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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

402nd PLENARY SESSION ON 24 AND 25 SEPTEMBER 2003

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — European Defence — Industrial and Market Issues — Towards an EU Defence Equipment Policy'

(COM(2003) 113 final)

(2004/C 10/01)

On 12 March 2003, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 September 2003. The rapporteur was Mr Wilkinson.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 117 votes to 3, with 5 abstentions.

1. Introduction

1.1. In its Communication [1] the Commission suggests that the time is now right to start building a more coordinated policy for defence equipment to complement national policies in the area. This Communication follows on from two earlier Communications on defence related industries [2], which resulted in a very limited number of actions.

1.2. The Commission believes that it can make a key contribution by improving the quality of the EU regulatory framework governing the treatment of armaments in Europe thus helping to safeguard the survival of a viable EU defence industrial base.

1.3. Their comments and proposals are made on the basis of the European Security and Defence Policy (ESDP) and within the context of the developing Common Security and Foreign Policy (CSFP), but are not dependent on these policies.

1.4. The proposed measures are intended to encourage industrial restructuring and consolidation, to promote the establishment of a European defence equipment market and to enhance competitiveness of the European industry. This is an important challenge in the development of ESDP. They are also intended to achieve broader socio-economic objectives.

1.5. The Communication recognises that action is most likely to add value in the areas of the defence equipment market and of defence related research.

1.6. The General Affairs and External Relations Council, at its meeting in Luxembourg on 16 June, supported some of the activities included in the Communication.

[1] COM(2003) 113 final.
[2] COM(96) 10 final and COM(97) 583 final.

2. **General comments**

2.1. The Committee welcomes the Communication as timely and can agree with most of the actions proposed in it. The key objective of any changes agreed must be the more efficient and cost effective delivery of the defence capabilities that Member States need within the resources made available.

2.2. Defence is a highly political matter and one where not all Member States are agreed on the EU's role. These proposals must be examined in this political context. However there is agreement that EU defence capabilities are not yet sufficient for all the tasks that are envisaged at present (the Petersberg tasks), let alone the tasks that could be agreed in the future. Clearly the EU must have available military capabilities to match the needs of its agreed external and defence policies if these are to have credibility. While there is as yet no general agreement among Member States on the need for the EU to develop its military capabilities, the Committee welcomes actions to this end as a key part of future viable ESDP.

2.3. Defence is also a very complex area; the range of possible tasks (national, NATO, EU, UN and other) and equipments for these, as well as the existing arrangements for them, which often overlap and can duplicate each other, make it impossible to rationalise fully. However, it would clearly be useful to reduce these differences.

2.4. To this end the EU must make the most of the resources already given to these capabilities. It is telling that while the combined EU spending on defence is about 40 % of that of the United States, the operational capabilities produced are only about 10 %. It is clear that EU countries are getting less value for money for the resources involved than they could.

2.5. Without real improvements in the development of the new technologies relevant to defence, EU industries will continue to lose ground in the production of operational capabilities; this is contrary to the Lisbon strategy and bad for employment prospects. The open method of coordination could play a useful role in the interaction of national industrial policies at EU level in this respect; further, the consultations, evaluation and benchmarking at EU level that this would allow could help towards the rationalisation of the industries involved.

2.6. It is always right to make the most of available resources, but there is limited value in doing this alone. The political will must exist to pay for what is needed to meet existing and expected tasks (paragraph 2.3 above). Moreover, in the most demanding tasks military forces that do not have equipment that is technologically advanced have no hope of success.

2.7. The Committee notes that little has been said about access to, and transfer of, technology and information between Member States in the defence sector. The Committee notes its importance for the most technologically advanced equipment.

2.8. The majority of current Member States and a significant number of Accession States are members of NATO. Further, the EU has negotiated assured access to some NATO assets for some EU operations. It is clearly therefore necessary to develop any EU systems and standards taking full account of existing NATO equivalents. Equally, for equipment, interoperability between EU and NATO forces will remain crucial and will continue to be more important than standardisation (although this should continue to be encouraged where possible).

2.9. Most importantly, since the current situations on defence industries and equipment [1] are so different in the various Member States, it must be accepted that a multi speed and flexible approach is essential; the Committee therefore welcomes the Commission's 'when and where possible' approach and notes that overall progress, and the benefits coming from this, will be far slower than desirable. It also hopes that as changes are introduced, the disparities in defence equipment performance between larger and smaller Member States will be progressively reduced.

2.10. EU level procedures established to harmonise defence equipment policies could lead progressively, for those Member States wishing to participate, to more efficiency, better results, lower costs and a positive effect on RTD expenditure.

2.11. Turning to the proposals in the Communication, the Committee supports them except where indicated in the paragraphs that follow.

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[1] The European Capability Action Plan (ECAP) has identified EU capability shortfalls which must be corrected if agreed EU tasks are to be undertaken.

3. EU defence industry

3.1. The Committee strongly endorses the need to maintain a viable defence industrial base in the EU that is able of competing in the global market. Without this Member States would have to rely on third countries (notably on the United States) for much of their defence related equipment. It is important to develop an 'EU defence market' to encourage more purchases from EU sources.

3.2. There has already been much consolidation in the EU's defence industries and, indeed, in defence industries worldwide. Because it is a worldwide market, most major EU companies already have connections (ownership, partnership, contractual or other) with non-EU companies to enable them to operate in the global market effectively. It is also a limited market, a fact that has led companies to rationalise and to cooperate in order to be able to continue to compete successfully. This trend continues and will be important in some of the Accession Countries, which have so far made little progress in this area.

3.3. As the Communication notes, a major contribution to security and defence systems now comes from companies developing their products and services also for civil applications. This trend is likely to increase.

3.4. State involvement in defence industries is unavoidable since States are the only legitimate customers for many of their products; but State ownership of such industries must be limited as much as possible if competition is to be meaningful. It is recognised that the State will remain involved in some fields of special sensitivity (for example, nuclear and cryptographic) and that State support for RTD is often necessary to keep armed forcers at the leading edge of technological advance.

3.5. The Committee agrees that restructuring must be primarily a matter for the industries concerned, taking account of market realities. It also notes that there are particular challenges facing many of the Accession Countries in the restructuring of their defence industries [1] which make it vital that they are fully involved in the whole of this subject as soon as possible.

3.6. Restructuring will inevitably mean accepting that Member States will lose some domestic defence industrial capabilities so that they can concentrate on others, a process that has already started. The aim should be to ensure that between them the EU Member States have a full range of industrial capabilities to match EU defence needs.

4. The market and its regulation

4.1. The Committee welcomes the review of the regulatory framework for the EU defence industry. However, it wishes to comment on three aspects of the proposals in this area.

4.2. *Monitoring*. The Communication suggests that there is a need to establish an then to monitor the economic situation in the EU defence industrial base including the ability to support the supply requirements for ESDP, levels of competitiveness and design expertise, R&D investment etc. In the Committee's opinion this level of monitoring is unrealistic (for example, because of the factors outlined in paragraphs 3.2 and 3.3 above) and unnecessary. Moreover, intellectual property rights and commercial confidentiality would be major problems in some cases. Member States should be asked to give relevant details as necessary, and should include an estimate of the numbers employed related to their skills.

4.3. *Defence procurement*. The Communication suggests that the EU should itself be directly involved in procuring defence equipment. While agreeing that there could be merit in centralising some aspects of the procurement of defence equipment, the Committee would like to see the added value that such a role for the EU would bring before it could agree this proposal. The Committee agrees that so far as possible a single set of rules for defence procurement should be the long term aim; but it will take a long time to achieve such uniformity, given the very different rules now used by Member States, and allowance will always have to be made for procurement from third countries, which will have different procedures and rules. It is expected that the future Agency (see paragraph 6.1 below) will have a major role in formulating these rules.

[1] Many of these had armed forces and defence industries which were part of a system that did not match that of current Member States.

4.4. *Competition policy*. The Committee fully supports the Commission's general position, but notes that limiting the scope of Article 296 must not be allowed to reduce the ability of Member States to safeguard their national security interests. It also repeats that because of the involvement and the interests of States as the sole legitimate customers for much defence equipment, competition will continue to be harder to ensure than for other products.

5. **A more coherent EU advanced security research effort**

5.1. There is currently massive under investment in defence related research, technology and development (RTD) and the organisation charged with managing cooperative defence related research programmes (WEAO ([1])) handles only 2,5 % of EU investment in the area. Where possible, it makes sense and adds value to coordinate appropriate national research activities at EU level, as shown by the results of the European Research Area. RTD will be a key area if the EU is to meet the desired objectives of the EU defence equipment policy.

5.2. There is a need to define 'EU strategic technologies' ([2]) as a precursor to Member State agreement on the EU agenda for advanced research. Projects chosen must have the potential to impact directly on improved security capabilities in relevant areas. It will also be necessary to agree on how to find the necessary funding and how to apportion the resultant benefits, but it is clear that there is a need to raise defence expenditure in most Member States to achieve a meaningful improvement in RTD. The proposed Agency could be most useful as a centre for consultation, for holding and sharing information and, where appropriate, for promoting common projects and production.

5.3. More generally, it is necessary to identify and agree common requirements to the greatest extent possible. This would allow industry to recommend the most cost effective development and production (or procurement) routes, would aid interoperability and would lead to viable production runs. It will also be necessary to understand national RTD requirements and to coordinate better the evolution of technologies and the necessary funding.

6. **Themes for further reflection**

6.1. *EU Defence Equipment Agency*. In the past there have been many calls for the establishment of some sort of Agency; the Commission Communication refers to it as a defence equipment agency, in the EP report on security and defence architectures it is called an armaments and research agency and in a recent draft of the Convention on the Future of Europe, the European Armaments, Research and Military Capabilities Agency. The suggested roles for an Agency vary, more or less in accordance with the suggested names. However, a political decision was taken at the General Affairs and External Relations Council meeting on 16 June 2003 that an Agency in the field of defence capabilities should be set up. The details of its exact role are under discussion.

6.2. The Committee welcomes the Commission's understanding that any Agency must reflect the political choice of Member States that much RTD and procurement should be conducted outside the current EC Treaty and their wish to use existing agreements ([3]) as a basis for Agency work. Since not all Member States will necessarily take part in the Agency's work, there must be an agreed basis for contributions to financing it which will take into account the participation and contributions of those who do take part. The Committee looks forward to commenting in detail once it is clear exactly what the Agency's role will be and how it will add value.

6.3. *Security of supply*. Few, if any, Member States will restrict their procurement of defence equipment to the internal market, so there will continue to be bilateral arrangements both for supply and for security of supply. The Committee considers that the responsibility for security of supply in these circumstances must remain with Member States, who may then choose to use any EU arrangements (such as the proposed Agency) or to make their own arrangements bilaterally or multilaterally.

([1]) Western Europe Armament Organisation

([2]) This is defined here as technologies vital to the capabilities identified as necessary for the agreed EU tasks.

([3]) Such as OCCAR (Organisme Conjoint de Coopération en matière d'Armement), and the Europa MoU (Memorandum of Understanding, within the WEAO framework)

6.4. *Trade issues*. The Committee will comment on this important aspect when detailed proposals are put forward by the Commission, but agrees that it would now be helpful to monitor existing practices for dual use exports with the aim of ensuring fair competition.

7. **Conclusions**

7.1. The EESC welcomes the start of the process of establishing a better coordinated policy for defence equipment in the EU as a key part of a viable European Security and Defence Policy (ESDP), concentrating on achieving the capabilities needed to meet agreed EU requirements in the ESDP, within the context of the Common Security and Foreign Policy (CSFP). Agreed EU level procedures could lead to more efficiency and lower costs for participating Member States.

7.2. It recognises that the key element in this will be the necessary political will, notably in the area of increased funding.

7.3. It is in both the political and the economic interests of the EU to have a defence industry that is capable of competing globally and the Committee notes that restructuring is already happening largely because of market pressures.

7.4. Establishing and monitoring relevant data on the industries will best be done by Member States; the data should include employment figures related to skills.

7.5. The EESC doubts the added value of the EU's proposed direct role in procuring defence equipment.

7.6. A coherent EU advanced security research effort is vital to future progress, and defining the 'EU strategic technologies' required for closing the capabilities gap is a key element in this.

7.7. The Committee looks forward to commenting in detail on the EU Agency in the field of defence capabilities once its role and other details have been agreed.

7.8. Security of supply must remain the responsibility of Member States for the foreseeable future, although the Agency could play a useful role.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits (codified version)'

(COM(2003) 252 final — 2003/0094 (COD))

(2004/C 10/02)

On 26 May 2003 the Council decided to consult the European Economic and Social Committee, under Article 308 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 September 2003. The rapporteur was Mr Green.

At its 402nd plenary session (meeting of 24 September 2003), the European Economic and Social Committee adopted the following opinion with 119 votes in favour, one against and three abstentions.

1. Background

1.1. On 1 April 1987 the Commission instructed its staff that all legislative acts should be codified after no more than ten amendments or at even shorter intervals to ensure that the Community rules are clear and readily understandable.

1.2. Given that no changes of substance may be made to the instruments affected by codification, an interinstitutional agreement was made on 20 December 1994 between the European Parliament, the Council and the Commission whereby an accelerated procedure may be used for the fast-track adoption of codified instruments.

2. The Commission proposal

2.1. The purpose of the present proposal is to undertake a codification of the low voltage directive 73/23/EEC. The new directive will supersede the various acts incorporated in it [1]. The proposal fully preserves the content of the acts being codified and effects only such formal amendments as are required by the codification exercise itself.

2.2. The low voltage directive covers electrical equipment designed for use with a voltage rating of between 50 and 1 000 V for alternating current and between 75 and 1 500 V for direct current. It therefore applies to a large proportion of the electrical appliances used for both professional and private purposes. It is the low voltage directive which sets out the requirements for CE marking and an EC declaration of conformity.

3. General comments

3.1. In principle, the EESC endorses the Commission proposal, which is intended to make Community legislation clear and transparent.

4. Specific comments

4.1. Proposed amendment to the wording of the second paragraph of Article 5:

> 'Standards shall be regarded as harmonised once they are drawn up and adopted by a recognised standards body, and published under national procedures. The standards shall be kept up to date in the light of technological progress and the developments in good engineering practice in safety matters.'

The present wording does not concern the bodies mentioned in Article 11 of the draft directive. In actual fact the standards are those drawn up by CENELEC [2].

[1] Annex V, Part A, of the draft directive.

[2] European Committee for Electrotechnical Standardization.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on injunctions for the protection of consumers' interests (codified version)'

(COM(2003) 241 final — 2003/0099 (COD))

(2004/C 10/03)

On 6 June 2003, the Council decided to consult the European 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 3 September 2003. The rapporteur was Mr Burani.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 124 votes to one.

1. The purpose of this proposal is to undertake the codification of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests. The new Directive will supersede various other Directives incorporated in it; their content is fully preserved, and they are brought together with only such formal amendments as are required by the codification exercise itself.

2. The Committee obviously supports the codification of Community rules, undertaken by the Commission in accordance with the decision of 1 April 1987 [1], and its opinion on the proposal for a directive is therefore favourable, as in previous cases regarding such initiatives.

3. The Committee notes that under the interinstitutional agreement dated 20 December 1994 between the European Parliament, the Council and the Commission, no changes of substance may be made to the instruments affected by codification, and that respect for this condition is guaranteed by the Commission in the text of the proposal. However, the Committee has a duty to verify the changes made before approving them. The rapporteur has done this and has found no cause for any specific reservations or comments. The Committee recommends that in future, for practical reasons and to save time, proposals for directives in all similar cases should contain an annex including a detailed list of differences — even the slightest ones — between the original texts and the codified versions.

[1] COM(87) 868 PV.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on:

— **the 'Proposal for a Decision of the European Parliament and of the Council modifying Decision No 163/2001/EC of the European Parliament and of the Council of 19 January 2001 on the implementation of a training programme for professionals in the European audiovisual programme industry (Media-Training) (2001-2005)'**

(COM(2003) 188 final — 2003/0064 (COD))

— **the 'Proposal for a Decision of the European Parliament and of the Council modifying Council Decision 2000/821/EC of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (Media Plus — Development, Distribution and Promotion)'**

(COM(2003) 191 final — 2003/0067 (COD))

(2004/C 10/04)

On 5 May 2003 the Council decided to consult the European Economic and Social Committee, under Articles 150(4) and 157(3) 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 4 September 2003. The rapporteur was Mr Braghin.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 127 votes to one with one abstention.

1. Introduction

1.1. The Media-Training programme is designed to improve the professional skills of people working in the European audiovisual industry through the provision of further vocational training. The aim is to equip these people with the knowledge and skills they need to allow them to take full advantage of the European and international dimension of the market and of the use of new technologies.

1.2. The Media Plus programme is designed to boost the competitiveness of the European audiovisual industry by means of measures to support the development of production projects and companies and the distribution and promotion of cinematographic works and audiovisual programmes.

1.3. The two programmes are due to end at a time of major change in the structure and workings of the EU, marked by enlargement, the intergovernmental conference, European Parliament elections and the renewal of the European Commission.

1.4. It is therefore necessary to establish a legal basis for prolonging the current Media-Training and Media Plus programmes pending the adoption of successor programmes, so as to ensure the continuity of Community support for the sector and avoid any disruption of these mechanisms, bearing in mind that they further Community objectives which are laid down in the Treaty.

1.5. The Commission proposes to increase the overall budget of the Media-Training programme to EUR 57,40 million and that of the Media Plus programme to EUR 435,6 million.

2. General comments

2.1. The Committee thinks that it would have been better if the Commission had taken earlier action to create the conditions and adopt the measures needed ahead of the discussion and submission of the new multiannual programme for the areas covered by Media-Training and Media Plus, rather than simply prolonging the existing programmes for a year. In this way it could have addressed the various needs and new realities of the audiovisual sector and respond to the constructive criticism the existing programmes have received. For instance, the conception and structure of the programmes need to be revised to meet the challenges arising from enlargement.

2.2. The Committee trusts that the current mid-term evaluation will take account of the suggestions and proposals contained in previous Committee opinions, as well as those made in the present one.

2.3. The level of funding scheduled for 2006 is essentially the same as for the preceding five-year period — indeed, in the case of the Media-Training programme it is actually lower. Even if the sum to cater for the impact of enlargement is added, the total figure is still not enough to meet the needs of a larger number of potential users and the increased opportunities for cooperation.

2.3.1. The Committee therefore hopes that the funds scheduled for Media projects, especially in the training field, will be increased in the EU general budget for 2006-2012 and will be divided up more effectively in the light of the new needs arising from the fact that the audiovisual sector is less developed in the new Member States.

2.3.2. Alongside the support provided under the programme, other financing opportunities (e.g. private funding mechanisms and EIB support) should be used more and geared more effectively to supporting SMEs, particularly the many micro businesses in the sector, with the Growth and audiovisual: i2i audiovisual scheme acting as a model.

2.3.3. A special effort should be made to identify mechanisms for providing tax concessions and creating a venture capital market tailored to the specific features of the sector, which is about to experience major innovations with the move to digital.

3. **Specific comments**

3.1. The Media desks, which provide the national interface with programme beneficiaries, are crucial for achieving the programme's objectives. Care must be taken to ensure that the Media desks being set up in the new Member States operate effectively and offer users in those countries appropriate information and services. This could have useful spin-off as regards the search for partners for co-productions and dissemination at European level.

3.2. A further way of promoting European films, both in Europe and elsewhere, is by supporting European film, documentary and cartoon festivals. Such support could be usefully supplemented with the systematic provision of information about these festivals, so as to facilitate the participation of authors and small independent producers, and promotion of their work at both EU and international level.

3.2.1. Festivals are an important means for promoting productions that are not exclusively commercial and often have a valuable cultural content, providing insight into a region's history and traditions. With proper backing, they can raise the profile of regional culture and audiovisual productions that have hitherto been overlooked or sidelined by international distributors. This need is bound to increase with the accession to the EU of countries whose culture and traditions differ from those of the current Member States.

3.3. The Committee supports the idea of turning the technical assistance office into an executive agency. This should make it possible to manage funds in a more flexible and transparent manner. The Committee urges the Commission to press ahead with the study it has launched.

4. **Conclusions**

4.1. The Committee hopes that the current mid-term evaluation will be followed by a wide debate and possibly consultations with stakeholders, so as to prepare the future Media programme as effectively as possible and to review the allocation of resources as of now, if necessary.

4.2. In the run-up to enlargement, the problem of funding for the audiovisual industry cannot be solved simply by a projection — based on current figures — for an enlarged Union with around 70 million new citizens and a wider development gap in the audiovisual sector. The Committee asks the Commission to take this into account as it draws up its proposals for the future EU budget, in terms of both the scale of funding and its suitability to meet recipients' needs.

4.3. The Committee reiterates and reaffirms some strategic points made in its opinion on the original proposals for the Media-Training and Media Plus programmes, which it adopted on 27 April 2000 [1]. In particular, the Committee would ask the Commission to take due account of the following points in its evaluation exercise and when preparing the future Media programme:

— ensure that the programme complements and is consistent with other Community measures, by adopting a common strategy and encouraging the audiovisual industry to take part in such programmes as Culture 2000;

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[1] EESC opinion on the Proposal for a Decision of the European Parliament and of the Council on the implementation of a training programme for professionals in the European audiovisual programme industry (Media-Training) (2001-2005) and the Proposal for a Decision of the European Parliament and of the Council on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (Media Plus – Development, Distribution and Promotion) (2001-2005), OJ C 168, 16.6.2000.

— provide aid at those stages of the audiovisual chain where intervention can bring greater added value (mainly at the beginning and end of the production process), in particular by facilitating access for SMEs by using more flexible mechanisms and arrangements such as slate funding (support for catalogues of projects);

— give priority to products which can be marketed commercially over an extended period, and take action regarding the length of production rights, as independent producers are particularly penalised here;

— give priority to technological development and innovation and transnational dissemination (in particular with the new Member States);

— set up an information and monitoring system for the new needs and developments of the audiovisual market;

— improve public access to the EU's audiovisual heritage by means of digitalisation and interconnection at European level, particularly for training and educational purposes;

— conduct an appropriate and systematic evaluation of aid, with a view to making optimum use of the financial resources available and meeting the needs of the audiovisual industry as effectively as possible;

— carry out pilot projects: little use has been made of these hitherto, possibly because they have concentrated on technological aspects. They should also focus on content.

4.4. In the training field, the main obstacle is overly rigid implementing regulations and, as already noted, inadequate investment. As the Committee proposed in its earlier opinion, incentives should also be provided for distance learning using new technologies, and coordination should be promoted between vocational training centres and universities, taking care not to distribute aid too thinly.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised

(2004/C 10/05)

By letter dated 26 November 2002, Mrs Loyola de Palacio, vice-president of the European Commission, requested the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on the Practical application of the European Works Council directive (94/45/EC) and on any aspects of the directive that might need to be revised.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 September 2003. The rapporteur was Mr Piette.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 122 votes to one with six abstentions.

PURPOSE OF THE OPINION

In response to requests by the EESC for greater involvement in the EU's work in the area of social policy, and in the spirit of the framework agreement between the Commission and the EESC, the Commission has requested the Committee to draw up an exploratory opinion on the practical application of the directive on the establishment of a European Works Council or a procedure in Community-scale companies and Community-scale groups of companies for the purposes of informing and consulting employees and on any aspects of the directive that might be need to be revised. This opinion could be very useful for the Commission with a view to taking a well-founded decision in 2003 on the follow-up to be given to the request made by several players, and in particular the European Parliament, concerning the revision of Directive 94/45/EC. The social partners will be able to draw support from the evidence and commonly agreed facts presented in this opinion, without prejudice to their autonomy or their decision on this matter.

Thus the present document is primarily meant to be a corpus of information and its aim is to take stock of the experience acquired following the implementation of the directive.

1. Background to Directive 94/45/EC and its review

1.1. The adoption by the Council of Ministers, on 22 September 1994, of a directive on the establishment of a European Works Council or a procedure for the purposes of informing and consulting employees and its extension to the United Kingdom by Council Directive 97/74/EC of 17 December 1997 marked a crucial step forward in the development of a truly European social dialogue at company level in line with the transnational structure of companies and groups of companies.

This new instrument, which is genuinely transnational, has made a made a very important contribution to developing the European dimension of industrial relations.

1.2. Member States were supposed to have transposed the directive into national legislation by 22 September 1996 (15 December 1999 for Directive 97/74/EC) [1]. The central management of companies and employees' representatives were set the same deadline for negotiating voluntary agreements under the provisions of Article 13. In view of the complexity and highly innovative character of the directive, in that it combines specifically European aspects and national aspects, coordination of its transposition into national legislation proved to be essential in establishing provisions with a high degree of convergence in terms of content.

1.3. Under the provisions of Article 15 of Directive 94/45/EC, the Commission was required to review the operation of the directive by 22 September 1999 at the latest, with a view to proposing any amendments that might be necessary to the Council.

1.4. By that date, the negotiations and work carried out within European works councils (EWCs) were supposed to have provided sufficient practical experience for the review to be carried out, whilst recognising that this was a ground-breaking process.

1.5. The Commission was to conduct the review 'in consultation with the Member States and with management and labour at European level'.

1.6. The review was to focus on the operation of the directive, i.e. on all aspects relating to the setting-up and functioning of EWCs and on the appropriateness of the workforce size thresholds.

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[1] The texts of the legal acts transposing Directive 94/45/EC into national legislation are available on the web site: http://europa.eu.int/comm/employment_social/soc-dial/labour/directive9445/index_en.htm.

1.7. Following the review and a conference with the social partners held in April 1999, the Commission submitted its report on the application of the directive to the European Parliament and the Council on 4 April 2000. Although the report was largely concerned with assessing the transposition measures taken by Member States, it also included an evaluation of the practical implementation of the directive. Regardless of the quality of the transposition measures, the Commission stressed that there was a need for further interpretation of some issues. The report went on to note that while some of these issues could be solved by the parties concerned, others would have to be resolved by the courts. Therefore the Commission did not conclude that there was a need to propose amending the directive at that stage.

1.8. The President of the European Parliament subsequently referred the report to the Committee on Employment and Social Affairs for its report and to the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy for their opinions. The European Parliament resolution on the report was issued on 17 July 2001; in it the Parliament called on the Commission to submit, at an early date, a proposal for the revision of the directive containing a series of improvements ([1]).

1.9. Nearly three years after its report and a longer period of application, the Commission considers that it would now be appropriate to carry out a new review of the practical implementation of the directive, especially as this issue was mentioned in the Agenda for Social Policy adopted by the Nice European Council in December 2000.

1.10. Since the publication of the Commission report in April 2000, the European labour market has undergone considerable change. The quickening pace and changing nature of transnational restructuring, which has become a more permanent feature of business life, represent challenges for EWCs today.

1.11. Directive 94/45/EC will apply to the new members of the European Union, ten of which are scheduled to join on 1 May 2004. Enlargement will have an important impact on both some of the existing councils, which will have to include employees' representatives from these countries, and on new groups of companies that will come under the scope of the directive, which will certainly bring new challenges. Any assessment of EWCs and action related to them over the next few years will have to recognise the special features of the new companies that will be covered by the directive and the specific characteristics of industrial relations systems in the new Member States. As was stressed by the social partners at the conference European works councils: practice and development held in April 1999, a learning process will be necessary to enable the players to bring together facts and features that are the product of different cultures, practices and realities and overcome obstacles related to social, economic and cultural differences.

1.12. The legal context has also changed with the entry into force of new Community legislation on informing and consulting employees, namely Council Directive 2001/86/EC of 8 October 2001 on supplementing the Statute for a European Company with regard to the involvement of employees, and Council Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

2. **The evidence to date**

2.1. *An already considerable body of experience*

2.1.1. Out of a total of 1 865 companies or groups of companies employing 17 million people which come under the scope of the EWC directive, 639 of them, with 11 million employees, had an EWC at the end of 2002. 72 % (400) of the agreements were concluded under Article 13 of the directive before the deadline for the entry into force of the directive ('agreements in force') and 28 % under Article 6. Thus a very large majority of the EWCs in operation today are still based on agreements in force, renewed or amended where appropriate. The list of agreements also includes seven agreements which provide for the introduction of information and consultation procedures without the setting up of an EWC ([2]).

2.1.2. More than half of the agreements were concluded in 1996 alone. Since then, about 40 agreements have been concluded annually. Of all the companies and groups currently covered by the directive, 1 200, employing 6 million people, have yet to establish an EWC or a procedure for informing and consulting employees. Many of the companies or groups concerned are smaller in size and less integrated in transnational terms but already engage in significant transnational operations.

([1]) European Parliament report A5-0282/2001 of 17.7.2001 on the Commission report on the application of Council Directive 94/45/EC — Committee on Employment and Social Affairs.

([2]) ETUC Infopoint database.

2.1.3. A quarter of the agreements fall under German law, 12-13 % fall under French, Belgian or UK law, 4 to 7 % under Dutch, Swedish, Italian, Irish or Finnish law and less than 20 agreements fall within the scope of, respectively, Austrian, Norwegian, Danish, Luxembourg, Swiss, Spanish or Greek law.

2.1.4. Enlargement is already a reality for about 30 % of existing EWCs [1] which include members or observers from the countries set to join the European Union on 1 May 2004. The candidate countries, among them Poland, the Czech Republic, Slovakia, Slovenia and Hungary, have started to transpose Directive 94/45/EC into their national legislation.

2.1.5. More than 10 000 workers' representatives are now directly involved in the work of EWCs and in implementing intercultural exchanges and practices. This is one of the most striking and significant features of social Europe.

2.2. *The negotiation of agreements*

2.2.1. The merit of the principle of the directive, i.e. that it requires management and employees at company level to take the initiative with regard to negotiations, is confirmed by the number of agreements concluded under Articles 6 or 13. Admittedly, the role of the social partners has not always been easy, given the complex and inherently European nature of this new instrument, but the studies generally indicate that the social partners have taken full advantage of their shared experience of EWCs.

2.2.2. The agreements show great diversity both as regards agreements concluded before the entry into force of the directive, which make up the majority of the total, and those concluded after. In most cases the agreements include provisions on informing and consulting employees on a transnational basis, in accordance with the rights laid down by the directive. Only eight agreements are limited to the provision of information. Moreover, some agreements not only include central mechanisms for information and consultation but also make provision for decentralised procedures at national level for certain aspects of information and consultation.

2.2.3. The social dialogue and the role of management and employees in a company have been strengthened simply as a result of negotiations between central management and special negotiating bodies on establishing EWCs. The studies on the agreements reveal that European trade union federations have played an important coordinating role in more than three-quarters of the voluntary negotiations and have been co-signatories to agreements. In many cases, the members of the special negotiating body have requested experts of their choice, for example representatives of appropriate Community level trade union organisations, to assist them in their work.

2.2.4. The method of negotiating a new agreement is laid down by Directive 94/45/EC. However, the adjustment or renegotiation of existing agreements can raise the sensitive issue of negotiators and signatories where there are no provisions on this in the agreement.

2.2.5. The question of information on the structure of the company or group of companies in Europe, the workforce and the negotiating partners in different countries is usually the first to arise for employees in the 1 200 companies or groups of companies which may wish to initiate the process for negotiating a new EWC or establish a procedure for the purposes of informing and consulting employees. Three cases brought before the European Court of Justice for a preliminary ruling [2] establish the principle that the managements of all the undertakings located within the European Economic Area must provide employee representatives with any information required to open negotiations on setting up a European works council, in particular information on the structure of the group and the workforce, irrespective of where the headquarters of the group is located or the central management's opinion as to the relevance of the directive.

2.2.6. Creating the conditions and means necessary for conducting negotiations is the responsibility of central management, which must handle various practical aspects of organising meetings (travel, accommodation, interpreting, allocation of time, etc.) as well as meet the costs. This is particularly crucial for medium-sized European groups, which make up the majority of companies that still have to commence negotiations. It could be useful to consider practical arrangements for supporting the establishment of transnational social dialogue within such companies, for example through the budget lines opened in this area.

[1] European Trade Union Institute, European Works Councils — facts and figures, Brussels, November 2002.

[2] C-62/99 Bofrost, Ruling of 29.3.2001; C-440/00 Kühne & Nagel, Conclusions presented on 11.7.2002; C-349/01 ADS Anker GmbH, Conclusions presented on 27.2.2003.

2.2.7. The negotiations, which must be commenced within six months of the request or initiative, can take up to three years, but usually take less. The conditions under which they are conducted are often decisive when EWCs start operating.

2.2.8. Many companies adjust or renegotiate the agreements on their EWC(s) because of mergers, transfers of business or important changes in activity. The adequate adjustment of the composition of representative bodies in the event of changes in the company's or group's field of activity and their continued existence during transition periods are crucial for the ability of the council(s) to deal with restructuring. In half of the agreements restructuring issues are included in the remit of the EWC; 51 % of the agreements mention mergers, 47 % closures and 53 % relocations [1]. Changes in the field of activity have raised issues in most councils.

2.3. *The operation of EWCs*

2.3.1. The joint reports published by the European Commission (DG Employment and Social Affairs) and the European Foundation for the Improvement of Living and Working Conditions drew a distinction between agreements establishing EWCs whose potential seems to be confined to a largely formal or symbolic existence, based on annual meetings, and agreements establishing EWCs with the potential to develop a dynamic role. Under the latter agreements there is ongoing activity on the employee side between meetings and permanent liaison with management [2].

2.3.2. However, existing EWCs are constantly evolving as part of a constructive internal process, so that to determine the extent to which the agreements offer EWCs real scope to play an active role, it is necessary to focus not only on the provisions of the agreement but also on the analysis of practical experience.

2.3.3. The results of various studies (e.g. Lecher [3]) clearly indicate that the conclusion of an agreement is more a point of departure than the end result in the evolution of an EWC as a body.

2.3.4. The studies analysing the operation of EWCs in the form of monographs, surveys or exchange of practices point to a dynamic process of development in successive stages. If, initially, there may have been some reservations regarding requests to establish EWCs, today there is wide recognition of the positive role played by EWCs in improving social dialogue and information/consultation in the company.

2.3.5. A study published by the Dutch employers' association sheds light on the tasks and role of EWCs in 17 companies headquartered in the Netherlands and shows that most employers feel that EWCs bring or can bring added value, particularly in the case of restructuring [4]. Some employers nevertheless thought that EWCs had not helped to improve social dialogue in the company. Similarly, in a survey conducted among Japanese multinationals [5] a large majority of the senior managers interviewed gave a positive assessment of EWCs. A recent survey by a US-based management consultancy firm of managers in 24 major, mainly American, multinationals also found that experience of EWCs was positive [6]. A majority of companies indicated that the formal provisions of their EWC agreements had been exceeded in practice; management was now more willing to examine issues falling within their transnational dimension than in the early days of their EWC; confidentiality posed very few problems; the contribution of experts was judged useful; and consultation on restructuring was viewed as positive. Three-quarters of the mangers interviewed felt that EWCs brought added value to the company, despite the heavy demands in terms of time and resources. Several respondents even reported that EWCs had brought unexpected benefits through improved management discipline and coordination in the decision-making process.

[1] Agreements database, ETUC Infopoint.

[2] Negotiating EWCs under the Directive: A comparative analysis of Article 6 and Article 13 agreements, European Foundation for the Improvement of Living and Working Conditions, Mark Carley & Paul Marginson, 2000.

[3] Lecher W., Nagel B. & Platzer H.W. (1999), The establishment of European Works Councils. From information committee to social actor, Ashgate Publishing, Aldershot.

[4] The added value of European Works Councils, J. Lamers, AWVN, Haarlem, 1998.

[5] S. Nakano, European Journal of Industrial Relations, vol. 5, No 3, pp. 307-326.

[6] Organization Resources Counselors Inc., ORC European Works Councils Survey 2002, summarised in EIROnline 01/2003.

2.3.6. Reflecting the different stages in their development, EWCs are often classified according to the way they operate (Lecher): some are an extension of national representative structures in the country where the company is headquartered, and thus are a source of additional information for national use; others are led by representatives from the dominant country and thus possess a transnational quality, albeit embryonic; still others are characterised by a true 'supranational collective identity', with equality between members, and the development of common positions.

2.3.7. The timing, content and frequency of transnational information and consultation are key factors in the operation of EWCs, in particular:

— the quality of regular and specific information (provided by management and by members to their colleagues) and all interested parties' actual accessibility to such information are considered vital to the quality of the dialogue which can take root within an EWC and to its capacity to play an active role. Some EWCs are therefore agreed on the need for access to and analysis of updates and other types of information;

— the confidentiality clause appears in 87 % of the agreements and is often the subject of debate in practice, mainly in cases of restructuring. However, the establishment of an atmosphere of confidence seems to have made it possible to mitigate the problem with the help of the dialogue mechanisms in place.

2.3.8. Experience shows that early intervention by EMCs in all decision-making processes can help to promote a responsible and precautionary style of management, especially in the case of restructuring.

2.3.9. The transnational nature of issues addressed by EWCs is often the subject of practical debate, for example in cases where decisions which, although in principle concern only one country, actually have strategic implications that extend beyond national level. Despite the fact that it covers a different area, partly because of the purely optional nature of the European Company, the directive on the involvement of employees in a European Company stipulates that '... the informing of the body representative of the employees and/or employees' representatives by the competent organ of the EC on questions which concern the EC itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State ...'.

2.3.10. Research by the European Foundation for the Improvement of Living and Working Conditions on transnational joint texts negotiated by EWCs in 12 companies or groups of companies [1] and databases on EWC agreements [2] show that some EWCs are starting to expand their information and consultation role by drawing up joint opinions, codes of conduct, charters, action programmes and agreements at European level covering areas such as health, safety, the environment, fundamental rights, mobility, training, supplementary pensions, and mergers, closures, relocations and restructuring.

2.3.11. Experience also shows that the establishment of real, fruitful dialogue within an EWC is linked to the council's mode of operation, as this determines how information is circulated and the capacity to coordinate and respond:

— The select committee, whether a bureau or secretariat (present in three-quarters of councils), its composition, the frequency of meetings, contacts with national representative bodies, the possibility of contacts with the company's various sites and translation facilities are considered key to the effective operation of EMCs.

— The skills and competence of EWC members and the resources at their disposal vary between EWCs: 42 % of the agreements already make provision for training, and training is geared to the specific needs of performing representative functions at European level; most of the agreements provide for access to experts (57 % of the agreements provide for the use of expertise at plenary and preparatory meetings) although expertise nevertheless remains a subject for debate in view of the specific characteristics and day-to-day practices of national bodies — in some countries trade union officials are council members; communication facilities, including links to the various sites represented, and customised translation and interpreting services, are essential; the frequency of ordinary council meetings is also important (83 % of the agreements explicitly limit the number of meetings to one a year or to one ordinary meeting with the possibility of an extraordinary meeting; 14 % of the agreements provide for two ordinary meetings).

[1] M. Carley, Joint texts negotiated by European Works Councils, EFILWC, Dublin, 2001.
[2] ETUC Infopoint database.

— The information and consultation process largely covers the topics set out in the directive and is of particular importance in cases of restructuring. However, some councils have extended the scope of information and consultation to include measures planned by management in, inter alia, the following areas: continuing training, the environment, health and safety, equal opportunities, possible employee financial participation and, albeit still in a very small minority of cases, cultural and social activities.

EWCs are proving to be a forum for the practical implementation of objectives, such as those set in Lisbon, a key element of which deals with lifelong education and training.

2.3.12. The capacity of EWCs to adapt and evolve as a result of changes within the group or with the aim of improving the way they operate (dynamic process) is also very important in practice. The Belgian agreement on the transposition of the directive makes reference in its supplementary provisions to changes in the structure or size of the company or group and lays down rules applicable in such cases. These rules can be laid down in a cooperation protocol.

2.3.13. Some agreements provide for separate treatment of different activities or divisions within a group. While in some cases the EWC is a single body, despite a very wide range of activities, organisation along sectoral lines within one and the same EWC is already the case for more than one in ten EWCs (study by the European Foundation for the Improvement of Living and Working Conditions, Dublin, 2000). Most of the companies concerned have also established formal arrangements for the circulation of information and coordination between the different levels and bodies engaged in dialogue.

2.3.14. The serious imbalance in the representation of men and women is a persistent feature of special negotiating bodies and EWCs and most probably reflects the imbalance that also exists in representative bodies at national level. In view of the position of EWCs in the European social model, its seems appropriate to consider ways of voluntarily reducing this imbalance.

2.3.15. In addition, some agreements and some provisions of national transposing legislation provide for a balanced representation of different categories of employees on EWCs.

2.3.16. The approach to the question of the legal personality of EWCs and their right to take part in court proceedings, manage assets and conclude agreements, varies between Member States.

2.3.17. All countries prescribe penalties for the infringement of the requirements laid down in the directive, as regards the setting-up of a negotiating body and the operation of the EWC. However, problems may arise with regard to the accessibility of the law in certain cases, especially where a group headquartered outside Europe has its main European office in a country which has no trade union representatives on the EWC. The representatives may come up against practical and legal difficulties regarding recourse to the competent courts in the country concerned (in Belgium, for example, national law allows employees' representative organisations to seek legal remedy through the labour courts).

2.4. *Coordination of national and European social dialogue*

2.4.1. Directive 94/45/EC largely respects the subsidiarity principle by taking into account the different types of representation and ways of informing and consulting workers in a company. The arrangements for selecting or appointing workers' representatives are decided by the Member States.

2.4.2. In some cases the interaction between the local and the European level has helped to improve national practices.

2.4.3. Thus, following on the heels of an EWC, some companies have established a group works council (inter-establishment works council) at national level, in some cases through an agreement. According to a survey of Belgian representatives of the CSC-ACV (Confederation of Christian Trade Unions), EWCs have led to the creation of inter-establishment communication networks at national level in 35 % of cases. According to the same survey, 67 % of representatives feel that EWCs have been a factor behind the improved operation of local works councils [1].

2.4.4. Thus, in some companies, EWCs have also helped to eliminate obstacles to staff information, consultation and communication, as a result of the requirement in point 5 of the annex to the directive for EWC members to provide information to the employees' representatives, or in the absence of representatives, to the workforce as a whole.

[1] Le CENE est-il sur la bonne voie? CSC and Hoger Instituut voor de arbeid, Veerle Cortebeeck and Joris Van Ruysseveldt, Leuven, 2002.

2.4.5. Thus, with a view to strengthening coherence between local managements, some groups also introduced transnational management meetings when EWCs were set up.

2.4.6. EWCs have fostered the emergence of a European awareness in social dialogue not only through information and consultation but also through the exceptional cultural opportunity provided to foster exchanges at transnational level. Seen against the background of building Europe and mindful of the diversity of arrangements for representation, exchanges of knowledge, reciprocal interaction and synergy between the interests of workers and employers within the same group represent a real cultural advance.

3. **Conclusions**

3.1. The various reports and studies on agreements and practices confirm that the experience gained to date is sufficient for conclusions to be drawn on how to organise a simple, democratic and effective negotiation process on the establishment of a European Works Council or a procedure for the purposes of informing and consulting employees. There is also a wealth of experience on the extent to which the basic aim of the directive, i.e. to improve the right of workers to information and consultation, has been achieved.

3.2. By virtue of its composition, the EESC has certainly been able to shed special light on the dynamic process of social dialogue under way in companies and groups of companies. The EWC is still a very new body but one which is constantly evolving. The proportion of agreements that are renegotiated each year bears witness to this.

3.3. Information and consultation through EWCs and the dynamic nature of their role and practices would certainly benefit all the parties concerned, including citizens. The responses made in the context of the globalisation of companies and restructuring affect not only living and working conditions but also the social climate beyond company gates.

3.4. Drawing on various findings — which it shares — on the practical application of the directive and the operation of the EWCs, the EESC has been able to identify the contribution of EWCs to European social dialogue and European development. However, a number of fundamental questions remain open. They mainly concern the following aspects:

— the concepts of ‘useful effect’ and ‘timeliness’ with regard to informing and consulting employees;

— the scope of Directive 94/45/EC with regard to, for example, joint ventures, the possible exclusion of merchant navy crews and the concept of ‘undertaking’, owing to the many different forms of business organisation. This diversity will increase further at European level with the inclusion of community enterprises, cooperatives and mutual enterprises, whose economic activities are becoming increasingly important and increasingly transnational in scope. Public enterprises are nevertheless mentioned explicitly in the national transposing legislation of two states, Sweden and Spain;

— the question of representation and proportionality of representation on EWCs, which is not covered by transnational rules;

— the question of the impact of EWCs on social dialogue in the company at national level;

— the question of the possibility of EWC representatives visiting the establishments whose workers they represent and communicating with these workers;

— the question of the relation between EWCs and the regulatory authorities in the competition field. Council Regulation No 4064/89 on Community control of concentrations stipulates that ‘recognised workers’ representatives’ may be heard as ‘natural or legal persons showing a legitimate interest’ in connection with an examination of a concentration operation subjected to Community control. At present, however, workers’ representatives have no guarantee of access to files, not even ‘non-confidential’ versions. This is a matter first and foremost for the Community authorities in connection with the establishment of a more coherent link between Community social policy and competition policy.

3.5. EESC members are divided on the significance of the findings and views put forward on the application of the directive and the operation of EWCs. Some feel that the present exploratory opinion must simply provide a corpus of information, without any intention of influencing possible future discussion by the social partners on the revision of Directive 94/45/EC; the Commission has indicated in its work programme that it intends to consult the social partners starting in the autumn of 2003. Others consider that it should be possible to use the evidence presented by the Committee on the application of the directive and the operation of EWCs as a basis for assessing any aspects of Directive 94/45/EC which might need to be revised.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a European Parliament and of the Council decision establishing a Community action programme to promote bodies active at European level in the field of youth'

(COM(2003) 272 final — 2003/0113 (COD))

(2004/C 10/06)

On 24 June 2003, the Council decided to consult the European Economic and Social Committee, under Article 149 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 10 September 2003. The rapporteur was Mrs van Turnhout, the co-rapporteurs were Mr Soares and Mr Pezzini.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 128 votes in favour and 1 vote against.

1. **Executive summary**

1.1. The European Economic and Social Committee welcome this measure, which ensures continuity of essential funding to bodies active at European level in the field of youth.

1.2. However the EESC is critical of the proposal to reduce funding by 2,5 % each year after the third year. In this opinion we have outlined the probable impact of this proposal. In addition we argue that these organisations should be treated as per Article 162 of the Commission Regulation (EC, Euratom) No 2342/2002 [1]. They are bodies who pursue an aim of general European interest [2] and therefore should not be treated under Article 113(2) of the Council Regulation (EC, Euratom) No 1605/2002.

1.3. The EESC welcomes the stability of funding this measure will give to the European Youth Forum, ensuring that it can continue to grow and strengthen.

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[1] Article 108 of the Financial Regulations.

[2] Article 162 of the Commission Regulation (EC, Euratom) No 2342/2002.
'A body pursuing an aim of general European interest is:
(a) a European body involved in education, training, information or research and study in European policies or a European standards body; or
(b) a European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.'

1.4. The EESC notes with concern the trend over the past years, which has seen a gradual reduction of funding to some international youth organisations. The EESC calls on the European Parliament, the Council and the European Commission to actively work to increase this budget line. The growth and development of international youth organisations is essential to the development and future of Europe, this needs to be recognised.

1.5. The EESC notes that this proposal covers the period 2004-2006. We urge the Commission to commence and consult as wide as possible on how funding post-2006 will be handled.

1.6. The EESC urges the immediate implementation of the outstanding recommendations contained in the Evaluation Report on support for International Non-Governmental Youth Organisations, produced by the Commission ([1]).

1.7. The EESC notes that this proposal is one of several referred by the Commission concerning Community action programmes and measures across a diverse range of fields. The EESC strongly advocates that the Commission takes a coherent approach across these fields, particularly to the eligibility for funding criteria.

2. **Background**

2.1. The European Economic and Social Committee welcomes the establishment of a Community action programme to promote bodies active at European level in the field of youth. This proposal will provide a basis for operating grants to bodies active at European level in the field of youth, for a period of three years (2004-2006).

2.2. For several years this support has been provided without a legal basis, under budgetary headings entered in the Commission's administrative expenditure:

— heading A-3023 co-finances the operating costs of the European Union Youth Forum.

— heading A-3029 provides support for international non-governmental youth organisations.

2.3. This support has provided essential core funding for the European Youth Forum through the Youth Forum of the European Union. With regard to the International Non-Governmental Youth Organisations this support has provided vital funding for the administration and secretariat of these organisations, funding which is otherwise unavailable at European level.

2.4. In drafting this response the European Economic and Social Committee has consulted the European Youth Forum and its member organisations, both International Non-Governmental Youth Organisations (INGYOs) and National Youth Councils (NYCs), over 90 organisations in total.

3. **European Youth Forum**

3.1. The EESC welcomes the stability of funding this measure will give to the European Youth Forum, ensuring that it can continue to grow and strengthen. Currently funding for this organisation must be channelled through the Youth Forum of the European Union of which some members of the European Youth Forum are not full members, e.g. National Youth Councils based outside the EU. On the face of it, it could just be seen as the removal of a technical barrier but the EESC also recognises the political significance of having only one body at a pan-European level for youth.

3.2. The EESC welcomes in Annex 2.1 the recognition of the independence and autonomy of the Youth Forum. In spite of this it also refers to the principle of the 'broadest possible involvement in the European Youth Forum's activities of non-member organisations and young people who do not belong to organisations'. The EESC believes that this should not be seen as a condition of funding as the Youth Forum already strives to have a broad membership in the same manner as UNICE and ETUC at European level.

4. **International Non-Governmental Youth Organisations**

4.1. For several years the European Commission has provided vital funding for the administration and secretariat of these Youth NGOs, which is otherwise unavailable at European level. The majority of National Youth Councils within the European Union enjoy a similar arrangement for funding from their governments at Member State level.

4.2. A clearer definition and understanding of the work of International Non-Governmental Youth Organisations (INGYOs) is essential for the operation and success of this proposal. The EESC would welcome criteria that ensures Youth NGOs are run by and for youth; have a real democratic structure; enable participation of youth on local, regional, national and European level; are non-profit making and are volunteer led. A consistent measurement needs to be applied that will ensure only Youth organisations who fulfil the criteria listed herewith can avail of the funding.

([1]) SEC(2003) 934 Commission Staff Working Paper, Support for non governmental youth organisations (Evaluation Report).

4.3. The EESC strongly rejects the proposal to reduce funding by 2,5 % each year after the third year as outlined in Annex 5.6.

— Not to provide sustained support to youth NGOs would waste the experience and knowledge that has been built up in organisations over years; from a taxpayer's point of view it would mean destroying the investment of public funds allocated in the past.

— For youth NGOs the sustainability of their structures is a particularly crucial question, as membership, volunteers and staff have — due to the very nature of youth organisations — a high turnover rate. Additionally, more than other voluntary organisations youth NGOs rely on volunteers with little prior experience when they become involved in the organisation.

— Youth NGOs involve a section of society with little own income which impacts on the organisations' possibility to raise money from their constituency.

4.4. In addition the proposal to reduce funding after three years may encourage organisations to splinter, regroup and then reapply under their newly formed grouping. The incentive should be for organisations to strengthen and grow. If funding to individual organisations continues to reduce on a yearly basis, the EESC understands why sections of an organisation may break away and apply for funding separately. Measures need to be put in place to reduce this risk.

4.5. The EESC highlights the importance of including measures to encourage new organisations to establish, particularly when they represent organisations and young people that are traditionally not represented or are under-represented groups. In this the European Year of People with Disabilities, the EESC believes particular efforts need to be made to ensure the development of organisations including and serving young people with disabilities.

4.6. The EESC underlines the importance of the involvement of the Commission in the selection process for funding. While the EESC understands the wish of the Commission to outsource some of this work, the political decision-making and control must remain the responsibility of the Commission.

4.7. The EESC notes that the English language version of the document in Annex 1 refers to in-formal education instead of non-formal education. The other language versions refer to non-formal education which is in agreement with the EESC understanding of these terms.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Partnership for implementing the Structural Funds'

(2004/C 10/07)

On 18 February 2003 the European Commissioner responsible for regional policy, Mr Michel Barnier, acting on behalf of the Commission, asked the European Economic and Social Committee to draw up an opinion on the 'Partnership for implementing the Structural Funds'.

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 11 September 2003. The rapporteur was Mr Barros Vale and the co-rapporteur was Mr Di Odoardo.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. The European Economic and Social Committee (EESC) has always devoted special attention to the arrangements for public policy coordination and consultations between elected authorities and their representatives and organised civil society, at both EU level and in the Member States.

1.2. This concern led the Committee to include in its 2003 work programme the drafting of an own-initiative opinion setting out its thoughts on the Partnership for implementing the Structural Funds. The European Commission subsequently asked the Committee to draw up an exploratory opinion on the subject. This shows the topical interest of a matter that needs further study, especially with a view to the future revision of the Structural Funds regulations and the forthcoming accession to the EU of many new Member States.

1.3. The partnership forms one of the principles pursued within the legal framework of structural policy, as stated clearly and unequivocally in Council Regulation (EC) No 1260/1999 of 21 June 1999, and it has gained in importance with each successive reform.

1.4. The partnership first became generalised in the 1994-1999 period. In the current period (2000-2006) it has been further extended [1] to include local authorities, socio-economic partners and some non-governmental organisations (NGO).

1.5. In parallel with this increase in the number of potential partners, their role has also been stepped up so that it now extends from the planning stage to monitoring and ex post evaluation [2].

1.6. There were two main reasons for this increased concern for the partnership:

— firstly, the social partners had expressed a wish for the partnership's role to be strengthened;

— secondly, studies had found that a broad-based and integrated partnership contributed to the success of the programmes because:

  a) involving the partners from the outset ensures that measures draw on more specialist knowledge and enjoy greater legitimacy;

  b) a broad-based and integrated partnership also makes it easier to coordinate the organisation of the programmes;

  c) appropriations are used more effectively, both because the selection of projects is improved and because the potential beneficiaries and co-financiers are better informed;

  d) there is greater transparency, as Community action has a higher and clearer profile.

2. The partnership concept

2.1. A clearer definition is first needed of what the partnership exactly involves, strengthening its key role in the proper implementation of the Structural Funds as an instrument for ensuring social fairness and not as a political instrument.

[1] Article 8 of the abovementioned regulation.

[2] Article 15 of the regulation.

2.2. The partnership defined in Council Regulation (EC) No 1260/1999 laying down general provisions on the Structural Funds [1] concerns two main types of partners (the differing functions of which could usefully be spelt out more clearly within the regulation):

— the 'institutional' partners, and in particular the regional and local authorities;

— the economic and social partners.

2.3. The present opinion discusses the partnership in general but obviously pays particular attention to the standpoint of the socio-economic partners on this matter.

3. **The current situation**

3.1. The first type of partnership in the Structural Funds is conducted at EU level, coming even before the partnership at national level. Right from the general programming stage, Community activities must be based on consultations between the Commission, the Member States and the socio-economic partners.

3.2. Article 8 of the abovementioned regulation on the Structural Funds states that 'each year, the Commission shall consult the European-level organisations representing the social partners about the structural policy of the Community'.

3.3. The Committee recognises the exemplary (and indeed, multiplier) role which the partnership can play at Member State level. However, in practice, in recent years EU-level consultations have been limited to meetings lasting just a few hours, at which the partners are basically just briefed on the progress of the Structural Funds and are given no practical opportunity to put forward any suggestions or set out their views in detail.

3.4. The partnership at EU level has thus been limited to 'providing information', which is not the same thing as 'consultation' on Community structural policies. Of course, the EU social partners must also take the initiative and actively monitor the institutional procedures for implementing the Funds.

3.5. The Commission needs to review its arrangements for consulting the socio-economic partners, so as to provide more opportunities for meetings and promote effective debates and consultations with permanent and sectoral partners.

3.6. Additionally, as part of the general revision of the Structural Funds regulation, it would be helpful to spell out the fact that particularly when general structural policy objectives are being fixed, the Commission must always consult not only the Member States but also the socio-economic partners at EU level. The current Article 10 significantly makes no mention of these partners: '... after consulting the Member States, the Commission shall publish broad, indicative guidelines on relevant and agreed Community policies in relation to the objectives referred to in Article 1'.

3.7. It is very difficult to get a detailed picture of the partnership arrangements in the Member States for the 2000-2006 programming period. Analysis of the development plans, Community support frameworks, operational programmes and single programming documents (SPDs) shows that in most cases only vague reference is made to the involvement of the socio-economic partners, and that the details of their role in the monitoring committees vary greatly and are extremely sketchy.

3.8. Community guidelines must thus be laid down for improving the content of Member States' reports on their arrangements for consulting the partners. More detailed information can then be gleaned regarding these arrangements and best practice can be analysed.

3.9. Extending the type of bodies that can take part in the monitoring committees also improves the management and implementation of the Funds, which can draw on each body's practical experience and knowledge of the region concerned and of its socio-economic situation, thereby improving the whole process.

3.10. Boosting the partnership and the role of the partners is an important objective which is not always translated into practical consultations. For example:

a) in approving the plans submitted by the Member States, consultation of the socio-economic partners is essential when the plans are being drawn up; the consultation arrangements have not always been ideal, and might need to be amended to ensure effective support/involvement of the partner bodies;

[1] OJ L 161, 26.6.1999.

b) in the finalisation of the plans, boosting the partnership should form part of the negotiations between the Commission and the Member States; in practice, however, the situation has depended largely on the Member States, which have failed to follow a clear line regarding the minimum acceptable threshold for involvement of the partners;

c) partnership is one of the factors specified for the mid-term evaluation of all programmes and single programming documents; again, it is important to clarify how the partnership is viewed and how it influences the evaluation;

d) the Commission has encouraged the mainstreaming of partnership schemes that were pursued in the previous period, such as the territorial employment pacts; however, in some cases, failings on both sides (authorities and partners) have meant that the results have sometimes been disappointing;

e) the Commission has launched a thematic evaluation of the territorial employment pacts supported in the previous period, and case studies are to be carried out that should yield a list of good practices; the Committee would like to give its opinion on the latter.

3.11. The potential partners also have an essential role to play in strengthening the partnership, as their diverse nature means that they can bring a different viewpoint from the existing partners. They should therefore prevail on the national authorities to include them in the monitoring committees. In this context they should be able to benefit from technical assistance and specialist training measures, and adopt any good practices observed.

3.12. In the first few years of the current programming period (2000-2006), the following points have been noted:

a) in the 100 or more programmes and SPDs for Objective 1, the 60 for Objective 2 and the 59 for Interreg III which the Commission has received and examined so far, the partnership rules (which are a condition for eligibility) have been respected;

b) the Commission has also noted that the socio-economic partners have been consulted on the various plans, programmes and SPDs, with provision for their involvement in the monitoring committees;

c) the information provided by the Member States on this subject, however, varies greatly. Many countries state merely that the partners have been consulted, without giving any further details. There are a few exceptions, when countries have published the programmes online as a means of public information. The Committee thinks that the Commission should encourage such practices;

d) information about participation on the monitoring committees also varies greatly. In some cases, it is merely stated that the partners will be involved. The hearings held by the Committee showed that the partners feel serious frustration about the results achieved, while the authorities remain upbeat;

e) the documents submitted by the same country often differ from programme to programme in their use of the term 'partners', as a result of the subsidiarity specified in Article 8 of Regulation (EC) No 1260/1999;

f) the rights accorded to the socio-economic partners on the monitoring committees also differ. In many cases, their status differs from that of other members (no right to vote, or only limited voting rights, often having a purely consultative or information role);

g) despite the constraints which have been observed, the Committee feels — and the Commission appears to agree — that there will be results in the medium term. The monitoring committees have a more important role in the 2000-2006 period than they did in the past, inter alia as they are to approve project selection criteria. More definite conclusions can be reached in the forthcoming mid-term evaluation, as the impact of the partnership is one of the elements to be assessed;

h) the importance of the partnership is thus clear, and the partnership obviously plays an important role in the implementation of the Structural Funds. However, given the diversity of procedures and arrangements for involving the partners, it appears that there is no clear framework of procedural or practical arrangements for their participation in the various stages. This matter needs careful thought. The differing roles assigned to the partners and the differing arrangements for their involvement, even within the same Member State, clearly suggest that a firmer and more detailed framework might be needed in this area.

3.13. However, much remains to be done on this front, and the Commission has a key role to play. The Committee considers that the present exploratory opinion is well worth drafting and will have a real multiplier effect, opening up new avenues for relations between the social partners and national administrations. This groundbreaking and innovatory way of involving civil society, and the socio-economic partners in particular, in the implementation of public programmes also places a special responsibility on the European Commission to ensure that the authorities' behaviour is beyond reproach.

4. **The different levels and stages of the partnership, and related procedural issues**

4.1. In 1999 the London Tavistock Institute's evaluation development and review unit issued a study entitled Thematic evaluation of the partnership principle, at the request of the European Commission. This study highlighted significant differences in the involvement of the partners at the various stages of the programmes. In most cases, the partners played a significant role in the programming and general programming (pre-negotiation), but a totally inadequate role in the monitoring and evaluation stages. The study states that in these latter stages in many Member States, the partners were merely given 'an illusion of inclusiveness'.

4.2. In such circumstances, further thought must be given to the monitoring committees established under Article 35 of the Structural Funds regulation. The mechanisms for involving the social partners must be revised in the light of the new and important duties assigned to these committees.

4.3. The abovementioned Tavistock Institute report noted that for the partners, the monitoring committees had been a means of obtaining information on the progress of the Funds rather than a forum for being involved in decisions.

4.4. First and foremost, the involvement of the socio-economic partners on the monitoring committees must be made mandatory, and must be strengthened by giving them the right to vote so that their position on the issues discussed by the monitoring committees is quite clear.

4.4.1. Expressing the position of the partners simply by recording their views on the matters under discussion in the relevant minutes does not give national or regional authorities, or the EU institutions, a clear picture of the feelings of the majority of the bodies represented on the monitoring committees, or of the relative strength of any differing positions. The only way to achieve a clear picture is by holding a vote.

4.5. The socio-economic partners must have a chance to contribute to the work of the monitoring committees. For this to happen, certain prior steps are necessary:

— Meeting agendas must not focus solely (as they often do at present) on solving administrative or procedural problems regarding relations between the management authorities and the Commission; they must concentrate on checking 'the effectiveness and quality of the implementation of assistance'.

— A special secretariat should be set up or made operational to provide the monitoring committees with the requisite technical support, so that the socio-economic partners can carry out their duties properly and adopt their positions in full knowledge of the facts.

— The quality of the partnership achieved in the various measures should be included among the indicators for checking the efficiency of the programmes, and should be a major criterion when allocating the 'performance reserve' (Article 44 of the regulation) which Member States can activate at the mid-term of the operational programmes.

4.6. The Commission should commission a new study of the different types of participation models that have been used at national and regional level. Practices which are less well known, but which could be important for the future, could then be evaluated and disseminated more widely.

4.7. The Committee considers it vital to guarantee that the party evaluating a specific programme is independent from the national authority that is responsible for implementing it. Here too, the institutional and socio-economic partners can play a greater role, thanks to the knowledge acquired with regard to the practical results of the various measures.

5. **The criteria for selecting the partners**

5.1. The Committee considers that the selection of the partners is vital, and that their role and responsibilities must be made quite clear.

5.2. A question arises about the compatibility (or otherwise) of partners being involved in the various stages of programme implementation when they are also project promoters. In such circumstances, rules must be established for selecting the partners so as to ensure that the partnership does not include bodies which are dependent on the state and whose ability to act independently would therefore be functionally or structurally limited.

5.3. The Committee thinks that an assessment is needed of the appropriate number of partners for each stage of the programmes, as procedures are made less effective by an excess of red tape and the widespread loss of individual responsibility on hugely inflated committees that in some cases are nothing more than an official forum for passing on information.

5.4. The Committee supports the establishment of credible networks of partners (with the requisite competences) at different levels, to ensure that they play an effective role and that their involvement is not just a matter of form.

5.5. Alongside those bodies which traditionally make up the socio-economic partners (trade unions, industrial and agricultural organisations, trade and craft associations, the cooperative and non-profit sector, etc.), a greater role in Community structural policies should be given to autonomous bodies such as chambers of commerce, universities, public housing associations, etc.

6. **Conflicts of interest**

6.1. Problems may arise with regard to the membership of the partnership and possible ineffectiveness of the procedures, owing to the accumulation of functions that are incompatible with transparency and independent decision-making (e.g. involvement of the same people in the programming, monitoring and evaluation stages, when in many cases these people are also beneficiaries of the programmes concerned).

6.2. There often appears to be potential incompatibility or conflicts of interest in cases where a decision-taker may also be a beneficiary of the Structural Funds.

6.3. The stages at which the partners are to be involved, and their powers, must be made clear. Their role should be advisory, and they should have no decision-making powers. Giving the socio-economic partners decision-making powers would be an infringement of representative democracy, in which decision-making bodies are elected. The Committee thinks that the partners' right to vote must be limited to preparatory, monitoring and evaluation bodies and never extend to project management and decision-making bodies, although the partners must sit on these bodies or be represented on them. This is consistent with the principles of participatory democracy without affecting the principles of representative democracy.

6.4. The Committee thinks that clear rules must be established for each of the groups involved (i.e. programmers, monitors and evaluators), so as to avoid potential conflicts of interest that would be contrary to general ethical and legal principles.

7. **Other types of partnership**

7.1. The Committee considers that the arrangements for involving the institutional and socio-economic partners in the implementation of the Funds must do far more than just involve them in the planning, management, monitoring and evaluation bodies.

7.2. Greater use should be made of the global grants procedure, obliging the Member States to adopt this system in at least a few of their CSFs, as it could prove faster and less bureaucratic and relieve the strain on national budgets, bearing in mind the current widespread constraints on public finances.

7.3. The Committee does not consider that the global grant procedures should be retained in the form applied hitherto. After an assessment has been made of past experience, the rules governing this procedure should be improved so as to give increasing scope for involving credible operators (not exclusively state operators) in the management of the Community Funds — something which many Member States have unfortunately not done in the past.

8. **Financing and technical assistance**

8.1. The Committee thinks that the socio-economic partners should have access to financing and training in order to help them play their full role. This is rarely the case at present.

8.2. In some cases, the partners are unable to play their proper role because they lack high-calibre technical experts to play an active part in Fund-related forums, where they could and should have a role.

9. **Enlargement**

9.1. The Committee feels that the forthcoming enlargement of the EU is a further source of concern, given the fragility of civil society in some of the future Member States. The partnership in these countries will not be effective unless special care is taken to boost the technical and financial resources of socio-economic organisations, with a view to establishing the minimum conditions necessary for them to participate efficiently.

10. **Other issues**

10.1. The Committee thinks that the Member States must make every effort to cut red tape wherever possible. Overly complex administrative procedures frequently jeopardise the whole partnership principle, erecting barriers and introducing practices that often prove counterproductive.

11. **Conclusions**

11.1. The Committee considers that it would be very helpful to set a minimum participation threshold, laid down by a Community regulation but leaving the Member States to establish detailed participation levels in their own national law or provisions.

11.2. The role of the socio-economic partners, the content of the proposals and the participation procedures necessarily differ at the preparatory, financing, monitoring and evaluation stages of Community structural measures. It is therefore necessary to clarify what is expected of the partners, what the partners need to do to ensure that the programmes are as successful as possible, at what levels the partnership is conducted, and the political and technical bodies in which the partners should be involved.

11.3. The partnership is of crucial importance at two stages:

— at the 'political' stage of Fund programming and when general decisions are taken, at both Community and national level;

— at the monitoring and evaluation stage.

11.4. The Committee considers that Article 8 of Regulation (EC) No 1260/99 should be expanded so as to establish a clear framework for each group involved in each stage of a programme, from planning to evaluation, and thus allow real involvement of the socio-economic players.

11.5. In the Committee's view, the management authorities should retain responsibility for the operational management of the measures, to avoid any confusion or overlapping of roles.

11.6. The Committee thinks that the experience gained from the territorial employment pacts could provide important information about the involvement/role of the partners, and help to clarify responsibilities and limitations, on the part of both the public authorities and the socio-economic and institutional partners.

11.7. Deeper and more responsible involvement of the socio-economic partners, with the requisite technical and financial capacity, is highly desirable in the management of measures that use Community funds. The Committee therefore proposes the setting of a substantial minimum threshold — e.g. 15 % of the total CSF funding — to be applied under the global grants procedure, which has regrettably been used very little hitherto.

Brussels, 24 September 2003.

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 establishing a Committee on monetary, financial and balance of payments statistics (codified version)'

(COM(2003) 298 final — 2003/0103 (CNS))

(2004/C 10/08)

On 6 June 2003 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 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 11 September 2003. The rapporteur was Mrs Florio.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 125 votes to 2 with 1 abstention.

1. In June 2002 the Commission adopted a series of documents in response to the White Paper on Governance aimed at improving the workings of the European institutions, which must strive to deliver a clearer message on the activities and decisions taken by the European Union. It has therefore been repeatedly emphasised that the EU's ability to progress democratically also depends upon its ability to keep its citizens informed and to support their involvement in the decision-making and legislative process.

2. This is even more important regarding simplification and clear information, including information on EC law. In 1987 the Commission authorised its services to carry out legislative (official) codification designed to provide greater clarity of the law, given that it was impossible to change the basic content of the decision.

3. The current proposal for codification concerns the previous Council Decision (91/115/EEC) establishing a committee on monetary, financial and balance of payments statistics. Since it concerns the codification of a consolidated text, the EESC will not deliver an opinion on the document itself, but does submit its views on the simplification procedure.

4. The EESC believes that, due to the importance of establishing such a committee, and as a result of several amendments to the text tabled at various stages of the drafting procedure, simplification (of codification) should be endorsed. This would certainly help improve the workings of the committee itself and would help provide better information on its activities.

5. This information is particularly important for the various tiers of institutions and society that use and supply data on monetary, financial and balance of payments statistics, as provided for.

6. The EESC has for some time considered it crucial that the decisions taken regarding statistics should, as far as possible, be taken jointly and with consensus, given the importance they represent in defining economic, monetary and balance of payments strategies. It is vital that the accuracy and reliability of data provided by national statistical offices as well as by Eurostat are constantly checked and monitored.

7. Therefore, the Council Decision to establish a committee to examine the development and coordination of monetary, financial and balance of payments statistics is particularly important. Moreover, the EESC endorses codification of the text of the Council Decision, although it stresses that over ten years have passed since the Council document was approved in 1991, and this could mean a certain delay in finalising legal texts and codification procedures.

8. The EESC therefore calls for codification procedures to be accelerated, where possible.

Brussels, 24 September 2003.

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 a Cohesion Fund (Codified version)'

(COM(2003) 352 final — 2003/0129 (AVC))

(2004/C 10/09)

On 30 June 2003 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 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 11 September 2003. The rapporteur was Mr Silva.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 123 votes to 1 with 3 abstentions.

1. The Committee approves the Commission's initiative to undertake the codification of Council Regulation (EC) No 1164/94 establishing a Cohesion Fund.

2. This exercise will help to simplify and improve understanding of Community legislation in an area that is of particular significance at the current stage of European integration.

Brussels, 24 September 2003.

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 on the control of concentrations between undertakings (the EC Merger Regulation)'

(COM(2002) 711 final — 2002/0296 (CNS))

(2004/C 10/10)

On 14 January 2003 the Council decided to consult the European Economic and Social Committee, under Article 308 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 September 2003. The rapporteur was Mrs Sánchez Miguel.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 24 September) the European Economic and Social Committee adopted the following opinion by 102 votes to 27 with 16 abstentions.

1. Introduction

1.1. The proposal for a regulation submitted by the Commission sets out to recast in a single text Regulation (EEC) No 4064/89, the amendments made by the Act of Accession of Austria, Finland and Sweden and Regulation (EC) No 1310/97 amending the original regulation. The aim of this new proposal is, on the one hand, to make the legal texts more readily understandable to all those involved in company mergers with a Community dimension, and on the other hand to comply with the requirements of the regulation itself for a revision of the turnover thresholds used for establishing whether a merger has a Community dimension.

1.2. The Green Paper on the review of the regulation [1] identified three areas in which amendments were required: the operation of the turnover thresholds, the substantive test to be applied by the Commission for the review of concentrations and procedural issues. The EESC drew up an Opinion on the Green Paper [2], setting out its views on each of the above aspects.

1.3. Since the regulation came into force the Court of Justice has issued a number of judgments significantly affecting the interpretation of the merger rules and the assignment of competence to the Member States or the Commission; this has made it necessary to extend the reform proposed in the Green Paper in order to comply with the requirements set out in that document.

1.4. The result will have to be assessed once the new regulation enters into force. It appears from the Commission's consultation of the institutions that the need for reform is accepted, as the difficulties being encountered were detracting from the effectiveness of the regulation.

1.5. It would appear essential for the new regulation to be adopted before EU enlargement. The economic concentration which is likely to occur in many of the applicant countries will be facilitated by simplifying procedures and, above all, by defining the turnover thresholds applicable to Community mergers.

2. Content of the proposal

2.1. In general terms the proposal for a new regulation covers the following issues:

— jurisdictional issues

— substantive issues

— procedural issues

— other proposed amendments.

2.2. *Jurisdictional issues*

2.2.1. In this area the Commission proposal envisages the establishment of a system of streamlined referrals aimed at optimising the allocation of competence between the national authorities and the Commission, so that:

— the criteria for referrals can be improved, with a closer 'mirroring' of the criteria for referral in both directions;

— the applicability of Articles 9 and 22 at the pre-notification stage can facilitate the right of initiative of the notifying parties at this stage of the procedure;

[1] Green Paper on the Review of Council Regulation (EEC) No 4064/89 (COM(2001) 745 final).

[2] OJ C 241, 7.10.2002, p. 130.

— exclusive jurisdiction can be conferred on the Commission, if all the Member States concerned, or at least three of them, agree to a case being referred under Article 22;

— the Commission can apply for a case to be referred, under Article 22. In this way a formal right of initiative can be established.

2.2.2. The substantive criteria, especially regarding referral, are improved by deleting in Article 9(2)(a) the reference to the Member States assessing whether or not the proposed concentration threatens to create a dominant position and replacing it with a request for referral on the basis that competition would be significantly affected on a distinct market within a given Member State. Articles 9 and 22 would also apply during the previous phase of the notification, at the request of the merging parties or when at least three Member States were affected.

2.2.3. The clarification and rationalisation of the procedural rules for joint referrals, laying down deadlines for Member States to request referral or lend their support to such a request, will make it possible to adapt Commission procedures in specific cases ([1]).

2.2.4. The general definition of concentration in Article 3(3) has been amended so as to explicitly include the criteria according to which a concentration requires a change in control and that this control has to take place on a lasting basis. It is also proposed that multiple transactions or those which are conditional on one another or closely connected be deemed to constitute a single concentration.

2.3. *Substantive issues*

2.3.1. The substantive criteria on which Commission intervention is based were debated in the Green Paper, especially substantial lessening of competition. In order to improve legal certainty, a new Article 2(2) is proposed clarifying the concept of dominance, in accordance with the criteria laid down by the Court of Justice ([2]), to cover suspected oligopolies (in the absence of concerted practices) ([3]).

2.3.2. In the discussion of the substantive aspects account has been taken of the efficiency of merger control, by stipulating in Article 2(1)(b) that account shall be taken of the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

2.4. *Procedural issues*

2.4.1. In Article 4 (1) the reference to one week for the prior notification of a concentration is dropped, but the requirement for prior notification is clearly spelt out.

2.4.2. With regard to the suspension of the implementation of concentrations until a final clearance decision has been taken by the Commission, two automatic derogations are provided for in respect of:

— acquisitions through the stock market;

— simplified procedure cases.

2.4.3. Deadlines are stated in working days.

2.4.4. The timetable is made more flexible in both Phases I and II, as experience has shown that in some complex cases time may be short. The following are proposed:

— Phase I: 35 working days if remedies are proposed;

— Phase II: optional extension of the deadline by 20 working days and automatic extension by 15 working days.

2.4.5. With regard to the procedure following annulment by the European Courts, it is proposed that Article 10(5) be clarified to take account of the new requirements for concentrations.

2.4.6. The enforcement provisions, both in relation to procedure and to the sanctions provided, have been spelt out, inter alia, as follows:

— as a general principle, the enforcement provisions will be kept in line with antitrust rules;

— the ceilings for fines and periodic penalty payments related to 'fact-finding' will be increased;

— the ceilings for periodic penalty payments related to the enforcement of certain types of Commission decision will also be increased;

— the Commission is empowered to request information from private individuals.

([1]) Cases: Promatech/Sulzer Textil, decision of the Commission 24.7.2002 and GEES/Union, decision of the Commission 17.4.2002.

([2]) Footnotes 17 and 18 (COM(2002) 711 final — 2002/0296 (CNS)).

([3]) With regard to horizontal concentrations, a draft Commission communication has been published in accordance with Regulation (EEC) No 4064/89 (OJ C 331, 31.12.2002, p. 18), on which the EESC is drawing up an opinion.

2.5. *Other proposed amendments*

2.5.1. Report from the Commission to the Council on the operation of the thresholds. The Commission is required to report to the Council by 1 July 2007.

2.5.2. The deadlines for pre-notification referral are amended in accordance with the provisions of Article 1.

2.5.3. With regard to the Commission's power to prohibit a concentration after the event, Article 8(4) allows the Commission to require the separation of assets brought together, the cessation of joint control or any other action that may be appropriate to restore conditions of effective competition.

2.5.4. The treatment of ancillary restraints is directly related to that of concentrations, and it is intended that these should be covered by the Commission's clearance decision.

3. **General comments**

3.1. The EESC welcomes the proposal for a new Community merger control regulation which, in accordance with the principle of legislative simplification, recasts various legal texts to facilitate their application in the single market [1]. The consultations carried out in connection with the Green Paper have highlighted the need to seek flexible and comprehensible rules, facilitating both the work of the Commission and that of the authorities of the Member States but more especially the use of the legal instrument by firms, preventing legal uncertainty and damaging consequences for all merging parties.

3.2. It should be pointed out that the case law laid down by the Court of Justice during the period of validity of the amended rules has been incorporated into the proposal for a regulation. This gives the proposed regulation a practical slant, as the cases studied, which had been brought by companies before the Court of Justice, derived from interpretation problems arising from the lack of precision of certain articles of the regulation with regard to (i) the allocation of competence between the various authorities concerned and (ii) the criteria used to establish the existence of an economic act falling within the field of competence of the Commission.

3.3. The EESC considers that reviews carried out under the merger control rules are necessarily complicated and are increasingly being impeded by rapidly changing economic conditions as a result of other aspects of globalisation. All these circumstances make it necessary to develop economic and productive structures guaranteeing greater competitiveness of the Community economy.

3.4. Merger control also has to be analysed against the background of the global economy, as required by Article 1(3)(a), in order to take account of the constant and growing international competitive pressure on European companies. The EESC would stress the importance of ensuring that reviews of takeovers are based on a detailed analysis of the global market, rather than being restricted to conditions in Europe.

3.5. In the light of this, the impact on competitiveness must continue to be a central focus of reviews carried out in connection with merger control. Competitiveness should be assessed not only in terms of the European market but also, as suggested in point 3.4, in an international perspective, with greater account taken of world-level economic considerations. One of the objectives of competition policy is to safeguard the interests of consumers. The EESC is of course aware of the great variety of economic and social issues raised by structural change and is broadening its focus to include other market-related subjects.

3.6. One general point to which attention should be drawn is the lack of complete consistency between the recitals and the corresponding articles; some of the comments made on the Green Paper and during the consultation of the economic and social interest groups and other players, have been incorporated into the recitals but not into the operative part of the regulation. One striking example of this is recitals 32 and 42, concerning the rights of workers of firms involved in mergers; the text of the articles, however, makes no mention of these rights, which are nonetheless enshrined in the Treaty itself [2], in recognition of the fact that mergers often have significant economic consequences in terms of employment at the firms concerned. The Commission should carry out its review with an eye to the fundamental objectives laid down in Article 2 of the Treaty, including the objective of strengthening economic and social cohesion (see also Article 158).

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[1] In addition to the legal texts already referred to the Commission has published a broad range of interpretative notices in response to the complexity of the texts, including the Commission Notice on the concept of full-function joint ventures (OJ C 66, 2.3.1998), the Commission Notice on the concept of concentration (OJ C 66, 2.3.1998), the Commission Notice on the concept of undertakings concerned (OJ C 66, 2.3.1998) and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998) etc.

[2] Article 127(2) of the EC Treaty states that 'The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities'.

3.7. There are also discrepancies between the various language versions of the proposed texts; this question is highly relevant to the correct application of the regulation, as each individual language version constitutes the authentic text in the Member State in question.

3.8. In examining the proposed rules, we will follow the same thematic approach used by the Commission to facilitate comparison with the EESC's Opinion on the Green Paper. At all events, the recasting of the previous legal texts will provide a more systematic overview of each of the subjects as well as facilitating application, with the promise of better results.

3.9. The jurisdictional issues have been the subject of a wide-ranging debate in the proposals set out in the Green Paper. The proposals relating to the concept of concentration, the regulation of referral (although the question as to whether a concentration should be deemed to have a Community dimension when it affects two or more states, as proposed in the Green Paper, perhaps needs further consideration) and thus the allocation of competence between the Commission and the Member States can all be considered reasonably satisfactory. Two comments should, however, be made.

3.9.1. In order to determine whether a concentration involving one or more Member States, whose authorities might be better placed to scrutinise the operation, should be referred, the Green Paper proposed that in Article 9(2)(b) the requirement that the concentration should 'not constitute a substantial part of the common market' be replaced by a requirement for proof that 'the effects do not extend beyond the Member State's borders'. This change does not, however, appear in the proposal. The EESC considers that it should be incorporated, as it facilitates the more effective allocation of competence between the Community and national authorities.

3.9.2. The new Article 4(4) allows the notifying parties to ask the Commission for referral to the national authorities prior to notification. The question arises as to whether the wording is appropriate to the desired objective, as the Commission reserves the right not only of total but also of partial referral of a matter to those authorities. In the event of partial referral, the parties, wanting the matter to be examined by a single authority, would find themselves in a situation where it was being analysed by the two different bodies. The EESC considers that the only provision made should be for total referral to the national authorities by the Commission. Similarly, if the Commission decides, following a request by the entrepreneurs concerned, that a concentration has a Community dimension, the Member States should not be given the power of veto and the concentration should be examined at Community level only.

3.10. The substantive issues concern the criteria on which competition policy is based, particularly 'dominant position' and 'substantial lessening of competition', which have been interpreted by the Court of Justice [1] so as to include areas previously considered borderline as regards application of the regulation, such as oligopolies. We therefore consider that the new Article 2(2) fulfils its intended objective of clarification, although the quantitative thresholds set out in Article 1 would exclude from Community review a large number of concentrations which would nonetheless have clear economic repercussions for the common market. At all events, when analysing these substantive issues, account should be taken of the arguments put forward in points 3.4 and 3.5 above.

3.10.1. However, the EESC considers that, if the operative part of the regulation is to be brought into line with the recitals, the part of the regulation dealing with the evaluation of concentrations should take account of the interests of workers and the impact on employment, as EU workers' right to information and consultation cannot be ignored.

3.10.2. At the same time, Articles 3(4) and 5(2) should be brought into line. The first of these stipulates that when 'two or more transactions which are conditional on one another or are so closely connected that their economic rationale justifies their treatment as a single transaction shall be deemed (by the Commission) to constitute one and the same concentration'. The provisions of Article 5(2) relating to the calculation of turnover thresholds should make reference to the above provision.

3.11. The procedural issues have undergone a radical revision. In fact, not only have the legal texts been recast but they have also been corrected in order to adapt and simplify the request and notification procedures.

3.11.1. The proposal for a regulation has introduced certain changes to the deadlines for referral to the national authorities (Article 9(4) et seq.). Thus, the deadlines for resubmission have been considerably extended to facilitate application, as these could constitute an obstacle in the light of the considerable time taken for each of the phases of the procedure.

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[1] The ECJ clarified the definition of dominant position in Case T — 112/96 Gencor/Commission.

3.11.2. Moreover, the deadline within which the parties are required to request extension of the Phase II time limit, 15 working days following the beginning of the phase, is rather rigid, given that the request has to be presented at a very early stage of the procedure, at which time the parties probably have no detailed knowledge of the objections which the Commission might make to the notified operation. It should also be made clear whether the 15 and 20-day deadlines can run consecutively or whether the second deadline begins from the time an extension decision is taken. In the former case, if it is the Commission which takes a decision on extension, this could mean a substantially longer timeframe.

3.12. The other proposed amendments are generally satisfactory, reflecting issues of major significance for competition in the single market. There are, however, two issues which the EESC considers should be the subject of revision:

3.12.1. First, ancillary restraints, where these are necessary, will be covered by Commission clearance, although it is not obliged to make any express declaration on the subject. Under this approach firms will be deprived of the legal certainty of a specific declaration. The ancillary nature of the restraints might then be questioned by the national authorities, thus, if these authorities were to judge them independent restraints, obliging the merging parties to provide proof of their legality in the course of a national procedure.

3.12.1.1. It would therefore be desirable, in line with the case law of the Court of Justice [1], for the Commission to continue to be obliged to make a specific declaration on the ancillary nature of restraints identified as such by the parties.

3.12.2. If, however, this requirement is not retained, it would be advisable, in order to ensure an acceptable level of legal certainty for: (i) the burden of proof as to the non-ancillary nature of the restraint to lie with the third-party plaintiff (ii) the principles and guidelines published by the Commission to be given force of law [2].

3.13. The provisions of Article 20 of Council Regulation (EC) No 1/2003 of 16 December 2002 have been incorporated into Article 13 of the proposal for a regulation. Although the Commission's powers of inspection must be broad and undisputed, individual circumstances may differ, at least where voluntary notification is concerned, so that some limitation of these powers should be considered; they would, however, apply in cases involving suspected failure to notify when required to do so or failure to comply with procedural obligations, as well as in all cases where the Commission's action is directed against third parties separate from the notifying companies.

3.14. Article 23(1)(e) provides that the Commission may impose administrative fees for submission of notifications, which is unacceptable.

3.15. Lastly, the Committee feels that the Commission should take the opportunity of the new Regulation to give a stronger legal basis to the various concepts and a more solid operational basis to the explanatory guidelines for merger assessment, which are contained in certain of its communications on this subject, particularly its December 2002 draft Communication OJ C 331, by incorporating these points in the definitions and procedural rules set out in the draft Regulation.

4. **Proposed amendments**

The EESC, with a view to more effective application of the regulation, and above all in order to ensure that the development of the regulation is as beneficial as possible to all parties concerned, proposes the following changes to the Commission's text:

4.1. Recital 17: The second and third sentences ('The Commission should not be obliged ... compatible with the common market.') should be deleted, in view of our comments in point 3.12.1.

4.2. The Spanish text of Article 1(2)(b) should be amended.

4.3. Article 2(1)(b) should read as follows:

> '(b) the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, employment trends in the economic sector and in the areas in which the merging companies' productive facilities are located, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.'

[1] Judgment T-251/00 Lagardère v Canal +/Commission 20.11.2002.

[2] Communication of 27.6.2001.

4.4. In Article 3(6)(a) replace 'financial institutions' by 'investment firms'.

4.5. Add the following paragraph to Article 4(2):

'Simultaneously with, or immediately following, notification of the Commission, the notifying persons or enterprises shall also notify representatives of the employees of the enterprises involved in the concentration.'

4.6. In the final line of the first paragraph of Article 4(4) the words 'or in part' should be deleted.

4.7. In the first line of the third paragraph of Article 4(4) the words 'unless the Member State concerned disagrees' should be deleted.

4.8. The fourth paragraph of Article 4(5) should read as follows:

'Where all the Member States concerned, or at least ~~three~~ two such Member States, have requested the Commission to examine the concentration, the concentration shall be deemed to have a Community dimension and shall be notified to the Commission in accordance with paragraphs 1 and 2 of this Article.'

4.9. The penultimate paragraph of Article 4(5) should read as follows:

'Where the Commission decides to examine the concentration, it may request the submission of a notification pursuant to paragraphs 1 and 2. The Member States or States ~~having made the request to the Commission~~ affected shall not apply their national legislation on competition to the concentration.'

4.10. The first paragraph of Article 5(2) should read as follows:

'2. By way of derogation from paragraph 1, where the concentration consists in the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the concentration shall be taken into account with regard to the seller or sellers; account shall, however, be taken of the interdependence of, or links between, other parts of the merging companies, in accordance with Article 3(4), in aggregating their turnovers.'

4.11. The title of Article 5(3)(a) should read:

'Income from equity capital investments.'

4.12. In Article 5(3)(a) replace the references to 'other financial institutions' with 'investment companies'.

4.13. The second paragraph of Article 6(1)(b) should read as follows:

'A decision that a concentration is compatible with the common market shall also cover the restraints directly connected with, and necessary for, the concentration, as indicated in the notification or the Commission decision.'

4.14. The third paragraph of Article 8(2) should read as follows:

'A decision that a concentration is compatible with the common market shall also cover the restraints directly connected with, and necessary for, the concentration, as indicated in the notification or the amendment thereto, or in the Commission decision.'

4.15. Article 9(2)(b) should read as follows:

'(b) a concentration affects competition on a market within that Member State, which presents all the characteristics of a distinct market and which does not ~~constitute a substantial part of the common market~~ extend beyond the frontiers of the Member State in question.'

4.16. Article 9(4): In view of the arguments set out above, it would be advisable to shorten the deadlines laid down here.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which obtained more than one quarter of the votes cast, were rejected during the discussions:

Point 3.6

Delete.

Reason

The criticism in point 3.6 is unjustified. The balance struck in the Commission proposal is reasonable. It is quite appropriate for the recitals to include self-evident remarks to the effect: (a) that the Regulation must be interpreted and applied without prejudice to fundamental rights and principles and (b) that it does not detract from 'the collective rights of employees, as recognised in the undertakings concerned, notably with regard to any obligation to inform or consult their recognised representatives under Community and national law'. Such remarks are unnecessary in the text of the Regulation proper and, if anything, their inclusion could give rise to uncertainty as to the aims of the Regulation.

Result of the voting

In favour: 48, against: 71, abstentions: 11.

Point 3.10

Replace with the following:

'3.10. On the substantive side, the Commission proposes the retention of the dominance criterion. The Committee agrees that there should not be a transition to the "substantially less competition (SLC) test". [1] However, the definition introduced in Article 2(2) alters the content of the concept. Under the proposal, any undertaking which can influence appreciably and sustainably the parameters of competition is deemed to be in a dominant position. This seems to be a particularly vague and elastic definition. The Committee feels that it would lead to a significant and unwarranted extension in the scope of control. It would also be a source of considerable uncertainty, with potentially adverse consequences for structural change. It is obvious that predictability is vital in this regard.

3.10.1. A lack of clarity in the concentration rules may have serious and undesirable deterrent effects; it is not just acquisitions that are really harmful to the economy that are to be held back, but also business transactions that are quite legitimate, beneficial and necessary. In the Committee's view it is precisely this which must be avoided. Therefore the Committee feels that the current definition of dominant position must be retained so that the system remains stable and stays within reasonable limits. It can be noted that if the aim is specifically to extend the scope to non-synergy oligopolies (which, it must be said, is an unlikely situation), this can be achieved by adding a provision clarifying the scope.'

Reason

The original wording of the first sentence in 3.10 does not appear to be correct; as far as we are aware, the Court of Justice has not interpreted the 'substantially less competition' test. In general: self-explanatory.

Result of the voting

In favour: 39, against: 86, abstentions: 9.

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[1] See also the EESC opinion of 17 July 2002, point 3.2.13, OJ C 24, 7.10.2002.

Point 3.10.1

Delete.

Reason

Employee rights to information and consultation are regulated by other provisions. It is up to the Commission to decide how it obtains the information it needs to take a decision. In most cases assessments by, *inter alia*, workers' organisations should be included in the grounds for the decision. It seems unnecessary to incorporate provisions on this in the Regulation.

The impact on employment must never in itself be a reason for opposing a planned merger. The Regulation should only be used to prevent concentrations that would clearly impede competition.

Result of the voting

In favour: 45, against: 84, abstentions: 11.

Point 4.3

Delete.

Reason

The impact on employment must never in itself be a reason for opposing a planned merger. The Regulation should only be used to prevent concentrations that would clearly impede competition. The proposed addition to Article 2(1)(b) could cause confusion and make decisions under the Regulation much more difficult to predict.

Result of the voting

In favour: 53, against: 76, abstentions: 8.

Opinion of the European Economic and Social Committee on the 'Draft Commission Notice on the appraisal of horizontal mergers under the Council Regulation on the control of concentrations between undertakings' ([1])

(2004/C 10/11)

On 22 January 2003 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned notice.

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 3 September 2003. The rapporteur was Mr Hernández Bataller.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 90 votes to 21 with 25 abstentions.

1. Introduction

1.1. Under Article 2 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ([2]), the Commission is empowered to appraise such operations provided they fall within the scope of the regulation.

1.2. The regulation has been supplemented by a number of Commission notices on:

— the concept of full-function joint ventures ([3]);

— the concept of undertakings concerned ([3]);

— calculation of turnover ([3]);

— alignment of procedures for processing mergers under the ECSC and EC Treaties ([3]);

— the simplified procedure for processing certain merger operations;

— remedies acceptable to the Commission ([4]);

— restrictions directly related and necessary to concentrations ([5]).

1.3. The regulation on the terms of reference of hearing officers ([6]) and the rules on notifications, time limits and hearings in concentration procedures ([7]) are to be added to this already complex legal framework.

1.4. Following the debate sparked by the publication of the green paper, on which the Committee has already issued an opinion ([8]), and recent Court of Justice case-law on concentrations ([9]), the Commission has had to shift its focus on merger operations. It has published a new proposal for a regulation on control of concentrations between undertakings ([10]) and the present notice, the purpose of which is the appraisal of horizontal concentrations under the Council regulation on the control of concentrations between undertakings.

2. Content of the draft notice

2.1. The subject of the draft notice is the criteria for appraising the impact on competition in the relevant market of 'horizontal concentrations' ([11]).

([1]) OJ C 331, 31.12.2002.
([2]) OJ L 395, 30.12.1989, as amended by Council Regulation (EC) No 1310/97 of 30.6.1997 (OJ L 180, 9.7.1997).
([3]) OJ C 66, 2.3.1998.
([4]) OJ C 68, 2.3.2001.
([5]) OJ C 188, 4.7.2001.
([6]) Commission Decision of 23.5.2001 on the terms of reference of hearing officers in certain competition proceedings, OJ L 162, 19.6.2001.
([7]) Commission Regulation (EC) No 447/98 of 1.3.1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, OJ L 61, 2.3.1998.
([8]) OJ C 241, 7.10.2002.
([9]) Including the judgments of 22.10.2002 (Case T-77/02) on Schneider Electric v Commission and of 20.11.2002 (Case T-251/00) on Lagardère SCA and Canal+ SA v Commission.
([10]) Proposal for a Council Regulation on the control of concentrations between undertakings [COM(2002) 711 final], OJ C 20, 28.1.2003.
([11]) Understood as concentrations in which the undertakings concerned are actively operating on the same market, or are potential competitors on that market. The distinction and its meaning are set out in detail in the Commission Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, OJ C 3, 6.1.2001.

2.1.1. These criteria are applied in two complementary ways:

i) definition of the relevant product and geographic markets, especially aspects such as market shares, concentration levels and the importance of innovation;

ii) assessment of the merger in competition terms.

2.1.2. The draft notice is therefore structured around the following questions:

a) the likely anti-competitive effects of the merger in the relevant markets in the absence of countervailing factors;

b) the likelihood that buyer power would act as a countervailing force to an increase in economic power as a result of the merger;

c) the likelihood that entry by new firms would maintain effective competition in the relevant markets;

d) the likelihood that efficiencies would result from the merger;

e) the conditions for a failing firm defence.

2.2. However, these elements are not all equally relevant to horizontal mergers. Efficiencies and the failing firm defence are usually only analysed if the notifying parties establish that the necessary conditions are met.

2.3. The Commission believes that there are three main ways in which horizontal mergers may significantly impede effective competition as the result of the creation or strengthening of a dominant position:

— a merger may create a paramount market position. A firm in such a position will often be able to increase prices without being constrained by actions of its customers and its actual or potential competitors;

— a merger may diminish the degree of competition in an oligopolistic market by eliminating important competitive constraints on one or more sellers, who consequently would be able to increase their prices;

— a merger may change the nature of competition in an oligopolistic market so sellers, who previously were not coordinating their behaviour, now are able to coordinate and therefore raise prices. A merger may also make coordinating easier for sellers who were coordinating prior to the merger.

2.4. The Commission applies a number of criteria to define 'firms with a paramount market position'. In general, they must have very large market shares (in excess of 50 %), particularly when smaller firms hold much smaller shares. However, the Commission also points to other factors which may be taken into account when determining the merged entity's economic power, including:

— economies of scale and scope;

— privileged access to supply;

— a highly developed distribution and sales network;

— access to important facilities or to leading technologies, which may give the merging firms a strategic advantage over their competitors;

— privileged access to certain inputs, such as physical and financial capital;

— other strategic advantages, such as ownership of the most important brands, a well-established reputation, or extensive knowledge of the specific preferences of customers.

Rather than an absolute value, 50 % is an indicator for the presumption of the existence of a dominant position; in practice, levels of up to 70 % have been tolerated which did not prevent competition or place insurmountable obstacles to access in the path of market competitors, as in Case T-114/02 of 3 April 2003. On the other hand, notifications of agreements below the 50 % mark may meet with a refusal if they would entail a serious risk to competition.

2.5. The Commission considers that on oligopolistic markets (non-collusive oligopolies), under certain circumstances some mergers may diminish the degree of competition by removing important competitive constraints on one or more sellers, who consequently find it profitable to increase prices or reduce output post-merger. In such cases, the Commission advocates the use of different measures of market concentration, depending on whether the goods are relatively homogeneous or differentiated.

2.5.1. In markets where output or capacity levels are the most important strategic decisions made by the oligopolists, the important concern for firms is how their output or capacity decision influences the prices on the market.

2.5.2. In contrast, there are markets in which setting prices is the most important strategic decision made by the oligopolists. Negative effects on competition may arise where, following the merger, the new entity finds it profitable to raise prices as a result of the loss of competition between the merging firms, thereby damaging the interests of consumers. The incentive to increase prices is strongly related to the proportion of lost sales that each merging firm would be expected to recapture in increased sales of the other merging party's product.

2.6. A merger may change the nature of competition in an oligopolistic market so sellers, who previously were not coordinating their behaviour, are now able to coordinate and thus raise prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 81 of the EC Treaty.

2.6.1. The alteration of the market structure may be such that such sellers would consider it possible, economically rational, and hence preferable, to adopt on a lasting basis a course of action on the market aimed at selling at above competitive prices.

2.7. Lastly, the Commission looks at a number of particular cases relating to innovation, the potential entry of competitors into the market, mergers creating or strengthening negotiating power, corporate reorganisations meeting the requirements of dynamic competition, and failing firms.

3. **General comments**

3.1. The Committee warmly welcomes the Commission's adoption of the above-mentioned criteria, which clarify the analyses of the impact on competition of mergers. On an overall basis, the Committee finds the theoretical economic thinking applied in the draft notice to be adequate and fairly uncontroversial. The Committee however also feels that more can be done to provide guidance with regard to the practical implementation. In order to advise companies in individual cases, the notice needs to relate more to situations typically arising in practice, and to expand on issues of empirical evidence and standard of proof.

3.1.1. This will, firstly, promote consumers' interests by providing them with new guarantees for obtaining an excellent level of quality and price for goods and services. Secondly, it will spur businesses to strive harder for competitiveness and economic efficiency.

3.1.2. The proposal clarifies a number of aspects of the Commission's administrative rules for dealing with company merger notifications. By their very nature, these rules cannot take account of other aspects which, as a side-effect, assume importance in company mergers, such as those relating to employment and industrial policy.

3.1.3. The Committee believes that consideration should be given to such aspects in future supranational legislative projects on this question. One example might be the introduction of provisions concerning the employers' duty of information to workers.

3.1.4. The draft notice further develops 'the dominance test' [1] and 'significant lessening of competition' set out in the Green Paper on the review of Council Regulation (EEC) No 4064/89 [2], by introducing new parameters, particularly with regard to 'efficiencies'. The clarification provided in this respect by the draft notice does not entail any amendment to the Council regulation. However, dominant firms now seem to be all those that are capable of influencing appreciably and sustainably the competition parameters. The Committee feels this enlarges the scope, and subsequently lowers the threshold of intervention considerably. The proposed definition appears to be very wide and ambiguous. In the view of the Committee, the draft notice is insufficient to alleviate this problem, which however first and foremost should be rectified by a more precise definition in the regulation. To clarify that it applies to so-called unilateral affects of non-collusive oligopolies, it could use a formula saying just that, with a reasonable degree of precision (cf. the concept indicated in footnote 7 of the draft notice). The Committee would like to emphasise the crucial importance of predictability here. Uncertainty as to the scope and substance of the merger regime causes a severe and undesirable deterrent effect. It will dissuade not only truly harmful mergers, but also impede legitimate, useful and necessary restructuring.

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[1] Firms have usually been considered to hold a dominant position if their economic power enables them to operate on the market without taking account of the reaction of their competitors or of intermediate or final consumers.

[2] COM(2001) 745 final. The Commission Notice on the definition of relevant market for the purposes of Community competition law is also worth consulting in this respect, OJ C 372, 9.12.1997.

3.1.5. The Committee supports the Commission's on-going drive for greater institutional transparency in other areas of its relations with individuals (for instance, a series of administrative commitments in processing complaints against Member States' failure to comply with their obligations under Community law ([1])).

3.2. With a view to more accurate analyses of the impact on competition, the draft notice focuses only on situations created by horizontal mergers, excluding comparable events involving joint ventures or cooperation agreements between firms ([2]) from its scope.

3.3. Applying the criteria laid down in the draft notice will result in more detailed appraisals. Companies will consequently have to provide more exact detail on certain aspects in the notifications, particularly concerning their specialised sector. The Commission must ensure that an excessive or unnecessary administrative burden is not placed on undertakings.

3.3.1. This strengthens the principle of legal certainty and will presumably avoid the kind of disputes recently settled by the Court of First Instance ([3]), in which the appropriateness of the appraisal criteria currently used by the Commission ([4]) are questioned.

3.3.2. The Commission should nevertheless also examine the suitability of including some of these concepts, criteria, parameters and rules in the draft regulation on merger control ([5])) as statutory obligations, so as to ensure greater legal certainty in the assessment of merger situations.

4. **Specific comments**

4.1. Further efforts to clarify the content and scope of certain terms used by the Commission in its draft notice would however be advisable. They are set out below.

4.2. Points 11(a) and 19 mention 'a paramount market position'. This is a new concept, which cannot easily be distinguished from the concept of 'dominant position' as used in the Commission's own practice and in the case-law of the CJEC ([6]), and which is expressly referred to in point 20. The EESC proposes that the expression 'paramount market position' be deleted on account of its lack of legal precision. The effect would be to increase transparency and legal certainty in the Commission's assessment.

4.3. Point 25 also introduces the new concept of 'non-collusive oligopolies'. This term appears to give separate legal treatment to a situation comparable to that of 'individual dominant position' defined in the Commission's practice and the case-law of the CJEC ([7]). Parameters consolidated by the USA anti-trust authorities — referred to in a number of recent Commission decisions — should be used when establishing 'non-collusive oligopolies'.

4.3.1. The particularity of 'non-collusive oligopolies' is apparently that they create neither a collective nor an individual dominant position. On what criteria can the Commission then establish their existence?

4.4. In footnote 28 and in point 27 the Commission refers to 'relatively homogeneous products', deeming them to exist 'if customers consider the products from one producer as a sufficiently good substitute for the product from any other producer'. These should be defined in more practical terms, if possible on the basis of actual cases.

4.5. The benchmark to be used by the Commission in assessing particular concentrations also needs to be clarified. Point 16 refers to the market concentration index (HHI below 1 000 points), while point 29 mentions the market share (maximum 25%), which could cause problems in the case of homogeneous products. What would happen if the parties concerned had a market share of less than 25 % but their HHI concentration index exceeded 1 000 points? In this regard, 1 000 HHI points would appear to be too low, considering that other Commission documents, such as the guidelines on

([1]) COM(2002) 141 final, in OJ C 244, 10.10.2002.
([2]) These are governed by the block exemption regulations for R+D and specialisation agreements, and by the guidelines referred to in footnote 13 above.
([3]) See Case T-342/99: Airtours v Commission; Case T-310/01: Schneider Electric v Commission, not yet published in the European Court Reports.
([4]) Application of the new criteria will not affect the Commission's degree of tolerance towards horizontal mergers. The aim is not to make it harder to grant authorisations, but rather to provide a clearer definition of the terms on which the relevant administrative act is based in each case.
([5]) COM(2002) 711 final, 12.12.2002.
([6]) Michelin v Commission, judgment of 9.11.1983, ECR p. 3461.
([7]) DLG judgment of 15.12.1994, ECR I-5641.

horizontal agreements [1], describe a concentration index of between 1 000 and 1 800 as 'moderate'. The reference to the HHI index could perhaps be raised to 1 300 or 1 400. Under exceptional circumstances, the HHI index may rise above 1 000, even reaching the 2 000 mark. In conclusion, the Committee finds the draft notice too ambiguous as to how the thresholds would apply. Also, in practice the delimitation between differentiated and homogeneous markets may not be that clear-cut, but involve various grey areas. Clarifications should therefore be made, with a view to creating 'safe-havens' of practical use and greater generality of the thresholds, preferably relating them to all types of effects dealt with.

4.6. The same confusion arises in point 41, which states that 'it is unlikely that the Commission would approve a merger' if coordination was already taking place between the members of an oligopoly on the oligopolistic market in question prior to the transaction, unless the merger was likely to disrupt such coordination. This does not fit in well with the test contained in Article 2(3) of the Concentration Regulation according to which the Commission may only prohibit a merger if it creates or strengthens a dominant position significantly impeding competition.

4.7. Lastly, section VI on 'efficiencies' merits particular consideration. In essence, efficiencies may be decisive in determining that a merger is to be approved if the benefits for competition make the restrictions acceptable. Efficiencies must be demonstrated, by applying pre-established criteria to be specified in a Commission document or instrument. Undertakings will have to place special emphasis on the benefits for consumers; by way of exception, these benefits could also be viewed in a long-term perspective [2] (e.g. benefits deriving from R&D). Consideration of the long-term benefits must nevertheless be restricted to highly specific sectors of business activity.

4.7.1. However, point 21 also mentions efficiencies as an element which can increase the likelihood of a merger leading to greater 'market power' (a concept which is not defined). Would efficiencies generating economies of scale be considered as positive elements or, on the contrary, as strengthening market dominance? How could a balance be struck between the positive and negative effects of efficiencies?

4.7.2. In order to avoid confusing situations of this kind, the Commission must provide clear and concrete examples. It should be borne in mind that analysis of 'efficiencies' is probably the most innovative feature of the Commission's draft notice. Indeed, until very recently efficiencies were not considered to be of particular importance in analysing merger notifications to the Commission (as in European Commission Decision/Honeywell 2001 [3]). For the sake of legal certainty, the Commission should clarify explicitly, in the notice, that there is indeed no such thing as an 'efficiency offence'.

[1] OJ C 66, 2.3.1998.

[2] Caution should be exercised in introducing the long-term benefits criterion, as the CJEC itself appears to do in its clarification of the consideration given to such benefits in the Kramer case set out in the *obiter dictum* contained in the judgment of 12.12.2002, Case C-281/01, which states, *inter alia*, that: 'It is true that in the long term, depending on how manufacturers and consumers in fact behave, the programme should have a positive environmental effect as a result of the reduction in energy consumption which it should achieve. However, that is merely an indirect and distant effect, in contrast to the effect on trade in office equipment which is direct and immediate'.

[3] Commission Decision of 3.7.2001 in Case COMP/M.2220.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

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

Point 3.1.3

Delete.

Reason

Employee rights to information and consultation are regulated by other provisions. It is up to the Commission to decide how it obtains the information it needs to take a decision. In most cases assessments by, *inter alia*, workers' organisations should be included in the grounds for the decision. It seems unnecessary to incorporate provisions on this in the Regulation.

The impact on employment must never in itself be a reason for opposing a planned merger. The Regulation should only be used to prevent concentrations that would clearly impede competition.

Result of the vote

In favour: 53, against: 78, abstentions: 10.

Opinion of the European Economic and Social Committee 'addressed to the 2003 Intergovernmental Conference'

(2004/C 10/12)

At its Plenary Session on 21 February 2002, the European Economic and Social Committee, acting under Rule 29, paragraph 2, of its Rules of Procedure, decided to draw up an opinion addressed to the 2003 Intergovernmental Conference and, under Rule 19, paragraph 1, of its Rules of Procedure, the Committee decided to establish a subcommittee to prepare its work on the matter.

The subcommittee adopted its draft opinion on 15 September 2003. The rapporteur was Mr Malosse.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 118 votes to 7 with 9 abstentions.

1. European Economic and Social Committee's main recommendations to the IGC

1.1. The draft constitutional Treaty is the fruit of a democratic, transparent and open process which will leave its mark on history. It stipulates that any changes will henceforth be made by a Convention or at the very least, where less fundamental alterations are involved, after consulting the European Parliament. This method has demonstrated its effectiveness: the draft does in fact afford genuine value added for the public in terms of readability, simplification, a higher profile for the Union and democratisation.

1.1.1. What is at stake next is to establish, on a permanent basis, but also with a view to revising the constitutional Treaty, procedures securing more public involvement and more structured dialogue with civil society organisations. This is the only way to confer greater legitimacy on the Union and make civil dialogue work, based on the principle of participatory democracy.

1.2. The European Economic and Social Committee (EESC) asks that the IGC not upset the balance and the broad principles achieved through consensus in the draft Treaty submitted to the Council Presidency on 18 July 2003.

1.3. However, bearing in mind the debates which will be held at European and national level, the EESC recommends that those taking part in the IGC supplement, detail and clarify certain points in such a way as to increase the trust and involvement of the general public and civil society organisations. This includes:

— introducing stronger provisions for implementing the Union's economic and social policies and improving governance in the Euro zone;

— boosting the democratic legitimacy of economic, social and monetary policies by involving the European Parliament and the EESC more;

— bringing priorities up to date and simplifying the instruments for economic, social and territorial cohesion;

— making common foreign and security policy more democratically accountable and making it more consistent and effective;

— defining more precisely the scope and arrangements for putting into practice the principle of participatory democracy, so as to give tangible expression to civil dialogue and the tasks of the European Economic and Social Committee in this context;

— expanding the mandatory fields of consultation of the EESC to cover the common asylum and immigration policy, application of the principle of non-discrimination, and culture; and

— acknowledging the role of civil society organisations in implementing the principles of subsidiarity and proportionality, granting the EESC the right of appeal to the Court of Justice.

2. Overall assessment of the draft constitutional Treaty

2.1. *General comments*

2.1.1. The draft Treaty establishing a Constitution for Europe, submitted to the European Council Presidency on 18 July 2003, represents a milestone in the European venture. It is the outcome of a democratic, transparent and open process inspired by the success of an earlier Convention which drew up the Union's Charter of Fundamental Rights.

2.1.2. The European Convention which prepared the draft constitutional Treaty was a body with a legitimate basis: the vast majority of its members — nearly two thirds — were members of parliament, either from the European Parliament or from Member States' or accession countries' parliaments. Alongside them were representatives of Member States' governments and the Commission, as guardian of the treaties, participating on an equally legitimate basis; thus the unique character of the EU as both a union of States and a union of peoples was respected. The representative nature of the Convention was given a further boost by the presence of the social partners, the European Economic and Social Committee, the regions, through the Committee of the Regions, and the Ombudsman as observers, even though their full participation would have lent even greater legitimacy to the Convention.

2.1.3. The Convention generally operated in a transparent fashion, and steps were taken to ensure that, as far as possible, members of the public who were interested had access to its work and documents, even though its methods could still be improved upon. The Convention's work began with a 'listening' phase during which representatives of civil society and youth were asked to give their views. The way this consultation was organised did not really allow everyone to express their views nor did it allow for in-depth debate, but these beginnings of dialogue could foreshadow genuine participatory democracy which, as is called for in the Laeken declaration, might actually help 'bring citizens (...) closer to the European design and the European institutions'. These efforts to hear people's views and ensure transparency were complemented and taken further by the EESC, in particular through the regular information meetings and dialogue with European civil society organisations and networks which it organised in cooperation with the Convention's praesidium, its joint work with national ESCs and similar bodies and its initiatives to involve civil society organisations in the accession countries.

2.1.4. The Convention was also efficient, since — operating by consensus — it managed to hammer out a complete, balanced draft in the required time, meeting the requests made at the Laeken European Council of 14 and 15 December 2001. It was able to generate its own momentum, which also meant that it could place a broad interpretation on the Laeken Declaration.

2.1.5. The Convention succeeded in involving national parliaments, previously to a great extent left out of the early stages of major European debates. It also allowed accession countries to be involved in the work on an equal footing with Member States, apart from the right to vote which, in any case, was not used by the Convention.

2.1.6. The Intergovernmental Conference (IGC) has a legitimate, credible draft before it. Copies of the draft are now being circulated extensively and brought to the public's notice. This is a unique situation where the democratic process is preceding the diplomatic one. The IGC is in itself only one stage prior to the final, but fundamental, phase of ratifying the Treaty establishing a constitution for Europe in each of the Member States, be it by referendum or parliamentary ratification. In fact this is the first constitutional text which clearly engages the citizens of the EU in a common future.

2.1.7. One of the points at stake in the draft constitutional Treaty is thus to create a more understandable vision of the role and objectives of the Union, which would win the support of the people of Europe. This can only be achieved if the institutions of Europe, including the EESC, gain and maintain the confidence of the general public.

2.1.8. The European Economic and Social Committee supports the draft constitutional Treaty drawn up by the Convention. The EESC set out its priorities to the latter in its September 2002 resolution [1], and played an active part in the Convention's work through its three observers: Roger Briesch, Göke Frerichs and Anne-Marie Sigmund [2]. For the sake of efficiency and democracy, the Committee recommends that the IGC does not call into question the general balance of the draft constitutional Treaty. The EESC also calls for the IGC to be transparent, by establishing a system for informing and consulting civil society organisations at European and national level.

2.1.9. Nevertheless, the EESC feels that it would be legitimate to raise two key questions regarding the draft constitutional Treaty:

— Does the draft Treaty satisfy the public's expectations, as set out in the Laeken Declaration and identified by the EESC through its members — who come from the main national civil society organisations – and at the many conferences, hearings and meetings organised by the EESC on this issue?

— Can the draft constitutional Treaty be improved still further without upsetting its general balance?

[1] EESC Resolution of 19.9.2003 addressed to the European Convention, adopted at the plenary session of 18 and 19 September 2002 — OJ C 14.3.2003.

[2] Alternates: Jan Olsson, Giacomo Regaldo (replacing John M. Little as of September 2002) and Mario Sepi (replacing Gianni Vinay as of September 2002).

2.2. *The value added of the new constitutional Treaty for the public at large*

Treaty also responds to this concern to help people identify with the Union and its values. The creation of an independent authority to monitor protection of personal data (Part I, Article 50) bespeaks, moreover, a concern to make the Union more transparent to the general public.

The actual constitutional provisions and the Charter of Fundamental Rights (Parts I and II)

2.2.1. With this draft Treaty, Europe has, for the first time, announced a clear goal: to establish political Union on behalf of the people and States of Europe. It is of key importance, and highly positive, that Part I (Articles 2, 3 and 4) includes a clear definition of the Union's objectives and values. The EESC, which contributed to this part via amendments, welcomes the balanced wording of these articles. As regards the social protection objective mentioned in Article I-3, the original wording, calling for a high level of ... social protection, should be retained. The inclusion of the Charter of Fundamental Rights in Part II represents an indisputable victory for civil society. Members of the public in Europe will be able to cite the provisions of this charter in any national court in connection with the implementation of European policies.

2.2.2. The draft Treaty not only bears all the hallmarks of a constitution which will find its place in the collective consciousness, but it is also more understandable, more readable and simpler than the current treaties. The amalgamation of the three former pillars and the single name are designed to make it easier for people to identify with the Union, even though the disappearance of the term 'Community', with its unifying connotations, is to be regretted. The draft Treaty allows the general public to see which areas of competence are exclusive to the Union, which are shared and which are subject to coordination; hence it will be clear which areas remain matters of national, regional and local responsibility. The new Treaty, at least as far as Parts I and II are concerned, is very readable. Jargon, although there is still a great deal of it, has in many cases been replaced by terms which are more understandable to the general public, and regulations have been replaced by European laws, and directives by European framework laws. Clearer or new references about the suspension of Union membership rights, voluntary withdrawal from the Union, and the political solidarity clause all strengthen the image of a shared and accepted common commitment for the future.

2.2.3. The draft Treaty raises the profile of the Union. Thus, the principle of a stable Council presidency, without upsetting the institutional balance, and the creation of a post of minister of foreign affairs for the Union may help give European policies a more personal touch. The introduction of a special article on the symbols of the Union in Part IV of the draft

2.2.4. The draft Treaty brings some improvements in terms of consolidating the Union's democratic legitimacy and making the decision-making process more efficient. The granting of responsibilities to national parliaments ('early warning', right of appeal) may be understood as both a way of ensuring compliance with the subsidiarity principle and as a means of involving national parliaments in the European process. Election of the European Commission's president by the European Parliament and stronger powers for the president as regards membership of the College of Commissioners are both steps designed to give greater legitimacy to an institution which is the driving force behind the Union and guardian of the Community method. More powers for the Parliament will reinforce the general public's perception of the importance of this institution. Extension of both qualified majority voting and the co-decision procedure should also confer greater legitimacy on the Union's decisions and actions and make them more effective.

2.2.5. The future Treaty contains an entire, completely new title (Part I, Title VI) on the democratic life of the Union. It lays down the principles of representative democracy and participatory democracy and establishes the role of the social partners and autonomous social dialogue, the attributes of the European Ombudsman and the transparency principle. This title also introduces a right of petition, for petitions supported by no fewer than one million citizens; this can be seen as significant progress for civil society as long as the implementation arrangements allow for effective follow-up (Article 46(4)). The dialogue to be established with churches and philosophical and non-confessional organisations is evidence of the fact that the Union wishes to be more tuned in to the views of society (Article 51).

2.2.5.1. The Committee particularly welcomes the fact that the draft Treaty acknowledges that participatory democracy is an integral part of the European social model. For the Union to gain more democratic legitimacy, the institutions' powers and responsibilities must not only be clearly defined, but the active involvement of civil society must also be guaranteed. Support from active, committed members of the public and the organisations which express their views and act on their behalf, is indeed vital in order to put into practice Europe's declared ambition to be an area of freedom, democracy, justice and security.

The policies and functioning of the Union (Part III)

2.2.6. In Part III, which deals with the policies and functioning of the Union, substantial progress has been made in terms of the democratisation (extension of qualified majority voting, involvement of the European Parliament and the Court of Justice) of the area of freedom, security and justice.

2.2.6.1. However, it is to be regretted that, despite the amalgamation of the three pillars, specific provisions have been maintained for implementation of the common foreign and security policy, despite a certain amount of progress and the prospect of a common diplomatic service. Unanimity remains the rule and no involvement of the general public or of civil society representatives has been envisaged at European level. Consequently, the provisions on the common foreign and security policy should include rules on consultation of EU civil society representatives. This is all the more important to ensure the effectiveness and legitimacy of the European Union's actions in these areas. The EESC suggests that this matter be examined thoroughly and reviewed in the course of the Intergovernmental Conference, without upsetting the broad lines of the draft constitutional Treaty.

2.2.7. The EESC welcomes the affirmation of economic, social and territorial cohesion, to which it attaches considerable importance, and endorses the principles underpinning the EU's policies in this sphere. It would stress that this policy must mainly aim to optimise the human, cultural and natural resources of the less developed countries and regions, thus securing equality of opportunity. With a view to enlargement and a knowledge-based economy, what is needed is a reform of priorities and simplification of implementing arrangements. In this connection, the Committee has suggested a single intervention fund for territorial cohesion ([1]). It consequently welcomes the fact that Article 119 of Part III provides for the possibility of grouping all the structural funds together.

2.2.8. It also welcomes the introduction of a new provision on the importance of the role of services of general interest for promoting social and territorial cohesion in the Union. However, the promotion of a high standard of services of general interest should have been included among the objectives in Article I-3.

2.2.9. On the other hand, a number of sections in the draft constitutional Treaty do warrant being beefed up. Only modest progress has been made, for example, on economic, social, employment and sustainable development issues. Nevertheless, the Committee welcomes the fact that both full employment and a highly competitive social market economy have been explicitly mentioned in the constitutional Treaty as objectives of the Union, but it would point out however that the corresponding articles in Part III should also be worded in such a way as to reflect this. In addition, the EESC calls for the relevant articles to state more clearly that economic and monetary policy must contribute to attainment of the objective of growth and full employment.

2.2.10. Proposals for the coordination of economic and employment policies do not break much new ground in relation to current provisions and practices, especially as regards Euro-zone governance. The public's expectations mostly focus on the notion of a comprehensive growth-promoting, job-creating blueprint for society. These keen expectations, which are consistent with the ambitions the Union set for itself at the March 2000 Lisbon summit, are largely shared by civil society in the accession countries, as the EESC has been able to gauge through the surveys and meetings it has organised. The EESC has itself formulated concrete proposals on economic and social governance ([2]).

2.2.11. Excessive distortions of competition in the single market are damaging to its cohesion and render it less dynamic in pursuit of the Lisbon objectives. It is for this reason that extending the scope of qualified majority voting would open up genuine prospects for convergence in an enlarged Europe. In matters of taxation, and on the question of unanimity, the procedure for strengthening co-operation could be used, which would enable a group of Member States to move forward as pathfinders in accordance with Community rules, without creating any distortions of competition.

3. Improving the draft constitutional Treaty so as to generate more public support for it in Europe: the EESC's proposals

3.1. *Defining more precisely the scope and arrangements for putting participatory democracy into practice (Part I, Article I-46)*

3.1.1. The principle of participatory democracy has assumed key importance in the wake of the Laeken European Council's request that citizens be brought closer to the European design and the European institutions. Through

([1]) See EESC exploratory opinion of 25.9.2003 on 'Economic and social cohesion: regional competitiveness, governance and cooperation' — CESE 1178/2003.

([2]) See EESC own-initiative opinion of 12.12.2002 on 'Economic governance in the European Union' — OJ C 85 of 8.4.2003.

the meetings, conferences and hearings it has organised throughout the Convention's work, the Committee has noted that in the Member States and the accession countries, as well as in the major European civil society networks, there were very high expectations of the draft Treaty, and then a certain disappointment with its lack of content in this domain.

3.1.2. Although Article I-46 of the draft constitutional Treaty represents a fundamental achievement, it does not go as far as the EESC and civil society organisations would have liked and did in fact ask for. Indeed the principle of participatory democracy entails not only the consultation, but also the active participation of all parties representing civil society organisations, both at an early stage in the proceedings, when policies are being shaped and decisions made, and also later on when they are being implemented and followed up.

3.1.3. In this connection, the Committee regrets the lack of adequate operational provisions for implementing this principle and thus for strengthening the confidence of European civil society in the genuinely participatory nature of the Union. By allowing for the participation of those directly concerned, civil dialogue is instrumental in enhancing the democratic legitimacy of the European Union. For this civil dialogue to be effective, it is however necessary to specify the framework and the forum within which it is held. The EESC's natural focus, thanks to its membership and its brief, is to 'facilitate' civil dialogue and provide the institutional forum for this. Thus, without compromising the draft constitutional Treaty, the Committee calls for:

— The European Economic and Social Committee, which should from now on preferably be designated 'European Economic and Social Council', to be included in the list of institutions and bodies making up the Union's institutional framework (Part I, Article 18 (2)).

  The Committee's very nature and brief mean that it is indeed making a full contribution to achieving the Union's objectives and to boosting its democratic legitimacy in the general interest of both the Union and its Member States.

  Moreover, including the EESC in the Article 18 list would make Article 46 (2) more effective; this stipulates that 'the Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society'.

  This process of dialogue and consultation when framing European policies must nevertheless be extended to all levels of government within Europe.

— A new Article 297-III should be inserted as follows so as to define the Committee's tasks clearly:

  'As part of the advisory function conferred on it by Article I-31 of the Constitution, the European Economic and Social Council shall:

  — assist the Union's legislative and executive institutions in the process of decision- and policy-making and in their implementation;

  — assist the European Union in organising the social dialogue, at the joint request of the social partners and while respecting their autonomy;

  — facilitate dialogue between the Union and the organisations representing civil society in accordance with the principles laid down in Article I-46 (1 and 2);

  — support the Union's external action by maintaining dialogue with civil society organisations in non-EU countries and blocs'.

3.1.4. Moreover, effective follow-up to EESC opinions (be they consultative, exploratory or own-initiative opinions) provides a fundamental guarantee of its effectiveness in a genuinely participatory democracy. For this reason, the EESC is proposing to supplement Article III-298 as follows:

'The institutions shall transmit regular reports to the Committee on the follow-up to its opinions'.

3.2. *Broadening the scope of representative and participatory democracy*

3.2.1. The EESC regrets the fact that in an area of such importance as the coordination of economic and employment policies, there is no provision for rules allowing either the public (through the European Parliament) or civil society (through the European Economic and Social Committee) to be involved or consulted. This anomaly should be rectified by the IGC to allow for consultation of the European Parliament and the EESC on Member States' broad economic policy guidelines (BEPGs) (Article III–71).

3.2.2. The scope of the 'open method of coordination' has been expanded to cover new spheres: social policy, industrial competitiveness, research and public health. However, it is regrettable that there are no provisions for effectively involving the European Parliament, national parliaments, the EESC, the social partners and other civil society players in those areas which concern them.

3.2.3. As regards the areas in which the EESC must be consulted, it would be appropriate — given the EESC's membership and areas of expertise — to expand these to include the following:

— Application of the non-discrimination principle (Article III-7)

— The common asylum and immigration policy (Articles III-167 and III-168)

— Culture (Article III-181) [1].

This would give tangible form to the Union's wish to reinforce the democratic legitimacy of Community policies in areas which are of special importance to the European public and to civil society organisations.

3.3. *Civil society organisations and the subsidiarity principle*

3.3.1. The application of the subsidiarity principle was one of the most hotly debated issues at the Convention. It was one of the Laeken European Council requests. The draft constitutional Treaty quite rightly recognises the role of national parliaments in monitoring subsidiarity. It also involves the Committee of the Regions which, without however having institutional status, can submit appeals regarding legislative acts where the constitution Treaty requires that it be consulted prior to their adoption.

[1] The Committee would point out that Article I-31 of the draft constitutional Treaty stipulates that the European Economic and Social Committee shall consist of representatives of civil society, *inter alia* those operating in the area of culture. It is therefore logical to stipulate that the Committee be consulted on culture-related matters.

3.3.2. The Protocol on the application of the principles of subsidiarity and proportionality recognises the need for wide-ranging consultation before proposing and deciding on legislative acts. Nevertheless, this protocol, which gives national parliaments the right to alert the Union to problems and Member States the right to appeal (if necessary, on behalf of their national parliaments), totally ignores the role of civil society organisations — as represented inter alia by the EESC — in implementing the subsidiarity principle, without regard for Article I-46 on participatory democracy.

3.3.3. Civil society players are as well placed as regional and local authorities to judge whether certain proposals for legislative or regulatory acts might encroach on their fields of competence; this concerns as much the social partners, in their collective bargaining activities, as the other civil society operators, for all alternative forms of regulation (co-regulation, self-regulation, codes of good conduct, etc.) which can complement or replace legislative action. The European Commission, in its White Paper on European Governance [2], has itself highlighted the importance of these new ways of organising society in the future, which are part of functional subsidiarity and also guarantee a better response to the public's concerns and demands as well as more effective action by the Union.

3.3.4. For this reason, the EESC is proposing:

— firstly, that the Protocol on the application of the subsidiarity and proportionality principles be supplemented accordingly, and

— secondly, also with a view to respecting the principle of parity with the Committee of the Regions, that the European Economic and Social Committee be granted the right of appeal to the Court of Justice regarding legislative acts about which the constitutional Treaty requires that the EESC be consulted prior to their adoption, and that Article III-270 of this Treaty be amended accordingly.

In any case, if the EESC were included in the institutional framework of the Union, this right of appeal would be conferred on it automatically.

[2] COM(2001) 428 final, 25.7.2001.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee 'Towards a pan-European system of inland waterway transport'

(2004/C 10/13)

On 23 January 2003 the European Economic and Social Committee, acting under the second paragraph of Rule 29 of its Rules of Procedure, decided to draw up an opinion on the following subject Towards a pan-European system of inland waterway transport.

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 4 September 2003. The rapporteur was Mr Simons.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 29 votes to one.

1. Introduction

1.1. Internal waterway transport (IWT) plays a relatively important part in the transport of goods in Europe. Although it accounts for only 4,1 % of total goods transport in Europe ([1]), in some Member States it makes a much more significant contribution (e.g. Netherlands: 42,7 %, Germany and Belgium: 13,1 %). However, IWT has sufficient capacity to take on a substantially greater share of total goods transport in Europe and is therefore regarded as a mode of transport with great growth potential. According to recent research ([2]) and official forecasts, IWT is likely to grow strongly in the next few years, and the capacity of the existing waterways is sufficient to absorb this growth. Through the major cross-border waterways as well as many national waterways throughout Europe it can reach much of the continent. The sector is innovative in a number of areas. By making itself better known as an alternative to road haulage, IWT has already succeeded in winning new markets.

1.2. With the enlargement of the European Union, IWT will play a greater part in the internal market. Many of the accession countries have navigable waterways which are used for the transport of goods. In the framework of the policy announced by the European Commission, IWT can play a major role in the integration of the new Member States and their economic development.

1.3. IWT is regarded as being the cleanest and most environmentally friendly mode of transport. Despite investment in cleaner engines for road haulage, IWT is still well ahead as the cleanest mode of transport in terms of emissions and pollution ([3]). The sector is thus making a contribution to reducing the environmental impact of transport and, by investing in improved environmental and safety practices, it is striving to improve the situation still further.

1.4. With regard to the management of the problem of waste (cargo waste, waste from vessels and household waste), the sector has already adopted self-regulatory measures, thus anticipating the introduction of legislation.

2. Bottlenecks

2.1. In the context of the new European Commission policy, efforts are being made to achieve a new balance in transport. IWT is seen as a way of achieving a more balanced transport market. In order to be able to exploit fully the potential of this mode, a number of obstacles need to be removed which are currently impeding the full development of the sector.

2.2. In broad terms, obstacles are encountered in relation to infrastructure and the development of the Trans-European Networks, as well as in relation to the lack of legal harmonisation and unification of IWT.

2.3. In connection with the revision of the Trans-European Network directives and the laying-down of a related list of priorities by the European Commission, the sector has compiled a list of bottlenecks and asked that these be added to the list of priorities ([4]). Reference is made here to the EESC's own-initiative opinion on the subject ([5]).

([1]) EU Energy and Transport in Figures, Statistical Pocketbook 2002, ISSN 1225-1095.

([2]) Waardevol transport, feiten en cijfers van het goederenvervoer en de binnenvaart (Transport of goods, facts and figures from goods transport and IWT) 2002-2003, Bureau Voorlichting Binnenvaart, Rotterdam.

([3]) op. cit. p. 44 et seq.

([4]) INE brochure ... European Barge Union (EBU) opinion on revision of TEN directives.

([5]) Opinion of the European Economic and Social Committee on Revision of the list of trans-European network (TEN) projects up to 2004, still to be finalised.

2.4. With regard to the public and private-law provisions governing IWT, the current legal regime is fragmentary in contrast to the law governing the competing modes of transport in the Community. This situation will take on the new dimension with the enlargement of the European Union. Taking note of the joint conclusions of the EU-Romania Joint Consultative Committee [1], legal problems can be seen as bottlenecks equally hindering shipping on the Danube. The public-law aspects of shipping on the Danube, the Rhine and national waterways thus come under different regimes, on the basis of supranational and intergovernmental legal regimes and bilateral conventions [2]. Cautious harmonisation of public law provisions, which is still far from complete, is already taking place in relation to the Rhine, the Community waterways and the Danube, based on mutual recognition and taking the Rhine navigation rules as the model.

2.5. Private law relating to transport agreements and liability is different in the EU Member States and non-EU countries. Recent initiatives in this area have resulted in international conventions which require ratification and implementation in national law.

2.6. The lack of uniform systems of public and private law means lack of legal clarity and certainty for the parties concerned (carrier, shipper, insurer) in an industry which is mainly international. This problem also needs to be addressed in order to bring about the modal shift envisaged in European transport policy.

2.7. This own-initiative opinion, which follows on from earlier EESC opinions on IWT in general, its infrastructure, corridors and the Danube [3], aims to look at the bottlenecks referred to above, in particular in the context of the harmonisation and unification of IWT law, and thus to point the way to pan-European rules for IWT.

3. **Harmonisation/unification of rules**

3.1. *Public-law aspects*

3.1.1. European IWT is covered by three distinct systems of law, which overlap geographically to some extent:

— The area of application of the Mannheim Act of 1868 [4].

— The area of application of the Community treaties and the *acquis communautaire*.

— The area of application of the Belgrade Act of 1948 [5].

3.1.1.1. The Mannheim Act is the oldest European treaty still in force. It was concluded in 1868 between the Rhine riparian states [6]. Under the Mannheim Act the EU Member States which are also signatory states transferred responsibilities falling within the scope of the Act to the Central Commission for Navigation of the Rhine (CCNR). The Act in principle guarantees freedom of navigation on the Rhine. A series of regulations and resolutions have been drawn up by the CCNR in implementation of the principles of the Act. These deal, inter alia, with technical standards, manning, and the safety and freedom of shipping. The CCNR has jurisdiction in disputes falling within the scope of the Act. Its decisions are binding on the signatory states and are required to be implemented in national law. There is a uniform system for the Rhine which has been implemented uniformly in all the signatory states. Switzerland is the only signatory state which is not also a member of the EU.

3.1.1.2. With the establishment of the European Community [7], and the subsequent Treaty changes, additions and derived legislation, responsibility for establishing a Community internal market was transferred by the Member States to the European Commission. Powers in the field of goods transport, inter alia, were assigned to the European Commission, and the Commission has since developed secondary European law in this area by means of regulations and directives. European law, which applies in the Member States of the European

[1] Joint Conclusions adopted at the 5th meeting of the EU-Romania Joint Consultative Committee held in Bucharest on 23-24.5.2002 on Optimisation of the Danube as a pan-European TEN Corridor.

[2] These will lapse with enlargement, to the extent that they concern Community powers.

[3] The documents referred to are: Joint conclusions adopted at the 5th meeting of the EU-Romania Joint Consultative Committee held on 23-24 May 2002 on Optimisation of the Danube as a pan-European TEN corridor, on Implementation of the structured social dialogue in the pan-European transport corridors and the EESC Opinion on The future of the trans-European inland waterway network, OJ C 80, 3.4.2002.

[4] The current signatory states of the Mannheim Act are Switzerland, France, Germany, Belgium and the Netherlands.

[5] The current signatory states of the Belgrade Act are Bulgaria, Germany, Croatia, Moldavia, Austria, Romania, Russia, Serbia and Montenegro, Slovakia, Ukraine and Hungary.

[6] Mannheim Act — Revised Mannheim Act on Navigation of the Rhine (Mannheim Convention or Act of 17.10.1868 and protocols, Official Gazette, 1869, p. 75).

[7] Treaty establishing the European Community, 25.3.1957.

Community, also covers scrutiny of technical standards, manning and safety, and the Commission has supplemented the law in these areas by recourse to the decisions and resolutions of the CCNR, which are applied in the Community.

3.1.1.3. In 1948 the Belgrade Act was concluded by the Danube riparian states [1]. The Act set up the Danube Commission, which monitors the Danube regime on the basis of the Belgrade Act and develops it further. The Belgrade Act regime in principle sets out to regulate cross-border Danube shipping. In implementation of this principle, a series of recommendations have been made to the signatory states under the auspices of the Danube Commission, covering, among other things, technical standards, safety and manning rules. The decisions of the Danube Commission under the Belgrade Act are recommendations to the signatory states, which have in some cases been implemented in national law. In view of the nature of the decisions of the Danube Commission, there is no uniform system for shipping on the Danube, in the sense that decisions are not implemented automatically and unchanged in the signatory states. With the forthcoming accession of one Balkan state to the EU, possibly with others to follow, a number of signatory states, such as Russia, Ukraine and Moldavia, will in future remain which are not also members of the EU.

3.1.2. As European IWT is currently governed by different systems, leading to differences in legal instruments and divergent rules, de jure and de facto obstacles arise, inter alia, in relation to:

— restrictions on market access;

— restrictions on transport rights for 'foreign' vessels;

— disparities in technical standards and certificates.

Following the 2001 Rotterdam pan-European ministerial conference, these disparities were listed and discussed [2] in a recent study by the international organisations concerned (UN/ECE group of volunteers). This group listed and commented on the obstacles in a document. This looked at restrictions in transport rights for foreign vessels, free access to shipping on the various waterways, differences in technical standards, boatmasters' certificates and crewing requirements, as well as the incomplete harmonisation of the civil-law framework. In the light of the planned convergence of the CCNR and the Danube Commission, initiatives aimed at mutual recognition of various decisions, EU enlargement and the consequent lapsing of bilateral agreements to the extent that they concern Community powers, harmonisation is to be expected in the foreseeable future in a number of areas.

The EESC has already looked at obstacles in this area in a Report on optimising the Danube as a pan-European corridor by the EU-Romania Joint Consultative Committee.

3.1.3. The completion of the link between the Rhine and the Danube in 1992 has given an impetus to increased economic activity and transport between East and West. Moreover, with the opening of the markets of the Eastern European countries and their transition from planned to market economies, the accession of many of these states to the EU has ushered in a new era which requires that a pan-European system of rules for IWT be tackled with determination. This is called for in the final declaration of the ministerial conference referred to above.

3.2. *Private-law aspects*

3.2.1. Unlike transport by sea, road or rail, the carriage of goods by inland waterway is still governed by various national rules.

3.2.2. Recent efforts have resulted in conventions intended to bring about harmonisation and unification in this area.

3.2.3. In the past years, partly on the initiative of industry (IWT and insurance), conventions have been drafted which aim to lay down uniform rules for goods transport in Europe with a view to legal certainty and availability of insurance. The conventions listed below aim to introduce a uniform private-law regime for IWT, which, in view of the nature of the sector, is based on comparable international maritime transport and road haulage conventions.

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[1] Belgrade Act — CAP Convention regarding the regime of navigation on the Danube — signed at Belgrade on 18.8.1948, 1949 United Nations, Treaty Collection, Translation No 518. Some countries consider that de jure the international Danube Act of 1856 and the European Danube Act of 1921 are still in force.

[2] UNECE Group of Volunteers 'Legislative obstacles': 'Inventory of existing legislative obstacles that hamper the establishment of a harmonised and competitive pan-European inland navigation market (Rotterdam Declaration, item 13)'.

3.2.3.1. Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels (CLNI):

The CLNI limits third-party liability for inland waterway vessels. The Convention was originally drawn up and signed by Rhine riparian states. Having entered into force in 1997, the Convention has been opened up to the Eastern European countries as well ([1]).

3.2.3.2. Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI):

The CMNI provides for a uniform IWT regime for the carriage of goods by inland waterway comparable to the rules applicable to other modes of transport (cf. the Hague-Visby Rules and Hamburg Rules for maritime transport and the CMR Convention for road haulage). The regime is at present based on divergent national rules in the EU Member States. In the future Member States and other Danube states private law is still being developed, and this process and further legal fragmentation could be prevented by the introduction of an international convention. The Convention was signed in 2001 by all the European IWT countries and is currently awaiting ratification and implementation by the countries in question.

3.2.3.3. Draft European Convention on liability for damage in connection with the carriage of hazardous and noxious substances by inland waterways (CRDNI):

Conscious of its social responsibility, the IWT sector is striving for uniform rules covering liability for damage occurring in connection with the carriage of hazardous substances via inland waterway, which is currently dealt with in different ways in the various states, with different levels of protection for the injured party. The CRDNI introduces a single liability regime as regards the — steadily increasing — carriage of hazardous goods by inland waterway. Based on the principle of a high degree protection for the injured party, the draft sets out to introduce a system based to a great extent on maritime transport provisions and on the following principles:

— assignment of liability;

— risk liability;

— compulsory insurance.

([1]) Entered into force on 1.9.1997. Ratified by Germany, Luxembourg, the Netherlands and Switzerland.

3.2.4. Of the above conventions, to date only one has entered into force in some five IWT countries (Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels (CLNI)); the others are awaiting either ratification and entry into force (Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)) or completion (draft European Convention on liability for damage in connection with the carriage of hazardous and noxious substances by inland waterways (CRDNI)).

4. **Environment and safety**

4.1. With regard to environmental impact, energy use per tonne-kilometre for goods transported by water is only one fifth ([2]) of that for goods transported by road and three fifths of that for goods transported by rail. Innovation ensures that new vessels have better engine technology, with correspondingly reduced emissions, while the engines of older vessels are in many cases being brought up to date.

4.2. With regard to policy on waste, the Central Commission for Navigation of the Rhine has drawn up the Convention on the Collection, Discharge and Reception of Waste arising from Rhine and Inland Navigation. Aware that arrangements for preventing, as well as collecting, discharging and receiving waste for reprocessing and disposal are necessary for IWT and related sectors, in order to protect the environment and the health and safety of the crews and transport users, the member states have agreed on a system for the discharge and reception of waste.

4.3. Taking as a basis the polluter pays principle, the Convention provides for the collection of ship-borne waste, including oily and fatty waste, as well as for the reception and disposal of cargo waste.

4.4. Pending the entry into force of this Convention, the reception of shipping waste is still governed by divergent national rules and procedures which are an impediment to improved protection of the environment and safety.

4.5. With regard to the safety of shipping, there are strict requirements governing the technical equipment of vessels in general, as well as specific requirements relating to the transport of hazardous cargoes.

([2]) From the EESC Opinion on The future of the trans-European inland waterway network, OJ C 80, 3.4.2002, points 3 and 4 of which provide detailed figures on IWT.

4.6. The transport of hazardous cargoes on the Rhine is governed by the ADNR [1]. This lays down the conditions under which hazardous goods may be transported on the Rhine.

4.6.1. In Germany, the Netherlands, Belgium and France the ADNR is also applied on waterways other than the Rhine. On the Danube the ADN-D has the status of a recommendation. The rules are based on the ADN recommendation of the ECE-UN. In 2000 the ADN Treaty was drawn up under the auspices of the ECE-UN and in collaboration with the CCNR. The Treaty in principle applies throughout Europe and enters into force following seven ratifications. When the Treaty enters into force its appendices will be incorporated into the current ADNR appendices to ensure continuity of the rules applied. In a 1997 draft directive [2] the European Commission proposed that the ADNR rules be adopted by the EU Member States.

4.7. Attention should be paid to the monitoring of compliance with these rules, which still leaves something to be desired.

5. **Social issues and labour market situation**

5.1. *Freedom of movement for workers and general labour market situation*

5.1.1. The social aspects in the European Union are closely connected with the organisation and operation of the Community market. The powers laid down in the EC Treaty with regard to social measures refer, inter alia, to the principle of free movement of workers and the related coordination of social security (Article 39 TEC, OJ 136 EC).

5.1.2. There is a lack of skilled IWT workers in the existing EU Member States. There is, however, a pool of skilled workers in the future Member States.

5.2. *Law applicable to crews*

5.2.1. Qualification and certification requirements for the IWT sector differ between the current and future Member States, and this can lead to difficulties in recruiting workers and with regard to the free movement of workers.

5.2.2. Under the Mannheim Act, the member states of the Central Commission for Navigation of the Rhine (CCNR) have introduced legislation relating to boatmasters' certificates and crew composition which is uniform and which applies in the participating countries [3]. These rules, which apply to Rhine shipping, serve as a point of departure for national waterways in the CCNR member states.

5.2.3. As a result, the rules governing working hours, crew composition, rest times, qualifications and training in relation to IWT are part of the various systems of public law. This is not only unclear, but also gives rise to disparities with regard to monitoring of compliance with the rules.

5.2.4. The Belgrade Act only lays down rules on boatmasters' certificates for Danube vessels. The provisions of the Belgrade Act are, however, only recommendations, and it is not clear to what extent the requirement for boatmasters' certificates is actually implemented in the member states. There are, however, arrangements for mutual recognition of boatmasters' certificates by the member states of the Danube Commission.

5.2.5. Community rules on boatmasters' certificates already exist and a start has been made on legislation covering crews. The aim is a broad common basis, with provision for more flexible provisions at local and regional level.

5.2.6. The existing law covering IWT crews is linked to the rules governing the equipment of vessels, in order to ensure that minimum crew requirements are complied with. These requirements are closely connected with technical standards for inland waterway vessels.

5.3. *Social dialogue*

There is little or no social dialogue in the IWT sector. In the CCNR states rules on crews apply uniformly to all crew members and contain no specific provisions for employees. At the same time, the rules on protection of workers, e.g. with regard to working time and conditions, take no account of the conditions specific to IWT or existing regulations applicable to crews. It should also be pointed out that the IWT sector relies to a great extent on the self-employed.

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[1] European Agreement concerning the International Carriage of Dangerous Goods on the Rhine.

[2] COM(97) 367 final.

[3] Rhine vessels inspection regulation, chapter 23.

5.4. *Harmonisation*

5.4.1. Harmonised European rules on crew qualifications and clarity with regard to mutual recognition promote social integration and safety at European level and help create a level playing field in the interest of all parties concerned.

5.4.2. Recent discussions between the CCNR and the Danube Commission have focused, inter alia, on mutual recognition of boatmasters' certificates by the respective signatory states.

5.4.3. The European Commission dealt with the mutual recognition of boatmasters' certificates in Directives 91/672/EEC and 96/50/EC.

5.4.4. With regard to qualifications and other requirements applicable to crews, there is a need for harmonisation at European level and for clarity regarding the mutual recognition of the relevant certificates. Harmonised training can make an important contribution to achieving the desired harmonisation of European law relating to crews.

5.5. *Communication*

5.5.1. One issue is communication in European IWT. Different languages are used in the European IWT countries, which, in view of the mobility of workers, have in the past led to communication problems between crew members and between the various participants in shipping and may continue to do so in the future.

5.5.2. Mutual comprehension is very important in ensuring safety, and this issue requires attention. In this connection, reference should be made to the 'Guide de radiotéléphonie pour la navigation intérieure'. This handbook contains instructions as to the language to be used for communication between vessels and in ship-to-shore communications.

6. **Current European policy framework**

6.1. *Views of the European Economic and Social Committee on the future of IWT*

6.1.1. The EESC pointed out in its recent opinion on The future of the trans-European inland waterway network [1] that IWT is a real option, the importance of which is underestimated.

6.1.2. Being the most environmentally-sound and safest form of transport, IWT is still able to grow and can thus play an important role in modal shift as well as in intermodality.

6.1.3. According to the conclusions of the EU-Romania Joint Consultative Committee [2], the ultimate political goal, as regards the optimisation of the Danube as a pan-European TEN corridor, is the close linking of Corridor VII [3] to the rest of the pan-European transport system. The linking of the various components of the pan-European transport network has been given a major boost recently in a wider context.

6.1.4. The EESC has repeatedly called for a permanent and structured social dialogue in the pan-European corridors; there is a need to improve contacts between the CEEC socio-economic partners [4].

6.2. *Commission White Paper on European transport policy for 2010: time to decide* [5]

6.2.1. The Commission has decided to tackle the problems identified in the transport sector and is putting forward policy solutions aimed, inter alia, at shifting the balance between modes of transport.

6.2.2. Bearing in mind the main goals referred to in the transport policy, the Commission pointed out in its White Paper that IWT, which has hitherto been underused, could provide a means of coping with the congestion of certain road infrastructure.

6.2.3. The Commission seeks to improve and strengthen the situation of IWT through fuller harmonisation of the technical requirements for inland waterway vessels, of boatmasters' certificates, as well as of crewing conditions, which will inject fresh dynamism into this sector.

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[1] See EESC opinion on The future of the trans-European inland waterway network, OJ C 80, 3.4.2002.

[2] EU Energy and Transport in Figures, Statistical Pocketbook 2002, ISSN 1225-1095.

[3] Austria, Croatia, Germany, Moldavia, Ukraine, Hungary, Romania, Bulgaria and Slovakia.

[4] See EESC opinion on the 'Implementation of the structured social dialogue in the pan-European transport corridors' — CESE 1351/2002.

[5] COM(2001) 370 final, 12.9.2001.

6.2.4. In the framework of the new European transport policy, the Commission is intending to strengthen the position of the Community in international organisations, including the CCNR and the Danube Commission [1].

6.3. *The European Parliament's comment on the Commission White Paper on European transport policy for 2010: time to decide*

6.3.1. In its report on the Commission White Paper [2] the Parliament regards IWT as a useful instrument of transport policy, as it is an innovative, environmentally sound and relatively cheap mode of transport, and the Parliament expresses the view that inland waterways should be modernised, upgraded and extended by means of appropriate investment.

6.4. *European Commission and Central Commission for Navigation of the Rhine (CCNR)*

6.4.1. On 3 March 2003 the European Commission and the CCNR signed a cooperation agreement. The European Commission and the CCNR share common goals with regard to the development of IWT. Both organisations are therefore determined to promote the unification of the IWT market on the basis of the principle of freedom of shipping. Both the European Commission and the CCNR make it clear that effective cooperation is necessary in order to create the conditions enabling European IWT to develop its potential to the full.

6.4.2. On 28 November 2002 the member states of the CCNR signed the seventh protocol to the revised Mannheim Act, which makes it possible to recognise certificates and licences issued on a basis comparable with the regulations applicable to Rhine navigation. This measure, which will apply in particular to Community documents, sets out to harmonise the different regimes in a pragmatic way and to simplify the administrative responsibilities of IWT firms.

6.5. *Danube Commission*

The Danube Commission is currently considering modernisation and possible revision of the Belgrade Act. This is connected with the cooperation which has existed for a number of years between the Danube Commission and the CCNR in the form of joint committees. The negotiations on possible revision cover the following areas:

— the question of principle as to the definition of freedom of shipping on the Danube (freedom of shipping only or freedom of shipping and other forms of transport);

— the legal status of the decisions of the Danube Commission (recommendations or binding).

6.6. *Pan-European policy plans*

The importance of IWT has been recognised in recent policy decisions, and a positive contribution thus made to improving the situation.

— At the pan-European conference on inland waterway transport, held in Rotterdam on 5 and 6 September 2001 [3], the representatives of the European governments and international organisations and the observers from other countries with an interest in IWT acknowledged the impetus which the Ministerial Conference on Timely Issues of European Inland Waterway Transportation (Budapest, September 1991) had given to the discussions and measures aimed at promoting IWT and eliminating obstacles to its development, and they called, among other things, for the establishment of a transparent and integrated pan-European IWT market on the basis of the principles of reciprocity, freedom of navigation, fair competition and equal treatment of inland waterway users.

— At the end of the 4th IVR/TAIEX colloquium on future prospects for IWT, held on 21 and 22 March 2002, representatives of international bodies, ministries, the IWT sector, insurers, shippers and representatives of other sectors adopted a resolution calling for unification of IWT.

[1] At the section meeting the Commission representative announced that a decision had been taken on 1 August to begin negotiations.

[2] Report on the Commission White Paper (COM(2001) 370 final — C 5-0658/2001 — 2001/2281(COS) — 9.12.2002).

[3] Declaration adopted by the Rotterdam conference on 6.9.2001.

7. **Recommendations**

7.1. *Scope and legal instruments*

7.1.1. In order to bring about integrated legal regimes and uniform law covering IWT, harmonisation is needed of existing treaties, conventions and bilateral agreements applicable to national and international waterways.

7.1.2. The harmonisation aimed for applies to the current and future EU Member States and non-EU countries which maintain navigable waterway links with these states.

7.1.3. The legal instruments, by means of which harmonisation and unification can be achieved, consist of the integration of existing regimes and mutual recognition of related regulations governing the public-law aspects, and the drawing-up and ratification of international conventions governing private-law aspects.

7.2. *Public-law aspects*

7.2.1. European IWT is currently regulated by different regimes, which leads to disparities in legal instruments and regulations with differing content. This concerns the states which fall under the CCNR regime, the Member States falling under the EC regime and the countries falling under the Danube Commission regime. Whilst the CCNR and EU regimes are legislative in nature and cover all the Member States to some extent, the Danube Commission regime is based on recommendations.

7.2.2. Integrated systems

— The rules laid down by the European Union and the CCNR regarding IWT sometimes already correspond to some extent, or will in the foreseeable future. The overriding principle is the highest possible level of protection of shipping in terms of safety and technical equipment. Further integration of rules on the basis of reciprocity is to be recommended, based on the highest existing standards.

— From the moment of accession of the new Member States the relationship between the rules of the European Union on the one hand and the Danube Commission on the other, as they apply to the new Member States, will become less complicated. In view of the advisory nature of the current rules of the Danube Commission, the future Member States are required, from the time of their accession, to have implemented the *acquis communautaire* in national law. In view of the Danube Commission's position and coordinating role between East and West, it can play an important role as a link between the European Union (and the EU Member States) and the other Danube Commission member states in an enlarged Europe. A new Danube Treaty, as recommended in the Report of the EU-Romania Joint Consultative Committee on the optimisation of the Danube as a pan-European TEN corridor, following the CCNR-EU rules, would be a positive step.

— It is virtually certain that the relevant Balkan states will also be joining the European Union — the accession of Bulgaria and Romania is scheduled for 2007, Croatia has also recently become a candidate and Serbia and Montenegro are certain to follow. The Danube countries will then come under the ambit of European inland waterway law under the *acquis communautaire*. With the accession of the EU to the CCNR, as proposed in the Commission White Paper, the Community will be recognising the binding nature of the Act as a basis for a pan-European IWT regime.

7.3. *Private-law aspects*

All other modes of transport have been subject to uniform international private-law rules for decades, and clearly IWT, as a cross-border mode of transport *par excellence*, needs harmonised and uniform rules. The early entry into force of international conventions is therefore necessary for IWT in order:

— to achieve European policy objectives;

— to prevent the development of new inland waterway legislation in the future EU Member States and other Danube countries and thus further fragmentation of IWT law;

— to complete the missing link in the international transport chain.

7.4. *Drawing-up and ratification of international conventions*

The (current and future) EU Member States are therefore called on:

— to ratify and implement international conventions already concluded: Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (*CMNI*), Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels (CLNI);

— to draw up a comprehensive and legally balanced international convention on liability for damage and/or loss occurring during the carriage of hazardous substances by inland waterway, based on the draft European Convention on liability for damage in connection with the carriage of hazardous and noxious substances by inland waterways (CRDNI) drawn up by the industry;

— to adopt all other measures needed to prevent fragmentation of the law in various areas and to bring about unification in the various areas of IWT.

7.5. *Social policy*

A Community basis for the law relating to crews in the EU is needed in order to create a level playing field for IWT. A social dialogue between organisations of employers, employees and the self-employed could make an important contribution here and promote improved coordination between rules relating to crews and those relating to the protection of workers.

7.6. *Further action*

The EESC calls on all the parties to continue working in this direction. The Committee will continue to work for the earliest possible entry into force of uniform rules for all European inland waterways.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Green Paper — Entrepreneurship in Europe'

(COM(2003) 27 final)

(2004/C 10/14)

On 21 January 2003, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'Green Paper on Entrepreneurship in Europe'.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 September 2003. The rapporteur was Mr Butters.

At its 402nd plenary session, held on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 38 votes to three, with two abstentions.

SUMMARY OF THE OPINION

The introduction explains the scope, objectives and context of the opinion, clarifying in particular the need to work within the parameters set by the Green Paper in order to contribute, as constructively as possible, to the ongoing process of developing a long-term European policy framework that will encourage entrepreneurial activity.

— Brief general comments on the Entrepreneurship Green Paper as a whole are provided in section 2, before raising two points that are central to this area: promoting the spirit of entrepreneurship and creating an environment that encourages entrepreneurial activity, which are discussed in greater detail in sections 3 and 4.

— Section 5 considers some key elements raised in the Entrepreneurship Green Paper:

  — whether we need to distinguish between different types of entrepreneurship;

  — whether entrepreneurship is for everyone;

  — the contribution of entrepreneurship to society;

  — the factors that motivate entrepreneurs;

  — whether the US model of entrepreneurship is the right model for Europe;

  — the impact of entrepreneurs on society.

— Section 6 of the opinion identifies a number of policy priorities for encouraging entrepreneurial activity and makes certain concrete recommendations for action and a number of suggestions to be taken on board in the follow-up to the Entrepreneurship Green Paper.

— Section 7 provides brief responses from the Committee to the ten questions raised in the Entrepreneurship Green Paper and the conclusions are drawn in section 8.

1. Introduction

1.1. This opinion seeks to contribute to an ongoing process of understanding and stimulating entrepreneurship. The Lisbon Agenda and subsequent European Charter for Small Enterprises underlined the importance of entrepreneurial activity to sustainable development in Europe and the need to engender a policy environment conducive to promoting enterprise.

1.2. Entrepreneurship is an all-embracing cultural concept, a common characteristic of which is a mindset, and is manifested in many ways. This opinion focuses on the economic articulation of entrepreneurship, in the form of running a business, and the factors that influence people's engagement in this activity.

1.3. The Committee's opinion will work within the parameters of the Green Paper, its framework and agenda. It will explore and expand upon the points contained therein and will contribute positively with recommendations for the Action Plan (AP) requested by Heads of State and Government at the 2003 EU Spring Council.

2. General comments

2.1. The Committee welcomes the Entrepreneurship Green Paper and congratulates the European Commission for this excellent piece of work. It considers that the Entrepreneurship Green Paper provides an extremely useful inventory of the main challenges faced by future and existing business owner-managers in Europe, offering a valuable overview of the reasons why entrepreneurial activity is relatively low in Europe.

2.2. By stimulating a lively debate within the business and policy-making communities, the Commission's Entrepreneurship Green Paper should be considered a successful initiative in its own right. However, it will only have a lasting impact if the Commission now builds on these foundations by setting out an ambitious and far-reaching plan for concrete actions and then goes on to ensure implementation of the AP by policy-makers and stakeholders at local, regional, national and EU levels.

2.2.1. Beyond this, the Committee draws attention to the vital importance of defining policy based on the needs of entrepreneurs. This requires the input of the whole SME community, through the involvement of the widest possible range of organised business representative organisations, at all levels of policy-making and from the preliminary stages in the decision-making process.

2.2.2. The Committee feels that a distinction should be made between a policy to promote entrepreneurship, aimed at bringing enterprise culture to all, and a business support policy comprising a range of legislative and operational measures designed to reduce the constraints and stimulate business development. It recommends that the AP divide its content into two distinct areas:

— promoting the spirit of entrepreneurship: this action should be aimed at developing a culture of entrepreneurship, 'restoring' and improving the reputation of the entrepreneur among potential entrepreneurs in schools, universities and family circles, as well as in public and private services, especially financial institutions and European and Member State administrations;

— creating an environment that encourages entrepreneurial activity: this is aimed at defining a programme of operational measures to encourage business activity in response to the ten questions in the Green Paper.

3. **Promoting the spirit of entrepreneurship**

3.1. As the Green Paper states, entrepreneurship is a mindset. This mindset cannot be taught, but can be stimulated. A combination of a rounded education and exposure to entrepreneurship, from an early age, can help by encouraging children and young adults to think and behave more entrepreneurially and, ultimately, to consider business ownership as a career option.

3.2. The AP must pay careful attention to introducing the concept of entrepreneurship to boys and girls from school age, as these formative years are an important socialisation window for potential owner-managers of the future. For a long time, business ownership has conventionally been regarded as a route to employment and social mobility for some with otherwise limited opportunities in the labour market, such as low academic achievers and economic migrants. Yet, society and the labour market is gradually demonstrating that business ownership can offer opportunities for all. The AP should consider how entrepreneurship can be portrayed to people of all abilities, as a positive option, rather than a response to limited labour-market opportunities.

3.3. Celebrating entrepreneurship is an important part of improving the public's perception of entrepreneurs in Europe. However, changing cultural attitudes to entrepreneurship is notoriously difficult and a long-term process. The use of role models and extolling the virtues of entrepreneurship can help, but practical policies to create the right environment for enterprise to flourish will be more effective in the long run and should be the focus of policy-makers' attention.

3.3.1. The Committee notes that the curricula taught in public and private universities and colleges tend to focus on big business to the detriment of the study of small business. At present, the term 'business' is considered primarily in terms of capital assets and stock-market value. However, a clearer understanding of small and micro-businesses requires an appreciation of the distinctive social aspects of the enterprise culture, as well as conventional financial considerations.

The Committee calls for economic and scientific studies to be carried out on models specific to small businesses. This will allow the promotional campaigns scheduled for the AP to convey the reality of business on a human scale, enhancing the image of those who run such businesses; the micro-enterprise must be perceived by the public as important and just as much a symbol of professional success, both for its manager and for its employees.

3.4. As a precursor to the celebration of entrepreneurship, the AP needs to appreciate what constitutes an enterprise and what running a business involves. Running an enterprise involves the marshalling of a range of resources, including human, financial and physical (buildings and equipment) for the purpose of producing goods and services to meet a market need. Business owners have to manage relations with suppliers, staff, customers and external stakeholders, including representative bodies as well as government agencies. In doing so, business owners also have to maintain their own motivation, as well as that of their staff. Only an appreciation of these roles and processes will help form the foundation for the celebration of entrepreneurship.

3.5. The promotion of the culture of entrepreneurship may involve engagement by a range of public and private sector organisations. For public institutions, it is important that an appreciation of entrepreneurship is embedded in the activities and policies of all agencies, such as the European Commission and national, regional and local administrations. The spirit of entrepreneurship and concept of enterprise need to be understood better by, and inculcated in, administrators in these institutions, as well as in politicians, and the plethora of other private and public institutions that either initiate, oversee or implement policies that impact upon future and existing entrepreneurs' businesses.

3.6. The role of intermediaries is also key to the successful promotion of an entrepreneurial culture. Many business membership organisations are keen to cooperate more closely with policy-makers and are far better placed than public sector agencies to reach their constituents through promotional initiatives.

3.7. The media play a key role in conveying the spirit of entrepreneurship and an understanding of how business works. However, there tends to be an over-emphasis on big business and multinationals. The action plan should define strategies to highlight the role of the entrepreneur and thus to put across the image of small businesses and micro-enterprises and to enhance that of specialised trades and traditional and craft activities.

4. Creating an environment that encourages entrepreneurial activity

4.1. There is a certain feeling of disillusionment within the SME community about EU-initiated policy aimed at helping entrepreneurs. Indeed, there is a commonly held belief that the way the EU institutions can best help SMEs is to do less in certain areas. The SME community perceives the EU to be the source of much onerous legislation whilst, on the other hand, finding it difficult to grasp and appreciate measures designed to promote business ownership emanating from the EU.

4.2. Clearly, more can be done to stimulate entrepreneurship and promote business ownership. Yet, it is important that a more 'bottom-up' approach is adopted than has been done in the past, drawing on the wealth of experience and practice and in collaboration with businesses and their stakeholders, rather than the 'top-down' imposition of initiatives, policies and laws.

4.3. Given the proliferation of enterprise initiatives at European level and the disillusionment of the SME community, it is essential that the AP demonstrates continuity with previous and ongoing activities and relevance to achieving the goals of the Lisbon Agenda. In particular, continuity from the 2000 European Charter for Small Enterprises is needed and the AP must seek to complement and incorporate recommendations on achieving the Charter's 10 lines for action [1].

5. The main points covered in the Entrepreneurship Green Paper

5.1. Discussions over the definition of entrepreneurship will never end and there is no right or wrong answer. However, the definition of entrepreneurship in II.A.iii (p. 6) and the tone of the Green Paper, in general, fail to consider properly the existence of what might be described as 'routine entrepreneurship'. Not all entrepreneurs blend risk-taking, creativity and/or innovation with sound management, as the Green Paper's definition of entrepreneurship implies. Moreover, the Committee would argue that any definition of entrepreneurship equally needs to incorporate the concept of reward and recognise the broad range of rewards that motivate entrepreneurs.

5.2. There are many more examples of business owners seeking stability and survival than there are of the kind of entrepreneurs to which the Green Paper refers. SMEs are run by people with varying aspirations for their enterprise, with different talents and management capabilities, are based in prosperous and deprived locations and in a variety of industry sectors — some traditional, some cutting edge. The follow-up to the Entrepreneurship Green Paper need not be prescriptive about what constitutes entrepreneurship and should instead seek to embrace all types of entrepreneur, running all types of business and based in different local and sectoral contexts.

5.3. It is important to underline that entrepreneurship is not the solution to all of society's problems and that not everyone is potentially a successful entrepreneur. The follow-up to this paper must remember this fact. The AP should consequently focus on identifying, encouraging and supporting those who want to become successful entrepreneurs, rather than trying to convince people to become entrepreneurs against their better judgement, or indeed compelling employees and the unemployed people to become self-employed.

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[1] In its own-initiative opinion on the European Charter for Small Enterprises, the European Economic and Social Committee called on the Commission to 'initiate a genuine multiannual operational plan of action at Community level and within Member States with a view to ensuring the effective and efficient implementation of the Charter' OJ C 48, 21.2.2002.

5.4. The statistics used by the Commission may suggest that job satisfaction among the self-employed is higher than among the employed, but a growing proportion of self-employed workers brings with it new challenges for European society. On an individual level, self-employment can also present problems and, as with entrepreneurship itself, self-employment is not the right choice for everyone. These issues need to be considered in the AP.

5.5. The Green Paper rightly, in B.iii, underlines the fact that people become entrepreneurs for a variety of reasons, and financial gain is certainly not always the priority. Other motivating factors include independence, job satisfaction, the application of personal competences and skills and the ability to manage one's own work-life balance. Thus, although lowering taxes is an obvious way to increase entrepreneurs' rewards, the importance of self-realisation must also be a key consideration when looking at the risk/reward balance.

5.6. The notion of a single 'model for entrepreneurship' implies that policy-makers are seeking to develop a prescriptive and homogenised view of the entrepreneur across Europe. This would, in all likelihood, reinforce the commonly held view within the SME community that policy-makers have little appreciation of the reality of entrepreneurship and the diversity of practice it embraces.

5.7. Section C of the Green Paper looks at the EU's entrepreneurial gaps and potential and, indirectly through its choice of data, raises a fundamental question: should the EU aspire to a US approach to encouraging entrepreneurship? The data given indicates that compared with the USA, proportionately fewer Europeans are involved in start-ups and significantly more prefer employment to self-employment. Many observers believe that the European social model is one of the key reasons why more people in Europe prefer to be employees. The follow-up to the Green Paper needs to consider a) whether this data is itself sufficient for benchmarking EU activity between nation states and with the rest of the world b) the effect of this preference for employment over self-employment, c) whether it is directly related to the lack of entrepreneurial dynamism in Europe and d) whether the solutions are acceptable to European society.

5.7.1. The Committee calls for the development, collection and application of more systematic European benchmarking data on small firms, using common definitions [1]. This will facilitate measurement of entrepreneurial activity throughout Europe, between Member States and regions and over periods of time and thereby providing a sound basis for policy-making.

5.8. The Committee would argue that the pursuit of greater entrepreneurial dynamism should concentrate on the quality of entrepreneurs, not quantity. Encouraging more people to become self-employed, or even involved in a business start-up will not necessarily lead to an increase in successful, sustainable entrepreneurial activity. The displacement effects of an over-vigorous start-up policy on existing businesses need to be considered and the AP should include more options for existing businesses.

5.9. All enterprises have an impact on society, positive and negative, intended and unintended. Given the vision for European economic development outlined by EU Heads of State at Lisbon in 2000 and the central role that SMEs play in this process, it is important that the follow-up to the Green Paper provides a more comprehensive view of entrepreneurs' contribution to society (B.iv). Many SMEs may practice 'responsible entrepreneurship', while many equally may not. An appropriate non-legislative policy approach needs to be found for promoting responsible entrepreneurship.

6. **Policy priorities for encouraging entrepreneurship**

6.1. The impact of policy-making on entrepreneurship is complex and difficult to measure with any precision. However, the statement 'Policy can contribute to boosting levels of entrepreneurship' is certainly valid and applies to policy-making at all levels.

6.1.1. The Committee recognises that views on the policy priorities for encouraging entrepreneurship will vary according to different stakeholder perspectives. The Commission's European Employment Strategy (EES) highlights that the key contribution of entrepreneurial activity to competitiveness, growth and the creation of sustainable and quality jobs relies on a 'broad policy mix', encompassing many of the key areas that the Committee would also highlight. This mix would include a better regulatory and administrative framework, access to a skilled labour force, fostering more positive attitudes towards entrepreneurship and managerial skills, a supportive financial environment, well functioning product and labour markets and favourable conditions for research and innovation [2]. The Committee urges the Commission to refer closely to the EES when drafting the AP.

[1] Based on the May 2003 revised Commission definitions of micro, small and medium-sized enterprises to be applied from 1.1.2005 [C(2003) 1422].

[2] COM(2003) 176 final.

6.1.2. Beyond this, the Committee also underlines the importance of macro-economic stability in encouraging entrepreneurial activity.

6.1.3. The Committee highlights the need for the AP to strike a balance between the often competing demands of stakeholders when establishing policies for encouraging entrepreneurship.

6.2. *Better policy-making*

6.2.1. As the previous reference to the EES clearly illustrates, policy options to support small firms must not be pigeonholed as 'enterprise policy'. Rather they should be embedded, horizontally, into all relevant policy-making areas (employment, taxation, environment, education, etc.) and, vertically, at all policy-making levels. This will help ensure that the needs of existing and future entrepreneurs are taken into account by a far wider range of officials and politicians than is currently the case at most administrative and political levels in Europe.

6.2.2. For example, regional policy is an important mechanism by which enterprise policy can be delivered. The Committee therefore calls on the Commission to include the recommendations made in the Charter for Small Enterprises within the operational priorities of the future Structural Funds and cohesion policy.

6.2.3. The Committee believes that an effective, relevant and deliverable enterprise policy must embrace all of the appropriate public and private institutions and agencies. The engagement of national, regional and local institutions is a pre-requisite to the effective development and delivery of policy. For example, changes in the fiscal regime cannot be delivered at European level and depend on Member States' involvement.

6.2.4. For policies to be implemented effectively, the Committee calls for the AP to identify clearly at which level policy will be developed, delivered, monitored and evaluated. For example, the promotion of entrepreneurship in schools may be enshrined at the European level, but delivery can only take place with the cooperation of local agencies, including education authorities. This integrated approach will ensure the delivery of policy and also reduce the development of initiatives that are not tenable.

6.2.5. Moving further away from a ring-fenced enterprise policy approach at EU level does not mean that the Commission's Directorate-General (DG) for Enterprise has any less of a role to play. On the contrary, DG Enterprise should play a greater role, building on the appointment of an SME Envoy by strengthening its influence across the Commission's services. The AP should include a clarification of how the role of the DG Enterprise will be extended to have an even greater impact across the Commission. How will DG Enterprise engage SME representative organisations in policy-making systematically and from a sufficiently early stage, to be able to contribute constructively to the policy-making process?

6.2.6. There is sometimes a considerable gap between business-owner-managers and policy-makers. This gulf can be bridged by consulting intermediary organisations and representative bodies on all relevant policy initiatives throughout the various stages of drafting. This will allow the SME sector to embrace the policy process, influence policy outcomes and better appreciate the efforts of the policy-makers.

6.2.7. The European Economic and Social Committee has done much valuable work in the area of better regulation and simplification in the past, most recently in the form of its opinion on Simplification [1]. This is an area that needs to continue to improve if policy-making is to be more sympathetic to entrepreneurs whilst simultaneously taking into account the perspectives and interests of other stakeholders. Greater efforts should be made to engage entrepreneurs directly in the decision-making process at a much earlier stage. Impact assessments need to be carried out thoroughly, based on wide consultations, systematically taking into account alternative solutions and, in the case of proposals for regulation, explaining why a non-regulatory option has not been chosen.

Beyond the policy areas identified above, there are of course innumerable more specific ways that public policy can help entrepreneurs, some of which are given particular attention in the next section.

6.3. *Educating potential entrepreneurs*

6.3.1. The Committee reiterates the need to introduce the concept of entrepreneurship from an early age through exposing children to positive examples. Beyond this, teaching across a broad range of subjects in schools and higher education institutes needs to encourage the development of entrepreneurial skills and to bring students into contact with entrepreneurs.

6.3.2. The education of potential entrepreneurs should also recognise that people can become entrepreneurs later in life too and not therefore, concentrate exclusively on the young.

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[1] OJ C 133, 6.6.2003.

6.4. *Setting up a new business*

6.4.1. The Paper refers to the length of time it takes to set up a new business and policy-makers across Europe have recently made considerable efforts to reduce this time. However, the barriers to entrepreneurship before and after the setting-up process are far more significant and this obsession with speedy company registration is misplaced. Indeed, this focus on making company registration quick and inexpensive may inadvertently encourage a 'create and destroy' approach and, in so doing, curtail the appropriate period of research, planning, capacity-building and overall consideration before an entrepreneur embarks on a new business venture.

6.5. *Business support*

6.5.1. Good business support can certainly contribute to more successful enterprises. However, any such support that is perceived as a state-run service could be flawed, as the public sector is simply not regarded as a natural source of advice by some entrepreneurs. Entrepreneurs requiring support will turn initially to their trusted network of advisers. Evidence shows that this comprises, firstly, of other entrepreneurs, then their regular advisers (accountants, banks, solicitors, etc.), sectoral organisations and professional bodies and only then will they turn to other sources. This underlines the important role that mentors can play in supporting entrepreneurs and policies should therefore build on natural support providers.

6.5.2. It is also important that EU business support policy is linked strongly with Member State institutions and policies to allow successful and efficient delivery and secure help to achieve intended objectives.

6.5.3. The AP should consider means by which entrepreneurs might be encouraged to ask for and use business support.

6.5.4. The AP should contain measures to ensure the provision of support and advice throughout the process of business formation, namely pre, during and post-launch, which will greatly improve the chances of an enterprise's survival and prosperity.

6.6. *Fostering capacity and skills*

6.6.1. Fostering capacity and skills is essential to increasing entrepreneurial dynamism in Europe. The personal attributes of the owner-manager are central to successful business. However, entrepreneurial dynamism is as much about the daily management of the business as the innovativeness and vision of the entrepreneur.

6.6.2. Successful entrepreneurship is more likely if owner-managers are supported by mentors and other key individuals that complement their skills.

6.6.3. Promoting apprenticeship and work-linked training and encouraging transnational mobility among apprentices are important ways of passing on entrepreneurship. The Committee asks that the Action Plan considers the establishment of Community-funded exchange programmes for apprentices and entrepreneurs.

6.7. *Informal training*

6.7.1. There is an assumption that smaller firms do not train their workforces adequately and that business owners themselves sometimes lack the skills necessary to undertake their duties. Evidence shows that the bulk of training in smaller firms, for both owners and employees, is ad hoc, informal and geared to the specific needs of individuals to perform their jobs. Much of this activity is not recognised by government and its training providers in assessing the type and volume of training undertaken in small firms [1]. On the other hand, public sector-led training schemes for small firms are often qualifications-based, involve time away from the enterprise and are structured. As a result, the take-up on training initiatives by business owners and their staff is often lower than expected.

6.7.2. In developing a more relevant training policy for small firms, the AP needs to consider this current mismatch between the provision of training and the needs of businesses especially in relation to training content and delivery format. Policy may seek to bridge this gap by moving more towards how entrepreneurs and their staff train and encouraging a more flexible mode of delivery. Business owners will also require convincing of the benefits of training for individuals in their business and the performance of their enterprise.

[1] See for example, Kitching J. and Blackburn R. (2003) 'Measuring Training in Small Firms', Small Business Council, London, March.

6.8. *Business transfer and succession planning*

6.8.1. Careful succession planning and owner-manager exit strategies are fundamental to good and sustainable entrepreneurship. Resources therefore need to be devoted to considering which policies might be employed to alleviate the 'succession crisis', whereby there are plenty of businesses for sale, but not enough buyers.

6.8.2. One possibility is to strengthen the market place to make the process of business transfer more transparent. Other possibilities include an examination of the legal and tax systems in the business-transfer process, but taking into account existing workers' rights in this area, already in force at EU-level [1].

6.9. *Access to finance*

6.9.1. Research shows that small firms tend to finance start-up and growth from their own resources. When they do go outside for finance, this tends to be with the banks. Take-up of equity funding, including informal and formal venture capital, has not been as widespread as originally envisaged and this may be a result of market deficiencies as well as entrepreneurs' reluctance to dilute ownership. In general, the current low interest rates in Europe have provided entrepreneurs with relatively cheap debt finance for their activities.

6.9.2. Surveys vary in their emphasis on finance as a barrier to enterprise. Currently, access to finance for start-up, business development and growth appears to be a major problem for specific types of economic activity, for businesses in certain locations and for entrepreneurs having specific characteristics. The equity gap up to €1.5m in particular needs addressing.

6.9.3. There has been a growing interest in the role of micro-credit as a means of stimulating new businesses. The significance of this form of finance in the overall context of funding for SMEs is minor. Nonetheless, evidence to date suggests that it may be most relevant for specific types of business owners and for enterprises in less-favoured regions. For example, micro-credit may fill a significant gap in financing the activities of micro-businesses in the new Member States. The Committee suggests that the AP considers the relevance of micro-credit, the circumstances under which it can be an effective mechanism for promoting business ownership and how it can best be promoted.

6.9.4. The AP should consider further the specific types of businesses experiencing finance problems. The current market for finance is complex and crowded. Attempts should be made to bolster existing channels of finance and initiatives for financing entrepreneurs should build on existing intermediaries' efforts rather than create new structures.

6.9.5. The Committee feels that the solutions proposed in the Green Paper, such as micro-loans and risk capital or business angels, are only partially suited to the needs of small businesses. The Commission needs to consider the development of professional and mutual guarantee funds so as to facilitate access to credits for the development of the business. The Committee calls for the European Investment Fund to reinforce the financial instruments for guaranteeing loans to SMEs by gearing them more appropriately to the needs of small and micro enterprises and craft businesses, particularly for investment associated with standardisation, the environment and the acquisition of production and communication technologies.

6.10. *Public procurement*

6.10.1. Amongst the most obvious, efficient and direct measures that can be taken by public authorities to help entrepreneurs is to enhance small business access to public contracts. However, in the same way that small businesses feel a natural affinity to other small businesses [2], it seems that public administrations, when allocating contracts, gravitate more to big businesses that are run in a similar way. This important cultural barrier, caused by both public authority and SME attitudes, needs to be surmounted if public procurement is to be taken up by small firms.

6.10.2. The need to open up public procurement to smaller firms may present many challenges. The criteria for winning contracts from the public sector make it difficult for small firms because of the large size of contracts, the bundling together of various services within contracts and the bureaucratic procedures linked to bidding for tenders. More recently, state attempts to ensure that contractors are environmentally compliant may further militate against opening up public sector procurement to small firms. The AP needs to consider these issues in more detail.

[1] European Commission (2002): Final Report of the Expert Group on the Transfer of Small and Medium-sized Enterprises, May.

[2] The Committee would challenge the assertion in III.B.vi of the Green Paper that 'it is natural for firms of all sizes to work together'.

6.11. *Tax burdens*

6.11.1. Informal investment in enterprises could be greatly encouraged through a more suitable tax regime. This could build upon tax incentives for the re-investment of profits by enterprises. This has the advantage of efficiency of delivery and fits with the investment preferences of business owner-managers. It also avoids the dilution of ownership associated with external investment whilst acting as a major incentive for business growth.

6.11.2. Business owner-managers will always call for lower taxes, but they would also appreciate a lower tax-administration burden. The AP should recommend an analysis of different approaches to support for owner-managers in paying various taxes. ([1])

6.11.3. This area is another example of the need to embed enterprise policy into other policy spheres and at European, national and regional levels.

6.12. *Social protection for the self-employed*

6.12.1. The notion of social protection for the self-employed needs to be considered carefully and the correct balance found between risk and protection. There is no obvious contradiction in asking for both lower taxes and increased social protection. Nonetheless, action is needed to ensure that there is no discrimination against the self-employed and owner-managers in the provision of social protection.

6.13. *Entrepreneurship and Social Exclusion*

6.13.1. Entrepreneurship touches on all areas of society and the Committee emphasises the need for the AP to appreciate this diversity. In particular, social economy enterprises, including co-operatives, mutual societies, foundations and associations embody entrepreneurial activities, but with social objectives.

6.13.2. Business ownership is, equally, one way in which socially excluded groups can enter the employment market. However, the Committee recognises that more research is needed into understanding the contribution of business ownership to overcoming social exclusion.

6.13.3. It is important that the AP recognises the variety of enterprises and the experience of those with social objectives. It is also important that it stimulates support services to meet their needs.

6.14. *Spin-off*

6.14.1. The AP should pay attention to the encouragement of spin-off ventures from universities and higher educational institutions. There is evidence to suggest that, although there are examples of good practice in the EU, the potential for developing spin-off has not yet been fully realised. Consideration needs to be paid to the potential for this type of enterprise, the processes it involves and if appropriate, relevant policy options.

6.15. *Stigma of failure*

6.15.1. The Committee welcomes the Green Paper's recognition of the need to address the damaging tendency in Europe to stigmatise as a failure an owner-manager who has run a business that has gone bankrupt. Potential investors and financial institutions, in particular, need to take a more positive attitude to such business experience which, it can be argued, is a valuable stage in an entrepreneur's learning curve and often leads to more successful future business ventures.

6.16. *The Internal Market*

6.16.1. The European Single Market still remains a distant concept to many SMEs, a high proportion of which will never seek to exploit opportunities beyond their local or national markets. Nonetheless, other smaller firms are well placed to sell their goods and services across borders and in other Member States. They could, in particular, be supported in this process through the ongoing development of an infrastructure that supports the movement of goods, people and information and increased mutual recognition of professional qualifications.

6.17. *Enlargement*

6.17.1. As the Committee has stated in the past, SMEs are 'a pillar of the transition process and make a large contribution to GNP and employment' in the new Member States. SMEs in these countries face exaggerated difficulties in several areas, notably in terms of access to finance, training, support and advice ([2]).

([1]) One example is the Belgian approach of using intermediary agencies to administer employees' income tax and social security.

([2]) OJ C 193, 10.7.2001. Opinion on 'The employment and social situation in the central and eastern European applicant States'.

6.17.2. It is important that the AP considers the effects of enlargement on SMEs in the EU15 and in the new member states. It is also important that the AP considers how existing policy can accommodate the diversity of needs of small firms throughout an enlarged EU.

6.17.3. As previously mentioned, accessing appropriate forms and levels of finance in these states presents particular problems and requires particular solutions.

7. **Brief response to the ten points raised in the Green Paper**

7.1. The above paragraphs spell out in detail the Committee's opinion on the Green Paper. In briefly answering the ten questions raised in the Green Paper, however, below are some of the most important messages in this opinion, together with suggestions for several key areas for action.

1) *What should be the key objectives for an agenda for entrepreneurship in the European Union and how should these relate to other political ambitions? How can we build a model for entrepreneurship in an enlarged Europe?*

A European approach to stimulating increased entrepreneurial activity needs to focus on how to provide the best environment for existing SMEs through a more favourable risk-reward balance. In so doing, this will also reduce many of the most significant deterrents to the creation of new enterprises.

The approach must recognise the broad range of key objectives, notably: a stable economy, a better regulatory and administrative framework, fostering more positive attitudes towards entrepreneurship and managerial skills, a supportive financial environment, well functioning labour markets and access to a skilled labour force and favourable conditions for research and innovation.

Just as enterprises impact on many areas of society, these objectives encompass and relate closely to several major EU policy areas and political ambitions. It is therefore essential that the views of a wide variety of stakeholders be taken into account in developing a European approach to stimulating increased entrepreneurial activity.

2) *How can we improve the availability of finance (tax measures, public-private partnerships, stronger balance sheets, guarantees) and what alternatives to bank loans should be promoted (business angel finance, leasing, factoring and micro-loans from non-bank lenders)? How can entrepreneurs be supported in obtaining external finance?*

In the current economic and financial climate, surveys suggest that in general there is no lack of finance available to small firms. However, this should not detract from the long-term structural finance problems faced by small firms. Improvements should focus on four elements: continuity in the flow of finance (at all stages of a business' development), a variety of financing options, transparent criteria for enterprises applying for financial support and fiscal measures to encourage business development and investment.

One of the main challenges is that entrepreneurs are notoriously reluctant to dilute ownership through taking up equity finance, venture capital and other external sources of finance. Informal investment in enterprises could be encouraged through a more favourable tax regime, which is both efficient and preferable to business owner-managers. It is important that those seeking external finance are encouraged to be 'investment ready'.

Solutions need to be tailored to different local and regional requirements, with businesses in several of the new EU member states in particular facing unique challenges.

Public authorities should identify existing successful solutions, informal or formal, and consider how they might be developed or duplicated.

3) *Which factors most hinder growth ((lack of) mutual recognition and EU rules or their (non-) implementation at national level, national tax provisions or the situation on the labour markets)? What actions are best suited to supporting growth and internationalisation (trade missions, market analyses, clustering and networking, information and consultancy services)?*

The Committee would highlight macro-economic instability, negative attitudes towards entrepreneurship, poorly functioning labour markets and the burden of excessive and poorly drafted regulation, as the main hindrances to growth.

Public authorities at local, regional, national and European level could contribute to the growth of many younger, smaller businesses very directly by allowing them improved access to public contracts. The Committee feels that securing a skilled labour force and meeting small businesses' recruitment requirements are priority European issues, and asks that the requisite economic and political measures be put forward in the Action Plan.

4) *To ensure high quality businesses, what training and support should be offered for a business start-up (basic training — compulsory or voluntary, incubators, mentoring) and business development (networks, courses, mentoring, distance learning, e.g. e-learning)? Should there be services tailored to the needs of specific groups (women, ethnic minorities) or businesses (knowledge-based activities)? Should the quality of delivery of support services be improved (using ICTs, professional standards)?*

Support needs to be provided to meet the diversity of needs of business owners and their enterprises. This involves the segmenting of support, for example, according to business sector, the stage in their lifecycle and their geographical location. The Committee acknowledges the challenge of getting established businesses to take advantage of support offered, but would argue that this could be improved by tailoring the services more to their needs and supplying them in a flexible manner.

Support targeted specifically at start-ups needs to commence at the very earliest conceptual stages and be maintained throughout the preparation, launch and early growth phases.

EU support initiatives and those at national, regional and local level need to be better joined up.

5) *Are the obstacles and incentives for business development and growth in the European Union similar for entrepreneurs in the Candidate Countries, and does the forthcoming enlargement call for specific measures in the Candidate Countries?*

Potential and existing business owner-managers undoubtedly face particular problems in the EU's new member states. The development of more systematic European benchmarking data on small firms would greatly assist comparative analyses of SME performance and experiences in the EU and the new member states and thereby help identify areas of policy for development, delivery and evaluation.

The Committee recommends that policy-makers look more closely at the experiences of entrepreneurs in the new member states; having started and run businesses in such a rapidly changing political and economic environment, they are well-placed to provide valuable input into the development of a more entrepreneur-friendly environment across Europe.

6) *What can EU Member States do to make the balance between risk and reward more favourable to promoting entrepreneurship (reducing the negative effects of bankruptcy, making more social benefits available for entrepreneurs, reducing the tax burden either in terms of administration or rates)?*

Risk is an unavoidable factor in any entrepreneurial venture. Nonetheless, the level of risk is perceived by many in Europe as being disproportionate to the potential rewards.

In line with the European social model, the Committee calls for measures to be taken to ensure that business owner-managers are not discriminated against in terms of social protection. This will have the additional advantage of making the decision to switch from being an employee to becoming self-employed or an employer less daunting, which is currently a major obstacle to entrepreneurial activity.

Lower rates of corporate taxation would contribute to an increase in the financial rewards to be gained from entrepreneurship and motivate more people to become entrepreneurs. However, the AP must also recognise the wide diversity of reward sought by entrepreneurs and be aware that, while financial gain clearly remains a significant motivation, there are numerous other factors that inspire people to become entrepreneurs.

7) *How might more prospective entrepreneurs be encouraged to consider taking over rather than starting a new firm (buyers and sellers' databases or marketplaces, special training for family-owned businesses, management or employee buy-outs)?*

The process of business transfer must be made more transparent and better publicised to potential entrepreneurs as an effective and efficient way of entering business.

The Commission has undertaken some valuable work in identifying best practice in supporting business transfers. The Committee expects the Action Plan to build on this and for Member States to deliver tangible improvements, particularly in relation to the legal and fiscal aspects of business transfer.

The Committee urges attention to developing a clearer understanding of the process of business closure and society's response to owner-managers' involved in closures. This involves raising intelligence on the causes of closure, stakeholders' attitudes to those having closed a business and the

treatment of these owner-managers by financiers, the legal system and other support bodies. The AP should seek to stimulate a better understanding of those involved in business exit by society, government and support agencies.

8) *How can spin-offs be made more attractive (management buy-outs, showcasing, specialised advice, tax or other provisions for employees and their employers whilst starting a business)?*

The Committee calls for a review of existing approaches to spin-off in different Member States and consideration of how the potential for developing this process might be realised.

9) *How can education support the development of the awareness and skills necessary for developing an entrepreneurial mindset and skills (entrepreneurship training as part of a school's curriculum, getting entrepreneurs into the classroom, apprenticeships for students to work with experienced entrepreneurs, more entrepreneurial training in universities, more MBA programmes, matching entrepreneurial training with public research programmes)?*

As already discussed in the main part of this opinion, an entrepreneurial mindset cannot be taught, but can be stimulated. Currently, too few younger people consider starting and running their own business as a realistic and appealing career option.

More young people need to be exposed to the concept of entrepreneurship from an early age. There also needs to be greater concentration on entrepreneurship in teaching later in the education process. This should cross-cut traditional academic disciplines rather than be merely circumscribed to business studies.

The potential for people to become entrepreneurs later in life should also be encouraged.

10) *What could business organisations, the media and public authorities do to promote entrepreneurship (role models, media campaigns, open door days of firms, award schemes for entrepreneurs) and at what level (European, national, regional or local)?*

The most effective way to promote entrepreneurship is by ensuring that the risk-reward balance is more favourable to business owner-managers and practical policies to achieve this objective should therefore be the priority for policy-makers. This requires a better understanding of business among policy-makers, more involvement of representative intermediary organisations through early, systematic consultation and a more cohesive approach to enterprise policy at all levels.

The use of role models, media campaigns and raising the profile of entrepreneurs can certainly help, but the Committee would argue that representative organisations and other intermediary organisations are better placed than public authorities to fulfil this need.

The Committee also underlines the fact that entrepreneurship is not the right choice for everyone and any promotional efforts should therefore focus more on changing public perceptions rather than trying to encourage as many people as possible to become entrepreneurs themselves.

8. **Concluding remarks**

8.1. The Committee welcomes the Commission's Green Paper and the added urgency it has given to reflections on European enterprise policy among officials, politicians and stakeholders. In order for this process now to have a lasting value, it is essential that an ambitious, yet carefully targeted, AP is delivered efficiently.

8.2. It is clear that an improvement of the risk-reward balance for entrepreneurs is central to any increase in entrepreneurial activity and must be a theme running through the AP.

8.3. The Committee stresses that public policy needs to be targeted and should seek to tackle the most urgent matters first if ultimately all objectives are to be realised. Within the broad range of policy areas covered by the Green Paper, it is therefore imperative that the AP prioritises specific policy areas.

8.4. The Committee highlights several key areas for action that the AP should prioritise:

— improving SMEs' access to public contracts;

— a review of the fiscal regimes in which SMEs operate across Europe, assessing taxation levels, administration and collection;

— a clearer understanding of the process of business closure and society's response to owner-managers' involved in closures;

— action to promote the spirit of entrepreneurship and to encourage people of all ages and backgrounds who demonstrate the appropriate mindset to become entrepreneurs;

— the development of more systematic benchmarking data on SMEs in order to facilitate measurement and inform appropriate policies.

8.5. Better enterprise policy will only have a positive impact if it is also delivered effectively. Commensurate with each of the priorities identified in the Action Plan, the Committee therefore calls for a strategy for implementation. Each strategy should set out policy targets and time-scales. Most importantly, the priorities must state at which level responsibility for delivery lies: EU, national, regional or local.

8.6. The Committee has frequently stressed that consultations with representative business organisations at various levels, including those representing small businesses in line with the Charter's tenth recommendation, is the only way to ensure that European measures are suited to the different kinds of businesses and are able to be applied in practice. The Committee asks that the organisations representing small businesses continue to be directly involved in developing the Action Plan through consultation in order to ensure that it — and the practical measures that will follow — are effective.

8.7. The Committee feels that, although real progress has been made in implementing the European Charter for Small Enterprises at Member State and Community levels, its impact has been low. The Committee and the Parliament have asked that the Charter be given legal status. Without this status, the Charter will remain a mere political declaration of intent devoid of any genuine, firm and concerted framework. The Committee has pointed out in a number of opinions that the Commission has most frequently used the Charter as grounds for measures already planned for enterprises in general, not for small businesses in particular.

8.8. The Committee is pleased that the Spring Summit and recent Competitiveness Councils have called for the Charter to be applied more effectively. The Committee asks the Council to improve implementation of the Charter by taking a formal decision stipulating that:

— no legislative or quasi-legislative text with a potential impact on SMEs may be submitted by the Commission unless it has been subject to consultation with the organisations representing small businesses;

— impact assessments carried out by the Commission on policy initiatives of potential significance to SMEs must include a specific analysis relating to small and micro enterprises;

— specific measures must be adopted in all Community programmes that might potentially involve small businesses to assist them, in line with the Charter.

8.9. The Committee deplores the fact that the Convention proposals make no mention of enterprise, entrepreneurs or entrepreneurship. It calls on the intergovernmental conference to take up this policy and asks that the future European constitution make reference to enterprises and small businesses as opposed to merely industry in general. It also calls on Member States to support this approach at the IGC.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Revision of the list of trans-European network (TEN) projects up to 2004'

(2004/C 10/15)

On 8 April 2003, in a letter from Mr Umberto Vattani, Ambassador, Permanent Representative of Italy to the European Union, the Council asked the European Economic and Social Committee to draw up, in accordance with Article 262 of the Treaty establishing the European Community, an exploratory opinion on the 'Revision of the list of Trans-European Network (TEN) projects up to 2004'.

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 4 September 2003. The rapporteur was Mr Levaux.

At its 402nd plenary session, held on 24 and 25 September 2003 (meeting of 25 September), the European Economic and Social Committee adopted the following opinion by 90 votes to 6, with 6 abstentions.

1. Aim of this exploratory opinion

1.1. After the Treaty of Maastricht was concluded in 1993, the Commission put together a comprehensive framework for developing European networks, aimed at speeding up completion of the single market, linking outlying regions with the heart of Europe and opening Europe up to its neighbouring countries. In Essen in 1994, the heads of state and government pinpointed 14 priority transport projects. In 1996, the Parliament and Council adopted a decision setting down more general Community guidelines for trans-European transport networks (TEN–T). This decision covered a series of infrastructures worth EUR 400 thousand million to be completed by 2010, of which EUR 152 thousand million (at 2002 prices) were earmarked for TEN-Ts. Six years after this decision was taken, barely 25 % of the planned projects have been completed, and at the current rate of investment it will take 20 to 25 years to complete the EU's network described in the European master plans.

1.2. The budgetary resources earmarked by Member States and the Community are therefore proving to be inadequate for meeting the objectives. Moreover, public investment in transport declined from 1,5 % of GDP in the 80's to less than 1 % in the 90's. For information, comparative GDP and construction investment curves, the latter including transport infrastructure, illustrate this deterioration.

1.3. The Commission underlines that delays are affecting border and rail infrastructure projects in particular, i.e. two key areas of Community policy:

— securing cross-border continuity of networks;

— shifting the expected increase in road freight to other means of transport (rail, inland waterway and sea transport).

1.4. Since 1996, several events have occurred and reports have come out which warrant a review of the TEN-T guidelines.

— Firstly, the rate of economic growth envisaged at the Lisbon Council could by 2010 lead to a 38 % increase in freight traffic and a 24 % rise in passenger transport, compared to 1998. For its part, the Commission demonstrated in its 2001 White Paper entitled 'European transport policy for 2010: time to decide' that without a major shift in the balance of traffic, freight transport will increase by 50 %. The Committee agrees with the Commission's analyses of this development and stresses that, although economic growth today is not in line with forecasts made a few years ago, this should not in any way be seen as yet another opportunity to put off action on decisions already made or to postpone making choices regarding TEN-T. Deadlines for completing infrastructure and putting equipment into service are spread over a 10 to 20-year period; thus when growth picks up, it will lead to traffic gridlock.

— Secondly, as of 2004 the EU is taking on board ten new countries and it has already announced its intention to take in other candidate countries over the next few years. This situation requires account to be taken of the new Member States' needs, both to allow them to adjust their economies to that of the EU and to properly absorb the inevitable extra traffic. The Commission estimates that along the corridors linking these new Member States to the current EU countries, some 20 000 km of roads, 30 000 km of railway lines, sea ports and airports will either have to be built or improved at a cost approaching EUR 100 thousand million. The Committee deems it vital that the Commission include some internal waterways in its plans, in addition to the Corridor VII Danube project, for they are particularly suited to the transport infrastructure of several of the new countries, especially bearing in mind sustainable development requirements.

1.5. For these reasons, in October 2001 the Commission proposed a revision of the guidelines on the trans-European networks. Towards the end of 2003 it will present a new proposal to continue the reform of TEN policy:

— to link the new Member States' and the candidate countries' networks, particularly in the transport corridors;

— and to step up efforts to select and concentrate on true European priorities such as:

  — removing bottlenecks;

  — cross-border projects; and

  — the main land and sea routes.

This will ensure cohesion throughout Europe, while current TEN-T schemes sometimes operate alongside national schemes, which means that Community funds are thinly spread. The Committee supports this approach, since Community action on infrastructures does not have to cover the many needs which have been identified and are particular to each Member State, but rather must focus on trans-European priorities, securing the continuity of networks. Since this is a priority in Europe's general interest, Europe must shoulder the lion's share of the burden of Community infrastructure costs, above all in those areas which are at a disadvantage due to their geographical location, such as those with extensive mountain regions.

1.6. In drawing up its new proposals for TEN-T, the Commission set up a study and research mechanism:

— It entrusted Mr Karel Van Miert with the task of chairing a high level group to examine in detail the projects worth including in an updated list of major priority projects for the enlarged European Union [1].

— It set up an internal task force to provide the high level group with support in analysing the one hundred projects submitted by the Member States, with reference *inter alia* to updated traffic forecasts.

1.7. The Union is on the eve of enlargement. Its budget for 2007-2013 will be difficult to draw up for the Europe of Twenty-Five, since it will have to set the priorities amongst the trans-European infrastructure projects. The Commission therefore felt it necessary to start to reflect on the future of Community funding, in particular on the budget earmarked for trans-European networks. On 23 April 2003, it presented a communication outlining the innovative financial instruments and management systems needed to carry out major infrastructure projects. Section 4 of this opinion examines this communication.

1.8. The Committee takes the view that the trans-European transport network constitutes a key element of European integration, which can be achieved only if there is unimpeded movement of people and goods. It also points out that it has long maintained that the essential increase in transport must take place with due regard to sustainable development principles.

1.9. Initially, up to the end of June 2003 and pending information on the Van Miert Group's work which had hitherto been kept confidential, the Committee:

— took note of the progress made up to the end of 2002 with the 14 Essen priority projects and the six new projects added in 2001, on the basis of the Commission document published in February 2003 entitled: the trans-European transport network — TEN-T — priority projects;

— prepared a forecast which indicated an overall implementation rate of 74 % for the 14 Essen priority projects by 2010;

— examined the methodology adopted by Mr Karel Van Miert's group for selecting the new priority projects;

— renewed its proposals for funding these priority projects by means of a mechanism creating a 'permanent' formula in the EU's budget, independent of the Member States, allowing higher subsidies to be granted and guaranteeing loans. This new mechanism should help the States concerned and the EU to comply with the implementation deadlines, since national budgetary constraints would be eased.

1.10. Then, by the end of 2003, after publication of the Van Miert Group's report, the Commission will prepare its new proposal for revising the TEN-T policy guidelines, which will be submitted to the various institutions and bodies in line with the usual procedures, with a view to obtaining definitive approval from the European Parliament and the Council in early 2004. The Committee, while understanding the deadlines imposed by the Parliamentary elections in early 2004 and the enlargement to 25 in May 2004, regrets the fact that the Commission's cooperation on the matter is somewhat delayed due to the Commission wanting to keep the Van Miert Group's work confidential (its proposals only being available for examination during the last few days).

[1] See section 3.

2. The current priority projects: progress and characteristics

The Committee would point out that in 1993, the Commission published a white paper on transport setting out priorities on the basis of three master plans; EUR 300 thousand million were scheduled to be invested by 2010:

— the plan for roads, scheduling the construction of 17 000 km of motorway;

— the plan for high speed trains, scheduling the construction of 4 000 km of new line and the upgrading of 3 600 km of existing line; and

— the plan for inland waterways.

Some of the projects examined in 1993 by the Christopherson Group and included in the guidelines have been unilaterally abandoned (Rhine — Rhone link) and are no longer included in the 14 priority projects adopted in Essen; others have been changed. There has been some major slippage in terms of deadlines and costs. In view of this, while it approves of the Commission's current steps to update the list, the Committee would point out that it is counter-productive when Member States do not honour commitments and when established priorities are called into question. The simple fact of revising the list of TEN-T priority projects every five years will not make it possible to secure effective sustainable development in Europe, be it in economic and social or environmental terms. The Committee therefore wishes formally to draw the attention of the Commission, Parliament and Council to the importance which decisions on TEN-T will have, particularly regarding commitments on funding, work start-up and completion dates. At a time when the EU of Twenty-Five is being established, with a view to redeploying economic resources and in view of economic globalisation, we have a unique, historic opportunity to consolidate what has been achieved to date by providing Europe with a modern, comprehensive and efficient transport infrastructure.

2.1. *The 14 priority projects adopted in Essen: + six additional projects*

In response to a request made at the Barcelona Council, the Commission compiled a brochure in February 2003 setting out what had been achieved under the Essen priority projects. This brochure, entitled 'Trans-European Transport Network TEN-T Priority Projects', provides the following information, allowing the scale of the EU's ambitions in this sphere to be gauged. In 2010, within the Europe of Fifteen, the whole trans-European transport network, including priority TEN-Ts projects, should comprise:

— 75 200 km of roads;

— 78 000 km of railways;

— 330 airports;

— 270 international seaports;

— 210 inland ports; and

— traffic management systems, user information and navigation services.

The total cost of financing this network was estimated at EUR 400 thousand million (at 1996 prices), with an average financing of EUR 19 thousand million per annum; this entails implementation spread over about twenty years, which is not compatible with the stated aim of implementation by 2010. Appendix 1 sets out in table form the twenty (14 + 6) projects with the key information provided by the Commission, such as deadlines for completion, total costs and the state of progress as of September 2002. The table shows up the following inconsistencies:

2.1.1. As regards the deadlines, whilst 2010 is taken as the general reference date for completion of priority projects, several of these, according to the Commission's indications, will only be finished after this date. Thus, the Committee believes that it would be more realistic and effective to plan projects which would come into service between 2010 and 2020 (as proposed in the EESC's January 2002 opinion on 'The future of the trans-European inland waterway network' up to 2020 — CES 24/2002). However, this of course presupposes that the will exists to do everything possible to comply with this new deadline and to this end the Committee suggests that:

— steps be considered for setting up a monitoring body within the Commission which, together with the Member States, would take responsibility for coordinating, along the major routes, the management of the various sections and the funding from the EIB, EU Member States and PPP, etc.;

— a mechanism be introduced imposing heavy sanctions on those states not meeting their obligations. For instance, the sanctions could be as follows in these cases for any project which such states put forward as being of priority importance:

  — the state concerned could see part of its control of the project concerned being taken away from it by the EU and given to other Member States involved in the trans-European link;

— if a state pulls out of a project, European aid for studies or land purchase might have to be reimbursed to the EU by the defaulting state, thus preserving the EU's financial interests;

— as in private contracts, delays in delivering an infrastructure should be subject to a penalty payable by the state at fault, like the mechanisms for financial guarantees of successful completion of work used in the private sector.

2.1.2. As far as project costs are concerned, the table in Appendix 1 shows that overall investments are estimated by the Commission to be 173,993 thousand million euros (EUR 173 993 million) for the twenty priority TEN-T projects decided upon or proposed in 1996 and 2001. In parallel, in the same document the Commission announces a total cost of 400 thousand million euros (EUR 400 000 million) to which a further one hundred thousand million euros (EUR 100 000 million) is to be added for projects for the new Member States for all the networks, including these priority TEN-Ts. In order to clarify the various estimates from 1996 and then 2001, together with those submitted to the Van Miert Group, the Committee would underline the following:

— Lists 0 and 1 in the table below set out the remainder of the TEN-T priority projects decided upon at Essen together with those added in 2001, the costs of which increased sharply following the update and a number of extensions within the corridor where the initial project was located (e.g., the Danube project, number 2 on List 1).

	Million euros		
	2004-2020	of which the following are for the period 2004-2013	of which the following are for the period 2014-2020
List 0	80	80	0
List 1	142	125	17
List 2	13	3	10
List 3 non-priority	22	20	2
Total	257	228	29

Excerpt from the Van Miert report — § 6.6.2.

— the Van Miert Group has set an overall cost package of EUR 600 thousand million up to 2002 for work outlined in the trans-European transport network plans (including the TEN-T priorities and plans for the new Member States);

— costs of EUR 257 thousand million have been set by the states for the projects in Lists 0, 1, 2 and 3, which receive Community subsidies; and

— the Commission has estimated the cost of the networks to set up in the ten new Member States at EUR 100 thousand million.

2.1.3. The proportion of European subsidies for priority TEN-T projects (currently standing at 10 % of a project's cost, excluding taxes) provides few incentives. In some cases, the Commission might envisage raising this to 20 %, but the Committee feels that for genuine incentives to be provided, depending on the nature and frontier location of certain projects, this subsidy should comprise between 20 % and 50 % of costs, excluding taxes.

3. **The working group chaired by Mr Karel Van Miert**

The Commission proposal to present new TEN-T guidelines by 2004 is an ambitious and difficult one because at the same time it should:

— take into account the consequences of enlargement;

— set up comprehensive networks quickly without missing links;

— solve the funding problem; and

— change ways of thinking by favouring general European interests over national ones.

The Committee feels that by setting up a high level group as the Commission has done, steps to achieve the above will be made easier.

3.1. *Membership of the high level group*

Mr Karel Van Miert chaired the group which was comprised of one representative from each Member State plus one observer from each country expected to join the EU by 2007 at the latest, i.e. the ten accession countries plus Romania and Bulgaria, together with the European Investment Bank (EIB). The Commission provided the secretariat for the Group.

3.2. *The high level group's brief*

a) To examine proposals for projects submitted by current or future Member States for insertion in the lists of priority projects previously accepted or proposed and thus to amend the TEN-T guidelines.

b) To examine projects which are not sponsored by any country, but which could be of particular trans-European value.

c) To compile a restricted list of projects which cover all the major regions in an enlarged Europe.

d) To draw up a method, procedure and timetable for subsequent updates to the list of priority projects, including for the removal or non-implementation of projects whose launch has been delayed too long, or which have been subject to major changes affecting their profitability or feasibility.

e) To look into means to facilitate and speed up the implementation of projects on the restricted list.

f) To decide on the horizontal priorities which should be covered by the guidelines.

3.2.1. The Committee approves as a whole the content of the brief given to the high level group. Nevertheless, it does not agree with the Commission in respect of the thinking behind d) concerning the withdrawal of projects, for this is tantamount to anticipating failures. The same holds true for any state not meeting its commitments and jeopardising the general European interest and, in particular, the neighbouring country concerned in the cross-border project. Wielding a large EU subsidy, the Commission should, with the Parliament's and Council's support, adopt a more determined approach vis-à-vis any such Member States, involving binding arrangements, and set up a body such as a 'European Agency for Transport Infrastructure' with resources for following up and, if necessary, monitoring project implementation, in particular for the ten new countries, so as to prevent such a problem from occurring. Moreover, it would point out that it is vital to apply these penalties (See para. 2.1.1).

3.3. *The Van Miert Group's general criteria for project assessment*

These have been divided into two phases:

— Phase 1:

a) Compliance with the concept of major European routes, known as 'corridors'.

b) Commitment from the Member States concerned to complete projects with a minimum cost of EUR 500 million in the precise timescale stipulated.

c) Suitability of projects in relation to European transport policy objectives, particularly as regards bottlenecks and cross-border links.

d) Potential economic viability, with impact on the environment and on economic and social cohesion.

— Phase 2:

e) Assessment of a project in terms of sustainable development as part of the trans-European network, in particular its contribution to intermodal transport options, aimed at encouraging a shift to other forms of transport (rail, intermodal, maritime and river transport).

f) Territorial cohesion in the candidate countries and major outlying regions.

g) Beneficial trans-national impact on several states, with evaluation of European added value in terms of % of total international traffic.

3.3.1. The Committee believes that the proposed general criteria are relevant. However, it would stress that:

— regarding point b), it is an illusion to have commitments without sanctions against states in the event of the commitments not being met (see point 2.1.1);

— regarding point d), the potential economic viability criterion should not make it possible to eliminate a project whose completion turns out to be vital. In the past, this kind of thinking, applied to sections or parts of networks, has resulted *inter alia* in missing links, bottlenecks and a lack of continuity in the network;

— regarding point g) and sustainable development, the Committee would stress that the assessment tools based on a forward study still warrant publication, and precise objectives still have to be set.

3.3.2. The Committee welcomes the fact that point a) requires that a project absolutely must fit into a corridor or structure-promoting European network, where continuity is assured from one end to another. Thus the Commission, when compiling its final proposals, will identify a series of structure-promoting networks which will constitute the main routes for traffic and transportation in an enlarged EU, in conjunction with neighbouring countries, in this way securing the continuity of these networks by making it mandatory to provide or replace missing links.

4. **Project funding arrangements**

On 23 April 2003, the Commission published a communication entitled: 'Developing the trans-European transport network: Innovative funding solutions. Interoperability of electronic toll collection system'; at the same time it issued a proposal for a directive concerning the more widespread use and interoperability of electric road toll collection systems in the Community. The Committee is currently dealing with this proposal for a directive in a separate opinion ([1]).

From the outset of the priority TEN-T review procedure, the Commission had planned to seek solutions for project funding since this is in fact an unavoidable and key issue. There is general agreement about the fact that 'without high-performance transport networks, economies cannot be competitive'. However, such agreement is worth nothing if, as can be seen, 'transport infrastructure is still under-financed, for lack of adequate funds and the absence of a framework conducive to investment'.

The Commission sets out the reasons for the stagnation of the trans-European transport network:

— the lack of political will on the part of the decision-makers in the Member States;

— the inadequacy of the financial resources dedicated to the trans-European network; and

— the fragmentation of the entities responsible for the projects.

The Commission then notes that the share of GDP (less than 1 %) earmarked for completing transport infrastructures has been constantly on the decline over the last few decades, while the needs identified and the traffic have actually been increasing.

The Committee confirms and expresses its concerns about the above and was therefore most interested to study the solutions put forward by the Commission, which are based on two main ideas:

— greater coordination between public and private funding for trans-European transport networks; and

— back-up from an effective European electric toll collection service.

4.1. The Committee clearly supports the Commission's aim of achieving greater coordination between regional, national and Community funding. Again, the Committee feels that the Commission should, with support from the EIB, have additional means available to help certain countries put financial arrangements into place and overcome the difficulties inherent in a policy of co-financing infrastructures, where each party negotiates its involvement in keeping with the interests it represents and not the general European interest. The Committee therefore feels that it is necessary for the EIB to support a European Transport Infrastructure Agency which should be set up to optimise the existing funding mechanisms by strengthening them and better coordinating them.

4.2. As regards the public-private partnership (PPP), the Committee agrees with the Commission's analysis of the limits of entirely private funding of large-scale infrastructures. However, mixed financing cannot provide the sole solution, insofar as private investors quite legitimately require certain guarantees and profitability from their investments. As a consequence, costs go up. Moreover, other aspects should be taken into consideration:

— every priority TEN-T project involving several European countries should be carried out by setting up a 'European company' legal structure, so as to secure the transparency necessary for the financial arrangements for the project;

— a PPP can only reasonably be set up where there is a balance between the financial input from the public and private sectors. It would be hard to imagine a PPP where the private sector had only a very small input. It is therefore not realistic to envisage the private sector contributing the necessary funding for carrying out the majority of projects;

— limits must be set so as to avoid the unforeseen consequences of a gradual abandonment of the sovereign power traditionally held by Member States or public authorities in matters pertaining to spatial planning and major public infrastructures.

As far as the funding of transport infrastructures is concerned, while PPPs represent an interesting option for certain specific cases, they in no way constitute a panacea.

([1]) Committee opinion being drafted on the 'Proposal for a Directive of the European Parliament and of the Council on the widespread introduction and interoperability of electronic road toll systems in the Community — EESC 716/2003'.

4.3. *Creating a European Transport Investment Fund*

4.3.1. With the exception of the Structural Funds, the EU does not have sufficient resources available, either in its own Transport budget or in the various funds allocated to it, to contribute high subsidies (10 % to 50 % of the cost of the work involved) to provide incentives or ensure that commitments are irreversible. Likewise, the subsidiarity principle slows matters down considerably, each state retaining the possibility of challenging or postponing the commitments made. Thus the Committee reiterates its suggestion of setting up a European Transport Investment Fund in the EU budget, independent of the Member States, especially for the implementation of priority TEN-T projects, which would receive permanent financing and be managed at Community level.

4.3.2. Enlargement is providing the EU with an historic opportunity to put the finishing touches to the integration venture, by equipping itself for several decades with sufficient means to establish the networks for transporting people and goods that are vital for securing its sustainable development over the coming decades. Land-use planning in an enlarged Europe, together with the completion of communication infrastructures constitute the priorities for ensuring that attitudes and rules change, undertaking ambitious reforms and, to this end, accepting the transfer of some responsibilities from Member States to the EU. The proposed European Transport Infrastructure Fund would be financed by a very modest solidarity levy of 1 cent per litre on all fuel consumed on the EU's roads by all private and commercial vehicles (see Appendix 4 — Breakdown of fuel consumption in 2001). As regards the various ways of solving the transport infrastructure funding headache, the Committee will set out its views more comprehensively and in greater detail in a later own-initiative opinion on future transport infrastructure — financing, planning, new neighbours.

4.3.3. The Committee notes that twice in 2003 [1] it has proposed setting up such a fund as has the European Parliament. The principal features of the fund proposed by the Committee should be:

— a European fund dedicated to priority TEN-T projects;

— permanent revenue from 'one cent' on every litre of fuel (petrol, diesel, LPG) consumed in the EU-25 for all road transport of goods and persons (public or private);

— collected by the Member States and paid in full every year into the dedicated fund in the EU budget, i.e. about EUR 3 000 million from the 300 million tonnes of fuel consumed;

— management of fund entrusted to the European Investment Bank to spend on the priority TEN-Ts proposed by the Commission and adopted by the Parliament and Council;

  — very long-term loans (30-50 years);

  — interest rate subsidies for the loans;

  — provision of financial guarantees for PPPs;

  — on behalf of the EU, granting of subsidies of 10 to 50 % of the work according to the type of project.

5. **Report of the high level group**

During the second half of 2003, the Commission will put forward definitive proposals to the Parliament and the Council, backing up those made by the group chaired by Mr Van Miert.

The Committee, once it has seen and discussed the Commission's definitive proposals based on the Van Miert report, will then complete its comments and suggestions, which will be incorporated in a more comprehensive own-initiative opinion on 'The future of European transport infrastructures'.

6. **Conclusions**

6.1. The revision of the list of priority TEN projects up to 2004 is being carried out at the same time as the EU is increasing from 15 to 25 members. This major historical event presents a unique opportunity for giving Europe a TEN-T commensurate with the foreseeable challenges over the coming decades.

6.2. The trans-European transport networks must above all ensure that traffic flows freely. Consequently, absolute priority must be given to trans-European routes and corridors which remove bottlenecks and complete missing links. The level of subsidies must be more attractive, in particular for cross-border projects, and must lie between 10 % and 50 % of the cost of the work (excluding taxes), depending on the type of project involved.

6.3. Existing mechanisms are highly inadequate for placing EU financing of priority TEN-Ts on a more permanent footing. The Committee is proposing that a European fund specifically for transport infrastructure be set up in the EU budget, with permanent revenue. The revenue for this fund for carrying out

[1] OJ C 85, 8.4.2003, p. 133 — opinion on the alignment of the excise duties on petrol and diesel fuel — and opinion on safety requirements for tunnels in the trans-European road network.

priority TEN-T projects would come from a levy of one cent per litre on all fuel consumed on EU roads, which would bring in EUR 3 000 million a year, for 300 million tonnes consumed in 2006. This financing would provide a modest, solidarity-based contribution for future generations from all European road-users.

6.4. In order to ensure better coordination of project launches, financial arrangements, implementation follow-up and monitoring in the new countries, the Commission must have additional means available under a new structure such as a 'European Transport Infrastructure Coordination Agency'.

6.5. So as to prevent some states from pulling out of projects which they have put forward for priority classification, or from overrunning the deadlines, the Commission must (as with private projects) provide for heavy sanctions or penalties for those states which do not respect the general European interest or who do not meet the requirements of other states involved in the projects concerned.

Brussels, 25 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

The following points in the section opinion were deleted. In the vote on the proposal to delete these points, more than a quarter of the votes cast were in favour of their retention.

Point 4.3.1

It has been demonstrated that current funding options do not allow European infrastructure projects to be completed under satisfactory technical conditions and within the appropriate timescale. The reasons are well known: it is mainly due to the fact that project implementation is the responsibility of Member States. For budgetary or political reasons, in a difficult economic climate, Member States — with an eye to the Maastricht criteria — will be obliged to give precedence to more immediate problems, i.e. minor reductions in everyday operating costs and major reductions in investment expenditure. Investment in priority TEN-Ts decided upon in early 2004 by the Council and the Parliament at the Commission's suggestion responds to a need for more rapid completion of the Single Market in order to boost competitiveness, and therefore growth and employment. As part of the growth initiative advocated by the Italian presidency, the Committee suggests that the sums involved in 'virtuous' investments earmarked for priority TEN-Ts alone should not be included when calculating compliance with the Maastricht criteria if the state concerned really has embarked upon a debt reduction policy.

Point 6.4

In order to bolster the EU Italian presidency's 'growth initiative' during this period of stagnation and major budgetary deficits in certain countries, the Committee suggests that the sums involved in 'virtuous' investments earmarked for priority TEN-T projects alone should not be included when calculating compliance with the Maastricht criteria.

Outcome of the vote

For: 48, against: 41, abstentions: 8.

The following amendments, which were supported by more than a quarter of the votes cast, were rejected at the plenary session

Point 4.4

Delete.

Outcome of the vote

For: 37, against: 53, abstentions: 10.

Point 6.3

Delete.

Outcome of the vote

For: 25, against: 51, abstentions: 3.

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Innovation policy: updating the Union's approach in the context of the Lisbon strategy"'

(COM(2003) 112 final)

(2004/C 10/16)

On 12 March 2003, 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 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 3 September 2003. The rapporteur was Mr Soares.

At its 402nd plenary session of 24 and 25 September 2003 (meeting of 25 September), the European Economic and Social Committee adopted the following opinion by 66 votes to none with one abstention.

1. **Summary**

1.1. The Committee welcomes the Commission's Communication and endorses the goal of boosting innovation capabilities along the lines of the strategy set out by the Lisbon Council.

1.2. Boosting innovation in Europe — as a major contribution to economic growth and employment — is a highly topical issue at a time when the difficulties that the European economy is experiencing in recovering its momentum are compounded by political uncertainties and hazards.

1.3. The Committee shares the Commission's systemic view of the innovation process and its belief that innovation can assume various guises; it is a process that is nonetheless based on human resources skills — rooted in education and training — for achieving innovation in firms. The EESC firmly believes

that building up sound relations, on a voluntary or negotiated basis, especially in the areas of human, social, financial and ecological links, also constitutes a fundamental element for consolidating an innovative model which is specific to the European Union.

1.4. The Committee welcomes the Commission's efforts to encourage innovation based on coordinated action between Member States and the EU institutions and in general agrees with the strategies outlined in the Communication.

1.5. The Committee acknowledges that some progress has been made in innovation over the last few years, but the EU's relative disadvantage vis-à-vis other regions is clear, while there are still major differences between countries within the EU as regards performance in innovation.

1.6. The EESC would draw Member States' attention to the need to complete the single market — the largest market in the world — effectively, and to the urgent need to create better conditions for taking full advantage of the enormous opportunities offered by the recently agreed enlargement for reviving investment and economic growth throughout the European Union.

1.7. The Committee highlights the need to: bolster the support mechanisms for businesses; streamline the decision-making processes; work towards more efficient processes for exchanging and spreading good practices in innovation; and give greater recognition to business activity, calling upon the Commission and the Member States to promote a business culture more conducive to innovation, quality promotion and business risk-taking within society as a whole.

1.8. The EESC recommends that when European policies are devised and applied, in particular in those areas for which businesses provide the driving force, such as in innovation, account should be taken of the need to bolster the mechanisms for involving the key protagonists, namely businessmen and workers.

1.9. The Committee firmly believes that this Communication can provide a basis for strengthening innovation capabilities throughout the European Union, and hopes that the Member States and EU institutions provide the right conditions and resources needed for beefing up investment in innovation which is so vital for economic growth and for improving quality of life for people in Europe.

2. **Gist of the Commission document**

2.1. Innovation is a cornerstone of the Lisbon strategy launched by the European Council in March 2000 and emphasised by subsequent European Councils, in particular at Barcelona in 2002.

2.2. The present Communication on innovation policy, together with the Communication on industrial policy in an enlarged Europe and the Green Paper on entrepreneurship, form a coherent framework for developing an enterprise policy that fosters company competitiveness and contributes to the growth of Europe's economy.

2.3. While recognising the major contribution of research to innovation together with the importance of the recent Communication 'More research for Europe, towards 3 % of GDP', the Communication highlights that there are many other forms of innovation.

2.4. Innovation can be incremental or radical, it can result from technology transfer or through the development of new business concepts, it can be technological, organisational or presentational.

2.5. The object of the Communication is firstly to describe the diverse routes to innovation and analyse the consequences for the design of innovation policy and for the different means by which innovation policy is put into action, so that they are not hampered by a view of innovation which is too restrictive.

2.6. This analysis is complemented by an examination of the current challenges that are, to different degrees, specific to the EU, recognising that structures, problems and opportunities relating to innovation are not necessarily the same in all the world's major economic areas. Factors considered include the persistently inadequate performance of the Union, the implications of enlargement, demographic trends, and the large size of the public sector in EU economies.

2.7. While innovation policy takes place mostly at the national and regional levels, the Member States and the Commission need to step up their cooperation for strengthening innovation in the EU, including coordination and assessment mechanisms for mutual learning, as well as for taking stock of progress achieved. The Communication makes concrete proposals on how to turn European diversity into a strength.

2.8. The Communication also suggests several new directions for EU innovation policy development and, in particular, interaction with other policy areas. Innovation policy must often be implemented via other policies, and the Commission's suggestions include better coordination and a pro-active follow-up by the Commission and Member States.

3. **General comments**

3.1. The importance of innovation has been recognised since 1995, especially in the Green Paper on Innovation [1] and the First Action Plan for Innovation in Europe [2], the main objectives of which were to create an innovation culture, generate an environment favourable to innovation and encourage better links between research and innovation.

3.2. When the Lisbon European Council of March 2000 set the European Union the strategic objective of becoming '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' by 2010, it created certain expectations that innovation might become a key pillar for the future of the Union. [3]

3.3. The 2000 Commission Communication on innovation [4] identified five priorities for guiding Member States' actions to promote innovation:

— Coherence of innovation policies

— A regulatory framework conducive to innovation

— Encouraging the creation and growth of innovative enterprises

— Steps to improve key interfaces in the innovation system

— A society open to innovation.

3.4. The Committee expressed the view at the time that such objectives worked towards the vital 'recognition of the importance of innovation policy on the part of both the national governments and the European public' [3], and identified four crucial principles for encouraging innovation in Europe:

— information on innovation;

— a broad awareness of its value;

— a functional organisational and regulatory environment;

— coordination of activities at national and cross-sectoral level.

3.5. This assessment still holds true, and particularly the Committee's contributions regarding the following aspects:

— the importance of converging national innovation policies;

— the adoption of tax measures to encourage private investment in research and innovation and the employment of researchers by the private sector;

— the removal of barriers preventing communication between small and medium-sized enterprises (SMEs) and universities and research centres;

— steps to encourage the creation and growth of innovative businesses (facilitating the access of start-ups to public tendering procedures and Community programmes);

— the development of human resources in research institutes and centres of excellence and steps to attract researchers and scientists from non-EU countries;

— improvements to key interfaces in the innovation system;

— measures to facilitate knowledge transfer activities; and

— the need to modernise basic school curricula and provide training, especially in primary and secondary schools, in order to raise broad social awareness on a practical level of the meaning of innovation. [5]

3.6. However the EESC would draw attention to the need for some public funds to be earmarked for continuous training, especially for intermediate-level professionals (knowledge workers), so as to allow on-the-spot research and innovation activities in firms to expand.

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[1] COM(95) 688 final — volumes I and II: EESC opinion CES 700/1996, OJ C 212, 22.7.1996.
[2] COM(96) 589 final.
[3] EESC opinion OJ C 260, 17.9.2001.
[4] Innovation in a Knowledge-driven Economy, COM(2000) 567 final.
[5] EESC opinion OJ C 260, 17.9.2001, points 3.2 to 3.6.

3.7. The Barcelona European Council decided that investment in research and technological development (R&D) in the EU should be stepped up with the aim of approaching 3 % of GDP; it also called for an increase in the level of business funding to two-thirds of total R&D spending. The Committee welcomed these conclusions and highlighted the fact that the goals of competitiveness, economic growth, employment, high environmental and health standards and balanced sustainable development could only be achieved by more knowledge, R&D and innovation ([1]).

3.8. While R&D (research and development) has already been dealt with in various previous European Commission communications and corresponding Committee opinions ([2]), the Communication in hand focuses on those aspects of innovation which go beyond or fall outside the sphere of R&D, but whose importance may be decisive for imparting new impetus to European innovation policy.

3.9. The Committee shares the Commission's view that although some progress has been made here, innovation is still a real weak point for the European Union compared to the United States and Japan, and this shortcoming could be one of the main reasons for Europe's relatively poor performance in terms of growth and productivity.

3.10. The Committee welcomes the present Commission Communication which is designed to launch the debate on modernising the foundations of Europe's innovation policy, based on a clearer understanding of the mechanisms of innovation and underpinned by renewed political desire on the part of Member States for overcoming the difficulties in creating a more innovative Europe capable of achieving the Lisbon objectives.

3.11. The Committee attaches importance to the priorities set down at the European Council meeting on 20 and 21 March 2003, namely as regards growth in employment and greater social cohesion, innovation and entrepreneurship, and environmental protection and quality of life for EU citizens, although it does recognise that to date these priorities have been more a subject of discussion than concrete action by Member States.

3.12. The Committee also welcomes the general thrust of the conclusions of the XIVth Inter-Parliamentary Eureka Conference held on 23 and 24 June, on 'Building an innovation policy for Europe'.

3.13. The difficulties in relaunching economic growth and boosting employment are compounded by the political uncertainties and hazards affecting the world and the European economies in particular, and highlight the particularly important and topical nature of the Commission's Communication on innovation policies. This difficult situation should be a compelling factor in encouraging Member States and businesses to support investment policies for securing the necessary changes designed to step up innovation activities as a key instrument for boosting the productivity and competitiveness of European economies.

4. **Specific comments**

4.1. The Committee shares the Commission's systemic view of the mechanisms for innovation and agrees with its comment that capacities and performance in non-technological innovation may be as relevant to the slow pace of progress in achieving the Lisbon goals as the low level of R&D spending. This situation must not, however, be allowed to detract from the European objective of 3 % of GDP being channelled to R&D, to which Member States have committed themselves, and to which they must keep in order to make up the current innovation shortfall.

4.1.1. In truth, developing new knowledge is a prerequisite for the European Union becoming — as affirmed at the Lisbon Council — the most advanced knowledge-based society in the world. New elementary knowledge is a product of basic research. On the other hand, innovation — and the practical knowledge associated with it — flows from interaction between basic research, applied research, development, engineering, management, marketing, etc, or from any one of these stages. It can crop up in many forms and offer many opportunities.

4.1.2. On the other hand, more effective incentives are needed to encourage mobility amongst scientists and engineers — as purveyors of information and innovative techniques — between industry (including SMEs), universities and other research centres. Intellectual property rights must be distributed fairly.

([1]) EESC opinion OJ C 95, 23.4.2003.

([2]) OJ C 260, 17.9.2001; OJ C 94, 18.4.2002; OJ C 241, 7.10.2002 and OJ C 95, 23.4.2003.

4.1.3. Of particular importance is the role which small and medium-sized enterprises can play in adopting and developing ideas for new products. However, their market opportunities and chances of survival do not depend exclusively on mobility, knowledge transfer and the sharing of new ideas, but much more on the general economic climate, their self-sufficiency in basic equipment, financing arrangements and business experience. Thus, improved competitiveness for new companies, together with a better market position and financial capacity, are also vital for innovation, at least in the first five years.

4.2. The Communication argues that businesses constitute the driving force for innovation, based on their ability to recognise market opportunities and to respond in innovative ways using their know-how and skills. The EESC would, however, emphasise that although all the interactions a businesses has with its immediate environment are vital to its innovative capacity, and conditions in the broader environment affect its innovative orientation, the knowledge base depends on life-long human resource education and training. Individuals' learning opportunities and abilities are decisive elements in the innovation process.

4.3. The EESC stresses the importance of greater recognition for business activity and the need for the Commission, Member States and society in general to strive to create a business culture more conducive to innovation, quality promotion and business risk-taking.

4.3.1. As part of the mutual learning process, it would be particularly valuable for the Commission to organise round tables at sectoral level, at least as pilot projects, in order to make it easier to pass on information about best practices in business innovation.

4.3.2. The particular nature of innovation activities, bearing in mind the high failure rates in turning ideas into financially viable projects, should warrant steps by Member States to make specialized services available to provide support for business innovation.

4.3.3. In addition, financial institutions should expand their capabilities for assessing new ideas, giving businesses opportunities for obtaining financial resources so that they can benefit as much as possible from existing and emerging knowledge.

4.4. The EESC would point out that Europe's main weaknesses emerge most of all in the proportion of GDP represented by companies' R&D spending, the number of high-tech patents [1] and industrial added value in high-tech sectors. It reiterates its view that this state of affairs must be put right.

4.5. The EESC would also stress that differences between the Member States are particularly significant in terms of participation levels in life-long learning and numbers of high-tech patents. The continuing disparities between Member States' R&D expenditure as a share of GDP and high-tech patents is worrying. These are some of the aspects which require particular attention.

4.6. The acknowledged difficulties affecting innovation should be adequately addressed by the EU countries. These involve, firstly, shared problems such as risk-aversion, insufficient R&D investment and the lack of cooperation between the research and industrial sectors and, secondly, the specific problems the accession countries face in making the necessary changes to their economic, institutional, education and social frameworks.

4.7. The Communication underlines the need for suitable human resources policies in terms of providing appropriate opportunities for the last phase of working life, encompassing flexible working time arrangements and opportunities to participate in training. The EESC agrees that developing all workers' skills and extending the economic contribution made by older workers are important factors which must be reflected in companies' age structures and in steps to resolve the difficulties faced by social security systems. Nevertheless, workers in physically hard jobs or working in certain high-risk conditions should be dealt with differently in this connection.

4.7.1. In particular, consideration should be given to the contribution that older knowledge workers can still make to creating wealth and well-being for the community, with skill and intelligence, providing valuable opportunities for the community's productive and economic system while reducing economic and social costs.

[1] 2002 European Innovation Scoreboard [SEC(2002) 1349].

4.7.2. Against this background, the EESC feels that it is necessary to:

— set up specific instruments to safeguard rights by involving these workers more in the process of reorganising and restructuring businesses, in such a way as to facilitate new opportunities by adopting suitable instruments for back-up and technical support;

— introduce incentives for firms to employ knowledge workers who are seeking new jobs;

— encourage — through specific projects for investment policies — commercial development and partnerships with the Member States, and mobility and improved status for these workers, in order to make it easier for them to fit into the system and to ensure maximum use is made of their valuable skills and knowledge;

— make use of these workers' knowledge in order — as part of the policy of managing migratory flows — to develop selection and training activities on the spot in firms interested in hiring immigrants;

— use experts to provide professional support in the field to SMEs wishing to gain a foothold on new markets opened up via the accession countries;

— encourage exchanges between these professionals so as to give on-the-spot back-up to the process of modernising the productive, organisational and administrative apparatus of the new members of the Union; and

— introduce a specific policy for knowledge workers who, in addition to losing jobs, encounter major difficulties in reconciling mobility with the need to support a family.

4.8. The EESC is convinced that worker satisfaction, particularly regarding the quality of working conditions and relations, is a key factor in strengthening business innovation. Greater environmental and social responsibility on the part of businesses, with all its implications, would also appear to be fundamental to reinforcing a specific model for innovation in the European Union.

4.9. The Committee recognises the importance of the specific features of the EU set out in the Communication and having a bearing on innovation policy, such as the importance of the public sector and its interfaces with the most innovative enterprises, the regeneration of urban areas as centres of innovation, attractive to highly-qualified individuals, and the need to draw on European diversity in developing an innovation policy specifically geared to boosting economic growth, employment, and the quality of life for Europe's citizens.

4.10. The Committee joins with the Commission in recognising the need to step up efforts to encourage innovation, and to coordinate action between the Member States and the EU institutions; such efforts must however lead to practical effects on both enterprise support policies and models for encouraging worker participation and commitment, as well as budget policy guidelines for allocating the necessary resources.

4.11. The EESC urges Member States to devise actions for developing better basic and technical training for the working population and, as part of moves to coordinate policies Europe-wide, to create the conditions for boosting the mobility of human resources between universities/research centres and industry, between countries and between businesses. Such actions can play a decisive part in speeding up the process of spreading knowledge and best practice in innovation activities so that sectors and businesses can benefit fully from the knowledge available, applying it to the design, production and marketing of goods and services. In information technology, it will be vital to ensure that better use is made in future of existing networks, especially by businesses and universities/research centres so that, by learning from each other, they can achieve the desired levels of innovation.

4.12. The Communication calls for new directions to be studied in order to improve innovation performance in Europe. The Committee supports many of the suggestions made, regarding either the implications for policy interfaces, or the systematic assessment of their impact on innovation (competition, internal market, employment, taxation, the environment and regional development), steps to stimulate greater market dynamism (exploiting the concept of lead markets), the promotion of innovation in the public sector (efficient, open and competitive public procurement, new types of services), and moves to strengthen the regional dimension of innovation policy (skills creation reflecting the distinctive social and economic characteristics of a region and learning from previous successes).

4.13. In the EESC's view, European innovation should be strengthened through the following specific interfaces:

— taxation: a policy of selective tax incentives for innovative activities, especially for SMEs operating in growth and/or medium- and high-tech markets;

— public sector: an investment policy for boosting the development of new products and services, focusing particularly on those with the greatest impact on public well-being (health, education and training, the environment, transport and communications);

— employment: coherent employment market policies aimed at upholding and creating high-quality employment, strengthening social cohesion and steady EU progress to a level of near full employment;

— social responsibility and company human resources: one of the main concerns of an innovative organisation should be its ability to relate to its various stakeholders in a fair, balanced way, defending and advocating environmental protection in such a way as to satisfy the various interests involved, particularly those of its workers and the community in general. At present, one of the greatest challenges facing businesses is to establish good relations, especially human relations and those relating to social, financial and environmental issues, and particularly on a voluntary or negotiated basis.

— redefinition of Community support schemes for innovation: bearing in mind that part of the Community funds allocated to Member States for innovation are not used because the public contribution to the national financing component is lacking, it must be possible to guarantee this contribution fully from private sources only, so that all the funds which the EU makes available to the Member States for innovation can be used.

4.14. The Committee is convinced that the steps proposed by the Commission go some way to reducing the effects of the productivity gap between the EU and other economic areas, and can help to devise specific paths and solutions capable of strengthening the European social model.

4.15. Lastly, the EESC feels it must express its concern about how slow decision-making procedures are in the European Union, typical instances of which are the actual operation of the single market and the European patent. This difficulty means that the processes for devising and formulating policies and for subsequently implementing them on the ground — particularly those, such as innovation policy, for which businesses are a driving force — should take into account the need to strengthen the mechanisms for involving the main protagonists — businessmen and workers. The Committee is convinced that it is becoming vital for the Commission and the Member States to adopt such a new stance so that Europe can meet the challenges of innovation.

Brussels, 25 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

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

Insert a new point 4.1.4

'Accordingly, the Committee advocates that, until the R&D target of 3 % of GDP is achieved, all public investment in this sphere should be excluded from the calculations of public expenditure for the purposes of the Stability Pact.'

Result of the vote

For: 35, against: 39, abstentions: 3.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1655/2000 concerning the Financial Instrument for the Environment (LIFE)'

(COM(2003) 402 final — 2003/0148 (COD))

(2004/C 10/17)

On 16 July 2003 the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Bureau of the European Economic and Social Committee instructed the Section for Agriculture, Rural Development and the Environment to prepare the Committee's work on the subject.

At its 402nd plenary session (meeting of 25 September 2003), the European Economic and Social Committee decided, in view of the urgency of the matter, to appoint Mr Chiriaco rapporteur-general and adopted the following opinion by 56 votes to one with one abstention.

1. Gist of the Commission proposal

At the time of the adoption of Regulation (EC) No 1655/2000 concerning the Financial Instrument for the Environment (LIFE) [1], the Commission had proposed a management committee to oversee its implementation since the choice of projects was a measure with substantial budgetary implications.

1.1. The Council unanimously rejected the Commission proposal regarding the committee procedure to be applied, and specified in Article 11(2) that the regulatory procedure provided for in Article 5 of Decision 1999/468/EC be used for the adoption of measures implementing Regulation (EC) No 1655/2000.

1.2. The Commission therefore brought an action before the Court for the annulment of the provision in question.

1.3. In its judgment of 21 January 2003 [2], the Court of Justice annulled Article 11(2) of Regulation (EC) No 1655/2000, arguing that management measures relating to the

[1] OJ L 192, 28.7.2000, p. 1.

[2] Judgment of the Court of 21.1.2003, Commission v. European Parliament and Council, Case C-378/00, not yet published in the Court Reports.

implementation of a programme with substantial budgetary implications within the meaning of Article 2(a) of Decision 1999/468/EC fall in principle under the management procedure defined in Article 4 of Decision 1999/468/EC or, in some circumstances, in accordance with Article 2(c) of that Decision, under the advisory procedure defined in Article 3 thereof.

1.4. In accordance with the Court's judgment, the Commission is proposing a regulation to amend Regulation (EC) No 1655/2000 as regards the committee procedure to be followed, the effect of which will be to replace the regulatory committee by a management committee for the adoption of measures implementing Regulation (EC) No 1655/2000.

2. **General comments**

2.1. The Committee notes the Court's decision and supports the Commission proposal to replace the regulatory committee by a management committee for the adoption of measures implementing Regulation (EC) No 1655/2000.

3. **Specific comments**

3.1. While giving its support, the Committee calls on the Commission to ensure that the management committee works transparently and efficiently. The Commission should also promote the dissemination of the committee's decisions and, where appropriate, should organise wide-ranging consultations involving representatives of civil society.

4. **Conclusions**

4.1. The Committee welcomes the Commission proposal to amend Regulation (EC) No 1655/2000 as regards the committee procedure to be followed.

Brussels, 25 September 2003.

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 2596/97 extending the period provided for in Article 149(1) of the Act of Accession of Austria, Finland and Sweden'

(COM(2003) 372 final — 2003/0144 (CNS))

(2004/C 10/18)

On 16 July 2003 the Council, in accordance with Article 262 of the Treaty establishing the European Community, decided to consult the European Economic and Social Committee on the above-mentioned proposal.

The Bureau instructed the Section for Agriculture, Rural Development and the Environment to draw up an opinion on the subject.

In view of the urgency of the work, at its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee appointed Mr Staffan Nilsson as rapporteur-general and adopted the following opinion by 89 votes to 2, with 1 abstention.

1. Background

1.1. The transitional arrangements provided for in the Act of Accession of Austria, Finland and Sweden granted a derogation from the Council Regulation on the harmonisation of the fat content of milk (EC No 2596/97) [1]. After being extended, the derogation is set to expire on 31 December 2003 (EC No 2703/1999) [2].

1.2. Finland and Sweden were invited to report the measures taken to conform to Community rules. The Commission examines these in its report 'on certain aspects of the markets for preserved milks and drinking milks', published together with the proposal to amend the Regulation.

2. The Commission proposal

2.1. The Commission notes that, in some respects, fat content requirements continue to create difficulties for Finland and Sweden. It therefore proposes that the derogation enabling Austria, Finland and Sweden to diverge from Community rules on fat content of milk should be further extended to 30 April 2009.

2.2. The Commission also reports that six new Member States (Cyprus, Hungary, Latvia, Lithuania, Malta and Poland) have been granted the same derogation until 30 April 2009.

2.3. The Commission states its intention to prepare a report on the market for drinking milk, possibly accompanied by proposals to harmonise the rules, by 2007.

3. EESC comments

3.1. The EESC endorses the proposal to extend the derogation.

3.2. Both Finland and Sweden market a few drinking milk products with a lower fat content. A significant number of consumers remain opposed to the imposition of a fat content increase for these products.

3.3. Given that the derogation has been extended and that six new Member States are in the same situation, it is important that the Commission's 2007 report should carefully assess the issue of harmonising the fat content of milk on the market. The point of departure should be the interests and wishes of consumers, and whether these are best protected through harmonisation of permitted fat content or through harmonised fat content labelling.

[1] OJ L 351, 23.12.1997 p. 12.
[2] OJ L 327, 21.12.1999, p. 11.

Brussels, 24 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on 'Economic and social cohesion: regional competitiveness, governance and cooperation'

(2004/C 10/19)

In the context of the activities of the Italian Presidency of the European Union, the Italian permanent representative to the EU asked the European Economic and Social Committee in a letter dated 8 April 2003 to draw up an opinion on Economic and social cohesion: regional competitiveness, governance and cooperation.

In view of the urgent nature of the work, the Committee decided at its 402nd plenary session (meeting of 25 September 2003) to appoint Mr Malosse as rapporteur-general and adopted the following opinion by 76 votes to one.

1. Presentation

1.1. The draft constitutional treaty presented to the Italian Presidency on 18 July 2003 confirms and strengthens cohesion policy as one of the essential pillars of the European Union. The European Economic and Social Committee has been one of the instigators and chief supporters of this policy since its emergence at the beginning of the 1980s.

1.2. As a trailblazer for administrative simplification ([1]), the Committee is concerned about signs of bad governance such as delays in programme implementation, inadequate partnerships with the socio-economic players and contradictions between the Union's various policies. EU enlargement on 1 May 2004 will see the arrival of countries which will be the major beneficiaries of this policy but which have no experience of implementing it and in many cases lack the capacity to do so. In an increasingly globalised economy, better governance is the only way to secure the future of cohesion policy.

1.3. The Committee unswervingly supports the implementation of the Lisbon process to make the European Union the most competitive knowledge-based economy in the world by 2010. This objective could galvanise the EU public, but it is being called into question by economic instability and a lack of real commitment on the part of the Member States and the Union to put the main planks of the Lisbon process into practice. A genuine dialogue has yet to be promoted with businesses, the social partners and all the other civil society players, notably those who can inform the public about the reforms, plans and aims of the Lisbon process.

1.4. Accordingly, the Committee — acting at the request of the Italian Presidency — will draw up a series of recommendations for the future of cohesion policy, focusing on the topics of competitiveness, governance and cooperation. These recommendations will also draw on the recent work of the Committee's Section for Economic and Monetary Union and Economic and Social Cohesion ([2]).

2. Regional competitiveness

2.1. The aim of a renewed cohesion policy must be to enable the whole EU area to adjust to the challenges of the knowledge-based economy and thus help all regions to take account of the Lisbon objectives. The Union should now be able to find its way back to strong growth. For the past twenty years, despite being the world's leading industrial and trade power, the Union has appeared as an outsider who is dependent on the outside world to relaunch its economy. Such a situation is not natural. With the majority of its members sharing a single currency since 1 January 2002, the Union should be able to assert itself as a major player on the world stage, able to build growth from its own resources.

2.2. The lack of cohesion within the Union is clearly a source of weakness. The Italian Mezzogiorno, the rural and outlying regions of France, and, more recently, Germany's new Länder have all shown how a lack of cohesion can impede a

([1]) The EESC was the first EU body to adopt a code of practice regarding simplification.

([2]) See the following opinions in particular:
- Second report on economic and social cohesion — OJ C 193, 10.7.2001, p. 70.
- The EU's economic and social cohesion strategy — OJ C 241, 7.10.2002, p. 151.
- The future of cohesion policy in the context of enlargement and the transition to a learning society — OJ C 241, 7.10.2002, p. 66.
- Second progress report on economic and social cohesion.

country's economic and social progress. The same is true of the Union as a whole. For the last five years the acceding countries have had the highest growth rates in Europe and the best development prospects, but their accession will widen regional development gaps within the Union. EU cohesion policy must thus be continued and reinforced. In its twenty years of existence this policy has achieved very encouraging results, enabling the cohesion countries to close the economic gap. It has been less successful for lagging regions within individual countries, and in some cases subnational disparities have actually worsened. The Commission should devise innovative arrangements to meet the challenges posed by enlargement, for example by exploring synergies between the measures undertaken through the Structural Funds, investment loans from the European Investment Bank and capital available from the private sector. Such synergies have considerable potential to boost productive investment, not least in the acceding countries.

2.3. The experience of past years shows that the countries and regions which succeed are those which manage to harness and exploit their assets — first and foremost, their human resources, but also their natural heritage and their geographical situation. There is no 'magic formula' for this, just a spirit of social consensus in support of ambitious goals and targeted investment to create a level playing field for these countries and regions when it comes to sustainable development. Education/training and research, and high-quality infrastructure, are the keys to this. The majority of people in the Member States and the candidate countries aspire to a European model of society that is typified by the fight against poverty and social exclusion and better use of the potential of the least developed regions. There is a danger that any system that did not strengthen this approach would weaken cohesion and aggravate the constraints on structural measures. Further steps must be taken to strengthen this model of society, the key political tenets of which are public participation in the democratic process, the development of competences, access to general interest services, equal opportunities and the provision of basic social guarantees.

2.4. EU aid should be proportional and should be tapered in the light of the results achieved. It should be targeted on priorities defined under EU auspices by local stakeholders (including the private sector) acting jointly. The future cohesion policy should draw on past experience and incorporate best practice. This should be a basic tenet of future cohesion policy regulations. In this context, the techniques for assessing the effectiveness of Structural Fund measures need to be developed and improved.

2.5. Direct subsidies for businesses severely distort competition between regions. However, more general support may be necessary — in ways that do not disrupt the market — in order to foster entrepreneurship. It could take the form of support for the creation of new activities or assistance with development strategy, research and training for small businesses.

2.6. The Committee therefore calls for an active policy to help the least developed countries and regions (Objective 1 of cohesion policy) become more competitive. This policy should be provided with significant resources, which should be targeted on education and training, infrastructure, sustainable development, enterprise and SMEs, and the capacity of civil society organisations to mobilise local players. It must respect certain basic principles which must continue to underpin cohesion measures as they have done since 1988, namely concentration, programming, additionality and partnership.

2.7. The Committee calls for EU aid to be given further to EU regions which cease to qualify for Objective 1 because of the statistical effect of enlargement, with the focus on measures for skills development, promoting entrepreneurship and job creation. It considers that some of the current Objective 1 regions will continue to need support after 2006, and that they should not be denied it merely because enlargement will bring down the Union's average per capita GDP. The Committee stresses that this historic enlargement must be backed by measures to boost cohesion, as part of a regional policy which embraces the whole EU area.

2.7.1. The current distribution between Objectives 1, 2 and 3, where support levels and activity focus vary, should be replaced with a more flexible system. Three different support levels should be maintained, with the highest level of support going to remaining and new Objective 1 areas. A lower per capita support level should be provided for remaining Objective 2 and previous Objective 1 areas. An even lower level of support should be provided for remaining areas within the enlarged EU. As regards the latter, the focus should be entirely on skills development and experience-swapping between regions.

2.8. The Committee thinks that the Union and its Member States must continue to show solidarity towards regions with serious structural problems (the outermost regions, islands, upland areas, landlocked regions, sparsely populated regions, etc.) which need specific support for the provision of services of general interest, especially communication and transport networks (including broadband). Reform of cohesion policy in the wake of enlargement must not weaken support for these extremely vulnerable communities. In this area too, action is needed to encourage the development of human resources. This must remain a key priority and must receive additional EU support. Community solidarity would produce added value by tapping into successful experiences and enabling these regions to play their part in the major EU policies.

3. **Governance**

3.1. Better governance of cohesion policy is vital: the added value of Community cohesion policy depends on it. An effective cohesion policy must be clear and transparent and must enjoy the support of its beneficiaries, who should also play an active part. Above all, it must encompass all the various factors that can generate economic, social, cultural, environmental and human development. These factors appear increasingly interlinked.

3.2. The Committee would first reiterate its call for real simplification of cohesion policy procedures. This vital EU policy needs root-and-branch reform if it is to remain fully credible. Alongside this essentially operational concern, a forecasting instrument should also be put in place to study trends and track the parameters that govern real convergence and dynamic competitiveness factors.

3.3. The Committee has stated on a number of occasions that the principles underpinning the Structural Funds should be retained and developed after 2006. Aside from the debate (already mentioned) on the future of the concentration of support, steps must be taken to ensure that Structural Fund programmes are devised and managed with due respect for the subsidiarity principle. This means establishing a policy for the full and active involvement of local authorities and socio-economic partners, in contrast to initiatives that simply increase the role of national governments. The Committee could see no merit in a proposal which effectively put the monitoring of the Structural Funds into the hands of national governments.

3.4. To ensure a better distribution of roles between the several levels of decision-making, one of the most critical steps (if not the most critical) is that the European Union should take radical steps to follow through the principles of subsidiarity in decision-making. A better distribution of roles between the EU, the Member States and the regions is vital in order to avoid overlapping and excessive delays. The Union should set the main priorities — based on the Lisbon objectives — and the regions should be responsible for implementing them. The role of the Member States should be to check that this is done properly.

3.5. Good EU governance is based on representative and participatory democracy. The role of the socio-economic partners should be reviewed and strengthened. Socio-economic organisations should be directly involved in the establishment of priorities, on the basis of EU priorities and in partnership with the local authorities. They should also be involved in the monitoring and evaluation exercises conducted by local and regional steering committees. This partnership approach has proved crucial to the success of cohesion measures and should be made a key instrument of cohesion policy. A genuine partnership that involves all the socio-economic partners at all stages of the programming is vital if this policy is to be implemented more effectively. Any move to downgrade the role of the partnership in cohesion measures is bound to limit their usefulness and scope. The Committee is currently drafting a separate exploratory opinion which contains practical proposals for enshrining these principles in new regulations [1].

3.6. The rigid programming system based on Single Programming Documents (SPD) should be replaced by contracts with specified objectives. A significant proportion of the programmes should give local organisations or socio-economic representatives global grants, which should be used to manage small-scale projects. Systematic use would also be made of new financial engineering formulas for SMEs.

[1] Partnership for implementing the Structural Funds.

3.7. The additionality requirements should be made more flexible, tying them to the achievement of objectives rather than to each individual project. The EU could thus become the sole public source of support for the target priorities stemming from the Lisbon objectives.

3.8. A single Structural Fund should be set up, operating on a multiannual basis but with an indicative budget and flexible provisions so that the regions or countries which prove the most able could receive funds from a performance reserve. This reserve could also be used for formulating innovative projects, implementing them on schedule but also authorising emergency funding in particularly difficult situations.

3.9. The Committee thinks that the discussions on the future cohesion policy should be launched as soon as possible. Sufficient time must be devoted to this to ensure that the debate does not merely look at financial considerations and neglect the socio-economic implications, as the latter are vital in the context of enlargement and increasing globalisation. The debate must be thorough and transparent, and civil society players must be given a central role in it.

4. **Cooperation between regions**

4.1. There is broad consensus on the importance of cooperation between regions and on the Community added value of EU action. This was reaffirmed at the informal EU council meeting in Chalkidiki on 16 May 2003.

4.2. Given the effects of enlargement and globalisation, cohesion policy must promote a more polycentric development within the EU. This approach requires not only shared objectives, but also a recognition of Europe's diversity. Despite implementation difficulties, crossborder, transnational and interregional cooperation within the EU are recognised as essential instruments for the integration of regions which for years have lived 'back to back'. Internal border regions which have often been marginalised are now finding new vigour through new links and forms of solidarity. After 1 May 2004 the EU will have some large new internal border regions. The Interreg programme must thus be continued and extended, albeit with new priorities and significant streamlining of its governance: procedures must be radically simplified.

4.3. Aid for previous programmes has been spread too thinly, and this has undoubtedly made them less effective and less high-profile. The Committee recommends that priorities be limited to fields which would help crossborder regions to become competitive, such as the university network, research facilities, shared facilities for supporting small businesses, improvement of transport and communications, and a joint programme for sustainable development.

4.4. Cooperation along borders with third countries (including the 'new neighbours' to the east and non-member Mediterranean countries) must also be stepped up, as the enlarged Union cannot accept the creation of a new Berlin wall. The aim must also be to instil a spirit of cooperation in these border regions, encouraging them to get to know each other and exploit potential synergies.

4.5. To ensure that the Lisbon objectives are implemented effectively, the Committee recommends programmes for exchanging best practice, involving EU regions and the socio-economic players. These could focus on the following: the fight against exclusion, equality between men and women, boosting employment levels, spreading the knowledge-based economy, stepping up research, the quality of training, entrepreneurship, and the application of the Charter for Small Enterprises.

4.6. The Committee advocates a non-bureaucratic method for supporting cooperation between regions. This means that management should not be left solely to the Member States. The Committee therefore calls for the establishment of an EU cooperation facility which regions and socio-economic operators could access directly, providing co-funding with Member States (and in third countries). The facility could be managed by a special European agency which would also organise meetings to promote experience-swapping.

5. **Conclusions**

5.1. The Community's regional cohesion policy should undergo radical reform and aim to increase the competitiveness of EU regions that under-use their own resources, rather than using public aid to compensate for development disparities.

EU intervention should provide real added value and should draw on successful experiences and cooperation between regions. This added value will help the least developed regions to play their part in the major Community policies.

5.2. The Committee calls for a radical reform of economic and social cohesion policy methods and priorities to meet the challenges posed by enlargement and the knowledge-based economy. The new cohesion policy for 2007-2013 must tie in with the Lisbon strategy as a matter of priority, in order to make the EU the most competitive knowledge-based economy in the world and allow all regions to play a full part using their own particular assets.

5.3. This reform should be built on the principles of competitiveness and cooperation between regions. Its success will be secured through new methods of governance based on transparency, simplification of procedures and a genuine partnership with the local and regional socio-economic players.

Brussels, 25 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on 'The contribution of other Community policies to economic and social cohesion'

(2004/C 10/20)

On 23 July 2002, Mr Michel Barnier, European Commissioner responsible for regional policy, acting on behalf of the Commission, asked the European Economic and Social Committee to draw up an opinion on 'The contribution of other Community policies to economic and social cohesion'.

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 11 September 2003. The rapporteur was Mr Dassis.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 25 September), the European Economic and Social Committee adopted the following opinion by 66 votes to 21, with ten abstentions.

1. **Introductory remarks**

1.1. Highly significant recent events have demonstrated that the road to political union is still going to be a long and arduous one. Certain European governments seem to have forgotten the stance that was constantly promoted in the 1970s and 80s, i.e. that European integration was the only option for European countries, as none of them could influence world developments alone.

However, economic and social cohesion is one of the basic aims laid down by the Treaties and confirmed in the draft European Constitution, along with EMU and the completion of the internal market.

There are certain factors in the current environment, primarily:

— the intensification of market globalisation,

— EU enlargement and its opening up to the countries of central and eastern Europe,

— the predominance of a knowledge-based society and economy, and

— the more general social and political features of the 21st century,

that call for efforts to establish a more up-to-date approach to the issue of economic and social cohesion.

1.2. These efforts should centre on:

— analysing the commitments of Member States and of the Community regarding economic and social cohesion that originate in the Treaties establishing the European Union and the European Community, with a view to providing the fullest possible explanation of the meaning of the relevant Treaty provisions and regulations,

— enumerating and examining Community and Member State practice in interpreting and implementing the cohesion-related provisions and regulations of the Treaties and of the European Constitution when it enters into force,

— identifying the impact on economic and social cohesion of current Community and Member State practice in interpreting and implementing the relevant Treaty provisions and regulations, and

— identifying any need to shift from current practice in the interpretation and implementation of cohesion-related Treaty provisions. Such a shift may be approached as a matter of changing priorities or of finding additional options during the planning, mapping out and implementation of each individual Community policy.

1.3. The EESC has already produced relevant opinions, including one on The future of cohesion policy in the context of enlargement and the transition to a learning society ([1]), in which it expanded on the issue of the consequences for cohesion of the shift to a knowledge-based economy, and on the EU's economic and social cohesion strategy ([2]), in which it emphasised the contribution of the structural policies conducted under Article III-111 of the draft Constitution to strengthening cohesion.

1.4. The present opinion is of a complementary nature and aims, for reasons that will be explained below, to make an in-depth analysis and evaluation of other, non-structural policies, i.e. the policies listed under Article III-112 of the draft Constitution, in relation to economic and social cohesion.

([1]) OJ C 241, 7.10.2002, p. 66.
([2]) OJ C 241, 7.10.2002, p. 151.

2. **Definition of cohesion**

2.1. The cohesion-related provisions and regulations are to be found in part III of the draft European Constitution, where they are more detailed and substantive.

2.2. Under the provisions of the Treaty, the Member States and the Union must also consider the economic and social cohesion factor before making any decisions relating to any Community policies and activities. In other words, the need to bolster economic and social cohesion is not just limited to specific Community policies and activities, but permeates all of them.

2.3. A more detailed analysis might lead us to the following three conclusions:

2.3.1. First: the Treaty articles mention economic and social cohesion, but without clarifying in specific provisions the meaning of the 'economic' and 'social' dimension of cohesion. However, the fact remains that the articles of the relevant treaty provisions do not refer just to cohesion generically, but distinguish two dimensions: economic and social.

2.3.2. Second: the only provision that contains a generic reference to cohesion (i.e. combining the economic and social dimensions) is Article 158 (overall harmonious development of the Community, reducing regional disparities and addressing the backwardness of the poorer regions).

2.3.2.1. If the provisions of Treaty Article 159 were not clear, the following questions might arise. Should other, non-structural, Community policies — before they are announced, but while they are being finessed and implemented — be forced to conform to the requirement of furthering economic and social cohesion, which would probably make it impossible to derive the anticipated general benefits from their implementation? Or should other, non-structural, Community policies be implemented with the exclusive objective of deriving the maximum anticipated benefit for the Community as a whole from their implementation, regardless of whether their full and uncompromising implementation increases regional disparities, exacerbates the development lag of the poorer regions and ultimately creates regional divergence and new disparities rather than cohesion?

2.3.2.2. But these questions do not arise, because of the way Article 159 is formulated: other policies must be adapted, as they are framed and implemented, to the requirements of cohesion, which means it may not always be possible to derive maximum benefits for the Community as a whole, if those benefits would increase regional disparities and exacerbate the relative position of the Community's poorer regions.

2.3.3. Third: the issue of how the Community has so far interpreted and implemented in its activities the Treaty provisions relating to cohesion has not yet been clarified. As will be discussed below, the Community has followed a different approach so far. When other, non-structural, Community policies are being designed, framed and implemented, no account is taken and no assessment is made of their potential implications for cohesion (i.e. for reducing regional disparities and backwardness); only their impact on the Community as a whole is assessed. This approach means that the Community accepts the risk that a widening of regional disparities, i.e. economic and social divergence, not cohesion, will result from the implementation of certain Community policies (e.g. competition policy, internal market policy, monetary policy) and subsequently takes steps, by drawing up and implementing structural policies, to eliminate or limit and mitigate the effects of other policies that are harmful to cohesion. In Community practice, therefore, ensuring economic and social cohesion appears, like structural policy, to follow after other Community policies.

3. **Combining economic and social cohesion**

3.1. The term 'economic cohesion' implies the cross-regional convergence of specific economic indicators, especially indicators relating to GDP per capita.

3.2. In principle, 'social cohesion' means the system of social protection and social welfare that is included within the European social model.

3.3. The combined reference to the two concepts in the Treaty, and more specifically in Articles 158-162, without clarifying any differences in meaning between them, was not the best solution, because it makes it very difficult to look specifically at the substance and scope of one or the other.

3.4. The basic issue is to clarify the acceptable (tolerable) sequence for attaining the two (complementary) aspects of cohesion. The question could be framed as whether economic cohesion should be given priority over social cohesion.

3.5. This question must be approached on the basis of the explicit terms of Articles 158-162 of the Treaty establishing the European Community, and not random theoretical debates or decisions. In other words, it is necessary to clarify whether the terms of Articles 158-162 require parallel and concurrent pursuit of both economic and social cohesion in the context of framing and applying Community policies in general, or whether on the contrary there is an order of priority of economic over social cohesion.

3.6. Per capita GDP is an average, and measuring cohesion exclusively with this quantitative indicator means importing the known distortive effects of statistical averages into findings.

3.7. As a result, trends in cohesion cannot be assessed on the basis of per capita GDP alone. Other parameters and criteria must also be taken into account when assessing the true and precise scale of cohesion and its development (convergence or divergence).

3.8. The purpose here is to produce a more representative indication of cohesion, and this requires:

— first, deciding on other, non-GDP parameters to be assessed. The new cohesion indicator should be a composite: in addition to GDP, it should include parameters such as employment and unemployment levels, the extent of social protection, the level of access to general interest services etc.,

— second, the issue should also be addressed of how each factor should be weighted in the composite cohesion indicator as a whole.

4. **General assessment of the implications of structural policies for economic and social cohesion**

4.1. With respect to defining, researching and evaluating regional policy, there is a clear connection between regional policy and structural policies.

4.2. Expert studies have been done and are still ongoing to measure the impact of the structural policies.

4.3. This has made it possible to flesh out the Second Report with a wide variety of reliable data, as well as a well-rounded overall picture of the contribution of the structural policies to cohesion: in the 1988-1999 period, the four poorest countries' 32 percentage-point (68 %) disparity in relation to average European per capita GDP, was reduced by a third, i.e. to 21 percentage points (79 %).

4.4. In other words, over an 11-year period (1988-1999), the disparity between the average per capita GDP of the four cohesion countries and that of the EU shrank at an average rate of 1 % per year.

5. **General assessment of the contribution of other Community policies to economic and social cohesion**

5.1. The claim that regional policy is connected with structural measures is based on the observed lack of any kind of statistical data on the impact of other, non-structural policies on economic and social cohesion.

5.2. The issue is how to use the experience of choosing indicators and quantitative measurements that has already been gained in the field of structural measures and apply it to other Community policies.

5.3. The need to apply Article 159 after EU enlargement is becoming more urgent. Published estimates predict that Community per capita GDP will fall by 13 % with the accession to the EU of the new members, which would mean the probable exclusion of 15 European regions from Objective 1 support. If this happens, the structural policies will play a less important role in strengthening economic and social cohesion in those regions.

5.4. It is important to avoid undermining the process of strengthening economic and social cohesion in regions no longer eligible for Objective 1 support after enlargement. There are two ways of achieving this, and they are not mutually exclusive:

5.4.1. first, the regions can be allowed to stay within Objective 1 by lowering the 75 % threshold for Community per capita GDP, and

5.4.2. second, the contribution of the other, non-structural policies to economic and social cohesion can be increased.

5.5. If the first option is not feasible, application of Article 159 and use of other, non-structural policies to bolster economic and social cohesion (in the poor European regions in particular) could be particularly effective.

6. **Inconsistencies in the implementation of other Community policies — adapting them without calling them into question**

6.1. It should be made clear that no Treaty provision allows a Community policy to be reversed.

6.2. In the specific context of the Treaties, it makes no obvious sense to consciously obstruct the operation of a specific Community policy: any Community policy may involve positive or possibly negative consequences (e.g. with the introduction of a single currency it might be assumed that there will be certain negative consequences, but these do not overshadow its broader beneficial effects).

6.3. This implies that the Community policies listed in Article 159 very probably — to a certain extent — have contradictory consequences and results; while the overall effects for the EU as a whole may be beneficial, it cannot be ruled out that there may be unfavourable consequences for certain regions.

6.4. In addition, the effects of the remaining, non-structural Community policies can be expected to differ, sometimes widely, from one region to another.

6.5. The Second Report on Economic and Social Cohesion points out that while convergence is observed between the Member States, disparities may be noted between the European regions.

6.6. The European Commission's study on employment [1] goes much further, stating that the years since 1950 can be divided into three periods, each with different characteristics.

6.7. In the period from 1950 to 1970, there was clear convergence between European regions, in terms both of income per capita and of productivity levels, with poorer regions developing over four times more rapidly than richer regions.

6.8. The reverse is true of the following periods (post 1970). More specifically:

6.8.1. In the period 1971-1994 (and even more so between 1995 and 1999), there was a clear slowdown in convergence between regions, with the poorer regions failing to catch up with the richer areas.

6.8.2. Likewise, the final period (1994-1999) was a period of growth for Europe, but it is clear that not all the European regions benefited from that growth. On the contrary, the European regions present different results:

— in growth in per capita GDP (measured in PPS terms),

— in productivity,

— in employment, and

— in unemployment.

6.9. It is significant to note that European integration is hindered by differences existing between regions:

— in productive capacity,

— in skill structures and labour force specialisation,

— in the sectoral specialisation of the products produced, and

— in employment and functioning of the labour market.

6.9.1. At the same time, the geographical situation in each region influences its capacity to gain access to big markets and to knowledge spill-overs.

6.9.2. These differences lead the European regions to specialise in different production sectors on the basis of their specific comparative advantage.

6.9.3. This specialisation, however, leads to a variety of further consequences depending on the specialisation in question; sectors that are more knowledge-intensive have the greatest advantage, as well as lower costs and increased labour mobility.

6.10. As a result, technological development and the persistence of certain features of the economy (high unemployment, low per capita income and the sectoral composition of output) not only depend on the distribution of production factors between regions and their mobility, but also contribute to shaping production factors in a highly dynamic process.

6.11. The Employment in Europe 2002 report also places considerable emphasis on 'asymmetric shocks', i.e. shocks in demand for certain products or types of labour. These shocks, which are a decisive factor in the development of regional inequalities, affect particular regions rather than the EU as a whole, since they are related to the structure of each region's economy.

6.12. The regions hit by these shocks enjoy less favourable conditions and are less productive than other regions, especially if adjustment is slow, for instance because unskilled or poorly skilled workers are less flexible than those with more skills.

6.13. It follows that the interdependence of the various elements (production factors, skills, geographical situation, technological development, asymmetric shocks) means that the various regions have differing capacity to generate new jobs and to promote growth.

6.14. The same report also observes that if the poorer regions do not manage to cross a threshold of strategic inputs (human resources, public infrastructure, etc.) they can become trapped in situations of low economic growth and may not be able to catch up with the richer regions.

6.15. Europe's regions are therefore obliged to follow different paths, with the result that, in principle, convergence will be achieved only within the context of 'clubs' of regions, whose upper and lower limits are determined by the strategic factors available to them.

[1] Employment in Europe 2002, Chapter 4.

6.16. Attempts to bridge the gap between the European regions are essential preconditions for strengthening cohesion throughout the EU, providing that this is done in such a way as to avoid all possibility of aggravating regional inequalities and disparities.

6.17. It is not always clear whether the planning, framing and, above all, implementation of the Community policies listed under Treaty Article 159 lead to benefits for all the European regions, or whether on the contrary they help only regions whose structures are more suited to reaping the benefits of European integration.

6.18. After considering the various characteristics of the European regions and their various labour markets, the Employment in Europe 2002 report identifies five 'regional clubs' that are characterised by different patterns of utilisation of human resources and labour skills.

6.19. However, over and above the differences in patterns of utilising human resources and labour skills, the further inequalities between the European regions are so great that there is a clear difference between the results and consequences of the Community policies listed under Article 159, by region and by regional club.

6.20. The discussion does not end here however. Under Article 159 of the Treaty we must not just identify but also measure the positive and negative effects of Community policy on economic and social cohesion for each region. So far these have not been measured or more specifically, the task has not been undertaken.

6.21. As a result, it is also clear that it is not satisfactory to make general and rather vague statements of the kind that competition policy helps to generate new jobs. A statement of this kind must be backed up with specific measurements of potential new jobs per region, so that it can be ascertained whether new jobs really have been created.

6.22. It is also possible that the EESC did not back up certain statements in earlier opinions to a sufficient degree with statistics, e.g. the statement that disadvantaged regions are affected by concentrations.

6.23. There are various possible ways of addressing this issue, for example:

6.23.1. First measure the impact by region of Community policy under Article 159.

6.23.2. Second, on no account question Community policy as a whole, even if it has unfavourable consequences for regional cohesion.

6.23.3. Third, adapt this Community policy for an individual region, or apply it gradually (over a specified transitional period) in that region, so as to measure its effects.

6.23.4. Fourth, if adapting or gradual (transitional) application of the Community policy in one or more regions is not feasible or not considered effective, or jeopardises the expected benefits of the Community policy for the EU as a whole, then decide to implement complementary policies in specific regions (including policies of a structural nature), so as to eliminate, or mitigate the negative effects for cohesion in these regions.

6.24. It should be stressed that putting the above into practice requires:

6.24.1. first, that the effects of the complementary policies be assessed beforehand;

6.24.2. second, that the complementary policy for eliminating negative consequences for one or more regions is effective, i.e. that it covers all the negative consequences and that these have been assessed.

6.25. It should be noted that the Employment in Europe 2002 report uses a number of indicators to measure regional performance and thus to group the regions into 'regional clubs', i.e. groups of regions with similar characteristics, systems and performance.

6.25.1. Chapter 4 of the Employment in Europe 2002 report could be very useful for drawing up a set of indicators that would provide a statistical evaluation and description of the effectiveness of other, non-structural Community policies in strengthening cohesion.

7. **Relationship between the structural policies (Treaty Article 158) and the remaining Community policies (Treaty Article 159)**

7.1. It has been observed [1] that the Community Support Frameworks (CSFs) work in three ways:

— by improving basic economic infrastructure,

— by enhancing human capital (by improving skills and the general education of the workforce), and

— by directly strengthening the private sector through investment support.

7.2. Studies to assess the impact of the structural policies have measured the effects of the first two approaches by designing specific models.

7.3. It was found that the structural policies contributed to growth — increase in per capita GDP — to differing degrees in each of the four cohesion countries, with Greece and Portugal benefiting more from the structural policies than Ireland and Spain.

7.4. The same studies found that the benefits of the single market were not so great for Greece and Portugal as for Ireland and Spain.

7.5. This raises the question of how the impact of structural policies relates to that of the other Community policies.

7.6. To arrive at a definite answer to the question of the combined effects of the single market and the CSFs, the Single Market Review states that it is necessary to choose among a series of alternative scenarios, for instance:

— to what extent, if at all, is the increased flow of foreign direct investment recorded for instance in Spain the result of the European single market?

— is financing through the structural policies and the CSFs temporary or permanent?

— are the economic mechanisms that generate the long-term supply responses to CSF support strong or weak?

7.7. These are difficult questions, to which definitive answers have yet to be found. A greater effort must be made to answer these questions, in view also of enlargement.

8. **Specific shortcomings of other Community policies with respect to economic and social cohesion**

8.1. *Common agricultural policy — partial reform of the CAP and economic and social cohesion*

8.1.1. The common agricultural policy was the first real Community policy, introduced by the founding Treaty of Rome. This policy was completely successful in addressing the food shortages that followed the end of the second world war and made a genuine contribution to strengthening economic and social cohesion [2].

8.1.2. One of the main features of the common agricultural policy reform adopted on 26 June 2003 is the decoupling — or partial decoupling — from production of compensatory payments, in particular crop payments, premiums by head of cattle and compensatory payments for milk after 2005. The link between the compensatory payments and the current calculation method (by head of cattle or by hectare), will be replaced — or partly replaced — by a system of income support payments for farmers (payment by farm). The Member States decide in each case which form of decoupling to use.

8.1.3. The EESC notes that other CAP instruments, such as those for managing the supply of agricultural products (e.g. quota arrangements), have an important function. These arrangements go a considerable way towards curbing the process whereby agricultural production is concentrated in the most favourable areas. This is in the interest of small farms and is also necessary to secure production in disadvantaged areas.

8.1.4. Any appraisal of the CAP and its contribution to economic and social cohesion should take into account that the reforms implemented in 1992 and 1999 brought decisive changes. Market support payments have fallen substantially, while payments according to farm size and head of livestock have become much more widespread. As these are intended to compensate falling producer prices for agricultural produce, there has been no significant shift in transfers between regions or types of production. Some cases of unfavourable bias have remained, e.g. against arable land, which the EESC has criticised on a number of occasions.

[1] The Single Market Review — Subseries VI: Vol. 2, 'The cases of Greece, Spain, Ireland and Portugal'.

[2] EESC opinion on the Communication from the Commission to the Council and the European Parliament — Mid-Term Review of the Common Agricultural Policy, OJ C 85, 8.4.2003, p. 76.

8.1.5. The Agenda 2000 reform drew together the various flanking market policy support measures in the Rural Development Policy programme, the so-called second pillar. The EESC has expressed its approval for this new focus of the CAP in a number of opinions, as it can make an important contribution towards securing the multifunctionality of European agriculture and the viability of rural areas. The EESC has therefore repeatedly called for improved funding of the second pillar.

8.1.6. In its opinion on the CAP reform of 14 May 2003 [1] the Committee underscored inter alia the need to take account of the impact on economic and social cohesion when undertaking further reforms. The extent to which this actually happens is significantly affected by the transposition of reform measures by the Member States.

8.1.7. Since second-pillar measures have an important function for economic and social cohesion in rural areas, actual requirements cannot fully be met even with the proposed redistribution under so-called modulation. This is why the Committee's opinion of 14 May 2003 advocated deploying additional resources for rural development.

8.1.8. The improvement in cohesion expected with the new CAP must be assessed statistically and measured by region, in accordance with Treaty Article 159.

8.2. *Economic policy: Stability and Growth Pact and introduction of the single currency*

8.2.1. The Second Report on Economic and Social Cohesion notes (Synthesis, Part II) that in order to sustain high rates of economic growth in the regions of the Union that are lagging, it is important for structural policies (i.e. policies covered by Article 158) to be allied with macroeconomic policies which ensure financial stability (i.e. policies covered by Article 159).

8.2.2. At the same point, the report argues that nominal convergence has been accompanied by real convergence, in so far as there was a substantial decrease in inflation during the 1990s matched by a rise in GDP (above the European average in the four cohesion countries during the second half of the 1990s).

8.2.3. Although this reasoning is theoretically sound, it can be objected that there are no data measuring the probable impact of applying the cohesion criteria on each country's GDP growth per capita.

8.2.4. This deficiency could be corrected by introducing indicators for measuring specific economic parameters, e.g.

— the fall in demand caused by applying the Stability and Growth Pact;

— effects on economic productivity of reduced demand;

— effects on investment spending of reduced demand;

— effects of reduced productivity in reducing jobs and increasing unemployment;

— statistical correlation between reduced demand and job losses/higher unemployment;

— statistical correlation between the level of unemployment and any change (rise or fall) in salaries and wages (introducing such an indicator means accepting the principle that any increase or decrease in wages must be related to a concurrent inverse — and measurable — change in the employment and unemployment indicators).

8.2.5. In the same section of the Second Report on Economic and Social Cohesion, the general, abstract argument was advanced that introducing the single European currency had reduced inflation and would enhance financial stability, with positive effects on cohesion. However, no further statistical evidence is provided in support of these claims. The Commission should carry out a quantitative study on this matter.

8.2.6. A correct approach would require selecting and elaborating a series of statistical indicators, such as for instance:

— correlating inflation with changes in per capita GDP by region;

— correlating inflation (and/or per capita GDP) with changes in employment, unemployment or poverty by region.

[1] COM(2003) 23 final — 2003/0006+0007 (CNS).

8.2.7. Recent discussions about the need to gradually shift the fiscal priority from budget deficit limits to public debt limits must not be confined to mere statements of opinion and result in rash political choices. Correct political decisions are always preceded by assessment of their implications.

8.2.7.1. As regards the consequences of the Stability and Growth Pact, and in particular the application of the specific criteria (budget deficit or public debt), it is necessary to try and provide a quantitative assessment of the effects to date of prioritising the first criterion (budget deficit), and to evaluate the anticipated impact of this, in the context of the current economic situation, on economic and social cohesion.

8.2.7.2. Moreover, switching the priority to public debt requires an evaluation of the relevant effects of this change on social cohesion.

8.2.8. It should be emphasised that these calculations and evaluations must be used not just to establish the extent of change generally but also to compare rates of development by region, focusing in particular on the poorer regions.

8.3. *Competition policy*

8.3.1. The Second Report on Economic and Social Cohesion contains a clear reference to the effects of national policies on the widening of disparities, with the obvious purpose of highlighting the need to coordinate national and Community policies in order to avoid exacerbating disparities within the Member States.

8.3.2. In fact, in the second paragraph on page V of the report a distinction is drawn between disparities between Member States and disparities between regions, and it is noted that the latter have narrowed by less, partly because of the widening of gaps between regions within certain Member States.

8.3.3. National development policies implemented by adopting country-specific laws based on national characteristics and needs include special development assistance packages with various combinations of development incentives.

8.3.4. These incentives may take the form of:

— tax exemptions and reductions,

— special credit terms (reduced interest or interest-free),

— free capital assistance,

— or various combinations of tax, credit, or capital measures and aids.

8.3.5. In addition to supporting the development of the poorest regions in each country, the choice of specific development measures and assistance must also aim to:

— boost employment, and

— strengthen comparative regional and national advantage.

8.3.6. It should be noted that the composition of these development aid packages is in each case overseen by the EU authorities with the aim of avoiding any potential conflict with Community policies. However, the aim of conformity to Community legislation does not include prior evaluation of the implications for enhancing economic and social cohesion.

8.3.7. It is now also necessary to change the approach followed to date and endeavour to:

— provide a prior statistical estimate in each case of the positive and negative effects of aligning national packages of development incentives to the requirements of the relevant Community rules on enhancing cohesion and

— correct as necessary the relevant adjustments of national policies so as to avoid any decision being taken that would widen disparities or fail to enhance cohesion.

8.3.8. At the same time it should be noted that in many cases supporting a particular business or sector essentially amounts to supporting a specific region, which means that discontinuing or reducing support ultimately exacerbates the economic and social lag of the region concerned.

8.4. *Trade policy — the internal market*

8.4.1. The Internal Market Strategy approved by the Helsinki Council is particularly important because it provides for ongoing review and improvement of the functioning of the internal market.

8.4.2. As part of this process it would be helpful to assess the utility of specific and predetermined comparative indicators of regional disparities.

8.4.3. Such assessments would ultimately establish the extent to which the cohesion goals have been achieved.

8.5. *Transport policy*

8.5.1. Transport policy is one of the most basic growth factors for the EU's peripheral regions. The lack of inter-regional links (road, air and sea links) is for many regions a major hindrance to growth. Not only has the liberalisation of transport failed to improve the position of the peripheral regions, but in certain cases there is a danger of their becoming economically isolated.

8.6. *Education and vocational training policy*

8.6.1. The skills and vocational knowledge that are embedded in a region's workforce, in conjunction with the type of employment available, is described as a 'key variable' in shaping regional competitiveness, particularly in the light of the Lisbon Strategy [1].

8.6.2. Furthermore, the European Council in Nice stressed that the pursuit of the goal of full employment implied ambitious policies for increasing the employment rate and for reducing regional disparities.

8.6.3. More specifically, the Nice European Council pointed out the local and regional dimensions of the employment strategy that required a concerted approach at all levels (Community too), with policies tailored for each region, in terms of content and objectives, as a precondition for achieving the Lisbon goals and strengthening cohesion between the European regions.

8.6.4. Before the European Council's comments can be turned to account, a detailed approximation and assessment must be made of existing labour skills against what is required in each region, and the necessary support mechanisms developed for disadvantaged regions, so as to fill the skills gaps at the pace required by the production base.

9. **Conclusions**

9.1. Although the economic situation and more generally the standard of living in the peripheral regions of the EU has improved over the last two decades, in many cases the disparities remain the same or have worsened.

9.2. If economic and social cohesion policy is to be effective, European regional policy must be a horizontal policy so that all EU policies take into account their impact on the regions and their development.

9.3. Without underestimating the role of the remaining Community policies, transport policy and competition policy rules on state aids aimed at regional development must be reviewed. Inasmuch as there is not yet a common policy on taxation, national fiscal policies should take serious account of the regional dimension with a view to strengthening cohesion, with due regard for competition policy.

9.4. Inequalities in income are always accompanied by other, not directly income-related disparities and inequalities that make the situation even worse for the poorer regions. It is useful to note that in the Second Report on Economic and Social Cohesion (page XI), there is an explicit reference to the fact that lower per capita GDP is linked with:

— lower production per employee,

— lower levels of education and training,

— fewer research, development and innovation activities,

— slower introduction of new information and communication technologies.

9.5. The weaknesses of the Community policies listed under Article 159 (namely all the non-structural policies) should be identified in terms of a quantitative assessment of their impact on economic and social cohesion.

9.6. A procedure should be established for measuring the impact of the Article 159 policies on economic and social cohesion, and more specifically on the profile of GDP per capita per region, employment per region, unemployment per region and poverty per region (a procedure that is already applied for the Article 158 structural policies).

9.7. There is also a need for a special study to be carried out to establish the package of ex ante and ex post indicators for measuring the effectiveness of the remaining policies, similar to the package that is applied for measuring the effectiveness of the structural policies [2], with the distinction that the choice of recommended indicators cannot be general for all the policies but must be specific to each individual policy.

[1] Employment in Europe 2002, Chapter 4.

[2] European Commission — DG XVI: The new programming period 2000-2006, Methodological working papers, no 3, Indicators for monitoring and evaluation: an indicative methodology.

9.8. The establishment of a procedure for measuring the impact of the Article 159 policies and the drawing up of a special study to establish a package of indicators for measuring the effectiveness of these policies must tie in with the framework provided for in the Second Progress Report on Economic and Social Cohesion, and more specifically:

— with the Commission's commitment to conduct further research on the coherence and consistency of Community policies, so as to secure the necessary compatibility of all policies in the new programming period (2007-2013) with the objective of economic and social cohesion, and

— efforts to keep to the deadlines for adopting the new legislative instruments before the end of 2005, so that 2006 can be devoted to negotiating with the Member States and the regions on the 2007-2013 programming period ([1]).

9.9. There is a need to establish a procedure, for the three-yearly review and evaluation of the impact of the Stability Pact, both for the EU as a whole and for the individual European regions. The aim of this evaluation should be the prompt and effective review of the prospects and commitments imposed by the stability pact national economies, in conjunction with the differing social and regional developments in the actual economy in each case, so as to prevent possible retrograde trends or so as not to exacerbate recession at Community level and also to minimise the risks of undermining cohesion at regional level.

9.10. The connection between the remaining, non-structural Community policies, and above all economic policy, with the objectives of cohesion is a fairly complex issue. An in-depth study is required and in any event oversimplifications must be avoided.

9.11. In 1999, the Community resources available for strengthening cohesion amounted to 0,45 % of EU GDP. The level of cohesion in the regions of the 15-member EU has undoubtedly improved. However, in the light of the accession of ten new States, the EESC believes that a careful study must be made of both the level of the resources necessary to promote further cohesion and their rational use.

9.12. The EESC, in the context of its responsibilities, could examine this subject in further depth and attempt to answer the following questions:

— Which Community policies contribute towards cohesion?

— How can real improvements be made to economic and social cohesion within the boundaries of the European Union?

([1]) 'Second Progress Report on Economic and Social Cohesion', COM(2003) 34 final, 30.1.2003: III — The main topics of the debate on future cohesion policy — Other aspects — The contribution of other policies and IV — Future deadlines.

Brussels, 25 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments were rejected during the debate (Rule 54(3) of the RP):

Point 6.21

Amend point 6.21 as follows:

'As a result, it is also clear that it is not satisfactory to make general and rather vague statements of the kind that competition policy helps to generate new jobs in all regions (Second Report on Cohesion). A statement of this kind must be backed up with periodic evaluations of the impact of competition policy on employment'.

Reason

To avoid an unrealistic expectation that the impact of competition policy can readily be measured in terms of the impact on jobs.

Result of the vote

For: 28, against: 53, abstentions: 6.

Points 6.24, 6.24.1 and 6.24.2

Delete.

Reason

To avoid an unrealistic expectation of these as practical proposals. The principle is outlined in 6.23.4.

Result of the vote

For: 31, against: 49, abstentions: 9.

Point 8.2.3

Replace this point with the following text:

'The impact of the introduction of the single currency and the Stability and Growth Pact on economic trends in Europe's regions should consequently be examined in greater detail'.

Result of the vote

For: 38, against: 52, abstentions: 3.

Point 8.2.4

Delete.

Reason

The connection with the Stability and Growth pact is over-simplified and the search for economic indicators of the sequence envisaged would be unrealistic.

Point 8.2.4 establishes in advance a number of arguable cause-effect relations. Moreover, it proposes a specific methodology – the creation of certain arithmetical 'indicators' – which may not be the most appropriate compared with other methods such as surveys, check-lists or a wide range of types of econometric model. It seems unreasonable to ask the Commission's specialist services to carry out a study and also to tell them which methodology they must use.

Result of the vote

For: 39, against: 48, abstentions: 2.

Point 8.2.6

Delete.

Reason

The linkage that may be significant is that between the stability of the single currency and the impact on cohesion. The references to causation through inflation do not seem to be appropriate.

It is for the Commission's specialist services to decide on the methodology.

Result of the vote

For: 37, against: 52, abstentions: 4.

Point 8.3.7

Delete first indent.

Reason

This would be difficult, if not impossible, to implement. The possible benefits would be exceeded by the costs and conceptual difficulties of the exercise whether retrospectively or in anticipation.

Result of the vote

For: 31, against: 53, abstentions: 2.

Point 8.3.8

Delete entire point.

Reason

Damaging to equal opportunities on the Single Market.

Result of the vote

For: 23, against: 58, abstentions: 4.

Opinion of the European Economic and Social Committee on 'Industrial change: current situation and prospects — An overall approach'

(2004/C 10/21)

On 22-23 January 2003, the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an Opinion on Industrial change: current situation and prospects — An overall approach.

The Consultative Commission on Industrial Change (CCIC), which was responsible for drawing up the Committee's work on the subject, adopted its opinion on 1 September 2003. The rapporteur was Mr Van Iersel and the co-rapporteur was Mr Varea Nieto.

At its 402nd plenary session (meeting of 25 September 2003), the European Economic and Social Committee adopted the following opinion by 53 votes in favour and one vote against.

1. Introduction and objective

1.1. As the expiry date of the ECSC Treaty approached, the Member States asked the European Commission to present its ideas on the future of structured dialogue [1]. A body within the EESC was proposed [2] with a remit not limited to the coal and steel sectors but extended to encompass all aspects relating to industrial change, particularly in the light of enlargement [3].

The Consultative Commission on Industrial Change was set up by an EESC Plenary Assembly decision of 24 October 2002. This decision acknowledges the enrichment and added value the CCIC can bring to the EESC. The CCIC has 24 members from the EESC and 30 external delegates who have initially been drawn from the former ECSC Consultative Committee members. Subsequently membership may be extended in the future to other sectors.

1.2. The establishment of the Consultative Commission on Industrial Change opens up new prospects. It will now be possible to examine questions relating to industrial change in all their complexity — from an economic and social point of view as well as in terms of protection of the environment and sustainable development, with particular emphasis on the problems encountered by the future Member States.

1.3. The former ECSC Consultative Committee did a great deal of useful work for the sectors in question. In the history of European integration it was a model for consultation between the social partners and government and for Community responsibility for development in these sectors, on the basis of a specific form of industrial policy. Some of the main results of this ongoing consultation are listed below:

— Community analysis of markets and market conditions over the years leading to restructuring processes,

— programmes for regions particularly hard hit by unavoidable restructuring,

— Community R&D programmes, (part of financing now comes from paying back of loans to enterprises and for housing of workers),

[1] Industry Council of 18.5.2000.
[2] Communication of 27.9.2000 (COM(2000) 588 final).
[3] Simultaneously with the opinion, the CCIC is drafting an opinion on: The restructuring of heavy industry in the enlargement countries.

— Community training programmes,

— (financial) programmes for restructuring in the coal and steel sectors,

— a large number of opinions on various subjects, in particular relating to trade policy and discipline by government in granting state aid to these sectors,

— other achievements (joint committees for the harmonisation of working conditions, which led later to the setting up of a committee for social dialogue in the coal sector and, possibly in the future, also in the steel sector).

— the launch of social programmes (payments in respect of loss of employment and early retirement).

The sum of all these measures has created a highly competitive steel industry as well as a profitable export of European mining technology and know-how.

1.4. Flanking measures for conversion and territorial development have also been judged necessary in the most badly affected regions. The financial programmes for restructuring have been financed by structural funds with specific programmes for affected regions: Rechar I (1990-1993), Rechar II (1994-1999), Resider I (1988-1993) and Resider II (1994-1999). These programmes developed social measures and focused particularly on improving local and regional infrastructure, which facilitated access to new businesses and cleaned up areas polluted by coal and steel industries.

1.5. When the ECSC Treaty came to its end, the specific form of consultation of the ECSC Consultative Committee was abolished and in its place the CCIC was set up. Past experience is still valuable. But circumstances for industrial change have changed. The consultation instruments need to be fine-tuned in the light of the Lisbon strategy in order to combine competitiveness with sustainable development and social and territorial cohesion. In addition to general industrial policy objectives, these aspects will also require sectoral approaches.

1.6. The goal of this opinion is to highlight the role of CCIC to further a direct dialogue with all concerned stakeholders affected by industrial change and where lessons learnt from both the coal and steel and from other sectors will be used. This opinion is a first of a series.

1.7. The EESC considers that future work of the CCIC should be related to the following:

— Analysing industrial change and its causes from the economic, social, territorial and environmental points of view, as well as assessing the impact of industrial change on sectors, firms, workforces, territories and the environment.

— Seeking positive common approaches to anticipating and managing industrial change and seeking ways in which the EU and the Member States can improve firms' competitiveness and profitability, encouraged by social dialogue and cooperation between all the parties concerned.

— Seeking common approaches to promoting sustainable development and improving social and territorial cohesion, in order to give an impetus to the Lisbon Strategy, and promoting a framework and conditions allowing industrial change to take place in a way compatible both with firms' need for competitiveness and with economic, social and territorial cohesion.

— Promoting the coordination and coherence of Community action in relation to the main industrial changes in the context of enlargement: research, economic, competition, social, regional, environmental, transport, etc.

2. **Industrial change and their driving forces**

2.1. *Working concept*

2.1.1. Change in the European industrial sector has often been approached from the restructuring angle. But in fact it is a much more dynamic concept. On the one hand it embraces the on-going development of the company (establishment, development, diversification, change); but, on the other hand, the business world is closely linked with the European political and social environment in which it develops, and which in its turn influences the process of industrial change.

Fundamental industrial change comes about in two ways: through radical action and through gradual adaptation. There is also a second possible distinction: reactive change, imposed by circumstances, and proactive change, where a decision for change is taken, although there is no clear or pressing need for it ([1]).

Today it is important to dwell on the proactive concept of change in order better to anticipate and manage the economic, social, organisational and environmental repercussions of industrial change.

([1]) The causes of change are varied, cf.:
— Prahalad, C.K. and Hamel, G. (1994): 'Strategy as a field of study: Why search for a new paradigm?', Strategic Management Journal, vol.. 15 .
— López, J. and Leal, I. (2002): Cómo aprender en la sociedad del conocimiento, Gestión 2000, Barcelona.

2.1.2. Restructuring is a constantly recurring phenomenon of the industrial age. The most sweeping changes have occurred since the 1970s in sectors such as iron and steel, mining, textiles and shipbuilding. Until recently the economic and social consequences were dealt with in a specific way.

2.1.3. Today companies are exposed to rapid change arising from increasingly open markets, and new markets, the main features of which are highly developed means of communication and transport, advanced technologies and their applications, unremitting and increasingly tough competition, demanding shareholders and a constant battle for market positions. That is why, over and beyond the process of development over time, affecting human, financial and technological organisation, companies are today making other, more rapid forms of adaptation. Restructuring has become more radical, more complex and more extensive in both time and geographical terms, e.g. making use of subcontracting. It affects all industrial and service sectors and a number of categories of employees and regions.

2.1.4. The recent use of the term industrial change reflects this change in the nature of adaptation by companies [1] and covers all changes affecting companies, their organisation, their jobs, skills and locations. These changes also concern the business environment.

2.2. *The context of industrial changes*

Industrial change is driven by a series of factors. Some of these, particularly relevant, are developed below.

2.2.1. Globalisation

2.2.1.1. Notwithstanding the current economic downturn, industrial change is occurring throughout a world in which markets continue to become increasingly internationalised (WTO). There is a clear interaction between international trade and industrial change.

2.2.1.2. The world's main regions are all undergoing the same development, but differ in the extent to which their economic and social structures are suited to this process. Europe's industries face global competition on productivity. They meet challenges such as economic and technological competition from the US (sometimes unfair) [2], rapid development in Asia, particularly in the high technology sector, and even South America. They also have to cope with unfair competitive practices which sometimes infringe WTO rules.

2.2.1.3. At the same time investment and business activity is being redirected towards countries with low costs (labour, energy, etc.), direct market access and a high level of educational and technological skills. Environmental, tax and other regulations are often less strict there. This transfer of activity to countries outside the EU sometimes has a negative impact on employment in the Community and it may seriously affect certain European regions.

This trend goes generally hand-in-hand with the creation of technologically more advanced processes in high-cost countries, which in many cases is beneficial for the development of new areas of activity and for improving employee skills.

2.2.1.4. Because of increasing knowledge and technology innovation, as well as the liberalisation of capital markets, worldwide investment is no longer restricted to large or multinational companies. Many medium-sized and even small companies, particularly firms with high technological added value, are less and less bound to a particular location or country. Outsourcing and networking are contributing to further worldwide diversification of investment and to international interaction and intertwining.

2.2.2. The European single market, legislation and implementation

2.2.2.1. In Europe, the completion of the single market occupies a central place in the process of European integration and, as an integral part of the process of globalisation, it promotes a high degree of integration of European economies and companies.

Economic integration is reflected not only in trade but also in the development of mergers and acquisitions, some of them with a Community dimension [3]. The long-term trend is towards a marked increase.

2.2.2.2. The late 1990s were years of buoyant economic growth. The combination of economic growth and EMU strengthened European businesses. But there were still shortcomings in the economic and social dynamics and in knowledge development in Europe. That is why, at Lisbon in March 2000, the European Council adopted a new strategic objective of making the European Union by 2010 'the most competitive and dynamic knowledge-based economy in the world, capable

[1] See F. Aggeri & F. Pallez 'les nouvelles figures de l'État dans les mutations industrielles' Cahiers de recherche du centre de gestion scientifique nº 20, École des mines de Paris, 2002 and Bernard Brunhes consultants 'la gestion des crises industrielles locales en Europe', Cahier nº 6, 2000.

[2] For example, the application of Section 201, under which customs duties on certain flat steels have been increased since March 2002 or the tax law relating to Foreign Sales Corporations, condemned by the WTO, under which certain firms can benefit from export subsidies.

[3] In 1991 there were 8 239 mergers and acquisitions involving EU companies. The corresponding number in 1999 was 12 796. Source: 'Mergers and acquisitions' (European Economy. Supplement A. Economic trends. No 5/6.2000. Office for Official Publications of the EC).

of sustainable economic growth with more and better jobs and greater social cohesion'. The aim is the most competitive economy embedded in a more stable economic framework.

2.2.2.3. Partly as a consequence of the crisis in the ICT and telecommunications sectors and substantial falls in international stock markets, Europe now faces low growth, widespread economic uncertainty and lack of confidence among companies and consumers, slower investment and job losses in different economic sectors.

2.2.2.4. The European Commission and the European Council have decided to continue efforts to create a climate in favour of industrial change in all its aspects. More specifically, the intentions of the Lisbon Strategy were worked out at the Summits of Göteborg and Barcelona. In 2003, the Spring Summit in Brussels resulted in a focus on four priority areas, which are all closely connected to industrial change:

— innovation and entrepreneurship;

— establishment of an Employment Task Force;

— strengthening the internal market: the Council on Competitiveness has been confirmed;

— environmental protection for growth and jobs.

2.2.2.5. In its extensive conclusions, the Council stressed once again the need for realisation of the EU vision of a knowledge-based society and for 'boosting competitiveness back onto the centre stage'. The Council formulated objectives such as the rapid implementation of the Action Plan 'simplifying and improving the regulatory environment', a comprehensive impact assessment for all major proposed EU legislation in the economic and social fields, inter alia by a systematic consultation of the social partners.

2.2.2.6. The European Council also mentions in its conclusions specific sectors such as the electricity and gas directives, the transport sector, the Financial Services Action Plan, R&D and defence procurement, the European space policy, information society and biotechnology. Special attention is asked for services of general interests, their quality and accessibility, taking into account the EU rules on government subsidies and on competition [1].

2.2.2.7. In line with the conclusions of the Summit, the European Commission presented on 7 May 2003 a Ten-Point Plan for making Europe better off, emphasising implementation of legislation among other things. The EESC regrets that, whilst the European Council develops ever more EU-level policies, until recently too little attention was paid to their practical implementation. Implementation is important in view of industrial change. It is above all important in view of the European rule of law.

2.2.2.8. In this ten-point plan, the Commission rightly pleads for new consensus and determination, for it looks as if much of the potential of the internal market is being wasted as the number of infringements is increasing. The target is to reduce the number of internal infringements by at least 50 % by 2006 [2].

2.2.2.9. Sectoral approaches were also put forward by Commissioner Liikanen, when he stated on 29 January that '[...] while the horizontal dimension will remain of fundamental importance, the effects on industrial sectors, especially those facing special challenges, must be carefully monitored, and where possible, the necessary adaptations made to meet specific situations'.

2.2.2.10. The EESC supports the approach set out in the Commission's Communication on Industrial policy in an enlarged Europe but is also of the opinion that emphasis should also be placed on the need for sectoral policies, which may be especially useful in connection with economic change in the candidate countries. Account should be taken of the lack of such dialogue in these countries at present.

2.2.2.11. Direct state intervention in industry has been reduced although state aid needs to be reduced further. A reduction in state aid promotes a European level playing field in the sectors concerned.

[1] The European Commission has just published a Green Paper on Services of general interest (COM(2003) 270 final, 21.5.2003).

[2] The number of open infringement cases has soared from just under 700 in 1992 to nearly 1 600 today. In the ten point plan, special emphasis is laid on integrating service markets and 'network industries' such as energy, transport, telecommunications and postal services, which are 'crucial to all EU citizens' and a significant part of business costs. Other important elements of the ten-point plan are the implementation of a Better Regulation Action Plan and more open public procurement markets.

2.2.2.12. The European business climate and that of the Member States is directly influenced: by macroeconomic, monetary and taxation policies. The successful advent of the euro has not yet led to sufficient uniformity of the economic policies of the Member States. Substantial differences between tax regimes persist. To a certain extent these differences in the macro-economic field between the Member States may also negatively affect industrial change in Europe.

2.2.2.13. The development of the single market suffers from the fact that in vital areas progress has been slow or even non-existent. Various examples of this are the unsatisfactory operation of the European capital market, shortcomings in the competition regime, the absence of a directive on takeovers, the very long drawn-out negotiations on the European patent, which were in the end only partially successful, and sometimes the lack of effective implementation of European legislation.

2.2.2.14. In order to create further conditions for industrial change based on social cohesion and competitiveness, the EESC also reiterates its demands for efficient policies to achieve:

— human resources development,

— more and better jobs within an inclusive labour market,

— specific attention towards the ageing of the active population, and towards measures promoting women's access to the labour market,

which all require lifelong-learning at all levels, and improvement of education and training. Analyses of best practice in each of these subjects are highly desirable.

2.2.2.15. Innovation policy is a central theme in the Lisbon strategy. But the financial intensity differs from one country to another. Moreover, in a number of Member States cooperation between universities/knowledge centres and business is certainly not optimal, as pointed out in the conclusions of the Summit of March 2003. In this area, for instance, Europe compares unfavourably with the USA. Consequently the sectoral trade balance between the EU and the USA is in favour of the latter.

2.2.2.16. Sustainable development is a principle to which the EESC subscribes. It has drawn up several opinions, which should be taken into account within the process of industrial change.

3. Industrial and social changes

3.1. In the last few years a number of well-known reports have appeared in the EU about fundamental changes in the business world and the business environment ([1]).

The European Parliament, the ETUC and UNICE have also adopted resolutions on industrial change ([2]).

3.2. Change has always been a feature of the business cycle. In the last few decades, it has led to major social and economic consequences. At the moment, figures show a large increase in the proportion of the active population working in the services sector, which is partly due to outsourcing and subcontracting, partly also to the emergence of dynamic sectors such as entertainment and media.

3.3. Technological progress means that products and services have an ever-shorter life. Open markets prevail. As a result, adaptation is needed. Many companies, including those which have suffered from a crisis, or seen a need to restructure, undergo a partial or complete transformation. An appropriate balance needs to be struck between flexibility (adaptability and new skills) and job stability, by means of social dialogue. Analyses of concrete cases show that there are several causes for the need to restructure: capacity adjustments, economic transition, competitiveness, productivity adjustments, redefinition of positioning, rationalisation, organisational changes

([1]) The most important of these were 'Managing change' of November 1998, the report of the group chaired by Pehr Gyllenhammer (on which the EESC published a positive, albeit critical opinion: OJ C 258, 10.9.1999, and the Report of the High-level Group on Industrial Relations and Change in the European Union of January 2002, produced by the group chaired by Maria João Rodrigues.

([2]) European Parliament Resolution of 15.2.2001 on the social consequences of industrial restructuring (B5-0089/2001) calling for a more proactive approach to industrial restructuring and its social consequences, stressing the need for continuous social dialogue and recalling the provisions of the Treaty stating that the objective of a high level of employment must be taken into consideration in all Community policies and activities. ESC Resolution of 11-12.3.2002 stressing the need for workers to be continuously involved in the process of change and for the social cost of restructuring to be minimised, and calling for research and analysis to evaluate the scale and impact of company restructurings by country and region. UNICE Resolution of 8.3.2002 calling for exchanges of experience on anticipating and managing change.

and bankruptcy ([1]). In a number of the cases analysed, the transformation of the company led to completely new products and/or services, respectively to redeployment or even to extension of the number of employees. These processes of change of and within businesses are mostly related to sector-specific developments. The way restructuring is implemented from the social point of view is the result of a fruitful dialogue between employers and workers.

3.4. These processes continue, despite the current economic downturn. Indeed, this situation actually stimulates competition, as each firm seeks to secure its position in order to safeguard its continuity. Although more attention is perhaps now paid to costs, firms are still renewing their internal organisation and positioning themselves for the future, not forgetting industrial concentration through mergers and acquisitions.

This intense restructuring activity has meant a sharp rise in job losses. In the first nine months of 2001 230 000 jobs were lost in the euro area and 350 000 throughout the EU. — The high cost of these job losses, not only for individual workers, but also for whole areas and regions, requires the adoption of flanking measures and plans for the creation of alternative jobs. This approach is already applied in a number of Member States.

In this connection the EESC draws attention to the ICT paradox. The economic stagnation of recent years was heralded by a sharp fall in investment in the overheated ICT sector. But that has not prevented this very sector (communications, information, Internet) from bringing about radical changes in the manufacturing and services sectors, giving traditional sectors an entirely new appearance and spawning new firms, new alliances between market partners and new manufacturing and services packages. Not one sector has escaped this process of renewal. It is, as it were, a new commodity. The next radical renewal, this time in biotechnology, is imminent.

3.5. Nonetheless, restructuring as an autonomous phenomenon is taking place in the Member States. The EESC points to a number of examples of regional restructuring which leads to redeployment of work and new development of companies and the creation of new ones. Complicated processes were often at the basis of such restructuring. Many European regions have specific features, which are the result of their economic history, geographical location and regional traditions. Sometimes, adaptation of industrial structures was not adequately anticipated. But at the same time we notice also that the regional stakeholders — employers, trade unions, regional and local authorities — have often mobilised and mobilise, in forthcoming cases also in close cooperation with national authorities and the European Union (e.g. in Rechar, Resider and Retext) to create the basis for new perspectives. Restructuring and modernisation processes implementing industrial change have been and are underway, sometimes with surprisingly positive results.

Examples of regions which have created numbers of new companies and have changed patterns of existing ones include the Ruhrgebiet (Germany) and Birmingham (United Kingdom) with their changing structures from heavy industries to service-oriented businesses, Oulu (Finland) with its strong telecommunication sector, and Barcelona (Spain) which experienced profound change on the occasion of the Olympic Games in 1992.

3.6. However, despite some proven successes, other areas are still in mid-stream, such as Asturias, a region of Spain which in the 1990s underwent major adjustments in the steel and mining industries. Employment in the steel sector fell from 23 000 workers to 8 000 currently, a net loss of 15 000. The region also lost more than 17 000 jobs in the mining industry. Efforts have been made by the Spanish central government and by the regional government, and aid has been forthcoming from the European Commission (ECSC Treaty, Rechar and Resider programmes). Yet the problem has not been resolved and, although the economy has regained some vitality, it has not managed to replace even half of the jobs lost in the sectors concerned or in related sectors. This clearly highlights the continuing need for economic flanking measures if the lost ground is to be made up and if economic life in this region is to be developed to the full.

Other current examples are Liège (Belgium) and Bremen (Germany), where Arcelor, the result of the merger of Arbed, Aceralia and Usinor, has decided — against a backdrop of a structural overcapacity in steel flat production and with a view to improving synergies — progressively to close the Liège steelworks and scale down production in Bremen. In the light of the job losses these measures will entail, Arcelor is committed to assisting all those concerned, rehabilitating all the sites affected and contributing to the reindustrialisation of the local economic fabric, with the help of all the parties involved. Support measures, like those set up some years ago under the Rechar and Resider programmes, should stave off hardship in these regions. The conditions also need to be created for the sustainable development of these regions

([1]) cf: Case studies on the handling of the social impact of major industrial restructuring Case studies, Bernard Brunhes, consultant, for the European Commission, DGV (http://www.brunhes.com/Etudligne/Cahiers/6/Cahier6.htm).

3.7. An important aspect of the current trend is not only that the character of individual firms is subject to change but that it is becoming more difficult than in the past even to distinguish one sector from another. A crucial change is that the former clear-cut distinction between sectors has given way to new rules of the game, characterised by interdependency, interaction, networking and outsourcing. As most firms choose their own way in the light of their vision of the future and market position, the situation tends to vary from one individual case or firm to another. An appropriate combination of flexibility, employee involvement, continuous improvement and stability is therefore needed.

3.8. At all events, this rough sketch of these processes of renewal, internationalisation and reorientation in the manufacturing and services sectors shows that the whole economy is affected by these changes, which are felt at all levels of companies. This accounts for the strong emphasis placed by the social partners in most countries on new forms of training and skills development. Vocational mobility is a characteristic of the current system of manufacturing and services. Traditional employment structures (i.e. shoemaking industry in Choletais, France [1]) coexist with other, newer structures. And of course many firms are still in transition from the 'traditional' to the new. But one notices also that traditional sectors such as retailing and distribution centres are sometimes completely restructured for the better. At all events, training and dialogue are essential in order to tackle these transitions. The reorganisation of vocational training and the wide opportunities which are offered, and which must be offered, to ensure workers the most secure future possible, are essential with a view to flanking these changes, some of which have been enumerated above.

3.9. Human resources development is of course of fundamental significance. As the Lisbon European Council acknowledged, the processes of change in companies and the creation of new jobs, as well as competitiveness in Europe, are based on research and innovation and on workers' creativeness and adaptability. Recognising the strategic importance of human capital means:

— investing in the training and skills of workers throughout their working lives;

— raising the ability of companies to adapt;

— involving workers in the management of change and the creation of a new kind of security;

— facilitating access to employment for less skilled workers;

— developing social dialogue mechanisms in companies [2].

Nowadays the employee himself is also a source of change in managing companies and, by that, of industrial change. Old hierarchical structures are often replaced by organisational frameworks that fully take into account the higher level of competence of today's employees.

3.10. Recently, more emphasis has been placed on 'corporate governance'. This is the sum of rules, codes and conduct within companies, aiming to take account of the interests of all stakeholders. Companies, especially those with a large workforce, also have a societal responsibility, in the framework of international competitiveness of courses. Corporate governance is channelling a number of problems related to a desirable attitude of business in a wider context. In particular, as far as industrial change is concerned, corporate governance is in the interest of the companies themselves. It is relevant to issues such as sustainability, transparency, effective supervision, etc. and it aims to ensure good working relations and external responsibility towards society. It is in this very field that the specific features and values of the European social model must take shape. Therefore, the recent proposal of the Commission to put 'corporate governance' on the agenda of the EU is also a positive step aiming at using our resources more efficiently and producing with quality.

4. **Conclusions and recommendations**

4.1. It is important that confidence in the economic situation be restored. This is why the EESC supports the outlines and objectives set out by the European Commission and the European Council at the Spring Summit 2003, and those set out in the Commission's Ten-Point Plan aimed at giving the economy a boost, creating jobs and, more generally, implementing the Lisbon Strategy. Europe needs a climate favourable to a new paradigm focused on 'industrial change with a human face' which is based on competitiveness, sustainable development and social and territorial cohesion.

(1) The case of the Choletais shoe-making industry, Aggeri Franck and Pallez Frédérique — Centre de Gestion Scientifique, École des mines de Paris, September 2001.

(2) Commission document: Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring — First phase of consultation of the Community cross-industry and sectoral social partners (point 1.3).

4.2. The EESC recommends benchmarking, peer pressure and dissemination of best practices in areas affected by industrial change and that comparative analysis should focus on technological change, innovation and social aspects. It welcomes the European Commission initiative to publish concrete comparative analyses between countries.

4.3. The EESC is in favour of a horizontal industrial policy which at the same time allows the development of sectoral approaches directly related to industrial change.

A sectoral approach must be accompanied by procedures for consultation, participation of all players and social negotiation in the framework of industrial restructuring, particularly in the candidate countries.

4.4. The EESC is in favour of systematic checks to establish whether the rules and decisions drawn up and approved at Community level are being complied with, as exceptions would lead to a 'Europe à la carte'.

4.5. It is very important to ensure that representatives of the sector are involved at all stages of the legislation processes in the EU (bottom-up) in order that rules and decisions in different policy areas are assessed in relation to industrial change. The EESC stresses the need to ensure that competitiveness and industrial change strategies are effectively and consistently implemented. The CCIC will monitor this process closely.

The EESC stresses the importance of ensuring that relocation of industries is not purely inspired by increasing differences in legislation between Member States, e.g. in environmental and fiscal areas.

4.6. A short time ago the Competitiveness Council was established. The EESC welcomes this new approach. It is desirable that issues and regulatory solutions be considered in their context, keeping in mind the quality of jobs.

The EESC stresses that consistency between different Community policies, e.g. in the social, industrial, tax, regional, energy, transport, competition, training and research fields, is necessary in order to ensure the effectiveness of any policy on industrial change.

4.7. An effective impact assessment of European legislation is desirable. To that end, the EESC supports the proposal to establish an independent advisory group for business impact assessment of EU regulations, in order to improve the quality of EU legislation.

4.8. For the EESC it is essential that innovation and research promotes European leadership both in terms of competitiveness and of social welfare. Part of this will be at the same time an answer to similar policies in other world regions, such as the USA that promotes some industrial development by government-driven actions in the defence sector [1].

4.9. The EESC considers that initiatives to promote the cooperation between universities/knowledge centres and business are desirable [2].

4.10. The EESC believes that more attention should be paid to the possible repercussions of certain Community provisions and rules on SMEs.

4.11. Coherent rules on remaining state subsidies must be maintained in Europe. At the same time, the European Union must continue to act, mainly through WTO, against misuse of duties, like the US duties on steel products. This is important in order to achieve a level playing field in international trade.

4.12. To ensure a balanced environment for industries undergoing change, the EESC encourages the European Commission to exercise vigilance with regard to the application of WTO rules, where gaps exist [3].

4.13. The EESC draws attention to the need to focus on different sorts of industrial change. The clearest distinction is that between restructuring of mono-industrial regions and, on the other hand, industrial change as an ongoing process of adaptation of manufacturing industries and services. In the first case, specific measures can be foreseen on a temporary basis in the regions concerned.

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[1] Opinion of the EESC on the Green Paper on European Space Policy — OJ C 220, 16.9.2003, p 19; see also Opinion of the EESC on the Commission's Communication on European Defence — Industrial and Market Issues — Towards an EU Defence Equipment Policy (on which a complementary opinion has been prepared by the CCIC).

[2] In this respect, it is interesting to note that by analogy with Finland, the new Dutch Government has installed a platform for interaction of knowledge centres and business under the direction of the Prime Minister.

[3] For example, China, with regard to micro-electronics quotas, South Korea with regard to shipyard subsidies and the USA with regard to aid to the iron and steel industry.

The EESC recommends that the positive experiences with sectoral programmes such as Rechar, Resider and Retext be taken into account in modernising mono-industrial regions in the future and existing Member States and that new forms of social dialogue be promoted in these countries.

In regions particularly affected by relocation specific flanking measures may be needed for a limited period.

4.14. In a number of cases, regions subject to industrial change benefit from a close cooperation between companies, public authorities, social partners and, where appropriate, other socio-economic sectors. The EESC invites the Commission to publish details of pilot projects carried out in this area, their successes and limitations, which can be of help to regions in transition, in particular in the future Member States.

4.15. The EESC stresses the importance of training programmes for personnel and calls on the Commission to take into account all the trends and results of these specific programmes of vocational training, including private-sector programmes. It would be appropriate to hold round tables on the subject with the social partners from the various sectors.

4.16. The European Monitoring Centre on Change (EMCC), established in 2001 within the Dublin European Foundation for the Improvement of Living and Working Conditions as a direct response to the call from the Gyllenhammar group, can play a valuable role. In cooperation with the various economic players (companies, social partners etc.) and national research establishments, it provides specifically targeted information on changes in particular sectors and industry in general and on ways of anticipating and flanking these changes. The EESC intends to further develop cooperation between the CCIC and the EMCC.

4.17. The EESC considers that the establishment of sectoral observatories would make it easier to anticipate and implement industrial change, identify viable alternatives and minimise their negative consequences. As the EESC has already pointed out [1], another measure which would help to better anticipate and manage industrial change would be 'that European companies of size (more than 1000 employees) should prepare a Managing Change Report [which would] provide information on what structural changes are foreseen and how they will be managed' [2].

4.18. In order to exploit best practice, the EESC suggests that an evaluation should be made of companies with the best record in restructuring processes on the basis of knowledge, sustainability and social programmes (Lisbon Strategy).

4.19. The EESC considers that social dialogue in companies and, where appropriate, involving local players and public authorities, is an important and decisive tool to develop competitiveness, social conditions and employment as well as environmental protection in a productive balance. The EESC experience and that of the former ECSC Consultative Committee demonstrated that establishment of a continuous sector-based dialogue at European level in which representatives of the producers, workers and other groups representing organised civil society (consumers, dealers etc) helps to establish a useful basis for a renewed industrial policy.

4.20. The future work of the CCIC, as a body within the EESC, will concentrate on sectors and/or regions particularly affected by industrial change and will be based on the approach outlined in point 1.7 and on these conclusions.

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[1] EESC Opinion on Managing Change — High level group on economic and social implications of industrial change — Final Report, point 3.2.3 — OJ C 258, 10.9.1999.

[2] Executive summary: Managing Change — High level group on economic and social implications of industrial change (Gyllenhammer report).

Brussels, 25 September 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH