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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

403rd PLENARY SESSION, 29 AND 30 OCTOBER 2003

Opinion of the European Economic and Social Committee on 'Socially sustainable tourism for everyone'

(2004/C 32/01)

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 'Socially sustainable tourism for everyone'.

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 7 October 2003. The rapporteur was Mr Mendoza.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion by 112 votes to two with one abstention.

PART ONE: **GENERAL ASPECTS**

1. *Introduction*

1.1. Tourism is widely recognised around the world — and especially by the European Union and its institutions — as an area of economic activity of strategic importance in achieving a range of objectives which lie at the very heart of the EU's existence, its policies, and its desire to create a better Europe for present and future generations. Developing tourism has a direct impact on economic, social and environmental conditions; consequently, it can and must be an important means of enhancing European citizens' quality of life and must be used as such. However, in order to ensure that this potential is effectively harnessed in the longer term, tourism must meet sustainability requirements which all the players involved — public and private bodies, businesses and users — must in turn observe. New forms of tourism which are sustainable in economic, social and environmental terms, and which all parties seek, will be determined by this set of conditions.

1.2. The special contribution made by sustainable tourism to achieving the strategic objective of the Lisbon summit — 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' — is generally recognised and must be emphasised.

1.2.1. Against a new, less dynamic economic backdrop in which fewer jobs are being created, the Brussels Council of 20 and 21 March 2003 sought to turn words into actions and ensure that the Union and the Member States live up to their undertakings — 'we reaffirm our strong personal commitment to the timely and effective delivery of reforms across the three pillars of the Lisbon strategy — economic, social and environmental'.

The Brussels Council established new priorities which, in practical terms, mean giving fresh impetus to entrepreneurship and innovation and strengthening the internal market as a means of enhancing competitiveness and placing it centre stage both within the economy in general and tourism in particular.

1.3. Special care must be taken in 2003, the European Year of People with Disabilities, to realise the right of disabled people to enjoy their leisure time and participate fully in tourism. This implies changes in ways of thinking, information,

awareness and management. The European Economic and Social Committee's modest contribution to the success of the European Year and to making sustainable tourism open to all will be to analyse these conditions and put forward relevant initiatives.

1.4. It must also be remembered that for various social and economic reasons, tourism is still not accessible to all European citizens. The range of intrinsic benefits of tourism to all citizens — especially the young — should be taken into special account by the institutions so that they can promote new forms of tourism which are open to all and most of all to those with lower purchasing power. Creating a larger, ecologically aware, economically competitive and socially cohesive Europe, in which all citizens enjoy a good quality of life, requires resources, attention and appropriate supporting policies.

2. *Tourism as part of European policy*

2.1. Tourism is widely agreed to be of great importance not only economically, but also socially and environmentally, in the European Union and worldwide. Where tourism is already well-developed, people count on it to continue being what it has been in the past, a source of wealth creation, high employment and a high quality of life, while people in less-developed areas look to tourism as a potentially crucial means of escaping from poverty, securing economic progress and social development and meeting convergence objectives.

2.2. At the same time, tourism often has been, is and may in the future still be a source of economic, social and environmental imbalances, in the longer term entailing risks which may undermine its potential to generate well-being and sustainable development.

2.3. A number of paragraphs from the Commission Communication on Working together for the future of European tourism [1] merit inclusion here, as they provide a clear summary of the economic importance of tourism in the EU:

'The tourism industry in the European Union comprises some two million businesses, mostly SMEs, which account for about 5 % of both GDP and employment. This figure varies from 3 % to 8 % depending on the Member State. Tourism also generates a considerable amount of activity in other sectors, such as the retail trade and specialised equipment, to a level of around one and a half times that of tourism itself.

In terms of turnover, over 80 % of the tourism undertaken by Europeans concerns individuals or families. The remainder is business tourism, in the broad sense. It varies, depending on the country, from barely 15 % to over 30 % of the total volume, the highest proportion relating to Nordic Countries. EU households earmark around one eighth of their personal expenditure for tourism-related consumption, a figure which varies relatively little from country to country.

Community tourism is largely domestic. 87 % of tourism activity recorded is attributed to its own citizens with only 13 % to visitors from non-member countries. As for the tourism of EU citizens, three-quarters remain within the EU, the remaining quarter going to other parts of Europe and the world.

Tourism is one of the sectors of the European economy with the best outlook. Forecasts indicate a steady growth of tourism in Europe, stronger than the average economic growth. This is due to factors such as the increase in time for leisure activities and its social importance, together with global economic growth.

Over the past few years 100 000 jobs a year have been created in Europe in the hotel and restaurant sectors alone. Europe, with the greatest diversity and density of tourist attractions, is the most visited tourist region in the world. Despite having a lower growth rate than the world average and than certain up-and-coming overseas destinations in particular, the volume of European tourism is expected to double over the next 20 to 25 years, with a net increase, in terms of expenditure and yield, of around 3 % per year. Employment will rise by about 15 % over the next ten years.'

2.4. Although tourism is not directly part of common EU policy, a number of European institutions are engaged in measures and actions which affect tourism because of their horizontal nature, or which rely on tourism in order to achieve a range of major EU objectives, including sustainable development, employment, economic and social cohesion, etc.: in other words, a better quality of life for European citizens.

[1] COM(2001) 665 final, 13.11.2001.

2.4.1. It is important to point out that the only reference to tourism in the EC Treaty, as consolidated at Nice, and following the revision and expansion of certain protocols, is in Part One: Principles, Article 3(u), which reads as follows:

> 'For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:
>
> (...)
>
> (u) measures in the sphere of energy, civil protection and tourism.'

2.5. Several Commission and Council documents have attached importance to tourism as an instrument for generating employment, but it may readily be agreed that tourism nevertheless has a very low profile among European policies as a whole, and that it should perhaps be strengthened and expanded in line with the universally accepted strategic importance of tourism at present and, most probably, in the future. A higher profile for tourism in the activities of the EU and of its various institutions and, more clearly, the coordination of all Community policies affecting tourism have been both called for and predicted. For this to happen, more and better data on all aspects of tourism and the way it ties in with other sectors must be available in the future, so that tourism's contribution to the quality of life and social cohesion can be accurately evaluated in both economic and social terms.

2.6. The imminent entry of new countries into the European Union requires that the impact of enlargement on tourism — in the existing fifteen and ten future Member States — be taken into account. The Commission could look into this aspect in close detail, and disseminate its findings and conclusions as widely as possible.

2.7. Careful attention should also focus on determining the future role of tourism in shaping the Europe which will emerge from the European Convention. There must be initiatives to ensure that tourism and tourism policy are given full recognition in terms of their economic importance and capacity to create employment, their potential contribution to culture and mutual understanding among the peoples of the world, and as a tool for creating a Citizens' Europe.

3. *Tourism*

3.1. Tourism is a highly complex phenomenon on account of the wide variety of factors which determine its shape, organisation and development. A number of these factors and their connections with tourism are identified with a view to gaining a clearer picture both of the forms currently assumed by tourism and of how it may in the future be designed to be open to all and socially sustainable, as suggested in the title of this opinion.

3.2. Some of the numerous factors interacting with tourism merit close attention, as they are of importance in ensuring consistency of objectives. The Committee considers that ten aspects are useful in identifying the ideal form most likely to achieve this objective: tourists, employment, businesses, social cohesion, stability, culture and heritage, accessibility to persons with disabilities, the environment, peace and solidarity, and the roles of the various players.

3.3. Initiatives of varying types and involving different parties responsible for implementation will be proposed for each of these ten facets and their connections with tourism. The aim is to encapsulate the spirit of the Brussels summit, which called for the principles of sustainable development to be put into practice. Given its strategic importance for the European economy, tourism can perhaps be a pilot-project for this aim; the initiatives set out in the second part of this opinion are proposals whose conceptual scope can help achieve the objective.

4. *Tourism and sustainability*

4.1. Thirty years after the expression sustainable development was first used to describe the ideal development model, it is a requirement for all human activities, whether economic (the relationship between resources and products), social (the relationship between individuals and groups) or environmental (the relationship between mankind and nature).

4.1.1. The term came of age at the 1992 Rio summit, and has since been taken on board by the entire international community; the remaining ambiguity in how the concept is formulated allows for some nuance in the way it is used. The classic definition is the Brundtland one of 'sustainable development as satisfying present needs without compromising the ability of future generations to meet their own needs'.

4.2. Sustainability does not mean easy solutions: it involves opposition between the different objectives which society may set itself, between economics and ecology, between the present and the future, and between the local and the global. Sustainability, then, entails not only technical solutions but also values, priorities, ways of looking at problems, a fresh approach to public and private policy: in short, switching to a model which can imbue all aspects of human activity with respect for, and balance between, various commitments.

4.3. A number of EU institutions have taken up the philosophy of sustainability: the Treaty of Amsterdam, for example, which came into force in 1999, makes sustainable development one of the European Union's main tasks. Article 2 of that Treaty stipulates that 'The Union shall set itself the following objectives: (...) to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through (...) the strengthening of economic and social cohesion'.

4.3.1. A broad consensus exists on the two main ideas which the concept of sustainable development must, as a minimum, embrace:

— that development should possess an economic, a socio-cultural and an environmental dimension. Development will be sustainable only if it strikes a successful balance between the different factors influencing the quality of life;

— that the current generation has a duty toward future generations to leave sufficient social, environmental and economic resources for them to enjoy at least the same level of well-being as itself.

4.3.2. The triple reliance on the economic, social and environmental aspects, which must represent both the limits and connections constituting sustainable development, emerge clearly and consistently.

4.4. This triple focus is even clearer in the case of tourism. Tourism is perhaps unique among industries in that its basic product is 'tourist attraction', comprising a series of ingredients in which enjoyment of nature, variety of settings and landscapes, biodiversity and respect for the environment play a crucial role in ensuring product quality and matching the product with its potential users, tourists.

4.4.1. It is axiomatic that economics are crucial to tourism. As indicated above, the tourist industry has proved to be a powerful engine for generating employment and wealth practically everywhere in the world, and in a particularly intensive way in Europe, with a special concentration in Mediterranean countries. Sustainability in relation to this factor implies the need for a strategic, long-term rather than short- or medium-term, vision. It means approaching tourist products in terms of sustainable competitiveness which is environment-friendly but at the same time capable of creating lasting, high-quality and year-round jobs.

4.4.2. Similarly, its fundamental service-oriented nature means that social factors relating to the operators and individuals involved in tourism simultaneously can and must be taken into account, so that they can not only offer a product meeting uniform standards, but also transmit social, cultural and human-contact values, celebrating the ability of different peoples to share their traditions, culture, values and experience. Tourism can and must be of significant assistance in the task of completing the EU's internal market. Active backing should be given to completing the single market in services, including the tourism sector. Free movement of persons engaged in tourism must be guaranteed as soon, and as fully, as possible.

4.4.3. It must be borne in mind that social sustainability entails removing, mitigating or at least compensating for the risks inherent in tourism for the local and family environment of those working in the sector. The working time of the sector's employees, in daily, weekly and annual terms, often cause family and social problems which are difficult to avoid, and have a negative impact on the education of young people, on the necessary balance of family and professional life, and on the capacity to forge social links and cohesion.

4.4.4. Tourism is an ideal tool for introducing the peoples of the world to each other and forging links between them. Only by getting to know each other can they understand and appreciate each other, and exchange knowledge, culture and experience. Each journey exposes tourists and travellers to emotions and experiences bringing them closer to other peoples and other ways of life which enrich them, increasing their sense of tolerance and solidarity.

4.4.5. The purpose of this opinion is to ensure — or at least help to ensure — that tourism, today and in the future, fulfils its basic function of increasing knowledge and exchange between peoples, and that it can be enjoyed by all regardless of physical ability, age, income, ethnic origin, religion or any other factor.

4.5. The need for internal consistency in the EU and its institutions requires that this opinion focus on new forms of socially sustainable tourism open to all, as part of the broader concept of sustainability or sustainable development; the opinion also points towards practical steps which may be taken.

PART TWO: **PROPOSALS**

5. *Ten aspects of sustainable tourism, one hundred initiatives for action*

5.1. Tourism and tourists

Clearly all economic and social activity needs to focus on the individual. Tourism, like any economic activity involving personal, individual and collective relations between peoples, must above all meet the needs of people, as citizens of a nation, European citizens and, ultimately, citizens of the world.

The tourist, as consumer, must be both the beneficiary of services and the source of demand under conditions favourable to the sustainability of tourism and its availability to all.

Various initiatives can be adopted with a view to designing a form of tourism for the future which will meet these requirements.

5.1.1. The exercise of responsibility by tourists from the environmental and social points of view, involving the various links in the tourist services chain: transport, reception at the tourist destination, entertainment, accommodation, contact with nature, contact with local culture and heritage, and especially with tourism professionals and the general public at tourist destinations.

5.1.2. Promotion by all institutions and players involved in tourism of staggered holiday periods as a way of minimising the impact of tourism and reducing its seasonality.

5.1.3. Promoting a broadly based policy of training and information, awareness-raising and management on patterns of sustainable consumption throughout the tourist season in the countries of origin, during the journey and at the tourist destinations.

5.1.4. Promoting, by all available means, energy-efficient tourism in relation to transport, as a way of minimising the use of resources.

5.1.5. Reinforcing the various environmental labels which provide consumers with information and point them towards more sustainable forms of tourism and consumption.

5.1.6. Promoting the development by tourist operators of products based on the sustainable use of resources and avoidance of excess waste.

5.1.7. Focus on sustainable quality by tourist sector players, so that meeting customer requirements is the essential goal of any business; ensuring transparent prices and services at European, national and regional level by harmonising benchmarks for service and establishment quality, and always bearing in mind sustainability criteria.

5.1.8. Creating and disseminating sustainable models of rights and responsibilities of tourists, agents and institutions, with special emphasis on personal safety, which is one of the main concerns of tourists.

5.1.9. Respecting the principles of the Code of Ethical Tourism approved by the WTO, which must become the basis of consumer behaviour for both tourists and tourist operators. In particular, sexual tourism, which must not be considered as a valid form of tourism, must be rejected.

5.1.10. Reinforcing tourism as a fundamental, useful and necessary activity for everyone and as an instrument of exchange of local culture and of the concept and reality of European citizenship without frontiers, making tourism into a vehicle for the human and cultural development of tourists, balancing tourists' rights and responsibilities as consumers. Promoting Europe as a whole as a sustainable and accessible tourist destination for the rest of the world.

5.2. Tourism and employment

Various large-scale studies have repeatedly highlighted the enormous current impact and the extraordinary potential of tourism as a source of jobs. But in order to turn this into reality, in socially and economically sustainable terms, various conditions have to be met. The fact that tourism is an economic activity fundamentally based on personal services means that any new tourist activity generates new jobs, but tourism can only be high-quality and sustainable if it generates high-quality jobs.

Various initiatives could be adopted with a view to ensuring that in the future tourism is able to generate more and better jobs in tourist enterprises and areas.

5.2.1. Drawing up lifelong training plans for people working in the tourism sector, making employees more adaptable, employable and providing scope for career development.

5.2.2. Promoting the updating of qualifications, specialisms and skills in order to adapt to major changes in the organisation and management of tourist activity. Creating new career profiles to meet the requirements of new forms of tourism, which is more sustainable and more open to all. An impetus must be given to tourism-related environmental jobs, as an integral part of future employment.

5.2.3. Promoting the creation of diversified tourism products extending over the whole year in order to avoid the excessive seasonality of tourist activity, and consequently employment. Giving priority to turning disadvantaged areas or former industrial or mining areas etc. into tourist areas, and to developing rural tourism facilities in areas affected by changes in agriculture or the Common Agricultural Policy, as a way of providing alternative activities and maintaining employment and social cohesion.

5.2.4. Collective bargaining and legislation must recognise the rights of part-time or seasonal workers, with regard to work and social benefits, including pensions. The European Parliament and the social partners are asked to promote measures to consolidate the position in Europe and in the tourist industry of workers with discontinuous contracts of employment, giving them employment and social rights equal to those of permanent workers.

5.2.5. Promoting the flexibility and transferability of qualifications which will be favourable to stability of employment throughout the year.

5.2.6. Researching and proposing, in the context of collective bargaining, forms and systems of labour relations making it possible for social security contributions to continue throughout the year even when employment is limited to the period of peak tourist activity.

5.2.7. Promoting the active participation of workers in quality improvement and certification, ensuring that the quality of tourist activities and firms is underpinned by proper working conditions.

5.2.8. Improving access to employment information, employment opportunities, vocational guidance and active employment policies, preferably using information and communications technologies (ICT).

5.2.9. Applying measures for reconciling family life and work, especially in tourist areas with a low degree of sectoral diversification. Particularly with regard to day-care centres, housing and infrastructure.

5.2.10. Ensuring equality of labour and wage rights, independently of gender, age, ethnic background or religion. Given the international dimension of tourism, states should at least subscribe to Convention No 172 of the International Labour Organisation and Recommendation No 179 on Working Conditions (Hotels and Restaurants) of 1991.

5.3. Tourism and businesses: entrepreneurial competitiveness and social responsibility of businesses

Tourism is fundamentally a complex economic activity, a group of economic services and sectors governed by market rules and based on companies seeking competitiveness, wealth creation, and which ultimately create employment and quality of life for ordinary people, both as users and as workers in the sector. If this economic activity is to be sustainable, now and in the future, a number of conditions have to be met which can be underpinned by various initiatives.

5.3.1. Promoting knowledge of opportunities generated by tourist demand now and in the future, as a way of generating wealth by means of new products and destinations meeting sustainability requirements.

5.3.2. Promoting an ongoing dialogue between the tourism sector, government, employers' organisations, trade unions and ordinary people in search of consensus and the quality and sustainability of the industry.

5.3.3. Reaching agreement on the responsibility of the industry for the local area, its culture, social features, environment, promoting the social acceptance of tourist activity. Firms in the sector will be encouraged to adopt corporate social responsibility policies as a commitment to sustainable tourism.

5.3.4. Creating support instruments for the establishment of businesses, particularly SMEs, assisting them with training, research, knowledge transfer and business cooperation.

5.3.5. Promoting a culture and activities conducive to high-quality tourism products and services, integrating environmental quality as an essential aspect of all quality certification.

5.3.6. Promoting the creation and diversification of non-seasonal products and services with a view to all-year activity, countering the dominance of seasonal products and services.

5.3.7. Boosting the competitiveness of firms through the introduction of management techniques, modernisation and the use of information and communication technologies (ICT) in firms and in their relations with customers, suppliers and employees.

5.3.8. Defending and promoting the role of the company in the tourism sector vis-à-vis the various illegal forms of tourism which do not contribute to the improvement of society, do not supervise the quality of their tourist services and do not protect consumers' rights.

5.3.9. Giving preference to forms of tourism based on the economic activity with the greatest added value and least environmental impact, as against forms of residential tourism based on ownership of land and buildings, with a low rate of annual utilisation of these assets. Tourism is essentially an economic activity which must be profitable and competitive all year round and in the long-term and not only for a limited part of the year.

5.3.10. Organising research, information and the promotion of tourism products and services through public-private partnerships, using information and communication technologies and e-commerce. Government to offer services to business (databases, information and promotion networks etc.).

5.4. Tourism and social cohesion: impact and social balance of tourist activity

Tourism is a powerful means of promoting contacts between different peoples, while at the same time generating economic and social well-being in tourist areas. Often, however, social relations in the local population have been affected by a perceived loss of the traditional balance, in the face of an influx of visitors exceeding several times over the number of local residents, and a consequent trend to standardisation in products, including tourism products, and in social relations. Developing the potential of tourism in a positive way and reducing the risk of social or cultural disruption is the basis of socially sustainable tourism.

Maintaining socially sustainable tourism, from the point of view of the social cohesion of local areas and people, requires that a number of conditions be met by means of various initiatives.

5.4.1. Government, with the involvement of the sector's players, laying down parameters for the volume and growth of tourism which do not exceed the sustainable absorption capacity of tourist destinations, not only from the environmental point of view but also with a view to balance in the local population.

5.4.2. Promoting forms of tourism which contribute to the preservation of local customs, strengthening them and promoting diverse local identities which are attractive in tourist terms.

5.4.3. Involving the local population in the planning and management of tourist destinations, not only as passive hosts, but as active participants. Tourism can play an important part in improving the rural environment in the EU Member states, particularly the new ones.

5.4.4. Obtaining maximum social consensus in the host population in order to minimise the negative effects of tourism and maximise its positive ones.

5.4.5. Ensuring that the local population enjoys proper conditions of health, education, and other public services, needed for individual and community development, both for people working in the tourist industry and for the rest of the local population. Access to suitable housing is in particular a fundamental right which government and the industry must strive to guarantee for tourism sector workers.

5.4.6. Developing broadly based social integration activities among the local population, equal opportunities, training and jobs as the only way of preventing a hiatus between economic prosperity and social cohesion.

5.4.7. Promoting family life in communities focusing on tourist activities, which is frequently disrupted by the daily, weekly and annual working patterns of tourism sector workers which differ from those of school-age children.

5.4.8. Making young people who opt for long-term, added value training into role models for the large number of school drop-outs attracted by easy and immediate access to jobs in the tourism sector requiring no qualifications; ensuring that the available jobs allow them to continue full vocational training.

5.4.9. Promoting various forms of community association and participation among the local population to improve social networks in tourist areas.

5.4.10. Combating all forms of crime in tourist areas and especially the impact of tourism in terms of sexual exploitation, especially that involving children, for which legitimate tourism activities are often used as a cover.

5.5. Tourism and stability: reducing seasonal bias

The seasonality of tourism has been described as the sector's major outstanding issue, in that it is the cause of serious imbalances because it does not continue throughout all the potentially effective periods, with serious consequences for businesses, people employed in tourism, tourist areas, and ultimately tourism's proven capacity to generate wealth and prosperity.

Seasonality first and foremost means under-utilisation of physical capital (equipment, buildings, infrastructure etc.) as well as human capital, which is idle for much of the year. The result is clear: if there is no tourism, sector workers do not get paid and have to seek other activities or else join the ranks of the unemployed during the off-season.

In some cases this period of inactivity is long, in others short; in some cases it is during the winter and in others during the summer, but in almost all cases it will have damaging consequences throughout the year. In all cases the stability of employment, which is a precondition for the quality of employment, is under threat, and in other cases companies' profitability and competitiveness will be compromised by seasonality and consequent loss of revenue, which is a grave threat to the sustainability of employment and to the whole of tourist activity.

Bearing in mind the climatic basis for seasonality, finding a complete solution to this problem is difficult, but various initiatives can help mitigate seasonality and its damaging effects.

5.5.1. Facilitating the staggering of holiday periods of users, paving the way towards diverse, all-year-round tourism.

5.5.2. Promoting, by means of special offers with public-sector support or financing, tourism aimed at sections of society not working during periods of slack tourist activity, developing and reinforcing forms of social tourism already existing in some Member States, while also broadening its objectives, activities and clientele to embrace the whole European Union.

5.5.3. Promoting the creation of clearly non-seasonal tourism products in areas where this is possible as a way of compensating for under-diversified activity.

5.5.4. Diversifying the economies of tourist areas, combining seasonal tourism activity with other, non-tourist industries in order to mitigate the negative effects and maximise the positive effects of the spreading of risk.

5.5.5. Promoting international student exchanges throughout the year as a form of cultural and educational tourism, to encourage closer contact between countries. It will also offer children the opportunity to learn to speak the language of the country in question fluently and to learn about local culture.

5.5.6. Establishing social tourism programmes in all EU Member States under conditions making them financially accessible to everyone and conducive to the well-being of users, providing workers with all-year-round employment and underpinning the profitability of companies.

5.5.7. Stepping up the research being done by the European Commission on forms of trans-national cooperation and coordination at European level through the social tourism programmes which seek to promote the positive effects of cultural and social exchange and to promote European citizenship as a concept and an everyday reality.

5.5.8. Ensuring that the pressure of new tourism activities on the environment is contained with a view to sustainability and the social benefits which they can bring.

5.5.9. Facilitating participation, through public-private partnership arrangements, in the management of new products to combat seasonality with a view to improving the economic, social and environmental balance in tourist areas.

5.5.10. Promoting trans-national exchange of experience in this area, sharing existing good practice and investigating ways of introducing this in other countries.

5.6. Tourism, culture and heritage

The rich cultural heritage of towns and rural areas throughout Europe is undoubtedly a major attraction for tourists and travellers. The diversity of customs and traditions of Europe's rural areas is also a source of intangible, but very real wealth, which tourism can help preserve and exploit. Some of these intangible cultural values such as craftsmanship, music, oral traditions, customs, languages, dances, rituals, festivals, traditional medicine and remedies, cuisine etc. can form an integral part of some new forms of socially sustainable tourism. Similarly, sporting events are ideally suited to tourism and to the exchange of different values between peoples. There are two possible approaches to the relationship between tourism on the one hand and culture and heritage on the other: 1) exploiting the various aspects of this culture and heritage, with tourism as a means of maintaining, preserving and improving them, or 2) destroying these assets through irresponsible consumption. The first option is sustainable, and the second is socially unsustainable. We can propose various initiatives to promote cultural and heritage sustainability through tourism.

5.6.1. Taking account of tourism capacity as a fundamental variable in the tourism-culture-heritage relationship, if we wish to ensure the sustainability of tourism, and regulate access to it and its impact in the light of socially based limits.

5.6.2. Respecting local cultures and customs as essential aspects of life in tourist destinations, preventing these areas being swamped or having alien customs imposed on them.

5.6.3. Promoting the exploitation of the arts and heritage of tourist areas, by restoring and maintaining them.

5.6.4. Promoting the exploitation of the heritage resources of each area in order to encourage the diversification of tourism products.

5.6.5. Ensuring that the tourist industry brings in sufficient resources to enable local authorities to maintain the area's culture and heritage.

5.6.6. Encouraging authentic local crafts throughout the added value chain of the tourist industry as a way of preserving the cultural heritage and giving a boost to the economy.

5.6.7. Stepping up research into the local historical and cultural heritage of every tourist area in order to enhance the area's appreciation of its history and contribute to its exploitation.

5.6.8. Promoting trans-national cultural exchanges in the form of networks to encourage the development of intercultural relations, bringing Europeans into contact with Europe's rich diversity. In particular promoting exchanges between young people in the framework of European programmes (Erasmus, Socrates). Similarly, promoting foreign language teaching in the Member States by means of international teacher exchanges, so that schoolchildren are taught by native speakers. This will make it easier for children to improve their linguistic skills, and exchange teachers will be able to provide direct cultural input.

5.6.9. Improving the range of local hotel and restaurant services as a reflection of local culture, distinct from standardised international cuisine.

5.6.10. Promoting the management of the cultural heritage through forms of social participation, partnership and sponsorship, with the coordinated involvement of the public, employers' organisations, trade unions and institutions.

5.7. Tourism and accessibility for people with disabilities

Tourism has become an extremely important social phenomenon involving millions of people throughout the world, especially in Europe; not only is it an unprecedented force for wealth-creation and economic progress, but also a crucial factor in improving knowledge, communication, human relations and mutual respect between different peoples.

Tourism is of major benefit to society and should be within everyone's reach, with no sector of the community being excluded whatever their personal, social, economic or other circumstances. People with disabilities — 10 % of the total EU population — are becoming more integrated socially and economically and hence participating more and more in tourist activities despite all the impediments and difficulties which continue to prevent them from accessing tourist facilities and services on a regular and normal basis.

Removing and lessening these barriers is not only a must on grounds of equal rights and opportunities and non-discrimination, as championed by the EU and its Member States, but is also an effective way of including new groups of people in tourism-related activities, thus contributing to the growth of an economic sector which, especially in the southern European countries, has a direct impact on the creation of wealth and jobs in the interests of society as a whole.

No one can doubt the reality of this situation. It has led European associations for the disabled to proclaim some benchmark criteria with respect to tourism and disability which constitute a kind of ten-point statement of principles setting out their aspirations in this area. These principles could be given practical shape by the following initiatives:

5.7.1. Ensuring that people with disabilities and especially those with mobility and communication problems, are actually and effectively able to exercise the right to access tourist facilities and services of all kinds on a regular and normal basis.

5.7.2. Making sure that mobility and communication problems are never used as a reason for prohibiting, denying, limiting or hedging with conditions access to tourist facilities and services on equal terms with the rest of the population.

5.7.3. The public authorities at their various levels (local, regional, national and Community) must establish and enforce uniform legal and technical rules ensuring free access for persons with disabilities to tourist facilities and services.

5.7.4. The public authorities must promote, within their respective spheres of competence, programmes and actions designed to facilitate accessibility and the gradual removal of all types of barriers which make it difficult or impossible for people with disabilities to access adequate tourist services in safety and comfort.

5.7.5. Ensuring that accessible tourism or tourism for all is not solely the responsibility of the public authorities, but also of all private players working in this socio-economic sector (tour operators, travel agents, transport companies, hoteliers, tourist attraction managers, etc.).

5.7.6. The accessibility of tourist facilities and services should not only be regulated by the public authorities — though it is they who must ensure that the disabled can use and enjoy existing tourist facilities to the full — but the industry itself must realise that such access, besides being a social responsibility, is a business opportunity and competitive advantage.

5.7.7. Public authorities and private operators working in the tourism sector must bear in mind, with a view to offering price and contract concessions on their products and services, that people with disabilities are already in a disadvantaged position, especially those who need the assistance of other people if they are to enjoy tourism or leisure activities.

5.7.8. Accessibility and the free use of tourist facilities and services by the disabled should be one of the criteria taken into account when quality ratings are handed out to tourist establishments (e.g. hotel and restaurant stars).

5.7.9. All tourist information material and services must provide information on the accessibility of tourist facilities and services so that persons with disabilities know precisely and in advance what they will encounter.

5.7.10. Promoting and disseminating the call by associations for the disabled to European authorities, national governments, regional and local authorities and to private operators in the European tourism sector, to do everything they can to make Europe — which is the centre of international tourism — an area free of obstacles, open to everyone.

By implementing these principles and initiatives we will be opening up tourist facilities, products and services to a section of the population — people with disabilities and many older people — which until now has had only limited access. With these actions we will: further non-discrimination and access to tourism for all; enhance the range of tourist facilities and services on offer; start to address the demands of a group which has not always been taken into account as consumers of tourism products; and open up the market to more potential customers, hence generating wealth and progress.

It often happens that, besides physical obstacles, many people suffer from psychological inhibitions caused by a lack of knowledge of the real needs of the disabled which results in inconsiderate behaviour. In order to inform and alert the general public and the tourism industry to the need for these initiatives and the role that each person can play, the launch of a massive Europe-wide awareness campaign is proposed as a contribution to 2003, European Year of People with Disabilities.

5.8. Tourism and the environment

In the recent past tourism and the environment have been seen as mutually antagonistic: the wealth generated by tourism was at the expense of the environment, exploitation of the best sites, preferably by the coast or in the mountains, without consideration for such factors as biodiversity, the resources already there, scale or the capacity to absorb development. Faced with a difficult choice between two factors which were — wrongly — presented as mutually exclusive, the general response can be clearly seen from the situation we find ourselves in today: we opted for growth, wealth-creation, even if it meant damaging the environment. And this, paradoxically, in an activity which is based on preserving the attractiveness of nature. This undoubtedly stems from two different ways of looking at things: the short-term vision of immediate real estate profits and the long-term vision of a sustainable and competitive industry. Once again we face the need to establish conditions and initiatives conducive to new forms of environmentally sustainable tourism.

5.8.1. Striking the right balance between tourist numbers and means of transport so as to minimise the energy used by tourism and by transport in particular.

5.8.2. Making the planning of new tourist developments subject to strict sustainability criteria: appropriate site, minimum and renewable use of resources, especially water and energy. Urban planning in all its different forms should be the main means of ensuring suitability and minimising the impact.

5.8.3. Keeping a permanent eye on the population ceiling for a given area and the rate of sustainable growth, ensuring that the rules are respected by means of inspections.

5.8.4. Preserving the landscape, biodiversity, our natural land and marine heritage and, in particular, coastal and alpine systems which are especially fragile, vulnerable and a prey to developers. New forms of rural and eco-tourism should help to correct the balance.

5.8.5. Introducing advanced environmental management systems into firms and institutions to help them manage resources (water, energy, waste) by means of coordinated action and public-private partnerships.

5.8.6. Promoting sustainable mobility within tourist areas, encouraging movement by foot and public transport.

5.8.7. Encouraging environmental awareness among residents and tourists and introducing sustainable patterns of behaviour. Local agenda 21, which emerged from the 1992 Rio de Janeiro Earth Summit as a call to all towns and cities to prepare to meet the challenges of the 21st century, is a good integral long-term planning instrument, a methodology for overcoming the conflicts between different economic, social and environmental values and for involving the people in sustainability action plans.

5.8.8. Promoting the use of regulatory and financial instruments and incentives in the form of eco-taxes which can make a powerful contribution to sustainability policies and activities in tourist areas.

5.8.9. Encouraging visitors and residents to buy environmentally-friendly products.

5.8.10. Establishing generally accepted eco-audit and eco-labelling systems to encourage correct environmental behaviour. Supporting the development at European level of a common eco-label and facilitating the introduction of the tourist accommodation service eco-criteria approved on 14 April 2003.

5.9. Tourism, peace and solidarity

Tourism is just the opposite of war. War means the invasion of one country by another, aggression, the destruction of nature and heritage, the humiliation and even death of human beings. Tourism on the other hand means a welcome, interaction, getting to know a place, conserving the environment, wealth — in short, peace and friendship between people. If we only love what we know, tourism, as a means of bringing people closer together, is a force for harmony and peace between nations, cultures, religions and individuals. Democracy and political and socio-economic stability must certainly contribute to this objective, in the countries tourists come from and those they visit.

Understanding between peoples and the promotion of ethical values are at the root of sustainable and responsible tourism; solidarity between peoples can grow from acquaintance as tourists.

For tourism to be a real expression and instrument of peace and solidarity, and hence sustainable and accessible, various initiatives are needed:

5.9.1. Tourists must fully respect the laws, customs and cultures of the countries they visit, recognising their richness.

5.9.2. The authorities must ensure the safety of tourists and their property and inform them about and prevent possible aggression.

5.9.3. Encouraging tourists to enjoy the natural resources and heritage but also to respect them and see them as a means of personal and collective enrichment.

5.9.4. Combating all forms of aggression and sexual exploitation or affront to human dignity, especially involving children, as these go against the basic objectives of tourism.

5.9.5. Tour agents must provide tourists with objective and truthful information on destinations.

5.9.6. Promoting and enforcing the right of everyone to be a tourist, as an expression of the right to recreation, leisure and lifelong learning.

5.9.7. Tourist areas should pool their experience of tourist developments so that they do not make the same mistakes. This is an exercise in solidarity to avoid development models which have proved unsustainable.

5.9.8. Generally encouraging tourism between all peoples throughout the world as an ideal way out of poverty, of generating development and prosperity in many countries.

5.9.9. Peace is a prerequisite for all sustainable development. Consequently the tourist industry should reaffirm and work towards establishing globally the conditions of equality, justice, democracy and prosperity under which it can flourish.

5.9.10. Encouraging tourism in all its forms as a means whereby peoples get to know each other and of bringing about peace between nations. Supporting initiatives for recognising in symbolic fashion the role that tourism plays in bringing peace to the world: e.g. Peace through Tourism.

5.10. Tourism and the players in the sector

The vast range of stakeholders involved in tourism makes it advisable to differentiate the role each plays in this complex task of defining new forms of sustainable tourism.

5.10.1. It is the responsibility of political and institutional policymakers to define the appropriate framework in which new forms of sustainable tourism are possible and can be promoted by means of the full range of instruments at the disposal of the public authorities. The political priorities of this strategy of accessible and sustainable tourism must be geared towards ensuring that tourism is taken into account in all horizontal policies and in all relevant common policy areas. Accurate, high-quality data, e.g. in the form of Tourism Satellite Accounts, can be instrumental in drawing up appropriate policies for achieving sustainability and accessibility.

5.10.2. Administrations, especially those at grass-roots level — regional and local — have a special role to play insofar as they are the ones who draw up urban land use plans for tourist areas, who help to reconcile the interests of tourists and the local community and who plan economic activity, in this case tourism. They have a very important role in sustainable tourism and normally have direct or indirect powers vis-à-vis the tourism sector.

5.10.3. To enable them to exercise this important role in the interests of sustainability, financial instruments should be made available at local and regional level enabling them to put into practice the agreed policies and strategies.

5.10.4. The social partners: trade unions and employers' organisations must champion the interests of those they represent, but taking into account the need to devise policies, strategies and practices tailored to the sustainability of tourism; consequently their involvement in and co-responsibility for the planning, monitoring and assessment of tourism initiatives should be facilitated.

5.10.5. Providers of tourist services supply the final product, interface with consumers and draw up the basic contracts governing what they pay and what they get for their money, and ultimately they are responsible for the quality of the product as a whole.

5.10.6. Middlemen bring the product to potential consumers and put service users and providers in contact with each other. Their particular importance for the sustainability of the product stems from the fact that they are the ones who recommend destinations and provide responsible advice for users.

5.10.7. Universities and other research bodies provide knowledge, management tools and information, in short data of vital importance for the sustainability of the sector.

5.10.8. Users are the key to sustainable tourism; insofar as they adopt sustainable consumption patterns, they will favour destinations and products which meet these criteria.

5.10.9. The local host community is the necessary human resource which provides services for the tourist industry and its relations with tourists determine whether ultimately they are satisfied and will return to the destination.

5.10.10. All of these players must be made aware of the need to work together, to talk to each other and reach a consensus on the basis of the same principles of accessibility and sustainability. To this end, various arrangements for dialogue and participation (forums, committees, boards, etc.) must be set up from Community down to local level.

Of particular value are the European Tourism Forum sponsored by the Commission and the EESC's cooperation with other international institutions such as the World Tourism Organisation and the International Social Tourism Bureau (BITS), as a way of advancing knowledge and consensus in the interests of sustainable and accessible tourism.

PART THREE: **APPENDICES AND BACKGROUND**

Commission Green Paper on the Role of the Union in the field of tourism ([1])

Council conclusions on tourism and employment of 26 November 1997

Tourism in Europe: New partnerships for jobs. Conclusions and recommendations of the High Level Group on Employment and Tourism, 15 October 1998

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Enhancing tourism's potential for employment ([2])

Follow-up to the conclusions and recommendations of the High Level Group on Tourism and Employment of 23 June 1999 (1999/C178/03)

Conclusions of the Council on tourism and employment of 21 June 1999

Conclusions of the Lisbon European Council of 23 and 24 March 2000

Report of 28 March 2001 from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Community measures affecting tourism ([3])

Conclusions and action plan of the extraordinary European Council of 21 September 2001

Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Follow-up of the European Council of 21 September: the situation in the European tourism sector ([4])

Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Working together for the future of European tourism ([5])

Conclusions of the Internal Market, Consumers and Tourism Council of 26 November 2001

Council Resolution on the Future of European tourism (2002/C135/01)

Opinion of the European Economic and Social Committee on the Integration of disabled people in society (2002/C241/17)

Opinion of the European Economic and Social Committee on Tourism and employment ([6])

Opinion of 18 September 2002 of the European Economic and Social Committee on the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Working together for the future of European tourism ([7])

Opinion of 10 October 2002 of the Committee of the Regions on the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Working together for the future of European tourism

([1]) COM(95) 97 final.
([2]) COM(1999) 205 final.
([3]) COM(2001) 171 final.
([4]) COM(2001) 668 final.
([5]) COM(2001) 665 final.
([6]) OJ C 75, 15.3.2000, p. 37.
([7]) OJ C 61, 14.3.2003.

Commission Communication of 13 November 2002 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Working together for the future of European tourism

Resolution of 14 May 2002 of the European Parliament on the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Working together for the future of European tourism

Agenda 21. Sustainability in the European tourism sector. Reference document. European Tourism Forum 2002, 10 December 2002

Commission Decision of 14 April 2003 establishing the ecological criteria for the award of the Community eco-label to tourist accommodation service (2003/287/EC)

Cooperation agreement between the Ministry of Economic Affairs and the Spanish Committee of Representatives of People with Disabilities with regard to Tourism For All Code of Ethics of the World Tourism Organisation

Resolutions on sustainable tourism policy of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (UITA-IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT).

UNESCO action plan on cultural policies for development. Intergovernmental Conference on cultural policies for development (Stockholm, 1998).

Brussels, 29 October 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 measures and procedures to ensure the enforcement of intellectual property rights'

(COM(2003) 46 final — 2003/0024 (COD))

(2004/C 32/02)

On 4 March 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 7 October 2003. The rapporteur was Mr Retureau.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion by 115 votes to one with four abstentions.

I. Presentation and summary

1. *Objectives*

1.1. Following a series of initial (and still incomplete) vertical texts, including current and draft legislation on industrial property (patents, Community trade mark, trade marks and designs, trade names — referred to henceforth as IP) and literary and artistic property (copyright and related rights, *ad-hoc* rights, resale rights, artists' and publishers' rights — referred to henceforth as LAP), the Commission is now presenting a horizontal project concerning civil proceedings and certain aspects of criminal procedures and sanctions for piracy and counterfeiting within the internal market.

2. *Grounds*

2.1. According to the proposal's explanatory memorandum, the provisions of Article 41 of the WTO TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement to protect IP-LAP rights in international trade are insufficient; disparities between national laws in terms of procedures and sanctions also affect the single market by creating distortions in the field of civil and criminal legal means of combating piracy and counterfeiting.

2.1.1. Organised crime is moving into all these illegal activities on a dangerous scale. Moreover, the high-speed Internet network makes it easier to pirate software and other intellectual works, such as music. For these reasons, prosecution procedures, protection under civil law of the rights of IP-LAP right holders and certain criminal sanctions applicable to pirates and counterfeiters should be harmonised across the internal market.

3. *Summary of the opinion*

3.1. The Committee supports the objective pursued and endorses the principle of horizontal harmonisation of measures to combat piracy and counterfeiting, which is on the rise in both third countries and Member States, and is damaging to the legitimate interests of consumers, companies and individual authors; as Community law currently stands, the Committee considers the form of a horizontal directive, as proposed, to be appropriate. It would however make a number of comments and suggestions regarding the text referred to it for an opinion.

3.2. The Committee would like to see a draft directive which clearly proposes measures to protect *bona fide* consumers and, more generally, consumer education and information measures on IP-LAP rights, focusing especially on young people.

3.3. In the digital and Internet field, the EESC urges that no backing be given to measures, even in guideline form, which would affect the legitimate rights or privacy of consumers and users, would impose an excessive burden on internet-access providers, or could even drive those publishers who offer alternative solutions — especially open source software and formats (which can be freely used and reproduced) or private copying software and hardware — off the market.

3.4. IP-LAP rights, which confer exclusive rights upon holders, amount to temporary, legally constituted monopolies; they are only allowed for specified periods of time, and without prejudice to the greater public interest, are not unlimited and must not hamper the free dissemination and transfer of theoretical and scientific knowledge and technologies, such as those relating to Internet, on which a competitive knowledge-based economy depends — and which does not yet exist in Europe.

3.5. The above comments by the Committee are in keeping with the TRIPS objectives (Article 7) and their underlying principles (Article 8(2)) [1]: these should be included in the recitals of the directive, since the possible penalties cannot be entirely dissociated from substantive law, and possible abuses of IP-LAP rights by right holders must not be overlooked.

3.6. Where counterfeit products which put users or their property at risk are concerned, specific sanctions with sufficient deterrent effect must be provided, together with adequate compensation in the event of accidents involving injury or damage. Market withdrawal, confiscation and destruction measures, at the infringer's cost, are absolutely necessary in such cases. Consumers and consumer organisations must enjoy adequate means under law to seek compensation for losses incurred and to punish infringers.

3.7. Lastly, the EESC calls upon the Commission to commit itself to in-depth independent sectoral studies employing a transparent methodology. These should seek in particular to encourage convergent legislation and a global strategy for developing closer judicial, police and customs cooperation, including studies and regular reports and other appropriate initiatives. The purpose would be to effectively combat pirating and counterfeiting from the manufacturing stage onwards, primarily targeting criminal networks together with those who habitually trade in pirated or counterfeited tangible or intangible goods. The Committee also calls upon the Member States to give urgent consideration to all opportunities for cooperation between themselves and with the Community to this end.

II. **Analysis of the proposal and comments**

4. *General comments*

4.1. The explanatory memorandum mentions the Green Paper on the fight against counterfeiting and piracy, in respect of which the EESC would refer to its earlier opinion [2]. The Committee would also refer to its other opinions mentioned by the Commission, and to its opinion on the patentability of computer-implemented inventions [3].

4.2. The Committee endorses the overall object of the draft directive. It notes, however, that European patents issued by a certain number of countries (which vary depending on where they are filed) adhering to the 1973 Munich Convention have been included within the scope of the directive. In principle Community jurisdiction does not extend to the convention in either substantive or territorial terms, unless the Community joins it. The situation will differ with the future Community patent, which will be valid in all Member States and over which the Community will have jurisdiction. However, it is the Committee's view that the WTO TRIPS Agreement requires the Community to protect all existing IP-LAP rights throughout its territory and, moreover, that such protection lies within the Community's powers concerning the internal market (Article 95 of the Treaty establishing the European Community). This article is the legal basis for the directive and sets out to remove distortions of competition as a result of disparities between national rights, procedures and practices.

4.3. It should also be pointed out that effective measures against European or international criminal networks, or against large-scale counterfeiting and pirating, would require a comprehensive, coordinated and coherent approach, covering cooperation under the second pillar between courts, police forces and customs services, reinforcement of the customs code, criminal law, measures against organised crime and money laundering, as well as Europol and Interpol functions, since counterfeited objects or pirated works often originate in third countries.

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[1] Article 7. Objectives. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.
Article 8. Principles (...) 2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology www.wto.org.

[2] OJ C 116, 28.4.1999.

[3] OJ C 61, 14.3.2003.

4.4. The Committee cannot fail to take note of the mismatch between the objectives set out in the introduction and the content of the draft directive itself. It represents only a first step which does not yet come close to meeting the enormous economic and social challenges posed by industrial counterfeiting and piracy which affect employment, competitiveness and businesses, chiefly SME-SMIs, who are least able to identify those infringing their intangible rights and to uphold these rights in foreign national courts.

4.5. Harmonisation is becoming all the more urgent since with enlargement, bringing in more Member States, legislative and procedural differences will multiply, entailing a risk of distortion of the internal market. The long overdue advent of the European patent makes such harmonisation even more essential.

4.6. The Committee would prefer a combination of national rights which offer effective protection to right holders and consumers in keeping with the different legal systems and the general principles of law applied by them (in particular the presumption of innocence and protection of privacy). This might be done in conjunction with a relatively early review. Excessive obligations should not be imposed on certain businesses (including Internet-access providers and manufacturers of blank media), and neither should the rights of legitimate users be restricted or all consumers taxed indiscriminately (tax on blank media for the benefit of certain right holders but not all). The aim should be harmonisation which is more than just the sum of those provisions offering the greatest protection to right holders only, taken out of their national context, and should also allow legislation, parts of legislation, or procedures to be strengthened in those countries where they are insufficiently developed.

4.7. In view of the diversity of national situations and the huge numbers of counterfeit goods, regular evaluation of the impact of the directive, and of any adjustments made in line with changing circumstances, would be essential. If necessary, measures to protect specific sectors could then be envisaged.

4.8. In this spirit, the Committee for the present approves the option for a directive which should provide for coherent means of protection and a form of harmonisation which reflect the spirit of the various legal systems, rather than a regulation which could severely disrupt existing laws which are successfully performing their functions. In the longer term, movement towards a regulation may be possible regarding the Community patent and trade mark. In spite of the differences in procedure or national legislation, it would for the moment suffice for each Member State and candidate country to introduce real protection and effective deterrent and punitive measures against pirating and counterfeiting for commercial ends or by criminal gangs. It should also be noted that the directive would impose radical changes on some national legal systems even though they provide effective solutions.

4.9. The Committee considers the personal scope of the proposal to be sufficiently broad. Although directives such as those on software or copyright and related rights acknowledge the rights of users and consumers, such as the right to back-up copying, private use or for demonstration or educational purposes, but such rights and their scope vary from country to country: whether or not they are implemented is left to the workings of subsidiarity. In this respect, the Committee regrets the emerging trend in a number of countries to further curtail or abolish users' rights.

4.10. The Commission's competence in criminal affairs is the subject of a dispute between the Council and the Commission currently before the Court of the Justice, and the Committee cannot prejudge the issue which will become *res judicata* in the future. However, in earlier opinions the Committee has generally accepted that, *inter alia* by means of a framework directive, the Commission could propose harmonisation of the criminal sanctions needed to enforce first pillar provisions, and would only alter its approach in the light of a relevant judgement of the CJEC.

4.11. Turning to practical steps to halt pirating and counterfeiting and compensation for businesses incurring losses, national judges should retain their powers of discretion *in concreto* concerning economic losses and infringement of non-pecuniary rights or brand image. Judges, sometimes assisted by experts, are empowered to set the amount of civil damages incurred and fines or other applicable criminal sanctions according to national law, although in some countries these sanctions should be revised and put into effective practice to give them real deterrent effect.

4.12. The Committee believes that independent, rigorous sectoral studies should be carried out in advance to provide an objective evaluation of factors which vary widely in scale and their actual effect on sectors, particularly in their impact on the economy and employment, on SMEs-SMIs and on consumers. This applies in particular to products which may affect health, safety or the guarantees which users may legitimately expect (spare parts, toys, electrical equipment, etc.). Such an important issue as protection of consumers against counterfeit products merits far greater attention as a part of anti-counterfeiting strategy.

4.13. The proposed harmonisation must be balanced and in proportion to the objectives set. Implementing measures and sanctions are dependent upon substantive law, and should also be designed to be as favourable as possible to consumers, their protection and the effectiveness of their legitimate rights as users. Consumers or their representatives should be able to participate as civil parties to actions brought by right holders against pirates and counterfeiters, in cases where users, acting in good faith, have incurred loss as a result of pirated or counterfeit products.

4.14. Bona fide users should not be implicated in any enquiries by police, judicial or customs authorities, who alone are authorised to carry out investigations, into the origin of objects or programmes in their possession.

4.15. The Committee believes that future measures must primarily target those European and international networks which present the greatest danger to consumer safety and business interests. Investigations, cross-border and international cooperation, protection of evidence and deterrent penalties are necessary. Proportionate deterrent measures could be applied to users acting in bad faith, within the framework of the existing national laws, bearing in mind that future major efforts must primarily focus on achieving tangible results for the European economy, consumer safety and employment.

4.16. Lastly, the need to make IP-LAP compatible with the knowledge and information society is only mentioned in passing, and compatibility with public interest requirements is not mentioned at all. These are however major issues, and the harmonisation of means of protecting research and production investments must involve more than blanket reinforcement of civil and penal sanctions and greater judicial and material resources for legal investigations and proceedings.

4.17. Neither should harmonisation block the dissemination of knowledge and its use in teaching, which requires publication of inventions, innovations, new procedures and computer programme sources for the purposes of interoperability, at least for application interfaces and file formats. In any case, reverse engineering should not be considered to constitute counterfeiting. Similarly, independent programmes enabling files, including protected ones, to be read or their format to be changed cannot be judged to infringe copyright since an independent creation is involved, and unlimited extension of the legal scope of the copyright concept is unacceptable in the light of the general principle of interpreting criminal offences in as restrictive a way as possible.

5. *Specific comments*

5.1. The preliminary general considerations of the proposal appear rather confused, taking an equally condemnatory view of criminal gangs, individuals who wittingly or unwittingly acquire counterfeit products and teenagers swapping music through the web. Some of the considerations do not match the scope of the draft directive: they should be removed from what is an otherwise relevant and balanced proposal.

5.2. In the Committee's view, the steps to be taken should be diverse and tailored to each clearly identified and defined category of rights and economic sector. It must be ensured that legitimate measures of protection do not become an intimidating arsenal of civil and criminal law which could, in some cases, paralyse innovation on the part of SMEs-SMIs under constant threat of counterfeit proceedings by certain monopolies or oligopolies.

5.3. All 'options' affecting web surfers' private lives or preventing users from fully exercising their rights (right to private copying, right to play CDs-DVDs on different types of machine, right to choose one's computer operating system without having to pay for a preloaded system and programmes the price of which is kept secret, right to non-zoned DVD players, etc.) represent improper restrictions, possibly forced purchase, or sale of products with truncated functions, and are unacceptable to the Committee, since they are disproportionate to their stated — and in any case, often unfair — aims.

5.4. The arrangements for taxing blank writable media are even more unjust if such media or systems are protected against copying by built-in hardware or software devices.

5.5. It would be better for companies in the sector to concentrate their innovative efforts on viable commercial models in the digital communications age in order to harness a huge potential market, rather than viewing all consumers as potential pirates or seeking perpetual unearned income by taxing blank media or imposing disabling technical restrictions on reading tools or media. Many viable software manufacturers market their products on-line at reasonable prices. The first Internet pay-distribution companies in the music sector show that a market which respects the rights of music publishers and artists can still be created and developed.

5.6. The Committee does however fully endorse the voluntary system for identifying the origin of blank writable media, which should help combat industrial-scale counterfeiting. Codes of conduct for public and private enterprises on the proper management of intangible property rights should also be encouraged, and have already provided real results in Europe: the number of 'code-compliant' companies is growing, and this trend will certainly be confirmed if licence prices are not set at an abusive level and if competition can effectively be brought to bear (e.g. monopolies or oligopolies in several sectors). In this context, excluding from the scope of the directive all institutions and undertakings acting in the exercise of their prerogative of public power is difficult to justify with regard to codes of conduct. Neither Community or national institutions, nor public enterprises may be exempted from compliance with IP-LAP rights.

6. Lastly, the Committee wishes to comment in detail on certain articles of the draft directive:

— Damages: the provisions here are extremely, sometimes excessively, precise, such as the requirement for the complainant to provide evidence of the profits made by the defendant, and in support of which the defendant must provide accounts for illegal or criminal activity ...

— European and national organisations defending consumers' rights must be recognised as being qualified to take part in general interest actions or actions for injunctions, provided they are legally constituted and representative.

— In purely civil proceedings, damages are justified by the serious prejudice incurred by the complainant, not by the intentional character of the infringement of rights; in contrast, if the civil proceedings are subordinate to criminal proceedings, then the intentional nature of the prejudice must be established.

— Provisional and precautionary measures: although on the grounds of urgency a court may not initially be required to hear the defendant, principally in order to prevent destruction or removal of evidence, the defendant must in all cases then be heard with equal urgency; seizure of goods or freezing of bank accounts may cripple a wrongly-accused company or even drive it completely off the market. Respect for the rights of the defence is an inalienable principle of Community law.

— Evidence: the appropriate criminal courts alone may order the seizure of bank, financial or commercial documents and their forwarding to a civil jurisdiction; in the context of on-going criminal proceedings, it is generally the courts which are competent.

— Penalties: in addition to destruction of goods, seizure of pirating or counterfeiting equipment might also be envisaged. Any criminal penalties applicable to legal persons depend on the internal law of each country. These penalties should be brought into line with the legal systems of the individual Member States.

— Publication of judgments: the proposed wording places no restrictions on publication: the judge lays down either an overall sum to be used for this purpose, or the titles of publications and the form that the statement should take (summary of the judgment or *in extenso* report).

— Technical measures: whether or not a technical device or copying or counterfeiting software is unlawful often depends not on their nature but on the purposes for which they are used. The same means may be used for legitimate ends (individual back-up copying, for example). In consequence, circumventing an improper technical device in order to exercise a consumer's right cannot be regarded as unlawful.

— Codes of conduct: these should also set out consumers' rights and guarantees, in keeping with Community law.

Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Draft Commission Regulation amending Regulation (EC) No. 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid' [1]

(2004/C 32/03)

On 3 June 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 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 7 October 2003. The rapporteur was Mr Wolf.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) the European Economic and Social Committee adopted the following opinion by 122 votes to one with one abstention.

1. Introduction

1.1. Articles 87 and 88 of the EC Treaty lay down the general ban on aid and define the content and procedures of the permissible exceptions to the general rule that state aid is incompatible with the principles of the common market. In this case we are concerned with a regulation exempting training aid under certain conditions from the otherwise applicable requirement for notification ('exemption directive').

1.2. This is dealt with in Regulation (EC) No 68/2001. The Commission draft amends this Regulation.

1.3. The reasons given by the Commission for preparation of the draft are as follows:

— further need for clarification, arising from accumulated experience, with regard to aid granted before the Regulation entered into force and without the Commission's authorisation; and

— the need to incorporate the new definition [2] of 'small and medium-sized enterprises' adopted by the Commission;

— the desire to replace the specific reporting requirements hitherto laid down in Annex III with a uniform, simplified system of annual reporting.

2. The Committee's comments

2.1. The Committee is glad that the Commission, in the interests of transparency, simplification and legal certainty, is also incorporating the new definition of small and medium-sized enterprises into the training aid exemption regulation.

2.2. The Committee also welcomes the Commission's intention of clarifying, concluding or definitively assessing as yet unclarified and possibly still pending issues relating to aid granted before the Regulation in question entered into force. In the interests of legal certainty, however, it should be ensured that the criteria applied are consistent with those which were current or applicable at the time the measures to be assessed were adopted [3], in the event that the criteria of the current draft regulation do not lead to a more favourable outcome for the parties concerned.

2.2.1. The Committee therefore recommends that the final subparagraph of Article 8(i)(a), which has been amplified by comparison with Regulation (EC) No 68/2001, be clarified as follows: 'Any aid which does not fulfil the conditions of this Regulation shall be assessed by the Commission in accordance with the regulations, frameworks, guidelines, communications and notices applicable at the time the notification was received, in accordance with Article 88(3) of the EC Treaty, or, where there has been no notification, at the time the measure was carried out or the aid granted, in the event that the criteria of the current draft regulation do not lead to a more favourable outcome for the parties concerned'.

2.3. In the definition of small and medium-sized enterprises, microenterprises are for the first time listed as a separate category. In view of the great economic importance of such

[1] OJ C 190, 12.8.2003.

[2] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36, which will enter into force in 2005.

[3] See also the Commission Notice on the determination of the applicable rules for the assessment of unlawful state aid of 7.5.2002, OJ C 119, 22.5.2002, p. 22.

microenterprises, the Committee recommends that in the future policies of the Community and the Member States the establishment of such microenterprises be facilitated (e.g. by simplifying and reducing the preconditions) and, in general, that still more account be taken of the specific operating conditions of such enterprises.

Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

3. **Conclusion**

The Committee recommends that the Commission draft be approved subject to the comments set out in points 2.2 and 2.2.1 and that particular account be taken of the comment set out in point 2.3 when adopting future measures.

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 on enhancing maritime transport security', and**

— **the 'Proposal for a Regulation of the European Parliament and of the Council on enhancing ship and port facility security'**

(COM(2003) 229 final — 2003/0089 (COD))

(2004/C 32/04)

On 2 May 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 above-mentioned communication.

On 26 May 2003 the Council decided to consult the European Economic and Social Committee under Article 80 (2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 October 2003. The rapporteur was Dr Bredima-Savopoulou.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) the European Economic and Social Committee adopted the following opinion by 122 votes for and one against.

1. **Introduction**

1.1. Following the 11 September 2001 terrorist attacks world safety and security have assumed a higher profile than ever before and have been placed at the top of policy-makers' priority lists. Subsequent events and action proved that the war on terrorism is bound to last a long time.

1.2. Maritime security has been a matter of concern for the European Community well before 11 September 2001, as proved by the Transport White Paper [1] which already referred to the need to enhance the security of cruise ship passengers in Europe.

1.3. On 23 April 2002, in a letter from Ms Loyola de Palacio, the Commission asked the European Economic and Social Committee to draw up an exploratory opinion on the Security of Transports, under Article 262 of the Treaty establishing the European Community.

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

1.4. At its plenary session of 24 October 2002 the EESC adopted its exploratory opinion [1] supporting the Commission's analysis with regard to both the nature of the subject and the solutions to it. The EESC proposed a number of yardsticks to be followed in future EU action regarding security of transport.

1.5. The International Maritime Organisation (IMO) began work on maritime security in February 2002. The Commission considered it preferable to await the outcome of the discussions within the IMO rather than develop regional unilateral initiatives. On 12 December 2002, following a Diplomatic Conference, IMO adopted amendments to the International Convention for the Safety of Life at Sea (Solas), and in particular a new chapter entitled 'Special measures to enhance maritime security', and an International Ship and Port Facility Security (ISPS) Code. The amendments of the Solas Convention and Part A of the ISPS Code consist entirely of mandatory provisions; Part B of the ISPS Code is made up of recommendations which contracting governments are requested to implement.

1.6. The effective implementation of maritime security measures requires intense preparations and timely action on the part of parties involved. The implementation of the IMO measures will be a huge challenge, particularly in smaller ports and developing countries. Governments will need to put in place a large number of measures by June 2004. Likewise, ships and shipping companies must comply with the new IMO security provisions.

2. **Communication on enhancing maritime security**

2.1. The Commission considers that since the security of a transport chain depends upon its weakest link, an approach addressing the multimodal dimension in parallel will make it possible to improve the security of transport as a whole. Initially, this Communication addresses the purely maritime dimension of this chain.

2.2. The EU's maritime logistics system, including seaborne freight transport, ports and port handling services, accounts for over two-thirds of the total trade between the Community and the rest of the world. It is therefore important that maritime transport security should be enhanced, and its competitiveness maintained, while facilitating trade.

2.3. The Communication refers to a number of areas on which action is in progress, such as on security of Community ports, enhancing the security of the logistics chain as a whole, monitoring and administration of maritime security, maritime transport risk insurance and international mutual recognition. More specifically, the Commission underlines that:

— priority should be given to passenger transport, where the consequences of a terrorist act would be the heaviest with regard to the human lives at stake;

— the scope of the work concerning maritime security at the IMO is limited to ships and to port facilities where the ship/port interface takes place;

— maritime safety depends to a large extent on the security of other feeder modes of transport. It is therefore very important that it should be possible to identify both the transported goods and those involved in handling them (suppliers and carriers) and their respective responsibilities;

— without calling into question the different administrative and economic systems for maritime and port matters, there is a need for clear and comprehensible procedures to be established at both national and Community level with regard to maritime security;

— it intends to analyse in 2003 the potential consequences in terms of insurance of enhancing maritime security in order to encourage better coverage of risk for maritime transport operators and customers.

2.4. The Commission will encourage the establishment of partnership based on mutual and reciprocal recognition of security and control measures with all its international partners, including the USA, so as to promote the harmonious and secure flow of world maritime trade. The envisaged agreement is intended to replace the bilateral arrangements that have been concluded between certain Member States and the US Customs Service and it will be based on the principles of reciprocity and non-discrimination which apply to all trade between the Community and the US.

2.5. On a legislative level, the Commission will, as necessary, launch an initiative concerning the enhancement of the security of seafarers' identification and reserves the right to present in the course of 2003 a proposal for a Directive defining additional security measures to be implemented in Community ports. Moreover, it intends to draw up emergency plans and take actions that would guarantee effective response in case of need.

[1] OJ C 61, 14.3.2003, p. 174.

3. **Proposal for a Regulation on enhancing ship and port facility security**

3.1. The main objective of this Regulation is to introduce and implement Community measures aimed at enhancing the security of ships used in international trade and domestic shipping and associated port facilities in the face of threats of intentional unlawful acts. The Regulation is also intended to provide a basis for the harmonised interpretation and implementation and Community monitoring of the special measures to enhance maritime security adopted by IMO. In order to achieve the above objective the Regulation:

a) goes beyond the measures adopted by IMO in that it makes mandatory certain provisions of Part B of the ISPS Code, which have the status of recommendations, e.g. it extends the measures to passenger ships on national routes; it extends to other ships sailing nationally the requirements relating to undertaking security evaluations;

b) calls upon Member States to conclude agreements on security arrangements for scheduled maritime traffic within the Community on fixed routes using dedicated port facilities;

c) details the arrangements to be made by Member States for ports only occasionally serving international traffic;

d) establishes the system of security checks prior to the entry of ships of whatever origin into a Community port, as well as that of security checks in the port;

e) calls for a single national authority responsible for the security of ships and port facilities, and a timetable for early implementation of some of the measures it contains;

f) provides for a process of inspections to check the arrangements for monitoring the implementation of national plans adopted pursuant to it;

g) entrusts to the European Maritime Safety Agency the role of assisting the Commission in the performance of its tasks.

3.2. For the purpose of reaching the overall objective of maritime security the Commission proposes the extension of all the provisions of Chapter XI-2 of the Solas Convention and of Part A of the ISPS Code to include passenger ships engaged on domestic voyages. Moreover, it provides for a possible exemption from the obligation of security checks prior to entry into a port for ships engaged on a scheduled service within a Member State or between two or more Member States.

3.3. Each Member State will be required to adopt a national plan for the implementation of the Regulation, starting with the appointment of a single national authority by 1 January 2004 and completing with the issuing of the international ship security certificates by 1 June 2004.

3.4. The Regulation gives Member States the possibility of concluding amongst themselves bilateral or multilateral agreements for the provision of alternative security arrangements and, in particular, those necessary for promoting scheduled short-sea shipping within the Community on fixed routes between port facilities located within their territories.

3.5. The Commission proposes that six months after the date of application of the Regulation, in cooperation with the national authorities and assisted by the European Maritime Safety Agency it shall initiate a series of inspections to verify the means of monitoring implementation of the national plans adopted pursuant to this Regulation. Member States concerned will be informed in good time before inspections. However, departments responsible for monitoring port facilities, companies and ships may be inspected without advance notice.

4. **General comments**

4.1. *Comments on the Communication*

4.1.1. Maritime transport by its very nature is open to attack. The sector is characterised by an extremely diverse international labour force, transporting a vast range of goods whose provenance, description and ownership are often left vague. As most characteristically said 'The very things that have allowed maritime transport to contribute to economic prosperity also render it uniquely vulnerable to exploitation by terrorist groups [1]'.

4.1.2. The EESC reiterates [2] that security is an issue where, par excellence, all links in the transport chain should be involved in order to achieve tangible results. In the short term a security culture should be developed by all participants in the transport chain. Measures aimed at fighting terrorism should be coupled with measures aimed at fighting traditional security problems (organised crime, piracy, fraud, smuggling and illegal immigration). The EESC invites the Commission as

[1] OECD: Security in Maritime Transport-Risk Factors and Economic Impact (July 2003).
[2] OJ C 61, 14.3.2003, p. 174.

a matter of urgency to tackle traditional security problems, and in particular piracy and armed robbery, in its future policymaking, if it is not feasible to cover them under the present Regulation. The EESC notes that the Council has asked the Commission to carry out a feasibility study concerning controls at maritime borders aimed at the improvement of checks and surveillance at maritime borders. It also notes that maritime transport security will be one of the five vital sectors where the future fight against terrorism by the recently created action group of the G8 will focus.

4.1.2.1. With the advent of the EU enlargement, the Mediterranean Sea acquires an enhanced role. Its vicinity to areas from where potential security problems might arise emphasises the need for a Mediterranean dimension to maritime transport security policy. The Motorways of the Sea Agreement between five Mediterranean EU Member States (5-6.7.2003) stressed the importance of developing short sea shipping services in the Mediterranean along with the security services.

4.1.2.2. In light of the above considerations, the EESC welcomes the Commission Communication on the development of a Euro-Mediterranean Transport Network [1] and the incorporation of security of shipping in its common transport policy objectives. It agrees that it is essential that the Mediterranean Partners strengthen international security by incorporating equivalent rules into their national laws and introducing efficient means of enforcement. The setting-up of a Euro-Mediterranean institute for Safety and Security is considered as a first step towards this goal.

4.1.3. The EESC considers that trade is a major factor for world prosperity and underlines that its disruption will have serious consequences for national economies and consumer prices. Therefore, attention needs to be paid to the medium-term consequences of terrorism. Measures to reduce risks and the economic consequences of further attacks should be both security-effective and growth friendly. The recent OECD Study [2] indicates that the cost of implementing security-related measures will be high, but the financial cost of not taking every opportunity to reduce the risk and the incidence of terrorist attacks may be considerably higher. It is hoped that the implementation of the measures (as suggested in paragraph 4.1.1) and the expected beneficial effect of the enhanced surveillance and controls in port areas in reducing or eliminating traditional criminal activities and security problems, in the long run will largely off-set the costs of implementing security measures. Indeed, the same OECD study points to potential savings, such as 'reduced delays, faster processing times, better asset control, fewer losses due to theft or fraud'.

4.1.4. The EESC supports the determination of the Commission to resist any unilateral measure which might not only affect international trade but also be incomplete or run counter to the objectives with regard to security, which necessitate global solutions. In this regard, the EESC welcomes the authorisation of the Commission by the Council to negotiate on matters within the Community's sphere of competence in order to reach an agreement between the Community and the US customs authorities concerning the development of an export control system, which takes account of the need for security in international container-based trade. It further welcomes the decision to invite the relevant stakeholders to preparatory meetings of the Joint EU/US working party on transport security.

4.1.5. The EESC welcomes the intention of the Commission to fill the security gap by presenting in the course of 2003 a proposal for a Directive defining additional security measures to be implemented in Community ports and its intention to draw up emergency plans.

4.2. *Comments on the Regulation*

4.2.1. In its exploratory opinion the EESC urged the EU to initiate a dialogue with the US and other countries with a view to establishing a global system in the interest of all. Assuming such a leading role over security issues would offer the EU the opportunity to show a higher profile internationally. It is therefore gratifying to see a year later that indeed the EU has followed the above suggested course of action.

4.2.2. The EESC notes with satisfaction the EU coordinated position in the decision-making international fora and at the EU level in order to avoid possible inconsistencies between international and prospective Community rules. It also welcomes the comprehensive analysis by the Commission and the proposed action for the timely and harmonised implementation of the IMO international measures.

4.2.3. The effect of tightening of security on the cost of trading internationally is likely to be asymmetrical. Shipping must continue to serve the flow of international trade effectively and efficiently and, to ensure this, ships, port facilities and their respective personnel must be prepared adequately for the possibility of encountering terrorist attacks or other forms of criminal intentions. If security procedures become too stringent the efficiency of the business of transporting goods could be severely hampered, which would give terrorists the success they were seeking. Therefore, it is encouraging to note that the Commission has launched a study to assess the consequences of enhancing maritime security.

[1] COM(2003) 376 final.

[2] OECD: Security in Maritime Transport-Risk Factors and Economic Impact (July 2003).

4.2.4. The scope and level of measures should take into account any adverse implications on the performance of the human element (fatigue, stress). European philosophy and culture sustains a strong respect for the human rights and any reaction to threats of terrorism should not disregard these long cherished principles. The scope of any security screening of personnel should be relevant to its potential involvement in terrorist activities and should not lead to unwarranted employment exclusions. Furthermore, there is an increasing danger of imposing upon ship's crews and on port authorities, directly or indirectly, policing responsibilities that normally fall upon governments. Unless a security culture is instilled across the board, it would be unrealistic to expect ship's crews to protect their ships against sophisticated terrorist threats. Finally, the safety and working conditions of crews should not be put at risk when dealing with their additional security duties.

4.2.5. The EESC reiterates that the implementation of security measures should be of such a nature as to avoid deflection of traffic in favour of some ports to the detriment of other ports, 'imposing disproportionate bureaucracy or costs and charging to the industry costs that fall properly to governments' ([1]). In perspective, the EESC has good reasons to be concerned that governments may be reluctant to assume the corresponding responsibilities for their Agencies and ports. On the other hand, there are legitimate concerns that security considerations will override safety considerations and needs to facilitate trade.

4.2.5.1. The cost of compliance with the measures adopted by IMO and proposed by the Commission will be significant for most ports and huge for the big ones ([2]). Unavoidably, the enhancement of security will involve costly arrangements in terms of hardware (infrastructure and equipment) and software (manpower and training). Some of the anticipated costs can be calculated fairly reliably – others, notably those associated with shore side security — less so. It is estimated that security costs will increase the overall annual operational costs of shipping companies by 10 % ([3]). In accordance with a recent OECD Study ([4])'the initial burden on ship operators is estimated to be at least USD 1,279 million (EUR 1,460 million) and USD 730 million (EUR 833 million) annually thereafter. Estimates on port-related security costs are extremely difficult to derive as it is yet uncertain what the impact of IMO measures will be on hiring of new security personnel and if so, what will be the applicable rates'. By way of comparison, maritime security costs in the EU are expected to be higher than in the US for geographical reasons due to the larger number of EU ports. Moreover, the non-federal structure of the EU and the fragmentation of authorities involved will exacerbate the problems of implementation of the security measures in the EU.

4.2.5.2. Although part of the increased security costs will be passed on to customers, governments are also expected to bear some of the costs to counter terrorism, since terrorism is a reaction to policies of governments ([5]). The US government has already earmarked security grants to private companies and ports amounting to USD 105m (EUR 120m) after disbursing USD 93m (EUR 106m) in similar grants last year. Unless similar action is taken by EU governments, European ports and companies will be disadvantaged, and more importantly, ports may fail to meet the security criteria and qualify as compliant ports, with far reaching repercussions in terms of competitiveness. Consequently, the EESC invites the Commission, recognising the origins of the problem and the real targets of terrorism, to devise an EU scheme for commensurate financing of the implementation of the measures incumbent upon ships, crews and ports.

4.2.5.3. In the aftermath of 11 September, insurance implications in maritime transport were tremendous. Terrorism insurance became either unavailable or unattainable. For instance, following the attack on the tanker 'Limburg' (October 2002) underwriters tripled insurance premia for vessels calling on Yemeni ports, reaching as much as USD 300 000 (EUR 342 390) per vessel and USD 250 (EUR 285) per container. Insurance cover for inevitable delays resulting from the intense security measures as well as for the highly sophisticated high tech scanning equipment has to be considered. According to estimates ([6]) hull and machinery insurance for ships (tankers/bulk carriers) is expected to rise by 9 % and P&I insurance to rise by 10 %.

([1]) OECD: The Economic Consequences of Terrorism, 17.2.02 Economic Department Paper No 34: OECD Transport Security and Terrorism Council of Ministers, 2.5.2002.
([2]) A container scanner in the port of Rotterdam costs EUR 14m.
([3]) Drewry Report, 2003.
([4]) OECD: Security in Maritime Transport-Risk Factors and Economic Impact (July 2003).
([5]) EESC Opinion — OJ C 61, 14.3.2003, p. 174.
([6]) Drewry, Annual Review of Ship Operating Costs, 18.6.2003.

5. **Specific comments**

5.1. *Comments on the Regulation*

5.1.1. The Automatic Identification System (AIS) required to be fitted on ships has a security benefit only if signals can be received ashore, analysed and acted upon. Member States should be required to comply with Article 9 of the Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system by 1-7-2004. Furthermore, the EESC welcomes the intention of the Commission to support technological research and the promotion of satellite radio navigation applications (Galileo and GPS) which will make it possible not only to enhance security but also safety, navigation and management in this area. The early implementation of the Galileo system was suggested in the exploratory opinion of the EESC as a means of facilitating the enhancement of increased security.

5.1.2. Article 3 (Joint measures and scope)

5.1.2.1. The EESC agrees that the radical measure of fully applying the voluntary Part B of the ISPS Code would be unnecessary and supports in general the proposal to make mandatory certain of its provisions. The extension of the scope of the IMO measures to domestic shipping needs to be clarified. There is no indication of the size of Class A ships or indeed of sizes of other classes of passenger ships referred to in the second paragraph of paragraph 2 (presumably it may cover any ship engaged in any voyages, even short ferry crossings).

5.1.2.2. Effective access control would require a photo ID for all persons boarding a ship in a port. The EESC welcomes the inclusion of paragraph 4.18 of Part B of the ISPS Code in the list of the mandatory provisions. However, and in order not to compromise ship security, the requirement to issue appropriate identification documents should be extended to cover not only government officials but also other persons involved with the operation of the ships in ports.

5.1.2.3. The EESC notes with satisfaction that the proposal does not infringe on the terms of ILO 108 Convention 1958. Hence, seafarers can continue to be exempt from normal visa requirements for the purpose of shore leave or for transit to and from their ships. In this connection it welcomes the successful outcome of the work of the International Labour Organisation (3-19.6.2003) concerning the enhancement of the security of seafarer's identification and the EESC invites the Commission to take proper action for the timely implementation by the Member States of the new Seafarers Identification Documents Convention, and to dispense with any unwarranted visa requirements or arrangements that would result in charging seafarers with visa fees. Moreover, the compatibility of the new Convention with the obligations from the Schengen Agreement should be examined.

5.1.3. Article 5 (Intra-Community and domestic shipping)

5.1.3.1. The EESC fully endorses the Commission proposal that Member States may conclude among themselves, each acting on its own behalf, the bilateral or multilateral agreements envisaged under the IMO measures, and in particular such agreements as are necessary to promote intra-Community short sea shipping. The EESC agrees that Member States concerned should notify the draft agreements to the Commission and urges the Commission to review the proposed procedure so that approvals for the implementation of the agreements are given without undue delay.

5.1.4. Article 7 (Security checks prior to entry into a Community port)

5.1.4.1. Member States should be encouraged to promote the concept of a single point of entry, thereby, making it possible for the ship's master or agent to provide the required information using this concept.

5.1.5. Article 10 (Implementation and conformity checking)

5.1.5.1. The EESC believes that the IMO implementation date of 1 July 2004 is already very tight and difficult to fully meet, especially with respect to shore-side requirements. Given the large number of ports and even greater number of ships to be assessed and certificated by the above date and the need to ensure complete preparations, it may not be prudent to advance the implementation of the appointment of ship, port, company security officers (by 1 March 2004), the approval of ship and port facility security plans (by 1 May 2004) and the issuing of the international ship security certificates (by 1 June 2004). However, the EESC strongly supports the timely designation of a single national authority responsible for ship and port facility security by 1 January 2004.

6. **Conclusions**

6.1. The EESC welcomes the acknowledgment that comprehensive and coherent action is needed by the Community in order to enhance maritime transport security. It supports the intention to draw emergency plans and take actions that would guarantee effective response in case of need.

6.2. The EESC welcomes the determination of the Commission to resist any unilateral measure which might affect international trade and the pursuance of an EU agreement with the US Customs Service that will be based on the principles of reciprocity and non-discrimination which will apply to all trade between the Community and the US.

6.3. The Commission's intention to present in due course a legislative proposal defining additional security measures to be implemented in Community ports is fully supported. Specifically the EESC highlights the need to give a Mediterranean dimension to the maritime security policy which becomes vital with the EU enlargement.

6.4. The EESC congratulates the Commission for the comprehensive analysis and the proposed action for the timely and harmonised implementation of the IMO international measures. The effective implementation of the IMO measures will be a huge challenge, particularly in smaller ports and requires intense preparations and timely action on behalf of parties involved. However, given the large number of ports and ships to be assessed by 1 July 2004, it may not be prudent to advance the implementation of the IMO date in the EU framework.

6.5. The EESC believes that attention needs to be paid to the medium-term consequences of terrorism. Measures to reduce risks and the economic consequences of further attacks should be both security-effective and growth friendly. In line with the yardsticks developed in its exploratory opinion (2002), the EESC maintains that the implementation of the envisaged measures must be clear, uniform, proportionate to the threat and practical.

6.5.1. The EESC is concerned about the economic impact of the envisaged measures and the increase of the insurance costs in periods of crises. It hopes that the desirable implementation of security and policing measures will ease the imbalance of costs against the expected benefits in security and in curtailing other illicit practices committed in ports.

6.5.2. The EESC warns about the huge cost implications from the implementation of the new IMO security measures. Although part of these costs will be passed on to customers, in the interest of fairness governments should also bear part of some costs since terrorism is a reaction to policies of governments. Hence, it urges the Commission to adopt an EU financial instrument to cover some of these costs. To this effect the EESC invites the Commission to draw up an overall impact study about the financial implications of the increased maritime security measures.

6.6. The EESC supports in general the proposal to make mandatory certain of the provisions of the voluntary Part B of the IMO ISPS Code. However, the extension of the scope of the measures to domestic shipping needs to be clarified as it may cover any ship engaged in any voyages, even short ferry crossings.

6.7. The scope and level of measures should take into account any adverse implications on the performance of the human element (fatigue, stress). Ship crews and port workers should not be unduly affected by the implementation of security measures, such as any unwarranted employment exclusion following security screening of personnel. Moreover, seafarers should not be entrusted with the imposition of policing responsibilities that normally fall upon governments.

6.8. The EESC invites the Commission to take proper action for the timely implementation of the successful work of the International Labour Organisation concerning the enhancement of the security of seafarers' identification (ILO Convention 185, revising Convention 108).

6.9. The EESC maintains that in the short term a security culture should be developed by all participants in the transport chain. In the medium and long term, however, the EESC firmly believes that the EU should take the lead internationally in developing a broader framework for security which will address the causes of the terrorism and not only seek to prevent it or eliminate its effects.

Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on Trans-Euro-Mediterranean energy networks

(2004/C 32/05)

On 27 March 2003, in a letter sent by Mrs Loyola de Palacio, the Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on Trans-Euro-Mediterranean energy networks.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the work on the subject, adopted its opinion on 10 October 2003. The rapporteur was Mr Hernández Bataller.

At its 403rd plenary session held on 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion by 120 votes to two with two abstentions.

1. **Background**

1.1. The Euro-Mediterranean Conference held in Barcelona in November 1995 was a milestone in the relationship between the European Union and the associated non-member Mediterranean countries, establishing the creation of an economic and social area based on shared prosperity. In order to attain this objective, in line with the strategy agreed in Barcelona, a system of political meetings was drawn up alongside initiatives aimed at bringing together civil society and the economic players [1]. Last but not least, a Community Programme entitled 'MEDA' was created with significant resources at its disposal.

1.2. From the very start, it was clear how potentially important more intensive cooperation in the energy sector was for both the Mediterranean countries and the European Union. First and foremost, an adequate supply of all types of energy at competitive prices is a prerequisite for promoting economic development. Secondly, several southern Mediterranean countries have major energy reserves, essentially hydrocarbons, and in order to develop, use and transport this energy to the end markets, major resources are needed, coupled in many cases with stability on the home consumer market. Lastly, the global dimension of sustainable development means that the supply and use of energy resources must be accompanied by optimum protection of the environment.

1.3. This led to various initiatives. First of all, at the Malta Conference of 1997, energy was established as one of the six priority sectors. Secondly, again in 1997, the Euro-Mediterranean Energy Forum was set up composed of senior representatives of the 27 EU and Mediterranean countries. Thirdly, the companies of the energy sector created the Mediterranean Energy Observatory (OME), which operates as a research and study centre dealing with the current situation and future prospects of the energy sector across this region. Lastly, in 2002, the Facility for Euro-Mediterranean Investment and Partnership (FEMIP), which is multi-sectoral and managed by the European Investment Bank (EIB), was created. The Italian presidency of the EU has expressed an interest in increasing its funding and in this facility ultimately forming the nucleus of a Euro-Mediterranean Investment Bank.

1.4. At the same time several political meetings were held, most recently the highly significant Euro-Mediterranean Ministerial Conference on Energy which took place in Athens in May of this year. The OME, together with other bodies such as the European Forum for Renewable Energy Sources (EUFORES) and the Euro-Mediterranean Forum of Economic Institutes (FEMISE), organised both technical and business conferences and carried out important research into the current situation and challenges on the energy market.

1.5. The three most recent developments are the Green Paper 'Towards a European strategy for the security of energy supply', drawn up in October 2000, the communication issued by the Commission on 13 May 2003 on the development of energy policy for the enlarged EU, its neighbours and partner countries and, lastly, the inclusion in July of 2003 of South-North connection projects for the Mediterranean in the revised list of priority Trans-European Energy Network (TEN) projects.

1.6. It is the view of the European Economic and Social Committee that the above elements constitute an adequate political and technical basis for promoting a partnership in the energy sector, a key element in which is the development of energy interconnection networks.

[1] The EESC was mandated at the Barcelona Conference to coordinate those initiatives undertaken by national ESCs in this region in relation to the global Euromediterranean strategy

2. **Priorities for 2003-2006**

2.1. The priorities adopted by the energy ministers in May of this year on the basis of the recommendations of the Euro-Mediterranean Energy Forum can be divided into three main areas:

— concrete energy policy action at regional level and development of infrastructure projects of common interest;

— creation of financing mechanisms for these projects of common interest and promotion of industrial cooperation in this respect;

— development of logistic support for the Euro-Mediterranean Energy Forum.

These areas will be the main topics on the agenda of the next Euromed Conference on energy infrastructures to be held in December of 2003 during the Italian presidency of the EU.

Within these three areas, six major focal points have been identified comprising a total of 24 priority actions and a large number of concrete energy infrastructure projects (9 for natural gas and 12 for electricity). Within the first area two types of action are to be undertaken side by side. In terms of infrastructure, a fully integrated and interconnected Euro-Mediterranean electricity and natural gas market is to be created. With respect to Euro-Mediterranean energy policy, a harmonised legal framework is to be set up covering both pricing and technical aspects related to trade, the reduction or potential elimination of tax concessions that prevent the promotion of rational energy use, increased use of renewable energy sources and enhanced security of supply in the transport of hydrocarbons by sea.

2.2. Within the second area, namely project financing, the focus has been firmly set on use of the FEMIP, finding new financing measures at regional level with the participation of the EIB and other multilateral lending organisations such as the World Bank and the Regional Development Banks (RDB) and lastly, the possibility of drawing up legislation that will offer a better guarantee to potential investors. The desired industrial cooperation is to be achieved through the transfer of technology and the elimination of the legal impediments to the creation of joint ventures involving businesses from different countries in the region.

2.3. The third area covers the need for financing to enable the three working groups set up within the Forum to continue their tasks, and which hope to involve some 100 specialists in their meetings, as well as the 11 studies deemed necessary, of which 7 are regional and 4 national in nature. Several of these studies have already been started and when they are finished will provide clear details of the objectives to be met. It is estimated that around EUR 49 million will be needed.

3. **Current challenges**

3.1. The detailed definition of the priorities to be adopted must take account of the challenges faced by Euro-Mediterranean cooperation in the field of energy, summarised below.

3.2. The first challenge will be to determine the real implications of the security of energy supply to the EU and the Mediterranean as a whole, and just how this cooperation and the development of interconnecting energy networks can improve it.

3.3. The second will be to outline the role to be given to public sector and private operator initiatives in developing this cooperation, and how this is viewed in the various countries and regions, in terms both of financing problems and the creation of the legislative and regulatory frameworks.

3.4. Thirdly, it will be necessary to set down concrete financing needs, determine available public-initiative resources, in particular from MEDA, FEMIP, the EIB, the World Bank and the RDB, look for a new way to reduce non-business risks and, in parallel, enhance the interest and capacity of the private sector to take on projects.

3.5. The fourth challenge will be to develop South-South initiatives to complement the North-South initiatives, the latter being of particular interest to the European Union and the energy exporting countries. This will create a true feeling of partnership in the Euromed area and its various sub-regions.

3.6. In fifth place comes the creation of genuinely sustainable energy policies which encourage rational energy use and promote renewable energy sources whilst alleviating the environmental impact of energy use. Similarly, within these policies particular attention should be paid to the issue of rational use of water, as considerable quantities of energy are going to be required across the Mediterranean for the purposes of desalination to meet the sharp increase in demand for both agricultural and residential use.

3.7. The sixth challenge will be to harmonise the legislative and regulatory frameworks and provide adequate information to legislators and other officials responsible for implementation.

3.8. The seventh challenge will be to draw up a joint position to be adopted by the EU Member States and the other Mediterranean countries in international bodies such as the Conference on Climate Change (UNFCC), the Johannesburg Renewable Energy Coalition (Coalition of the Willing) set up at the Johannesburg summit and the International Maritime Organisation (IMO).

3.9. Lastly, the greatest and most important challenge will without doubt be to place into appropriate order all the priorities outlined in the previous point, along with the challenges mentioned earlier, so as to turn the objectives and projects already sufficiently identified into reality in a progressive and clearly structured manner.

4. The concept and importance of security of energy supply

4.1. In its opinion on the Green Paper of May 2001, the Committee indicated, amongst other things, that one essential element of the debate was to understand that although EU dependency on external energy supplies is set to soar in the future, it is crucial that the notion of dependency be dissociated from the notion of risk.

4.2. The Commission then included this assessment in its document issued in December of 2001, which summarised the various contributions made with respect to the Green Paper. Other contributors to the debate had thrown up the very same issue. A series of new concepts surrounding the amended notion of security of energy supply can be taken from this document and summarised as follows:

— Increased external dependency must not automatically imply greater risk as to security of supply.

— Enhanced security of supply to the EU depends to a large extent on appropriate use of energy resources globally. This is in line with the Kyoto commitments and rests on the absolute priority that must be given to concrete projects undertaken internationally to promote rational energy use and placing such rational use at the very centre of all economic and social development.

— In order to achieve the cooperation that is required across the globe in the energy sector, three aims must be met. First of all, there must be transfer of technology both for the use of domestic fossil and renewable resources and in order to promote rational energy use. Secondly, investment must be encouraged in order to make possible the use of new resources whilst guaranteeing a return on and recovery of the capital invested. And lastly, suitable conditions must be created for the transit of energy products so as to benefit the producer, consumer and transit countries in a fair manner.

— The energy sector must become a priority in the European Union's external relations, promoting both producer-consumer dialogue at the global level and including this issue as a central topic in its bilateral relations with the Mediterranean countries and Russia, to give but two examples.

— Equally, the idea that eco-taxes could be acceptable in specific cases must be considered. Energy taxation intended to enhance security of supply, in particular where it also improved the protection of the environment, could be widely accepted.

4.3. Whilst a constant and regular supply of energy is vital to the EU, it must be remembered that the creation of an area of shared prosperity will guarantee the future stability of the EU and the whole Mediterranean region. It is for this reason that it is necessary to promote South-South energy cooperation within the Mediterranean region and its sub-regions in order to guarantee regional stability and ensure the harmonious development of Mediterranean society.

5. The role of the public authorities and of private initiative

5.1. The magnitude of the investment required means that the private sector is going to have to shoulder the lion's share of the burden, supplemented, especially in the southern and eastern Mediterranean countries, by the active participation of public-sector energy companies in these countries.

5.2. Nonetheless, the important role to be played by the public authorities within the EU and the other countries of the Mediterranean cannot be ignored. This role will centre on the following tasks:

— to lay the basis for adequate political and social dialogue so as to minimise what is known in financial terms as 'country risk' and any additional related costs and to secure for the citizens of the South and East Mediterranean countries far-reaching services that will give them security and safety for the future;

— to participate in financing feasibility studies for infrastructure or concrete projects of common interest, i.e. projects which benefit the EU and at least one non-EU Mediterranean country;

— to co-finance priority infrastructure projects not fully covered by private initiative and according to specific conditions;

— to draw up legislative and regulatory frameworks that will facilitate joint operational or infrastructure projects, including the transit of energy products through non-EU countries.

6. Financing of the Euro-Mediterranean energy sector and its infrastructures

6.1. Several studies have attempted to provide clear indications of the investments that will be needed to finance South-North and South-South interconnection infrastructure. For the first, the aim is to double the supply of gas to the European Union through three points, strengthen existing electricity connections and build pipelines for the transport of crude oil. In terms of South-South cooperation, the overarching aim is to create what are referred to as Mediterranean gas and electricity 'ring networks'. The undeniable and immediate advantage of the latter for all parties is the support they provide for the management of the relevant systems, which in turn leads to reductions in any supply downtimes. The one sticking point in this respect is the inclusion of Libya in the ring network in order to ensure it is complete. Plans are afoot to create an integrated sub-regional electricity market in the Maghreb. These were ratified from a political point of view at the recent meeting of energy ministers held in Athens in May of this year.

6.2. Studies carried out by different organisations, such as FEMISE and the OME, estimate the required investment in infrastructure and development of the production sector at around EUR 200 billion over the next 10 years, with EUR 110 billion earmarked for the electricity sector (EUR 70 billion for generation and the remainder for transport and distribution). These figures are based on estimates for the year 2000 and today's figures could turn out to be somewhat higher. It is also important to note that 50 % of the investments needed refer to just two countries, Turkey and Algeria. It was not possible to ascertain what part of the investments was intended for Energy Networks of Common Mediterranean Interest (ENCMI).

6.3. Against such a background, constructive action is needed. On the one hand, according to FEMISE, in the 1990s Foreign Direct Investment (FDI) in these countries amounted to some EUR 15 billion per annum for all sectors of the economy, divided equally between public-sector investments, made by multilateral institutions and development cooperation programmes, and private-sector investments. With the new FEMIP, the EIB expects to be able to increase its investment capacity for the Mediterranean from EUR 1,4 billion to EUR 2 billion per annum. It will therefore be crucial for private initiative to supplement this major investment drive. New ideas, such as the recent Averroes risk capital initiative, with a budget of EUR 26 million, are a timid first step in the right direction.

6.4. In the Committee's view, one issue that has thus far been insufficiently analysed is the possibility of granting access to competitors to major interconnection infrastructure financed in part by Community money. For the moment, this infrastructure is governed by the principles of owner priority and first-come first-served to determine how any surplus capacity is used. This issue should be analysed from a legal point of view. It could become a distortive factor in terms of the participation of private initiative in the construction of major North-South interconnections.

6.5. Some recent data point to a significant increase in private investment in the energy sector in the Mediterranean countries. Major projects financed by the private sector are up and running in Turkey, Algeria and Egypt. In the latter countries the focus is on exporting their energy products. However, although the scale of these projects is impressive, they are one-off cases which are in no way interlinked and, whilst bringing considerable mutual benefits both for the investors and the country concerned, do not form part of the collective partnership strategy.

6.6. It is for this reason that new actions must be drawn up based on the following guidelines:

— to promote reciprocal investment protection agreements based on the bilateral agreements between the EU and the relevant Mediterranean countries;

— to establish precise criteria for the use of infrastructure financed partially using public subsidies;

— to improve the domestic legislation of the Mediterranean countries involved so as to increase foreign investment in the energy sector wherever socially and economically possible, both to boost exports and to meet domestic supply requirements for the local population and industry;

— to develop new financial services tailored to the Euro-Mediterranean situation as approved at the Athens Ministerial Conference, with the support of the EIB, the World Bank, the Regional Development Banks and the private banking sector;

— to increase the amounts of both national and Community financing earmarked for the development of energy projects of common interest with a high strategic and social value and which also have evident benefits for the environment;

— to promote industrial cooperation in the energy sector through agreements between major companies and between the latter and governments, including the manufacture and maintenance of equipment and the creation of a local production base.

7. The North-South and South-South dimensions

7.1. It is clear that any North-South connection infrastructure will benefit not only the energy exporters and transit countries which take a levy for the use of the infrastructure and gain from the creation of both employment and wealth during the construction phase, but also and quite particularly the European Union.

7.2. Nonetheless, many such connections (natural gas, oil and electricity) are based on exclusive export to the European Union, meaning not only that the exporter countries renounce any possible dealings with other importers, even in the south of the Mediterranean itself, but also that priority is given to EU exports over domestic consumption, a figure that is rocketing as a result of the population explosion and economic growth.

7.3. It would therefore seem necessary to promote South-South interconnections in parallel to North-South connections with the three-fold objective of increasing overall security of supply in the region, enhancing the synergy of the economies involved and creating a feeling of partnership between the Mediterranean countries and the European Union.

7.4. At the same time, some of this infrastructure could be doubly useful where the North-South connection runs through non-EU transit countries. Not only that, but it would improve both the physical and technical security of EU energy supplies in that several alternative routes would be available for use during one-off or even longer-term crisis situations. This solution would also be an alternative to the suggestion by the European Commission that the levels of strategic stocks within the Union itself should be increased. This latter proposal has met with considerable reservations.

8. **Development of sustainable energy policies**

8.1. As outlined above:

— If the current trend continues and a major effort is not made to improve rational energy use, domestic energy consumption in the countries of the southern Mediterranean is set to grow exponentially. A similar effort to improve rational energy use will have to be made in the EU.

— Investment needs in the energy sector are very high and will be met only if both public and private initiative are involved together. The private sector will only participate if suitable guarantee and profitability conditions can be created for its investments.

— There is a clear need to introduce legislation and regulations in the energy sector that will make for sustainable economic growth, generate income from energy exports and promote the rational use of energy.

8.2. The organisation model used by the energy sector in the European Union is a sound example, provided the following truths are accepted:

— The energy model used by the European Union has evolved over several decades from majority state ownership and strict government control to an open-market model with regulated competition.

— The situation in each of the countries of the southern Mediterranean is quite distinct and transferring the current model used by the European Union must be a long-term aim based on a variety of approaches that will not necessarily involve the creation of an internal Euro-Mediterranean energy market in the short term or even in theory.

— Hand in hand with the progress made on liberalisation of the energy sector, it will be important to safeguard all missions of common interest implemented by the energy sector. The European Economic and Social Committee has not yet seen this aspect reflected in any official documents dealing with Euro-Mediterranean cooperation. To ignore this aspect will lead to major social disputes and the possible stagnation of the entire process.

8.3. Nonetheless, the cautious, gradual approach and social dimension considered to be essential by the Committee must not overshadow other aspects that will enable consensus to be reached as to the direction any Euro-Mediterranean energy policy should take. These aspects are:

— the need to create solidarity in the energy sector by strengthening both bilateral and regional cooperation. The national dimension of sectors such as energy is limited;

— the need for energy policies that promote rational use of energy above all else, which support renewable energy sources as much as possible and which include the combined aspect of water and energy which is relevant to all of the countries of the Mediterranean to a greater or lesser extent;

— the need for fiscal policies that comply with these objectives and eliminate unnecessary subsidies, including those of a social nature, which cannot be sustained in the longer term and which discourage those types of consumption that offer low added social and collective value;

— the need to integrate the protection of the environment into all energy projects and in particular to apply the same criteria used within the European Union to those projects which the Union considers to be of a priority nature, including the Trans-European Energy Networks.

9. Harmonisation of legislative and regulatory frameworks

9.1. As already indicated under the previous point, the harmonisation of legislative and regulatory frameworks must not be seen as an end in itself but rather as a means of obtaining true Euro-Mediterranean partnership in the energy sector.

9.2. Accordingly, harmonisation of the legislative and regulatory frameworks must begin with those aspects that will promote the sustainable energy policies already drawn up beforehand. In other words, we should not endeavour to create an energy market based on the EU model in the southern part of the Mediterranean region with immediate effect. First of all, legal frameworks must be set up that are adapted to the circumstances of the countries concerned and are compatible with the current strong growth of the energy sector fed by the population increase and higher expectations. Such frameworks will also enable the countries involved to export any surplus energy to the European Union.

9.3. Regulatory frameworks such as that used in Europe from 1950 to 1990, established in line with the phases of strong growth experienced by the energy sector and based on a system of territorial concessions granted under the aegis and supervision of the government authorities, need to be opened up to private initiative and investment. The experiences of other regions of the world, such as Latin America between 1970 and 1990, show that a public-sector monopoly of the energy sector does not guarantee supply in the face of growing demand; rather it serves only to attract international capital which is swallowed up by the receiving state and does not benefit other sectors which are unable to guarantee similar returns.

9.4. The framework eventually established will nonetheless need to sustain in their entirety those projects of general interest currently being carried out by the energy sector in the countries concerned, taking as its reference the past experiences of the EU. Were the energy market to be opened up, even partially, without maintaining public service obligations — especially the obligation to provide a universal service — the result would be social discontent and potential failure of the model within a few years.

9.5. An effort must also be made to (a) create a framework for the protection of foreign investment so as to eliminate political risks, bring down the cost of the new installations — and, with that, the energy supply — and provide added value for the general public, who would pay less for the energy they need, and (b) support the development of new economic activities. In this respect, it would be both possible and desirable to define a framework within which to harmonise all legislation concerning investments so as to eliminate any competition not justified on purely technical and economic grounds.

9.6. Similarly, the harmonisation of fiscal policies used to promote or penalise specific sources and uses of energy could be advantageous. A common model could be chosen based on the harmonisation of tax bases and procedures, without removing the freedom of each country to determine the individual rules to be followed in each category. This approach would eliminate fiscal competition, which is not desirable in the long term.

9.7. Finally, it will be necessary to guarantee the transparency and stability of the legal and regulatory frameworks. With this in mind, it would be advisable to prioritise specific projects, organised via the MEDA programme, to suitably prepare those responsible for drawing up and applying the legislation. The wealth of experience of the countries of the European Union will enable a training and shared experience scheme to be chosen for each country that is best adapted to its specific needs. The training and twinning projects run by the European Institutions and national socio-economic partners and governments will be of particular importance in this respect

10. Development of a joint position in international bodies

10.1. In the light of recent world events, it is becoming increasingly clear that both the European Union and the countries of the southern Mediterranean must work together actively to promote a multipolar world in which consensus and respect for international law are upheld.

10.2. Given that the energy problem has a global dimension, that every consumer country needs a producer country, that for every country that reduces its energy consumption there is another ready to increase it, and that for every exporting and importing country another transports energy across its land or waters, it is indispensable for a clear position to be adopted in all international bodies.

10.3. The development of sustainable energy policies, based on rational energy use and encouraging renewables, will help to prevent climate change. The creation of new, safer infrastructure minimises the impact of much more hazardous methods of transport on the environment. By further developing the use of renewables and promoting the efficient use of water we are not only generating decentralised wealth but also preventing phenomena that lead to migration.

10.4. It would thus seem possible:

— to involve the countries of the Mediterranean in the Clean Development Mechanisms outlined in the Kyoto Protocol as far as possible;

— to establish a joint position within the IMO to push for the use of the Mediterranean Sea only by vessels that comply with the required safety conditions and are subject to uniform controls at all ports of that sea;

— to promote the use of renewable energy sources via adequate transfer of technology and the development of industrial activities at local level. Initiatives such as the Marrakech Declaration should ensure that all the countries of the Mediterranean participate in the Johannesburg Renewable Energy Coalition.

11. **Realistic priorities for the energy partnership**

11.1. As analysed under point 2.1, the existence of six objectives and 24 priority actions for the energy sector would seem ambitious. The Committee would strongly recommend further prioritising these. The following criteria could be used for this:

11.2. Criteria for the definition of priorities in the energy partnership:

— Autonomy of the proposed measure: Can the proposed measure be adopted on its own or does it require the adoption of another measure or action first?

— Contribution to the partnership: Does this measure have a primarily North-South dimension or is this dimension combined with a major impact on the South-South dimension?

— Responsibility for implementation: Does this measure or action have to be carried out or implemented solely by the public authorities or does it require private initiative participation? In the latter case, are there any firm declarations of interest from the private sector?

— Cost effectiveness: What impact will the proposed measure or action have on ordinary citizens in the short and medium term? Will the outlay by the public sector be adequately repaid in economic and social terms and will the results be visible to citizens?

— Sustainability: Are the proposed measures or actions self-sustaining or will they require regular financial top-ups or further regulatory action? In environmental terms, do these measures comply with the sustainability principles reaffirmed in Johannesburg?

11.3. The Committee does not of course regard itself as qualified to establish the priorities itself, but thinks that on the basis of these criteria the 24 priorities proposed by the energy ministers should be placed in various categories, thus avoiding an excessive dissipation of effort which prevents the success of this Euro-Mediterranean energy initiative.

12. **Conclusions**

12.1. Euro-Mediterranean cooperation in the energy sector is a key plank in both boosting overall energy supply security for the Mediterranean region and making the most of the energy resources of the southern Mediterranean countries, so that instead of merely a source of export revenue they become a mainstay of their productive economy.

12.2. Such cooperation provides a unique opportunity for creating joint infrastructure and projects between the countries of the southern Mediterranean themselves, thus fostering the concept of shared prosperity based on the joint exploitation of resources and use of territory for the transit of these products or for the creation of interconnected energy networks which make it possible to develop integrated sub-regional energy markets.

12.3. Hence it is clear that major progress has been made on Euro-Mediterranean cooperation in the energy sector: obstacles have been identified, a set of priority actions has been adopted and governments have been made aware of the issues involved.

12.4. Nevertheless, it must be pointed out that the obstacles to be overcome are still considerable and centre around the following four aspects:

— Effective harmonisation of the regulatory framework and its administrative application, tailored to the priorities and different national situations, so that we have a genuine collective partnership and not ad hoc, bilateral actions.

— Substantial expenditure mainly provided by private capital and companies who first have to be guaranteed a stable legal framework effectively supervised by the public authorities.

— The traditionally weak regional cooperation between the countries of the southern and eastern Mediterranean.

— Involvement of the people, especially around the southern and eastern shores of the Mediterranean, explaining the projects and the overall results expected, so that the benefits for the population in general and for energy consumers can be seen and possible reservations overcome.

12.5. Effective harmonisation of the regulatory framework should focus on aspects such as reciprocal protection of investments, harmonisation of energy taxes geared towards environmental sustainability, agreements for the transit of energy products and ratification of the concept of services of general interest in the energy sector.

12.6. Nevertheless, the Committee regards it as unnecessary to concentrate in the short term on building up an internal energy market in the southern Mediterranean countries based on the present EU model and linked to the Union's own internal market. Although such an internal energy market may be a long-term objective, the EESC thinks that in the short term individual strategies need to be adopted tailored to the situation in each country or specific region. Such strategies should avoid all forms of fiscal and administrative discrimination, promote the objectives of a sustainable energy policy and not impede the principles of Euro-Mediterranean cooperation in the energy sector, especially with regard to free transit, openness to private initiative and non-discrimination on grounds of nationality.

12.7. Once the transparency and stability of the regulatory framework have been established, it will be much easier to ask the private sector to undertake projects previously identified as of 'common Euro-Mediterranean interest' and which will give a significant boost to south-south cooperation. This will first require the public authorities and institutions to fund the detailed studies needed for an economic and social assessment of the projects of common interest and a decision to be made on which of them, on account of insufficient profitability or high risk, may require public-sector support in the form of subsidies or loans. Finally, wherever possible other multilateral bodies such as the World Bank and the RDB should be involved. In this respect, the European Commission is currently revising further the planned trans-European energy network projects and hopes to include various south-south network initiatives.

12.8. A major effort is needed right now to impress on the people of the southern and eastern Mediterranean countries the necessity of framing energy policies which encourage the efficient use of energy and water and boost the use of renewable energy sources; they should be assured that energy will continue to be regarded as an essential service and subject to a public service obligation. Only when this objective is attained will it be possible to inform people that national energy surpluses can be used outside their country and hence that Euro-Mediterranean cooperation in the energy sector and in the development of infrastructure and production and distribution facilities is the appropriate means of properly exploiting these possibilities.

12.9. The EESC, through its links with civil society in these countries, can initially be instrumental in channelling this process which would later have to extend at local level to all economic and social players across society. To this end the EESC recommends the creation of a specific programme, within the framework of EUROMED, to disseminate these ideas and projects among national and local public administrations and the media, thus strengthening any training and twinning projects.

Brussels, 29 October 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 widespread introduction and interoperability of electronic road toll systems in the Community'

(COM(2003) 132 final — 2003/0081 (COD)) [1]

(2004/C 32/06)

On 13 May 2003, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 71(1) of the Treaty establishing the European Community, on the above mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 October 2003. The rapporteur was Mr Levaux.

At its 403rd plenary session held on 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion by 117 votes to three, with four abstentions.

1. Aim of the Proposal for a Directive

1.1. The Commission published the following two documents together on 23 April 2003:

— a communication entitled 'Developing the trans-European transport network: Innovative funding solutions-Interoperability of electronic toll collection systems';

— a Proposal for a Directive on the widespread introduction and interoperability of electronic road toll systems in the Community.

1.2. In chapter 4 of its opinion on the revision of the list of trans-European network (TEN-T) projects up to 2004 [2], the Committee examined the contents of the funding section of the abovementioned communication. In this opinion the Committee will therefore confine itself to outlining the main observations and proposals made in its earlier opinion. Furthermore, the funding section of the abovementioned document will be examined by the Committee once again in its own initiative opinion entitled Preparing transport infrastructure for the future — financing — planning — new neighbours.

1.3. In its explanatory memorandum to the Proposal for a Directive, the Commission points out that electronic road toll systems were introduced in the 1990s on motorways operated under a concession, where the toll serves to finance motorway construction and maintenance. The aim was to speed up the time required to pass the toll collection points. The collection of tolls causes congestion, delays, accidents and incidents as a result of subscribers being separated from occasional users. An electronic toll collection lane can handle between 200 and 300 vehicles an hour, depending upon the lane's configuration, i.e. twice as many vehicles as a lane fitted with a credit card machine or manual toll-collection equipment.

1.4. Italy, France, Portugal, Switzerland, Slovenia and Norway have national electronic road toll systems but these are incompatible. Electronic road toll systems are now widely used throughout Europe to regulate either traffic in particular areas or certain categories of vehicle (HGVs in Germany, Austria and Switzerland).

1.5. Several techniques are to be employed (GPS/Galileo, EGNOS and microwave technology), thereby creating real problems for users travelling in Europe. In the Commission's view, there is thus an urgent need for operators to provide international transport drivers with electronic boxes capable of reading all the systems used in Europe.

1.6. The aim of the Proposal for a Directive under review, which was announced in the White Paper on the European transport policy for 2010, is to 'lay down the conditions necessary for a European electronic toll service to be put in place as soon as possible on all parts of the road network subject to tolls', on the basis of the principle of 'one contract per customer, one box per vehicle'.

1.7. The Commission points out that by assuring the interoperability of toll systems in the internal market, the Directive will facilitate the implementation of a Europe-wide infrastructure-charging policy. Furthermore, the recommended technologies will be able to cover all types of infrastructure (motorways, roads, bridges, tunnels, etc.) and vehicles (HGVs, light vehicles, motorbikes, etc.).

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[1] The Commission document also contains a Commission communication entitled 'Developing the trans-European transport network: Innovative funding solutions — Interoperability of electronic toll collection systems'

[2] CESE 1174/2003, adopted on 25 September 2003.

1.8. The Commission adopts a pragmatic approach in proposing two solutions for achieving interoperability:

— a short-term solution (for the period up to 2005), designed to take account of projects in the pipeline in a number of Member States;

— a long-term solution (for the 2008-2012 period), designed to provide a general system. The aim is to deploy the European service from 2005, in the case of HGVs, buses and coaches, and from 2010, in the case of cars.

1.9. The cost of the equipment for one vehicle should ultimately be between EUR 20 and EUR 50.

2. General comments on the Commission communication entitled: 'Developing the trans-European transport network: Innovative funding solutions — Interoperability of electronic toll collection systems'

2.1. The Committee has, as indicated in point 1.2, already stated its views on this subject in an earlier opinion [1].

2.2. The Committee joins the Commission in deploring the reasons for the stagnation of the trans-European transport network (TEN-T) (lack of political will on the part of decision-makers in the Member States, shortage of TEN funding, vast number of separate bodies responsible for the projects). The Committee has noted with interest the solutions proposed by the Commission; these solutions are based on two main pillars, namely:

— better coordination of public and private financing of the TEN-T, and

— an effective European electronic toll service.

2.3. The Committee does, of course, support the Commission's objective of improving the coordination of public financing at regional, national and EU level. The Committee agrees, however, with the Commission that this will be a difficult task as a balance will have to be struck between different priorities which do not necessarily fit in with each other. Such difficulties are in fact inherent in a policy of co-financing infrastructure, where each of the parties negotiates its participation in the light of the local, regional or national interests which it represents, sometimes neglecting the general European interest. The Committee therefore thinks that the existing financing arrangements need to be optimised by strengthening them and coordinating them more effectively. However, this goal ties in with the existing system and does not represent anything really new.

2.4. On the subject of public-private partnerships (PPPs), the Committee agrees with the Commission's assessment as regards the limitations of wholly private funding of major infrastructure projects. Joint financing cannot, however, be the sole solution, since private investors quite rightly insist on receiving guarantees and making a definite profit on their investments. This puts up costs. Other considerations also have to be taken into account:

— for each TEN-T project involving several European countries a 'European company' should be set up in order to bring the necessary transparency to the financing arrangements for the project;

— a PPP cannot reasonably be arranged unless there is a balance between the funding provided by the public and private sectors. It is difficult to imagine a PPP in which the private sector holds only a small minority interest. It is therefore not realistic to envisage that the private sector will be able to provide the funding necessary for the implementation of the majority of the projects;

— limits must be set in order to avoid the unforeseen consequences deriving from a gradual abandonment of the supreme power traditionally vested in states or public authorities in respect of spatial planning for key public infrastructure.

The Committee thinks that PPPs are clearly an interesting proposition for financing transport infrastructure in a number of specific cases; however, they are by no means a panacea.

3. General comments on the Proposal for a Directive on the widespread introduction and interoperability of electronic road toll systems in the Community

3.1. The Committee supports the measures proposed by the Commission with a view to making electronic toll systems in the single market interoperable within a very short space of time. Users should be provided with a system which is both straightforward and simple to use.

3.2. The Committee does however, wonder, what are the objectives of this technical Directive, which has been presented by the Commission as part of a communication seeking to establish innovative funding solutions for the development

[1] CESE 1174/2003, adopted on 25 September 2003.

of trans-European transport networks. Existing and future electronic toll systems provide users with a service to facilitate payment of tolls and to enable traffic to flow more smoothly, but they do not in any way represent a new way of financing TEN-Ts. The introduction of a more effective tool for levying charges does not provide any new resource, particularly in view of the fact that the Commission does not express any views on the use to be made of the income from tolls; each State or region will continue to use this income, in accordance with its own rules, for maintaining and improving its own network, without taking account of the requirements imposed by the increase in EU traffic and therefore disregarding the general interest.

3.3. The Committee fully understands the Commission's viewpoint that the widespread introduction of electronic road toll systems will make it easier to compare the cost of tolls more effectively. The Committee does, however, highlight the fact that it is hard to imagine harmonisation taking place in this field, as each State continues to be free to determine the level of charge per kilometre travelled in relation to vehicle types and terrain (undulating of flat).

3.4. The European electronic toll service is to be introduced from 1 January 2005, in the case of HGVs, buses and coaches, and from 1 January 2010, in the case of the other vehicles. The Committee has noted that operators will have to make interoperable receivers available to users who want them. It points out that it is very important not to make this equipment obligatory for the following reasons:

— in order to enable users to pay by credit card, for which bank charges are harmonised;

— in order to keep the scheme optional so as to enable operators to continue to perfect their system, with a view to attracting new users;

— in order not to record the whereabouts of vehicles and users at any given time by storing this data; this would infringe the principles of freedom of the individual. The Committee therefore calls on the Commission to draw attention, in an article of the Proposal for Directive, to the principles of freedom of the individual (Charter of Fundamental Rights).

Brussels, 29 October 2003.

3.5. The Committee does not wish to make any comments on all the technical aspects of the Proposal for a Directive and its implementation. In the Committee's view, the proposal as a whole is a balanced proposal.

4. **Conclusions**

The consultation of the EESC comprises two parts:

4.1. Innovative funding solutions for TEN-T projects: the Committee will give its comprehensive view on the financing of transport infrastructures in a separate opinion on this issue before the end of 2003. The Committee draws attention to the fact that, in three different opinions which it adopted in January, June and September 2003, respectively [1], it proposed that a 'European Transport Infrastructure Fund' be set up in respect of such projects. With effect from 2006, the proposed fund would be financed by a levy, in EU-25, of one cent per litre on fuel consumed by all categories of vehicle using roads and motorways in the EU. Over a period of 20 to 50 years, this 'dedicated' fund would make it possible to finance, either directly or through loans, the sums required to establish infrastructure for use by future generations.

4.2. The interoperability of electronic toll collection systems: the Committee endorses the Proposal for a Directive but would like attention to be drawn in Article 3 of the Directive to the principles of safeguarding the freedom of the individual, with specific reference being made to the Charter of Fundamental Rights.

The President

of the European Economic and Social Committee

Roger BRIESCH

[1] Opinion of the EESC on the Proposal for a Council Directive amending Directive 92/81/EEC and Directive 92/82/EEC to introduce special tax arrangements for diesel fuel used for commercial purposes and to align the excise duties on petrol and diesel fuel — OJ C 85, 8.4.2003.
Opinion adopted by the EESC in June 2003 on the Proposal for a Directive of the European Parliament and of the Council on minimum safety requirements for tunnels in the Trans-European Road Network — OJ C 220, 16.9.2003, p. 6.
Opinion adopted by the EESC in September 2003 on the revision of the list of trans-European network (TEN) projects up to 2004.

Opinion of the european economic and social committee on the 'Communication from the Commission on Developing an action plan for environmental technology'

(COM(2003) 131 final)

(2004/C 32/07)

On 25 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 Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 October 2003. The rapporteur was Mr Nilsson.

At its 403rd plenary session on 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion by 116 votes to 3, with 5 abstentions.

1. **Introduction**

1.1. The Lisbon European Council meeting in March 2000 established what is now known as the Lisbon Strategy: to develop 'the most competitive and dynamic knowledge-based economy in the world'. The Stockholm Council meeting in March 2001 called for an investigation into how the environmental technology sector might contribute to growth and employment. The June 2001 Council meeting in Gothenburg set out the 'strategy for sustainable development'. All the above underpin the Commission's ongoing efforts to frame a strategy and action plan for environmental technology.

1.2. The Commission's work is divided into three stages. The first was a report presented in March 2002 on Environmental Technology for Sustainable Development ([1]). The second is the present communication on Developing an action plan for environmental technology. The third stage is the action plan that the Commission intends to present by the end of 2003. This procedure includes an interactive phase in which all interest groups are able to submit proposals and ideas for the final draft.

1.3. Environmental technology must be seen as a continuous process that brings together research and development, expertise and practical application. While the market is able to develop the sector on a purely commercial basis, there may be a need for various forms of support to enable it to push ahead with development. The EESC wishes to be a strong player in this respect.

([1]) COM(2002) 122 final.

1.4. The strategy and action plan can also be seen in relation to other Commission initiatives in which environmental technology can provide an important tool, e.g.

— The Commission Communication on Integrated Product Policy, which addresses the environmental impact of products from a life-cycle perspective ([2]).

— The Commission Communication On The Road to Sustainable Production, which aims to coordinate measures to prevent and contain pollution, and where 'best available technology' ties in closely with a future action plan for environmental technology ([3]).

— The Commission Communication Towards a Thematic Strategy on the Prevention and Recycling of Waste ([4]).

1.5. Another important piece of work in this area is the own-initiative opinion currently being drawn up by the EESC. Starting from the premise that there are special obstacles to the implementation of environmental technologies in the new member states, the Committee will address the question of how appropriate small-scale environmental technologies can be used, or their use promoted, in these countries. Particular attention will be paid to an assessment of the EU's aid programmes under the pre-accession programmes and the future use of Structural and Cohesion Fund resources ([5]).

([2]) COM(2003) 302 final, EESC opinion under preparation.
([3]) COM(2003) 354 final, EESC opinion under preparation.
([4]) COM(2003) 301 final, EESC opinion under preparation.
([5]) EESC own-initiative opinion on Prospects and realities for appropriate environmental technologies in the candidate countries under preparation.

2. Gist of the Commission communication

2.1. In its March 2002 report, the Commission defines environmental technologies as 'all technologies whose use is less environmentally harmful than relevant alternatives'. However, the Commission extends the definition from covering only technology that cleans emissions to include technology that prevents pollution during the production process, such as new materials, energy- and resource-efficient production, environmental science and new methodologies. The extended definition thus includes technology and know-how.

2.2. Environmental technology is a growing market both within the EU and internationally. The EU's eco-industries directly provided around 1.6 million jobs in 1999 and supply some EUR 183 billion of goods and services per year. Pollution management and cleaner technologies account for around EUR 127 billion and resource management (excluding renewable energy plants) around EUR 56 billion. In the candidate countries, pollution management and cleaner technologies' eco-industries supply around EUR 10.3 billion of goods and services a year (equivalent to 1.9 % of their GDP). The Commission provides an important contribution to the development of new environment-friendly technologies through the Research Framework Programme.

2.3. Many barriers, such as red tape, higher costs and public attitudes, continue to prevent the full development and use of environmental technologies. In particular, economic barriers are consistently a problem unless true environmental costs are taken into account. Poor access to finance coupled with long investment cycles as well as poor dissemination of new technologies are also issues. Technical barriers show the need for targeted and more effective research efforts. Also, technology entry into the market is slowed down by organisational barriers, and a lack of awareness and skills.

2.4. The Commission has decided to focus on four environmental issues: climate change, sustainable production and consumption, water and soil protection. The work is carried out by four different 'Issue Groups', each dealing with its own specific area. These issues are also linked to the priority areas identified in the 6th Environmental Action Programme. This work will form the basis of the future action plan.

2.5. The Communication is meant to kick off a wide stakeholders' consultation on the barriers holding back the take-up of environmental technologies. All stakeholders have been asked to provide input for the drafting stage, and their responses will help prepare an action plan by the end of the year.

3. EESC comments on the Commission communication

3.1. The EESC endorses the focus of the Commission's efforts to use various means to promote the development and commercialisation of technologies that reduce environmental impact or improve use of resources. Work is ongoing in a number of Member States, but a European approach is needed to achieve optimum success through wider dissemination of best practice. The EESC welcomes the Commission's approach to the action plan, involving an open consultation process in which the EESC, Member State experts and various organisations are invited to take part.

3.2. The EESC believes it is important and extremely positive that the Commission gives a broader definition of environmental technology instead of confining it to 'cleaning' technology. The economic statistics provided by the Commission refer only to the 'eco-industry'. These 1999 figures — which, moreover, need updating — only provide a partial picture of environmental technology's economic potential. The challenge for the environmental technology sector is to gradually improve all production and goods in terms of environmental performance and resources. It is also important to appreciate that a significant number of the rolling improvements and efficiency gains that the industry continues to make have yielded major environmental benefits without the term 'new environmental technology' ever being used. Given that we are striving to achieve sustainable growth, it is important to define environmental technology if we are to be able to support it. The broader definition, in which environmental technology also involves know-how, research and new production methods, thus becomes a necessity.

3.3. The EESC also sees environmental technology as a strategically important business sector for European firms, which can eventually enhance European corporate competitiveness, contribute to economic growth and boost employment. The overall strategy for promoting environmental technology should be to make it profitable for firms and provide value added for consumers.

3.4. Environmental technology promotion measures provide a back-up instrument that dovetails with other instruments. Other environmental instruments such as tax and regulations often increase costs for businesses and can impair their international competitiveness in the short term. European corporate competitiveness must be improved if the Lisbon strategy objectives are to be achieved. Consequently, promotion of environmental technology is a positive step, since it will enable us to secure environmental gains whilst maintaining or even improving competitiveness.

3.5. The four issue groups would seem to be a relevant choice since they represent the three basic elements of air, water and earth, and the societal activity of production and consumption. The EESC does not believe, however, that 'air' should be restricted to climate change, as all air emissions pose a considerable environmental problem and major environmental technology development and business opportunities are most certainly to be found in other air-related environmental issues. It is also important to realise that these areas impact on other areas and that solutions and innovations must also be able to cope with the horizontal perspective. The Committee also calls for the contribution of environmental technologies to noise prevention to be included in the work as soon as possible.

3.6. In a scenario in which environmental technology is being developed and commercialised in the Community, it is important to manage exports from earlier (and from an environmental standpoint, worse) production processes. For example, there might be legislation that makes a certain product profitable in the EU, but for which older technology is more profitable in third countries, and therefore the most widely used. This reduces environmental gains and restricts opportunities for exporting the new technology. Consequently, international cooperation on the environment should also continue to push for optimum harmonisation for environmental development, whilst third countries and, more especially, developing countries must be provided with expertise and real opportunities to harness the technology.

3.7. The development and commercialisation of environmental technology should be bolstered through various forms of support. In a scenario in which environmental technology is pushed through by means of robust economic or legislative instruments, there is a risk of it leading to reduced export potential, and to production being transferred beyond European borders where restrictions are less severe. In practice, this would lead to fewer overall environmental gains and to Europe exporting its environmental problems to other countries. The EESC feels this is morally dubious. Moreover, it would reduce growth potential.

3.8. Public procurement is a major player and can be readily used to develop environmental technology and exploit it commercially. It should be made clear that it is possible and desirable for tender documentation to include explicit environmental requirements. The environmental impact of a product should be assessed from a lifecycle perspective that includes all impacting factors, e.g. transport. It must be possible to ensure that new environmental technologies really do offer an improvement over existing technology. The Member States should also be able to arrange specific technology tenders to encourage firms to develop their products, in exchange for the 'winning' concept securing more orders, as has been done successfully in some countries. According to the Commission Communication on Integrated Product Policy, legislation on public procurement provides ample opportunity to include an environmental perspective in calls for tender, and the real challenge is for the purchaser to exploit existing opportunities. The EESC believes that both the Commission and the Member States should be at the forefront in meeting this challenge.

3.9. The efforts of the Commission, aided by the issue groups, to identify the various barriers to continued development, are important. Stakeholders are best placed to describe the obstacles they experience.

3.10. The EESC would like to see the action plan suggest how the European and national level can continue to identify barriers and get to work on removing them. In many cases, large scale technical research is needed to achieve environmental gains, e.g. development of fuel cells for vehicles. However, work is also needed on problem areas for smaller firms and for small-scale environmental technology breakthroughs. Providing SMEs with support for environmental investment could be a suitable way of encouraging development.

3.11. As the Commission has pointed out, there are legal and administrative obstacles to developing environmental technology. The European Ombudsman is investigating complaints about administrative shortcomings within the EU's institutions and bodies. An administrative shortcoming occurs when a Community institution omits to act in accordance with binding Community legislation. Whilst legal obstacles to developing environmental technology can hardly be considered a matter for the European Ombudsman, the EESC would like the Commission to suggest where or to whom individual firms (large or small) might turn if they feel that either a piece of legislation or action on the part of the authorities is impacting negatively on the environment. This 'environmental ombudsman' should not only ascertain whether the authorities have complied with legal requirements, but also identify any shortcomings in existing regulations. The EESC suggests that the Commission should investigate the case for establishing an ombudsman in this area.

3.12. The Commission communication gives an update of current research. The EESC would stress the importance of research, and the need for it to take place in close cooperation with stakeholders. Companies and their organisations must be involved when research funds are being earmarked for their field. Corporate research efforts are crucial for product development and innovation, but EU research programmes also highlight the difficulties that small and medium-sized enterprises come up against in this area. The action plan should

place great importance on developing models for corporate applications of environmental research.

Production and consumption

3.13. The EESC notes that the Commission focuses on waste-management issues in production and consumption. The Committee feels, however, that there is more to this area than waste issues. If the latter are to be addressed, the policy focus must be on reducing the amount of waste produced, more recycling for any remaining waste, and recovery of materials and energy. Experience from countries such as France has shown that transport and, consequently, energy requirements rise if unsuitable waste-sorting systems are put in place. Product development should therefore be encouraged to use materials in a resource-friendly manner. Similarly, waste issues must be addressed from a local/regional perspective in which solutions are assessed in terms of overall environmental benefit.

3.14. If environmental technology is to be a successful factor in achieving better, cheaper processes, treatment and know-how, that impact less negatively on the environment, then new methodologies and techniques will have to be looked at from a lifecycle perspective. A lifecycle analysis for goods and products provides a good understanding of how and where environmental damage occurs in the production chain. New technology must use a comprehensive approach to show that products and methodologies really can provide across-the-board environmental gains. Consequently, the Commission should include such an approach in its future work on an action plan for environmental technology.

3.15. The EESC notes the fact that the Commission has produced a Communication on Integrated Product Policy (IPP) [1] which can play an important role in developing environmental technology. For other EESC comments on the IPP communication, the Committee would refer to its opinion on the subject.

3.16. The Commission mentions ongoing research to persuade the public to adopt a more resource-based approach and to focus on quality rather than quantity. This is the correct approach and would have an immediate, major impact if individuals could see the significance of their own behaviour in a wider context. The EESC would also underline here, the problems in deciding what the consumer should understand as quality. It is not up to society to interfere and decide what should be understood as 'quality', or when quantity becomes negative.

3.16.1. On the other hand, a product-labelling system could be developed to give consumers the information they need to make an informed decision on environmental performance, including criteria such as taste, colour, size, image, price, accessibility and function. A common labelling system already exists for white goods. These labels tend to focus on energy efficiency, although they also include criteria such as noise levels, wash efficiency and water consumption. For office equipment, there is a labelling system for energy consumption.

3.16.2. In the section on climate change, the Commission writes that public-awareness campaigns are an important factor in cutting emissions. In order to enhance the effectiveness of such campaigns, the consumer needs to be able to use this new information constructively when making different types of purchase. The EESC therefore suggests that the action plan should state how existing product-labelling systems might be extended to partially include other groups of product.

3.16.3. A wealth of experience also shows that market developments can drive through rapid, major change just as successfully as regulation and legislation. For this to happen, consumers and purchasers must be informed and critically aware. Consumer organisations should be given a bigger role in disseminating knowledge and information. The Commission refers to an example of good practice in which industry has replaced chlorine bleach in paper production with other more environmentally-friendly methods that do not use chlorine. This is, however, more an example of a demand- and market-driven shift towards more environmentally-friendly production. Industry had long argued that it was difficult or impossible to change the production process, but as the market required paper manufacturing to be chlorine free, these new processes and methods began to take shape, with the result that chlorine bleach is no longer used in paper production.

Water

3.17. Turning to the 'water' issue group, the focus is on waste and sewage-sludge treatment. The Commission points out some key research areas that are relevant but wide-ranging. Two very important strands of research should also be mentioned:

— the impact of materials in contact with water, bearing in mind that tests recognised by all Member States would be helpful, as would a single EU standard for conformity of materials;

— real-time analysis, which would permit almost instant reaction to incidents.

[1] COM(2003) 302 final.

3.18. With regard to the obstacles, the Commission laments the somewhat conservative approach to technology of public and private actors in the water sector. This is doubtless due to the way the contract documents are drawn up, often with very specific requirements and leaving little scope for innovative or recourse to consultants, who tend to recommend tried and tested technology. More widespread use of performance tenders would doubtless lead to greater use of more innovative technology.

3.19. The EESC notes that considerable investments remain to be made for the installation of new sewage plants and new networks capable of implementing the objectives of the Waste Water Directive. Therefore, the EESC supports the focus on waste water and sewage-sludge treatment. The EESC also believes that the basic question should be whether the systems currently in use — whereby we use clean water as a means of transport, and mix household and industrial pollution together — are the right ones, or whether we should seek new systems for the sake of long-term sustainability. In the short term, however, environmental technology can help achieve lower material flows and cleaner emissions, but there is also a risk of maintaining structures that are less than environmentally friendly.

Climate change

3.20. One way of complying with the Kyoto Protocol is to step up use of biofuel, and the Commission communication refers to previous proposals to encourage the development of such fuels. The EESC would point to two examples that are of considerable practical importance to the development of biofuel, yet which the proposal sees as hindering it.

3.20.1. In its proposal for a new agricultural policy ([1]), the Commission suggested that it should no longer be possible to use set-aside land to grow crops for biofuel use, for example. This would have led to a drastic reduction in biofuel production. The EESC argued against this in its opinion ([2]) on the subject. The Council followed the EESC's suggestion at its meeting in June 2003, so it will continue to be possible to grow biofuel crops on set-aside land. In addition, a carbon-dioxide premium for growing biofuel crops will also be possible under the common agricultural policy. The agricultural sector is also developing more precise methods and systems that make more accurate use environmental technology in order to reduce chemical use and make more efficient use of nutrients.

3.20.2. Under the proposed directive to give Member States the option to make biofuel exempt from duty ([3]), the exemption must only apply six years at a time. This means that investment in biofuel plant is less certain, as write-off time is considerably greater than six years. Longer term financial certainty would make investment a more attractive prospect and encourage environmental technology. The EESC calls on the European Parliament and the Council to bear this in mind in the current deliberations.

3.20.3. Large amounts of carbon dioxide are continuously seeping into and accumulating in the ground. The balance between accumulation and breakdown of organic material determines whether there will be carbon-dioxide emissions or net absorption. In order to shore up efforts to reduce greenhouse-gas emissions, we need to study the potential for sequestering carbon dioxide in organic carbon sinks, and the action plan should mention ways of exploiting this commercially in agriculture and forestry.

Soil protection

3.21. The Commission communication's treatment of soil protection is limited. The EESC hopes that the somewhat delayed thematic treatment of soil protection will result in concrete proposals for environmental technology. We can also see how closely related the soil and air issues are when, for example, air-borne acid emissions pollute the ground. There is also a strong connection with climate change, since one of the greatest threats to the planet is the loss of organic materials, which also leads to emissions of carbon dioxide — a greenhouse gas. The EESC would therefore stress once again the importance of development in this area, and the need for all issue groups to be included in a horizontal strategy.

4. **Conclusions**

— The EESC endorses the Commission's plans for a European initiative to develop and support environmental technology, and its choice of four thematic areas: climate change, sustainable production and consumption, water and soil protection.

— The EESC endorses the broader definition of environmental technology as encompassing knowledge, research and production techniques.

— Environmental technology can be developed into a strategically important business sector if European corporate competitiveness is enhanced in line with the Lisbon Strategy.

([1]) COM(2003) 23 final — CNS 2003/0006.
([2]) EESC opinion 591/2003, OJ C 208, 3.9.2003; pp. 64-71
([3]) COM(2001) 547 final, OJ C 103, 30.4.2002.

— Development and commercialisation of environmental technology should be enhanced through various forms of support, rather than through economic and legislative requirements that might hinder exports and lead to production being moved to third countries.

— Public procurement can already be exploited to encourage demand for products and services with an environmental technology slant.

— Support can also be provided in areas that create problems for smaller firms, and for small-scale environmental technology successes, perhaps through investment support.

— The EESC suggests the Commission should indicate to whom or where individual firms can turn in order to draw attention to any obstacles posed by legal frameworks or authorities that lead to environmental deterioration.

— Waste issues must be addressed from a global perspective in which solutions are also assessed from the local and regional standpoint.

— Life-cycle analyses must be used to assess whether a new environmental technology is likely to yield environmental gains.

— The EESC would stress the difficulty in establishing what consumers consider to be quality or otherwise, and that it is not up to society to decide what constitutes 'quality', or when quantity should be considered a negative factor. A product-labelling system is preferable.

— The EESC believes that market-driven development often leads to change just as quickly as when change is a result of regulation and legislation. Consumer organisations can play a significant role here.

— In the main, clean water must owe its existence to a lack of pollution in the first place. In the short term, environmental technology can help to achieve cleaner emissions.

— The EESC notes that there are still obstacles to ensuring long-term stability for biofuel production.

Brussels, 29 October 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 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants',**

— **the 'Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants', and**

— **the 'Proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC'**

(COM(2003) 331, 332, 333 final — 2003/0118-0117-0119 (CNS))

(2004/C 32/08)

On 10 and 11 July 2003, the Council decided to consult the European Economic and Social Committee, under Articles 95 and 175 of the Treaty establishing the European Community, on the

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 October 2003. The rapporteur was Ms Cassina.

At its 403rd plenary session (meeting of 29 October 2003), the European Economic and Social Committee adopted the following opinion by 122 votes to 1, with 5 abstentions.

1. Background and content of the proposal

1.1. Persistent organic pollutants, generally referred to as POPs, are chemical substances that resist degradation under natural conditions and that when released into the environment are transported by the elements (wind, rain, water, etc.) or animals far from their point of emission. Such pollutants bio-accumulate through the food web and present a definite risk to human health and to the environment. Their adverse effects, whether near or far from the point of emission, are now well-demonstrated and universally recognised.

1.2. Arctic ecosystems are particularly vulnerable owing to the phenomenon of biodiffusion, but the risk is present across the planet and the international community embarked some time ago on the task of eliminating such pollutants, by banning their production, marketing and use by given deadlines.

1.3. Two instruments established by the international community now represent the reference point in this campaign:

— The UNECE Protocol, to which any party to the UN Convention on Long Range Transboundary Air Pollution (CLRTAP) ([1]) that wishes to participate may accede, was adopted during the special session of the CLRTAP Executive Body held in Aarhus (Denmark) in June 1998. This protocol was signed by the Community and all its Member States on 24 June 1998. It concerns 16 substances comprising eleven pesticides, two industrial chemicals and three unintentional by-products, and has entered into force on 23 October 2003.

— The Stockholm Convention was adopted in May 2001 with active involvement of the European Community and was signed by the EC and all its Member States on 22 May 2001; this convention governs a global programme for 12 substances recognised as POPs, with specific reference to application of the precautionary principle, and fixes rules for gradual extension of the convention to other substances that exhibit the characteristics of persistent organic pollutants and on which global action is needed. Around ten more parties must ratify the Convention before it can come into force.

1.4. In tandem with its proposal for a Regulation on POPs ([2]), the Commission has proposed that the EU ratify the two above-mentioned agreements, by adopting the following:

([1]) UN Convention on Long Range Transboundary Air Pollution, signed in 1979 in Geneva.

([2]) Proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC – COM(2003) 333 final.

— the proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants ([1]);

— the proposal for a Council Decision concerning the conclusion, on behalf of the European Community ([2]), of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants.

1.5. The present opinion concerns above all the proposed Regulation, with the two proposals for decisions mentioned only in point 6.

2. Limits of the current Community legislation in force

2.1. Among other legislation, the following restrictions apply in the EU to substances defined as persistent organic pollutants (POPs):

— the restrictions set out in Directive 79/117/EEC ([3]), which prohibits the placing on the market and use of plant protection products containing certain active substances;

— the provisions concerning the use of PCBs (polychlorinated biphenyls) set out in Directive 76/769/EEC ([4]) on the restriction of such substances and dangerous preparations.

2.2. The specific exemptions granted in these directives are much broader than those contained in the two conventions: ratification of the conventions by the Community therefore requires a re-alignment of Community legislation in this sphere.

2.3. The other more obvious shortcomings of the present system include:

— the lack of a ban on the production of chemicals with recognised POP characteristics; in effect, most of the provisions concerning such substances only impose a ban (in some cases only partial) on marketing and use;

— the lack of a regime prohibiting the production of new substances recognised as POPs that might in future be added to the lists either of the UNECE Protocol or of the Stockholm Convention.

2.4. Thus an evaluation of the Community legislation currently in effect shows that despite the albeit important commitment that the various legislative instruments represent in the environmental sphere, these are not adequate to fully implement the provisions of the Protocol and the Convention, and so to guarantee the objective of protecting human and animal health and the environment from the effects of products with POP characteristics.

3. Summary of the main proposals contained in the draft Regulation

3.1. The proposal for a regulation on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EEC is intended to implement certain provisions contained in the UNECE Protocol and the Stockholm Convention, while bringing previous Community legislation into line with the Protocol and the Convention by amending Directives 79/117 ([3]) and 96/59 ([5]). This proposal would ban the production, use and placing on the market of substances listed in the two international agreements.

3.2. In addition, the proposal contains some key features that represent an improvement on the international agreements in question, namely:

— the removal of exemptions for 'limited use' granted for certain substances in the international agreements;

— more binding rules and/or provisions for the disposal of stockpiles and waste;

— establishment of a procedure involving a regulatory committee, which will allow the Commission to add other chemicals exhibiting POP characteristics to the list of restricted or prohibited substances, within one year at the most of their being entered on the list of controlled or banned substances under the Convention or the Protocol;

— replacing the provisions of Directive 79/117/EEC with respect to restrictions imposed on eight pesticides and amending Directive 96/59/EEC with respect to the disposal of PCBs.

([1]) COM(2003) 331 final.
([2]) COM(2003) 332 final.
([3]) OJ L 33, 8.2.1979.
([4]) OJ L 262, 27.9.1976.
([5]) OJ L 243, 24.9.1996.

4. General comments

4.1. The EESC welcomes the Commission's initiative to adjust Community legislation with a view to ratification by the Community of international instruments designed to combat persistent organic pollutants. It appreciates the further tightening-up of legislation to reflect the precautionary principle. This is in line with the decisions taken in relation to the VIth Environmental Action Programme and is also consistent with the political declaration made at the World Summit on Sustainable Development in Johannesburg.

4.1.1. The EESC therefore hopes that the proposed regulation and decisions will be adopted as soon as possible, so that the Community can accede to the international agreements in question, perhaps even before they enter into force [1] and certainly in time for the Community to take part in the first conference of the parties that will be held within one year of the Convention taking effect.

4.2. Two aspects of the proposal for a regulation are of particular importance: the possibility of adding substances that can be identified as exhibiting POP characteristics and the strict limits imposed on the possibility of exemptions.

4.3. The EESC appreciates the use of national plans and a Community plan which will lead the Member States to constantly address the issue and take timely action to combat these dangerous substances and their effects. The coordination and synergies promoted by the Regulation between the efforts of the Member States and the Commission are also to be welcomed, and the Committee is pleased to note that this is not just a possibility or a hope, since positive cooperative efforts are already under way, also in a regional and transboundary framework, based on Community programmes [2]. Bringing measures to promote sustainable development within the Community framework, even when they are carried out in a specific region, ensures synergies between the Member States and thus both protection of the environment as a whole and of the single market from distortions.

4.4. It is still very difficult to ascertain infringements by individuals and companies, however, and it would therefore be useful to provide for specific networking of national verification and monitoring instruments, and to promote special training of staff employed to carry out checks, on the basis of trans-national and Community initiatives.

4.5. The penalties imposed for infringements of the rules governing POPs (depending as they do on the investigative and judicial instruments of the Member States, albeit notifiable to the Commission) should also within a relatively short time be subject if not to standardisation then at least to substantial and voluntary convergence.

4.6. The EESC is concerned about the situation in some of the new Member States that still hold very large stocks of products or articles with POP characteristics awaiting disposal. Funding for eliminating stocks has been guaranteed during the pre-accession phase under various programmes, including ISPA. In the future, the resources and technical assistance needed to assist the disposal of such stockpiles in this part of Europe should be provided through the standard instruments, notably the Structural Funds. This will require constant surveillance by Community institutions, but above all conscientious cooperation by the authorities of the new Member States and an ability on their part to involve social interest groups, NGOs and the general public.

4.6.1. Serious problems are also caused by the use and, in some cases, misuse of substances with POP characteristics in non-member Mediterranean countries. The EESC trusts that Euro-Mediterranean and 'good neighbour' strategies will give priority to the replacement and disposal of these products.

4.7. The EESC also calls for monitoring of the presence of products with POP characteristics to be stepped up and asks that maximum use be made of existing opportunities to earmark resources under the VIth Research and Development Framework Programme to enhance monitoring instruments and techniques for identifying the presence and movements of POPs.

4.8. Finally, the EESC notes that the present proposal for a regulation also became necessary because, despite the broad debate that has developed on the White Paper on Chemicals, it has not yet been possible to act on its recommendations. Regardless of the particular tenor of this opinion, the EESC would like to take the opportunity to ask the Commission to produce implementing proposals soon.

5. Specific comments

5.1. The EESC considers that Article 175 of the Treaty (environmental protection) should be cited first in conjunction with Article 95 (internal market) as the legal basis of the proposal, as has rightly been done in the first recital.

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[1] The Protocol has entered into force in October 2003.

[2] E.g. the Monarpop project (Monitoring Network in the Alpine Region for POPs), an Interreg cooperative project between the Alpine countries.

5.2. Still with reference to the recitals (number eight), the view that it is 'appropriate' to keep using HCH (lindane) in certain Member States is incomprehensible, considering the importance of the precautionary principle in this matter and considering that Decision 2000/801/EC [1] bans its use as a plant protection agent. The EESC asks the Commission to consider very carefully how, where and for what purpose lindane will continue to be used, and thinks that in any case lindane should never be used where an alternative (product or process) exists.

5.3. With regard to Article 5 (stockpiles), the EESC notes that the obligation to notify the authorities only applies to stockpiles over 100 kg. The EESC would prefer this threshold to be reduced (e.g. to 50 kg), but is aware that doing so would produce considerable administrative work for countries and businesses. It therefore calls instead for: a) information campaigns to be mounted to make all holders of such products aware of the risks associated with them; and b) if necessary, provision of technical assistance and advice on safe disposal of waste, even in small quantities.

5.4. Regarding the technical assistance provided by the Commission and the Member States to developing countries (Article 11), the EESC believes that provision should be made to support and involve not just NGOs but also — and explicitly — the social partners.

5.5. Article 13 (penalties) stipulates that penalties should be 'effective, proportionate and dissuasive', and gives responsibility to the Member States for administering and deciding the amount of penalties. The EESC believes that penalties should be as uniform as possible within the EU, but above all that they should be defined according to the same criteria; the concepts mentioned as a general criterion — efficiency, proportionality and dissuasiveness — may be interpreted differently by different countries, making responsibilities and even market forces uneven. To avoid this situation, close cooperation between those responsible for policing and those responsible for imposing penalties is crucially important, and this should be explicitly called for in the proposal.

6. **Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants** [2] **— Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants** [3]

6.1. The above-mentioned proposals are intended to allow approval of the two international instruments in question by the European Community and to determine the procedures for proposing new substances for inclusion in the agreements.

6.2. On the basis of these decisions, the Council will appoint the person or persons empowered to deposit the instrument of approval of the protocol and the convention with the Secretary-General of the United Nations. It will then fall to the EU institutions alone to propose amendments on behalf of the Community.

6.3. The EESC fully supports these two decisions and hopes that they will be approved without delay.

[1] OJ L 324, 21.12.2000.

[2] COM(2003) 332 final.

[3] COM(2003) 331 final.

Brussels, 29 October 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 Regulation of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the area of migration and asylum'

(COM(2003) 355 final — 2003/0124 (COD))

(2004/C 32/09)

On 12 September 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 Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 October 2003. The rapporteur was Ms Cassina.

At its 403rd plenary session held on 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion by 118 votes to four, with two abstentions.

1. Introduction and content of the proposal

1.1. On 11 June 2003, the Commission published a Proposal for a Regulation of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the area of migration and asylum. The overall budget is to total EUR 250 million and the programme will last five years (2004-2008) [1].

1.2. The conclusions of the Tampere European Council [2] set out the concept of partnership with third countries in the field of migration and stressed the need to adopt a comprehensive approach to address political, human rights and development issues in the countries and regions concerned [3].

1.3. In 2001, for the first time, the budget authority included a number of appropriations under Article B7-667 of the general budget of the European Union which were intended to finance preparatory measures in the field of migration and asylum.

1.4. In the present document, the Commission proposes a legal framework and larger appropriations for this instrument for cooperation with third countries in the field of migration. The instrument provides for a multiannual programme (first phase: 2004-2008) of specific and complementary aid for third countries, in order to help them manage all aspects of migratory flows more effectively. It is intended in particular for third countries actively engaged in preparing or implementing a readmission agreement initialled, signed or concluded with the European Community.

2. General comments

2.1. The EESC approves and supports the establishment of a programme with these goals and hopes that the European institutions will waste no time in endorsing it. The EESC would point out that in many opinions [4] on migration it has reiterated the need to operate on two complementary fronts: first, to provide for organic and coherent legislation, procedures, programmes and best practice in order to encourage the legal entry and integration of migrants in the European economic and social context; and second, to engage in close cooperation with migrants' countries of origin. The EESC is convinced that the complexity of the migration situation calls for a clear effort to make a variety of policies work together

[1] This proposal for a regulation follows on from the Communication to the Council and Parliament on integrating migration issues in the European Union's relations with third countries (COM(2002) 703 final).

[2] See points 11 and 12 of the conclusions of the Tampere European Council of 15 and 16 October 1999.

[3] This approach was confirmed at the Seville European Council (points 27-29 of the presidency conclusions) and at the recent European Council in Thessaloniki (points 19-21 of the presidency conclusions).

[4] See in particular the EESC opinions on: the Communication from the Commission to the Council and the European Parliament on a Community immigration policy, in OJ C 260, 17.9.2001; Immigration, integration and the role of civil society organisations in OJ C 125, 27.5.2002; and the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, in OJ C 80, 3.4.2002.

to produce synergy, and welcomes and underscores the responsibility assigned to the Commission for ensuring consistency with other common policies (Article 8).

2.1.1. More specifically, the EU must equip itself with appropriate instruments that will prevent Member States from continually wavering between measures to protect or even close external borders, and attempts to deal with labour shortages on an ad hoc basis by taking on workers from third countries (the labour situation being exacerbated by the bleak demographic situation in EU countries). These instruments must be sufficiently flexible to respond to diverse needs, while at the same time having a Community dimension to ensure they are applied fairly and openly. The absence of such instruments has a negative impact on European workers' perception of the migration situation, which is presented one moment as a necessity and the next as a danger.

2.2. The EESC would stress the need to ensure that measures taken in the two spheres (transparent migration policies and cooperation with the countries of origin) are synchronised and coherent and are geared towards a set of goals embracing both the values and policies of the EU. Unfortunately, there are still gaps in the framework for a common migration policy, owing to the difficulties encountered in winning approval for certain provisions (for instance in the fields of family reunification, visas and long-term residence). These difficulties arise mainly from the refusal of Member State governments to abandon their own migration policies. The EESC regrets this state of affairs and would stress the need to act consistently and responsibly in implementing the decisions made at Tampere, Seville and Thessaloniki. In truth, a lack of procedural certainty and appropriate reception policies do far more than inadequate border controls to encourage illegal immigration. [1] In the absence of a clearly defined visa, entry and integration policy, it is difficult to interpret the proposal for a cooperation programme with migrants' countries of origin in a balanced way, particularly when it comes to the setting of priorities.

2.3. The proposal appears to give priority to readmission procedures (which include enforced repatriation, voluntary repatriation and the return of people who have enjoyed temporary asylum), to the detriment of other measures. A clear information policy is especially important, regarding both legal emigration procedures and the requirements and nature of labour markets in EU countries. Another crucial area is vocational training for potential migrants, particularly when conducted in the context of European companies investing and/or relocating in migrants' countries of origin, without forgetting the need to support social development in these countries and promote respect for basic social standards. Furthermore, the fact that the one proposal covers very diverse aspects of the mobility of third country nationals (economic migrants, refugees, people enjoying temporary protection, illegal immigrants) does not serve to improve its clarity.

2.4. The result of all this is an imbalance in the concept of 'flow management', which is a lot more complex than simply keeping potential migrants in their country of origin or setting up schemes or programmes for returnees. In various opinions on migration [2], the EESC has stressed the need for the dynamic and integrated management of migratory flows (both inward and outward), involving various measures and players.

2.4.1. More specifically, clear information is essential on expatriation procedures, the chances of finding work, vocational and administrative requirements for working in the EU, labour market requirements in host countries, contractual conditions, and measures and opportunities for individual and family integration. It is worth noting that if the prospect of an upsurge in economic growth in Europe becomes a reality, not least through a new move to develop the major infrastructure networks, it will create demand for a large number of workers, a significant proportion of whom might be non-EU nationals. It would therefore be short-sighted to attempt to meet that need under the current diverse and sometimes contradictory national laws. At the same time, it is also possible that the use of subcontracting systems which are not (or cannot be) properly monitored could mean that major Community projects end up employing large numbers of third country workers illegally and with no protection. This would be unacceptable.

[1] Furthermore, the above-mentioned Commission Communication (COM(2002) 703 final) points out that: 'In those cases where comprehensive immigration policies are not yet in place — which is also the case for the EU — workers will find their own (illegal) way to enter the globalised labour market' (point 4.2).

[2] See in particular the EESC opinions on the: Green paper on a Community return policy on illegal residents, in OJ C 61, 14.3.2003; and on the Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents, in OJ C 85, 8.4.2003.

2.4.2. The proposed programme could come into play here, however, in the interests of the Community and of third country nationals interested in emigrating to the EU. The EESC therefore calls for the proposed measures to include at the very least the launch, if only on a trial basis, of a system similar to EURES [1], and involving the social partners in the EU and in the migrants' countries of origin.

2.5. Equally crucial is what can be done in terms of providing potential migrants with training, ranging from language courses to proper vocational training, arranged with the direct involvement of companies that need third country labour. Furthermore, the possibility of traineeships in Europe could mark a major step forward, both providing skilled workers for EU companies and helping the countries of origin to improve their competitiveness so as to be able to attract foreign direct investment.

2.5.1. The EESC understands that the proposed measures are designed to provide direct support for third countries, but it believes that the text can also be interpreted in such a way that certain initiatives could be carried out within the Member States, providing they further the programme's objectives. The Committee feels that this point should be made clearer in the proposal. In any event, it hopes that it might be possible to develop joint training schemes in Europe or other measures designed specifically to underpin repatriation measures by setting up economic initiatives in the third countries concerned, so as to offer job opportunities to returning emigrants. The Committee is aware that a few programmes — based on other joint instruments — already offer some opportunities in this respect, but calls for them to be bolstered and implemented in close synergy with the present programme.

3. **Specific comments**

3.1. The programme is aimed at third countries, but Article 1 (2) states: 'It is in particular intended for the third countries actively engaged in the preparation or in the implementation of a readmission agreement initialled, signed or concluded with the European Community'. The EESC would stress that this reference to third countries that have initialled, signed or concluded a readmission agreement must not be interpreted as an indication of exclusive priority. It notes that the greatest need for assistance may well lie in precisely those countries that have not or not yet signed readmission agreements: for there is often a strong pressure to migrate from countries that are in a state of economic and/or democratic transition, where there is legal uncertainty and where welfare systems and social structures are weak or non-existent. Under these conditions, support aimed at strengthening democracy, by upgrading administrative structures and implementing policies designed to establish fair and efficient social systems that respect basic social standards and encourage the development of organised civil society, would have a particularly positive impact.

3.2. The Committee would suggest amending the third indent of Article 2(2) as follows: 'Structured dissemination of information — modelled on the EURES network — on the possibilities of working legally in the European Union and on the procedures to be followed to this end, and on the contractual, administrative and reception conditions in the various Member States;'. In the ninth indent of Article 2(2) (actions), the EESC calls for an explicit indication that regional and sub-regional dialogue should involve not just the administrations in the countries concerned, but also the social partners. In other respects, this article is to be welcomed as it sets a series of priorities for objectives and actions with which the EESC concurs.

3.3. Article 4 is crucial and should be positioned accordingly. The Committee would suggest either putting it in the place of or combining it with Article 1.

3.4. Article 5 lists the partners eligible for financial support under the programme. The EESC calls for a specific reference to the social partners, which cannot be simply included in the term 'NGOs'. They have specific responsibility in the management of economic migration, which is by far the most common type. In confirmation of the above, Article 6 seems to refer implicitly to the social partners. The EESC finds the predominantly administrative approach taken in Article 6 to be slightly restrictive, however: in the field of migration, adherence to the values listed in the current Article 4 is equally important.

[1] EURES is a system of employment services designed to facilitate the free movement of workers in the European economic area. It operates by means of a network of advisers trained by and in constant contact with the European Commission. They provide workers with information on expatriation, living conditions (cost of living, tax system, school system, etc.) and working conditions (contracts, hours, pay, etc.), and employers with information to facilitate the recruitment of staff from abroad. EURES interacts and cooperates with national employment services and with workers' and employers' organisations.

3.5. The EESC notes that Article 7 (3) states that: 'The co-financing of an action under this programme shall be exclusive of any other financing by another programme financed by the budget of the European Union'.This does not preclude other measures financed by other Community programmes from working towards achieving the objectives of the proposal, as stated in Article 4: 'If necessary, and as far as possible, the actions financed under this Regulation are associated with measures aiming to strengthen democracy and the rule of law'.

3.6. Article 11 provides for the Commission to present a report by 2006 and a final report by 2010. The EESC asks to be consulted accordingly.

Brussels, 29 October 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 Council Decision establishing a Community action programme to promote bodies active at European level and support specific activities in the field of education and training'

(COM(2003) 273 final — 2003/0114 (COD))

(2004/C 32/10)

On 27 June 2003 the Council decided to consult the European Economic and Social Committee, under Articles 149 and 150 of the Treaty establishing the European Economic 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 6 October 2003. The rapporteur was Mr Panero Flórez.

At its 403rd plenary session of 29 and 30 October (meeting of 29 October) the European Economic and Social Committee adopted the following opinion by 124 votes to one with two abstentions.

1. **Introduction**

1.1. For several years now, the European Commission has co-financed a variety of bodies active in the field of education and training via a series of agreements signed with the following institutions:

— College of Europe

— European University Institute, Florence

— European Law Academy, Trier

— European Institute of Public Administration, Maastricht

— European Inter-University Centre for Human Rights and Democratisation

— International Centre for European Training

— European Agency for Development in Special Needs Education

1.2. Similarly, the Commission has funded Community operations in the field of education and training, including:

— preparatory measures in connection with the follow-up of the concrete future objectives of education and training systems;

— activities seeking to disseminate information on European integration in higher education circles, in particular by means of the Jean Monnet Project.

1.3. The common denominator for all of these projects in financial terms is that to date they have been implemented without any legal basis to lend them budgetary support.

1.4. Following the adoption of Council Regulation No 1605/2002 [1] approving the Financial Regulation applicable to the general budget of the European Communities and the subsequent Declaration of 13 June 2002, the Commission undertook to submit a proposal for a regulation specifying overall criteria regarding selection and the awarding of grants for the functioning of the bodies provided for in Article 108(1)(b) of the aforementioned Regulation.

1.5. This undertaking is linked to the requirement outlined in the Financial Regulation to classify Commission expenditure for the budget year 2004 according to use. This in turn makes it necessary to draw up acts providing a basis for subsidies such as those described above.

1.6. Similarly, the detailed work programme on the follow-up of the objectives of education and training systems in Europe, adopted by the Council on 14 June 2002 [2], sets out a programme of activity that requires support at Community level and which ties in with the perspectives of the proposal for a decision.

1.7. A further argument in favour of this proposal for a decision is the Laeken Declaration annexed to the conclusions of the European Council of 14 and 15 December 2001 and which asserts that one of the basic challenges to be resolved by the European Union is to bring citizens closer to the European design and the European institutions.

1.8. Lastly, and once again in support of the proposal, the document submitted to the Committee for debate outlines the need to train national judges in the application of Community law, fundamentally the legal interpretation of Regulation 1/2003 [3] on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. A budgetary heading currently exists for this area, which will require the same legal basis as the others from the next budget year onwards.

1.9. The legal basis applicable to the proposal for a decision corresponds to Articles 149 and 150 of the EC Treaty governing Community initiatives in the field of education and training. In accordance with the provisions of these articles, the European Economic and Social Committee is required to issue a report on the proposal for a decision submitted to it.

2. **Summary of the proposal for a decision**

2.1. *Objective of the proposal*

2.1.1. The proposal's explanatory memorandum states that the objective is to establish a basis for grants to promote bodies active at European level and to support specific activities in the field of education and training.

2.1.2. Article one of the proposal states that the general objective of the programme is to support the activities of bodies in the field of education and training.

2.1.3. Point 5.1.1 of the financial statement indicates that the proposal is primarily informed by the technical need to place on a solid legal footing operating grants hitherto awarded under part A of the budget and to provide a response to the joint declaration of the three European institutions of their intention to adopt a new financial framework.

2.2. *Actions envisaged*

The activities which may be carried out by the bodies eligible for Community funding under the programme are as follows:

Action 1: Support for specified institutions active in the field of education. These are the seven institutions listed in the introduction to this opinion.

Action 2: Support for European associations active in the field of education or training. Such associations must have members in at least twelve of the Member States of the European Union and pursue an aim of general European interest in the field of education or training.

Action 3A: Support for activities in the field of higher education concerning European integration, including Jean Monnet chairs. Fundamentally, this category comprises the implementation of European integration studies in universities, the creation and support of associations of teachers specialised in this subject and the promotion of reflection and discussion on the process of integration, etc.

[1] OJ L 248, 16.9.2002.
[2] OJ C 142, 14.6.2002.
[3] OJ L 1, 4.1.2003.

Action 3B: Support for activities contributing to the achievement of the future objectives of education and training systems in Europe. This action is tied to the detailed work programme on the follow-up of these objectives.

Action 3C: Support for training of national judges in the field of European law and for organisations for judicial cooperation. This action aims to support organisations for judicial cooperation and actions designed to promote training in European law, notably for national judges.

2.3. *Budget allocation*

The budget established for the programme period is EUR 129.62 million and is to be distributed amongst the different actions according to the following percentages:

Action 1: between 58 and 65 % of the overall budget

Action 2: up to 4 % of the programme budget

Action 3A: between 20 and 24 % of the budget

Action 3B: between 7 and 11 % of the budget

Action 3C: up to 4 % of the programme budget

2.4. *Programme duration*

The programme will start on 1 January 2004 and end on 31 December 2008. It may be continued by means of a new decision from 1 January 2009 depending on the results of the external evaluation by the Commission.

3. **Comments on the proposal for a decision**

3.1. The Committee has considered this proposal for a decision and notes that the programme outlined therein comprises a series of different activities which are all based on the need to provide a legal basis for specific types of grant which were awarded without any legal basis, before the new financial regulation was adopted.

These grants are listed in the proposal for a decision from the viewpoint of different reference sources, such as:

— the detailed work programme on the follow-up of the objectives of education and training systems in Europe;

— the Laeken Declaration on the future of the European Union;

— Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

3.2. The Committee also observes that a variety of aims are mixed together in this one programme: the need to provide a legal basis for specific types of grant, support for action undertaken in the field of education and training and ongoing training activities for national judges in the Member States.

The Committee feels that in light of the above, the programme detailed in the proposal for a decision is more a set of several different programmes linked by a common element determined by the application of the financial regulation as of 2004.

3.3. Analysis of the proposal for a decision clearly shows that the majority of the actions outlined under the programme concerned are largely already in place. In short, although the programme does not yet exist as such, it has effectively been underway for several years now.

The Committee therefore welcomes the proposal's commitment to create an executive agency to take on the task of managing the programme, either in whole or in part, if the agency results from a unification of the present technical offices of Socrates and Leonardo and does not imply an increase in the management costs to be deducted from the meagre funds awarded to this programme.

3.4. Nonetheless, the Committee strongly endorses the support and assistance granted to the bodies mentioned above and partly funded by the European Union. The activities carried out by these bodies and the benefits they bring, each in their own field, merit special recognition by the Committee, which is favourably disposed to the continuation and reinforcement thereof for the purposes of stability and continuity.

3.5. The proposal for a decision establishes a programme of Community action in the field of education and training, with as its legal basis Articles 149 and 150 of the Treaty, which provide a detailed definition of the role to be played by the Community in these two areas.

The comprehensive information provided in the annex to the proposal as well as the detailed information on the initiatives planned make it clear that the majority of the actions described, apart from that outlined under 3B, fall into the field of education, higher especially, and not vocational training, taking account of the concept to be applied to each in accordance with the aforementioned Articles of the Treaty.

Similarly the Committee notes that in the proposed decision only Action 3C contains a measure which could be described as life-long learning. The Committee considers that life-long learning should cover measures in both the educational and training spheres; such actions should be promoted as a means of achieving the Lisbon objectives.

3.6. Irrespective of the intended financial neutrality of the proposal, the Committee considers that the funding is inadequate, also in view of the imminent enlargement of the European Union, and feels that it should be increased accordingly.

Although the programme budget is based on those headings currently assigned to the activities planned under the different actions plus the percentage annual increase for each successive year, the Committee notes that funding for activities in the field of education can reach between 82 % and 93 % of the programme budget approximately, while funding for training activities remains at between 7 % and 11 % of the budget, approximately.

3.7. In view of the general comments made, the Committee feels that the Commission should consider giving a different name to the proposal for a decision, more in line with the actual content of the programme and the objectives it pursues.

3.8. Article 2 of the proposal for a decision outlines those bodies eligible for the programme grants. It does not determine how many bodies are able to take advantage of these grants.

Under Action 1, the annex to the proposal determines those bodies at whom the proposal is targeted. In concrete terms, these are institutions that may receive operational and administrative support. The list provided in the annex is limited to those bodies mentioned in the introduction to this document.

Whilst maintaining its support for this initiative, in order to ensure the stability and continuity of the activities, the Committee feels that this list should not be restricted, so that other significant institutions and bodies might be added who also pursue an aim of general European interest, whether extensively or more specifically within one concrete area.

3.9. The Committee agrees that it is necessary to promote training for national judges pursuant to Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

In view of its highly specific nature, this initiative can be defined as ongoing training for professionals, both because it is exclusively intended for a specific group and in view of its highly selective subject matter. With this in mind, the Committee finds it unusual for this issue to be included in the proposal for a decision under discussion here.

The Committee therefore feels that Action 3C should be removed from this proposal and included in another piece of legislation, unless it is broadened, in the sphere of lifelong learning, to cover other professions and sectors of the same European level of interest as those in this Action.

3.10. Action 3B, which covers support for activities contributing to the achievement of the future objectives of education and training systems in Europe, provides for awareness-raising activities in these fields, the promotion of initiatives of the European Union with respect to these systems, improving their quality, facilitating access for all and opening up European education and training systems to the wider world.

These various information and publication actions must, the Committee feels, take great care not to overlap with activities already up and running as part of the Socrates and Leonardo programmes. For this, effective coordination of all Commission services concerned and of the agencies entrusted with the management of the different programmes will be required.

3.11. In line with the general comments made above in relation to the need to create a management agency for the programme and in view of the fact that most of the activities concerned have to some extent been underway for some time already, the Committee would question the need for the agency's budget to include sums earmarked for studies, meetings of experts in charge of implementing the programme and information, publication and promotion initiatives, etc.

Given that this is not an 'ex novo' programme, the Committee believes that these amounts would be better used to fund those activities receiving the least support under the proposal as presented, i.e. those in the field of training.

4. **Conclusions**

4.1. With the exception of the above comments, the Committee fully supports all the various initiatives outlined in the proposal for a decision. The majority are already up and running and have been shown to be suitable for further continuation.

4.2. Actions intended to strengthen, improve and promote Europe's education and training systems, both inside and outside the Union, are always to be welcomed by the Committee. The Committee therefore believes, taking account of its comments on this aspect of the proposal, that actions of this type should be encouraged, achieving a better balance in the EU budget.

4.3. Those activities whose aim it is to support such prestigious bodies as those listed under Action 1 in the proposal for a decision, merit special mention by the Committee. These institutions carry out important work, each in their own specialist field, reflecting the most positive values that are closest to citizens and that are necessary to secure the success of the European integration process. The Committee therefore expresses its support for continuing the grants received by these bodies via the measures outlined in the proposal.

4.4. The Committee also feels it to be necessary to support training of national judges in such essential issues as Regulation 1/2003, mentioned above. In consequence, the Committee backs the initiatives outlined in the proposal for a decision, subject to the reservations expressed under point 3.9. of this working document.

4.5. The Committee calls to mind that this proposal for a decision is one of a set of seven proposals presented subsequent to the application of the Financial Regulation. The Committee would ask the Commission to adopt a coherent approach when drawing up this type of proposal, in particular with respect to the criteria governing access to funding.

Brussels, 29 October 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 Regulation of the European Parliament and of the Council establishing a European Centre for Disease Prevention and Control'

(COM(2003) 441 final — 2003/0174 (COD))

(2004/C 32/11)

On 5 September 2003 the Council decided to consult the European Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 October 2003. The rapporteur was Mr Bedossa.

At its 403rd plenary session (meeting of 29 October 2003), the European Economic and Social Committee adopted the following opinion with 125 votes in favour and two abstentions.

1. Introduction

1.1. Two major factors have prompted the Commission of the European Communities to lose no time in submitting this proposal to establish a European Centre for Disease Prevention and Control.

1.1.1. The first of these is the imminent adoption of the draft treaty establishing a constitution for Europe, which has identified common security problems in the area of public health as a field in which the European Community's powers should be quite substantially increased.

1.1.2. The second is the recurrence in the news of public health problems, which have been emerging around the world over the last twenty years or so, and which may be said to have started with the discovery and explosion of mutant viruses, such as HIV in the early 1980s, and most recently, earlier this year, with the mutation of the Corona virus, which caused a worldwide alert, from China to Canada, with the emergence of SARS (severe acute respiratory syndrome), with its many and complex implications that have yet to be thoroughly assessed.

1.2. Not to be forgotten is the emergence over the same period of bio-terrorist threats in Japan and USA.

1.3. Looking at the recent history of disease outbreaks, their most obvious feature is that the risks are immediately worldwide in scale: HIV, which undoubtedly came into being on the banks of the Congo River, was first identified in Norfolk, USA, and the mutation of the Corona virus 'travelled' in less than three months from Quandong (China) to Toronto in Canada.

In other words, the spread of these outbreaks is hastened considerably by international travel and communications systems.

1.4. A further constraint has arisen: although social protection arrangements differ considerably from country to country, European citizens demand that the State afford them ever greater protection against health risks and that, as far as public health is concerned, the authorities apply the principles of precaution, promptness, information and transparency in their reactions and decisions, even though this is a set of requirements which is not always easy to meet.

1.4.1. The situation in the EU is very uneven: some countries have modern structures with appropriate facilities, whereas others are much less well prepared. Divergences are set to worsen with EU enlargement, so the establishment and effective operation of a European Centre for Disease Prevention and Control is undoubtedly necessary.

1.5. The European Commission has been managing a network on communicable diseases since 1999, but it is an isolated and inadequate example of cooperation.

The system needs to be substantially enhanced forthwith so that the EU can control it effectively. In June 2001, at the Gothenburg European Council, the Council also called for this centre for the control and prevention of communicable diseases to be set up.

It should be noted that, since June 2003, following the outbreak of the SARS epidemic, support from the Member States for the proposed centre has grown considerably.

2. **General comments**

2.1. There is a need for a systematic and structured approach to controlling communicable diseases and other serious health threats. This demonstrates the importance of the preventive approach, which is rightly mentioned in the name of the centre and specified as part of its mission (Article 3 of the proposal).

In the agrifood sector, successive BSE crises, Creutzfeldt-Jakob disease, scrapie in sheep and avian influenza have posed widespread and serious threats.

2.2. In the environmental field, the sudden surge in illness and death rates due to asbestos and exposure to chemical agents, the development of respiratory illnesses due to pollution, and the large number of deaths as a result of the heatwave, i.e. global warming, are also now considered to be serious health crises which are of epidemic proportions. If these new health crises are to be prevented and controlled, an epidemiological model suitable only for communicable diseases must be abandoned, particularly since environmental factors are of increasing importance, even for these diseases. These crises show the importance of studying the interaction and cumulative effect of various risk factors which can lead to serious illnesses and health crises. The Centre must be properly structured and equipped to undertake complex analyses of this type.

3. **Health threats**

3.1. These may in future have very different origins: many regions of the industrialised world, as well as developing regions with little health infrastructure, may be affected, particularly when it is borne in mind that there is currently no way of controlling fast-acting haemorrhagic fevers, such as that caused by the Ebola virus.

There is also a real threat of serious crises originating from influenza, the viruses of which are constantly evolving.

3.2. Add to this the 'ordinary' chemical, toxic or microbial hazards and those which could arise from a deliberate act of bio-terrorism, such as sarin gas in Japan, anthrax in the USA, botulism, nerve gas and poison gas in Iraq.

3.3. Two parameters must be addressed:

— The time and speed of reaction, as well as having operational coordination structures, are essential factors in the response to such serious health crises. The SARS crisis was the most recent demonstration of this.

— The system of networks to be put in place must also be connected to global networks: in particular, links to the World Health Organisation (WHO) and to the network of the US Center for Disease Control and Prevention network in Atlanta.

3.4. The impact of such crises is not only felt in terms of public health, necessitating responses to widespread public concern, but also in economic terms, since in the SARS crisis, the economies of a number of Asian countries were affected and, to a lesser degree, the economy of the European tourism and transport industry.

3.5. The European Parliament and Council Decision 2119/98/EC setting up a network for the epidemiological surveillance and control of communicable diseases in the European Community was intended to address the existing lack of organisation.

3.6. Many EU Member States have efficient and effective structures within their own territories, but little coordination between them. Europe-wide surveillance, early warning and response are needed, and although the Member States make up the 'network of networks' as a Community basis, further action and technical measures are needed.

3.7. In order to do this, there will have to be a substantial increase in long-term funding to sustain these operations.

The scientific consultation and coordination of public health policies needed to meet these many requirements and heavy demands require major funding if the intention is to extend capacity to provide independent scientific advice and effective operational coordination.

3.8. The fragmentation of the present structures has a detrimental effect; new mechanisms need to be put in place to help the Member States and the Commission to do their work.

Enlargement to take in ten new countries, most of which are under-equipped, may make surveillance activities less effective.

3.9. The EU must be able to put the Member States and dedicated structures on a permanent health watch against any type of threat to the public health of their citizens. Wide-ranging liaison with the WHO and other specialist bodies around the world should facilitate an ongoing exchange of information between networks so that the appropriate material can be put in place quickly and at any time to respond to threats from whatever source.

3.10. The health crises suffered over the last ten years by the countries of the EU have raised the awareness of EU decision-makers, the Member States and the general public, increasing acceptance for the efforts needed to combat public health crises.

4. **Specific comments**

4.1. In order to deal with the growing demands of EU citizens faced with health crises of various types, some of which happen concurrently, an individual EU Member State needs skills, expertise and experience from all quarters able to provide coordinated specialist knowledge.

4.2. The network needed must have a number of elements in particular:

— A sufficient number of trained and skilled staff.

— The existing epidemiological centres must have a privileged place in the set-up, and must ensure that their prevention and control models keep pace with the changing nature of risks and encompass environmental health.

— The resulting source of information must be available to all partners. Scientific advice should be authoritative, providing a basis for the Commission to draw up all kinds of proposals for action and draft legislation.

4.3. The Centre, which acts as an independent European agency, could mobilise and significantly strengthen synergies between existing national disease control centres. It should enhance cooperation in an enlarged EU, as well as with other Community agencies, namely the European Food Safety Authority (EFSA) and the European Agency for the Evaluation of Medicinal Products (EMEA), which has specific competences regarding pharmacovigilance, so that their activities do not needlessly overlap.

4.4. The EESC agrees wholeheartedly with the Commission's analysis regarding the definition and conception of the remit of the European Centre for Disease Prevention and Control:

— Surveillance and the networking of existing laboratories to achieve rapid harmonisation of surveillance methods and to speed up the comparability and compatibility of surveillance data as soon as possible.

— High-level scientific advice recognised by scientific authorities and academics and standardisation of laboratory procedures. The high quality and independence of these laboratories' work must be guaranteed.

4.5. The EESC would press the point that scientific surveillance should be constant so as to permit an extremely rapid early warning and response, thus preventing any deterioration into a serious and/or major crisis.

4.6. The EESC feels that, in some instances, technical assistance cannot be limited only to EU Member States.

Care should be taken to remain attentive to all signals coming from elsewhere which might call for a rapid response: the EU should be able to obtain and/or provide help to all those able to give support in any theatre of operations: Community agencies, the WHO, the US Center for Disease Control, humanitarian medicine and foreign agencies faced with outbreaks which could affect other regions, especially the EU.

4.7. After research and prevention measures, the EESC agrees that the agency should have a major role in coordinating the response to serious Community-wide health threats, coordinating the work of the various parties concerned, such as the authorities responsible for public health and civil protection, the military, and civil society.

4.8. The EESC notes with interest how it is proposed that this European Centre should be organised:

— Small in size, but with great influence thanks to its synergies with national institutes.

  However, the EESC has some doubts as to whether the Centre will be able to begin operating with such a small number of staff.

— The administrative structure appears to be straightforward and flexible, allowing continuous monitoring of the coherence of its work with action taken under Community policies and national initiatives.

4.9. The EESC is strongly in favour of an Advisory Forum (Article 18), emphasising that its members should be selected with extreme care and rigour and should be drawn not only from similar national bodies because, alongside the Director, the forum is the key element in the structure underpinning the Centre, which is essential for a wider EU public health policy.

5. **Conclusions**

5.1. The European Commission has reacted quickly in the wake of the international health crisis caused by SARS. The EESC is convinced that there will be many more such threats in future on a range of fronts — chemical, toxic, climatological, viral or microbial — and that these will be aggravated by resistance to treatment, such as in the case of tuberculosis, AIDS, malaria and fast-acting hemorrhagic fevers.

5.2. The creation of this Centre is a boost to the EU's public health policy as defined in Treaty Article 152 and provided for in the draft EU constitution, now on the table before the IGC.

Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

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 Strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection'

(COM(2003) 261 final)

(2004/C 32/12)

On 28 May 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 Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 October 2003. The rapporteur was Mr Beirnaert.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 30 October), the European Economic and Social Committee adopted the following opinion by 62 votes in favour, two votes against and no abstentions.

1. **Introduction**

1.1. In its Spring Report of 2003, the Commission undertook to adopt a communication on 'the streamlining of current disparate actions linked to social inclusion and pensions and, in time, cooperation in relation to healthcare and "making work pay" into a single Open Method of Coordination'. Furthermore, the Brussels European Council asked the Commission in March of 2003 'to report on the advisability of simplifying and streamlining the various strands of work on social protection into a coherent framework within the Open Method of Coordination'.

1.2. In March 2000, the Lisbon European Council outlined its vision of an integrated socio-economic strategy for Europe, bringing cooperation in the field of social protection into the picture alongside the coordination of economic policies within the framework of the Broad Economic Policy Guidelines (BEPGs) and of employment policies within the framework of the European Employment Strategy.

1.3. This cooperation is based on the application of the open method of coordination to two aspects of social protection: social inclusion and pensions. The essential elements of this method are common objectives, National Action Plans for social inclusion (NAPs/inclusion) with a two-year cycle, National Strategy Reports on pensions covering a period of three years and a joint report drawn up by the Commission and the Council to summarise and analyse all such NAPs/inclusion and National Strategy Reports on pensions.

1.4. Health and long-term care currently use a less advanced system of cooperation involving exchanges of information and knowledge. Three broad objectives have been identified in this area and the Member States have completed a questionnaire on the manner in which they include these objectives in their policies. A joint report by the Commission and the Council outlines the main conclusions drawn from the analysis of the Member States' answers.

1.5. The Social Protection Committee is currently conducting a study into the concept of 'making work pay' in order to determine the exact contribution that could be made to this overall objective by social protection systems. The different aspects of this issue have been and will continue to be dealt with within the framework of the BEPGs and the Employment Guidelines.

2. **Content of the communication**

2.1. With a view to strengthening the social dimension of the Lisbon strategy, the Commission communication puts forward suggestions for the streamlining of policy coordination on social protection, followed by the synchronisation of the latter with the coordination process for economic and employment policies from 2006. A synchronised timetable has already been drawn up for both for the period 2003-2005.

2.2. The Commission suggests streamlining social protection coordination by means of a single set of common objectives organised into three pillars: social inclusion, pensions, and health and long-term care. These would replace the existing distinct sets of objectives and would be adopted by the Council in 2006 to coincide with the guidelines for economic and employment policies. In principle, they would then remain in place for a duration of three years. They would also include a limited number of cross-cutting issues, such as the notions of gender mainstreaming and making work pay.

2.3. Furthermore, the Member States will be expected to draw up a single report on social protection to replace both the NAPs/inclusion and the National Strategy Reports on pensions and which will cover a period of three years. In the intervening years, the Member States will submit reports outlining any measures taken thus far.

2.4. The national reports will be followed up at European level by a joint report on social protection issued by the Commission and the Council which will assess progress made towards the common objectives in the Member States.

2.5. Indicators will be jointly agreed and used to monitor progress made towards the common objectives.

2.6. The communication also outlines a timetable for the inclusion of the new Member States in the streamlined process.

3. **General comments**

3.1. *On the principle of open coordination in the field of social protection*

3.1.1. The Committee notes the inclusion of the principle of coordination of Member States' social policies in the first part of the draft European Constitution (Article 14(4)), reiterated in part III which states that in the social field this principle will take the form of 'initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation' (Article 107, paragraph 2). Both texts form the basis for the so-called 'open coordination method'. But over and above the significance of this legal basis, it is equally important for it to be supported by a real political will to develop concrete coordination strategies. The Committee feels that this coordination is all the more necessary in view of the slowdown in economic growth.

3.1.2. In this respect, the Committee would call to mind how important it considers the open communication method to be for social protection, as can be seen from its opinions on indicators for social inclusion [1] and the suitability and feasibility of pension systems [2] and its appeal for an open coordination method for healthcare [3].

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[1] OJ C 221, 17.9.2002.
[2] OJ C 48, 21.2.2002.
[3] CESE 928/2003, 17.7.2003.

3.1.3. The Committee notes that the Commission communication focuses on the streamlining and simplification of the various coordination processes in the field of social protection and not on the objectives, guidelines and indicators that form part of these processes.

3.1.4. The latter are to be developed in greater depth at a later stage in the social protection coordination process. Accordingly, the Commission work programme provides for the following before the launch of the new process in 2006:

— a Joint Social Inclusion Report to be submitted in the spring of 2004 subsequent to the NAPs/inclusion presented by the Member States in July 2003 for the period 2003-2005;

— a healthcare and long-term care communication to be presented in spring 2004;

— a report on making work pay to be submitted in spring 2004;

— a consolidated set of indicators together with new demographic and financial projections prior to the introduction or updating of the national strategy reports on pensions in 2005;

— an evaluation of all cooperation undertaken with respect to pensions, social inclusion and healthcare.

3.1.5. The Committee insists that it must be consulted on each of these key stages.

3.2. *On the Commission communication on streamlining open coordination in the field of social protection*

3.2.1. The Committee agrees with the aims of the communication, i.e. to streamline and simplify open coordination in the field of social protection. The Committee particularly welcomes the following positive aspects of this new approach:

— the reinforcement of the social dimension of the Lisbon strategy lending greater political weight to the goals of modernisation and general improvement of social protection;

— the extension of the Lisbon strategy on the basis of positive interaction between the economy, employment and social protection; this necessary synergy will bring benefits to all three sides of the triangle, i.e. sustainable economic growth, more and better quality jobs and greater social cohesion, with the latter constituting a fully-fledged strand of the process;

— the improved structure of the pillars social inclusion, pensions and healthcare achieved by streamlining and simplifying the related process;

— the progressive integration of the new Member States into the process of coordination of social protection.

3.2.2. The Committee welcomes the enthusiasm shown in the communication for an open approach. The communication stresses 'the high degree of organisation of civil society in relation to social exclusion', and the need for 'the involvement of a range of actors — the involvement of social partners and consultation with NGOs and representatives of sub-national branches of government'. Governments and public authorities must also demonstrate a real desire to open up the processes involved and include both the social partners and all other organisations concerned so that they might make an effective contribution. The Committee is of course aware that the partners involved vary according to the case at hand.

3.2.3. However, despite this positive evaluation, the Committee has some reservations and concerns.

3.2.3.1. The Committee fears that the processes used at the moment will lose steam during the transition period prior to the launch of the new system in 2006 and may even peter out entirely or stagnate. This applies in particular to the process of social inclusion, but also to pensions (the aim being both adequate provision and a feasible retirement system) and healthcare, which has thus far been unsuccessful in adopting the open coordination method as underlined by the Committee in its opinion ([1]).

3.2.3.2. The Committee also fears that bringing the various processes together into one global mechanism to be introduced in 2006 will damage the specific nature of the individual pillars of social inclusion, pensions and healthcare. Each of these faces quite distinct challenges. For example, the goal of social inclusion not only raises the issues of minimum earnings and employment, but also accommodation, education, health, access to justice, etc. Similarly, the healthcare sector faces challenges specific to patients requiring long-term care, the elderly and people with a disability. Each of these areas involves a different set of players, in particular the social partners and relevant NGOs and other organisations, such as social economy organisations, patients' and care-providers' associations, etc. This concern is expounded in further detail below.

([1]) CESE 928/2003, 17.7.2003.

4. **Specific comments**

4.1. The Committee insists that the common objectives must be more clearly defined. The proposal made by the Commission to replace the existing distinct sets of objectives in the fields of social inclusion, pensions and healthcare and long-term care with a set of common overall objectives raises a number of questions and leads to confusion. It is not evident in what way these objectives are 'common'. Is this because they apply to all three pillars? The Committee is concerned that any objectives that are common to the pillars of social inclusion, pensions and healthcare all at once will necessarily be very general in nature and that this would be out of sync with the specific nature of the problems at hand. Accordingly, the Committee feels that specific objectives relating to each individual pillar must be added to the common objectives. Otherwise, the entire process would be weakened. The Committee would like this issue to be dealt with as a priority and would ask the Commission to provide firm guarantees in this respect. The Committee further insists that the new objectives must not damage any progress already made, above all in terms of social inclusion, and demands that the continuity of work already undertaken must be maintained. Lastly, the Committee calls to mind its desire for objectives to be set by the Member States at national level in addition to the European objectives.

4.2. The Committee shares the Commission's view that it is necessary to consider a limited number of cross-cutting issues. However, should specific objectives be added to the common objectives, as advocated by the Committee, a large number of further, horizontal issues could render the process more complex, contrary to the desired simplification and streamlining.

4.2.1. The Committee welcomes the inclusion of the particularly important notion of gender mainstreaming in the cross-cutting issues. The Committee asks that concrete projects relevant to gender mainstreaming be clearly identified within each individual field and that details concerning the implementation of these projects be included in the annual national reports and closely followed up at European level.

4.2.2. The principle 'to make work pay and provide secure income' is one of the four broad objectives of the modernisation and improvement of social protection cited by the Commission in its communication of 1999 ([1]). As this topic is also dealt with as part of the BEPGs and the Employment Guidelines, coordination of activities is, in the Committee's view, in any case necessary given the importance of this issue.

4.3. The Committee agrees that by requesting that the Member States submit a single report on social protection, the synergy between the activities undertaken in each pillar could be enhanced and any overlapping prevented. However, the Committee is also aware of the risks inherent in a minimalist approach in terms of taking account of the specific problems related to each issue. It will be difficult to achieve the same depth of content in a report covering all three topics as in separate reports for each. Hence it is essential that the single report should correctly follow up any undertakings made in the NAPs/inclusion and the strategy reports on pensions and thus maintain the momentum.

4.4. As the Member States are to draw up annual reports focussing on progress made in attaining the common objectives, the Committee approves of the three-year cycle chosen for the national programming reports. The annual national reports will be necessary to ensure that any progress made is correctly followed up at European level and to assist the Commission and the Council in drawing up their annual Joint Social Protection Report, which is therefore a key instrument in the new process.

4.5. As the communication stresses, the greatest challenge for the new process will be to monitor progress made in all of the areas concerned in a both transparent and effective manner. It is essential that a set of indicators be developed. The Committee understands the Commission's concern to ensure that the overall number of indicators remains concise, but stresses that it will only be possible to assess the extent to which objectives and guidelines have been met if the indicators used are sufficiently valid and detailed. The Committee calls to mind its earlier comments in this respect ([2]) and its request to be consulted on new proposals.

4.5.1. The Committee is satisfied that the new process will lead to greater visibility of EU-level social statistics in that it will require more reliable, comparable and up-to-date data.

5. **Conclusions**

The Committee notes the inclusion in the draft European constitution of the principle of coordination of the social policies of the Member States, but feels it to be equally important for this principle to be based on a real political will to draw up concrete strategies.

([1]) Communication from the Commission on A concerted strategy for modernising social protection COM(1999) 347 final.

([2]) OJ C 221, 17.9.2002.

The Committee finds it particularly positive that the communication aims to reinforce the social dimension of the Lisbon strategy, lending greater political weight to the goals of modernisation and improvement of social protection.

The Committee feels that particular attention must be paid to ensuring that by bringing the different processes together into one global mechanism the specific nature of the individual fields of social inclusion, pensions and healthcare does not become lost. Each of these sectors faces distinct challenges, involves a different set of players and calls for specific objectives.

It is essential that the single report should correctly follow up any undertakings made in the NAPs/inclusion and the strategy reports on pensions and thus maintain the momentum.

Brussels, 30 October 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 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness'

(COM(2003) 516 final — 2003/0202 (CNS))

(2004/C 32/13)

On 11 September 2003, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

On 23 September 2003, 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.

Given the urgent nature of the work, at its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee appointed Mr Sarró Iparraguirre as rapporteur-general and adopted the following opinion by 76 votes in favour and two abstentions.

1. **Introduction**

1.1. The outermost regions of the Community (the Portuguese autonomous regions of the Azores and Madeira, the Spanish autonomous community of the Canary Islands and the French overseas departments of Guadeloupe, Guiana, Martinique and Réunion) are lagging behind in socio-economic terms, which is why the Community provides assistance for promoting their economic and social development, and their smooth integration in the dynamics of the internal market.

1.2. In this context, the Council has set up programmes of specific options for alleviating the remoteness and insularity of these outermost regions.

1.3. The difficulties faced by the fisheries sector in the outermost regions of the Community are exacerbated, in particular, by the cost of transporting fishery products to the markets as a result of their remoteness and isolation.

1.4. Article 299(2) of the EC Treaty recognises the need to adopt special measures to assist the outermost regions and mentions the fisheries sector explicitly.

1.5. In response to this situation, in 1992 the Community introduced a scheme to assist producers in these regions in the marketing of certain fishery products. The scheme was renewed

in 1994, 1995, 1998 and 2002 [1], thus offering a commercial outlet for the main species concerned.

1.6. The scheme was last renewed by Council Regulation (EC) No 579/2002 of 25 March 2002 [2], which lays down that this scheme will apply until 31 December 2002.

1.7. This Proposal for a Regulation [3] stipulates that this scheme to compensate for the additional costs incurred in the processing and marketing of certain fishery products in these outermost regions must continue after 2003.

2. **Comments**

2.1. The EESC believes it is necessary for this compensation scheme to continue so that certain fishery products can continue to compete with those from other regions in the EU.

2.2. The proposed Regulation also provides for support for the processing and marketing of fishery products from the non-industrial and inshore fishing industry. The EESC welcomes the fact that non-industrial and inshore fishing are included in the proposed Regulation and urges the Commission to continue to support this type of fishing, which is of considerable social and economic importance in these outermost regions.

2.3. The EESC believes it is important for the future of this proposed Regulation that consideration is given to the possibility of adjusting the amounts and quantities that it sets for the various species. However, the EESC is of the view that the procedure for adjusting the amounts and quantities laid down in Article 8 is too complicated. The Commission should therefore draw up a simpler procedure so that practical decisions can be taken more quickly.

2.4. The EESC agrees with the proposed Regulation that economic measures should be financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and that the Commission should report on the implementation of the measures, accompanied by proposals for appropriate adjustments, every four years, starting on 1 January 2007.

3. **Conclusions**

3.1. The EESC believes this Regulation must be published as soon as possible.

3.2. The EESC understands that the Regulation is of a permanent nature and that, if necessary, the measures must be revised so as to maintain the objective of compensating for the additional costs incurred in the marketing of certain fishery products from the outermost regions of the EU.

3.3. The EESC believes that the procedure for adjusting amounts and quantities laid down in Article 8 must be made more simple, practical and flexible.

[1] OJ L 162, 30.6.1994, p. 8; OJ L 236, 5.10.1995, p. 2; OJ L 208, 24.7.1998, p. 1; OJ L 89, 5.4.2002, p. 1.
[2] OJ L 89, 5.4.2002, p. 1.
[3] COM(2003) 516 final — 2003/0202 (CNS).

Brussels, 29 October 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 2561/2001 aiming to promote the conversion of fishing vessels and of fishermen that were, up to 1999, dependent on the fishing agreement with Morocco'

(COM(2003) 437 final — 2003/0157 (CNS))

(2004/C 32/14)

On 4 August 2003 the Council decided to consult the European Economic and Social Committee, under Articles 36 and 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

On 23 September 2003 the Committee Bureau instructed the Section for Agriculture, Rural Development and the Environment to undertake the preparatory work.

In view of the urgency of the matter, at its plenary session on 29 and 30 October 2003 (meeting of 29 October) the European Economic and Social Committee appointed Mr Chagas as rapporteur-general and adopted the following opinion by 66 votes in favour, with two abstentions.

1. Introduction

1.1. When the Council adopted its Regulation 2561/2001, which aims to promote the conversion of fishing vessels and fishermen that until 1999 were dependent on the fishing agreement with Morocco, it included in the regulation a number of derogations from certain provisions of Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector. It also approved complementary appropriations for structural and socio-economic measures.

1.2. These decisions were justified as an exceptional measure to facilitate the implementation of the conversion plans for Community fleets affected by the non-renewal of the fishing agreement with Morocco, and to provide the resources needed for individual or collective plans enabling fishermen to take early retirement or retrain for work outside the sea fishing sector.

1.3. It is worth noting that, as proposed by fishermen's organisations, a minimum of 32 % of the total amount of aid was to be allocated to socio-economic measures.

2. The Commission proposal

2.1. The Commission proposal introduces a series of amendments to address the exceptional situation that has arisen. The aim is to reach a maximum number of fishermen and treat them on an equal footing by abolishing the rules which currently restrict the grant of individual lump sums exclusively to fishermen whose vessel has permanently stopped its activities.

2.2. At the same time, the Commission proposes to extend by twelve months the period of eligibility for aid and the final date for submitting the request for payment of the balance. The reference date for taking account of the period of unemployment is to be set at 1 January 2002.

3. General comments

3.1. The Committee supports the amendments proposed by the Commission, which are designed to address problems in implementing the exceptional regulation adopted in 2001 and to reach a maximum number of fishermen affected by the breakdown of negotiations for the renewal of the fishing agreement with Morocco.

Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on:

— **the 'Communication from the Commission Programme for the Promotion of Short Sea Shipping', and**

— **the 'Proposal for a Directive of the European Parliament and of the Council on Intermodal Loading Units'**

(COM(2003) 155 final — 2003/0056 (COD))

(2004/C 32/15)

On 29 April 2003 the Council decided to consult the European Economic and Social Committee under Articles 71(1) and 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

On 7 April 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 October 2003. The rapporteur was Mr Chagas.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) the European Economic and Social Committee adopted the following opinion by 83 votes to 2 with 1 abstention.

1. **Introduction**

1.1. The development of the European Single Market as proposed in the 1985 Communication implied a structural change in the way business was being conducted until that moment. A consequence of the free circulation of people, goods, capital and services proposed to start on 1 January 1993 was a direct increase of transport services. In view of the expected pressures on the environment that such mobility could cause, the European Commission carried out a study on the impact of transport on the environment and its outcome was presented on the same day the Maastricht Treaty was signed [1]. This document presented a comprehensive assessment of transport impact on the environment, and also proposed the strategy for a Community response. The objective was to create a public debate with the participation of Community institutions and respective stakeholders on issues concerning transport and environment [2]. At the same time, it provided an insight into how should it be possible to integrate the environmental component into transport policy and it proposed to create an awareness of its importance given the objective of the Treaty of Maastricht to develop a sustainable growth for Europe. Transport is never environmentally neutral; its effects depend on the mode of transport under consideration [2].

1.2. In view of the findings, the principles of sustainable development and economic growth were seen as being at the core of European policy as a strong global economy can only be sustainable if it integrates economic, social and environmental issues and benefits within its development [3] [4]. To meet the above-mentioned objectives, the Commission presented the 1992 White Paper on the future common transport policy [5]. Two important issues have resulted from this document. Firstly, transport is seen as an element without which the completion of the internal market cannot be achieved even if artificial regulatory barriers were

[1] Green Paper on the Impact of Transport on the Environment. A Community Strategy for sustainable mobility. COM(92) 46 final, 20.2.1992.

[2] Communication from the Commission — The future development of the common transport policy — A global approach to the construction of a Community framework for sustainable mobility, COM(92) 494 final, 2.12.1992.

[3] Walley, N. and Whitehead, B. (1994) — It's not easy being green, Harvard Business Review, Boston, United States, Volume 72, Issue 3, pp. 46-52.

[4] Clark, R.A. (1994) — The challenge of going green, Harvard Business Review, Boston, United States, Volume 72, Issue 4, pp. 37-50.

[5] COM(92) 494 final, 2.12.1992.

eliminated; this presupposes the promotion of fair competition in the field of transport. Secondly, this document considered that transport should adopt an overall approach rather than one based on the individual characteristics of the modes, which promoted the shift of goods from road to sea. This met the objectives of the Maastricht Treaty in promoting sustainable development as set out in Article 2 and came as a response to the Green Paper presented in February 1992.

1.3. Short sea shipping as a valid instrument for achieving sustainable mobility moved to the centre of transport policy and the European Commission subsequently presented a number of communications on the issue. The most important ones were released in 1995 ([1]), 1997 ([2]) and 1999 ([3]). The 1995 Communication presents an overall approach of short sea shipping. Besides presenting its advantages it also addresses the challenges that short sea shipping has to overcome if it is to eliminate its present drawbacks. The Commission addressed three issues: to improve the quality and efficiency of short sea shipping, to improve port efficiency and port infrastructures and finally to prepare short sea shipping for an enlarged Europe, which will take place on 1 May 2004. The 1997 document presented as a Commission Staff Working Paper was a response to the Council Resolution of 11 March 1996 on short sea shipping. It called for progress reports to be delivered every two years. In it the Commission presented a number of measures undertaken and planned. Finally, the 1999 Communication examined short sea shipping potential in the light of a sustainable and safe mobility framework, of its image and existing barriers to its development, and as part of a process of integration in European logistic transport chains. In addition, it recommends further action. Once again, the three main reasons for promoting short sea shipping are stressed: (1) to promote the general sustainability of transport in order to strengthen the cohesion of the Community, (2) to facilitate connections between the Member States and between regions in Europe and to revitalise peripheral regions; and (3) to increase the efficiency of transport in order to meet current and future demands arising from economic growth.

1.4. On the Commission website a web page is devoted to short sea shipping ([4]) and there a list of success stories can be seen ([5]). In 1992 ([6]), 1994 ([7]) and 1996 ([8]), the Commission supported three roundtables where industry and academia got together to discuss short sea shipping issues. Parallel to this and following the outcome of the APAS report on short sea shipping and the Euret report on maritime logistics, the Commission has been supporting numerous research projects under the fourth and the fifth research framework programmes. Information concerning this research can be seen on a web page that the Commission has prepared ([9]). The output of these projects is huge and short sea shipping can benefit from its application. The sixth framework programme is now under evaluation. A lot of progress has been made on the basis of efficient cooperation between the Government appointed Focal Points on Short Sea Shipping, the Promotion Centres and the Maritime Industries Forum (MIF), supported by heavy investments and sales efforts of the shipping industry. According to Eurostat 2002, the short sea shipping market share has increased from 34 % in 1970 to about 41 % in 2000. This growth is less notable from 1990 until 2000; within this period, the short sea shipping market share has stabilised. Despite this and within the very same period, road and short sea shipping annual growth rates are very similar, i.e. 3.4 % and 3.3 % respectively. Rail transport has lost market share in that period and the share of inland waterways has remained, with a small increase recently.

1.5. In order to promote short sea shipping, the Commission has extended the PACT — Pilot Action on Combined Transport Programme to this transport mode. This was seen as a step forward to introducing short sea shipping in intermodal transport services. Although the PACT programme no longer operates since 31 December 2001, it has nevertheless been replaced by the Marco Polo Programme. Being

([1]) Communication from the Commission — Development of Short Sea Shipping in Europe. Prospects and Challenges, COM(95) 317 final, 5.7.1995.

([2]) Progress Report from the Commission services following a Council resolution on short sea shipping of 11.3.1996, SEC(97) 877, 6.5.1997.

([3]) Communication from the Commission — The development of SSS in Europe. A dynamic alternative in sustainable transport chain. A second two-yearly progress report, COM(1999) 317 final, 29.6.1999.

([4]) http://europa.eu.int/comm/transport/themes/maritime/english/sss/index_sss.html, accessed 1 July 2003.

([5]) http://europa.eu.int/comm/transport/themes/maritime/english/sss/sss_successstories_files/sss_successtories-1.htm, accessed 1 July 2003.

([6]) Proceedings from the First European Research Round Table Conference on Short Sea Shipping, 26–27.11.1992, Technical University Delft, London: Lloyds of London Press, 1993.

([7]) Conference Papers of the Second European Research Round Table Conference on Short Sea Shipping: Strategies for achieving cohesion in Europe through short sea shipping, 2–3 June, Athens/Vouliagmeni. Delft: Delft University Press, 1994.

([8]) Conference papers of the Third European Research Round Table Conference on Short Sea Shipping, 20-21.6.1996, Bergen, Norway. Delft: Delft University Press, 1996.

([9]) http://europa.eu.int/comm/energy_transport/en/pfs_5_en.html, accessed 1 July 2003

broader in scope, the Marco Polo intends to foster modal shift projects in all segments of the freight market, on the basis that only modal shifts from road towards short sea shipping, inland waterway and rail transport are eligible for Marco Polo support.

1.6. Despite all this support, the demand for road transport, as shown by the recent Eurostat statistics, has increased and will go on increasing if no measures are taken to curb this growth.

2. **The Commission proposal**

2.1. In view of the mixed performance of the common transport policy, of the congestion due to the effect of imbalance between modes, the expected growth in transport in an enlarged European Union and the need for integration of transport in sustainable development as proposed by the European Council meeting in Gothenburg 2001 in which European citizens were guaranteed economic stability, social security and a clean, sustainable environment, thereby stipulating that important policy areas be assessed for their economic, social and ecological effects ([1]), the White Paper on European Transport Policy for 2010: time to decide ([2]) sets a number of ambitious targets to ensure competitiveness and sustainability of transport by 2010.

2.2. In this Communication, the European Commission addressed the issue of intermodality and stressed the need to make use of underused capacity, namely short sea shipping and rail, to avoid the numerous bottlenecks that are still affecting transport and consequently the environment. Given the characteristics of both modes and of short sea shipping in particular, it is obvious that the latter has a role to play in reaching the objectives of European Union policy as a whole and of the common transport policy in particular. This importance is such that more recently the informal meeting of the European Union Transport Ministers in June 2002 in Gijón, Spain, reconfirmed its role in saying that 'Short sea shipping is an important option for alleviating road traffic growth in situations where the transport market is suited to its specific economic and operational characteristics. It can contribute to reducing traffic congestion, accidents, noise and air pollution. Short sea shipping in Europe should be intermodal and, as a consequence, it must be based on the complementarities of maritime and land transport modes. Therefore, its development implies the integration of the different transport modes through the interconnection and interoperability of maritime and land transport networks (which includes road, railways and inland waterways transport)'. The important role of short sea shipping was also reaffirmed at the recent informal meeting of EU Transport Ministers that took place in July 2003 in Naples, Italy.

2.3. In response to the invitation made by the European Union Transport Ministers by which the Commission and the Member States were invited to develop an action plan on key issues that promoted short sea shipping, including its full integration into intermodal transport chains under efficient and cost-effective conditions, and which is expected to be assessed by the Council in the second half of 2004, the Commission presented on 7 April 2003 a Communication on an Action Programme for the Promotion for Short Sea Shipping and a Proposal for a Directive on Intermodal Loading Units ([3]).

2.4. *A programme for the promotion of short sea shipping*

2.4.1. The objective of the action programme is to address in a systematised way what has been done in a non-systematised way; in this context, the European Commission proposes a path to be followed. The present Communication comprises fourteen individual actions which are divided into measures. For each measure proposed, the responsible actors and timetable for its implementation are given. The fourteen individual actions embrace legislative, technical and operational issues to be taken from 2003 onwards as follows:

A. **Legislative actions**

1. Implementation of the Directive on certain reporting formalities for ships to arrive in and/or depart from ports in the Member States (IMO-FAL)

2. Implementation of Marco Polo

3. Standardisation and harmonisation of intermodal loading units

4. Motorways of the Sea

5. Improving the environmental performance of Short Sea Shipping

([1]) http://eu2001.se/eu2001/news/news_read.asp?iInformationID=16063, accessed 2 July 2003

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

([3]) COM(2003) 155 final, 7.4.2003.

B. **Technical actions**

1. Guide to Customs Procedures for Short Sea Shipping

2. Identification and elimination of obstacles to making Short Sea Shipping more successful than it is today

3. Approximation of national applications and computerisation of Community Customs procedures

4. Research and Technological Development

C. **Operational actions**

1. One-stop administrative shops

2. Ensuring the vital role of Short Sea Shipping Focal Points

3. Ensuring good functioning of and guidance to Short Sea Promotion Centres

4. Promote the image of Short Sea Shipping as a successful transport alternative

5. Collection of statistical information

2.5. *A proposal for a directive on intermodal loading units*

2.5.1. The second part of the present Communication is the proposal for a directive, which was announced in the 2001 White Paper. By proposing a sustainable solution to transport problems that can reduce congestion, particularly road congestion, the directive aims at making intermodality more attractive for transport users. With a focus on the several modes of transport rather than only short sea shipping, the proposal deals with the issue of containers and swap bodies. The reasons behind the present proposal are threefold:

— With the exception of Ireland, all Member States are signers of the International Convention for Safe Containers, 1972 (CSC); this is a consequence of the 1979 Council Recommendation [1]. Additionally, only the Netherlands have signed the 1993 amendments to the Convention. These concern the information contained on the CSC Approval plate and also amend some of the test loads and testing procedures required by the Convention.

— To gain up to 50 % of time along transhipment points which translates into 20 % savings of the direct transfer costs.

— To obtain a compromise solution between sea containers and swap-bodies.

2.5.2. The objectives of the proposal are:

2.5.2.1. The harmonisation of interoperability characteristics of intermodal loading units

— To standardise the handling of intermodal loading units (ILUs), facilitate their storage and to secure ILUs on transport equipment more efficiently; in other words, to guarantee the efficiency of transhipment operations, the handling and securing devices of ILUs need to be made more uniform.

— To define harmonised standards for each class and category of ILU.

2.5.2.2. The creation of the European intermodal loading unit (EILU)

— Europe needs an optimal intermodal loading unit, the EILU that combines the benefits of containers (their solidity and stackability) with those of swap bodies (in particular their greater capacity). The creation of this loading unit can also be seen within the scope to substitute the 45' container; this one will be allowed in Europe until the end of 2006. Such an EILU could be used by the four modes of transport (rail, road, sea and inland waterways), be stacked four-high and its transhipment between the different modes simplified.

— The use of EILU will not be compulsory.

— The EILU will comply with the Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic [2].

[1] Council Recommendation of 15 May 1979 on the ratification of the International Convention for Safe Containers (CSC), OJ L 125, 22.5.1979, p. 18.

[2] OJ L 235, 17.9.1996.

2.5.2.3. Safety and security of Intermodal loading units

— To guarantee the safety of transport.

— The new ILUs will have to integrate anti-intrusion alarm devices, such as electronic seals.

— The Directive presents provisions on maintenance and periodic inspections which are in accordance with the provisions presented in the 1972 United Nations' and International Maritime Organisation (IMO) Convention for Safe Containers (CSC). The objectives of the latter are to maintain a high level of safety of human life in the transport and handling of containers and to facilitate the international transport of containers by providing uniform international safety regulations, equally applicable to all modes of surface transport. The CSC Convention is made up of two Annexes; Annex I includes Regulations for the testing, inspection, approval and maintenance of containers; Annex II covers structural safety requirements and tests, including details of test procedures.

2.5.2.4. Procedures for assessing conformity of ILUs and periodic inspections

— To comply with all relevant requirements established by Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives [1].

— To develop procedures regarding assessment and inspection which are in accordance with the provisions made in the CSC.

3. **General remarks**

3.1. The drawing up of an action programme with a view to promoting short sea shipping is a positive development. This market segment needs to be given more transparency/visibility since for many years it has been hidden. People seldom think how the goods have come to supermarket or retail store shelves and what alternatives exist other than unimodal transport, in particular road transport. Current European logistics trends and business practices have forced the wide use of road transport with its particular characteristics [2], despite the advantages of short sea shipping and potential as presented in the literature. In fact, awareness only exists of the shipping industry when accidents occur with ships, especially when pollution results. Such accidents do not offer a very good image of the industry as a whole and of short sea shipping in particular, and the key role it plays in the international and regional trades. The burden will naturally fall on the national contact points and on short sea shipping promotion centres; they will have the responsibility to change that image.

3.2. The promotion plan being proposed addresses some important issues that for some time have been causing bottlenecks in the intra-European movement of cargo by waterborne transport; these have to be overcome in the shortest possible time, if short sea shipping is to be the leading transport mode in the movement of goods. The existence of these bottlenecks also explains why the demand for short sea shipping has stabilised between 1991 and 2000 as shown by the statistics released by Eurostat in 2002. Despite this, substantial work has been done on short sea shipping bottlenecks although more progress has to be made. The Commission, the National Focal Points, the Promotion Centres and industry (the MIF) are working on this.

3.3. *On the proposed action programme for the promotion of short sea shipping*

3.3.1. Implementation of the directive on certain reporting formalities for ships to arrive in and/or depart from ports in the Member States (IMO-FAL)

3.3.1.1. The IMO ship formalities are not new and should have been implemented a long time ago. The Convention on Facilitation of International Maritime Traffic (FAL Convention), adopted on 9 April 1965 entered into force on 5 March 1967. It comprises two aspects: the FAL Forms and Certificates. The FAL Forms comprises a list of documents which public

[1] OJ L 220, 30.8.1993.

[2] Road transport inherent characteristics are: service reliability, service regularity and frequency, it allows the shipment of small consignments which meets time-based management strategies such as just-in-time.

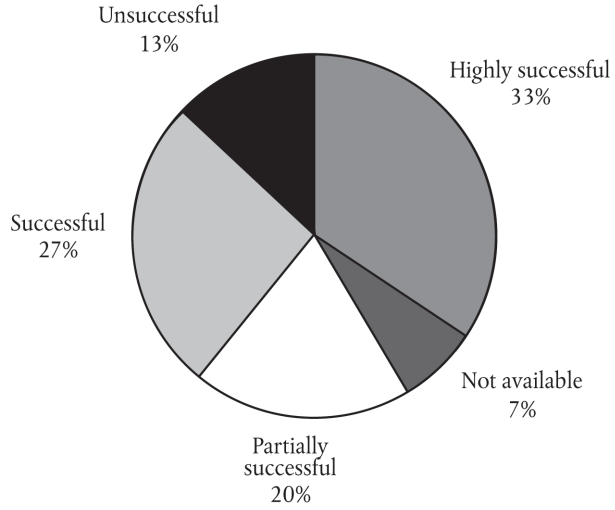
authorities can demand of a ship and recommends the maximum information and number of copies which should be required ([1]).

3.3.1.2. The problem with its non-implementation is partly due to the ports and the Customs Authorities. The latter do not implement existing EU Regulations in a coherent way, thus, imposing different requirements to ships Also shipping companies are willing to use their own formats rather than those of IMO; this allows using the company's logo on their own documents. In the light of this and of § 3.3.1.1 its implementation by 9 September 2003 should be seen as a strict deadline. The electronic delivery of ships' formalities implementation, even when ships are at sea, should be considered. Very often goods are lost in port calls because the information flow does not accompany the physical one. By the time ships arrive in port all port formalities should have been handled so that no delays exist along the international supply chain. Streamlining the interface/port processes is the next step to improve interface/port performance and consequently short sea shipping position vis-à-vis other transport modes.

3.3.2. Implementation of Marco Polo

3.3.2.1. The Marco Polo programme is a good support for the development of short sea shipping services integrated in multimodal logistics supply chains. The reduced number of PACT projects which included a maritime leg and its level of success is a good indicator of the success that Marco Polo projects are expected to achieve (see Figure 1). However, it should be taken into consideration that the degree of Marco Polo success will depend upon short sea shipping owners' willingness to participate and to take advantage of such a programme; in view of this a change in short sea shipping operators' attitude towards research is required. With few exceptions the short sea shipping is unwilling to participate in these projects for fear of giving knowledge away and therefore of losing market to their competitors. There is also a fear that subsidies particularly for starting up of services would distort competition with existing services. The project has therefore to be implemented in a way which safeguards full transparency based on objective criteria.

Figure 1: Level of success of pact projects involving a maritime leg



3.3.3. Standardisation and harmonisation of intermodal loading units

3.3.3.1. Lack of standardisation complicates and delays handling operations resulting in additional friction costs to intermodality. Furthermore, this complicates investments in intermodal loading units. Swap bodies are confined to land transport and short roll-on-roll-off journeys while containers are mainly used for waterborne modes. The proposed action aims at addressing the standardisation and harmonisation of intermodal loading units so that the movement of these units between modes is done in the most effective and efficient way given that time lost in their handling in port and/or inland terminals should be limited to the minimum required. A standardised and harmonised system can therefore only be of value to the intermodal industry and to the sustainable mobility of Europe. This issue is further addressed in § 3.4.

([1]) These include: IMO General Declaration, Cargo Declaration, Ship's Stores Declaration, Crew's Effects Declaration, Crew List, and Passenger List, Dangerous Goods. Two other documents are required under the Universal Postal Convention and the International Health Regulations. The list of certificates to be carried on board ships and depending on the type of ship include: International Tonnage Certificate; International Load Line Certificate; Intact stability booklet; Damage control booklets; Minimum safe manning document; Certificates for masters, officers or ratings; International Oil Pollution Prevention Certificate; Oil Record Book; Shipboard Oil Pollution Emergency Plan; Garbage Management Plan; Garbage Record Book; Cargo Securing Manual; Document of Compliance and Safety Management Certificate (International Safety Management (ISM) Code).

3.3.4. Motorways of the sea

3.3.4.1. Motorways of the sea being seaways that adequately serve short sea shipping routes and which are selected according to a set of criteria including safe navigation, shorter/faster port-to-port distances, integration into trans-European networks and the promotion of intermodality, have as their objectives to overcome present European bottlenecks. Those include geographical and urban constraints which hinder the seamless movement of goods. In addition, they must comply with the shippers' requirements regarding their logistics' strategies and be used to promote other modes of maritime transport other than liner transport, i.e., bulk transport (dry and liquid). Shippers do not regard as important the means by which port cargo is moved. They operate on a just-in-time basis and for that they must be sure that the cargo will be available when they need it. The motorways of the sea concept and those that are chosen to promote the concept, must be bottleneck free, which means that some of the actions being adopted in the COM(2003) 155 final need to be implemented before the motorways of the sea are a reality.

3.3.5. Improving the environmental performance of short sea shipping

3.3.5.1. Shipping is already an environmentally friendly transport mode vis-à-vis other modes [1]. Although it is understandable that to meet the Kyoto Protocol environmental pollution should be reduced, an additional burden will be placed on the transport industry. If the cost structure of a ship is examined, it can be seen that certain resources are being used to comply with international environmental regulation on marine emissions as required by Solas/Marpol. The industry is carrying out research and development which is already contributing to reduce pollution. This is the case for example with the EcoSilencer system developed by the Canadian company Marine Engineer [2]. Therefore, and even though this is an action to promote short sea shipping, it is not seen as a crucial one. The problem is not so much with shipping but rather with road transport that is still a long way from complying with the legislation. Air transport is also an important source of pollution. Attention should be focused on other modes of transport and whether they follow the same 'polluter pays' principle?

3.3.6. Guide to customs' procedures for short sea shipping

3.3.6.1. Customs issues are crucial for short sea shipping. They were addressed by the Commission in 2002 [3] where the EC Customs Rules were set as they apply to short sea shipping, in order to facilitate its use. In this document, the Commission makes use of the concept proposed in 1998 of 'regular shipping service' which is equivalent to road haulage and in which ships sailing only between European ports do not need to prove that the goods being carried are carried by an 'authorised regular shipping service'. In reply to the Commission exercise on customs procedures for short sea shipping, maritime industries made a priority point of enhancing the use of the simplified procedure on the basis of the Authorised Regular Shipping Status. However, this in itself is not enough as the underlying problem relates to the speed of implementation since some countries may give more importance to their national shipping policy than others. Likewise this deadline for implementation should be seen as a strict one. Unless this is overcome, short sea shipping will not be able to operate and to achieve the desired results as expected by the European Commission.

3.3.7. Identification and elimination of obstacles to making short sea shipping more successful than it is today

3.3.7.1. This problem has been very much discussed and talked about in the various European communications on short sea shipping, in the media and in some academic work being carried out. A recent work has been carried out by Paixão and Marlow (2002) which addressed the strengths and weaknesses of short sea shipping and aimed at carrying out a literature review and concentrating the elements in one paper [4]. As such, the existing bottlenecks must be addressed thoroughly wherever they exist. However, if in the future new bottlenecks are to be identified and eliminated this is to be done on a trade corridor basis and in that sense the Marco

(1) International Union of Railways (2000) — The way to sustainable mobility. Cutting the external costs of transport. International Union of Railways.

(2) Fairplay Solutions (2003). Scrubbing out the Sox. Ferry trials promise cleaner air. Fairplay Solutions, June, p. 6.

(3) Commission Staff Working Paper: Guide to Customs Procedures for Short Sea Shipping, SEC(2002) 632, 29.5.2002.

(4) Paixão, A.C. and Marlow, P.B. (2002). Strengths and weaknesses of short sea shipping, Marine Policy, Pergamon, London, United Kingdom, Vol. 26, Issue 3 (May), pp. 167-178.

Polo programme will contribute in an important way to their elimination. This action can be seen also as a sub-action of the implementation of the Marco Polo approach; and if this is accepted they should be addressed together. In addition, and although a study has been carried out on routes with the most potential for short sea shipping, it would be valuable if that study were to be updated [1]. The European Commission could therefore suggest the routes which present the greatest potential for short sea shipping.

3.3.8. Approximation of national applications and computerisation of Community Customs procedures

3.3.8.1. This is also a crucial action and is closely linked to action presented in § 3.3.6. Priority should be given to the implementation of electronic systems to promote the fast delivery of information/documentation, and to accelerate the customs' process for both the cargo and the ship. Without the functioning of proper information flows, the physical flows cannot proceed causing friction costs to the whole chain.

3.3.9. Research and Technological Development

3.3.9.1. This is a valuable support as it will help substantially to overcome some technological issues encountered in the integration of short sea shipping in multimodal logistics supply chains. However, research should also examine the strategic aspects of short sea shipping. It is a point that most research studies avoid dealing with but it is time that these are taken into consideration as well.

3.3.10. One-stop administrative shops

3.3.10.1. This must be dealt with in association with § 3.3.1, § 3.3.6 and § 3.3.8. On its own it will not work out and this implementation should be carried out in the shortest possible time. The implementation should take place at the same time and at a European level.

3.3.11. Ensuring the vital role of short sea shipping focal points

3.3.11.1. The focal points which are representatives of national maritime administrations should be more proactive in identifying existing bottlenecks and in creating promotion programmes for short sea shipping. This requires a close collaboration with the industry and they need to work together with the short sea shipping promotion centres to develop a concerted action on a national basis. It is important therefore that their work is monitored to ensure that they play a vital role within short sea shipping.

3.3.12. Ensuring good functioning of and guidance to short sea promotion centres

3.3.12.1. This should be done together with paragraph 3.3.11. Their work should also be monitored. It is not useful to have a network of short sea promotion centres if its working activities do not meet the expected requirements and outcomes.

3.3.13. Promote the image of short sea shipping as a successful transport alternative

3.3.13.1. This is part of the work carried out by short sea shipping focal points and short sea shipping promotion centres (see paragraphs § 3.3.12 and § 3.3.11). However, from a marketing point of view, the best way of promoting short sea shipping is to deliver effective and efficient transport services. In this way, it is also the role of short sea shipping to develop the correct logistics strategies that will lead to its integration in multimodal logistics supply chains [2]. The best way for promoting a service is to give customers what they want and to satisfy them. In the same way that word of mouth has a negative effect, it can also have a positive one.

3.3.14. Collection of statistical information

3.3.14.1. This has been an issue addressed previously in several communications from the Commission. The lack of statistical information emerges as being a problem to carry out market analysis. This should be done to help short sea shipping operators in defining where they are going to operate and which new potential services could be developed. However, without this sort of data market research is minimal and prevents the development of studies regarding the viability of

[1] Communication from the Commission — The Development of Short Sea Shipping in Europe: Prospects and Challenge, COM(95) 317 final, 5.7.1995, pp. 8-12.

[2] See Casaca, A.C.F.C.P. (2003) — The competitiveness of short sea shipping in multimodal logistics supply-chains. Unpublished Ph.D. Thesis, Cardiff University.

potential trade corridors. This work has been proposed in the 1992 Communication but its implementation is still lagging behind. This subject requires a very strict monitoring.

3.4. *On the Directive concerning Intermodal loading units*

3.4.1. As indicated in § 2.5 this directive addresses four important issues which include: (1) the harmonisation of interoperability characteristics of intermodal loading units; (2) the creation of the European intermodal loading unit (EILU); (3) safety and security of intermodal loading units; and (4) procedures for assessing conformity of ILUs and periodic inspections.

3.4.2. Items (1), (3) and (4) aim at solving the lack of intermodality in short sea shipping and to drive the implementation of certain rules and regulations within national Member State law. This action must be seen as a step forward since much is yet to be done at port level and in relation to short sea shipping integration along transport chains. The latter players will be the drivers promoting the changes still to be achieved by this industry.

3.4.3. As far as item (2) is concerned, the proposed European intermodal loading unit aims to provide a solution that meets the transport characteristics of road, rail and short sea shipping/inland waterways. For this reason, the EILU has been designed according to Council Directive 96/53/EC of 25 July 1996, and applies to all modes of transport. The EILU is not to be adopted by short sea shipping on a compulsory basis as may be the impression when reading the whole Communication. In this context the Directive is clear when stating that the use of EILU will not be compulsory.

3.4.4. The proposed EILU must be seen as a possible alternative to the present 45' containers that are allowed to circulate on European roads until the end of 2006 following which 1 January 2007 they will be banned from European roads, and which are being offered by some short sea operators. As such, the proposed EILU aims to fill a gap that will eventually occur at some point in time. Also it will allow road transport to make best use of its capacity since these boxes are able to carry 30 % more pallets, which eventually will reduce the number of trucks on the European road network, and therefore reduce environmental impact levels.

3.4.5. Not all trades and not all ships will be able to receive the European loading unit. If short sea shipping is to break even in certain trades, as it does now, it needs to mix two types of trades: the feeder and the pure intra-European ones. While the first implies a standard maritime transport from A to B and is an extension of deep-sea trades, the second is a far more dedicated approach which covers the specific requirement of shippers. The first trade particularly applies to the north-southbound short sea trades where the fleet being operated consists mainly of fully cellular containerships. However, even in these trades there is also the possibility to carry a reduced number of EILU in the aft of the ship or in front of the ships superstructure if the EILU is designed in accordance with the width of the traditional 20'/40' containers. If that is achieved, then the shift of goods from road to sea may be a reality.

3.4.6. Within this environment, and given that the earning capacity of a container ship is dependent upon the number of units it will carry and not a function of the actual cargo being carried in a container, it is important that short sea operators negotiate directly with buyers of short sea services in the provision of door-to-door transport services rather than with freight forwarders or other third party operators. This for two reasons: the short sea shipping market suffers from an overcapacity and there are always alternative means for conveying the goods. In the absence of new data, the conclusion reached by APAS in its 1996 report on short sea shipping and which is part of the research study carried out to develop the 4th Framework Programme is extremely important. Shippers are willing to give up unimodal transport in favour of an intermodal transport comprising a sea leg when door-to-door costs are reduced by 35 % to compensate for the amount of cargo that must be along the logistics pipeline. This suggests that the transport of the EILUs by short sea operators will be balanced between service quality and costs.

3.4.7. However, if both units, i.e. the EILU together with the traditional 20'/40' containers, keep their own dimensions as presented in the proposal, its adoption by short sea operators in the north-southbound trades will be almost impossible given the logistics nightmare that the two disparate units can cause. One first drawback is the fixed dimensions of the ships' cell guides which also extends to the cargo being carried on deck despite the fact that the market already provides moveable cell guides that adjust to the dimensions of the cargo units. The problem with the latter is that its use is very expensive not to mention the space that may be lost in the ships' holds, resulting eventually in a decrease in revenue. Attention therefore needs to be drawn to the width and/length of these units and to the present dimensions of the fixed cell guides. Second, to adopt the new EILU in the north-southbound short sea trades, means that short sea operators

will have to make new investments in new purpose built ships, which in the present market conditions seems doubtful. In addition, this new unit will require new tracking and tracing systems. In this case, the question to be raised is 'Who will pay for this new innovative and revolutionary transport system?' The probable scenario is that many short sea operators will go on trading as they have been doing for a long time and may even disregard the pure short sea operations. They may prefer the establishment of contracts with the bigger operators that ply the deep-sea trades and that give them certain income, even if that income is low, rather than being exposed to the risk of implementing a new system that will cost hundreds of euros and will not be used since shippers will go on using road transport. Road haulage industry opposition to this new cargo unit also contributes to this situation.

3.4.8. The introduction of the EILU poses problems for the inland navigation sector which are not readily surmountable: as far as the width is concerned, the proposal itself admits that the loading capacity for some barges will decrease, due to the fact that only three EILUs can be placed side by side on board, instead of four, which will cause problems from a commercial point of view. The height of the EILU is also of relevance given the standard height of many bridges in Europe. The EILU is higher (2,67 m) than a high cube ISO-container (2,59 m), which already causes a problem for a number of bridges. If one layer less can be carried as a consequence of the height of the EILU, the intended efficiency advantage concerning the number of pallets will be nullified.

Furthermore, contrary to what is suggested in the proposal, the adjustment of vessels, especially when for instance it involves container cell guides, is a very expensive matter. At present all new vessels are built based on the width of the current sea containers. Lock widths are also based on these dimensions.

3.4.9. Therefore, and under present circumstances the probable market for the EILU is the short-distance short sea shipping trades where operators employ roll-on-roll-off ships and where the trade routes have a strong component made up of trailers and semi-trailers and have the experience of using units such as the STORA Box. This applies particularly to the North-European including the Baltic geographical area where most ships of this type are already being employed. Another issue that very much contributes to it is the industrial concentration in this region; about 70 % of the European Union industry is located in the United Kingdom, Germany, France, Denmark, Sweden, Finland, Ireland and the Netherlands.

3.4.10. In view of the above statements, the market will determine the number of European loading units to be employed by short sea operators, at a time when short sea operators will involve themselves in their acquisition only when they are sure that they have a market share that will cover the investment being made. However, short sea operators will eventually have to operate two systems for controlling the traditional sea containers and the new intermodal units. This represents an additional cost to an industry that is suffering from numerous pressures. One important outcome that may result from the introduction of this loading unit is the possibility for transport operators to think beyond the operation of their own transport mode, and for the first time to address the issue of complementarity between modes which contribute towards the development of intermodal transport chains. This aspect is of particular importance to short sea shipping as for many years this industry has very much adopted a centralised management approach which reflects the reluctance to delegate decision-making processes which is synonymous with a control culture implemented by the founder family (Evangelista and Morvillo, 1998) ([1]).

3.4.11. Despite this, the following thoughts must be kept in mind whenever a new technology or legislation is brought into the shipping industry in general and short sea shipping in particular. The shipping industry is already struggling with cost increases arising from the safety and environmental rules and regulations that are required to be implemented for the development of safe maritime transport. The new European intermodal loading unit will oblige short sea operators to incur additional investments. When freight rates are as low as they are and road transport is a long way from internalising its external costs, are short sea operators willing to go ahead and implement the new system?

3.5. *Other issues*

3.5.1. Although not envisaged in the present Communication, the new ISPS Code must be borne in mind. With a view to fight organised crime and illegal immigration, its implementation will constitute one more additional requirement that short sea shipping has to overcome. It is time that shippers are given the responsibility to comply with the Hague and Hague-Visby Rules concerning bills of lading. Shippers are often reluctant to say what type of cargo is being carried in a container. This practice, even though an old one, should be changed. The way that this will be done requires deep thought,

([1]) Evangelista, P. and Morvillo, A. (1998) — The Role of Training in Developing Entrepreneurship: The Case of Shipping in Italy. Maritime Policy and Management, 25(1), pp. 81-96.

in order to avoid frightening shippers and making them choose road transport rather than short sea shipping. Short sea shipping must be seen as the truck of the sea.

3.5.2. If these actions were to be listed according to their importance in promoting the short sea shipping industry, the following outcome could be achieved:

Rank	Type of Action
First	1. Implementation of the Directive on certain reporting formalities for ships to arrive in and/or depart from ports in the Member States (IMO-FAL)
	6. Guide to customs procedures for short sea shipping
	8. Approximation of national applications and computerisation of Community customs procedures
	10. One-stop administrative shops
Second	14. Collection of statistical information
Third	2. Implementation of Marco Polo
	3. Intermodal loading units
	4. Motorways of the sea
	7. Identification and elimination of obstacles to making short sea shipping more successful than it is today
Fourth	5. Improving the environmental performance of short sea shipping
	9. Research and technological development
Fifth	11. Ensuring the vital role of short sea shipping focal points
	12. Ensuring good functioning of and guidance to short sea promotion centres
	13. Promote the image of short sea shipping as a successful transport alternative

3.5.3. Overall the promotion programme is positive but the most important point is to keep the deadlines as tight as possible.

3.5.4. As far as the actors responsible for applying the foreseen measures are concerned, the more that are brought into the system, the worse the situation will be. There may even be conflicts of interest between them. It would be sensible that only one national actor is responsible for applying the measures and that actor would respond to the Commission regarding the issues achieved within the proposed programme. The strategies that such an actor would adopt on a national basis would depend on the national context although they should be designed in such a way to apply the proposed measures.

4. **Conclusions**

4.1. In the light of the above and without prejudice of the remarks set out, the Economic and Social Committee supports the Communication from the Commission on the action programme for the promotion of short sea shipping.

4.2. The success of short sea shipping depends on the strict implementation of the deadlines proposed by the Commission in its communication. Without certain bottlenecks being removed short sea shipping cannot evolve into intermodality.

4.3. A continuous monitoring of implementation should be carried out; immediate measures should be applied whenever actions for implementation are not meeting the proposed deadlines.

4.4. With respect to the proposal for a directive on intermodal loading units, the European Economic and Social Committee supports the objectives contained therein, but considers that certain issues still have to be addressed. The list that follows presents some of the issues that ought to be taken into consideration:

— A clarification of the European intermodal loading unit concept must be given to transport modes operators. The present proposal targets all individual transport industries, i.e. road, rail and waterborne, and not a particular transport mode.

— The definition of the European intermodal loading units dimensions as these do not meet the technical specifications of the present container ships that trade in European waters:

  — in respect to width only if these units are to be carried on deck like the 45' containers;

  — in respect to both width and length if these units are to be carried in the hold of the ships.

— The difficulties that will arise in using the new intermodal loading units in certain transport modes and certain routes because of its bigger dimensions (constraints because of tunnels, bridges, etc.).

— The high costs involved in order to adapt the existing infrastructures ashore and at sea for the use of the new intermodal loading unit.

Unless this is done, the performance of intra-European short sea trades will be affected considerably and additional pressures will be put on short sea shipping operators.

Brussels, 29 October 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 Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community, and Council Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures'

(COM(2003) 378 final — 2003/0138 COD)

(2004/C 32/16)

On 10 July 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 European Economic and Social Committee decided to appoint Mr Peter Boldt as rapporteur-general for its opinion.

At its 403rd plenary session on 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion with 71 votes in favour and two abstentions.

1. **Introduction**

1.1. Regulation (EEC) No 1408/71 has often been amended to reflect changes to Member State social security systems and to the case law of the European Court of Justice, which impacts on the future implementation of the regulation. In 1999, work began on reviewing the regulation in order to simplify and modernise it. The European Economic and Social Committee has commented on the proposed amendments in several opinions, including: 'Amendments to Social Security — unemployment' ([1]), 'Social Security — Application' ([2]), 'Social Security when moving within the Community' ([3]), 'Extension of Social Security to non-EU nationals' ([4]), 'Application of Social Security systems to employed persons when moving within the Community' ([5]) and 'Social Security systems' ([6]).

1.2. For reasons of consistency, amendments to Regulation (EEC) No 1408/71 need to be accompanied by amendments to Regulation (EEC) No 574/72, which covers application of the former.

1.3. In recent years, particular attention has been paid to facilitating the free movement of people within the Union. It is therefore extremely important that EU citizens can access without undue difficulty the treatment they need during a temporary stay in a Member State other than their own.

([1]) OJ C 295, 7.10.1996.
([2]) OJ C 89, 19.3.1997.
([3]) OJ C 73, 9.3.1998.
([4]) OJ C 157, 25.5.1998.
([5]) OJ C 101, 12.4.1999.
([6]) OJ C 367, 20.12.2000.

1.4. Under the current wording of Regulation (EEC) No 1408/71, persons temporarily staying in a Member State other than their own shall be entitled, under the same conditions as the citizens of the Member State they are visiting, to 'immediately necessary care' or 'necessary care', depending on the reason for their temporary stay (whether they are on holiday, posted abroad by his employer, a student, jobseeker, or working in international road transport).

1.5. Access to treatment and reimbursement is currently guaranteed by a form that the insured obtains, on request, from the social security organisation in his country of origin. Various forms (E110, E111, E119 and E128) exist, depending on whether the insured is on holiday, posted abroad by his employer, a student, jobseeker, or working in international road transport.

1.6. In connection with approval of the action plan to remove obstacles to geographical mobility by 2005, the Barcelona European Council decided, in March 2002, to create a European health insurance card. The spring European Council in Brussels called for the necessary decisions to be taken to ensure that the card can be used as of summer 2004. The card 'will replace the current paper forms needed for medical treatment in another Member State'. The aim is to 'simplify procedures, [without changing] existing rights and obligations'. The proposal for a regulation is a response to the Barcelona and Brussels decisions.

2. **Gist of the Commission proposal**

2.1. The main objective of the proposal is to enable the adoption of a European health insurance card. An important aspect of the amendment is the proposal to harmonise the right to healthcare and to simplify access procedures.

2.2. Under the proposal, all groups of persons, whatever their situation, would be entitled to 'medically necessary' care during a temporary stay in another Member State.

2.3. To this end, it lays down the provisions governing relations and cooperation between the institutions and persons covered by the regulation (Article 84a). The proposal for a new Article 84a covers the duty of mutual information and cooperation between individuals and the institutions. The current regulation only covers cooperation between the institutions in the various Member States.

2.4. In a proposed amendment to Regulation (EEC) No 547/72, the text will only refer to 'documents' instead of models of certificates, certified statements, declarations, applications and other documents. This would allow the existing E forms to be replaced by the future health insurance card.

2.5. The Commission proposal to amend Regulations (EEC) No 1408/71 and (EEC) No 574/72 is, then, a continuation of the Commission Communication of 17 February 2003 [1], and aims to provide the legal framework for the adoption of the European health insurance card in 2004.

3. **General comments**

3.1. The plan to introduce a European health insurance card will provide a real fillip for a Citizen's Europe. However, the plan is by no means simple, either technically or legally. The Member States use different criteria for establishing entitlement to treatment, and levels of preparation for switching to a single card vary.

3.2. The European Economic and Social Committee welcomes the proposal to introduce the same entitlement to 'necessary care' for all categories of persons, which the EESC had called for in its Opinion on the 'European health insurance card' of 18 June 2003 [2].

3.3. European citizens' real prospects of moving within the European Union will be enhanced if the entitlement to medically necessary care also includes care requiring prior agreement. A list of such types of care should be drawn up without delay by the Administrative Commission on Social Security for Migrant Workers.

3.4. The European Economic and Social Committee, which supports the drive to secure a single card, is also aware of the difficulties posed by the very tight timetable for implementation of the reform, particularly since only some of the current Member States and a few of the new countries that are set to join the EU on 1 May 2004 will be in a position to introduce a European health insurance card by the proposed deadline.

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[1] COM(2003) 73 final.
[2] OC C 220, 16.9.2003.

3.5. Work on simplifying and comprehensively reforming Regulations (EEC) No 1408/71 and (EEC) No 574/72 is underway and it will not be facilitated by proposals for partial reforms to the regulations as the work proceeds.

4. **Specific comments**

4.1. The numbering of Article 1(1), covering the amendment of the current Article 22, is particularly complicated and would benefit from greater clarity.

4.2. The proposal for a new Article 84a improves implementation of the regulation by defining the respective duties of the institutions and of persons. However, the way the article is worded could make it difficult to give a clear interpretation of its scope. In particular, Article 84a (1)(3) is too general on the obligation to report any changes to personal or family situation. It should be restricted to the obligation to report any relevant changes. Similarly, in Article 84a(2), 'proportionate' (Translator's Note: EN version of COM doc has 'relevant penalties in accordance with national law'. All other language versions have 'proportionate') is left completely open to interpretation.

4.3. The objective of simplifying procedures cannot be achieved immediately after the proposal has been adopted. Not all Member States are ready to introduce the card without a (relatively long) transitional period, during which the old and new procedures would run in parallel. This could create a certain confusion and make increased demands for information on both the competent authorities and citizens.

4.4. There will be considerable demands for information on all bodies within the EU that are likely to come into contact with the card. Not only will forms and a European card exist side by side, but each Member State will be able to decide on the detailed rules for the card. The card could be a separate European card or it could be a joint national/European card. The Administrative Commission decides on the information the card is to contain.

4.5. Since the intention is to secure uniform entitlement for all users, including during the transitional period, and to simplify the procedure for seeking treatment regardless of whether the patient has the old form or the new card, the Administrative Commission must waste no time in drafting the necessary instructions/regulations for dealing with the different documents during the transitional period.

4.6. The regulation only addresses the risk of using false cards in the proposal for a new Article 84a). There could be major risks of intentional or unintentional misuse, particularly during the transitional period, and this should be borne in mind in the Member States.

4.7. Article 2(1) states that documents can be transmitted in paper form or electronically. This would, however, require agreement between the authorities in the sender- and destination Member States, i.e. many hundreds of bilateral agreements. Since an arrangement of this kind would probably involve a lot of red tape, a solution that does not require separate bilateral agreements for transmitting information electronically should be found as soon as possible under the TESS programme (Telematics in Social Security).

5. **Conclusions**

5.1. The Committee welcomes the proposed amendment of both regulations and assumes that future amendments to Regulations (EEC) No 1408/71 and (EEC) No 574/72 can be included in the major overhaul of these regulations.

5.2. Under the co-decision procedure, the Committee, as a consultative body, should have the opportunity to comment on any changes made to the texts during the decision-making procedure.

Brussels, 29 October 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 amending Decision 2002/834/EC on the specific programme for research, technological development and demonstration: "Integrating and strengthening the European research area" (2002-2006)'

(COM(2003) 390 final — 2003/0151 (CNS))

(2004/C 32/17)

On 25 July 2003 the Council decided to consult the European Economic and Social Committee, under Article 166 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 the Single Market, Production and Consumption to prepare the Committee's work on the subject.

In view of the urgent nature of the work, the Committee decided at its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) to appoint Mr Wolf as rapporteur-general and adopted the following opinion by 71 votes to 26 with eight abstentions.

1. Introduction and point of departure

The Commission proposal deals with the limits that are to apply, under the sixth EU R&D framework programme, to research into the medical and biological potential of human stem cells procured from 'supernumerary' (frozen) human embryos.

1.1. Life sciences and medicine are key aspects of the sixth framework programme of the European Community for research, technological development and demonstration activities. The first point of the specific programme covering this thematic area is the application of 'life sciences, genomics and biotechnology for health', including 'somatic gene and cell therapies (in particular stem cell therapies)' and 'immunotherapies.' The sixth framework programme adopted by the Council and the Parliament provides the legal basis for the Commission proposal.

1.2. Community funding of stem cell research using human somatic stem cells and embryonic stem cells from supernumerary human embryos is provided for under research priority (i) Advanced genomics and its applications for health in the section Application of knowledge and technologies in the field of genomics and biotechnology for health. For example, in this section: 'Research will focus on:.... development and testing of new preventive and therapeutic tools, such as somatic gene and cell therapies (in particular stem cell therapies, for example those on neurological and neuromuscular disorders) and immunotherapies' ([1]).

1.3. The specific programme adopted by Council on 30 September 2002 allows the funding of research activities involving the use of human embryos and human embryonic stem cells except in three areas:

— research activity aiming at human cloning for reproductive purposes (reproductive cloning);

— research activity intended to modify the genetic heritage of human beings which could make such changes heritable (germline gene therapy) ([2]);

— research activities intended to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer (commonly referred to as therapeutic cloning).

1.4. At the Council meeting of 30 September 2002, the Council and the Commission agreed, however, that 'detailed implementing provisions concerning research activities involving the use of human embryos and human embryonic stem cells shall be established by 31 December 2003.' Until that time, the Commission will not propose to fund such research, with the exception of proposals for projects that involve the use of banked or isolated human embryonic stem cells in culture.

([1]) OJ L 294, 29.10.2002, p. 10.

([2]) Research relating to cancer treatment of the gonads can be financed.

1.5. The Commission's purpose in submitting the present Proposal for a Council Decision amending Decision 2002/834/EC on the specific programme for research, technological development and demonstration: 'Integrating and strengthening the European research area' (2002-2006) is thus to establish the implementing provisions mentioned in point 1.4.

1.6. The Commission's proposal was drawn up in the light of an interinstitutional seminar on bioethics that took place on 24 April 2003. This seminar provided an opportunity for a discussion and sharing of views between experts (scientific, legal, and in ethics) and representatives of the European Parliament, the Council, the Commission, the Member States and the accession and candidate countries. However, the proposed guidelines also draw on the principles laid down by the European Group on Ethics, and in particular this group's opinion no. 15 on Ethical aspects of human stem cell research and use ([1]).

1.6.1. This group was guided by the following principles:

— the principle of respect for human dignity;

— the principle of human autonomy which entails the giving of informed consent, respect for privacy and the protection of personal data;

— the principle of justice and of beneficence (especially with regard the improvement and protection of health);

— the principle of freedom of research (which must be balanced against other fundamental rights) and;

— the principle of proportionality (the research activity must be vital to the objective to be achieved and there must be no more appropriate alternative methods available).

1.7. The Commission proposal thus addresses a field of research which combines both high expectations for medical applications and profound ethical questions. It concerns especially the procurement of new embryonic stem cells from human supernumerary embryos. In order to properly address both these scientific expectations and the ethical concerns, the Commission is proposing to fund such research only under strict and restrictive conditions.

([1]) http://europa.eu.int/comm/european_group_ethics/index_en.htm

2. **Gist the Commission proposal**

The gist of the Commission proposal is set out in its annex which is reproduced verbatim here:

'In order to be funded by the Community, research projects involving the procurement of stem cells from human embryos must also meet the following conditions:

(a) prior to the start of research activities, participants must obtain ethical advice at local or national level in the countries where the research will be carried out;

(b) the human embryos used for the procurement of stem cells must have been created before 27 June 2002 as a result of medically-assisted in vitro fertilisation designed to induce pregnancy, and were no longer to be used for that purpose;

(c) the project must serve particularly important research aims to advance scientific knowledge in basic research or to increase medical knowledge for the development of diagnostic, preventive or therapeutic methods to be applied to humans;

(d) all other alternative methods (including existing or adult stem cell lines) must have been examined and demonstrated not to be sufficient for the purposes of the research in question;

(e) the free, express, written and informed consent of the donor(s) should be provided in accordance with national legislation prior to the start of the research activities;

(f) no monetary compensation or other benefit in kind must be granted or promised for the donation;

(g) the protection of personal data, including the genetic data, of the donor(s) must be ensured;

(h) where appropriate, the participants in research projects must follow quality and safety standards on donation, procurement and storage in accordance to the state of the art, in order to ensure in particular the traceability of these stem cells.

The scientific evaluation and the ethical review organised by the Commission of the research proposals shall include verification of these conditions. The conditions set out in point (c) and (d) shall be assessed during the scientific evaluation.

The opinions of the European Group on Ethics in Science and New Technologies, and in particular those relating to research involving the use of human embryonic stem cells will be taken into account.

The participants in research projects should use their best efforts to make the newly derived human embryonic stem cell lines available to the scientific community on a non-profit making basis for research purposes.

A list of research projects involving the use of all types of human embryonic stem cells funded under the sixth framework programme will be published yearly by the Commission'.

3. The Committee's comments I: Medical and scientific aspects and the EU research programme

3.1. In a number of opinions, the Committee has expressed its wholehearted support for the successful structuring of the European research area as a key step towards attaining the Lisbon objectives, incorporating and developing the potential of European research, and preventing the migration of cutting-edge European research and top-level European researchers. To that end, it is vital to give European research the opportunities it needs to achieve excellence in global competition.

3.2. In its opinion on the sixth framework programme, the Committee strongly endorsed all the thematic actions proposed therein, including the research priorities under discussion here. A key element of these priorities is research into, and using, stem cells.

3.3. Stem cells are progenitor cells of other, more specialised cells; from them, various types of specialised cells can develop (multipotency). Haematopoietic stem cells have been known for a long time (and used in therapy for leukaemia and other types of cancer).

3.4. Knowledge is now available, however, about tissue-specific stem cells for many tissues. These are referred to in the Commission report as somatic stem cells, which are generally also known as adult stem cells.

3.5. Stem cells are able to generate different cell types to match the surrounding tissue ('plasticity') although many of the particulars surrounding the extent to which they have this facility remain unknown. It has been proven, for instance, that, in the right tissues, haematopoietic stem cells have developed into liver cells, muscle cells and nerve cells. This development potential is one reason why priority is given to the use of stem cells in cell therapy procedures. Research in this field is being conducted worldwide.

3.6. The earliest stage of a stem cell in the development of the organism is the fertilised ovum. The cells continue to divide, becoming 'blastocysts' between the fourth and the seventh day of development. A blastocyst contains two cell groups, the outer specialised cell layer (trophoblast) and the internal cell mass (embryoblast). This embryoblast consists of pluripotent stem cells (embryonic stem cells [ES cells]), which are progenitor cells for all later development stages of the organism.

3.7. For some time, embryonic stem cells of animals — particularly mice — have been studied in development biology and cell biology. In contrast to more specialised (tissue-specific) stem cells, they are able to reproduce identically through many cell division cycles and can be maintained in culture (cell lines) — something not normally possible (or possible only with difficulty and for a short time) in the case of tissue-specific stem cells.

3.8. Embryonic stem cells can be generated only from blastocysts, i.e. from early embryos from the fourth to the seventh day of their development.

3.8.1. Blastocyst production is a routine procedure in reproduction medicine: in vitro fertilisation (IVF). It has long been in use, for instance, in the breeding of farm animals.

3.8.2. The first human conceived by IVF was born in 1978. This procedure was initially highly controversial but it has now been introduced in all developed countries.

3.8.3. In most countries, in vitro fertilisation is subject to regulation and restriction under the law and/or professional rules of conduct. In certain cases, it can enable otherwise infertile couples to have children of their own and is thus a beneficial procedure for the parties involved.

3.8.4. This procedure involves, initially, developing several embryos (e.g. six), of which three, for instance, are implanted

into the womb at the first attempt, while the other 'supernumerary' ([1]) embryos are frozen and put into storage for a number of years for possible future use. Many of them can be kept implantable during that time.

3.8.5. Depending on the 'parental project' — and what is possible medically — supernumerary embryos of this kind are bound to be produced that have no prospect of ever being lodged, implanted or nidated (a pre-condition for the development of human life).

3.9. Human embryonic stem cells (HES) were successfully procured and established as cell lines in culture in 1998. Since then, many research teams have generated HES lines.

3.10. Research into and using HES has grown apace since then, for three main reasons:

3.10.1. In human medicine, therapeutic stem cell applications, which are currently performed only in haematology and oncology (and to date using only tissue-specific stem cells), may be used to treat many serious, common illnesses. If successful, the expected therapeutic, human and indeed economic benefits involved would be enormous.

3.10.2. For that to happen, fundamental issues still need to be resolved in the field of stem cell biology.

3.10.3. Many of these fundamental issues relating to stem cell biology can be resolved using animal ES cells.

3.10.4. But a number of issues crucial to therapeutic applications in the treatment of human illnesses can only be resolved using human stem cells.

3.10.5. Many issues crucial to therapeutic applications in the treatment of human illnesses can also be resolved using tissue-specific stem cells (adult stem cells).

3.10.6. At current levels of knowledge, however, some key issues can only be resolved using HES cells.

4. The Committee's comments II: Ethical and legal aspects

4.1. Blastocysts are four- to seven-day-old embryos made up of some 200 cells that have reached a differentiation stage (trophoblast and embryoblast). They normally do not survive withdrawal of ES cells. The procurement of HES cells thus involves the destruction of human embryos that are a few days old.

4.2. These embryos are not yet foetuses ([2]), but small balls of approximately 200 cells. As described in scientific literature, HES lines have been generated from embryos that were developed for IVF but were not ultimately used to induce a pregnancy (known as 'supernumerary' embryos).

4.3. Supernumerary embryos such as these are placed in cold storage in dedicated facilities across Europe and, if they no longer the subject of a 'parental project', are later destroyed in line with national rules.

4.4. The question is, however, whether it should be permissible to kill such supernumerary embryos procured through IVF ([3]) (which, after all, have no potential for life) in order to procure stem cell lines.

4.5. The ethical aspects of this procedure are thus tied to the key issue of whether and under what conditions it may be justifiable to use potential human life for an extrinsic purpose — even in cases where, as with supernumerary embryos, the subject involved is in any case doomed to certain death ([4]).

4.6. These issues have been widely discussed in all countries in which HES lines have been procured — and in many in which they have not — with widely varying results. The legal provisions that have been adopted show broad agreement on the substantive principles involved (a 'core consensus') but differ widely on key points of detail. This is true both at global level and between the Member States of the European Community.

([1]) In Germany, there are only a limited number of 'genuine' supernumerary embryos, as, generally speaking, those 'supernumerary' ova procured as a result of hormone treatment for the woman/prospective mother but not used for the initial implantation are, following sperm penetration, frozen at the so-called 'pre-nucleus stage', i.e. before the emergence of a common cell nucleus. In German linguistic usage, these are not yet termed embryos. However, in individual cases, embryos designed for first implantation are, for various reasons, not implanted, and are subsequently frozen.

([2]) The term foetus denotes an embryo from around the twelfth week of gestation until birth.

([3]) Thus, the Commission proposal under discussion here is concerned only with the procurement of stem cell lines from supernumerary embryos generated from IVF, not therefore from cloning (somatic cell nuclear transfer — SCNT) or from induced cell division that has recently been under discussion (parthenogenesis).

([4]) Society generally takes a positive view of this issue in the case of organ donations from adults killed in accidents.

4.7. Member States' differing stances on this issue to some extent also reflect the differing viewpoints of the general public and various social groups within the individual countries. As a result, individual Member States have adopted a variety of legal provisions through democratic channels that reflect the majority view in the countries concerned.

4.8. These provisions also reflect differences of opinion as to the moment in the development of a human embryo at which individual human life begins.

4.8.1. Views vary widely:

— Some believe that human life begins at the fusion of ovum and sperm (or their cell nuclei).

— Others take the view that life does not begin until the embryo is lodged/implanted/nidated [1] [2] in the womb.

— For others, life does not begin until the gastrulation phase [3] (formation of the 'primitive streak' that emerges between the twelfth and fifteenth day of an embryo's development).

— Still others consider that a relatively long evolutionary process is involved, making it impossible to fix an exact time. An arbitrary decision is thus needed, for instance, from the twelfth week [4] after the embryo lodges in the womb (i.e. at the transition from embryo to foetus).

5. The Committee's comments III: Europolitical aspects and international practice

5.1. Given the range of views within civil society outlined above and Member States' differing legal positions on the matter, it is clearly necessary — and also makes political sense — for the Commission to adopt a moderate and, if anything, restrictive middle course in its proposals for EU rules on this sensitive issue that is nonetheless also of vital importance in the light of the opportunities it affords.

5.2. This includes the Commission's proposal not to adopt Community laws binding on the Member States in this area, but instead to establish the potential research framework, i.e. to lay down the limits within which the Commission can support research projects using human stem cells (within the purview of the sixth framework programme).

5.3. The ethical and legal aspects of stem cell research were last discussed in depth at European level at the Commission's invitation in spring 2003; the present Commission proposal is the result.

5.4. The Committee respects the views of those, including some of its own members, who reject, on ethical grounds, any procurement of human stem cell lines from supernumerary embryos generated in the course of in vitro fertilisation, and thus also reject the Commission proposal.

5.5. Looking at the overall picture, however, the Committee nonetheless considers that the Commission proposal (reproduced in point 2 above) offers a balanced, well-thought-out approach that weighs up ethical principles against the potential prospect of treating diseases — although this inevitably, and regrettably also, places considerable restrictions on research possibilities and opportunities.

5.6. The Committee trusts that the proposed rules are compatible with the Charter of Fundamental Rights of the European Union, not least since the cases mentioned in Article II — 3(2) (b), (c) and (d) of the charter are explicitly excluded in the Commission's proposal and the earlier Council decision (see point 1.4).

5.7. This also applies therefore to all the individual provisions set out in the Commission proposal — from (a) to (h). The proposal focuses on the procurement of new stem cell lines from human embryos — a matter of some contention in the Council deliberations — and lays down criteria (points (a) to (h)) and procedures (the second to the fifth paragraph) to that end. Turning to the individual points:

a) The Committee welcomes the mandatory consultation of an ethics commission [5]. This is in line with normal international practice. The fact that this allows account to be taken of the legislation or rules applying in the individual Member States is also important.

b) The procurement of new stem cell lines is limited to human embryos created for IVF treatment before the start of the sixth R&D framework programme but which will no longer be considered for use in inducing a pregnancy, and are thus deemed supernumerary. This arrangement reflects the legislative consensus in those countries in which the procurement of HES lines and/or the use of existing lines is regulated by law. Having a cut-off date prevents the improbable, but nonetheless conceivable scenario whereby human embryos are procured specifically for research purposes. (Under the rules adopted for

[1] Hence some commentators (see, for instance, Jahrbuch für Wissenschaft und Ethik 7 (2002) ,Walter de Gruyter Berlin — New York) also use the term 'pre-embryos' to denote embryos existing before nidation (or in other cases before gastrulation).

[2] Hence there is no ban on contraception that prevents nidation (e.g. intrauterine coils).

[3] Ulrich Steinvorth, Jahrbuch für Wissenschaft und Ethik 7, 2002, p. 165, Walter de Gruyter Verlag. The main argument for this view is that a possible multiple-birth pregnancy cannot be ruled out until after this stage.

[4] In some Member States, this time period also plays a key role in abortion legislation.

[5] The Committee has reservations however about whether this measure is also necessary in Member States where it is not required under national law.

sixth R&D framework programme, reliable steps must be taken to rule out such a scenario and the practice is permitted under certain conditions only in Great Britain.)

c) There is agreement in international law that projects to be supported must serve particularly important research aims.

d) It is also standard international practice to demonstrate in advance that alternative methods for achieving the research objectives in question (for instance animal experiments or tests using tissue-specific human [adult] stem cells) have been fully explored. That can of course be done only in the light of currently available knowledge and should not delay pending decisions unduly.

e) The requirement to secure donors' informed consent is also in line with international norms and is, moreover, common practice in the case of organ donations.

f) The Committee welcomes the proposal to rule out any payment [1] as this broadly reflects international legal practice.

g) The requirement to protect personal data on all matters such as these is also self-evident.

h) The quality assurance and traceability requirements relate to the current legal position and knowledge of work with biological materials from patients and those involved in experiments. These requirements are also important for the establishment of stem cell banks mentioned in point 5.8.3 below.

5.8. The paragraphs after point (h), hereinafter referred to as paragraphs 2 to 5, deal with procedures for safeguarding those criteria and look at some of the reasons behind the measures.

5.8.1. Paragraph 2 sensibly spreads the responsibility for examining the criteria under points (a) to (h). The scientific evaluation alone can determine the status of research objectives and whether these can only be attained using newly established HES lines. In contrast, points (a), (b) and (e) to (h) set out formal criteria which are to be examined on an administrative level using uniform yardsticks. Non-compliance with one of the criteria rules out support for the project concerned.

5.8.2. Paragraph 3 refers to opinions of the European Group on Ethics in Science and New Technologies This provision may potentially help ensure that account is consistently taken of state-of-the-art knowledge in the rapidly developing field of stem cell research.

5.8.3. Paragraph 4 lays down that newly derived HES lines are to be made available freely (and on a non-profit making basis) to the scientific community. The Committee feels it is vital in this regard that the Commission wants to 'contribute to the establishment of public stem cell banks and their networking at European level'. This point ties in with considerations of the European Science Foundation.

5.8.4. The standardisation this brings represents added European value. It is also a key prerequisite and secure foundation for ongoing research. It is in the interest of both Europe and the world and cuts the number of embryos needed to procure stem cells.

5.8.5. New HES lines procured with support under the sixth framework programme should therefore be deposited in a public stem cell bank.

5.8.6. This can also counter the restrictions placed on use as a result of the patenting of existing stem cell lines.

5.8.7. Paragraph 5 is also welcomed; in it, the Commission commits itself to publishing the projects it supports in which HES cells are used (but not the names of the people working on those projects).

6. **The Committee's comments IV: Member States with differing national laws**

6.1. Member States' legal systems vary widely. Not all Member States explicitly address stem cell research. Some countries' laws are more liberal than the Commission's proposal, others more restrictive. The development is in a state of flux.

6.2. Thus, scientific institutions in Member States with more restrictive laws may not take part in stem cell research projects that fully exploit the scope afforded under the Commission proposal (in other words where they are not restricted to stem cell lines whose use is permitted in all Member States), and cannot, therefore, apply for financial assistance in relation to such projects.

[1] In this case too, there is an analogy to organ donations.

6.3. Conversely, scientific institutions in Member States with more liberal laws are not entitled to EU research funding either, unless they restrict themselves to research that meets the conditions laid down in the Commission proposal.

6.4. This situation is unsatisfactory, on the one hand, because all Member States contribute to the Community budget and thus also to the Community resources used to promote research, and, on the other, because exclusions such as these also limit the potential of the European research area by ruling out certain Member States (or rather their scientific institutions) from involvement in the networked research programme (and from a share in the support).

6.5. In the Committee's view, however, this does not preclude the Council, acting by a qualified majority and having consulted the Parliament, from adopting this Commission proposal to amend Decision 2002/834/EC.

6.6. However, the Community's funding remit does not include the right to standardise or harmonise Member States' laws.

6.7. In the light of the above, the Committee recommends the following:

6.7.1. When implementing this research programme, the Commission should work to ensure that the individual projects or programme elements are structured in such a way that research institutes that would otherwise be excluded can still be involved as far as possible in some aspects or subsections of the ventures, where the activities concerned do not violate European or national law.

6.7.2. In future revisions of their national legislation, the Member States concerned should seek, as far as possible, to come into line with these proposals so that, gradually, uniform rules are established that apply to all Member States. This is good for European research and medicine, not least given the high level of international networking and cooperation that exists in this field. The Committee feels that the present proposal offers a good compromise in this regard.

Brussels, 29 October 2003.

7. **Summary**

7.1. This proposal comes in response to the request made by the Council to the Commission in September 2002. It addresses those points in the implementing provisions of the sixth R&D framework programme that the Council felt required regulation.

7.2. The proposal on this sensitive but, given the opportunities it affords, nonetheless vitally important issue adopts a moderate and, if anything, restrictive approach, treading a 'middle way' between the different national laws that apply in the Member States. It thus represents a compromise between diverging individual viewpoints.

7.3. The proposed rules meet the challenge. They allow support to be given to key scientific research serving important medical and biological ends. They give special priority to projects fostering international coordination and cooperation. They establish clear criteria and procedures to comply with the appropriate ethical and legal factors.

7.4. The Committee respects the views of those, including some of its own members, who reject, on ethical grounds, any procurement of human stem cell lines from supernumerary embryos, and thus also reject the Commission proposal.

7.5. In the light of all the factors involved, however, the Committee recommends that, bearing in mind the detailed points made above, the Commission proposal be accepted.

7.6. The Committee again asks the Commission to ensure that, in implementing the scientific programme, the programme elements are broadly structured in such a way so as not to rule out the involvement of top-rate scientific institutions in some Member States.

7.7. It again calls on Member States to pursue the same objective in future revisions of national legislation and to seek an overarching consensus on what is, admittedly, a very difficult issue, thereby broadening the scope of the fundamental agreement that currently exists on core issues (see point 1.3 above) to encompass a future coherent set of rules accepted by all Member States.

7.8. New HES lines, which are procured with support under the sixth framework programme, should be stored in a public stem cell bank and be freely accessible to European researchers.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Initiative of the Kingdom of the Netherlands with a view to the adoption of a Council Regulation amending Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters' [1]

(2004/C 32/18)

On 27 November 2002 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 October 2003. The rapporteur was Mr Retureau.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) the European Economic and Social Committee adopted the following opinion by 63 votes to 11 with 7 abstentions.

1. The legislative proposal

1.1. The proposal is an initiative of the Kingdom of the Netherlands [1] amending a provision of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Regulation), which entered into force on 1 March 2002 and which contains implementing provisions for the Brussels I Convention (the Convention) on the same subject. This convention will continue in force in the Kingdom of Denmark, however. Moreover, the Lugano Convention (1988) will continue in force in certain non-EU countries.

1.1.1. The proposed amendment would insert a derogation clause into the Regulation with regard to jurisdiction for contracts for cross-border work.

1.1.2. Its legal basis is Articles 61(c) and 67(1) of the EC Treaty. These articles, together with Article 65, to which Article 61 refers, deal with the powers of the Council and with the right of initiative of its members with regard to jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. For a period of five years from the entry into force of the EC Treaty, as amended at Amsterdam, the Member States have the same right of initiative as the Commission, but with the entry into force of the Treaty of Nice the Commission's right of initiative will become exclusive and the members of the Council will retain only the right to ask the Commission to make proposals.

1.2. Article 20 of the Regulation reflects the rules on jurisdiction laid down in relation to proceedings connected with contracts of employment brought by an employer against an employee resident in another Member State. In principle, jurisdiction in such cases lies with the courts of the employee's home country.

1.2.1. This is a general and binding rule of assignment of jurisdiction which applies to any proceedings brought under the Regulation, but there is provision for a number of limited exceptions.

1.3. The proposed amendment would change this rule of jurisdiction for proceedings brought by an employer for judicial annulment of a contract of employment, where the court is asked to rule on the annulment and its consequences (e.g. monetary). Judicial annulment is a procedure apparently allowed in some Member States, and the authors of the proposal maintain that in the Netherlands it is even mandatory in the case of certain protected workers.

1.3.1. The proposed amendment would give the employer the option to bring his proceedings in the courts of the country where the employee habitually carries out his work, and not necessarily, as would otherwise be required, in the courts of the employee's home country. This unilateral option would, it is suggested, offer advantages for both parties.

2. General comments

2.1. The proposal does indeed offer the employer a new advantage by allowing him to choose to bring his action before the courts of the country in which the contract is carried out a rather than those of the defendant's home country, and would thus deprive the defendant of his right to choose the jurisdiction (the defendant's country of residence, his country of employment or the employer's country of establishment).

2.2. This would be an exception to the principles of jurisdiction which would appear to have been firmly established in the Regulation, the aim of which is to protect the weaker party to certain contracts which are unequal in economic terms or in terms of technical or professional

[1] OJ C 311, 14.12.2002, p. 16.

competence (employer/employee, supplier/consumer, insurer/insured). The Committee endorsed the Regulation in its opinion of 1 March 2000 ([1]).

2.3. Although social security is by definition explicitly excluded from the field of application of the Brussels Convention and of the Regulation referred to, labour law is however covered, despite difficulties in regarding it as a branch of private law.

2.3.1. This situation arose originally from the case law of the Court of Justice, which was responsible for interpreting the Convention, and which ruled that contracts of employment were implicitly covered (the first version of the Convention made no mention of them). After two revisions of the Convention employment contracts have been included in their entirety.

2.3.2. All the exceptions to the common law on contracts and to jurisdiction for employment contracts result logically from the fact that labour law is a very specific field.

2.3.3. Indeed, labour law is strongly influenced by a number of public policy provisions. In most Member States employees and their representatives are protected through the involvement of the authorities in conditions of training, implementation and termination of contracts (labour inspectorate, regulation of certain contractual provisions, obligatory and prohibited clauses, special protection for certain categories of employee, regulation of working conditions and contracts by sector, either by legislative means or via national or regional sectoral collective agreements) and through various other exceptions to the principle of contractual freedom.

2.3.4. Contracts of employment have in the past been excluded from efforts to establish European contract law, as they are considered to be too much bound up with the social and legal traditions of individual countries and too much subject to public policy criteria and legal and other factors. The situation will become even more complex and diverse with enlargement of the Union.

2.3.5. A large body of Community labour law continues to develop, which has an impact on the content of contracts of employment, the aim being to promote harmonisation in the interests of labour mobility in the single market, the principle of equality and a high level of protection for workers.

2.4. An option for an employer to have his employee's contract of employment annulled by a court is exceptional in most European countries, where it may either not be allowed under national law or be an exceptional procedure, and there is every reason to question the appropriateness of changing such a fundamental provision of the Regulation to accommodate such an apparently uncommon procedure.

2.4.1. Although in principle private or commercial contracts may be judicially annulled, if one of the parties considers that the other has not fulfilled his contractual obligations or if the dispute is not settled out of court, this is far from frequent in the case of contracts of employment. Contracts are usually terminated at a predetermined date, in the case of fixed-term contracts, or at the request of one of the parties, subject to compliance with the applicable clauses and rules, or, in the event of a serious fault by one of the parties, on the initiative of the other party, possibly with the involvement of the court in the event of disagreement on the reason for, or the monetary consequences of, termination of the contract.

2.4.2. Judicial annulment is resorted to exceptionally in the absence of one of the usual conditions for breaking or terminating a contract, e.g. a direct dismissal procedure which can be initiated by the employer for economic reasons or where the employee is at fault. The dismissal of certain protected workers is subject to specific rules which apply during the period of protection, and these vary from one country to another. An arrangement whereby a worker can be dismissed only by a tribunal of representatives of protected workers seems to exist only in a limited number of countries. Only the Netherlands is mentioned in the proposal.

2.5. The rules on jurisdiction of the Regulation require the plaintiff to bring proceedings before the competent court of the defendant's home country. Clauses assigning jurisdiction are not in principle allowed in contracts of employment. A clause of this kind might be allowed only with the common consent of the parties after a dispute has arisen and a procedure for termination of a contract has been initiated. It might, however, be permissible to include such a clause in a contract under certain conditions, e.g. if the employee were resident in a third country.

2.5.1. Once a decision has been taken to bring proceedings for judicial annulment of a contract, the employer is free to negotiate with the employee so as to reach agreement on jurisdiction under the conditions set out in the Regulation, and there is no obstacle to such an agreement if it appears favourable to both parties under certain circumstances, e.g. in the case of cross-border employment contracts.

([1]) OJ C 117, 26.6.2000.

2.6. But the proposal submitted to the Council would allow an employer to choose the jurisdiction, which could have serious consequences for an employee against whom an action for judicial annulment has been brought, who must be able to submit and conduct his defence against the plaintiff under the best possible conditions. The proposal would introduce a significant exception to the general procedural principles of the Regulation and might be prejudicial to the rights of the defence, if an employee did not wish to accept a clause assigning jurisdiction after a dispute had arisen to the courts of his country of employment or of the country in which the contract was concluded, but preferred that jurisdiction be assigned to the courts of his place of residence, where this was situated in a Member State subject to the provisions of the Regulation.

2.7. Only where the defendant is not resident in a country which is a party to the Regulation, and in the absence of a clause assigning jurisdiction, may the employer's national court legally exercise jurisdiction and apply the rules of its system of domestic law.

2.8. The Committee therefore considers that, under these circumstances, there is no compelling reason to make general provision for an exception to the exclusive benefit of one of the parties in an area where the Regulation lays down a general principle, although allowing an exception to be made by common consent once a dispute has arisen. This provision already takes account of situations where the exercise of jurisdiction by the courts of the country in which the contract is applied could be mutually beneficial to the interests of both parties.

2.9. With regard to the mobility of labour within the single market, the Committee considers that, if accepted by the legislative authorities, the proposal:

a) would bring about the recognition and implementation in the other Member States of a decision arising from a procedure which is relatively uncommon in labour law, even in those countries where it is allowed;

b) could be prejudicial to the rights of the defence and to the general principles protecting the weaker party to certain contracts;

c) could conflict with public policy in certain countries, e.g. if the employees in question were protected, or if the reasons for the dismissal were essentially unacceptable and the decision could therefore be neither recognised nor implemented in those countries, under the clause of the Convention allowing a state to oppose suspension of its public policy arrangements for the implementation of a foreign judgment;

d) would inhibit the courts of other Member States and their competence in, and ability to apply, contract law, which is one of the reasons quoted in defence of the proposal.

3. **Conclusion**

In the Committee's view, the proposal of the Kingdom of the Netherlands should not be adopted for reasons connected with legal certainty and compliance with a general procedural principle.

Brussels, 29 October 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 was defeated, received at least one quarter of the votes cast:

Point 3

Delete and replace by the following:

'The initiative by the Kingdom of the Netherlands is inadmissible as it no longer has any legal basis under the EC Treaty. The Committee recommends that the Commission review the substantive elements of this case, taking account of the Committee's comments above.'

Reason

The Treaty of Nice that has now entered into force introduced a fifth paragraph into Article 67 of the EC Treaty abrogating the right of initiative granted to Member States for a five-year transitional period following the entry into force of the Maastricht Treaty. Thus, the Dutch initiative has no legal basis and is therefore inadmissible.

The Committee's comments should be passed onto the Commission for substantive consideration.

Result of the vote

For: 21, against: 54, abstentions: 2.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the statistics relating to the trading of goods between Member States'

(COM(2003) 364 final — 2003/0126 (COD))

(2004/C 32/19)

On 3 July 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.

In view of the urgent nature of the work, the Committee decided at its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) to appoint Ms Florio as rapporteur-general and adopted the following opinion unanimously.

1. Background

1.1. The present regulation on statistics relating to the trading of goods between Member States (known as Intrastat) resulted from an agreement amending the system for collecting data on trade both between EU Member States and with third countries. The agreement, signed in 1991 [1], came into force in 1993, coinciding the completion of the single market and the disappearance of internal physical borders.

1.2. With the abolition of the system for collecting statistics based on customs declarations, the creation of a new instrument providing fuller information on trading of goods became essential, and could indeed be seen as a key support for the single market.

1.3. Statistics in this area are vital in connection with the balance of payments, national accounts and, of course, the effective operation and monitoring of the single market itself.

1.4. At this stage it became necessary to create a flexible, straightforward and harmonised system in keeping with the various national collection and accounting systems.

1.5. At the same time, the new regulation will have to ensure simplification in two areas: firstly, product nomenclature and secondly, a reduction in the number of statistical variables.

[1] Council Regulation (EEC) No 3330/91.

2. Characteristics of the new proposal

2.1. In brief, the new regulation which is to come into force in 2005:

— provides clearer and simpler rules;

— defines its scope, leaving the Member States greater freedom to meet national needs;

— accords a more important role to the administrative organisation of each country;

— is the result of three separate studies (an opinion poll of information providers in six Member States, a sample study of users of Community statistics and a study on problems with the product nomenclature in Sweden);

— retains the thresholds system while simplifying it so as not to impose an excessive burden on data providers (especially SMEs);

— introduces new provisions on deadlines for the transmission of data, intended primarily to meet the requirements expressed by the European Central Bank (macroeconomic and short-term policy);

— retains the link between statistical information and fiscal formalities in the trade sector;

— introduces provisions concerning quality of statistical information;

— strengthens the principle of confidentiality of available data, in accordance with the existing Extrastat system;

— sets up a regulatory committee, instead of the present management committee.

3. **Comments and recommendations**

3.1. As indicated in previous opinions, the EESC welcomes developments in the sphere of statistics and data collection by the Commission and the Member States which are designed to strengthen and monitor the progress of economic and monetary union.

3.2. The creation of an instrument which is readily understood and easily used by businesses, especially SMEs, in their capacity as data providers, is at this stage essential, as is a different approach to the national statistical bodies responsible for collecting these data.

3.3. In view of the importance of such an instrument, a wide-reaching information campaign — focusing particularly on SMEs — will be needed to explain how, under the new regulation, information will be collected and how it will be used.

3.4. A specific grassroots information and training programme may be necessary in this regard, preparing businesses for compliance with the regulation and removing any obstacles which might hinder their activity.

3.5. The Commission should be in a position to introduce flexible means of disseminating such information through a range of channels (business associations, chambers of commerce, etc.) and using different media (Internet, CDs, etc.).

3.6. Sound information will also prevent those responsible for providing information from incurring the penalties laid down by the Member States.

3.7. Information on the trading thresholds (which are accompanied by exemptions, facilities, etc.) is currently forwarded to the Commission which, however, has no means of subsequently checking on the data provided.

3.8. An enhanced link between the European data collection system and national statistical bodies could in future ensure greater reliability and uniformity of data collection criteria.

Brussels, 29 October 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 amending Directive 77/799/EEC concerning mutual assistance by competent authorities of the Member States in the field of direct and indirect taxation'

(COM(2003) 446 final/2 — 2003/0170 (COD))

(2004/C 32/20)

On 5 September 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.

In view of the urgency of the work, the EESC decided at its 403rd plenary session of 29 and 30 October 2003 (meeting of 30 October) to appoint Mr Pezzini as rapporteur-general and adopted the following opinion with 45 votes in favour, no dissenting votes and three abstentions.

1. **Introduction**

1.1. The ground rules for mutual assistance and exchange of information by competent authorities of Member States for the purpose of ensuring effective application of national tax laws were laid down in 1977.

1.2. *Increase in fraud*

1.2.1. The need for such rules arose out of the ever increasing risk posed by tax evasion and fraud beyond national boundaries, which led to significant losses of revenue for Member States.

1.2.2. This situation jeopardised the principles of fair taxation, the free movement of capital, and free competition, and caused the internal market to work, to say the least, imperfectly.

1.2.3. However, the system of bilateral agreements between Member States proved ineffective at combating all the types of tax evasion and fraud, which were multinational in nature, reflecting an increase in international trade and in the mobility of people and capital across borders.

1.3. *Structure of the Directive*

1.3.1. The current Directive makes provision for three types of information exchange — information on request, automatic exchange and spontaneous exchange. Limits and safeguards apply to the exchange of such information by competent authorities of Member States in order to ensure respect and consideration for the rights of taxpayers and for the secrecy of the information supplied.

1.3.2. Administrations of Member States must also constantly monitor the exchange procedures.

1.4. *Scope of the Directive*

1.4.1. Initially, the Directive applied only to direct taxes. Only later was its scope expanded to cover value added tax (VAT) and excise duties, partly because those areas were not yet covered elsewhere.

1.4.2. However, the peculiarities specific to this particular field subsequently led the Commission to regulate the exchange of information about VAT separately [1]. A proposal exclusively concerning excise duties is expected in the near future.

1.5. *The need for revision*

1.5.1. The social, economic and political context has changed radically since the Directive was first drafted and adopted. The size of the internal market and the amount of trade between Member States have changed. There is no doubt that the very concept of the internal market, as an extension of national borders, is now fully accepted — in practice as well as in theory — by an ever increasing number of operators. Although this development is in itself highly satisfying, it has brought with it exponential growth in intra-Community transactions and ever-better knowledge of the various national tax systems, which has led to a commensurate increase in tax evasion and fraud, exploiting any deficiencies in European legislation and in tax inspection systems generally. In this context, there is a clear need to modernise, strengthen and simplify administrative cooperation and exchange of information between Member States, and to make them more efficient.

[1] COM(2001) 294 final.

2. **The Commission's proposal**

2.1. The proposed changes to the current Directive are listed in Article 1.

2.2. The first proposed change, which would become the third subparagraph of Article 2 of the current Directive, sets out the practicalities of information exchange on request. In particular, it states that in order to respond to a request received from another Member State, the competent authority of the Member State receiving the request should proceed as if it were acting on its own account.

2.2.1. This amendment is totally uncontroversial, as it aims to eliminate the dilatory effects on enquiries of national regulations that require the competent authority to notify the taxpayer that a request for information about him has been received from the competent authority of another Member State. Such obligations do not exist when Member States are operating on their own account. The very fact that the requesting authority was outside the country used to slow down the investigations. This discrimination, which was prejudicial both towards the Member State requesting the information and towards the working of the internal market, must thus be eliminated. This amendment is perfectly in line with that contained in the proposal on VAT ([1]).

2.3. The second amendment proposed concerns the second indent of the second subparagraph of Article 7(1). It concerns the way in which information received from another Member State by the competent authority of a Member State may be used. This information must be treated confidentially, in the same way as information collected in accordance with national legislation.

2.3.1. The current text of the Directive has given rise to differences in interpretation. In fact, although there is universal agreement that information received from another Member State should only be divulged if this latter does not object, some Member States maintain that specific authorisation (from the competent authority that supplied the information) is required before using such information in judicial proceedings. Conversely, other Member States hold the view that tacit approval can be assumed unless a specific objection has been raised.

2.3.2. The Committee agrees with the need to amend the Directive and with the proposed wording, given that the new text aims to eliminate any ambiguity, thus speeding up and clarifying the procedure. In future, information received will be able to be used in the course of public hearings or sentencing, provided that the competent authority of the Member State that supplied the information did not express an objection when it first supplied it. It will therefore no longer be necessary to adjourn judicial proceedings in order to wait for explicit authorisation from the competent authorities of Member States who considered such a procedure to be necessary.

2.4. The next proposed amendment consists of a redrafting of Articles 8(1) and 8(3) of the current directive, which sets out the limits to the exchange of information.

2.4.1. The current text of Article 8(1) has created ambiguity linked to the ability of a Member State to refuse to supply the information requested when its national tax laws do not provide for this.

2.4.2. The amendment specifically makes it clear that a Member State can only refuse to supply the information requested when its national legislation or administrative procedures do not permit the investigations necessary to obtain that information.

2.4.3. There is no doubt that the proposal improves on the existing text, probably to the greatest extent realistically attainable. It is nonetheless apparent that the existing differences between investigative procedures, which are a direct reflection of the approximate nature of harmonisation between national tax laws, are an obstacle to an efficient system of information exchange. This makes it difficult to conduct effective checks on suspect transactions and therefore impedes the functioning of the internal market.

2.4.4. Similar observations apply to the proposed amendment to Article 8(3), aimed at clearing up ambiguities concerning the application of the principle of reciprocity of exchange of information.

2.4.5. The Commission proposal makes it clear that the competent authority of a Member State may refuse to supply information when the requesting authority is not able to supply similar information.

2.4.6. Whilst it appreciates the effort made to eliminate differences in interpretation, the Committee points out that recourse to the principle of reciprocity protects the individual Member State but is prejudicial to the full implementation of the internal market.

2.5. The Commission proposes to insert two new articles after Article 8: 8a and 8b. These bring the rules on direct taxation into line with those on indirect taxation.

([1]) COM(2001) 294 final, Section 5, paragraph 3.

2.5.1. Article 8a(1) states that, at the request of an authority in a Member State, the competent authority in another Member State should notify the taxpayer, in accordance with the rules and procedures in force at the time, of any instrument or decision adopted by the authority of the requesting Member State. Article 8a(2) lists the main points that should appear on the notification, while Article 8a(3) lays down the requirement to inform the requesting Member State promptly of what action has been taken in response to its request.

2.5.2. The new article takes note of the various practices and procedures that apply in national tax legislation and emphasises the requirement to follow those procedures when dealing with requests from other Member States. In particular, the duty to inform, which does not exist in some Member States, is a fundamental part of the procedures in others. The procedure would certainly be much simpler if it were managed directly by the requesting Member State. However, as things stand, this is unrealistic and risky: unrealistic because it would imply in-depth knowledge on the part of every national competent authority of the procedures, including that of notification, connected with the legislation of every other Member State; risky, because a notification that was incomplete and legally void according to national tax legislation would have a prejudicial effect on the length of investigations.

2.5.3. The Commission's proposal is nonetheless appreciated because, in concrete terms, it emphasises the importance of such procedures and obliges the requested authority to inform the requesting authority immediately of notifications it has sent, in order to facilitate any subsequent action.

2.5.4. Article 8b provides for the possibility for two or more Member States to carry out simultaneous controls on a single taxpayer where these would appear to be more effective than controls conducted by one Member State alone. The competent authority of a Member State is to identify the taxable persons whom it intends to propose for simultaneous control and notify the respective authorities in other Member States of the reasons for such controls and of the period of time in which they should be conducted. The requested authority shall confirm its agreement or its refusal to its counterpart authority. If approval is granted, each authority must then appoint a representative with responsibility for the control operation.

2.5.5. The new text recognises the importance of simultaneous controls, which are, in fact, considered to be one of the most effective methods, if not the most effective method of control. Indeed, it stands to reason that crosschecking data collected during the same period by competent authorities in the Member States in which the taxpayers under investigation operate increases the likelihood of discovering tax evasion or fraud. It is no coincidence that there are widespread calls for an increased use of simultaneous controls, above all to detect fraudulent use of transfer pricing for intra-Community transactions between entities operating in several Member States.

2.5.6. The insertion of Article 8b is therefore to be welcomed. However, it should be noted that the ability to refuse to act on a request for simultaneous controls, even if there is a reason for doing so, could limit the scope of such controls and with it the cooperation between Member States' administrations.

3. **Conclusion**

3.1. The EESC accepts the need to put in place an effective system of information exchange between Member States in order to combat tax evasion and fraud.

3.2. It takes note that the expansion of the internal market, both in geographical and economic terms, along with the increase in the number of taxpayers operating in more than one Member State, makes closer cooperation among national administrations essential.

3.3. While recognising the peculiarities specific to each sector, the EESC emphasises that improved and more systematic coordination between control systems for direct and indirect taxes and excise duties is an indispensable part of an effective system of control and of mutual assistance by Member States' competent authorities.

3.4. The EESC reaffirms [1] that the differences that exist between the administrative procedures of the Member States are prejudicial to the effectiveness of controls, increase the length of time required to carry them out, and represent a significant obstacle to the working of the single market.

3.5. Once again, the defence of national interests is limiting the benefits that could be derived from a more efficient internal market and, in this instance, from detecting and combating tax evasion and fraud. As the EESC has already pointed out [2], administrative cooperation and the prevention of fraud must go hand in hand with modernisation and simplification of tax regimes. This is all the more true in an enlarged Union in which harmonisation becomes more important.

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[1] EESC opinion on the Proposal for a Regulation of the Council amending Directive 77/388/EEC on the common system of Value Added Tax (the Value Added Tax Committee), OJ C 19, 21.1.1998, p. 56.

[2] EESC Opinion on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT), and the Proposal for a Council Directive amending Directive No 77/388/EEC as regards the Value Added Tax arrangements applicable to certain services supplied by electronic means, OJ C 116, 20.4.2001, p. 59.

3.6. It would be helpful to complement supranational legal instruments, such as the European company, with suitable tax instruments and associated control and information-exchange procedures. In other words, it would be possible to envisage the phasing-in of a European control and exchange system that is not tied to current national procedures.

3.7. The EESC takes the opportunity to denounce once again the limits imposed by the principle of unanimity, which currently applies to all decisions on Community tax legislation, and reaffirms the need to replace this with qualified majority voting.

3.8. It is odd that people often talk in general terms about the constitutional principles of fair taxation when referring to the potential distortions of the European internal market, and then go on in practice to accept differences and privileges born of national legislation and procedures.

3.9. Taking into account existing national procedures and the political desire not to overturn these, the EESC accepts the proposed amendments as a move towards convergence and as a further, albeit inadequate, step towards modernising cooperation between Member States. Furthermore, the EESC calls on the competent authorities of Member States to respond promptly to requests for cooperation from other administrations, without discriminating against such requests in favour of investigations of a purely national nature. To this effect, control and information-exchange technology must obviously be able to keep up with the most sophisticated forms of fraud and evasion, which use the most modern technology available.

Brussels, 30 October 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 regulation of the European Parliament and of the Council laying down requirements for feed hygiene'

(COM(2003) 180 final — 2003/0071 (COD))

(2004/C 32/21)

On 30 April 2003 the Council decided to consult the European Economic and Social Committee, under Articles 37 and 152 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 October 2003. The rapporteur was Mr Donnelly.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 30 October) the European Economic and Social Committee adopted the following opinion by 84 votes to two with five abstentions.

1. **Introduction**

1.1. Feed crises over recent years have demonstrated that serious failures at any stage in the feed chain can have enormous economic consequences. In the past this cost has been largely met from public funds. While contaminated feed material has been largely responsible for these crises, European farmers and consumers have experienced the severe economic impacts resulting from them.

1.2. Directive 95/69/EC [1] laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector,

[1] OJ L 332, 30.12.1995.

while constituting a sound basis for feed safety is limited to products covered by Directives 70/524/EEC [1] and 82/471 EEC [2].

1.3. Recent experience has shown that it is necessary to conduct a general review of feed hygiene rules and to take account of the need to ensure a higher level of protection of animal and human health and of the environment.

1.4. Experience has also demonstrated the need for an integrated approach to feed safety to include primary production and transport up to and including the placing on the market or export of feed.

1.5. Traceability facilitates the withdrawal of feed and food. Successive feed crises have demonstrated difficulties in this area. This has been addressed as a general requirement under Article 9 of Regulation (EC) No 178/2002 [3].

1.6. Whereas under general food law and more recently Regulation (EC) No 178/2002 [2] the primary responsibility for the production of safe food rests with food businesses, this principle has not applied to the feed chain.

2. **Gist of proposal**

2.1. The proposal seeks to ensure the safety of all kinds of feed, to ensure that all businesses operate in accordance with harmonised hygiene requirements and finally seeks to improve traceability.

2.2. The proposal reinforces the principle that the primary responsibility for feed safety rests with the feed business operator. The requirement for feed business operators to provide a financial guarantee is linked with this responsibility.

2.3. The proposal promotes an integrated approach to ensure feed safety throughout the food chain starting with primary production of feed up to and including the feeding of food producing animals. Feed businesses would only operate if registered or approved under these regulations.

2.4. Through the general implementation or procedures based on Hazard Analysis and Critical Control Point (HACCP) and the application of good hygiene practice the proposal reinforces the responsibility of feed and business operators. However flexibility is proposed for small businesses.

2.5. The Commission proposes the introduction of national and community guides to good practice to help feed business operators at all levels of the feed chain to comply with feed hygiene rules with the application of HACCP principles.

2.6. The introduction of the principle of the establishment of microbiological criteria is proposed and would be based on scientific risk criteria.

2.7. In relation to the import of feed from third countries the proposal reinforces the principles laid out in the proposal for a regulation on the official feed and food controls [4] i.e. that imported feed attains at least the equivalent standard as feed produced in the Community.

2.8. It is proposed to repeal Council Directive 95/69/EC [5] and Directive 98/51/EC [6] laying down certain measures for implementing Council Directive 95/69/EC and laying down conditions and arrangements for approving and registering certain establishments and intermediaries operating in the feed sector.

3. **General comments**

3.1. The EESC believes that the rules on feed hygiene needed to be revised and extended to include the entire feed chain.

3.2. The EESC welcomes the fact that the proposal takes into account the principles of food safety that are spelt out in the Commission's White Paper on food safety [7], in particular that:

a) the farm to table policy is systematically implemented;

b) feed safety policy is based on a comprehensive and integrated approach;

[1] OJ L 270, 14.12.1970.
[2] OJ L 213, 21.7.1982.
[3] OJ L 31, 1.2.2002 p. 1-4.
[4] COM(2002) 377 final — OJ C 95, 23.4.2003.
[5] OJ L 332, 30.12.1995.
[6] OJ L 208, 24.7.1998.
[7] COM(1999) 719 final — OJ C 204, 18.7.2000.

c) processors of feed materials take primary responsibility for feed and food safety controls; and

d) feed safety policy must be risk based.

3.3. The EESC understands and welcomes the fact that the proposal also takes into account some of the provisions laid down in Regulation (EC) No 178/2002 [1], inter alia:

a) to ensure effective functioning of the internal market in safe feed and providing a high level of animal and human health and a safe environment;

b) to ensure feed traceability;

c) to make feed business operators primarily responsible for safe feed and responsible where their products or activities could have an adverse impact on feed safety;

d) to make Member States responsible for the enforcement of feed and food law; and

e) to ensure that only safe feed is placed on the market.

3.4. The EESC welcomes the proposal in the form of a regulation, which ensures uniform application throughout the single market and enables updating without delay when taking account of technical and scientific developments.

4. **Specific comments**

4.1. The EESC welcomes the requirements for Good Animal Feeding Practice contained in Annex III to the proposal, it believes that consistent application in all Member States can only be guaranteed through the use of Community Guides.

4.2. The EESC agrees with the Commission that a system of registration and approval by the competent authority of the Member State of all feed business is appropriate to ensure traceability from manufacturer to final user.

4.3. The EESC recommends that the requirement for 'frequent changes' in bedding required in Annex III should be replaced with 'frequent changes depending on circumstances'. This would reduce the risk of inflexible enforcement of the regulation.

4.4. The Committee welcomes the principle of flexibility. However, in order to avoid inconsistencies in interpretation, clearer definitions should be agreed between the Commission and the Member States within the Standing Committee.

4.5. The Committee accepts that failure at any stage in the feed and food chain can have major financial consequences. These failures should be protected against through the provision of financial guarantees. However, the Committee feels that the exact nature of what this financial guarantee is, and what form it should take, has not been adequately specified or made clear enough in the Commission's proposal. Given the fundamental importance of this issue, any requirement for establishing a financial guarantee should be monitored carefully by the Commission, especially with regard to the financial impact on primary producers and the feed business.

4.6. The Committee strongly recommends that the Commission consults with all relevant interested parties to ascertain which forms of risk can be covered by the proposed financial guarantee and what form this financial guarantee should take, in order that it be designed in both a cost-efficient and practically applicable fashion so that adequate cover can be provided for total costs resulting from any hygiene failures in the feed and food chain.

4.7. The Committee would like to reiterate its view [2] that because import controls from third countries are also crucial to ensuring feed safety in Europe, the issue of ensuring a financial guarantee for the safety of imports of feed into the European Union needs to be considered thoroughly.

4.7.1. The Committee believes that the proposal, in its present form, may place an unfair burden on the importers of feed into the EU, which could result in an increase in costs. The Commission must therefore seek to ensure that exporters of feed into the EU also fulfil their responsibilities in ensuring the safety of their products.

4.7.2. The Committee therefore underlines the need to ensure the maximum possible accountability of feed exporters to the EU, under the relevant articles contained in the Sanitary and Phytosanitary Measures (SPS Code) adopted in the framework of the WTO, and believes that in order to assist exporters from developing countries, support structures are needed to check the required conformity at the point of origin.

[1] OJ L 213, 21.7.1982.

[2] OJ C 234, 30.9.2003.

4.7.3. All efforts should be made to ensure that export-import agreements drawn up under the auspices of the Grain and Feed Trade Association (GAFTA) should be transparent, fair and respect the principle of equal treatment.

4.8. The Committee notes that the rules on the therapeutic medication of feeds are not addressed in this proposal.

5. **Summary**

5.1. The EESC supports the proposal for a regulation that ensures feed safety from and including primary production up to and including the placing on the market or export of feed.

5.2. The EESC advocates the use of Community Guides in order to ensure a consistent application of the regulation.

5.3. The EESC reiterates the importance of ensuring that exporters of feed ingredients into the EU are held accountable for the quality of their products by the relevant EU authorities, using existing mechanisms of international cooperation such as Codex Alimentarius and the WTO/SPS Code.

5.4. The Committee recommends that the Commission examine the impact of the financial guarantee requirement for all animal feed businesses.

Brussels, 30 October 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 was defeated but received at least a quarter of the votes cast:

Point 4.1

Replace by the following:

'The Committee calls on the Commission to provide a positive list for animal feed in the regulation'.

Reason

A positive list establishes exactly what may be used as animal feed. With such a list in place, many uncertainties in the food chain — right up to the final consumption stage — would not arise in the first place.

Result of the vote

For: 29, against: 57, abstentions: 7.

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation No 79/65/EEC setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Economic Community'

(COM(2003) 472 final — 2003/0182 (CNS))

(2004/C 32/22)

On 16 September 2003, the Council decided to consult the European Economic and Social Committee, under Article 37 (2) of the Treaty establishing the European Community, on the above-mentioned proposal.

On 23 September 2003, 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.

Given the urgent nature of the work, at its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee appointed Mr Allen as rapporteur-general and adopted the following opinion unanimously.

1. Introduction

1.1. The data network set up by Regulation No 79/65/EEC provides the Commission with objective and relevant information on the CAP and is a useful tool for the Member States as well as for the Community.

1.2. The costs of the computerised systems on which the network relies and of studies and development activities of other aspects of the network should be eligible for Community financing.

1.3. The purpose of this proposal is therefore to include these operations in Regulation No 79/65/EEC in order to create an appropriate legal basis for their financing.

1.4. Moreover, for management reasons, it is proposed that the Commission be authorised to amend the list of divisions (regions) of Member States set out in the Annex to Regulation No 79/65/EEC, at the request of a Member State.

2. Comments

2.1. The EESC believes that the collection of accountancy data on the incomes and business operations of agricultural holdings is essential. This data is particularly important so that we can monitor the effects of the CAP Mid-Term Review on farm incomes and also changes to farm incomes that may result from any WTO agreement on agriculture.

In the context of the WTO negotiations it is necessary to have up-to-date independent data on EU farm incomes so as to evaluate the implications of the various agricultural policy proposals coming before the WTO.

The Farm Accountancy Data Network (FADN) is the methodology to provide policy makers with objective independent data on farm income and farm business throughout the EU.

2.2. The EESC fully agrees with the Commission proposal to amend Regulation 79/65/EEC by adding Article No 2a.

The Annex to the Regulation contains a list of the divisions (regions), which were set out to reflect the different conditions of agriculture in the member states. At present a Council decision would be necessary each time a member state wished to change a division for the purposes of the FADN.

The EESC believes that this procedure should be changed to a more efficient system.

The Commission amendment proposes that changes to divisions (regions) could be carried under the procedures contained in Article 19 provided that the request for change concerns the Member State's own divisions. The matter could then be agreed between the Commission and the Community Committee as detailed under Article 19.

2.3. The second proposed amendment to Regulation 79/65/EEC is the replacing of Article 22 (1). At present there is no proper legal basis to finance the costs of the computerised systems operated by the Commission for the reception, verification, processing and analysis of accountancy data. Unless a budget to finance the system is put on a proper legal basis it will cease to function.

The EESC fully endorses as a matter of urgency the need to put the FADN budget on proper legal basis by including it in the Community Budget, in the Commission section. The EESC also fully endorses the proposed Commission amendment to Regulation 79/65/EEC to achieve this result.

2.4. The new member states will join the EU in May 2004. We must ensure that proper procedures are put in place to obtain objective data on farm incomes from the new member states.

It is the EESC's view that Article 19 should be amended by adding the following paragraph:

'The Commission and the Community Committee shall draw up detailed special transitional procedures for the ten new member states. These new procedures must take all necessary steps so that the Commission and the Community Committee are fully satisfied that the data obtained is truly independent and objective and sufficiently reliable so that the new members can be fully integrated into the present system over a five year period.'

3. **Conclusions**

The EESC fully agrees with the Commission proposal to amend Regulation 79/65/EEC by adding Article 2a. and replacing Article 22

Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Assessment of the experiences gathered by the EESC to evaluate the economic, social and employment impact of structural reforms in the EU'

(2004/C 32/23)

On 27 March 2003, the European Parliament decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'Assessment of the experiences gathered by the EESC to evaluate the economic, social and employment impact of structural reforms in the EU'.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 October 2003. The rapporteur was Mr Vever.

At its 403rd plenary session, held on 29 and 30 October 2003 (meeting of 30 October), the Economic and Social Committee adopted the following opinion by 74 votes to 27, with 26 abstentions.

On 27 March 2003 the EESC was requested by the European Parliament to evaluate the economic, social and employment impact of structural reforms in the EU. The EESC asked its counterparts and socio-professional correspondents in the various EU countries if they would like to contribute to this evaluation. The process included the organisation by the EESC — with an eye on this opinion and another request from the Commission for an opinion on the Lisbon strategy — of a conference in Brussels on 8-10 October 2003 ('The Contribution of Organised Civil Society to the Lisbon Process: For a More Participatory Union'). The reflections made lead the EESC to make the following comments.

1. Summary

1.1. The EESC reaffirms its support for the structural reforms carried out in the countries of the Union, particularly following the Lisbon mandate, aimed at making Europe more competitive and ensuring that its economic and social development model is sustainable. It also points out that the issue is a demanding one: it involves not only doing better than before but, above all, doing better than elsewhere. Now, the EESC is concerned by a growing gap between the aims set for these reforms, the delays in implementing many of them, and the persistent deterioration in growth and employment in Europe. Without a turnaround, there is a risk of this strategy of reforms degenerating into a 'bubble', with an inflation of objectives, concepts and participating states, but as many deficits as regards sharing of responsibility, implementation and impact.

1.2. The EESC would stress first of all the need to make the Lisbon mandate more credible to Europeans and thus disarm criticism about its real significance and social cost: it should be spelt out more clearly that we are justified in having the common ambition of being the prime beneficiaries of the world's number one market, and that the reforms planned will determine the future of our European type of development in an open economy.

1.3. The EESC is greatly concerned about the current absence of real growth prospects for Europeans; this greatly complicates the implementation of reforms, because it feeds disquiet and weakens social cohesion. The EESC agrees that there is a need for a European growth initiative, which has been the subject of several convergent proposals (e.g. Italian Council presidency, EU Commission, Sapir report, Franco-German statement) and which has just been supported by the European Council of 16 and 17 October 2003. The EESC therefore recommends that the transnational research and infrastructure investments on which our future depends should be promoted, in particular through loans and public/private sector partnerships on a European scale, though without any relaxation of the discipline that the stability pact imposes on national budgets.

1.4. In particular the EESC deplores the absence of a common economic policy consistent with the creation of the euro: this should be put right without further delay, and should include an alignment and simplification of tax provisions on a European scale. The integration of the employment guidelines and the broad economic policy guidelines into a more effective policy mix would also be a useful step towards better economic and social governance throughout the EU.

1.5. The EESC notes that the single market is still far from being completed even as it is being enlarged: its identity, cohesion and security should be strengthened, in particular by contemplating transnational Community inspections, the joint management of external customs, a European statute open to

SMEs and even the emergence of services of general interest on a European scale in those areas where this would be justified. New initiatives remain necessary to ensure higher quality and a real simplification of red tape in Europe (more impact analyses, where the EESC is ready to play its part, and more occupational self-regulation).

1.6. The EESC is also concerned by the extent to which the EU lags behind in the field of research, just at a time when the Lisbon aim of competitiveness is based on the trump cards of a knowledge-based economy. It would be particularly advisable to boost the budget appropriations for the framework research programme so it can achieve a real threshold of effectiveness, while at the same time focusing it more on authentically European technological programmes. European technological innovation would get a big boost if there was a greater convergence of defence policies as part of a common security and foreign policy, including a more effective mutual opening-up of the relevant public procurement markets.

1.7. While stressing how the various structural reforms interact on one another, the EESC would point out that their state of implementation from one country to another varies greatly in the different areas that they cover: opening-up of markets, access to funding, public spending equilibrium, encouraging innovation, adapting the labour market, modernising social protection, improving education and training, simplifying red tape and consolidating sustainable development. The EESC also notes that the reforms are generally further advanced in those states that have respected the discipline of the stability pact than in the others. The EESC would stress the need for more detailed information on national states of play and proposes incorporating into the Europa website a database highlighting best practices involving the Lisbon strategy reforms.

1.8. The EESC would emphasise the central role that the actors of organised civil society have to play to ensure the reforms are a success, and regrets that this obvious fact, which is explicitly mentioned by the Lisbon mandate, is not yet stressed enough in all the Member States. The preparation of the spring summits should be the subject of systematic national debates with business circles, the social partners and other civil society players. Initiatives from them should be given more encouragement and highlighted in the annual reports of the states and the Commission, such as in the database recommended by the EESC on best practices in implementing the Lisbon reforms. The EESC, for its part, intends to contribute directly to this improvement of information.

1.9. The EESC would conclude by stressing the need to ensure that the structural reforms are, on the one hand, backed up by a revival of economic growth through the completion of the single market and the development of trans-European investments and, on the other hand, are discussed better, better understood and better allocated among all those who have to share responsibility for them: they must not only be pushed forward by political leaders but also be backed up 'on the ground' by the economic and social players. The EESC is convinced that this greater synergy between political decision-makers and civil society players will decide the success or failure of the structural reforms now being carried out in the EU.

2. **The processes of structural reform carried out in the EU**

2.1. *The various structural reform processes*

2.1.1. The economy and society constantly have to adapt and reform. But reforms have recently gathered pace under the pressure of social developments, commercial and cultural exchanges, technological changes, European integration and economic globalisation. Many structural reform 'processes' regarding economic, social and employment matters have thus been set in motion in the EU during the past decade, with a view to restoring EU competitiveness, boosting its economic growth, creating more jobs and ensuring the sustainability of its development and its environment. Some of these reforms (e.g. continued opening-up of the single market, introduction of the euro) have been undertaken primarily at European level, with the EU institutions playing a leading role. Other reforms, however, have been initiated by one state or another at a strictly national level, according to autonomous policy guidelines, at the initiative of its public authorities (e.g. economic liberalisation in the United Kingdom), or within a framework of close cooperation with the social partners (e.g. the Wassenaar economic and social contractual process carried out in the Netherlands). In recent years, structural reforms have gathered pace in all the Member States in accordance with guidelines adopted jointly by the 15 Member States and implemented in each of them. While these reforms fall under the heading of shared objectives, including periodic and comparative assessments, each Member State is allowed a high degree of freedom of initiative and application in the light of the diversity of national contexts and situations. Many interactions have thus developed around these reforms between the various levels of power and between the Member States.

2.1.2. With the Maastricht Treaty of 1993 and the coming of the single currency, one central economic reform process at

European level has been the machinery of the stability pact, accompanied by the annual adoption of the broad economic policy guidelines. The 15 Member States also agreed in Cardiff in June 1998 to launch structural reforms designed to open up the markets in goods, services and capital.

2.1.3. The 1997 Treaty of Amsterdam, while specifying that the stability pact also included a growth target for jobs (hence the official title of 'stability and growth pact'), supplemented the adoption of broad economic policy guidelines with guidelines for employment, which were then spelt out by the Luxembourg process in November 1997. The Cologne summit in June 1999 also drew up recommendations as part of a European employment pact.

2.1.4. An overview of the various structural reform processes was then undertaken under the Lisbon strategy agreed to by the 15 Member States in March 2000. Taking as its foundation the new assets of the knowledge-based economy, this strategy set itself the ambitious target of putting the EU in the forefront of world competitiveness by 2010, organising a revival of the single market (particularly in financial services, intellectual property and the opening-up of the energy sector and infrastructures) and pushing through a series of economic, social and administrative reforms in the Member States (particularly as regards training, research, the labour market, social welfare and administrative simplification). Fifteen years on, this Lisbon strategy is a logical extension of the 1992 programme that the Delors I Commission launched in 1985 with a view to completing the European single market by that date, and also of the White Paper on growth, employment and competitiveness, which the Delors II Commission presented in 1993 to boost the impact of the programme for the single market.

2.1.5. The 15 added to this raft of reforms in Gothenburg in June 2001 by deciding on an overall approach for taking the requirements of sustainable development into account in all EU policies.

2.1.6. Since 2003, an integrated cycle decided by the Barcelona European Council of March 2002 has been set in motion by the Commission to improve the interaction of these various economic, social and employment reforms, with a central role confirmed for the spring summit, as well as other rendezvous for the other quarterly European summits and for the various Council meetings throughout the year, with three years being allowed for adjustment to these reforms.

2.2. *The aims of the structural reforms*

2.2.1. The main aim of the reforms is to boost the economic competitiveness of a Europe that is largely open to the world, while consolidating and adapting the European model of society founded on mutual dialogue and fundamental social rights. These structural reforms that will determine the future are made necessary by the need for sustainable European economic and social development in a world of accelerating change.

2.2.2. The European economy today has to compete with both our large high-tech industrial partners, particularly the USA and Japan, and the new low-cost emerging economies. The main structural changes concerning the competitiveness of the European economy are linked to:

2.2.2.1. the acceleration of technological change, which is global and which goes hand in hand with the increased obsolescence of products and technology, fiercer worldwide competition and relocation on a large scale to countries where costs are lower, many of which, moreover, are constantly making progress as regards education, training and vocational and technological skills;

2.2.2.2. the WTO trade negotiations, which are scheduled to continue — despite the recent failure of the Cancun ministerial conference in September 2003 — in order to implement the Doha agenda, which involves a broad programme to support international development and the opening-up of economies on a worldwide scale, covering industrial products, services and agriculture, and equipped with new framework rules on competition, intellectual property, public health, and the environment;

2.2.2.3. changes in social behaviour, affecting jobs and the labour market in particular, with a continuation of the recent reduction in annual working time, which is often managed in a more flexible and personalised manner;

2.2.2.4. an ageing of the population, which affects all European countries and raises a series of questions concerning both better management of the various age groups on the labour market and the question of how to finance social welfare.

2.2.3. Another important objective of the reforms is to strengthen EU cohesion around its single market, an issue which will be even more important with the enlargement of the EU to 25 in 2004.

2.2.4. Moreover, the arrival of the euro needs to be accompanied by a policy of economic convergence by the Member States, in accordance with the criteria of the stability and growth pact.

2.2.5. Finally, there is a need to ensure that economic and social development in Europe is sustainable, as regards the balance of public finance, the viability of jobs (competitiveness, training, mobility), the solvency of social security — especially retirement and health provisions — the strengthening of social cohesion and environmental protection.

2.3. *Public perception of the reforms*

2.3.1. As regards these various objectives, certain questions have also been raised about the sense, the effectiveness and even the feasibility of the reforms, following the major slowdown in economic growth, the disturbances on the financial and stock markets over the past two years and the rise in unemployment. In particular, the highly ambitious goal set in Lisbon to make Europe the most competitive economy in the world by 2010 seems to many to be over-optimistic. This particular aim was set in March 2000 at a time when European growth, driven by the emergence of the 'new economy,' finally seemed to have emerged from a 25-year slowdown and rejoined, some hoped for a fairly long period, the club of high annual growth rates, even exceeding double-digit level in the case of Ireland. But this economic scenario quickly changed with the bursting of the technological and stock exchange bubble and the renewal of international tensions. In addition, the aim of maximum competitiveness laid down in Lisbon may also arouse fears, insofar as opinion may wonder about the price to be paid to catch up with competitors in the developing countries, where wages and social protection are incomparably lower and the most emergent economies, such as China, combine these features with productivity, industrialisation, investments and technologies of the highest level. Such doubts should not be underestimated and could even, if they were left unanswered, contribute directly to jeopardising the success of the processes undertaken.

2.3.2. The EESC, for its part, is still confident that the goals of the reforms adopted in Lisbon, including that of world competitiveness, will be achieved provided they are 'read' in an appropriate manner. The EESC basically sees the Lisbon objective as the 15's clearly expressed political will to give themselves the means of ensuring their growth, their jobs and the sustainability of their economic and social development model through reforms that ensure their compatibility with the increasing constraints of an economy open to international competition by taking as their base our best real or potential assets, especially education and training, the spirit and capability of innovation and the pooling of our principal resources. In particular, it is perfectly legitimate and feasible for Europe, its companies and its citizens to seek to be the prime beneficiaries of the world's number one market — 500 million producers and consumers with diversified but, overall, comparatively high real incomes — following the completion and improvement of their single unified and enlarged market. Such a view can only consolidate the credibility of the Lisbon goals, even if all kinds of challenges must be met to achieve them.

2.3.3. The EESC does not underestimate the determination and perseverance now required to implement these reforms. Major progress has already been achieved, but the greatest efforts still lie ahead of us if we are to have any hope of achieving these goals. This means in particular an improvement in the methods for implementing them.

3. **EESC comments on structural reform methods**

3.1. *The main areas of progress on reform methods*

3.1.1. The Lisbon strategy has, firstly, given the 15 the 'road map' which had hitherto been lacking. By setting a series of goals to be achieved between now and 2010 and deadlines for implementing reforms, it has provided a multiannual timetable of operations for us to join forces and together build an attractive, open and competitive Europe Site. The annual review of this strategy at a spring summit, makes it possible to draw up assessments, make comparisons and update priorities accordingly.

3.1.2. The open coordination method, which has by and large been chosen in the various Member States for undertaking these reforms, puts a new spin on the subsidiarity concept, which is no longer a pretext for dividing up European and national powers. Instead, the proper application of subsidiarity should enable useful links and 'bridges' to be established between the European, national and, where appropriate, regional or local levels of power, while at the same time justifying a mutual 'peer review' of policies from country to country that will encourage the spread of best practices.

3.1.3. Moreover, the public authorities, whether they be European, national or even regional, are not the only ones affected by the reforms: the private sector, the social partners and the whole of organised civil society also have a leading role to play, as the Lisbon mandate indicates very explicitly. It should particularly be emphasised that Unice and ETUC played an active role in preparing the spring summits by presenting their contributions before each of them, and by taking part, with the Commission, in preparatory summits of the social partners at the invitation of the Council presidency. In addition, by recently reaching agreement on a multiannual timetable for organising their social dialogue, Unice, CEEP, UEAPME and ETUC affirmed their wish to fulfil one hundred per cent their autonomous and contractual role in defining and implementing structural reforms at European level. This illustrates the growth of a 'horizontal' dimension to the subsidiarity concept (with responsibilities being shared out between public authorities, civil society associations and the private sector), in addition to its traditional 'vertical' dimension (Europe, states, regions).

3.1.4. Several national professional organisations have also taken the initiative to make their own critical and reasoned assessment of the state of progress of these reforms, including their spontaneous or contractual contributions, and present them directly to the spring summit. Evidence of this can be found in the detailed national reports of the member federations of UNICE, which concern each of the fifteen EU Member States — plus Norway and Turkey — drawn up for the last spring summit in March 2003 in Brussels ([1]).

3.1.5. The interactions between economic guidelines, employment guidelines, completion of the single market and structural reforms are also clear and have been demonstrated since the beginning of 2003, when the Commission brought out its annual reports on these different areas at the same time as part of an overall 'implementation' report.

3.2. *The main weaknesses in reform methods*

3.2.1. Coordination between the various economic, social and environmental processes, which has been undertaken by the Commission since 2003, still remains embryonic since so far it is still too formal and has no decisive impact on national political choices. It has not yet been followed by sufficiently permanent cooperation between the various Councils of ministers or between the Member States themselves, so, whatever happens, a 'running in' period will be necessary as regards procedures and behaviour, especially during the first three-year coordination cycle (2003-2006).

([1]) www.unice.org/lisbon.

3.2.2. One thing in particular to be deplored is a definite lack of concrete information from the Member States about the real state of national reforms at each spring summit. The Member States now seem to favour new debates on the goals already set in Lisbon, even if this means adding new guidelines — without any clear justification — instead of helping to assess and compare national reforms, something that the Commission is finding very difficult to do with any accuracy in the absence of any such collaboration from the Member States.

3.2.3. This lack of information generally goes hand in hand with delays in implementation and breakdowns in discipline on the part of the Member States. It is worth mentioning here the growing difficulties that many Member States have in meeting the stability pact's requirements on equilibrium in public finances, the persistent deficiencies in transposing directives into national law and the growing number of violations of the rules of the single market.

3.2.4. Also worth emphasising, in several Member States, is the alarming lack of involvement of the social partners and civil society in both the definition and implementation of reforms, and in the drawing-up of reports on their progress. This situation, moreover, was largely behind the member federations of Unice presenting their own national reports to the last spring summit.

4. EESC comments on the results of the structural reforms

4.1. The structural reforms carried out in the EU, particularly through the Lisbon strategy, have mainly concerned the following fields, though they are intended to provide each other with mutual enhancement:

— continued opening-up of the markets,

— improved access to funding,

— balanced public spending without increasing the tax burden,

— fostering innovation,

— adapting the labour market,

— modernising social welfare,

— boosting education and training,

— cutting red tape,

— consolidating sustainable development.

4.2. As regards the opening-up of markets, the most significant progress has been made in the telecommunications and, to a lesser degree and with some delays, energy sectors —

gas, electricity — where prices are often still too high. The postal sector, which is most often in the public sector, is still highly compartmentalised, despite initial limited liberalisation in Europe. There are still interconnection, equipment and modernisation delays in transport infrastructures, due mainly to the actual implementation of trans-European network projects being put off too often.

4.3. As regards access to funding, the progress achieved and ongoing in the integration of European financial markets is largely due to the introduction of the euro. Various measures have also been taken in several countries to facilitate access to start-up funding and help SMEs. But access to venture capital is still grossly inadequate in Europe, particularly when compared with the United States, which harms the vitality of SMEs and innovative companies on the European market. In addition, unification of the European financial market is still too dependent on rules that have been delayed, when self-regulation initiatives by the professionals concerned could have been encouraged more.

4.4. As regards public sector deficits, everyone can see that situations are very different from one country to another: the reports of the Commission and Council stressed that while certain Member States can be pleased to have achieved a positive balance in their public sector finance (cf. Denmark, Finland, Ireland, Luxembourg, Sweden), others have seen their deficits grow alarmingly (cf. Germany, France, Italy and, until recently, Portugal), reaching or exceeding the limits fixed by the stability pact. Those countries which have big deficits today are also those which, comparatively, have been lagging behind in implementing structural reforms. Countries which have a better balance on public sector financing are generally further forward with their structural reforms, even if some of them, particularly in northern Europe, also have high taxation.

4.5. As regards stimulating innovation, the general use of the Internet and the widespread access of companies to new technologies has made it possible to improve significantly the quality of goods and services, and make a lot of progress on productivity. This trend is often accompanied by the use of international divisions of labour to take account of comparative advantages, including wages, an increase in sub-contracting and the relocation of manufacturing (cf. textile, electronics, toys, etc.), or even of services (cf. business accounting) to emergent non-EU economies. But research expenditure, although significant in many countries (cf. Finland, Sweden, France) remains insufficient in several countries and far below the objective of 3 % of GNP fixed by the Lisbon strategy. They are also too much out of step with each other and with the European common R&D policy. Finally, the lack of a real alignment of economic and technological defence resources under the heading of foreign and security policy badly affects Europe's position in this field and its derivatives (cf. new materials, electronics, etc.). As regards the granting of patents, some countries maintain a good national level (cf. Finland, Sweden) but Europe on average continues to lag way behind the USA or Japan. The absence of a Community patent, pending the translation of the recent political agreement into concrete facts, casts a dampener on the situation.

4.6. As regards improving the labour market, situations vary greatly from country to country, as the appended tables show. Even if none are problem-free, some have a high level of employment overall, while others have to cope with structural under-employment and an alarming level of unemployment. Major reforms are in hand to improve the operation of the labour market, particularly to improve flexibility and the matching of vacancies to job applications, bearing in mind the ageing of the population. The consultations with the social partners, and the negotiations with them and between them, aim in particular to ensure that the new measures actually lead to better jobs and working conditions in the face of the challenge of international competitiveness. Some interesting initiatives have been taken, for example in France, to encourage job seekers to start their own businesses by cutting red tape and ensuring that, at least initially, they do not lose their unemployment benefit.

4.7. As regards the modernisation of social security, many reforms are in hand to restore financial equilibrium in the face of the ageing of the population affecting all EU Member States. This involves in particular adapting the length of benefit contribution to longer life expectancy, reforming pension schemes in both the public and private sectors, so as to reflect the best practice of both sectors, and ensuring that 'seniors' are not encouraged, or even forced, to leave the labour market prematurely [1]. The use of supplementary insurance schemes and pension funds is encouraged. While such reforms are spreading, they are also encountering problems of implementation and effectiveness, particularly too much early retirement (cf. Belgium, France, Greece).

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[1] Older workers, OJ C 14, 16.1.2001.

4.8. As regards education and training, most EU countries have highly efficient and developed educational systems (particularly in northern Europe), which, however, are sometimes still too divorced from economic needs and realities. Initiatives have been taken recently, for instance through legislation, interprofessional agreements, and exchange programmes, to improve these links and develop apprenticeship schemes (cf. France, Luxembourg, Spain, Italy, Portugal). The generalisation of internet access also helps to improve training.

4.9. As regards the simplification of rules, this is a need common to all EU countries, even if some (cf. Denmark, Finland, the UK, Sweden) have started sooner than others to introduce programmes and methods to remedy this. Priority is generally given to simplifying the procedures for setting up companies and small firms, because of their impact on economic activity and jobs. This necessary simplification of administrative charges and procedures should be accompanied by more effective combating of the underground economy, which may get even bigger with EU enlargement. Another priority is the best way to transpose EU directives, where, as the six-monthly scoreboards published by the Commission show, situations vary greatly from country to country, but where the longest national delays (cf. France, Greece, Italy) should nevertheless be reduced following government measures.

4.10. As regards sustainable development, the national measures taken to implement the Kyoto agreements are having variable results. Environmental protection is by tradition more anchored in legislation, programmes and codes of conduct in the countries of the North, but new measures have been taken in the other EU countries, and exchanges of good practices have had some success (cf. voluntary codes, company governance, environmental protection charters, labels, checks and the distribution of emission licences, etc.).

5. The EESC's conclusions on the impact of structural reforms

5.1. The EESC notes first of all that all the countries of the EU have actually undertaken structural reforms, with common objectives, to revitalise their competitiveness, strengthen growth, boost jobs and to ensure the sustainability of their economic and social development.

5.2. The main areas where progress has been made, and which enable us to remain confident about the Lisbon strategy despite the delays in implementing it, concern:

5.2.1. the awareness of the need for reforms in view of the challenges of competitiveness and demographic and technological changes, irrespective of traditional political divisions;

5.2.2. the development — even if it needs to be stepped up — of initiatives taken by business and socio-professional circles, particularly on a European scale, to help make the reforms a success;

5.2.3. in particular, the involvement of the social partners in the development of the reforms concerning working life and social issues (cf. training, labour market, social protection);

5.2.4. with the opening-up of telecommunications, speedier distribution of information technology and access to the Internet;

5.2.5. more concern about sustainability and the future (cf. management of public finance, reform of social welfare, consumer safety, environmental protection).

5.3. The main delays which must be made up, and which would make it possible in particular to rectify economic growth, concern:

5.3.1. completing the single market in fields such as energy, transport infrastructures and services, including financial services, so as to improve reliability and reduce costs: the EESC thus deplores the fact that Europe persists in not giving priority to its single market in order to ensure its growth;

5.3.2. better balance in public finances, under conditions that favour investments and growth, and a start towards European harmonisation of the main tax rules impacting directly on the operation of the single market;

5.3.3. real European dynamism in technological research, which at present is inadequate in terms of the ambitions proclaimed in Lisbon;

5.3.4. simpler rules and greater rigour in transposing EU directives into national law.

5.4. The EESC also stresses that:

5.4.1. national situations and the state of progress on reform vary greatly from one country to another:

5.4.1.1. on the whole, indicators are often better in the northern EU countries (cf. opening-up of markets, public finance equilibrium, productivity, education, research, employment, environment), although this progress coincides with the constraints of heavier taxation;

5.4.1.2. the countries of the south, which mostly lag behind, have taken corrective steps, but they need more time to overcome these handicaps, especially as many of them are long-standing and of a cultural nature;

5.4.1.3. the state of national public finances often reveals the state of reforms, as bigger deficits are often a sign of delays in implementation.

5.4.2. At present even the best-placed EU countries perform worse than their biggest international competitors (when over and above progress and delays from one year to another, the issue is not so much for the EU countries to do better than before, but to do better than elsewhere).

5.4.3. The public's perception of the reforms is often lukewarm if not critical, owing to fears of losing acquired advantages without any visible quid pro quo in terms of more jobs or sustainable social welfare, as these positive effects are taking their time to appear (cf. weakness of growth, higher unemployment). Now, the EESC is concerned by a growing gap between the aims set for these reforms, the delays in implementing many of them, and the persistent deterioration in growth and employment in Europe. The European strategy of reforms should not be allowed to degenerate into a 'bubble', with an inflation of objectives, concepts and participating states coinciding with equally growing deficits as regards sharing of responsibility, implementation and real impact.

6. EESC recommendations for boosting the impact of the structural reforms

6.1. The current deficiencies in terms of the economic, social and employment impact of the structural reforms, which make public opinion ask questions, lead the EESC to submit the following recommendations.

6.2. The EESC notes first of all that while the EU correctly identified, in particular at the Lisbon Summit, the main structural reforms needed at European and national level, the application of 'good governance of the reform' is still largely lacking in practice. The EESC should not therefore place too much stress on the importance of better methods to carry out the structural reforms. In this connection, the EESC would stress the following priorities:

6.2.1. One prime condition for making the reforms a success is to try harder to explain their goals: in particular, awareness and understanding of the issues must be improved. The preparation of the spring summits should give rise, in the various Member States, to genuine debates involving representatives of organised civil society.

6.2.2. This requirement goes hand in hand with better consultation of socio-professional organisations on the reforms to be carried out, their prospects, their effects, their conditions and their state of implementation. Through these consultations, it is also advisable to seek an optimal distribution of the contributions necessary, together with better co-responsibility in the implementation of reforms. In addition to the legislator and the public authorities, the actors of civil society also have an important role to play (initiatives by socio-economic groups, social partners' agreements, etc.). The states should therefore encourage the actors of civil society more to assume all their responsibilities in implementing the reforms, by delegating as much as possible to them, rather than the public authorities.

6.2.3. The state of implementation of the reforms should be better spelt out in the annual reports of the Member States and the Commission at the spring summit, which should mention not only the measures taken by the public authorities but also the initiatives taken by the socio-economic groups and the social partners concerning these reforms.

6.2.4. Following the refocusing of the monitoring and evaluation of the processes set up at the beginning of 2003, with the annual presentation of a summary report by the Commission, steps must be taken to ensure that this mutual interaction of processes becomes more effective. One could thus better integrate the employment guidelines and the broad economic policy guidelines, and not just synchronise the two. This would help simplify the annual process of setting the EU's economic and social guidelines.

6.2.5. It is also advisable to improve the effectiveness of benchmarking, making it possible to disseminate the best practices. To this end, it would be useful to create within the Europa website, under the Lisbon strategy, an observation and data base on the structural reforms in the EU, prompting the states and the actors of civil society to contribute all the useful elements of information needed to develop it. The EESC, for its part, intends to contribute directly towards improving the information on the initiatives taken by the actors of civil society in the reforms.

6.2.6. Close attention must be paid to the optimum inclusion in the Lisbon strategy of the ten new Member States from central Europe and the Mediterranean — and to involving the other candidate states for membership — taking into account their specific features and in particular the lack of development that most of them have compared with the 15 current Member States, though this does not rule out new Member States also being able to enjoy certain comparative advantages in the reforms. These countries should be invited to present their reform programme and the state of its progress at the next spring summit in March 2004.

6.3. As regards the scope and content of the reforms, the EESC would particularly stress the following priorities:

6.3.1. The adoption of the single currency is showing increasingly clearly that there is a need for common economic governance, something that the Member States have now refused, other than a — still embryonic — system of coordination from Brussels. Such common governance will obviously mean an alignment of taxation, and in particular a single regulation to eliminate double taxation, instead of bilateral agreements (which are as complicated as they are varied), so as to simplify taxes on intra-Community trade and harmonise bases of assessment. The EESC is preparing an opinion on these various taxation issues.

6.3.2. The stability pact to counter public sector deficits is a useful safety net and a clear expression of the solidarity linking all the states belonging to the euro. It should therefore be respected. These provisions should not make us forget the growth target which is also present in the spirit and letter of the pact, an area where the reasons for dissatisfaction are equal to those concerning deficits: it would be illusory to wish to tackle national public deficits in an effective and sustainable manner without agreeing together on a European policy that opens up real prospects for growth. It would be just as illusory to try and bring often rigorous structural reforms to a successful conclusion without offering such positive and credible prospects to Europeans.

6.3.3. This means using the single market with more determination as a privileged growth factor for the European economy, by speeding up the mutual liberalisation necessary for its completion and imposing more rigour in transposing EU rules into national law. Better management of the single market is more than ever necessary with the enlargement from 15 to 25 Member States in 2004. This means improving its cohesion, identity, fluidity and security. This would justify, both in cooperation with and as a complement to national administrations, contemplating the introduction of:

6.3.3.1. genuine Community inspections of the single market;

6.3.3.2. common management of European customs posts at the external borders;

6.3.3.3. better transnational coordination of public services, which could prepare, in certain fields where it would be justified, the emergence of services of general interest on a European scale;

6.3.4. Steps should also be taken to encourage more firms of all sizes to really use the single European market as their own real internal market, and redeploy themselves on this scale. The EESC would recall its proposals for a simplified European statute open to small and medium-sized enterprises, and reiterates its request to the Commission to submit such a draft statute [1].

6.3.5. Another reform essential for the European economy is, as the Lisbon strategy rightly points out, the promotion of the knowledge-based economy: the EU countries do not invest enough in the technologies of the future, and, when they do so, they are too unfocused. The EU framework programme for research, whose low budget (barely 5 % of national research budgets) is scattered too thinly between the Member States, should be clearly upgraded in order to reach a real threshold of effectiveness and be concentrated more on authentically European technological programmes suitable for supporting growth in the EU countries. The framing of a more convergent approach in the field of defence under the heading of a common security and foreign policy, in its various aspects

[1] European Company Statute for SMEs — OJ C 125, 27.5.2002.

(presence in space, harmonisation of armaments, new dual-use civilian and military technologies, etc.), and including a more effective mutual liberalisation of the corresponding public contracts, should play a key role in giving this new dimension to European technological innovation.

6.3.6. Recovery on the jobs market will come above all from a recovery of growth, brought about by the economic reforms (cf. deepening of the internal market, encouragement of operators' initiatives, attraction of investments, etc.). The social reforms for jobs (cf. education and training, employability, better labour market fluidity) must be conceived to go hand in hand with these economic reforms, and optimise their impact on jobs. The positive examples of jobs market recovery in the Netherlands, UK, Ireland and Denmark are good illustrations of this.

6.3.7. The EESC is therefore in favour of a European growth initiative, as proposed in July by the Italian Council presidency, the Commission, and also the high-level working party chaired by André Sapir. In September, France and Germany also submitted joint guidelines of a similar nature. The European Council of 16 and 17 October 2003 has itself just supported the need for such an initiative, the actual details of which should be decided on at the European Council of 12 and 13 December 2003. This would involve defining and implementing on a European scale new growth incentives to boost investments in research and new technologies — as indicated previously — and in the transnational transport, energy, telecommunications and environmental infrastructures that will be needed if the enlarged single market is to operate properly. The negative short-term effects that the necessary rigours of the stability pact regarding national budgets may have on growth would be offset by increasing loans and funding from the European Investment Bank for such investments, involving private investors through new public/private sector partnerships and thus helping, by these and other measures, to restore the confidence of the various players in the European economy.

6.3.8. The reforms of social welfare, which have to ensure the financial equilibrium of the various schemes (unemployment, health, retirement), are made particularly necessary by the ageing population, the rise in the cost of health cover, and the increased rigour which is necessary in public finance. Like the social reforms for employment, they involve close consultation of the social partners, who may be required, via the contractual policy, to play a major role in the measures to be taken.

6.3.9. Legislative and administrative rules also need to be improved and simplified, and a lot of progress still needs to be made here in addition to the several positive initiatives taken by the Commission (e.g. codifications, White Paper on governance, measures announced by the European simplification programme). This means in particular:

6.3.9.1. a new 'less red tape' culture geared to users' needs at both European level — with a code of conduct for the EU institutions — and in the Member States, which should give parallel undertakings and implement them at national level with rapid, concrete and measurable results;

6.3.9.2. improving impact studies on plans for new rules, ensuring their autonomy and their quality; the EESC attaches great importance to these impact studies and is ready to help improve them as part of its advisory mission.

6.3.10. Finally, support must be given to initiatives by the socio-economic players, who decide whether or not Europe adapts to its new economic and social environment. These initiatives must provide more systematic back-up for economic and social structural reforms and increase their positive impact. They should be better supported by the public authorities at both European and national level. This means in particular:

6.3.10.1. more room for freedoms and responsibilities, particularly on a European scale, while ensuring a more effective application of refocused rules;

6.3.10.2. better use of self-regulation and co-regulation as part of a partnership with the public authorities, especially in areas concerning social dialogue, the recognition of professional qualifications, services, environmental protection, trade and consumers.

6.4. In conclusion, the EESC is convinced of the need to ensure that the structural reforms needed to make the EU more competitive are, firstly, backed up by a revival of economic growth through the completion of the single market and the development of trans-European investments and, secondly, are discussed, understood and allocated better at the various levels among political decision-makers and the players in organised civil society. This involves optimising the European economy by invigorating its autonomous growth capacity and ensuring better synchronisation of the efforts required to bring this about. The effective impact of these reforms in a difficult economic and social landscape, and

therefore their success or failure, will depend ultimately on them being not only pushed forward by political leaders through laws and regulations but also — and above all — on them being supported and passed on by the economic and social players in their specific capacity as contractual partners and creators of initiatives 'on the ground.'

Brussels, 30 October 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 Directive amending Directive 77/388/EEC as regards reduced rates of value added tax'

(COM(2003) 397 final — 2003/0169 (CNS))

(2004/C 32/24)

On 1 August 2003 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

In view of the urgent nature of the work, the Committee decided at its 403rd plenary session of 29 and 30 October 2003 (meeting of 30 October) to appoint Mr Bedossa as rapporteur-general and adopted the following opinion by 66 votes to three with five abstentions.

1. **Introduction**

1.1. For tax consultants, VAT rates are more a question of political marketing and tax policy than of structural measures with an impact on company competitiveness and competition. However, in economic terms, any modification in the VAT rate has an immediate and long-term impact on consumption; cutting rates boosts consumption and thus has a direct impact on production and jobs, particularly when local activities are involved that do not distort competition. Creating jobs by cutting VAT in this way also has a major indirect impact on government income through the increased tax revenue from corporate earnings, earned income and social security charges and a cut in the cost of unemployment benefit.

1.2. Unlike other levies, VAT on final consumption is a visible tax and, because of that, is used as an excuse to cut other kinds of charges (specific indirect taxes, direct taxes, social security contributions and local taxes). As a matter of fact, VAT collection requires an exact registration of turnover, making other taxes and parafiscal charges much more difficult to evade.

1.3. Despite the fact that VAT rates are often the subject of intense lobbying and political activity, it is debatable whether they do in fact generate significant administrative difficulties for companies. Difficulties may perhaps be caused by having a plethora of rates, making it hard to determine which rate applies in a particular case. Problems do arise from time to time.

1.4. The Commission is right to say that companies are at a loss to understand how the system works, and that the rules do sometimes lead to incredible complexity, but this is not a

matter specific to rates of VAT. Indeed, there have been considerably fewer problems since the number of rates was cut in 1993 and premium rates were curtailed. Very many companies operate using a single rate and the problems that do arise can be managed centrally and definitively for very long periods.

2. **General comments**

2.1. The European Economic and Social Committee welcomes the Proposal for a Council Directive amending Directive 77/388/EEC as regards reduced rates of value added tax adopted by the Commission on 16 July 2003.

2.2. In its opinion of 26 May 1999 and in accordance with the wishes of the European Council on employment, the Committee stated that, despite the manifold criticisms that can be levelled against this proposal, the VAT rate also had to be used in the fight against unemployment and as a weapon to combat the black economy.

2.3. The Committee recognises that, not least with enlargement imminent, this proposal seeks to give all Member States equal opportunities to apply reduced rates in very specific, defined and clearly itemised areas.

2.4. The Committee notes that the draft directive seeks to rationalise the numerous derogations that have grown up in some — but not all — Member States in respect of VAT rates.

2.5. The Committee notes that the recitals to Council Directive 1999/85/EC set out the aims of this experiment, namely to boost employment and curb the black economy. A global evaluation report was also to be drawn up on the experiment. Nine Member State elected to take part in the evaluation, which culminated in July 2002 in an exchange of views on the evaluation methods and the difficulties encountered in drawing up the report.

2.6. The underlying economic mechanism was based on boosting employment and curbing the black economy.

2.6.1. The purpose of lower VAT is to cut consumer prices for the services concerned and thus increase demand. Increased production is meant not to boost productivity but to encourage recruitment. Directive 1999/85/EC clearly stated that there had to be a close link between the lower prices resulting from the rate reduction and the foreseeable increase in demand.

2.6.2. Higher VAT can only influence those businesses which have legal status but which operate in part in the black economy. The problem with evaluation is that it is difficult to measure activity which is, in essence, 'unobserved'.

2.7. The Committee also notes the key importance of the observation period selected. Employment trends vary depending on whether the period selected is one of high growth or, as now, severe recession, as the economic environment has to be taken into account.

3. **Specific comments**

3.1. The Commission proposal has four facets.

3.1.1. The list of goods and services on which Member States have the option of applying reduced rates of VAT is to be rationalised in four main ways, namely by:

— not extending the option to apply reduced rates to new categories on which no Member State applies reduced rates at the moment;

— extending the option to apply reduced rates only to the categories of goods and services for which specific derogations already authorise a Member State to apply reduced rates, provided this does not hinder the proper functioning of the internal market: restaurant services, housing and gas and electricity supplies;

— introducing the option to apply reduced rates to plants and floricultural products;

— introducing special provisions, for instance for material used by disabled people, for sewage and street cleaning services and for waste recycling.

3.1.2. Rationalisation of other reduced rates:

— abolition of the derogations which, in the past, enabled some Member States to maintain reduced rates for goods and services not contained on the restrictive list;

— restriction of zero and super-reduced rates to the goods and services listed in Annex H.

3.1.3. The lower rates applicable in certain territories are to be rationalised in order to define a clear legal basis for each of the derogations and to restrict their scope to prevent abuse.

3.1.4. VAT on certain labour-intensive services: the Commission claims that the reduction in VAT rates has had very little, if any, impact on prices and job creation and thus feels that this may be a waste of budget resources which could be more usefully deployed — and thus have better results. The Commission does not, however, call into question the optional nature of applying reduced VAT rates.

3.2. *Objectives and constraints*

3.2.1. The Committee notes the directive's objectives, namely:

— to implement the new VAT strategy to improve the functioning of the common VAT system in the single market;

— to preserve the Community *acquis* on rates and prevent current differences widening;

— to reduce inconsistencies in the current system, i.e. in the many specific derogations currently granted to certain Member States.

3.2.2. The Committee welcomes the following points made in the draft directive:

— In line with the principle of subsidiarity, there is no impingement of Member States' tax competence beyond what is necessary to ensure the proper functioning of the single market.

— The scope of reduced VAT rates is to be carefully defined to ensure that such factors do not disrupt the operation of the internal market.

— The derogations should apply for a very short period of time.

— It is vital not to lose sight of the Lisbon Strategy, which was expanded at Gothenburg, to promote sustainable development, increase employment and introduce economic reform and social cohesion in a knowledge-based society.

3.2.3. The Committee took note of the conclusions of the informal Council meeting in Stresa on 13 September 2003 which confirmed the many discrepancies on the list of services that will be eligible for lower VAT.

3.2.3.1. With regard to these many discrepancies, the Committee agrees with the Commission, on the issue of passing on the VAT rate in consumer prices. Often, this is highly negligible and, if anything, temporary. It is undoubtedly a step backwards for the single market, given the high cost to the budget of measures of this kind.

3.2.3.2. If the aim is to simplify the VAT system and make it more coherent, maintaining these very many derogations may distort competition.

3.2.4. The Committee notes the growing importance of Court of Justice case law — including the judgements delivered on 18 January, 8 March, 3 May and 8 May 2001 — for assessing the various measures taken by the Member States to define the scope of the reduced rates. This case law will from now on serve as a guideline for revising and rationalising Annex H.

3.3. The economic activities eligible for reduced VAT rates set out in Annex K have their own hallmarks that differ from other industrial goods and services. They are mostly performed by small and micro enterprises at local level. These small and micro enterprises are vital, not least for the local economy, and the immediate impact of any expansion of their activities is to boost local jobs rather than relocate operations.

3.3.1. In its findings on the experiment with reduced VAT, the Commission underlines the fact that the participating Member States failed to furnish proof of the effectiveness of this measure on employment and curbing undeclared work. While it is true that the information provided by some of the Member States involved is inadequate, France reports a very large number of new jobs created in the construction industry, while Luxembourg and the Netherlands report a similar development in the hairdressing sector. Broadly speaking, reports from the organisations representing the eligible companies highlight the benefits of this measure. Moreover, the positive effects vary depending on the sector and Member State concerned. To give a fuller picture, the findings should also have analysed the impacts of new job creation on government (tax and social welfare) revenue.

3.3.1.1. The Commission feels that reduced VAT has not done enough to secure lower prices for consumers. The Commission's arguments are not convincing. According to the French government report, 75 % of VAT cuts have been passed onto the final price in the construction business. This has enabled consumers to commission more work, generating added business for companies and creating jobs.

3.3.1.2. By its very nature, it is hard to show the impact of this measure on undeclared work — given the lack of information even about the scale of the problem. For the moment, we must make do with random, unquantifiable approaches. A number of reports note the views of grassroots entrepreneurs from the construction industry and elsewhere, who feel that undeclared work is on the wane both inside and outside companies.

3.3.2. The Committee feels therefore that, given the findings of some of the national reports, it is possible to objectively endorse the benefits of VAT reduction in certain sectors that have experience of this measure.

3.3.2.1. The Committee would also draw the attention of the Commission, the Parliament, the Council and the Member States to the serious economic consequences — in terms of jobs being destroyed — of discontinuing the experiment. The Committee feels therefore that this experiment now has to be turned into a definitive measure.

3.3.3. With regard to the activities mentioned in the new Annex H, the Committee is pleased with the Commission's proposal and the introduction of new sectors and new operations such as restaurant services. However, it is not clear why two sectors that used to be included in the former Annex K — hairdressing and small repair services — have been left out:

— It is unreasonable to definitively rule out any activities on the basis of inconclusive, disputed findings of short-term studies.

— It is vital to bear in mind the risk of losing the new jobs created in these two sectors.

— Restoring normal instead of reduced VAT rates in these sectors would have adverse economic effects.

3.3.4. Since Annex H is an option, not an obligation for Member States, the Committee calls for:

— confirmation of the twenty categories of activity in the new Annex H;

— the reintroduction of hairdressing and small repair services mentioned in the former Annex K;

— the addition, in category 10, of historic and religious buildings and buildings of private and professional/industrial cultural and architectural heritage.

4. **Conclusions**

4.1. VAT rates are undoubtedly a tax policy concern, as rates on final consumption impact public revenue.

4.1.1. The rates issue played a potentially key role in the European Commission draft papers discussed in the late 1980s and early 1990s where the aim was to abolish VAT exemptions in intra-Community relations and to introduce a system of VAT levied in the country of origin. Against that background, it was important to harmonise the rates.

4.1.2. Thankfully, however, the plan to levy VAT in the country of origin was deferred. At that time, there was much questioning of Member States' egotism, what was seen as their refusal to give up their tax prerogatives, the fear of an all-powerful European Commission, etc.

4.1.3. Under the Commission's plans it was not possible to allocate precisely each rate of VAT on consumption in the territory concerned. That does not mean that the aim of introducing VAT levied in the country of origin as propounded by the Commission was a mistake. It simply means that the ways of achieving that aim were not consistent the objective in mind.

4.1.4. Quite the reverse in fact: the abolition of exemptions in intra-Community relations would be likely to significantly cut 'carousel' fraud perpetrated by criminal organisations at the expense of the public purse and, above all, the companies concerned. This is a serious problem to which many companies fall victim.

4.2. The Committee welcomes the moves to draft the new Annex H, with a view to rationalising and simplifying it so that it becomes *ipso facto* the sole reference for defining the scope of reduced, super-reduced and zero rates.

4.2.1. The addition of new categories comes in response to pressing demands from the Member States who had not secured the requisite authorisation. This applies particularly to category 14 (restaurant services). This addition is designed to allow the reduced rate to be applied to restaurant services in more Member States and is thus a decisive step towards the more uniform application of reduced rates.

4.3. The Committee does not wholly share the Commission's view on the outcome of the evaluation of the experiment's effectiveness, not least in terms of job creation and efficiency.

4.3.1. Although the studies that have been carried out do point in the same direction, in one category at least (category 10: housing), convincing results have been achieved for small and medium-sized enterprises (SMEs) in one of the Member States applying the scheme. The rate rise has stimulated demand and boosted employment for craft workers in the sector concerned.

4.4. Nonetheless, the Committee welcomes the proposed revision, which is an important step towards improving the common VAT system with a view to improving the functioning of the single market.

4.4.1. This major simplification of the VAT rate for the European Union as a whole also maintains Member States' tax competence in setting the VAT rates applicable on their territory.

4.5. The Committee endorses the plan for a revision to be carried out in 2004 to allow an assessment of the economic, environmental and social impacts of the proposal.

4.6. The Commission proposal is useful in that it reintroduces a more rational approach and removes some of the inequalities in the application of the common VAT system. However, this situation is not specific to VAT rates and the adoption of the directive would not warrant the abandonment of other priorities such as, for example, eradicating discrimination and the serious inconsistencies in the economic sectors to which VAT exemptions apply. With this in mind, it would be advisable to allow Member States to extend the zero rate to all operations falling under Article 13 of the sixth directive.

4.6.1. In view of the above, we would propose that the Committee ask the Commission to amend the second subparagraph of Article 1(2)(a) of the proposal as follows:

'The derogation laid down in the first subparagraph may relate only to supplies of goods or services of one of the categories listed in Annex H or Article 13'.

4.6.2. In Article 1(2)(c), the proposal is to delete the words 'which give rise to consumption in those territories'.

4.7. The Committee challenges the Commission's finding that lower VAT rates are never the most effective tool, that the cost of such a measure to the budget is high when set against its economic impact, and that a preferable option is to reduce labour costs. Cutting costs and lowering VAT are interactive measures and, under the subsidiarity principle, the Commission must leave it up to the Member States to select the measures they feel best fit in with their own policies.

4.7.1. The Committee would again draw attention to the indicative, non-mandatory nature of the Commission's proposed directive. As the Annex H categories deal with local activities unlikely to distort cross-border competition, it is vital that Member States do not oppose the idea simply because they do not want to apply a particular measure contained in the directive in their particular country. In order to boost the ongoing development of dynamic policies to assist the sectors concerned and to avert the risk of a sharp economic and social slump that would result if VAT were to return to its normal rate, the Committee urges the Member States to adopt the proposed directive, bearing in mind the proposals set out above.

4.7.1.1. The Committee notes that this measure — which reflects the priorities of the European Charter for Small Enterprises — is of major benefit to local small and micro enterprises and must be stepped up accordingly. Like the Parliament, the Committee would like to see VAT reduction extended to all highly labour-intensive activities.

4.7.1.2. The Committee has been informed of the difficulties experienced by the companies concerned, not least in the construction business, in planning their operations for 2004 in the absence of any clear decision. The Committee asks the governments to adopt the proposal for a directive so as not to put a brake on company activities over the coming months.

Brussels, 30 October 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 Directive amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States'

(COM(2003) 462 final — 2003/0179 (CNS))

(2004/C 32/25)

On 5 September 2003 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

In view of the urgent nature of the work, the European Economic and Social Committee decided at its 403rd plenary session of 29 and 30 October 2003 (meeting of 29 October) to appoint Ms Polverini as rapporteur-general and adopted the following opinion unanimously.

1. Background

1.1. Directive 90/435/EEC introduced a body of rules concerning dividend payments and profit distributions, aimed at eliminating, or at least reducing, the legal and economic double or multiple taxation of profits distributed by subsidiaries in the country in which the parent company is established.

1.2. The experience gained in implementing the directive has revealed the need to make some corrections to the original text adopted in 1990.

1.3. Following a study on company taxation in EU Member States, the Commission drew up the present proposal for an amendment, mainly in order to broaden the range of companies which can benefit from the directive.

2. General comments

2.1. In view of the forthcoming enlargement of the Union, the EESC believes that effective removal of tax obstacles requires progressive harmonisation of Member State rules.

2.2. Against a backdrop of market globalisation and spread of new technologies and electronic commerce, it is essential to remove any efficiencies which might prevent EU companies from taking full advantage of the benefits of the internal markets and which would be harmful to competitiveness and well-being, in contrast to the Lisbon objectives.

2.3. The EESC supports the underlying purpose of the proposal to amend the parent-subsidiary directive, which is to consolidate corporate groups located in several Member States. The same aim could be pursued by eliminating or at least reducing the legal and economic double or multiple taxation of profits distributed by subsidiaries in the country in which the parent company is established.

2.4. The EESC welcomes the proposed broadening of the range of companies covered by the directive to include types of legal person so far excluded from its scope, such as cooperatives, mutual companies, certain non-capital based companies and savings banks.

2.5. In particular, the extension to savings banks and mutual companies of the benefits provided by the parent-subsidiary directive facilitates consolidation of groups within the EU single market, including in the banking and insurance fields.

2.6. However, in some cases to be determined in advance, the possibility should be considered of extending the benefits of the parent-subsidiary directive (restricted to exemption from withholding tax on distributed profits only) regardless of the existence or otherwise of a parent-subsidiary relation.

3. Specific comments

3.1. *Article 1 paragraph 1: Permanent establishment*

3.1.1. The proposed amendment to Article 1 of the directive is helps to make it clear that the Member State where a permanent establishment is situated must grant the benefits of the directive in the event that the permanent establishment receives distributed profits, provided that all the qualifying requirements of the parent-subsidiary directive are met.

3.1.2. The amendment to Article 4(1) of the directive obliges the Member State of a permanent establishment and the State of the parent company receiving distributed profits:

— to refrain from taxing such profits,

or

— in the event that such profits are taxed, to authorise the permanent establishment and the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary and any lower-tier subsidiary which relates to those profits, up to the limit of the amount of the corresponding tax.

3.1.3. The extension of the parent-subsidiary directive to cover situations where a permanent establishment of a parent company receives distributed profits from a subsidiary requires consideration of the various cases of triangulation which the financial planning of corporate groups may generate.

3.1.4. In this respect, the wording of the proposal allows the benefits of the directive to apply where the parent company and subsidiary are based in different Member States for tax purposes, and the dividends are paid to a permanent establishment situated in another Member State.

3.1.4.1. At the same time, the directive can be applied in the event that the parent company and subsidiary are located in different Member States and the permanent establishment receiving the dividends is located in the same Member State as the subsidiary.

3.1.5. However, the parent-subsidiary directive applies partially in cases where the parent company and subsidiary are located in different Member Stats and the permanent establishment is located in a non-Community country. The effect of the proposed changes would be for the State of the subsidiary to exempt outgoing dividends from the withholding tax (cf. Article 5 of the directive), while the jurisdiction in which the permanent establishment is located should not apply the arrangements set out in the directive. Lastly, the State of the parent company, under the new wording of Article 4(1) of the directive, could opt either to exempt such profits from taxation or to deduct from the tax that fraction of the tax due on the profits up to the limit of the amount of the corresponding tax.

3.1.6. Moreover, close attention must be paid to the potential risk of abuse of the directive in cases where a parent company and subsidiary are located in the same Member State while a permanent establishment is located in another Member State; under such circumstances the directive should not apply, since by virtue of Article 3(1) the subsidiary must be resident for tax purposes in different Member State to the parent company.

3.1.6.1. However, detailed examination of this specific situation is necessary regarding the potential infringement of the principle of non-discrimination; the same points apply as in the general comments on these aspects.

3.2. *Article 1 paragraph 2: Broadening of the range of companies benefiting from the directive*

3.2.1. It is proposed that the minimum shareholding requirement (needed in order to qualify for the status of parent company and subsidiary company)be reduced from 25 % to 10 %, in order to widen the range of cases covered by the directive.

3.2.2. The EESC notes with approval that the reduction of the minimum shareholding requirement increases the number of companies which can benefit from the tax advantages under Directive 90/435/EEC, and which were previously unable to meet the minimum 25 % shareholding requirement.

Brussels, 29 October 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 Directive amending Directive 77/388/EEC concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations'

(COM(2003) 335 final — 2003/0120 (CNS))

(2004/C 32/26)

On 20 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 16 October 2003. The rapporteur was Mr Pezzini.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 30 October), the European Economic and Social Committee adopted the following opinion by 62 votes to none with two abstentions.

1. Introduction

1.1. The purpose of the proposal to amend Directive 77/388/EEC providing for the establishment of a common system of value added tax (Sixth VAT Directive) is to introduce measures making the procedures under Articles 27 and 30 of the directive more transparent, and to establish procedures allowing the Council to adopt VAT implementing rules at Community level.

2. The system under Articles 27 and 30

2.1. Under Articles 27 and 30, the Council may authorise a Member State to introduce special measures into its national legislation for derogation from the provisions of the sixth directive, in order either to simplify the procedure for VAT charging, or to prevent certain types of tax evasion or avoidance, and to facilitate agreements with non-member countries or international organisations.

2.2. The procedure stipulates in particular that a Member State wishing to introduce special derogation measures shall inform the Commission, providing it with all the information considered necessary for this purpose. It also lays down that the decision shall be adopted if, within two months of the date on which the other Member States were informed of the request, neither the Commission nor a Member State has asked for the case to be raised by the Council.

2.3. According to these dispositions, the Council may then tacitly adopt decisions on matters which have not been laid before it. In fact, although in the preliminary stages of the procedure the request for authorisation is submitted by the Member State to the Commission, which then informs the other Member States, the Commission is under no obligation to present a proposal to the Council, which may consequently incur responsibility for a decision without any procedural involvement.

2.4. Furthermore, because of its simplified nature, the procedure does not ensure transparency of Council decisions, which may jeopardise the proper working of the single market. As things stand, the tacit adoption of a decision by the Council denies taxable persons knowledge of the content of the authorisation and of the reasons for the Council's decision.

3. The Commission's proposals on the procedure under Articles 27 and 30 for adopting derogation measures

3.1. The Commission believes that in the interests of all concerned, adoption of special derogation measures under Articles 27 and 30 of the sixth directive should take place within a procedure which can ensure that decisions are transparent and in compliance with Treaty provisions and the general principles of Community law.

3.2. The Commission considers that to this end, it is necessary to amend the provisions under which the Council can adopt tacit decisions, so that requests for derogation instead require a proposal from the Commission and a formal decision by the Council.

3.3. The Commission specifically proposes that the procedure should be triggered by a Member State lodging a request with the Commission supported by all the information deemed useful and necessary for appraisal. If the Commission considers that it has all the essential information and requires no clarification, it notifies the requesting Member State accordingly. If, on the other hand, it requires further information, it asks the appropriate Member State authorities to provide it.

3.4. Within three months of the conclusion of the investigation — i.e. from notification that no further details are required regarding the request — the Commission submits to the Council either a proposal for a decision or a communication setting out its objections to adopting the special derogation measures requested by the Member State.

4. **Implementing measures**

4.1. Experience during the operation of the transitional arrangements for the taxation of transactions between the Member States has shown that national differences in the incidence of the tax or administrative procedures impair the neutrality of the VAT system, presenting obstacles to the internationalisation of businesses and the full and effective completion of the single market. Significant differences in interpretation and application of the common VAT rules laid down by the sixth directive persist between individual Member States.

4.2. Alignment of national laws and, regarding VAT in particular, measures ensuring uniform application of the tax across the Union, are of the utmost importance for completion of the internal market. Measures of this kind were not however decided when the sixth directive was adopted.

4.3. The VAT Committee was set up to facilitate uniform implementation of the provisions of the directive and to enable more efficient cooperation between the Member States and the Commission. As a consultative committee, its task is to agree guidelines on how the sixth directive is to be applied, especially problems arising from the distinction between goods and services or their classification, or the determination of the place and possible conditions of taxation.

4.4. The VAT Committee however does not have the legislative powers needed to help the Commission adopt binding decisions. Neither do the guidelines it adopts have legal status. The Member States are not therefore legally bound to comply with the guidelines. Neither can the guidelines be invoked in either national courts or the European Court of Justice.

4.5. The VAT Committee's purpose is therefore thwarted, with the result that the proper operation of the internal market and the desirable level of legal certainty are also put at risk.

4.6. In order to ensure uniform application of the common VAT system, the committee's guidelines should be given legal status.

5. **The Commission's proposals on the implementing measures**

5.1. The Commission believes that the VAT Committee should be converted into a regulatory committee assisting it in implementing existing provisions. The Commission put forward the same argument in its 1997 ([1]) proposal to amend the sixth directive.

5.2. The Commission however recognises that many Member States are convinced that all powers should remain exclusively with the Council in the field of VAT.

5.3. Although the Commission stands by the view that reforming the VAT Committee would, in absolute terms, be the best solution, it is nevertheless aware that this is not at present feasible. In the short term, the Commission believes that a temporary procedure should be introduced allowing the Council to adopt VAT implementing measures.

5.4. The Commission is of the opinion that at present, certain powers should be reserved for the Council. The Commission realises that raising taxes, particularly VAT, is a key part of the economic and budgetary strategy of the Member States.

5.5. The Commission therefore proposes that the measures necessary to implement existing provisions should be adopted by the Council acting unanimously on a proposal from the Commission, according to the procedure under Articles 27 and 30 of the directive.

([1]) COM(97) 325 final.

5.6. The Commission identifies those areas where action is required, in the light of the questions raised by Member States, or by the Commission itself, on the VAT Committee. Regarding matters on which the committee has unanimously adopted guidelines, the Commission examines whether or not these guidelines should be converted into binding legal instruments. The VAT Committee itself is involved in this examination, and it should in any event be consulted before the Commission presents any proposal to the Council.

5.7. Where the VAT Committee concludes that legally binding implementing rules should be drawn up in order to ensure harmonised interpretation of the common VAT system, the Commission presents a proposal for a decision to the Council.

6. **Conclusions**

6.1. *The system under Articles 27 and 30*

6.1.1. The EESC agrees that the smooth functioning of the Value Added Tax system is one of the preconditions for the proper operation of the single market.

6.1.2. The EESC therefore considers that the procedures to introduce into national legislation special measures for derogation from the provisions of the sixth directive must involve formal decisions by the Council, and must also be fully transparent, so that taxable persons can be aware of the content and reasons for authorisations.

6.1.3. The EESC shares the Commission's view that the procedures under Articles 27 and 30 of the directive do not meet these transparency requirements. It regrets in particular that the Council may tacitly adopt decisions on matters which have not been formally laid before it, and that such tacit adoption of decisions prevents the parties concerned (taxable persons, Member States, etc.) from knowing the content of the derogation or the reasons for the Council's decision.

6.1.4. The EESC therefore supports the Commission's proposal to amend the provisions allowing the Council to take tacit decisions, by establishing instead that requests for derogation require a proposal from the Commission and a formal decision by the Council.

6.1.5. The EESC notes that to date, many special derogation measures have been approved [1]: it is very likely that the forthcoming enlargement of the Union will herald further requests for derogations.

6.1.6. It also hopes that the Commission will be able to rationalise the numerous derogation arrangements currently in existence [2], and that in future prevention of tax evasion and simplification can also be pursued by means of closer administrative cooperation [3], as set out in the draft Commission directive [4] on tackling tax evasion and avoidance.

6.2. *Implementing measures*

6.2.1. The EESC agrees with the view that existing differences between the Member States' administrative and regulatory procedures put the neutrality of taxation at risk, and constitute a serious obstacle to the completion of the single market. In this regard, uniform application of the rules represents a key factor in improving the temporary system.

6.2.2. In the EESC's view, therefore, the adoption of measures ensuring the uniform application at Community level of the common VAT system is of key importance.

6.2.3. The EESC is convinced that, in line with the procedure followed in other areas of Community legislation, the VAT Committee should be converted into a regulatory committee assisting the Commission in adopting implementing measures for existing provisions. The EESC previously put forward this argument in its opinion on the Proposal for a Council Directive amending Directive 77/388/EEC on the common system of Value Added Tax (the Value Added Tax Committee) [5].

6.2.4. The EESC is aware of the view of many Member States that where VAT is concerned, all powers should remain exclusively with the Council, and consequently supports the Commission's prudent approach in proposing that at present, the adoption of VAT implementing measures be reserved for the Council.

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[1] To date, 147 special derogation measures have been authorised: 2 for Austria, 15 for Belgium, 8 for Denmark, 2 for Finland, 17 for France, 20 for Germany, one for Greece, 12 for Ireland, 11 for Italy, 13 for Luxembourg, 18 for the Netherlands, 3 for Portugal, 20 for the United Kingdom, 3 for Spain and two for Sweden (source: Commission services).

[2] In this regard, see COM(2000) 348 final.

[3] OJ C 116, 20.4.2001, p. 59.

[4] COM(2003) 446 final/2, 31.7.2003.

[5] OJ C 19, 21.1.1998, p. 56.

6.2.5. However, the EESC hopes that in the medium term, the Commission will be able to press forward with the guidelines laid down in the Communication to the Council and the European Parliament on a strategy to improve the operation of the VAT system within the context of the internal market, and that it may consequently be able to re-submit the 1997 proposal to amend the sixth directive [1].

6.2.6. In any event, the EESC hopes that as a result of the institutional changes emerging from the European Convention, the Commission will be given powers to implement European legislation and, by the same token, that unanimous voting will be abandoned in favour of qualified majority voting in the field of indirect taxation (VAT) (except where the fixing of VAT rates is involved, until a proper compensation system is introduced).

[1] COM(97) 325 final.

Brussels, 30 October 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH