics*

Because this subject applies to all modes of transport equally, there is no need for a breakdown by mode. The applicant countries have not asked for any derogations in regard to Community statistical legislation. However, statistics take a great deal of time, while there is often a need for recent data which can be rapidly produced. Therefore the Committee takes the view that a monitoring system should be set up to observe the development of the transport market in the EU and provide decision-makers with relevant, comparable and recent data.

These data will also be needed to answer the question of whether and to what extent there is a crisis. This means information on prices, costs, charges, whether in the form of index figures or not, together with surveys of the current economic situation in the various transport sectors.

As well as having information available in the short term, the Committee thinks it necessary for the same terminology and definitions to be used in the present EU Member States and the applicant countries. At present this is far from being the case. For example, a recent survey shows that six applicant countries use the same definition as the EU countries for 'own-account transport'. It is therefore very important for the remaining countries to adopt this definition and use it in practice as soon as possible.

3.3. *Economics*

3.3.1. Competition

3.3.1.1. Road transport

Freedom of establishment exists in the applicant countries, but a number of them still have a quota system for international transport. There are no market indicators which measure the intensity of competition both in the EU and in the applicant countries. However, the greatly increased competition, which in the Committee's view is mainly due to the inadequate operation of the qualitative criteria for access to the profession of road haulier, leads to failure to comply with social and traffic safety rules.

The Committee therefore thinks it very important that training for the profession of road haulier and driver be raised to a comparable level to that found in the EU.

As regards cabotage transport, the general feeling is that immediate liberalisation of the cabotage market at EU level is undesirable. On a bilateral basis Member States can reach agreements with the applicant countries on mutual liberalisation. At Community level a start will be made only after some years (the figure of five years is often mentioned) on a partial, and later complete, liberalisation of the cabotage market for most of the applicant countries. For Slovenia, Malta and Cyprus, the cabotage market will be opened up reciprocally at the time of accession.

3.3.1.2. Inland waterway transport

In this sector, as stated above, ships from the applicant countries still have only limited access to the Rhine waterway area as a result of the so-called second additional protocol to the Revised Rhine Navigation Treaty. After accession this restriction will be lifted and ships from the applicant countries will have free access, provided that they meet the other EU criteria.

3.3.1.3. Rail transport

Competition in the rail transport sector is in the Committee's view a sensitive area, since the situation in the applicant countries varies considerably. The starting point is that rail transport/track use is determined as far as possible by the market, but that the general conditions and infrastructure policy are determined by the government. At the same time, the rail sector will have to be more efficient in order to survive. However, the Committee would stress that this must never be done at the expense of operating safety. Experience with reforms so far suggests that liberalisation does not lead automatically to more competition. It must always go hand in hand with technical and economic harmonisation.

3.3.1.4. Maritime transport

Competition in the maritime sector is found particularly in those areas described in the section on the acquis: market access, crewing, state aid, safety and environment. For all these areas there will be no distortion of competition provided that the acquis is fully adopted and complied with after implementation in the agreed manner. The situation in Malta and Cyprus is particularly worrying in view of the size of their fleets.

3.3.1.5. Air transport

The so-called 'level playing field' in air transport — market access requirements, controls and enforcement — is known, and has been agreed with the applicant countries, together with the transitional periods. The Committee thinks it unlikely that problems will arise in this sector.

3.3.2. Taxation

3.3.2.1. Road transport

In this respect the situation in the applicant countries varies. A number of them have the same system as the EU (motor vehicle tax, excise duty and a road-user tax or toll).

Other applicant countries use a different system. In the EU the White Paper on Transport appeared in September 2001, enshrining the idea that each mode of transport must pay the total costs to which it gives rise, including external costs. There will be a framework directive on an infrastructure taxation system, and a proposal for a uniform excise duty on heavy goods vehicles. The Committee takes the view that the principle of each transport mode having to pay for the costs involved is acceptable, but recommends that a simple system be adopted so that the applicant countries can soon take part in it.

3.3.2.2. Inland waterway transport

In the Committee's view the accession of the applicant countries will have little tax impact in the inland waterway transport sector. As is well known, the 'Mannheim Act' forbids the introduction of charges for the use of the Rhine waterway. Reactions to the ideas contained in the White Paper are as yet unclear.

3.3.2.3. Maritime transport

In this sector the existing rules on state aid are currently under review in order to improve the competitive position of the EU maritime fleet.

3.3.2.4. Air transport

In the air transport sector the Committee regards it as desirable, with a view to equal treatment of transport modes, for a start to be made soon on the discussion of tax issues.

3.4. *Social aspects*

3.4.1. Road transport

Some of the present EU Member States are concerned about employment in the transport sector after the applicant countries' accession, because wage costs in the applicant countries are significantly lower. There is a fear that jobs will be lost.

Moreover, the accession of the applicant countries will mean that the eastern frontier of the EU will then be that of the applicant countries. The Committee would point out that this will have social consequences for the border officials of Member States currently forming the EU's external frontier, as well as for border officials of the applicant countries, who will acutely feel the impact of enlargement. In the Committee's view these consequences are underestimated.

Preparation and training of border officials are needed for the new external frontiers, and a social programme must be established on the lines of that already introduced for Community citizens.

3.4.2. Inland waterway transport

The social consequences of enlargement appear at first sight to be acceptable, both for present EU employees and for employees in the applicant countries.

3.4.3. Rail transport

In the Committee's view it is still too early to make a valid assessment of the social consequences of enlargement for railway staff.

3.4.4. Maritime transport

In the maritime sector there is great concern about possible social dumping once the applicant countries have acceded. In the Committee's view seafarers from the applicant countries should enjoy the same working conditions after accession as present EU seafarers. However, this is not yet the case, and it is feared that it will not even apply after accession. As it is possible for seafarers from outside the EU to be employed on Community ships and to be paid by the standards of their country of origin. The Committee regards this as an undesirable and competition-distorting situation. The consequences can of course vary from one country to another, but the Committee thinks it desirable for an EU standard to be developed and laid down in an EU directive or regulation, so that the legislation of the country of registration applies.

3.4.5. Air transport

No problems are foreseen in this sector.

3.5. *Transport safety*

3.5.1. Road transport

Transport safety is, in the Committee's view, one of the most important subjects which should be covered in the enlargement negotiations. All the more so, since data from the CEMT (European Conference of Ministers of Transport) show that the transport safety situation has worsened in the applicant countries in recent years. This is partly a result of the growth in the number of vehicles in the applicant countries. The Committee takes the view that legislation, and its implementation and enforcement, must be tightened up in order to halt the downward trend. In this connection the Committee points out that attention must also be paid to improving the attitude of road-users and the 'transport culture' in the applicant countries. There has been a rapid growth in road traffic as a result of economic development. In the traffic safety area the acquis includes the introduction of rules on driving time and rest periods, the electronic tachograph, the speed-limiter and in the future the driver's certificate, all of which will be compulsory for international vehicles after accession. Moreover, if the White Paper on Transport were transposed into European rules, the costs resulting from traffic accidents would have to be included in the transport price. Furthermore, the Committee wishes to point out that it attaches great importance to a start being made at European level on a systematic analysis of the causes of traffic accidents.

3.5.2. Inland waterway transport

The traffic safety situation in inland waterway transport is not likely to change much as a result of enlargement.

3.5.3. Rail transport

In view of the fact that the railways transport millions of people and goods every day, it is of the highest importance to ensure a high level of traffic safety in the EU, including after enlargement. For this reason the European Commission, in its second rail package, proposed a number of accompanying measures to guarantee this level. The Committee takes the view that these accompanying measures should be adopted as quickly as possible.

3.5.4. Maritime transport

The Committee believes that maritime safety is a point of concern affecting virtually all (seafaring) applicant countries. This relates primarily to the safety requirements for ships as set down in: mainly international — still incomplete — legislation (IMO) which is applicable to all countries and forms part of the Community acquis, sometimes with even stricter requirements. Even if the applicant countries themselves have not asked for transitional periods, attention needs to be given to this point. Recent accidents with ships from e.g. Cyprus and Malta have once more revealed the seriousness of this problem. Within the EU, as a result of these accidents, work has been done on a further upgrading of the acquis (the so-called 'Erika measures'); this threatens to further widen the gap with the applicant countries if they do not act quickly. The relevant legislation should therefore be implemented in the applicant countries as quickly as possible.

3.5.5. Air transport

The traffic safety package has been laid down in a separate protocol which has been agreed between each applicant country and the EU. Agreements on possible derogations have been made with each applicant country.

3.6. *Infrastructure*

3.6.1. The present situation

Within the EU a network of transport corridors has been established (trans-European transport network or TEN-T). To prepare for the inclusion of the applicant countries in this network, the European Commission has made an extensive inventory of the existing and necessary infrastructure in these countries — the so-called Transport Infrastructure Needs Assessment (TINA). The total amount required for this inventory would be about EUR 90 billion. It involves the building or extension of 18 000 km of roads, 20 000 km of railways, 38 airports, 13 seaports and 49 inland ports. Special attention needs to be paid to inland waterway infrastructure, since the relevant Committee opinion [1] showed that on inland waterway routes the necessary works must be carried out to enable them to be used to the full within the trans-European networks. Infrastructure projects of the applicant countries which are described in the Tina final report can qualify for EU funding from the ISPA and Phare funds, albeit not for 100 percent coverage. The applicant countries themselves must provide the bulk of the funds (there is mention of 90 %). After accession the applicant countries will come under the EU rules for TEN-T. These consist of guidelines for the development of the trans-European transport network and general rules for the provision of financial assistance. In the Committee's view, these rules should be revised: in the guidelines for TEN-T the applicant countries must be provided with maps showing which infrastructure will come under TEN-T. The Committee would point out here that the extension of the trans-European networks to include the European islands [2] should in future also apply to the applicant countries. A further point to bear in mind is that in the projects to develop the TEN-T the Member States should also meet environmental conditions (Habitat Directive).

3.6.2. Another important aspect is that any effective investment can only be undertaken when the multinational and cross-bordering nature of the TEN-T is taken into account. Therefore, regional as well as cross-border cooperation and coordination is a must as regards planning, operation, time-schedule etc. Infrastructure projects must be realized on the basis of an integrated cross-border network; the Danube States and ports may be taken as a good example for that demand.

3.7. *Environment*

3.7.1. Transport modes

Emission standards and fuel quality come under this heading. Under the EU standards the emission of NOx etc. has been reasonably stabilised. The growth of the internal market has led to a sharp increase in goods transported by road. In particular, the aim of reducing CO_2 emissions cannot be achieved. In order to limit the damage as much as possible, it is important to create a 'clean vehicle fleet' in the applicant countries as soon as possible. Moreover, it will be very difficult to reduce traffic noise and the number of traffic accident victims.

For this reason, but also because of the likely road congestion, the Committee thinks it necessary for energetic efforts to be made to develop the infrastructure of other transport modes and adopt a market-oriented approach to these modes. Calculating the total cost for each transport mode could in the Committee's view speed up this process.

It should of course be assumed that the EU provisions of Natura 2000 and the Fauna/Flora/Habitat Directive will be respected in the planning and construction of infrastructure in the applicant countries. In addition to the need for a strategic environmental impact assessment for infrastructure programmes, it is clear that citizens, and nature conservation and environmental movements, need to be involved at an early stage.

Finally, the Committee thinks it important to set up a market warning system for the environmental impact of transport investment decisions so that the consequences of different options for the environment will be more apparent.

3.8. *Security at borders*

The transport sector is particularly sensitive to security aspects related to terrorist actions and illegal immigration.

In the perspective of the enlargement , all necessary precautions should be taken. At request of the Commission the EESC is currently preparing an exploratory opinion on this subject.

[1] Own-initiative opinion on 'The future of the trans-European Inland waterway network', OJ C 80, 3.4.2002, p. 15.

[2] Own-initiative opinion on 'Extending the trans-European networks to the islands of Europe', OJ C 149, 21.6.2002, p. 60.

4. **Conclusions**

The Committee takes the view that the extension of transport policy to the applicant countries in the near future is the right choice. Enlargement will not only have consequences for the present EU Member States and the applicant countries, but will also offer possibilities and have consequences for other countries, such as Russia.

This document considers the situation if enlargement includes 13 applicant countries. The essential point is that they take on board the Community acquis and especially that they actually implement it. The Committee has called for special attention to be given to the latter, because in its view the consequences of accession for administrative bodies and individuals in the applicant countries are somewhat underestimated. Examples of this are the shifting of the EU external frontiers and its social consequences for customs staff and infrastructure. Similarly, accession will have radical consequences in the fields of transport safety and environment.

To sum up, the Committee takes the view that, in terms of transport policy, enlargement is a sensible choice, but that its consequences in many fields are underestimated.

Brussels, 19 September 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Resolution addressed to the European Convention

(2003/C 61/27)

At its 393rd Plenary Session on 18-19 September 2002 (meeting of 19 September) the European Economic and Social Committee adopted this resolution by 167 votes to four with six abstentions.

1. **Preamble**

1.1. At European level the Committee is the institutional forum for consulting, representing, informing and expressing the views of organised civil society, thereby allowing the representatives of Member States' economic, social and civic organisations to be an integral part of the policy-forming and decision-making process at Community level.

1.2. The Committee's special relations with Member States' economic and social councils or similar bodies, and with organised civil society in the third countries and geographical groupings with which the European Union maintains structured relations enhance the added value and legitimacy of its action in favour of a politically more accessible, more transparent and more participatory Europe. The close relations which the EESC has established with civil society organisations not represented in its midst also help boost this added value and legitimacy. The Committee intends to strengthen these relations.

1.3. In this resolution the Committee has decided to limit its comments to certain key considerations and standpoints vis-à-vis the debate on the future of Europe. It reserves the right to give its views at a later date on certain more specific matters dealt with by the European Convention.

2. **The European model of society**

2.1. The EESC expects the Convention to redefine the European Union's constitutional foundations. This new definition will (i) be marked by a balance between cultural diversity and political unity and (ii) allow the European model of society to develop while at the same time fostering socio-cultural identities.

2.2. The work of the Convention concerns the very essence of the European identity and the European venture, and the values on which this venture is based, and is not concerned solely with 'competences' and the distribution of powers.

2.3. As an expression of adherence to common values, culture is a basic element in the European identity. The Committee calls for the future constitutional Treaty to interpret the concept of culture in such a way that EU policy in this sphere helps to build a genuine community of values while at the same time guaranteeing the blossoming of national and regional cultures.

2.4. The Committee reiterates its support for the development of European Union citizenship.

2.5. This makes it necessary to define an institutional architecture that is endowed with a strong democratic legitimacy within which:

(i) the powers and responsibilities of the institutions are defined more clearly and

(ii) the socio-cultural variety offered by European countries and the solid and continuous advances made by economic and social cohesion form the basic elements of a participatory European identity which is shared by all.

2.6. The Charter of Fundamental Rights constitutes in this respect an ethical, social and political commitment and is a key factor in creating this common identity. It reflects recognition of a community of rights and duties which all citizens endorse and embrace. The Committee calls for the Charter's incorporation in the constitutional Treaty.

2.7. The Committee thinks that the Union must assume a greater share of responsibility at international level and speak with one voice. It urges (i) that the Union be given the institutions which would enable it to conduct a genuine common foreign policy based in particular on the ideals of peace, democracy, solidarity and economic well-being, and (ii) that it support the development of civil societies in the partner countries and ensure their effective involvement in its cooperation programmes by providing for appropriate arrangements, as it has already done, at the suggestion of the EESC, in the Cotonou agreements and in the context of Mediterranean cooperation.

2.8. The EESC brings enhanced added value to the Union's action in the external relations sphere thanks to the structured dialogue it is continually developing with representatives of civil society in the applicant countries and with the partner countries of the Mediterranean, Africa, the Caribbean and the Pacific, Latin America, Russia and Asia.

2.9. The Committee thinks that the Union's competences with regard to justice and home affairs must be strengthened in order to respond to the public's concerns about combating crime in all its manifestations.

2.10. It is essential for the Union to be given the instruments needed to implement effectively a common immigration and asylum policy based on solidarity.

2.11. Policies for integrating immigrants need to be improved. The Committee calls on the Convention to examine the possibility of granting Union citizenship to third country nationals with long-term resident status.

3. **Participatory democracy, civil dialogue and social dialogue**

3.1. The Committee advocates that representative democracy be strengthened by developing participatory processes which allow civil society organisations to be involved at an early stage in the process of framing policy and preparing decisions and in implementing these decisions. By ensuring the participation of those directly concerned, civil dialogue is a key factor in enhancing the European Union's democratic legitimacy.

3.2. Without prejudice to its structure and competences, the EESC has a key part to play in organising the civil dialogue and is its natural focus.

3.3. In this regard, a clear distinction should be made between (i) dialogue with and between civil society organisations, and (ii) social dialogue. The European social dialogue is a mechanism with quasi-legislative powers. It is clearly defined in terms of participants, powers and procedures.

3.4. The participation and specific responsibilities of the social partners must be developed within the framework of moves to reinforce the European social dialogue.

3.5. The call for civil dialogue rests on the principles of democracy and subsidiarity. The subsidiarity principle not only concerns the distribution of powers between the various territorial levels, but is also the expression of a participatory conception of relations between public authorities and society and of the freedoms and responsibilities of citizens. When deciding who is to be involved in the preparation of decisions, account should thus be taken not only of territorial (vertical) subsidiarity but also functional (horizontal) subsidiarity, which is a major factor in good governance.

3.6. Both the social dialogue and the practice of co-regulation and self-regulation, which reflect a sharing of responsibilities between the institutions and interested parties, are part of this good European governance.

4. **Economic and social governance**

4.1. The EESC calls for economic policies to be coordinated in such a way as to make the most of the Union's potential for growth and employment, for the reinstatement of the Commission's right of proposal and mandatory consultation of the Committee in the procedure for drawing up the economic policy guidelines, for a better mix of macro-economic and structural policy instruments, and for a sustained dialogue between the various players involved in macro-economic policy, the social partners in particular.

4.2. The Committee calls for full employment to be mentioned explicitly in the constitutional Treaty as one of the objectives of the Union and for the relevant articles of this Treaty to state more clearly that economic and monetary policy must contribute to the attainment of the objective of growth and full employment.

4.3. The Committee calls for the Union to adopt the instruments necessary for making a success of the Lisbon strategy aimed at making Europe 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.

4.4. The Committee also stresses that the success of the Lisbon strategy must be supported by the implementation of the Gothenburg Council conclusions, thus incorporating all the essential principles for the achievement of sustainable development.

4.5. The Committee also calls for:

i) a strengthening of economic and social cohesion policy and the unification of procedures and arrangements in order to improve their efficiency and ensure that civil society organisations are involved effectively;

ii) support for innovation and entrepreneurship in all its diversity in accordance with the lines of action defined in the European Charter for Small Enterprises in particular;

iii) the insertion in the constitutional Treaty of a specific reference to the provision of services of general interest as being one of the areas that the Union, in close cooperation with the Member States, must develop in order to attain its objectives, and a provision ensuring that priority is given to the general interest goals pursued by the services concerned;

iv) stronger instruments to combat financial fraud in cooperation with the Member States.

4.6. The Committee considers that, without prejudice to the Union's legislative powers, the open method of coordination constitutes an important instrument for furthering economic and social cohesion provided that the social partners and other relevant civil society players play an effective part. The Committee calls for a legal basis in the constitutional Treaty for this method — in the monitoring of which it intends to be involved.

4.7. With regard to the financing of Community policies, it is necessary to ensure that over the long term EU revenues are sufficient to finance commitments. The Committee urges that a new system of financing be introduced. Consideration should be given to boosting the Union's own resources.

4.8. The Committee calls for a lasting reform of the policy-forming and decision-making processes at Union level, based on the principles of solidarity, transparency, coherence, subsidiarity, proportionality and openness.

4.9. The simplification of legislative processes and of Community legislation itself is an urgent necessity and a prerequisite for enlargement; it will give economic and social players and the general public a better understanding of Community policies and the European integration process. In this context the EESC calls for the European institutions to adopt codes of conduct for simplifying the regulatory process, and the need to enhance the impact assessments which should accompany all draft regulations by including an examination of possible alternatives.

4.10. The Committee thinks that greater support should be given to co-regulation by combining a Community framework with input from the parties concerned in pursuit of greater flexibility and efficiency.

4.11. The Committee also requests that the constitutional Treaty give it the chance to fulfil its role even better by being systematically consulted upstream of the legislative process and in particular by receiving more requests from the other institutions for exploratory opinions.

4.12. As the Union extends the network of consultations to enhance the quality of democratic governance, the EESC considers it can act as a bridge between the Commission and organised civil society, as illustrated by the success of the recent Stakeholders' Forum on Sustainable Development in September 2002.

4.13. Finally, the EESC considers that it would be strengthened in its role if it were granted the status of institution in the new constitutional Treaty.

5. **Conclusions**

5.1. The Committee reiterates its belief that every effort must be made, at all levels, to involve European citizens fully in framing a blueprint for an enlarged Europe so as to give this project genuine substance. In the face of the European public's persistent concerns about a lack of transparency and involvement in the European integration process, it is vital that the Convention's work generate a vision of the future of Europe which encourages Europeans to support and identify more closely with this process.

5.2. The EESC reaffirms its willingness to continue to play in full its role in the European Convention and, in accordance with the resolution which it adopted on this subject [1], to contribute in particular to involving organised civil society as widely as possible in the debate on the future of Europe.

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[1] Resolution on the future of Europe of 17 September 2001 — CES 1033/2001 fin.

394th PLENARY SESSION, 24 OCTOBER 2002

Opinion of the European Economic and Social Committee on the 'Security of Transports'

(2003/C 61/28)

On 23 April 2002, in a letter from Mrs Loyola de Palacio, the Commission asked the European Economic and Social Committee to draw up an exploratory opinion, under Article 262 of the Treaty establishing the European Community, on the 'Security of Transports'

On 23 April 2002 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the work on the subject.

At its 394th Plenary Session of 24 October 2002, and in view of the urgency of the matter, the European Economic and Social Committee appointed Dr Bredima-Savopoulou as rapporteur-general and adopted the following opinion by 93 votes to one, with five abstentions.

1. Introduction

1.1. Following the 11 September 2001 terrorist attacks in the US the world is facing enormous uncertainty. The shock waves from those tragic events have spread throughout the world and ramifications are being felt in almost every facet of our lives.

1.2. Preventive and operational safety and security have assumed a higher profile than ever before and have been placed at the top of policymakers' priority lists. It is noteworthy, however, that an internationally accepted definition of terrorism does not exist.

1.3. The need to enhance security worldwide is imperative and recognised by governments and industry alike. Perfect security is an impossible objective. In times of serious crisis there is a tendency to try to conceive every possible contingency and to find measures that could prevent that eventuality. However, no matter how serious the security threats may be, such intense security measures cannot be sustained for more than a few days at a time. In order to make sensible judgments about when to apply security measures, and their degree of intensity, it is necessary to better understand the types and likelihood of risks faced by the transport network.

1.4. In the aftermath of the 11 September the shipping and airline industries demonstrated their full support to the need to defeat terrorism and other threats to the security of ships and aircraft. Security is an issue where par excellence all links in the transport chain should be involved in order to achieve tangible results. All links should bear their share of responsibility, otherwise the 'weakest link' will be the target of terrorists in order to infiltrate into the system.

1.5. Maritime and civil aviation security is a global problem posed by terrorism and unlawful acts and as such it requires global attention and global solutions that only the respective international organisations, namely the International Maritime Organisation (IMO) and the International Civil Aviation Organisation (ICAO) can provide. Rail security appears to be largely focused on national level initiatives whilst terrorism in road and inland waterways transport has received relatively little attention. However, through the door-to-door concept involving several modes of transport all modes of transport are inevitably concerned by the increased security considerations. Hence, an interoperability of the integrated logistical chain is required.

2. The impact of security measures

2.1. Tighter security requirements and a series of surcharges have also affected the cost of transporting goods by sea and air ([1]). For international sea shipments, this has included notification requirements, more frequent Coast Guard inspections and tugboat escort obligations, which have resulted in increased costs and longer waiting times. For airfreight, higher security-related cost at airports led to the application of security charges, higher commercial insurance premia and war surcharges for certain sensitive regions.

2.2. A recent OECD Report ([2]) on the impact of the terrorist attacks of 11 September on international trade suggests that 'the cost of time delays, paperwork and compliance relating to border crossing ranged from 5 % to 13 % of the value of the goods involved' and that 'security measures could add a further 1 % to 3 % to these costs. It would be essential that governments avoid imposing disproportionate bureaucracy or costs. Furthermore, the costs that fall properly to governments should not be charged to transport providers'.

([1]) OECD The Economic Consequences of Terrorism, 17.7.2002 Economic Department Working Paper No. 34: OECD Transport Security and Terrorism Council of Ministers, 2.5.2002.

([2]) TD/TC/WP (2002) REV1/702002.

2.3. Shipping and civil aviation must continue to serve the flow of international trade effectively and efficiently and, to ensure this, ships, aircraft, airports and port facilities must adequately be prepared for the possibility of encountering terrorist attacks or other forms of criminal intentions. If security procedures become too stringent the business of transporting goods could grind almost to a halt, which would give terrorists the success they were seeking.

2.4. New security measures should be balanced in relation to the objectives they pursue, their costs and impact on traffic. Hence, it is necessary to consider carefully the proposals and assess whether they are realistic and practically feasible. They should not unduly restrain the personal human rights of the citizens nor the constitutional order of individual states, thus, serving the purpose of terrorists.

2.4.1. The cost and the distribution of cost of security measures should be based on estimates of reasonable measures that could be put in place in order to prevent or reduce the risk of terrorist attacks. The analysis should measure the actual cost of implementation, direct and indirect costs to transport providers and shippers (e.g. delays and additional equipment), impact on world trade and distortions on trading patterns (by trade being re-directed to areas of lesser security).

2.4.2. Unilateral measures are unacceptable, especially when they are applied asymmetrically and to the detriment of the interests of third countries. Unilateral and arbitrary measures should be avoided since they hamper world trade by raising bureaucratic as well as other obstacles, and eventually leading to distortions of competition and adverse economic effects.

2.4.3. Given the international character of maritime and air transport, security requirements should be based on reciprocal arrangements, uniformly applied and enforced without discrimination and must allow for the most efficient flow of trade.

2.4.4. Precautions against an attack will require information, hence, it will be a duty of all transport operators to pass any information or suspicions that they have to the authorities and keep informed their personnel.

2.4.5. Unavoidably, the enhancement of security will involve costly arrangements in terms of hardware (infrastructure and equipment) and software (manpower and training). Care should be taken to avoid disproportionate technical arrangements which may be seen as protectionist and promoting commercial interests. Furthermore the scope and level of measures should take into account any adverse implications on the performance of the human element (fatigue, stress, etc.). Transport workers are bound to be affected by the implementation of security measures. The European philosophy and culture sustains a strong respect for the human rights and any reaction to threats of terrorism should not disregard these long cherished principles.

2.4.6. There is an increasing danger of imposing upon ship and aircraft crews and on port authorities directly or indirectly policing responsibilities that normally fall upon government agencies. Such responsibilities are beyond their traditional duties and may expose them to physical risks and emotional stress.

3. **Insurance implications**

3.1. In the aftermath of the 11 September, insurance implications in sea and air transport have been tremendous. There was a total withdrawal of war risk cover by commercial insurers. When commercial war-risk cover was offered again, it was at more than ten times the cost that had previously existed. The insurance industry raised its premia by between 0.03 and 0.05 per cent ad valorem, but this partly offset the decline recorded in the last decade. Terrorism insurance became largely unavailable. Consequently governments had to step in and cover risks deemed too large for the private sector.

3.2. The new security measures had also an impact on the insurance market. Cover for inevitable delays resulting from the intense security measures had to be considered. Moreover, very expensive sophisticated high tech scanning equipment had to be purchased and insured [1].

3.3. In the maritime field the geographical areas where additional premia are applicable and the periods of their application were extended unreasonably. There is a widespread perception that the 11 September events have been used as an excuse for the imposition of unreasonable premia. Nowadays, a dialogue between shipowners and insurers is ongoing with a view to reaching more sensible solutions to the problem.

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[1] The cost of security equipment is very high, e.g. a container scanner in the port of Rotterdam costs EUR 14 m.

3.4. Regarding air transport, aviation war-risk underwriters were seeking extra premia. The extra cost of insurance of US carriers, was borne by the US government. Given the insurance challenges, the US government provided airline companies with direct financial help and reinforced airline security. In order to avoid disruption of the air traffic the EU Finance Ministers have approved a code of conduct that sets the conditions under which EU governments may sustain aviation insurance. The code of conduct enabled Member States so wishing, either to pay insurance premia linked to the 'risk of war and terrorism' for their airline companies or to grant them a State guarantee against such risk. The EESC supports the above EU initiative aiming at the viability of EU airlines.

3.5. Since there are indications for a return to an acceptable commercial aviation insurance situation, the Member States airline-insurance guarantees will not be prolonged. In a move to end the continuous difficulties in finding adequate insurance cover the Commission has proposed minimum aviation insurance requirements for all carriers using the EU airspace, i.e., a minimum liability per passenger and per kg of cargo. In the long run, a mutual fund scheme to cover third party liability for terrorism at reasonable cost appears to be an alternative.

4. **Maritime Security**

4.1. *Maritime security in perspective*

4.1.1. While the 11 September attacks involved aircraft and airports, ships and maritime transport infrastructure are vulnerable to terrorist risks. Ships could be used as a weapon, to launch an attack, to transport weapons or dangerous materials and by sinking to disrupt transport infrastructure (e.g. port entrance, canal passage). Chemical and gas carriers and laden oil tankers are particularly vulnerable and present increased dangers. Containers carried by ships could also be used to smuggle weapons of mass destruction or terrorists. In view of the potential danger, the US has put in place the most extensive provisions to protect its ports and vessels. No other country has as yet unilaterally and drastically altered their current security arrangements for shipping.

4.1.2. In comparison with aircraft and with the exception of the highjack of the cruise ship Achille Lauro, no other passenger ship or cargo ship have been the target of terrorist attacks as such. However, cargo ships have been the victims of acts of piracy and armed robbery. The total number of incidents of piracy and armed robbery against ships reported to have occurred from 1984 to 2002 was 2 650.

4.1.3. Therefore, the assessment of risks should focus on the probability and the possible seriousness of the risks, e.g. geographic location, transport mode characteristics, ease of access, risk exposure, institutional and legal problems facing security measures.

4.1.4. Security measures related to shipping should be clear in respect of requirements related to vessels, crews, passengers, shipper, consignees, terminal operators, road and rail carriers involved in international trade and should be appropriate to the level of threat assessed.

4.2. *The work in IMO*

4.2.1. Concern about unlawful acts which threaten the safety of ships and the security of their passengers and crews has been addressed by IMO since the 1980s.

4.2.2. Pursuant to the Achille Lauro incident (1985), IMO adopted a resolution and two circulars recommending measures to prevent unlawful acts against the safety and security of passenger ships ([1]).

4.2.3. In 1988 IMO adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol). The above instruments entered into force on 1.1.1992 ([2]).

4.2.3.1. The preparatory work leading to the adoption of these treaties took place at the same time as that leading to the adoption of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.

4.2.3.2. Moreover, IMO established a correspondence group to address the revision of the SUA Convention and Protocol in order to facilitate international cooperation as a means of combating unlawful acts, including terrorist attacks.

([1]) A.584(14), MSC/Circ.443, MSC/Circ.754.
([2]) Number of contracting states is 67 and 60 respectively.

4.2.4. Following the 11 September attacks the IMO sought to urgently reassess the state of international regulations dealing with security. At the instigation of the US, the IMO held ad-hoc meetings of an Intersessional Working Group of the Maritime Safety Committee on 11-15 February 2002, 15-24 May 2002 and 9-13 September 2002.

4.2.5. It has been decided by IMO that the new measures to enhance maritime security would form the International Code for the Security of Ships and Port Facilities and that the basic elements would be contained in amendments to Chapter XI of the International Convention for the Safety of Life at Sea (SOLAS). The IMO measures are expected to be adopted by a Diplomatic Conference on 4-13 December 2002. These measures will concern the following issues:

— automatic identification systems for ships;

— ship and offshore installation security plans;

— a ship security officer/a company security officer;

— port facility security plans and port facility vulnerability assessments;

— container security measures;

— information on ship, cargo, crew and passengers.

4.2.6. Issues of particular interest where further international and national work will be necessary include the security of port areas, the application of measures to ports and the security of containers.

4.2.7. The IMO measures will cover the 'Ship/port' interface, namely the immediate shore security threat towards the ship and vice-versa including anchorage and the movements of the ship in port. The remainder will be addressed by IMO in cooperation with ILO and other relevant organisations (e.g. World Customs Organisation, International Association of Ports and Harbours, International Harbour Masters Association).

4.2.8. The IMO has considered the issue of application of Port Vulnerability Assessment (PVA) requirements for 'small ports' and ports ever hardly called at by ships engaged in international voyages. Although it was recognised that the PVA requirements might not be applicable to all ports of a country, flexibility was considered necessary to close the maritime security loop for those cases when and where a security risk might arise.

4.2.9. Containerisation is very open but it is this openness that makes it prone to terrorist action. The sea transport of containers is only part of the multimodal transport chain and there is a need to ensure security at all stages including shippers, forwarders and carriers. The role of frontier agencies, in particular customs administrations, in controlling the international movement of containers is crucial and instrumental. Customs administrations worldwide have a long history of controlling containers in conjunction with other national and international law enforcement agencies and relevant trade bodies. The World Customs Organisation has a vital role to play in developing a comprehensive container security system in co-cooperation with interested international organizations and in consultation with the associations of shippers, forwarders and carriers. Part of the system should cover the responsibility to issue and control proper cargo declarations for containers.

4.2.10. The record of the history of the ship and information on ownership will respond adequately to the security concerns regarding transparency. Ships will be required to maintain a Continuous Synopsis Record (CSR). The CSR is intended to provide on board record of the history of the ship, with respect to information on the flag, date of registration, name and IMO number of the ship. It will also include information on the registered owner(s), charterer(s), classification societies, the ISM Code documentation. Furthermore, information on who appoints the crew, who fixes the use of the ship and who signs the charter party on behalf of the owner will be readily available.

4.2.11. The IMO has agreed in principle to accelerate the fitting of existing ships with Automatic Identification Systems (AIS). However, the determination of the final date for the carriage requirement is being left until the December 2002 Diplomatic Conference.

5. **The EU perspective**

5.1. The proposals or action that have been put forward internationally within the IMO framework seem to strike a fairly 'good balance' between the necessity to ensure free circulation of goods and persons and the necessity to provide the highest possible protection against terrorist attacks.

5.2. Although some IMO measures may later be transferred into Community legislation, the adoption of new international measures should not lead to delays in Community legislative procedures. There is a need to coordinate the decision-making processes in international fora and at the EU level in order to avoid possible inconsistencies between international and Community rules.

5.3. The European Council in Seville (21-22.6.2002) invited closer cooperation among the Member States in the fight against terrorism. It also welcomed the progress achieved since 11 September in incorporating the fight against terrorism into all aspects of the EU's external relations policy.

5.4. The EU ports should adopt common standards to heighten port security against terrorism before other countries take unilateral measures. Unilateral and discriminatory measures that may result in the classification of foreign ports as 'safe' and blacklisting of 'unsafe' in terms of detecting illegal immigrants and terrorists are unacceptable as they may lead to market distortion and could jeopardise the smooth flow of international trade. Furthermore, individual initiatives of certain EU customs authorities to conclude bilateral agreements with the US Customs pre-empt EU collective action and undermine the desirable framework of future arrangements that need to be reciprocal and collaborative. Screening at the port of loading (EU) instead of the port of discharge (US) is a Herculian task. The EESC supports the European Commission's stance in challenging the legality of these bilateral agreements. This move should be seen in light of legal considerations concerning the EU's competence in external trade relations. The EESC also supports EU action to pursue talks with the US in order to arrive at an arrangement giving equal treatment for all cargoes (containers) originating from the EU and to transfer/ integrate the bilateral arrangements in multilateral agreement (WCO).

5.5. Concern arises with the prospect of adoption by the US of rules that the rest of the world may not be in a position to follow, thereby causing confusion for ships, shipowners and ship/ port interface. The US maritime security initiative allows the US government to undertake foreign port assessment, with the ship's entry into the US being conditional on proof that the port of origin provided effective cargo screening and other anti-terrorist measures. The volume of trade with the US may provide a measure of the significance and the impact of the initiative. The cruise ship industry carries more than 6.5 million Americans annually on passenger vessels. Six million loaded containers, 156 million tons of hazardous material and nearly one billion tons of petroleum products enter in US ports each year. The total container movement between Europe and North America (US, Canada and Mexico) in 2001 amounted to 6 177 000 units [1]. Approximately 22.5 % of container sea traffic bound for US ports originates from nine mega-ports in seven EU States.

5.5.1. The sheer volume of trade with the EU and other parts of the world should induce the US to seek realistic solutions in cooperation with its trade partners. Conversely, the EU realising the potential impact of various and variable measures in other parts of the world should assume a leading role for the establishment of a global system in the interest of all. The EESC urges the EU to initiate a dialogue with the US and other countries to discuss sovereignty, data sharing, container inspection procedures, reciprocity and other issues of mutual concern. It is an opportunity for the EU to show a higher profile. Past and recent experience in many parts of the world has proved that focusing only on policing measures has limited effect. A policing strategy is not a secure strategy in a non-secure world. There is an urgent need for the EU to take the lead internationally in developing a broader framework for security which will address also the causes of terrorism and not only seek to eliminate its effects.

5.6. Security measures should be of such a nature to avoid deflection of traffic in favour of some ports (because of increased security measures) to the detriment of other ports. Moreover, security measures should not discriminate between liner/tramp shipping calling at EU ports.

5.7. The EESC proposes that all EU Member States not parties to the SUA Convention and its Protocol be urged to ratify both instruments [2].

5.8. Any EU action should take into consideration economic aspects, such as analysis of who pays for security measures and the competitive impact of security requirements on publicly and privately owned ports. The maritime industry has recognised the need for comprehensive anti-terrorism legislation and is prepared to share some of the costs of improved security measures.

5.9. The EU interest should focus primarily on an assessment of questions linked not only to security of persons working in the sector (seamen, port workers) but also to security of port terminals. The EU has to determine the means of a better identification of risks involved and to propose procedural/technological solutions in order to reduce them.

[1] Containerisation International, April 2002.

[2] Belgium, Ireland and Luxemburg have not ratified as yet.

5.10. Ship and port facility security is a risk-management activity. This assessment is a sovereign decision made according to the judgment of each Member State. However, as in various areas of maritime safety, EU action to establish uniform standards and procedures will prove indispensable. Common personnel training to respond to increased security demands will achieve harmonisation of procedures at reduced costs. Therefore, the entire logistical chain will have to change its business procedures in the long run to cater for security considerations.

5.11. Member States in coordination must conduct port-facility security assessments. The EESC believes that an overarching port security plan must form the framework to establish port facility plans. Seaports are often very open and exposed and, by the very nature of their role in promoting the free flow of commerce, may be susceptible to large scale terrorism that could pose a threat to coastal environment and industrial, commercial and administrative centres and their resident or working populations. Effective physical security and access control in seaports is fundamental to deterring and preventing potential threats to seaport operations, cargo shipments and ships. The EESC believes that the establishment of Port Security Committees will allow to combine efforts of port authorities, government representatives, (customs, immigrations, etc.), port users and other interested parties involved in security.

5.12. Security assessments should have three essential components. First, they must identify and evaluate important assets and infrastructure that are critical to the port facilities as well as those areas or structures that, if damaged, could cause significant loss of life or damage to the port facilities' economy or environment. Second, the assessment must identify the actual threats to those critical assets and infrastructure in order to prioritise security measures. Finally, the assessment must address vulnerability of the port facilities by identifying their weaknesses in physical security, structural integrity, protection systems, procedural policies, communication systems, transportation infrastructure, utilities, and other areas within the port facilities that may be a likely target.

5.13. Effective access control would require a photo ID for all persons boarding a ship in a port. Without such measure the ship would not be able to exercise control over persons boarding and leaving the ship and would therefore be unable to ensure the security as required by the ship security plan. Under the ILO 108 Convention seafarers can be exempt from normal visa requirements for the purpose of shore leave or for transit to and from their ships. Security considerations will have to be reconciled with the 108 Convention security considerations. It is anticipated that the format of identity documents, which will be issued by the seafarers' country of nationality, will be standardised through the development of machine readable documents.

5.14. The EESC notes that practical and cost implications might deter wide implementation of any new ID requirements. The use of biometric templates to verify the identity of the holder could give rise to human rights and data protection concerns. Moreover, reconciling the above exercise with the Schengen visa requirements will be an additional consideration as far as the EU is concerned.

5.15. The EESC urges speedy ratification of the 108 Convention by the EU Member States that have not done so. With respect to port workers, IMO and ILO will urgently resolve the matter and the EU should give its full support to that effect. Pending international action, the EU may consider transitional arrangements along the lines of the identified need for access control of government employees whose duties require access to ships.

5.16. Increased security measures will necessitate a strengthened cooperation between the various administrations of the EU Member States (immigration, customs, airport authorities and port authorities). Equally important is the need for coordination between the European Commission services involved.

5.17. The cooperation of the shipping industry should be sought in promoting security awareness. Any additional security measures should take into account other threats to ship/crew security such as drug trafficking, piracy, armed robbery and stowaways. The EESC notes that for a number of years ships and seafarers face an escalation of piracy and armed robbery incidents at sea. The current emphasis on maritime security should be seen also as an opportunity to finding solutions to the piracy problem. However, the safety and working conditions of transport workers should not be put at risk when dealing with such cases. Thus, actions dealing with the threat of terrorism will also serve the aim of dealing with other illegal acts (trafficking in drugs or people, piracy). When considering the economic costs of security measures the benefits achieved should be taken into account.

5.18. Care should be taken to avoid any imbalance between vessel security and port facility security that may result in forcing upon vessels and their operators the obligation to provide additional quay security to redress the imbalance. Costs that fall properly to governments should not be charged to the industry.

5.19. Member States should develop efficient methods of handling information on cargoes typically based on a single point of lodgement of information and on electronic systems. In particular, for containers there is a need for comprehensive data interchange between all parties concerned with their movements. The EESC believes that the system already established under Directive 93/75/EEC on reporting requirements for dangerous or polluting goods should be expanded to cater for the exchange of the data required to be submitted.

5.20. The EESC believes that the early implementation of the Galileo system (planned to be operational by 2008) will permit a very precise identification of ships and containers and, thus, facilitate attainment of the objective of increased security. In the meantime, an effort should be made to accelerate the operational phase (2003-2008) of the Egnos project, the precursor of Galileo, which relies on American GPS and the Russian GLONASS and monitors their integrity and implement it alongside Galileo.

5.21. Under the anticipated IMO measures ships will be subject to control in ports of the Member States and may be inspected, consistent with international law for the purpose of determining their compliance with the applicable requirements. In cases of violations ships may be subject to delay, detention, restriction of operations, expulsion from the port, or denial of entry into port. The EESC proposes that timely amendments to the Port State Control Directive (95/21/EC) should be drafted to give effect to the expansion of the scope of port state control.

5.22. The Automatic Identification System (AIS) only has a security benefit if signals can be received ashore, analysed and acted upon. The EESC proposes close monitoring of timely compliance of Member States with the relevant obligation under the proposed reporting Directive.

6. **Civil aviation security**

6.1. *Civil aviation — a risk*

6.1.1. Civil aviation security has two components: On board security and ground security. The Convention on International Civil Aviation, signed in Chicago on 7.12.1944 (Chicago Convention) provides for minimum standards to ensure the security of civil aviation. The International Civil Aviation Organization (ICAO) convened a Ministerial Conference on Aviation Security (Montreal 19-20.2.2002) which agreed a global strategy for strengthening aviation security worldwide and establishing the basis of an Aviation Security Plan of action.

6.1.2. Given the global nature of air transport, security measures need to be coordinated internationally and where necessary bilaterally to be effective. It is more important than ever that the entire aviation industry works together towards the common objective of increased security. Preventive measures can no longer be left solely to the local authorities or even the responsible national authorities. Therefore, the EU should coordinate activities on aviation security with ICAO and should make reference to relevant ICAO standards as far as possible.

6.1.3. The EESC shares the view that not all adjustments of security measures can be implemented effectively and uniformly with immediate effect but a realistic, gradual process will be required to cope with the necessary recruitment and training of personnel and the alterations of infrastructure.

6.2. *Onboard security*

6.2.1. Regarding onboard security the ICAO recently adopted standards relating to the incorporation of security into the design of aircraft and other in-flight security measures. The ICAO flightdeck security standards will require that passenger-carrying aircraft of 60 passengers or more, or with a maximum certificated take-off weight of 45 500 kg be protected from intrusion and ballistic threats. This requirement is not mandatory until November 2003.

6.2.2. However, the US corresponding rule requires that certain US air carriers must install reinforced flightdeck doors by 9.4.2003, i.e. 7 months earlier than the ICAO requirements. Since the US authorities considered it unacceptable to create two levels of flightdeck protection for the same operations to and from US airports by foreign operators, therefore the rule will apply to aircraft belonging to foreign carriers engaged in air transportation serving the US.

6.2.3. A few governments, including those of France and Germany have started deploying sky marshals, US and British carriers have taken significant steps to ensuring the sanctity of the cockpit through cockpit-door reinforcement and the worldwide increase in the number of bags being physically inspected has benefited security.

6.3. *Ground security*

6.3.1. On 14 September 2001 the EU Transport Council decided that it was necessary to implement the essential measures to prevent unlawful acts against civil aviation set out in Document 30 of the European Civil Aviation Conference (ECAC) ([1]). The EESC in its opinion (28.11.2001) ([2]) on the *Proposal for a Regulation on establishing common rules in the field of civil aviation security* ([3]) welcomed the proposal insofar as it was a fast and adequate answer to ensure a high level of security by taking action to prevent acts of unlawful interference against civil aviation.

6.4. *The EU perspective*

6.4.1. The 11 September events demonstrated that air transport has been misused by terrorists to attack governments. However, the air transport industry itself is not the intended target of terrorist activity and should not be responsible for the cost of preventive measures. Therefore, the reinforcement of certain security measures by the public authorities in the wake of the attacks directed against society as a whole and not at the industry players must be borne by the public authorities.

6.4.2. All adjustments of security measures, including the change of security measures' recommendations into mandatory legal requirements should be subject to a cost/benefit analysis and to a check of their operational implications. It should be underlined that within the EU the financing of security for air transport currently differs from country to country. The cost is borne by the government in some States, paid for by a special departure tax in other States, and financed directly by air-transport operators in others.

6.4.3. The EESC expresses its concern about the financing of existing and new security measures. It believes that governments' financial obligations in this field must go further. Indeed as is the case for other modes of transport, airports are national frontiers and it should be the responsibility of governments to ensure the highest level of national security for their citizens at these borders. The security issue demands a harmonised approach in the EU and governments should undertake coordinated action in drawing up a comprehensive policy for financing and guaranteeing the highest level of security possible for air travel.

6.4.4. The EESC recalls its opinion on the Regulation establishing common rules in the field of civil aviation security ([4]) whereby it was established that 'it is unfair that airports and airlines should bear the additional expenditure. Securing public safety at airports should be shouldered by the Member States'.

6.4.5. The EESC notes that the US Congress adopted an emergency package of measures, part of which will be allocated to the safety and security of air transport. No cost reimbursement for additional security measures is available from EU Member States for European carriers so far. Consequently, a distortion of competition between European and US air carriers by contrasting policies regarding the allocation of cost for security measures must be avoided. However, the EESC believes that new technical norms should not be introduced under the guise of increased security whilst in fact serving other purposes (e.g. commercial promotion of new equipment, protectionism).

6.4.6. In light of the above considerations, the EESC takes the view that the draft Regulation on common rules for civil aviation security should also deal with the cost of funding of security and not leave this issue for subsequent legislation. The competitive position of EU airlines has to be taken into account in deciding about the funding of security measures.

6.4.7. The EESC reiterates its previous call that the other pieces of proposed legislation dealing with civil aviation security should be promoted and adopted as soon as possible.

6.5. The EU cannot adopt measures applicable in third country airports. Therefore, it should devise a mechanism assessing whether third country airports meet the essential security requirements. Failure to meet such requirements may lead to further discrepancies between the security levels of EU countries. Such discrepancies should lead to the consideration of an important aspect of security, namely the segregation of passengers and its likely impact in operational, human and financial terms.

([1]) ECAC is a voluntary association of European aviation authorities which has adopted a number of recommendations, notably in the field of civil aviation security.

([2]) TEN/097.

([3]) COM(2001) 575 final — 2001/0234 (COD).

([4]) OJ C 48, 21.2.2002, p. 70.

6.5.1. The EESC believes that the EU should aim at introducing measures that would not conflict with on-board security measures adopted by the US. Furthermore, since the security risk is not at the same level all over Europe, there is a need for flexibility based on the corresponding risk assessment.

6.5.2. Efforts should concentrate on preventing individuals and/or items presenting a security risk from boarding or being placed on the aircraft. The primary focus of action should be ground security, laying with the responsibility of governments.

6.5.3. There is a need to review the measures and procedures for airside access control and in particular the degree of trust placed on airport-based employees when entering restricted zones. If one can enter a restricted area with ease, the benefits of enhanced passenger screening have been negated.

6.5.4. Failure to address the concern may jeopardise the objective to establish a 'common secure area', in terms of aviation security. This objective, commonly known as One-Stop Security (OSS) is to apply the appropriate security measures at the point of origin only, thereby removing the requirement for these measures to be repeated at the point of transfer.

6.5.5. The ECAC 30 air cargo security system could also be used in devising a container security system in the maritime sector. The ECAC 30 is based upon the 'Known shipper' system and the issuance of consignment security certificate. However, the ECAC 30 concept cannot be applied to tramp shipping in view of its fundamental differences from container/liner shipping as well as from air transport.

6.6. The stakeholders should be an integral part of the security process that includes the drafting, implementation and quality control of security measures. Airlines operating to States should have a right to see the inspection reports and/or any recommendations made, since they will be directly exposed to security risks as a result of any shortcomings by States or airports.

6.6.1. The EESC is of the opinion that the deployment of sky marshals should be left to individual airlines and individual governments. The acts of unlawful interference should be prevented on the ground. However, where the State mandates the use of armed in-flight security personnel, they should be provided by the State which must have the responsibility for funding, selecting and training such personnel.

6.6.2. The EESC does not believe that the arming of the crew with lethal weapons offers an alternative solution, as the disadvantages could be much greater than the benefits. On the other hand, the potential use of non-lethal protective devices in the cabin area for use in emergencies should be further assessed.

7. **Conclusions**

7.1. The EESC welcomes the European Council's invitation for closer cooperation among the Member States in the fight against terrorism. It also welcomes the progress achieved since 11 September in incorporating the fight against terrorism into all aspects of the EU's external relations policy.

7.2. The EESC firmly believes that a policing strategy is not a secure strategy in a non-secure world. Hence, the EU should take the lead internationally in developing a broader framework for security which will address the causes of terrorism and not only seek to eliminate its effects.

7.3. The need to enhance security worldwide is imperative and recognised by governments and industry alike. Increased security measures will necessitate a strengthened co-operation between the various administrations of the EU Member States (immigration, customs, airport authorities and port authorities) and increased coordination between the European Commission services involved.

7.4. Shipping and civil aviation must continue to serve the flow of international trade effectively and efficiently and, to ensure this, ships, aircraft, airports and port facilities must adequately be prepared for the possibility of encountering terrorist attacks or other forms of criminal intentions.

7.5. Given the international character of maritime and air-transport security requirements should be based on reciprocal arrangements, uniformly applied and enforced without discrimination and must allow for the most efficient flow of trade.

7.6. . Security is an issue where all links in the transport chain should be involved and through the door-to-door concept all modes of transport are affected by security considerations at varying degrees. Hence, an interoperability of the integrated logistical chain is required.

7.7. There is a need to coordinate the decision-making processes in international fora and at the EU level in order to avoid possible inconsistencies between international and Community rules. Unilateral and arbitrary measures should be avoided since they hamper world trade by raising bureaucratic as well as other obstacles, and eventually leading to distortions of competition and adverse economic effects.

7.8. Bilateral agreements of some EU customs authorities with the US authorities in the context of the US container security initiative are inconsistent with a unified EU approach and they undermine EU solidarity. For this reason, the EESC supports EU action to pursue talks with the US with a view to transferring/integrating the bilateral arrangements in a multilateral agreement.

7.9. New security measures should be balanced in relation to the objectives they pursue, their costs and impact on traffic. They should not unduly restrain the personal human rights of the citizens nor the constitutional order of individual states, thus, serving the purpose of terrorists.

7.10. Transport workers are bound to be affected by the implementation of security measures. The European philosophy and culture sustains a strong respect for the human rights and any reaction to threats of terrorism should not disregard these long cherished principles.

7.11. New technical norms should not be introduced under the guise of increased security whilst in fact serving other purposes (e.g. commercial promotion of new equipment, protectionism).

7.12. EU Governments have the responsibility to ensure the highest practical level of national security commensurate with the threat for their citizens at their borders, including ports and airports. They should undertake coordinated action in drawing up a comprehensive policy for financing and guaranteeing the highest level of security possible for sea and air travel.

Brussels, 24 October 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Decision adopting a multi-annual programme (2003-2005) for the monitoring of eEurope, dissemination of good practices and the improvement of network and information security (MODINIS)'

(COM(2002) 425 final — 2002/0187 (CNS))

(2003/C 61/29)

On 19 September 2002, the Council decided to consult the Economic and Social Committee, under Article 157 of the Treaty establishing the European Community, on the above-mentioned proposal.

On 17 September, the Committee Bureau asked the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

At its 394th Plenary Session on 24 October 2002, and given the urgency of the procedure, the European Economic and Social Committee appointed Mr Retureau as rapporteur-general and adopted the following opinion unanimously.

1. **Introduction**

1.1. The MODINIS programme is a continuation of the objectives of the Lisbon Council of 23/24 March 2000 (making the EU the most competitive knowledge-based economy and using the open method of cooperation to monitor progress) and of the Feira Council of 19/20 June 2000, which adopted the eEurope action plan and the long-term perspectives for the knowledge-based economy encouraging the access of all citizens to the new technologies.

1.2. The Council Resolution of 30 May 2001 on the eEurope Action Plan: Information and Network Security [1] and the Council Resolution of 6 December 2001 on a common approach and specific actions in the area of network and information security [2] called upon Member States to adopt appropriate specific actions and approved the strategy put forward by the Commission to improve network and Internet security proposing the creation of a European cyber-security task force, including in particular the improvement of the early warning system.

1.3. The present draft decision concerns the monitoring of the eEurope Action Plan, dissemination of good practices and the improvement of network and information security (Article 1 of the proposal).

1.4. It puts in place a multi-annual programme intended:

— to measure and compare the performances of the Member States against each other and against the best in the world, using primarily statistics and information already available;

— to put in place a European mechanism for exchange of experience on best practice;

— to analyse the economic and social consequences of the Information Society with a view to identifying the best responses in terms of competitiveness and cohesion;

— to support efforts to improve network security and to foster the development of (high-speed) broadband rollout.

1.5. The activities of the programme are cross-sectoral and complement Community actions in other fields and under other programmes, which should not be duplicated.

1.6. The programme provides a common framework to promote interaction at the various levels: Community, national, regional and local.

1.7. The actions to be undertaken in pursuit of these objectives include the following:

— collection and analysis of data on the basis of new indicators, focusing on information relating to the objectives of eEurope 2005;

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[1] Council Resolution on Information and Network Security, see http://register.consilium.eu.int/pdf/en/01/st09/09799en1.pdf

[2] Council Resolution on a common approach and specific actions in the area of network and information security, OJ C 43, 16.2.2002.

— studies on good practices serving implementation of eEurope 2005;

— organisation of initiatives (seminars, workshops, etc.) particularly to promote cooperation and exchanges of good practice;

— support of the Information Society Forum (network of web-based experts) as a source of advice for the Commission on implementing the Information Society;

— financing a range of initiatives on network and information security, particularly in wireless communications, and supporting the cyber-security task force;

— support efforts to enhance security at the various levels by promoting exchanges of experience (training, workshops, etc.).

1.8. The Commission will award appropriate contracts for the implementation of these concrete measures, itself helping with the collection and dissemination of information, the development of web services, the organisation of meetings of experts, seminars and conferences and carrying out preparatory work on the information and warning system in the area of network and information security (Article 3).

1.9. The programme will have a budget of EUR 25 million over the period from 1 January 2003 to 31 December 2005, distributed annually among the Member States (Article 4). The Commission, assisted by a committee composed of representatives of the Member States, will draw up a work programme each year (Articles 5 and 6).

1.10. Community aid will be subject to prior appraisal, monitoring and subsequent evaluation procedures. The Commission will conduct an ongoing evaluation of the programme to assess to what extent it meets the objectives, informing the committee of progress. At the end of the programme, the Commission will produce an evaluation report.

2. **General comments**

2.1. The Committee has expressed its support and encouragement for all initiatives to promote the Information Society in a number of opinions. Such initiatives include the eEurope Action Plan, network and information security policy [1], the fight against computer-related crime [2], the need to develop a knowledge-based society without discrimination [3] and the right to access the Internet securely in terms of the protection of personal data and the security of commercial transactions and IT services [4].

2.2. Benchmarking provides a common mechanism for analysis and reliable comparison provided the indicators are well chosen and the information collected is relevant. The Committee feels that a common method for achieving this will undoubtedly bring essential added value at the Community level.

2.3. The Committee also shares the Commission's view that, to fully realise the objectives of a competitive knowledge-based society, the development of high-speed access is a key requirement for Europeans and should be viewed as a service of general interest, readily accessible throughout the Community at affordable cost. This means it has to be eligible for Structural Fund support and EIB aid for appropriate investment. The Committee therefore endorses the priority given to broadband networks in the programme.

2.4. The Committee wonders whether the programme funding is commensurate with the considerable number of measures proposed which cover all countries, range from European to local level and are horizontal in nature. But given the delays in getting the programme up and running, allocations not taken up in the first year should be carried over to the next two years, and this programme should be seen as experimental, bearing in mind that the prospects for development of the Information Society are long-term, that technological change is rapid and that the full potential in terms of access and use has not yet been achieved, especially in regions which are disadvantaged in various ways.

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(1) ESC Opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on network and information security: proposal for a European policy approach, OJ C 48, 21.2.2002.

(2) ESC Opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Creating a Safer Information Society by Improving the Security of Information Infrastructures and Combating Computer-related Crime, OJ C 311, 7.11.2001.

(3) ESC Opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999.

(4) ESC Opinion on the Proposal for a Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communication sector, OJ C 123, 25.4.2001.

2.5. The Committee shares the Commission's view on the need to avoid duplication, given the considerable number of programmes and measures already implemented and funded by the Community.

2.6. The work programme drawn up by the Commission with the assistance of a committee composed of representatives of the Member States could be submitted for as wide a range of consultation and expert opinion as possible, for example through the Forum, which could suggest new projects or directions based on new developments, or by urging the Member States to introduce consultative procedures on the themes of the programme in order to address the proposals and the needs expressed by users, experts and the network economy more effectively.

2.7. While prior and subsequent evaluations, as well as monitoring, are essential, the Committee would nevertheless suggest that the methods employed should not be so bureaucratic as to delay, or even cripple, proposals for initiatives and measures submitted by associations or small groups of experts with no major financial resources of their own. Access to the programme must not be limited to institutional bodies with their own or external funding or permanent teams; on the contrary, the programme must make it possible to mobilise all the creative forces in a strategic field, quickly and across a wide spectrum, for the present and future of the Union.

2.8. Finally, the Committee would support and encourage this programme, the development, progress and results of which it intends to follow with interest.

3. **Specific comments**

3.1. The Committee is particularly concerned by security issues associated with the development of wireless networks; according to a recent survey, nearly 80 % of French companies using these technologies are not sufficiently aware of the security loopholes found in such communication technologies when systems for connection identification and effective encryption of data transmitted via current technology are either non-existent or inadequate. By way of example, in the La Défense area of northwest Paris, where the head offices of the largest companies are located, around 40 % of wireless connections are not yet secured effectively [1].

3.1.1. While wireless connections offer great flexibility of use, they use waves which may go beyond the confines of the buildings where they are used and which may be picked up from the outside with very simple equipment, thereby giving access to hostile intruders who 'hunt' for non secured connections from vehicles in the street (a practice known as 'war-driving').

3.1.2. In addition, Community and public sites are sometimes defaced by crackers who post more or less coherent messages; this can undermine confidence in eAdministration. Users' misgivings with regard to the eEconomy should also be taken into account so that particular attention is focused on making electronic commerce secure as a means of promoting this form of trading within the internal market.

3.1.3. The programme should include a whole range of concrete measures to promote a substantial increase in society's awareness of security issues, whether they relate to problems specific to each technology, network architecture or software, the protection of personal information or information storage procedures, so that networks and stored information can withstand accidents, natural disasters, various kinds of hostile attack and crime, like economic espionage, piracy or terrorism. Otherwise we may be jeopardising the future of businesses or the durability of data that is essential to the functioning of the economy and administration. A range of appropriate means should be employed to create a real security culture. Such a culture must be based first and foremost on the training and accountability of all stakeholders in the Information Society.

3.2. The security culture should be conceived in a way which is fully compatible with the freedom of information, communication and expression, economic, social and cultural freedoms and generally with the whole range of human rights. The Committee is concerned by various legislative approaches adopted recently in a number of countries, particularly in the aftermath of the 11 September terrorist attacks on the USA, which are proposing, or seek to implement, measures which may be effective but which, in some cases, as far as the internet is concerned, go too far in undermining legal rights and may impose a disproportionate financial and material burden, as well as excessive penalties, on providers of access, data storage space or site hosting. At the same time, the effectiveness of such measures is debatable as they are not targeted, but rather seek to monitor all communications over long periods (six months to a year). A knock-on effect of this could be a substantial increase in users' connection costs, a development which would be counterproductive for the expansion of the Information Society, while those with criminal intent would take steps to evade any surveillance, in most cases successfully (the necessary technologies already exist).

[1] *Source:* SVM magazine, October 2002.

3.3. In the Committee's view, an important priority for the programme and one of the key objectives of the Information Society should be to put greater effort into finding the most effective means of reconciling the need for information and network protection, and, more generally, the security of people and property on the one hand, with civil liberties and users' rights to cheap and totally secure broadband access on the other.

3.4. Finally, the Committee suggests that consideration be given to the feasibility of carrying out a very concise, periodical assessment of all the efforts undertaken by the Community and the Member States to promote the various aspects of the Information Society, a kind of logbook of the initiatives, programmes and actions conducted at the various levels, their overall cost and the progress made, including investment in broadband networks with the assistance of Community funds and other public funds.

Brussels, 24 October 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation establishing the European Union Solidarity Fund'

(COM(2002) 514 final — 2002/0228 (CNS))

(2003/C 61/30)

On 25 September 2002 the Council decided to consult the European Economic and Social Committee, under the third paragraph of Article 159 of the Treaty establishing the European Community, on the above-mentioned proposal.

At its 394th Plenary Session on 24 October 2002 the European Economic and Social Committee appointed Mr Kienle rapporteur-general and adopted the following opinion by 80 votes in favour, with two abstentions.

1. Presentation of the European Commission's proposals

1.1. In the wake of the enormous damage and cost caused by the recent flooding in central Europe, the European Commission has submitted a proposal for a Council Regulation establishing a new European Union Solidarity Fund. The purpose of this Fund is to help regions in the Member States and the candidate countries that have been hit by major natural, technological or environmental disasters.

1.2. The new Solidarity Fund is to differ in essence from the Structural Funds and other existing Community instruments. It is to be focused on providing immediate financial assistance to help the people, regions and countries affected to return to normal as far as possible.

1.3. Up to EUR 1 billion are to be made available each year between 2002 and 2006. Funding in the form of a single grant will be awarded at the request of the country affected.

2. Comments of the European Economic and Social Committee

2.1. The European Economic and Social Committee gives its unqualified approval to the Commission proposal.

2.2. The Committee supports the need for particularly urgent action so that the Solidarity Fund can be up and running before the end of the year.

2.3. The scale of this year's flooding in central Europe brought to light the intolerable fact that the EU is equipped with Community instruments for providing disaster relief in other areas of the world, but has no such instruments for its own Member States.

2.4. The Committee thinks that it is justified to restrict immediate assistance from the EU to the following measures: immediate restoration to working order of infrastructure and plant in the fields of energy, water and waste water, telecommunications, transport, health and education; providing temporary accommodation; immediate protection of the cultural heritage and cleaning up of the natural zones affected. The Committee considers that it is right and appropriate to apply the subsidiarity principle even in the case of disasters.

2.5. There can be no lasting Europe-wide solidarity unless use of the aid is transparent and makes sense. Accordingly, the Committee advocates the fixing of clear thresholds to trigger the release of Solidarity Fund monies. However, other considerations could have to be borne in mind in the event of cross-border disasters.

2.6. The Committee acknowledges that the European Union has made rapid and unbureaucratic use of existing Community instruments to help the Member States and applicant countries in question and that the European Parliament has supported immediate action: this is particularly true in the case of direct assistance for farmers, the deployment of the Structural Funds, the European Investment Bank's loan offers and the use of the Phare and Sapard programmes in the applicant countries.

2.7. The Committee would pay particular tribute to the fact that the public and organised civil society in the regions and Member States in question have shown solidarity, public spiritedness and an exemplary willingness to help by assisting neighbours directly, rescuing humans and animals, securing dikes, bringing in harvests, taking part in cleaning-up operations, and making generous donations in cash and kind.

2.8. The Committee thinks there is a vital need to examine straight away to what extent human action has contributed to the freak weather and hence the disasters, and to act accordingly. Action to prevent flooding and climate change must take on a new major importance. The Committee endorses the comment made to the European Parliament that 'prevention always costs less than having to repair the damage' [1].

Brussels, 24 October 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

[1] Speech/02/362, Commissioner Barnier, European Parliament, 3 September 2002.

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Recommendation on the prevention and reduction of risks associated with drug dependence'

(COM(2002) 201 final — 2002/0098 (CNS))

(2003/C 61/31)

On 10 June 2002 the Council decided to consult the European 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 was responsible for preparing the Committee's work on the subject and appointed Ms Le Nouail-Marlière as rapporteur-general.

At its 394th Plenary Session (meeting of 24 October 2002) the Committee appointed Ms Le Nouail-Marlière as general rapporteur and adopted the following opinion by 93 votes to one, with three abstentions.

1. Summary of the draft recommendation of the Council proposed by the Commission

1.1. The EU Member States have adopted common measures for combating drug addiction since the mid 1980's. In 1990 the Rome European Council adopted the first European Plan to Combat Drugs. It was then revised and updated by the Edinburgh European Council in 1992. The 1995-1999 EU Action Plan stressed the need for a multidisciplinary and integrated response, centred on demand reduction, supply reduction, the fight against illicit trafficking and international co-operation and co-ordination.

1.2. The Amsterdam Treaty singles out drugs as a major scourge and danger to public health; drugs clearly remain a priority subject for Community Action in the field of Public Health. The third paragraph of Article 152(1), states that 'The Community shall complement the Member States' actions in reducing drugs-related health damage, including information and prevention.' The reduction of drug-related health damage appears here as a new objective of the co-operation between Member States, alongside the traditional co-operation in the prevention field.

1.3. The EU Drugs Strategy (2000-2004) [1], endorsed by the European Council in December 1999, has three main public health targets:

— to reduce significantly over five years the prevalence of illicit drug use, as well as new recruitment to it, particularly among young people under 18 years of age;

— to reduce substantially over five years the incidence of drug-related health damage (HIV, hepatitis B and C, tuberculosis, etc.) and the number of drug-related deaths;

— to increase substantially the number of successfully treated addicts.

1.4. The main goal of the proposed Council recommendation, based on Treaty Article 152, is to facilitate the achievement of the second public health target by the Member States.

1.5. The proposal includes measures aiming to further integration between health and social care, while improving methods of training health care professionals in such matters and the prevention of drug-related infections.

1.6. The Member States are recommended to make drugs prevention and the prevention of drug-related health risks a public health goal, to introduce comprehensive prevention and treatment policies and to increase the effectiveness and efficiency of their efforts in drug prevention by establishing an appropriate means of assessment, including use of scientific evidence and more appropriate data collection.

1.7. Special emphasis is placed on the appropriate exchange of information within the European Union, which must be stepped up.

2. General observations

2.1. Why is this a recommendation and not a more binding legal instrument?

[1] EESC opinion on a European action plan to combat drugs (2000-2004) — OJ C 51, 23.2.2000.

The rule of subsidiarity does not allow stronger legal actions in the field of public health. Article 152 of the Treaty reads: 'The council, acting by a qualified majority on a proposal from the Commission, may also adopt recommendations for the purposes set out in this article'. This is the only recommendation in the field of public health, but there are recommendations that are more connected to law enforcement etc. (i.e. the supply side).

2.2. The Committee notes that other instruments are currently being prepared:

— Proposal for a Council framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking.

— Initiative by the Kingdom of Spain for the conclusion of a Convention on the suppression by customs administrations of illicit drug trafficking on the high seas.

— Draft Council Resolution on treatment of criminal drug abusers as part of service of sentence.

— Draft Council Resolution on generic classification of new synthetic drugs.

— Draft Council Recommendation drawing up an implementing protocol on taking samples of seized drugs.

3. This recommendation seeks to implement preventive programmes based on the tested evidence of projects already tried out in some Member States, and to extend the scope of possible schemes by involving the parties concerned in such prevention.

3.1. The aims of the drug programme are to encourage co-operation between Member States, provide support for their action and to promote co-ordination of their policies with a view to preventing addiction to illegal drugs. The programme was initially for the period 1996 — 2000, but it was later extended to the end of the year 2002.

3.2. The activities have focused on:

— improving knowledge of drug dependence and its consequences;

— the methods of prevention of drug dependence;

— improving information, education and training in the field, especially for young people and among vulnerable groups.

3.3. The programme also strived to enhance co-operation with other countries and international organisations active in the field of drug prevention. The actions have been implemented in close co-operation with Member States.

3.4. In order to ensure cost-effectiveness and added value of the Community's involvement, priority has been given to projects carried out on a large scale, projects that are relevant from the methodological point of view, innovative where applicable and likely to have a real impact on achieving the aims of the programme. They shall bring together public sector and non-governmental organisations offering sufficient proof of competence in the field and likely to encourage multidisciplinary co-operation.

3.5. Most of the projects funded are in the field of public health intervention rather than pure science, but with emphasis on evaluation. The number of funded projects during the whole period is approximately 180 and the total amount granted is EUR 38 million. The candidate countries have participated in some of these projects.

3.6. At the end of this year the Action Programme — together with the other 8 specific or vertical public health programmes — is coming to an end and will be replaced by one New Public Health Programme 2003-2008. The total budget for this period is EUR 312 million. The fragmented approach of the old programme will be replaced by a horizontal integrated programme consisting of 3 strands:

1. improving health information;

2. rapid response mechanism;

3. tackling health determinants through prevention and health promotion.

3.7. The drug problems will be an integrated part of the third strand. Nothing indicates that this important field will lose emphasis it enjoys presently, especially as it is stipulated in article 152 of the Treaty that 'the Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention'.

4. **Drug policy in the Member States**

4.1. Drug policies vary in different Member Sates of the EU. On one end of the spectrum is the most repressive strategy. The overriding aim in some Member States is 'drug free society'. Drug misuse is regarded as unacceptable and should never become an integral part of society. The problem of drug misusers is treated more as a matter for the criminal justice system than a matter of the social services. Risk reduction methods are used and accepted to some extent, but are strictly controlled. Methadone maintenance, in one example, is controlled under rules defined by the national Board of Health and Welfare and the number of patients may not exceed a certain number.

4.2. On the other end of the spectrum, the central goal is to reduce the risks experienced by drug misusers, those in their immediate environment and society in general. Some Member States make a clear distinction between 'soft drugs', such as cannabis and 'hard drugs' such as opiates and amphetamine. Great effort is made to hinder misusers from ending up in an illegal environment where outreach work can be difficult.

5. **Risk reduction /harm reduction**

5.1. Risk reduction is a general concept covering the reduction of any type of harm caused by the behaviour of individuals or by social and/or medical interventions. In the drug field it is particularly used to signify the reduction of risks for infections and other types of morbidity in drug users who continue to use drugs.

5.2. There have been arguments over the morality of harm reduction. Some people say that it condones or promotes drug use but people who support it say it is realistic and helps keep drug users safe and alive and respects choice and individual freedom. The thrust of policies is moving in the direction of pragmatism, emphasising evaluation. The state of research does not justify extreme positions.

5.3. In using the concept risk reduction instead of harm reduction the recommendation is more neutral and risk reduction is in fact almost universally accepted.

5.4. Methodology. There exists a variety of risk reduction methods. Many of the risk reduction methods mentioned in the present directive are already being used in many or all member states, but to a different degree. It is to be noted that only some of these methods are included in the present recommendation.

A. *Methods included in the recommendation.*

Methadone maintenance.

Vaccinations.

Information.

Clean needles and syringes.

Outreach, low threshold services.

B. *Risk reduction methods not included in the recommendation*

Medical prescription of heroin.

Injection rooms.

On-the- spot-testing.

Open drug scenes.

6. **The need for evaluation**

Evaluation involves clarifying and defining concepts and methods and assessing the impact of interventions. The European Commission has been promoting evaluation in the drug field as a co-organiser of two European conferences on the subject. The Community Action Programme for the Prevention of Drug Dependence identifies data, research and evaluation as primary areas for action. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) plays a crucial role in this connection. Its main task is to provide objective, reliable and comparable information at European level concerning drugs and drug addiction and their consequences.

7. **Conclusions**

7.1. The EESC notes that this recommendation focuses on the aim of reducing drugs-related health damage, in accordance with Treaty Article 152, and in particular encompasses information and risk prevention, as well as specific responses to the need to reduce the demand for drugs; it does not tackle the reduction of supply. The EESC regrets, however, that the aims specified in the recommendation lack an interface dimension which would encourage the pooling of efforts in different fields: health, police, education, social services and employment.

7.2. The EESC is pleased to see, in connection with the reduction and prevention of drug-related risks, that the implementation of specific programmes to prevent AIDS and other infectious diseases is advocated and stepped up.

7.3. The Committee agrees, as already touched on in its opinion [1], on the need to include measures focusing on this area of public health at specific levels (schools, health care networks, firms) so as to monitor target groups as closely as possible, both on a local geographical basis and in terms of social patterns. Risk factors are changing all the time and protective measures must keep pace.

7.4. Prevention and forms of action to curb drug dependence can be incorporated into occupational health and safety programmes. The workplace may not necessarily be the source of drug dependence but it can be an environment where such situations become entrenched. The social partners should be mobilized, along with the traditional players in the health and social sectors, in framing combined prevention/reintegration programmes to assist drug-dependent workers where necessary.

7.5. The recommendation could therefore provide under points 2 or 3, in connection with the horizontal occupational health programmes, for preventive programmes (information, awareness-raising, direction towards care services, action to facilitate access to treatment) which prioritise high risk sectors and involve the social partners.

7.6. The Committee supports the recommendation in the belief that prevention and reduction of the risks associated with drug dependence must be integrated into the Community framework, which provides for exchange of best practices and the protection of persons affected by a centuries-old social scourge which strikes blindly, in constantly shifting shapes and forms.

[1] EESC opinion on a European action plan to combat drugs (2000-2004) — OJ C 51, 23.2.2000.

Brussels, 24 October 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 77/388/EEC to extend the facility allowing Member States to apply reduced rates of VAT to certain labour-intensive services'

(COM(2002) 525 final — 2002/0230 (CNS))

(2003/C 61/32)

On 7 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the above-mentioned proposal.

Owing to the urgent nature of the opinion, the European Economic and Social Committee decided, at its 394th Plenary Session of 24 October 2002, to appoint Mr Ladrille rapporteur-general, and adopted the following opinion by 68 votes to two with no abstentions.

1. The Committee agrees with the Commission's proposal to extend by one year the period of validity of the authorisation granted to those Member States which have introduced the measure, to apply reduced VAT rates to certain labour-intensive services.

2. The Committee restates the view, expressed in its opinion of 26 May 1999 [1], that the measure introduced by Directive 1999/85/EC [2], amending the 6th VAT Directive 77/388/EEC [3], provides a means of creating jobs and, at the same time, of more effectively combating the black economy.

3. The Committee calls upon the Member States to draw up assessment reports on the measure in good time, so that the European Parliament and Council can take a final decision on the VAT rate applicable to labour-intensive services.

[1] OJ C 209, 22.7.1999, p. 20.
[2] OJ L 277, 28.10.1999, p. 34.
[3] OJ L 145, 13.6.1977, p. 1.

Brussels, 24 October 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of Central and Eastern Europe in the pre-accession period'

(COM(2002) 519 final)

(2003/C 61/33)

On 18 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

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

At its 394th Plenary Session on 24 October 2002, the European Economic and Social Committee adopted the following opinion by a majority vote with one abstention.

1. The European Commission's proposals

1.1. The floods in mid August 2002 also caused considerable damage in several applicant countries. The Czech Republic and Slovakia were particularly affected.

1.2. The Commission thinks that, inter alia, the Sapard pre-accession instrument set up by Council Regulation (EC) No 1268/1999 should be used to respond to exceptional natural disasters in applicant countries. The objectives of Sapard include 'solving priority and specific problems for the sustainable adaptation of the agricultural sector and rural areas in the applicant countries.'

1.3. The Commission is therefore proposing higher ceilings on aid for rebuilding measures in rural areas hit by exceptional natural disasters. The ceiling on public aid is to be raised from 50 % to 75 %, and the Community may contribute up to 85 % of the total eligible public expenditure instead of 75 %.

2. The European Economic and Social Committee's comments

2.1. The Committee approves the proposal, which it regards as a sensible adjunct to the Commission proposal establishing an EU Solidarity Fund to deal with natural disasters.

2.2. The fact that the proposal will not affect the Community budget makes the Committee's decision to give its approval that much easier.

2.3. On the other hand, the Committee regrets the enormous start-up problems and administrative difficulties involved in implementing Sapard. To date it has not been possible to deploy anywhere near the EUR 550 million provided each year from the Community budget for the 10 applicant countries. The Committee thought in its opinion CES 70/99 that given the serious weaknesses in agricultural structures and the huge problems of adjustment facing the agricultural and food sectors the funding would be inadequate to prepare successfully for accession.

Brussels, 24 October 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH