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EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

436th PLENARY SESSION, HELD ON 30 AND 31 MAY 2007

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages'

COM(2006) 486 final

(2007/C 175/01)

On 26 September 2006 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the abovementioned 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 19 April 2007. The rapporteur was **Mr Iozia**.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 78 votes to 10 with 0 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee thinks it would be wrong to apply an automatic adjustment for the rate of inflation in the EU-15 since 1992, given that another three countries joined the Union in 1995, a further ten on 1 May 2004 and two more on 1 January 2007.

1.2 The Committee thinks that if the desired harmonisation is to be achieved in the EU-27, the adoption of a maximum rate of duty should be considered: this is certainly one measure that holds out the prospect of effectively combating smuggling and fraud and approximating taxation rates, thus facilitating the emergence of a real single market. The way to protect the interests of consumers — who should not be seen as smugglers simply for buying alcoholic beverages where they cost less — is through progressive harmonisation.

1.3 The Committee recommends that Member States be explicitly forbidden to add to the normal duty and VAT regimes other forms of consumer taxation — for which, as the European Court of Justice has found [1], they sometimes invent the name 'Community tax'.

1.4 In the Committee's view, the proposal does not sufficiently justify the choice of Article 93 of the Treaty as the legal basis, authorising the Council to adopt measures to harmonise national legislation on fiscal issues by unanimous vote. By leaving the Member States free to set their own rates above the minimum, the proposal does not, in fact, harmonise anything.

1.5 The Committee thinks the Commission is wrong to play down the proposal and in this way justify the absence of an impact assessment and a consultation of interested parties. In a hearing held at the Committee, all the participants not only declared their own opposition to the Commission proposal, but also called on it to carry out a thorough impact assessment in the future.

1.6 The Committee wishes the proposal to be withdrawn and calls on the Commission, in its future work, to update references to the codes in the Common Nomenclature set out in Directive 92/83 and revise the methods of classification.

2. **The Commission proposal**

2.1 The Proposal for a Council Directive amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages sets minimum rates for excise

[1] C-437/97 Evangelischer Krankenhausverein Wien (EKW).

duty on alcohol and the different categories of alcoholic beverages. Article 8 of the Directive obliges the Commission to carry out periodical inspections and submit a report and, where appropriate, a proposal for amendment.

2.2 The debate following the report issued by the Commission on 26 May 2004 — in which it concluded that greater convergence of the minimum rates of excise duty in the different Member States was needed to ensure proper functioning of the internal market and prevent the fraud and smuggling which was facilitated by the different regimes in the Member States — led to the initiative, prompted by the Council's call for it 'to come forward with a proposal to adjust the minimum rates of excise duty in order to avoid a fall in the real value of the Community minimum rates, providing transitional periods and derogations for those Member States who may have difficulties in increasing their rates'. The Council also added that 'the Commission should also duly take into account the overall political sensitivity of this special issue'.

2.3 The Commission therefore proposes amending the Directive by:

— revalorising the minimum rates on alcohol, intermediate products and beer in line with inflation from 1993 to 2005, which is in the order of 31 %, to take effect from 1 January 2008;

— providing transitional periods to one year for those countries which should increase their rate by more than 10 % and equal to two years for those which should increase theirs by over 20 %;

— prolonging the review period of the review procedure under Article 8 of the Directive from two to four years.

2.4 The primary aim of the proposal, as requested by the Council, is to restore the real value of rates to the 1992 level — a value which the Commission thinks will 'ensure the functioning of the Internal Market without fiscal borders'.

3. **Remarks**

3.1 In the absence of an impact assessment, the Committee decided to hear for itself the views of producers' associations, consumers and trade unions. In the course of the hearing, participants spoke with one voice of their bewilderment at the proposal for a directive. Some organisations also noted that the proposal would further increase the unequal treatment of alcoholic beverages — to the manifest detriment of those liable to duty. Producers of beverages not liable to duty, on the other hand, called for the present structure — which was, moreover, set defined in the Common Agricultural Policy agreements — to remain unchanged.

3.2 Those participating in the hearing ([2]) also agreed that social and health aspects should be taken into consideration, but should not determine taxation. At the same time, they called for support for a 'responsible consumption' campaign to limit risks of abuses — a demand which the Committee endorses. It was also stressed that the European industry led the world and made a by no means negligible contribution to Europe's GDP and to both direct and indirect employment.

3.3 At first sight, the draft Directive would appear to be a routine measure simply adjusting the figures to match inflation since 1993. However, it deals with an extremely involved and sensitive issue that exposes how far national policies and interests are from giving way to a high degree of Community fiscal convergence. The Committee has on several occasions expressed its desire for a process of fiscal harmonisation, which is absolutely vital if consumers are to appreciate the benefits of the single market.

3.4 The ECOFIN meetings of 7 and 28 November 2006, at which this proposal was one of the items on the agenda, have reopened the interminable discussions between Member States, in many ways recreating the situation which back in 1992 gave rise to the Directive, which succeeded only in setting minimum rates and offered no possibility of identifying a joint approach for harmonising and converging excise duties.

3.5 Close inspection reveals truly vast differences in the rates in the various Member States. The report of 26 May 2004 included measures applied for various categories in the then 25 Member Sates and the candidate countries Romania and Bulgaria ([3]), members since 1 January 2007. The gap between the lowest and highest rates amounted to 1 100 %!

3.6 By way of example, for wine the range was from 0 to EUR 273; for sparkling wine from 0 to EUR 546 per hl.; for beer, from 0.748 per degree Plato ([4]), equivalent to EUR 1.87 to EUR 19.87 per hl./degree of alcohol; for still and sparkling intermediate products from EUR 45 to 497 per hl.; for pure alcohol from EUR 550 to 5 519 per hl., equivalent to a range of between EUR 220 and EUR 2 210 per hl. for 40° alcoholic beverages.

([2]) CEPS — The European Spirits Organisation; AICV — The Association of Cider and Fruit Wine; The Brewers of Europe; Comité Européen des Entreprises Vins.

([3]) See appendix: the charts published by the Commission on 26 May 2004 in its Proposal for a Council Directive amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages.

([4]) According to the free online encyclopaedia Wikipedia, the degree Plato is a unit of measurement to determine the **density** of a solution. The Plato scale is used especially in the beer industry for its ease of use. The density of a **solution** measured in degrees Plato is defined as the equivalent of the density measured in weight/weight percentage of a **water-sucrose solution**. In other words, if a litre of **beer wort** has a content equal to 12 degrees Plato, the density of the extract (or sugars dissolved in the wort) in question is equal to that of a litre of solution containing 12 % wt/wt of sucrose approximating the specific gravity of water at 1 Kg/l and **at sea level** and ambient temperature. Our sample contains around 120 grams of extract.

3.7 Revalorising the minimum rate as proposed by the Commission would reduce the gap between the rates used in different countries from 1 100 % to somewhere between 800 % and 1 000 %. The suggestion that this measure would ensure the operation of the internal market seems bold, to say the least. The Committee suggests that the effective solution is to introduce not only a minimum rate, but also a maximum rate — a measure that holds out the prospect of combating smuggling and fraud.

3.8 The insistence that adjusting the minimum rates to the rate of inflation will not increase real value is equally unconvincing. In the interests of providing fuller information, the Commission should have supplied a dynamic model of the way excise duty has operated in the Member States, starting with the year in which the proposal for harmonisation was put forward in a White Paper, namely 1985. The truth is that the result of this, with one or two exceptions, has been to increase the real value of duties in Member States once the derogation granted to some countries had expired. The Committee is critical of all national practices that add other forms of taxation to duties, in some cases calling them 'Community tax'.

3.9 That this is indeed the case has been confirmed by a study instigated by the Commission itself ([5]), which makes it clear that all but three of the Member States have increased the value of their duties every year or every few years.

3.10 The same study, which took into account demand elasticity in response to prices, showed that if the minimum rates were readjusted in line with inflation:

— spirits would benefit substantially from a change in rates — this would be particularly the case in Nordic countries, but also in the UK and Ireland;

— under the relatively high price elasticity option the increases in spirits consumption would be greater when compared to the crossprice elasticity assumption (the relationship between demand for a certain types of product and the cost of other categories of product) ([6]) as far as high-proof spirits are concerned;

— in the high elasticity option, the main losers would be in beer and wine — the Nordic countries would see significant losses in wine consumption and Germany, Belgium, France and Luxembourg would see a drop in beer consumption.

3.11 It would be interesting to compare this study, which was limited to the EU-15, with the effect of variation of the minimum rates in the new EU of 27 Member States.

([5]) Customs Associates Ltd, Study on the competition between alcoholic drinks — Final report — February 2001.

([6]) Crossprice elasticity in relation to price gives an indication of the degree of competition between beverages.

3.12 The Committee wonders whether the Commission should continue to perform a merely administrative role on what has been stated to be an extremely sensitive subject, or whether it should not instead put forward proposals, in some cases in dialogue with the Member States, to effectively mitigate the substantial distortions to competition entailed in maintaining such a fragmented taxation regime.

3.13 Another aspect that the Commission completely ignored in drafting its proposal for amending the directive is that in the 12-member European Community in 1992 the gap in per capita income was not such as to make the rates in force onerous. In the Europe of 27, where there is a very diverse range of salary and pension levels, continuing the same degree of taxation for new and old Member States is an unfair measure that hits only more modest incomes. For households containing workers and pensioners whose salaries and pensions are no higher than EUR 100 to EUR 150 a month and who have already had to suffer an increase in alcohol duties of between 50 % and 400 %, a further 31 % hike would undoubtedly adversely affect consumption. In the particular light of the accessions that have occurred in the meantime, bringing in 12 new countries, the Committee does not believe it would be right to apply an automatic adjustment for an inflation rate recorded in the EU-15 from 1992 onwards.

3.14 Save for very rare exceptions, then, the system proposed is at odds with all the anti-inflation policies put in place by the Member Sates which some time ago abolished, where they existed, mechanisms indexing wages and pensions to the inflation rate. The Commission fails to explain adequately why such a mechanism should be retained only for taxes and duties.

3.15 The Committee believes, on the contrary, that the current regime is entirely unfit for purpose and finds adjustment to the rate of inflation (of the EU of 12, 25 or 27?) to be an unnecessarily punitive measure, especially for the lowest incomes, as are all forms of indirect taxation that eat into the tax-payer's net income.

3.16 Just as the consumption of wine in moderation is part of the culture and history of some Member States, the same is true for other types of alcoholic beverages for other European peoples. The issue, in all its ramifications, needs to be seen in a broader perspective.

3.17 The Committee respects the decision of some countries to adopt a stringent fiscal policy on alcohol and tobacco, probably because of the abuse involved, especially among young people. Some Member States have made it clear that their fiscal policies must take account of public health. Nevertheless, these decisions they have chosen to make cannot influence the choice and motivations of other Member States.

3.18 In this regard, the Committee has already expressed its position in a detailed opinion ([7]) which stressed that: 'Abuse is best tackled by education, information and training programmes primarily aimed at those who do abuse alcohol.'

3.19 In the Committee's view, the requirements of Article 93 of the Treaty are not met, authorising the Council to decide by unanimous vote on measures to harmonise tax regimes in order to implement or improve the operation of the internal market within the scope of Article 14. The fact is that increasing minimum duties does not contribute to harmonisation, but merely sets a minimum level that every Member State can decide to raise as much as it wishes. The fact that actual rates have further diverged since the adoption of Directive 92/84 EEC shows that harmonisation cannot be achieved through a directive of this kind.

4. **Combating fraud and smuggling**

4.1 One adverse consequence of wide-ranging differences in taxation, apart from hindering sound operation of the internal market, is the strong tendency to avoid duties — either in part, by paying them in a Member State other than that of end consumption, or completely by importing goods from third countries or rerouting goods while they are in transit and duties are suspended.

4.2 The arrival of e-commerce has provided another area of potential fiscal fraud, given the impossibility of monitoring online sales and the absence of a coordinated policy to combat alcohol duty fraud, since some Member Sates do not consider this to be a problem and it is almost the exclusive concern of areas with the highest taxation.

4.3 Enlargement has brought the Union's external borders to countries where taxation levels are far lower than the EU average and the potential for fraud has increased exponentially. Corruption is rampant in some of these countries, with customs authorities themselves involved in some cases. Measures to combat smuggling must be further strengthened and if an increase in duties is adopted in the form proposed, the profit margins for international smugglers will be even greater.

4.4 As far back as 1992, the Union was aware of the problem of combating fraud on goods liable to excise duty, and published the Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products. As this met with little success, it was amended in 2004 by Council Directive 2004/106/EC of 16 November 2004, which amends also Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance.

4.5 On this issue, the Committee maintains in one of its opinions ([8]) that in order to effectively combat fraud 'there is a clear need to modernise, strengthen, simplify and make more efficient the instrument for administrative cooperation and exchange of information between Member States on excise duties'.

4.6 The same opinion highlighted the fact that: 'Once again the benefits which would flow from more effective operation of the single market, and in the case in point from procedures likely to detect and combat fraud and tax evasion, are being limited by the wish to safeguard national interests.' And again: 'There is no doubt that many fraudulent practices are directly related to the differences — sometimes significant — which exist between excise rates applied in the different Member States.'

'The Committee takes this opportunity to criticise the limitations arising from the unanimity principle, which at present governs most Community decisions on tax law, and reiterates the need to replace it with the qualified majority principle when it is a matter of taxes which influence the operation of the internal market or cause distortions of competition'.

4.7 The Committee has, over the years, repeatedly emphasised the following key concepts:

— strengthening administrative cooperation, permanent dialogue between fiscal administrations, mutual assistance, ongoing and identical training for those combating fraud, networks of police forces and tax authorities on compatible platforms and sharing databases;

— facilitating processes of fiscal harmonisation in both direct taxation and the more intricate field of excise;

— launching a process to abandon the requirement of unanimity for certain fiscal issues, starting with those that are easiest to implement;

— abandoning the VAT taxation model, which makes fraud easier, and

— not increasing the tax burden.

4.8 In Sweden in 2004, for example, travellers or smugglers imported around 164 million litres of beer alone, which was roughly the same volume — 173 million litres — sold by the state monopoly (Systembolaget) and represented a loss of around EUR 190 million in revenues from excise tax and VAT. Such purchases have risen 40 % since 2002 and the lifting of a special regime restricting purchases from abroad. Smuggling is

([7]) OJ C 69 of 21.3.2006 (Rapporteur: Mr Wilkinson).

([8]) OJ C 112 of 30.4.2004, p. 64 (Rapporteur: Mr Pezzini).

estimated to have doubled in the past two years. Denmark puts the amount of beer that travellers have bought in Germany and then imported at 95 million litres and this, added to 10 % of smuggled goods, means that around 30 % of beer consumed in the country is not subject to Danish taxation. In 2005, travellers imported more than 42 million litres, 10 % of total consumption, into Finland, causing revenue losses in excess of EUR 50 million. Thirty million litres were imported into Austria from Germany and the Czech Republic and more than 100 million into the UK (in addition to large-scale smuggling) ([9]).

5. **The structure of excise applied to alcoholic beverages**

5.1 In its 2004 report, the Commission set out some of the problems identified over time in the actual implementation of Directive 92/84/EEC, highlighting three in particular:

— **Member States are allowed to tax still and sparkling alcoholic beverages differently**;

— **the need to update references to the codes in the Common Nomenclature in Directive 92/83/EEC** for defining the categories of alcoholic beverages for excise purposes, to take account of possible changes to those codes since 1992;

— **the classification of alcoholic beverages in the categories contained in Directive 92/83/EEC** has resulted in differing classifications and, in consequence, different taxation of the same products in different Member States.

5.2 As far as the first point is concerned, the Commission justifies its proposal to remove the option of treating sparkling and still wines differently by saying that the arguments which had originally informed this decision — namely that sparkling wines were still a luxury product — were now less valid. (In point of fact, quite the opposite is true for certain still wines!).

5.3 Regarding the second point, Article 26 of Directive 92/83 (on the structure of excise) stipulates that the Common Nomenclature codes to which the directive refers are those in force on the day that the directive was adopted (19 October 1992). The Commission, however, proposes a reference instead to the most recent applicable Common Nomenclature codes and for future modifications to be adopted in line with Article 24 of Directive 92/12 EEC (involving a Committee on Excise Duties of the kind set up for energy products).

5.4 On the third point: to avoid the problem raised by many operators regarding the directive's vague wording, which fails to specify the amount of distilled alcohol that can be added to 'other fermented beverages', the Commission proposes to make the definition of alcoholic beverages for excise purposes less dependent on the Common Nomenclature classification.

5.5 The Committee finds the changes requested by operators to ensure simplification and protection of competition to be well founded and coherent. It endorses the proposals made earlier by the Commission and wonders why these changes have not been introduced to amend Directive 92/83 to this end.

5.6 The Committee calls for the proposal for a directive to be withdrawn, while recommending that the changes to Directive 92/83 proposed by the Commission be adopted.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([9]) Oxford economics 'The consequences of the proposed Increase in the minimum excise duty rates for beer'. February 2007.

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

Point 4.6

Delete text:

'The same opinion highlighted the fact that: "Once again the benefits which would flow from more effective operation of the single market, and in the case in point from procedures likely to detect and combat fraud and tax evasion, are being limited by the wish to safeguard national interests." And again: "There is no doubt that many fraudulent practices are directly related to the differences — sometimes significant — which exist between excise rates applied in the different Member States."

~~"The Committee takes this opportunity to criticise the limitations arising from the unanimity principle, which at present governs most Community decisions on tax law, and reiterates the need to replace it with the qualified majority principle when it is a matter of taxes which influence the operation of the internal market or cause distortions of competition".~~'

Reason

The decision-making procedure is a highly sensitive political issue which will have to be agreed on in the future treaty. Fiscal policy — once the single currency is established and the subsequent abolition of the possibility of developing monetary policies geared to the economic situation in each country — is the sole tool which the Member States have for directing their economic policy. For as long as no further progress is made on economic and social cohesion, it should not be proposed that a majority, even a qualified majority, can impose its criteria on all the Member States.

Furthermore, abandoning the unanimity rule would mean that some countries, which thanks to this rule are able to maintain their support for key sectors of their economy (such as wine and/or beer in certain countries), would be obliged to agree to a different decision-making scenario, losing the possibility of continuing to block certain policies contrary to their national interests, a possibility of which they make use at the moment.

Voting:

For: 21

Against: 54

Abstentions: 4

Point 4.7

Add the following:

'The *Committee has, over the years, repeatedly emphasised the following key concepts:*

— *strengthening administrative cooperation, permanent dialogue between fiscal administrations, mutual assistance, ongoing and identical training for those combating fraud, networks of police forces and tax authorities on compatible platforms and sharing databases;*

— *making it easier for consumers to exercise their rights when distance-buying all products on the internal market;*

— *facilitating processes of fiscal harmonisation in both direct taxation and the more intricate field of excise;*

— *launching a process to abandon the requirement of unanimity for certain fiscal issues, starting with those that are easiest to implement, as part of a coherent European tax policy;*

— *abandoning the VAT taxation model, which makes fraud easier, and;*

— *not increasing the tax burden.'*

Reason

Reason 1: The concept of a maximum rate should be uncoupled, at least formally, from those of harmonisation, approximation of rates of duty and progressive harmonisation. Although one of the effects of a maximum rate would be to squeeze the present differentials between existing rates, as explained in points 3.5, 3.6 and 3.7, with an ensuing increase in real harmonisation, the way the point is worded could suggest that the maximum rate is the same as the objective rate. The proposed amendment seeks to avoid this.

Indeed, the present problem is caused by the high rates imposed by some countries (Ireland, United Kingdom, Finland and Sweden, for example), which have generated enormous differentials with their neighbouring countries.

[The following paragraph does not apply to the English text].

Moreover, an effective way to boost the internal market and combat fraud is to allow EU citizens to exercise their right to buy these beverages from a distance, as happens with other foodstuffs. This would establish legal distribution channels subject to checks by the tax or health authorities, leading to greater consumer knowledge of these products. It would also comply with the principle of free movement of goods, which does not cover only the professional trade, but also transactions carried out by private individuals. Freedom of movement means that consumers living in one Member State must be able to buy goods in the territory of another Member State, subject to a minimum, standard set of fair rules governing the buying and selling of consumer goods.

The Committee has recently stated that promoting the benefits of the single market among consumers must be a priority for its completion (EESC Opinion on the Review of the Single Market, OJ C 93 of 27.4.2007 (opinion INT/332)).

Reason 2: Clarification is needed since, as mentioned in the following point, the model established under the VAT framework has generated abundant case-law, due to the loopholes in legislation and in its implementation at European and national level. If the process discussed in the opinion is to be put into action, it is important to ensure coordination.

Voting:

For: 20

Against: 55

Abstentions: 4

Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on the Community Statistical Programme 2008 to 2012'

COM(2006) 687 final — 2006/0229 (COD)

(2007/C 175/02)

On 19 January 2007, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned 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 19 April 2007. The rapporteur was Mr Santillán.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May), the European Economic and Social Committee adopted the following opinion by 159 votes to 1 and 5 abstentions.

1. **Conclusions**

1.1 The EESC welcomes the proposal for the five-year statistical programme 2008-2012 and agrees with the assertion that harmonised and comparable statistics are indispensable for the understanding of Europe among the general public, for the participation of citizens in the debate and for the participation of economic operators in the single market.

1.2 The EESC highlights the need for Eurostat as well as national statistical institutions to have the best human and financial resources that budgets will allow, because this is essential to meeting the increasingly demanding requirements for statistical information and because of the European Union's importance as a player on the world stage.

1.3 The Committee considers that greater emphasis should be placed on aspects relating to the wellbeing of Europeans and to this end suggests that the statistical programme be extended to cover the following areas:

— policies for children;

— the ageing of the population and the situation of the elderly;

— reconciling family and working life;

— social policy should also form a separate chapter.

1.4 Given its enormous importance in achieving the Lisbon objectives, the attention the Statistical Programme 2008-2012 gives to improving statistical information on education and vocational training may be considered inadequate.

1.5 Statistics should also be provided for the Social Economy, since this plays such an important role in the European Union.

1.6 There are also areas where the statistical information currently available is inadequate. Thus the five-year programme should thus focus more closely on the following areas:

— immigration and asylum; this is an increasingly important issue, for which no sufficiently reliable statistics are available;

— crime and criminal justice;

— employment; although statistics do exist covering the active population, employment, unemployment, etc, the rapid developments in the labour market — the emergence of new economic activities, the creation of new professions and new types of contract — mean that methods for carrying out surveys and working in this field must be constantly updated.

1.7 The EESC wishes to point out that, in accordance with the Treaty, '*The production of statistics … shall not entail excessive burdens on economic operators.* [1]' This will require:

a) firstly, endeavouring not to impose unnecessary or excessive costs on businesses, especially SMEs;

b) secondly, not repeating requests for data. The basic principle should be that each set of data is provided just once, and should then be distributed and shared amongst statistical organisations, whilst adhering to the principles governing Community statistics (statistical confidentiality, etc.).

1.8 Statistics for external trade: corrections should be made to the discrepancies that have been noted between the figures for exports from one given country to another and the figures for the second country's imports from the first. In other words, the figure given for A's exports to B is different to the figure given for B's imports from A.

1.9 Given the diversity of a European Union comprising 27 Member States, the EESC wishes to highlight the importance of striving to ensure the best possible coordination of statistical terminology.

1.10 To ensure that statistical data is as neutral as possible and to guarantee the other principles set out in the Code of Good Practice (including statistical confidentiality), the EESC considers it to be crucial that the work of private agencies operating (directly or indirectly) within the European Statistical System be monitored.

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[1] Treaty establishing the European Community, Art. 285(2).

2. **Gist of the proposal**

2.1 Council Regulation (EC) No 322/97 ([2]) calls for a multi-annual Community Statistical Programme (CSP) ([3]) to define the approaches, the main fields and the objectives of the actions envisaged for a period not exceeding five years, and to constitute the framework for the production of all Community statistics. The CSP is implemented via annual work programmes which provide more detailed work objectives for each year and via specific legislation for major actions. The CSP is subject to mid-term progress reporting and formal evaluation after the expiry of the programme period.

2.2 Against this background, the objective of the proposal — the legal base for which is Article 285 of the Treaty establishing the European Community — is to put in place a comprehensive strategic programme for official Community statistics. It should comprise the production and delivery of products and services to users, the improvement of the quality of statistics and the further development of the European Statistical System ([4]).

2.3 The main purpose of official Community statistics is to underpin on a recurring basis the development, monitoring and evaluation of Community policies with reliable, objective, comparable and coherent factual information. In some areas the statistical information is also used directly for the management of key policies by the Community institutions.

2.4 The 2008-2012 CSP is guided by the following policy priorities:

— prosperity, competitiveness and growth,

— solidarity, economic and social cohesion and sustainable development,

— security and

— further enlargement of the European Union.

2.5 When drawing up the proposal for a decision, the Commission consulted all interested parties, including the EU Member States, the EFTA and candidate countries and the technical working groups of the ESS. The European Advisory Committee on Statistical Information in the Economic and Social Spheres (CEIES) ([5]) and the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB) both delivered opinions on this subject ([6]).

2.6 With regard to the programme's approach, and given the two possible options, the 'restricted' vs. the 'comprehensive', the Commission opted for the second, bearing in mind three factors: a) the capabilities and efficiency, b) the costs incurred by Member States implementing these measures and c) the burden on enterprises and households.

3. **General comments**

3.1 The EESC has stated its views on the statistical programmes ([7]) and on various specific aspects of the Union's statistical policy on a number of occasions over the years. In general terms, the Committee has constantly sought to highlight the importance of the statistical system in achieving the EU's economic, social and political objectives and the need to support and strengthen Eurostat, which is a key element of this system, as are the national statistical institutions, although these are a matter for the Member States.

3.2 The EESC reaffirms these criteria and furthermore wishes to point out, with regard to this Decision, three aspects which made it necessary to have the best possible statistical system: the EU's role as a world player, meeting the Lisbon and enlargement objectives and the fact that coordinating the statistics of 27 States is a challenge unprecedented in history. In a nutshell, for the EU to succeed, it must have, amongst other things, an efficient statistical system.

3.3 As far as resources are concerned, the 2008-2012 five-year programme has a budget allocation of EUR 274.2 million (a 24.3 % increase over the operational resources allocated to the 2003-2007 programme). Account must, however, be taken of other factors not covered by this figure ([8]). If administrative costs and co-financing by Member States or other bodies are included, commitment appropriations total EUR 739.34 million.

3.4 Statistical Governance. According to the Code of Practice ([9]), national authorities and the Community Statistical Authority shall:

a) establish an institutional and organisational environment which promotes the effectiveness and credibility of national and Community statistical authorities producing and disseminating official statistics;

([2]) OJ L 52, 22.2.1997, page 1.
([3]) Article 3(1).
([4]) The partnership comprising Eurostat, national statistical authorities and other national authorities responsible in each Member State for producing and disseminating European Statistics.
([5]) Established by Council Decision 91/116/EEC (amended by Council Decision 97/255/EC).
([6]) Council Decision 91/115/EEC (amended by Council Decision 96/174/EC).
([7]) In 1998, the EESC delivered an opinion on the 'Proposal for a Council Decision on the Community Statistical Programme1998-2002', OJ C 235, 27.7.1998, p. 60, and again in 2002 on the 'Proposal for a Decision of the European Parliament and of the Council on the Community statistical programme 2003 to 2007', OJ C 125, 27.5.2002, p. 17.
([8]) Expenditure on staff and administration; operational resources on other statistical budget lines which could be additionally opened to cover new regulatory needs over the period 2008-2012 (Edicom type actions); operational resources made available by other Directorates-General on their budget lines; resources at the national and regional level. Eurostat will redeploy its own operational and human resources to respect the overall priorities of the programme.
([9]) Commission Recommendation on the independence, integrity and accountability of the national and Community statistical authorities. COM (2005) 217 final.

b) observe European standards, guidelines and good practices in the processes used by the national and the Community statistical authorities to organise, collect, process and disseminate official statistics and strive for a reputation for good management and efficiency to strengthen the credibility of these statistics;

c) ensure that Community statistics comply with the European quality standards and serve the needs of European Union institutional users, governments, research institutions, civil society organisations, enterprises and the public generally.

3.5 The 2008-2012 Statistical Programme proposes to achieve 32 cross-cutting aims (detailed in Annex I) and sets out some 90 objectives and practical actions (Annex II), covering both general policies and 18 specific areas of existing EU policy.

3.5.1 The programme provides for measures in the following main areas:

— Free movement of goods

— Agriculture

— Free movement of persons, services and capital

— Visas, asylum, immigration and other policies related to the free movement of persons

— Transport

— Common rules on competition, taxation and approximation of laws

— Economic and monetary policy

— Employment;

— Common commercial policy

— Customs cooperation

— Social policy, education, vocational training and youth

— Culture

— Public health

— Consumer protection

— Trans-European networks

— Industry (including statistics on the information society)

— Economic and social cohesion

— Research and technological development

— Environment

— Development cooperation

— Economic, financial and technical cooperation with third countries.

4. **Specific comments**

4.1 Given the ambitious aims of the 2008-2012 Programme, which now include close coordination between Eurostat and the statistical authorities of the 27 Member States, there is a need to prioritise statistical work and to use the limited resources as efficiently as possible.

4.2 Article 4 of the proposed Decision refers to establishing statistical priorities, given the need to use limited resources as efficiently as possible. Nevertheless, it does not set out any criteria or means for establishing these priorities. This is also difficult to do when, at the same time, there is an acknowledged need to further develop or create new areas of work.

4.3 The EESC agrees with the statement that 'The rapid evolution in the capacity and availability of the Internet will make it the prime tool for the dissemination of statistical data in the future. It will significantly increase the potential user community and thus create new opportunities for dissemination' ([10]). In order to achieve this objective and also bearing in mind that Eurostat's website reflects on the European Union, data should be presented as readably, simply and attractively as technology allows.

4.4 The EESC agrees with the assertion that cooperation between Eurostat and the national statistical institutes should be stepped up ([11]). The Committee wishes to point out, however, that the proposed Decision does not lay down any concrete measures for stepping up this cooperation.

4.5 European statistics — scope and priorities. The EESC wishes to highlight that, as is clear from the list of measures set out in point 3.5.1 of this opinion, the statistical system basically focuses on economic aspects and fails to provide sufficient information on social aspects, which have a direct impact on the life of the EU's inhabitants. The Committee also wishes to state that social policy has much closer links with education, vocational training and youth than with other areas.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([10]) Annex I. 3.6. Dissemination.

([11]) Annex I. 3.6. Dissemination.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on quarterly statistics on Community job vacancies'

COM(2007) 76 final

(2007/C 175/03)

On 4 April 2007, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

On 24 April 2007 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed **Ms Florio** as rapporteur-general at its 436th plenary session, held on 30 and 31 May 2007 (meeting of 31 May 2007), and adopted the following opinion unanimously.

1. **Background**

1.1 Access to reliable and good quality statistics is an indispensable instrument for enabling institutional, economic and social operators to monitor and evaluate the effectiveness of specific legislative choices and take future decisions.

1.2 Indeed, having an overview that is as accurate and as close as possible to present realities is essential for adopting the best possible policies.

1.3 This is particularly true in the case of statistics on the employment situation in Europe, for the purpose of analysing progress made by Member States towards the Lisbon objectives.

1.4 In order to understand the labour market situation in the European Union, it is extremely important to know the sectors and regions where there are job vacancies. Unfilled vacancies are indicators for structural variations by economic sector and can provide a useful framework for identifying European regions with labour shortages, or — conversely — with significant economic and employment growth.

1.5 Job vacancies are included in the set of Principal European Economic Indicators (PEEIs) and are an indicator that, if made available rapidly, can also be useful to the European Central Bank and the Commission for assessing the impact of economic trends in specific sectors, and weighing up monetary policy decisions.

1.6 The re-launched Lisbon Strategy, which dates back to the European Council of March 2005, made creating more and better jobs one of its key priorities. This has inevitably reinforced the need for better statistical information on labour demand.

1.7 The Integrated Guidelines for Growth and Jobs 2005-2008 and the Broad Economic Policy Guidelines (BPEGs), in the context of the European Employment Strategy (EES), require aggregated structural data, for the entire European Union, on job vacancies according to economic sector for the purpose of analysing the level and structure of labour demand.

1.8 The availability of reliable and frequently updated statistical data also enables individual Member States to assess the labour market and then adopt labour policy decisions, sometimes on a regional basis.

2. **The Commission proposal**

2.1 National data on job vacancies and occupied posts have been collected since 2003 under a gentlemen's agreement. Although this agreement guaranteed the Member States' flexibility and independence, it did not entirely meet the data users' needs.

2.2 At present, four Member States have not sent data to Eurostat and the data provided are not always perfectly comparable. As for quarterly data collection, ECB and Commission requirements in terms of coverage, timeliness and harmonisation are not being satisfied at all.

2.3 Through the proposal for a regulation (COM(2007) 76 final), which was drawn up on the initiative of the Employment Committee, the Commission therefore hopes to introduce a regulation that will make it possible to obtain timely and comparable statistics on job vacancies.

2.4 During the preparation of the proposal, which also included consultation with experts and the Statistical Programme Committee (SPC), various options were considered. Under the option finally adopted, annual structural data will continue to be dealt with in the short term on a gentlemen's agreement basis.

2.5 Thus, the proposal focuses mainly on provisions governing the collection of quarterly statistics on vacancies. Based on the experience of this regulation, consideration will be given to the future possibility of drawing up a new regulation to cope with the demands for annual data.

2.6 The level of detail required for each economic activity is to be determined on the basis of the version of the common classification system for economic activities in the Community (NACE) that is currently in force.

2.7 While maintaining established quality standards wherever possible, Member States are free to use administrative data or to restrict the range of economic sectors to be considered, in order to reduce the burden on businesses (Article 5).

2.8 The Commission (Article 8) proposes to establish a series of *feasibility studies* to be undertaken by Member States that have difficulties in providing data for:

a) units with fewer than 10 employees; and/or

b) the following activities:

i) agriculture, forestry and fishing activities,

ii) public administration and defence; compulsory social security,

iii) education,

iv) human health and social work,

v) arts, entertainments and recreation, and

vi) activities of memberships organisations, repair of computers and personal and household goods and other personal service activities.

2.9 During the initial phase (the first three years), Member States may receive a financial contribution from the EU. The financing will be covered by the Community Programme for Employment and Social Solidarity — PROGRESS ([1]) (Article 9). Thus, innovations and improvements in data collection can be launched in addition to the completion of the gentlemen's agreement phase.

([1]) Adopted by Decision 1672/2006 of the European Parliament and of the Council of 24 October 2006. Under Section 1. Employment, the financing of measures relating to statistics is specifically mentioned: '[…] *improving the understanding of the employment situation and prospects, in particular through* […] *the development of statistics and common indicators* […]'.

3. **Conclusions and recommendations**

3.1 The EESC emphasises the importance of having EU employment statistics that are as coherent and reliable as possible. For this reason, it values and supports the Commission's efforts to set up a legal framework for obtaining up-to-date, comparable and relevant job-vacancy statistics at EU level.

3.2 In order to achieve the economic, and especially employment-related, objectives of the Lisbon Strategy, reliable and efficient statistical support must be available for all statistics users and economic, social and institutional operators at EU and national levels.

3.3 The EESC also endorses the choice of instrument, i.e. an EU regulation, insofar as the purpose of the proposal, as is usually the case for the majority of statistical activity, requires detailed and uniform application throughout the European Union.

3.4 The decision to include only quarterly data collection in the proposed regulation and to continue to apply the gentlemen's agreement to the annual structural data is undoubtedly dictated by a well-founded desire for a gradual transition from an informal agreement to an EU regulation on data collection. The results obtained during the transitional period will have to be closely monitored, and the EESC hopes that a more complete and reliable framework will be achieved in the near future for both annual and quarterly data on EU labour-market potential.

The EESC regrets that there is no impact assessment as yet, but expects the Commission to produce one before a secondary implementing regulation could be adopted, as there will, in principle, be an increase in costs and in burdens on European businesses without offsetting reductions for other survey activity.

3.5 Nevertheless, the EESC believes that due to the need to simplify and reduce the cost of data collection, a not entirely clear choice has been made to make data collection optional for sectors defined as 'seasonal', namely agriculture, fishing and forestry.

3.6 'Seasonal adjustment' however raises a range of questions about the reliability of such statistics, since in other industrial sectors and/or the public sector, seasonal-type contracts have been in use for years (textile industry, agri-food industry, tourism, etc. …).

3.7 Furthermore, in all EU countries, work contracts currently provide for dozens of different forms of employment relations. It would therefore be useful to know the types of job vacancy involved (open-ended contracts, fixed-term contracts, part-time contracts, projects, partnerships, etc).

3.8 A framework that was closer to the real potential of the labour market, its trends and weaknesses in certain sectors and regions, would make it possible to focus better on the strategies to be implemented in order to achieve the Lisbon goals.

3.9 This is another reason why the EESC believes that consultation with the European social partners and their direct involvement is particularly necessary in these areas.

The EESC welcomes the Parliament's powers of scrutiny over the proposal which will be subject to co-decision with the European Parliament. Implementing regulations will be subject to comitology under the regulatory procedure with scrutiny, in accordance with the procedure laid down in Council Decisions 1999/468/EC and 2006/512/EC.

Brussels, 31 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1059/2003 on the establishment of a common classification of territorial units for statistics (NUTS) by reason of the accession of Bulgaria and Romania to the European Union'

COM(2007) 95 final — 2007/0038 (COD)

(2007/C 175/04)

On 25 April 2007 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 abovementioned proposal.

The Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Burani as rapporteur-general at its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), and adopted the following opinion unanimously.

1. **Introduction**

1.1 Regulation (EC) No 1059/2003 of the European Parliament and of the Council established a common classification of territorial units for statistics (NUTS) for the Member States.

1.2 An initial amendment was made in 2005 following the accession of 10 new Member States. A further amendment has become necessary following the accession of Bulgaria and Romania, in order to insert tables concerning these new Member States into the annex to the regulation.

2. **Comments and conclusions**

2.1 The EESC takes note of the Commission's proposal. Given that the need for the proposal has arisen following the accession of new Member States, and that it is of a purely technical nature, the Committee gives its full agreement.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on 'The internal market in services — requirements as regards the labour market and consumer protection'

(2007/C 175/05)

On 29 September 2005, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *The internal market in services — requirements as regards the labour market and consumer protection*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 May 2007. The rapporteur was Ms Alleweldt.

At its 436th plenary session held on 30 and 31 May 2007 (meeting of 30 May), the European Economic and Social Committee adopted the following opinion by 110 votes to 2, with 2 abstentions.

1. **Aim**

1.1 The Directive on services in the internal market ([1]) is designed to promote competitiveness, growth and employment, in line with the Lisbon Strategy. It has, at the same time, triggered an intensive debate on the form to be taken by the freedom to provide services. A contentious issue has been and continues to be the effects which the proposal will have on national labour markets, social conditions and consumer protection requirements. The EESC gave a detailed response to the Commission proposal in its opinion of February 2005 ([2]). The question here, then, is not the document as such, but the effects on employment and the interests of consumers that can be expected if the internal market in services is implemented in the way proposed.

1.2 Freedom to provide in services is one of the four internal-market freedoms enshrined in the EU Treaty and has long been a political reality. The Commission's strategy, set out in the EU services Directive, aims to dismantle all barriers to the provision of services. In a sense, this is not directly about the labour market or consumer protection. However, the more that freedom to provide services is implemented, the more apparent and keenly felt the differences between the various national systems will be. At the same time there are relatively few EU-wide provisions for protecting the interests of employees and consumers. In these fields, national, legal, social and employment provisions predominate and they frequently differ from state to state to a considerable extent. Adding to this is the parallel or separate validity — enshrined in the services Directive — of certain national measures of the country of origin and country where the service is provided, the impact of which will only become clear in future practice.

1.3 Social stability and consumer confidence are an important element of European integration and a prerequisite for a successful internal market in services. Discussion of the services Directive is seriously flawed in including no meaningful analyses of the effect on national social conditions, employment and consumer interests. The absence of a statistical basis for quantifying cross-border traffic resulting from the freedom to provide services and freedom of establishment was one of the points criticised by the EESC ([3]). Furthermore, there are hardly any reliable data on the structural changes that can be expected in Member States' labour markets. The result is a few very general statistical impact assessments on the one hand and particular individual cases of a frequently illegal or semi-legal nature on the other. Neither suffices for an objective impact assessment.

1.4 Creating the internal market in services is an important part of the Lisbon Strategy. The growth potential in this sector is an important stimulus to job creation. Increased competition, triggered by liberalisation in the internal market in services, will have positive repercussions as it will lead to a broader range of services and a fall in prices. This must be accompanied by a permanent improvement in the social protection of employed workers and an appropriate level of consumer protection. The same applies to the Member States' present quality and safety standards, including environmental protection. The employment effect will differ in the individual sectors and Member States. And the effect on small and medium-sized enterprises is crucial here.

1.5 The aim of the own-initiative opinion is to make it clearer what the effects of the current strategy for the internal market in services will be on job markets, employment conditions and consumer protection and in so doing to be of practical use to those affected and the EU institutions. These two aspects were not central to the EESC's two earlier hearings on the single market ([4]).

([1]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

([2]) CESE 137/2005, OJ C 221 of 8.9.2005.

([3]) See CESE 137/2005, point 3.2 — OJ C 221 of 8.9.2005.

([4]) The EESC held a hearing on the broad internal market strategy on 19 September 2001. A hearing held on 24 May 2004 as part of the process of drawing up the opinion on the EU services Directive addressed six key questions, including professional liability, the 'one-stop shop' and statistical methods.

1.5.1 The 'freedom to provide services', which in EU law applies to every performance of a service between two economic operators in different Member States ([5]), involves three sets of issues:

— Evidence with regard to the quantitative impact on employment and changes affecting sectors and countries which are likely to be brought about by the outsourcing and relocation, or the importing, of individual services

— New challenges in respect of employment conditions arising as a result of the fact that, against the background of an increasing cross-border provision of services, the mobility of posted workers will also increase rapidly

— Consumer interests and consideration of these interests in the internal market strategy for services

— The important role played here by small and medium-sized enterprises (SMEs) as the main providers of employment.

1.6 The opinion should be seen on the one hand as a starting point and on the other as a contribution to the European Commission's final report on the review of the single market ([6]) and to IMAC discussions ([7]). It is based on currently available data and the practical experience and expectations of experts and those affected. These were collected at a hearing held in Vienna in April 2006 and on the basis of a questionnaire circulated to almost 6 000 experts from industry, trade unions and various interest groups, as well as academia and government departments, in autumn of the same year Over 150 people completed the questionnaire. This makes no claim to being an objective study and can be no substitute for such a study. What it does seek to do, rather, is to provide reference points for current issues and future developments which should be explored in greater depth over the long term by the Single Market Observatory (SMO) and in turn serve as a spur to EU institutions and others in their policy decisions and analytical studies.

2. **The dynamics of the service economy in the EU**

2.1 The European Commission has pointed out that its internal market strategy has been prompted by the poor level of development of cross-frontier services in the EU. A more dynamic internal market in services is expected to produce both incentives for employment and benefits for consumers and enterprises. How is this dynamism to be defined in concrete terms?

2.2 A problem which has yet to be resolved is how to provide a statistical representation of the cross-frontier service economy. Up to now, both EuroStat and national statistical bodies have relied on 'payment flow' statistics, i.e. a service is only exported or imported if it gives rise to a corresponding cross-border payment transaction. Whilst, on the one hand, the service economy is characterised by a high degree of cooperation, the transfer of expertise and the exchange of services, extensive clearing transactions do, on the other hand, take place between individual parts of companies, network partners and also between legally independent economic entities in the respective countries which are engaged only in long-lasting cooperation. In such network structures, the respective partners calculate transfers of expertise, time transfers and transfers of services in their respective home countries as a service which they have provided to the customer, even though no cross-border payment transaction is made.

2.3 As a result, in the view of the EESC, the service economy involves a considerably greater volume of exchange and therefore has a much larger impact on the internal market than the current official statistics lead one to believe. The EESC therefore strongly believes that the EU should commission a scientifically pursued basic survey to determine how the individual branches of the service economy in the EU Member States organise cooperation with enterprises in other states. On the basis of this survey and by means of a process of extrapolation, a reliable picture of the actual volume of the EU market in services should be established for the future. This project would be supported by corresponding efforts on the part of European statisticians to draw up price indices in respect of all services and to introduce them into all EU Member States.

2.4 By way of illustration, on the basis of the current level of information, the Commission calculates that the service sector accounts for 56 % of EU GDP and provides 70 % of overall employment but represents only 20 % of the volume of trade carried out within the EU. The increase in productivity in the service economy in the EU has been significantly lower than in the USA ([8]).

2.5 This weakness is not apparent on the world market since the EU is the leading player in the trade in services and this lead is tending to increase at a significant rate. In 2003 the EU share of the global market in services was 26 %, whilst that of the USA was just over 20 %. Despite their considerable dynamism, India and China, whose importance as trading partners is increasing all the time, so far account for a joint share of the global market in services of just over 5 %. Between 1997 and 2003 the EU share of this market increased by 1.8 %, which was also the highest increase recorded amongst the leading players.

2.6 Attention is drawn to the fact that the weakness in the trading position of the EU concerns, above all, trade within the Union. In this field, too, the figures do not absolutely bear out this conclusion. Between 2000 and 2003 intra-EU trade in services increased by 10.8 %, whilst trade with trading partners outside the EU increased by only 6.4 % during this period. The comparative dynamism of the internal market was therefore very clear, all the more so in view of the fact that the year 2003 as a whole witnessed an economic downturn. Furthermore, account also has to be taken of the decline in prices in the service sector.

([5]) Under Article 50 EC, a service is any independent economic activity performed in return for remuneration.

([6]) This report is expected to be submitted during the Portuguese presidency.

([7]) Internal Market Advisory Committee.

([8]) Source for these figures and the figures set out in points 3.5 and 3.6 below: European Commission 2004 and 2005.

2.7 The EESC calls upon the Commission to step up its efforts to draw up an impact assessment in respect of a further realisation of the internal market in services. Carrying out a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis could be beneficial in this respect.

3. **The impact on employment of the creation of a more efficient internal market in services**

3.1 The estimates of the impact on employment are linked to the growth forecasts. One of the first analyses of the impact of the EU services Directive was published in October 2004 by the Netherlands Bureau for Economic Policy Analysis ([9]). This analysis follows the usual OECD assumption that any removal of regulation will give rise to growth and, as a consequence, an increase in employment. An interesting feature of this analysis is that it comes to the conclusion that it is not regulations *per se* that serve as an impediment but rather the heterogeneous nature of regulations. The authors of this analysis expect that the services Directive could bring about an increase in trade in services of between 15 and 30 %, with the proportion of direct foreign investment in this trade sector increasing by between 20 and 35 %.

3.2 In the spring of 2005, Copenhagen Economics published a study ([10]), drawn up on behalf of the European Commission. This study set out a number of explicit observations on the impact on employment. It noted that an expected increase in consumption of 0.6 % of EU GDP would bring about a net increase in job numbers for all 25 EU Member States of approximately 600 000. It was also expected that there would be an increase in productivity and that wages would increase by an average of 0.4 %.

3.3 The conclusions of the Copenhagen Study gave rise to controversy, above all because they are argued solely from a supply-side standpoint and are geared solely to the scenario of increasing demand and falling prices brought about by the removal of all regulations. This study fails to take account of any factors which could work against a growth in demand, such as a decline in purchasing power or any other change in consumer behaviour. Moreover, the choice of sectors was controversial. As far as other estimates of the impact on employment are concerned, such estimates are either not available or are based on the Copenhagen Study and accordingly come to the same conclusions ([11]). Attention must also be paid to the impact of research and innovation, raising the level of improved qualifications and the use of communication technologies on increasing the efficiency of the internal market in services.

3.4 The creation of an additional 600 000 jobs is, clearly, a positive outcome but, given the high level of expectations, such an outcome can rather be described as modest ([12]). A much more important element, however, is the fact that such an increase in the number of jobs may very well have a considerably different impact depending upon the individual sectors, countries and the various groups of employees involved. No information whatsoever is, as yet, available in this field. With the help of the Single Market Observatory and in the light of the impetus provided by this own-initiative opinion, the EESC would like to try to draw up a clearer picture of the structural changes affecting the labour market.

3.5 The EESC questionnaire clearly demonstrates the great interest there is in findings of this kind. 90 % found information available on the employment impact in the internal market in services to be inadequate. Our questions addressed first of all those sectors that would be particularly affected by a drop or rise in jobs. 60 % anticipated benefits generally or in certain sectors. Business and legal advice services were mentioned most often. Others were: commerce, crafts/SMEs, transport, healthcare, agriculture and forestry, industrial services, education, tourism, personalised services, and building and property management. 44 % said they expected job losses. Industry was the most frequently cited loser here, followed by: public services, building and property management, agriculture and forestry, business-related services, basic and premium foodstuffs, personalised services, commerce/retail, tourism and the textile industry.

3.6 Some interesting contrasts emerged when it came to the anticipated benefits in the process. We can assume that adapting to the market is crucial and that those who fail to adapt to the new liberalised conditions and the cross-border market will lose out. Skilled work will offer greater opportunities compared with unskilled work and young, specialised and mobile workers will have greater opportunities than the older and less flexible. Jobs with high social standards would lose out compared with unprotected jobs or self-employment, which would in future play a greater role. Quality compared with price, high professional standards and countries with high social costs would suffer. The new Member States were seen as those who would gain the most, the old as those who would gain the least. Local and small providers will face pressure from large multinational companies. When it came to consumers, there was no clear conclusion.

3.7 The future of SMEs was an issue in itself: would the increase in cross-border service traffic create more jobs or would price and competitive pressures squeeze SMEs out and so lead to job losses? A two-thirds majority (66 %) were sanguine about job opportunities. However, 55 % could also foresee competition driving some firms out of business. Nevertheless, a clear majority (69 %) thought that liberalisation of the services market would have no major impact on the future of SMEs, as this was more dependent on other influences. In short:

([9]) The Free Movement of Services within the EU, Kox et Al., CPB Report No 69, October 2004.

([10]) Economic Assessment of the Barriers to the Internal Market for Services, Copenhagen Economics, January 2005.

([11]) See, for example, the study entitled 'Deepening the Lisbon Agenda: Studies on Productivity, Services and Technologies', Vienna 2006, a study which was commissioned by the Austrian Ministry of Economic Affairs and Labour.

([12]) Criticisms have been expressed by reliable sources which regard even this projection as unrealistic.

the anticipated benefits predominated, though they were likely to be quite modest. However, the crucial factors for success or survival were expected to be the workers' skills, their capacity for innovation and the quality of the service provided. There would also be greater pressure or demand for further harmonisation (educational and vocational qualifications, management requirements, prices and salaries, social welfare contributions, corporation tax, and meeting EU and international standards in general). Welfare standards and consumer and environmental protection were expected to deteriorate. There was concern, too, that local cultural specialities could also lose out if large providers cornered the markets.

3.8 84 % of respondents thought the self-employed would have more opportunities to operate across borders in the future.

4. **New challenges in respect of working conditions and terms of employment**

4.1 In virtually all cases, cross-border services involve employee mobility. Since there has so far been little harmonisation of conditions in this respect in the EU, differing social provisions can therefore be encountered in a given national labour market or a given enterprise. The EU posted workers Directive introduced a minimum number of fundamental conditions as regards equal treatment of posted workers and local workers. Furthermore, matters relating to labour law and social law were in principle excluded from the scope of the EU services Directive. This would not, however, mean that a growing cross-border market in services would not have an impact. Despite the posted workers Directive, there is still a non-harmonised area of collective agreement rules. The exemption of labour law from the EU services Directive means that no 'place-of-work' principle has been established for workers; the legal formulations chosen were vigorously contested and are not necessarily unequivocal. This will become clear only with the transposition into national law. Finally, assuming the internal market in services is successfully deepened, the increasing frequency, and presumably length, of posting will constitute a new phenomenon.

4.2 This own-initiative opinion does not, however, provide the setting in which the debate on the implementation of the Directive on posted workers can and should be conducted. The key question to be answered is rather the following: what new problems will arise or how will existing problems be exacerbated as a result of the fact that, in future, in connection with the provision of services, employees from more than one Member State will more often — and perhaps for longer periods of time — be working at the same workplace whilst being subject to partially different conditions? This situation could, however, also be a source of opportunity, bearing in mind, for example, the prognosis set out in the Copenhagen Study with regard to increasing wages. The point here is definitely not to suggest that market participants and those bearing political responsibility are generally intent on social dumping, but to present a true picture of what is happening.

4.3 82 % responded in the affirmative when asked if they expected an increase in cross-border services, and hence in the activity of posted workers in another country, to bring about a change in the national employment conditions in their own country. 20 % anticipated an improvement in employment conditions, compared with 17 %, who expected a deterioration. Only 7 % thought jobs would be more secure. 56 % expected an increase in flexible and short-term work.

4.4 The question of flexibilisation came up again in answers to the open questions that followed. Many expected a drop in stable workforces in favour of part-time and contract work and an increase in pseudo self-employment. Expected benefits were also specified: language training, fresh perspectives and positive incentives to gain skills, as well as rising wages and more jobs. Even so, the fears predominated: there would be more competition, worse working conditions, and longer and more flexible working hours, while social strife and illegal practices would increase and wages would fall. The social welfare system would face new difficulties. Less mobile workers, especially women, would find it more difficult in future and families would suffer as a result of increasing mobility. On the question of how a future liberalisation of the internal market in services would impinge on wages, 50 % expected them to fall, 43 % to rise and 7 % envisaged no notable effect or said it would depend on the sector.

4.5 Responding to whether the posted workers Directive was sufficient to ensure social protection, 48 % replied 'yes' and 52 % 'no'. If new measures were needed, most (65 %) would prefer an EU-wide approach, a third thought this would be better addressed at national level and 2 % thought both were needed. The following areas were mentioned in response to the open question of which problems particularly needed highlighting: the lack of harmonisation in the social sphere (including admission to vocations and trades) and the ensuing inequality of treatment was the most frequently mentioned. Some accordingly called for the posted workers Directive to be extended in terms of both sectors covered and substance. The inadequate application of posting rules, legal uncertainty and the growth in illegal practices, as well as shortcomings in monitoring and prosecution, also loomed large. Problems of safety and health protection in the workplace, the social security system and combating pseudo self-employment were also mentioned. Finally, there was criticism of undue red tape, remaining obstacles at national level and a tendency to national isolationism. Difficulties were also foreseen if not enough attention were paid to linguistic and cultural differences.

4.6 What would the effect of this be at company level, if workers from different countries were employed on service contracts, in some cases under differing national conditions? 6 % saw no particular impact and 23 % thought it was too early to tell. 24 % expected differences in working conditions within companies to increase, 34 % saw new difficulties in maintaining social and employment provisions and 13 % said national rights to participate in company decision-making did not fully cover posted workers. New aspects came to light in the space for comments on this question. New social and wage-related problems were appearing as a result of, for example, different remuneration for the same work or because voluntary company social benefits would be reduced. An expectation just as frequently voiced was that familiarity with best practice could be an opportunity to improve working conditions and boost the quality of work. On this front, greater intelligence was needed in the social dialogue at company level. Communications barriers could hamper the quality of work and team work and team solidarity could generally be eroded. In some circumstances, it could become more difficult for individual workers to find out and be aware of their rights. Excessive inequalities could also hamper business success (conflicts, red-tape, work quality) and respecting legal provisions could lead to excessive demands and more abuse. Finally, the liberalisation of services was also seen as an opportunity to free up bottlenecks in finding skilled staff.

4.7 It is difficult to summarise the responses to the question on particular practical examples, since it was precisely in their detail that they sought to contribute to a better understanding. This being the case, only a few such examples should be mentioned here which cast light on hitherto unmentioned problem areas. There are, for example, references to unclear regulations and procedures in the case of an industrial accident, particular problems regarding posting within a company, the changing of employment contracts, the application of collective agreements from other countries and the treatment of migrant workers.

5. **The interests of consumers in the internal market in services**

5.1 The internal market in services is also designed to benefit consumers. These benefits relate to availability (price, access, supply), quality, transparency (information and confidence) and legal guarantees (liability and consumer protection). Are these aspects adequately reflected in current practice? Will they be promoted by the proposals for implementing the internal market in services or are there problematic developments, judging from the standpoint of the consumer? The third focus should be to highlight practical experiences with cross-border services, from the standpoint of the consumer.

5.2 The EU posted workers Directive prompts a mixed appraisal when judged from the standpoint of promoting consumer protection. The EESC hearing in April 2006 heard critical views to the effect that consumer protection had been criminally short changed. There were also favourable opinions, mostly concerning supply-side improvements. Overall, consumer protection questions are not given adequate prominence and will, in all probability, only become apparent when the impact of the Directive at national level in the various Member States is considered. Consumer confidence is, however, an element which is of major importance to the success of the EU's internal market in services.

5.3 The questionnaire called on respondents to prioritise the criteria for a consumer-friendly internal market in services set out in point 5.1 (availability, quality, transparency and legal certainty): firstly from their own perspective and secondly on the basis of how far these aspects were promoted by the EU services Directive. While quality and legal certainty ranked highly from the personal perspective (1st and 2nd position), when it came to the EU services Directive, it was clear that availability was sought above all and legal certainty came last. Only 23 % were satisfied with the current implementation of this dimension and 77 % saw a need for improvement.

5.4 Although the EU services Directive leaves the validity of consumer protection measures in the country where the service is provided essentially intact, fears were repeatedly voiced in the discussion that these had shortcomings. Asked whether they saw national consumer protection legislation coming under threat in future, 52 % said they did. Deteriorations in the enforcement of rights were most often mentioned, especially regarding complaints and compensation claims. This also tallied with answers to another question, where 76 % of respondents saw problems in relation to administrative implementation and liability. 51 % feared a general decline in the level of consumer protection. Particularly at risk were all those national standards that were above the EU minimum. This danger also applied to administrative rules regarding the exercise of trades — such as protection from unfair advantage and the grounds for compensation claims — which were directly relevant to consumers because they would in future be governed by the country-of-origin principle. There were concerns about the warranty terms and felt that the quality of services would be cut back. Finally, many feared the loss of the right to information, such as product information (environmental damage, liability, general transparency), price labelling, provider (integrity of the provider, skill level, the required guarantees and safeguards), warranty terms, liability, and so on.

5.5 Another question was about desirable and essential consumer information in cross-border services. Top of the list here were information about legal guarantees, compensation and rights of complaint. Then came the identity of the provider/origin, price transparency and precise

information on the quality of the service and the safety of the product/guarantee. Clearly confused by the debate on the country-of-origin principle, many called for information as to which law applies and which supervisory authority or complaints body has jurisdiction.

5.6 Only 25 % of those questioned had any experience with European consumer advisory bodies or EU-wide cooperation on consumer protection. Their views were in the main favourable, though shortcomings were also raised, such as cross-border help in enforcing rights or finding the right partners at national level. Critical voices were also heard condemning procedures as overly bureaucratic and expensive and generally considering cooperation on consumer protection as too weak and not very effective, especially in complex cases. The impression generally was that information on European consumer advisory bodies or the opportunities for cooperation was not was not very well disseminated.

5.7 The EU services Directive recommends introducing voluntary standards and certification to improve quality in services. 54 % of respondents thought this was a very good idea, 46 % found it questionable. Those in favour of voluntary quality standards thought it an efficient means that would have to prove itself in the market and to customers. Critics were unanimous in thinking that there was no guarantee these standards could be maintained without state supervision. Some consequently preferred clear legal rules. While voluntary standards were respected by reputable businesses, they were of no use against the 'black sheep'. Yet this was precisely what mattered so much in cross-border service traffic.

5.8 The EU services Directive also introduces a system of joint supervision by authorities in the country of origin and the country of destination. We wanted to know whether this inspired greater consumer confidence. 82 % answered in the affirmative, while 18 % were less convinced. Evidently, there were serious reservations about this how would actually be implemented in practice.

5.9 Finally, there was another opportunity to address unresolved questions about consumer protection in the future internal market for services. Once again, the lack of legal clarity and security came up as a key concern regarding warranties, liability (for example, in the event of insolvency), claims against warranty (inadequate harmonisation, burden of proof issues) and the enforcement of compensation claims (too slow, procedure too complex, desire for greater harmonisation). In second place came the guarantee of sufficient information on the service and the provider. The lack of common quality standards and the ability to compare skills and qualifications were also seen as a shortcoming. Consumer protection measures were often incorrectly implemented or were lacking in certain spheres (such as private pensions and healthcare services). Social questions also played a role (erosion of the minimum-wage, 'black economy' work, migration), as did the fear of losing environmental and safety standards. A minimum level needed to be set for generally available public services which guaranteed social involvement. Other fears included distortion of competition for local providers (e.g., different social costs) and problems arising from currency differences.

6. **Most important findings**

6.1 The responses to the questionnaire show there is considerable interest in tackling the new challenges for labour markets, employment and consumer protection in the internal market in services. Many potential problems were pointed out, but so, too, were future opportunities. In general, both merit more attention and should inform the implementation of the EU services Directive that is now in the offing.

6.2 One outstanding problem is the statistical break-down of the EU services economy in cross-border traffic. An accurate picture is essential for determining the employment dynamic that may emerge. The EESC therefore reiterates its call for a one-off grass-roots survey, which is the only way of solving the problem.

6.3 Information on the possible impact on employment of the new internal market strategy is inadequate, according to 90 % of respondents. 60 % expected a beneficial effect on employment, while 44 % foresaw job losses. Above all, people expected job relocations. It would be helpful to have a sector-specific and differentiated approach for future monitoring of the internal market in services by the SMO, focusing on areas such as industry-related services, education, selected liberalised public services, personalised services and crafts. The pointers to those who will gain the most are significant here. It would be useful to examine closely the question of skilled vs. unskilled work and the opportunities for skilled workers with the flexibility to relocate vs. workers with less mobility. The former is expected to be an issue both between Member States and within individual sectors. The latter is a particular challenge for labour markets and social security systems.

6.4 A bright future was overwhelmingly predicted for SMEs and job trends, with the EU services Directive having little influence on this, however. However, new challenges were expected and these would need to be met with better quality and skilling of workers and with innovativeness. Some believe that framework conditions should be further harmonised to counteract the new pressure of competition. It was feared that local and cultural specialities could lose out in future if big providers cornered the markets.

6.5 A majority (82 %) expected the future deepening of the internal market in services to result in changes in national work and employment conditions. This was not because of ignorance of the EU services Directive, but in view of the lack of harmonisation and new market influences. A majority anticipated an increase in short-term and flexible modes of working. Expected benefits included improved employment opportunities, language training and training generally.

6.6 The current provisions on posting play an important role in this context. Inadequate implementation of the rules was often presented as a problem. However, half of those surveyed thought the present regulations were insufficient to ensure social protection in the light of the new challenges. Close examination at company level makes this clear. The greater the non-harmonised sphere, the greater the scope for unequal treatment for the same work. In part, this was also seen as an opportunity, if contact with 'better practices' acted as an incentive to better working conditions in the country of origin. Generally speaking, unequal working conditions or legal provisions in a company or workplace also constituted a challenge for businesses. This is not the place to discuss the posted workers Directive. What matters here is to note that inequality and hence conflict will increase. This is a task for EU and national legislators, especially in the context of the forthcoming implementation of the EU services Directive, as well as being a challenge for social dialogue in the EU.

6.7 The increased worker mobility involved in providing cross-border services and the increasing difficulty of knowing one's rights will create more demand for consultation services. These services must be provided throughout the EU. The work done by the Euro Info Centres and the creation of a database of employees' questions, in which the EESC is taking a keen interest, would be an important source of information.

6.8 Consumers' views of the EU services directive are mixed. Some opinions are positive, some negative. The results of the questionnaire show that quality and legal certainty are rated highly but are not, according to the respondents, sufficiently promoted in the EU services Directive. Only 23 % were satisfied with the present state of consumer protection.

6.9 Concerns about legal certainty and enforcement of rights were central. Although the EU services Directive leaves national consumer protection essentially intact, 52 % felt that national regulations would be at risk in future. People wanted clear rules on the honouring of guarantees and on liability and the rapid settlement of compensation claims. Here, the current rules appeared inadequate, or else the future state of competition was considered likely to threaten high national standards. The availability of sufficient information on the service and the provider was seen as no less important. Another perceived shortcoming lay in the lack of common quality standards (views on voluntary certification were mixed) and the comparability of skills and qualifications. Consumer protection measures were often incorrectly applied or were lacking in some areas (such as private pensions and healthcare services).

6.10 Few respondents had experience of the European consumer advisory bodies or cross-border cooperation. There was approval in the main for current approaches, but these were not enough. They were too weak and were of little use in the enforcement of rights or in difficult cases.

6.11 Consumer protection aspirations in the internal services market must play a greater role. The palpable uncertainty regarding the legal situation in cross-border services must be countered with an information strategy at national and EU level. The desire for accurate information on the service and the provider must not be underestimated. That must also be taken into account in the implementation of the EU services Directive.

6.12 The EESC's Single Market Observatory will work closely with the Section for Employment, Social Affairs and Citizenship in continuing to look at the effect of the internal market in services on the growth in trade in services between Member States, employment and consumer protection. The findings of the present opinion suggest that it would make sense to take a closer look at individual sectors and, in the process, to make use of the main findings from the questionnaire.

Brussels, 30 May 2007.

The president

of the European Economic and Social Committee

Dimitris DIMITRIADIES

Opinion of the European Economic and Social Committee on the 'Quality standards for the contents, procedures and methods of social impact assessments from the point of view of the social partners and other civil society players'

(2007/C 175/06)

In a letter dated 19 September 2006, Mr Wilhelm Schönfelder, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the German Republic to the EU, acting on behalf of the German Council Presidency, requested the European Economic and Social Committee to draw up an opinion on abovementioned proposal.

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 May 2007 The rapporteur was Mr Retureau.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 31 May), the European Economic and Social Committee adopted the following opinion by 102 votes to 3 with 5 abstentions.

1. **Introduction**

The request of the German Presidency for an exploratory opinion on 'Quality standards for the contents, procedures and methods of social impact assessments from the point of view of the social partners and other civil society players' illustrates the will of the German government to focus on better regulation in cooperation with the Portuguese and Slovenian Presidencies and as a follow-up to the Six Presidencies Declaration of 2004. Thereby, 'comprehensive impact assessments ([1]) for all new projects will be a key element of the German action plan. These would (…) take account of social impact in the regulation process' ([2]). 'Impact assessment can be defined simply as a method for identifying the anticipated or actual effects of an intervention. The aim of impact assessment is to improve the evidence base on which decisions are made, and thereby improve the quality of decision-making' ([3]).

2. **General comments**

On the occasion of the European Commission conference on the further development of Impact Assessments in the European Union (held on 20 March 2006 in Brussels), it has been said that 'there is a broad consensus that principles underpinning the European Commission's Impact Assessment system are sound' and that, furthermore, they must include economic, social and environmental impacts ([4]). In the first place, impact assessments have been introduced in the context of the upstream improvement of the regulatory framework of the European Union. Taking account of the social dimension or consequences of EU legislation is inherent to abiding the Social Agenda. European citizens expect Europe to be social — or the Single Market to be socially compatible — and express in many ways their wish to be associated to the process of bringing the EU closer to them.

2.1 *The European Commission's initiative to implement impact assessments — A short retrospective*

The European Commission's initiative of 2003 to implement an impact assessment procedure for all major drafts, i.e. those included in the Annual Policy Strategy or in the Work Programme of the Commission, is based on the fact that these proposals have a potential economic, social and/or environmental impact and/or require some regulatory measure for their implementation ([5]). This initiative had been launched with a view to gradually integrate impact assessments into the legislative process by 2005 ([6]).

Since 2003, a lot has been said on IAs in general but little of social aspects of IAs in particular.

2.2 *Social aspects in IAs — a short review of the European Commission's work*

2.2.1 Logically enough, DG 'Education and Culture' and DG 'Employment, Social Affairs and Equal Opportunities' include social aspects in their IAs. Furthermore, the *'principle of proportionate analysis'* ([7]) induces differences in the degree of integration of social elements in other areas. This raises the question of whether or not social aspects (including items related to the EU Social Agenda) need be considered as a bottom line and also

([1]) Abbreviated in "IAs".

([2]) 'Europe — succeeding together', Presidency programme, 1 January to 30 June 2007 — issued by the German Federal Government (see also http://www.eu2007.de).

([3]) From 'European Governance Reform: The Role of Sustainability Impact Assessment', C. Kirkpatrick, S. Mosedale, University of Manchester, 2002.

([4]) The European Parliament is proposing a fourth pillar for impact assessments, that of fundamental rights. The question of whether to treat fundamental rights separately or mainstream them in the three other proposed pillars is still open. In any event, the impact on fundamental rights must be assessed.

([5]) 'The inclusion of social elements in Impact Assessments', p. 13. Document issued by the Instituto per la ricerca sociale, January 2006. This institute has compiled Commission documents (decisions, regulations, communications and directives) over a period of 3 years — i.e. between 2003 and 2005.

([6]) In June 2005, the European Commission published its 'Impact Assessment Guidelines', ref. SEC (2005)791. See also under http://ec.europa.eu/enterprise/regulation/better_regulation/impact_assessment/docs/sec_2005_791_guidelines_annexes.pdf.

([7]) The principle of proportionate analysis implies variations in 'the degree of detail to the likely impacts of the proposal. This means that the depth of the analysis will be proportionate to the significance of its likely impacts'. COM(2002) 276.

how to deal with proposals not related to social issues or likely to have a weak social consequence. Empirically, the study of the Istituto per la ricerca sociale (see e.g. footnote 2) reveals that 'IAs lacking consideration for social aspects tend to concentrate in the economic field. Here, one third of the IAs includes social aspects only marginally or not at all' ([8]).

2.2.2 Obviously, 'when the social relevance of the measure is self-evident (…), social aspects are widely considered and quite developed throughout the impact assessment document' ([9]). There, 'the employment issue clearly emerges as the most recurrent and stressed social consequence' ([10]).

2.2.3 According to the Istituto per la ricerca sociale, 'the degree to which social elements are considered is not necessarily "proportionate (…)" to the policy content and its likely impact. (…) In many cases these impacts are only described generically (…)' and 'are based on (…) shared assumptions (…). Such relations are seldom discussed when taking into account the specific content of the measure, the target population and interested territorial areas, the specific choice of policy instruments and the effect of the implementation process' ([11]). The study carried out by this institute also states that 'several IAs have not envisaged any correlation with other policy domains or EU policies'. While the work involved in conducting impact analyses is considerable, the latter must not be incomplete or superficial, or their shortcomings will undermine the value of the legislation.

2.3 *The role of stakeholders in IAs*

2.3.1 Evaluation of the impact of a legislative draft is not a 'tick box activity'. It also needs to be monitored — ideally by or in close cooperation with users of the law, especially those who will be most directly concerned. Since the social dimension is one of the three assessment criteria for EU policies there is a need to organise a standard procedure — both transparent and straightforward — for the collection of targeted inputs in the context of IAs. A few options can be mentioned:

— consultation via Internet: large scale on-line consultation is not appropriate for specific legal drafts with social consequences. On-line consultation needs to be narrowed down to those actors directly involved. Targeted consultation requires thematic networking (thematic IA web communities?) and a minimum of structure and coordination — and monitoring;

— consultation via stakeholders forums: due to time constraints, this option might not allow for the proper degree of precision;

— consultation of formal advisory platforms: this raises the question of involving such bodies as the European Economic and Social Committee in the social IA process (this actually could also apply for IAs in the area of sustainable development). By definition, such bodies have been set up to introduce pluralism between interests and correlation between policies;

— targeted consultation with relevant stakeholder: is called for by a number of civil society organisations.

3. **Basic methodological statements**

3.1 A number of questions must be posed in order to determine what methodology could be recommended:

— What is the state of the art, i.e. what has the European Commission achieved in terms of including social aspects in its IAs?

— Does an assessment of the social impact of a draft apply to all legislative proposals or does each draft require a separate ad-hoc study?

— What is the role of the stakeholders? How can they best be associated to the process?

— What could be the role of the European Economic and Social Committee as an assembly of representatives of organised civil society and as a strategically ideally situated 'hub' for contacts and networking?

— To what extent have the contributions of the social partners and of the main NGOs been taken into account by the Commission in assessing the social impact of its proposals? How can they best be involved?

— Should we not envisage a more precise code of conduct than that currently used by the Commission, or ethical rules for such social impact assessments?

— Along what lines should social IAs be made (internally or through outsourcing by way of calls for tenders and if so on the basis of what criteria)?

4. **Internal considerations**

4.1 In view of the complexity and importance of evaluating the social consequences of legislative proposals, all actors concerned, i.e. social partners as well as representatives of civil society organisations, should reflect upon the following methodological issues:

— What form should such a study take and what should be its scope?

([8]) 'The inclusion of social elements in Impact Assessments', p. 28.
([9]) Ibid, p. 30.
([10]) Ibid, p. 31.
([11]) Ibid, p. 77.

— Does such an evaluation cover a large spectrum of items (e. g. 'Better Lawmaking', Green Book on 'Matrimonial property regimes incl. mutual recognition') or should we focus on topics with a clear social content (e.g. port services, maritime safety, Green Book on 'Modernising labour law')?

— What does it imply in terms of preparatory work and drafting?

— In view of the need for a 'scientific' approach (the title mentions 'quality standards'), do we have to determine implicit standards based on practical cases and experience or do we need to develop these standards in the first place?

4.2 A public hearing at the Committee has given social NGOs, social partners, other actors of organised civil society and experts a chance to express their views and discuss the draft opinion so as to pass clear messages to the European institutions in general and to the Commission in particular.

4.3 Ultimately and in view of the fact that social IAs are an element of paramount importance in the EU decision-making process, the Committee should make proposals on how to bring about improvements and better integrate civil society organisations in this procedure.

5. **Social indicators: general considerations and methodological issues**

5.1 Several different social indicator systems already exist at national and international level, but it is necessary to ascertain how useful and how suitable they would be for the specific purposes of impact analysis.

5.2 Social indicators have been developed in a number of countries over the past thirty years as an alternative to assessing the appropriateness and impact of economic policies in terms of basic, quantitative data, with a view to 'steering' social development in parallel with economic development and developing the capacity to measure social well-being and its evolution.

5.3 As a result, there has been a significant growth in the amount of social statistics available, particularly in major areas of collective responsibility such as education, health, social protection, the environment, housing, transport, research and unemployment. However, unless this data is organised, summarised and interpreted, it does not automatically lead to the creation of social indicators.

5.4 An indicator is 'merely a statistic, to which particular importance is attached for the purposes of knowledge, judgement and/or action' ([12]). As far as impact analyses are concerned, it is not simply a question of compiling social statistics, from various sources, for each country, but of structuring this data in order to assess the current situation in relation to specific themes, selected on the basis of their relevance to the impact analysis.

([12]) Bernard Perret, Indicateurs sociaux, état des lieux et perspectives, CERC Working Papers, No 2002/01, (French version only) www.cerc.gouv.fr.

5.5 It is quite possible that in some areas, only sparse or fragmented studies and surveys may be available, making it impossible to conduct a cost/benefit analysis. For example, we already know that certain categories of pesticides are harmful to health and that concentrations in excess of a certain threshold cause serious illness. Yet, although a decision to reduce the use of chemical pesticides would have a positive impact on the health of the general population and of workers exposed to these pesticides, it would be impossible to produce exact figures on the long term benefits of this policy within the framework of a proportional impact study.

5.6 On the other hand, the social and health aspects would clearly justify the proposed measure and would provide considerable reinforcement for the economic arguments (which would include the reduction of production costs for agriculture and the resulting increase in competitiveness). In addition, the fundamental right to a clean environment could be raised in support of the proposal.

5.7 In practice, we now have access to a considerable volume of social statistics and these have also diversified in accordance with the changing foci of public debate in the various countries (such as working conditions, employment of young people, older people and women, crime, income inequalities, discrimination at work and relocations). Further, although few social indicators were drawn from this mass of statistics until very recently, fortunately, in the new socio-economic climate which has developed over the past ten years, where emphasis is again being placed on the role of the state in social policy and regulating the market, their relevance is once again being acknowledged.

5.8 However, social indicators do not always serve any great purpose if they stand alone, and take on more meaning if they are integrated into a broader concept, such as social and economic development or sustainable development. They now come from an increasingly diverse range of sources, not just central government but also from NGOs, and the think tanks operated by major foundations. They are also being presented in increasingly diverse ways, ranging from the selection of statistics to thematic surveys, and the compilation of data to form composite thematic or general indicators.

5.9 A number of international bodies publish social indicators and statistics and conduct comparisons between their member states. In this connection, the main bodies of relevance for the EU countries are (in no particular order) the OECD, the UNDP, the European Commission, particularly Eurostat, UNESCO, the World Bank and the ILO.

5.10 This very diversity of sources poses a number of problems in itself: firstly, with regard to the quality of the statistics, in that not all countries have sophisticated Statistics Offices, secondly in terms of comparability and thirdly in terms of harmonising concepts. For, 'the choice of indicators for measuring the social convergence of the EU countries is a

highly political issue. The indicators used for comparisons are not neutral: they not only reflect priorities but also sometimes particular understandings about what kind of society is desirable, which may legitimately vary from one state to another. The example of unemployment demonstrates that some indicators may have tangible and possibly even negative impacts on policy orientation ([13]). Notwithstanding, as things currently stand, the construction of indicator systems is left entirely to technicians.' ([14])

5.11 The use of GDP and growth as indicators of social well-being has been particularly critiqued within the UNDP, which has developed its own HDI (human development index), notably under the impetus of Amartya Sen's work on poverty, famine and democracy and his critical analysis of the use of purely economic, quantitative indicators, which won him the Nobel Prize in Economics.

5.12 Data on access to drinking water, male and female literacy, the health system and the outcome of campaigns against pandemics, participation in the democratic process, gender and life expectancy, perinatal and infant mortality are all relevant for assessing a society's level of wellbeing and the environmental situation. However, this data is not directly correlated with GDP.

5.13 The UNDPs first composite HDI indicators therefore provoked broad debate and controversy, since the 'rich' countries were sometimes well below the top ranking in terms of 'gross national happiness'. Nevertheless, in view of its solidity (it covers education, life expectancy and incomes adjusted to take account of poverty) this indicator has become the most widely accepted alternative to the purely economic indicators.

5.14 Social statistics are a necessary complement to economic statistics and, in that the public ascribes considerable importance to the key social issues, they also have a political import which it is imperative for governments to take into account.

5.15 Above and beyond narrow economistic thinking and financial short or medium-termism, we must, in all objectivity, recognise that other obstacles stand in the way of this happening, notably, the diversity of social issues and the difficulty of linking and quantifying them with a view to their integration into economic policy orientations.

5.16 We could, intuitively, come to the same conclusions regarding the establishment of environmental indicators aimed at re-integrating external factors into economic growth. For, ultimately, a model of growth that involved the clearing of virgin forest should be rejected, were the impact study to integrate all the social and environmental factors which, as we now know, more than outweigh the economic and monetary factors. On the other hand, it is extremely difficult to put a monetary figure on external factors, such as climate change, the loss of biodiversity, the fate of people who make a living from gathering or using medicinal plants, rapid soil exhaustion and the resulting soil erosion. Although a short term audit might appear largely positive, if these external factors were brought back into the picture, the long-term outlook might well be extremely negative, not only for the region or the country concerned, but for the planet as a whole.

5.17 The objective limits of the use of social and environmental aspects in impact analyses are clearly demonstrated in the cost-benefit approach underpinning a number of the 'better lawmaking' assessments and used in EU impact studies ([15]). Although a relevant indicator (such as number of job losses or lack of opportunities for re-employment) may be used to assess the social impact, the social impact itself is not necessarily a determining factor in the political decision-making process. It often comprises elements that are difficult to quantify, particularly when impact studies cast their evaluations in terms of short-term — or at best, medium-term — monetary considerations. The long term situation is far more difficult to grasp: how does one go about evaluating an aspect such as the expected economic benefits of falling mortality connected with fuel pollution at sea? ([16])

5.18 Lastly, debates around social issues use concepts that are sometimes only loosely defined. For example, an indicator on flexicurity would be formulated differently in different countries, or depending on whether it is based on existing experience or a desire to bring the concept into discussions at European ([17]) or national level with reference to 'national' models developed in a particular context and difficult to transpose into other social settings. Which factors should be taken into account and, most importantly, what values, either positive or negative, should be attributed to them? For, 'the inclusion or exclusion of particular indicators may reveal implicit values and ideologies.' ([18]) The problem is magnified still further when it comes to the construction of composite indicators: which indicators should be included, what coefficient should be ascribed to each of them and what is the actual meaning of the composite indicator obtained?

([13]) As Jean-Baptiste de Foucault states in Joelle Affichard's "The relevance of statistical indicators in directing social policy" (Institut Paris la Défense), "There is always a danger that the fight against unemployment will be diverted into a fight against unemployment figures".

([14]) Bernard Perret, 'Indicateurs sociaux, état des lieux et perspectives', CERC Working Papers, No 2002/01, www.cerc.gouv.fr (French only).

([15]) For example, the impact study for the CAP reform of the Banana CMO demonstrates that the equivalent of tens of thousands of full time jobs will be irremediably lost with no alternative employment possibilities in the EU's ultra-peripheral producer regions where unemployment levels are already high. Despite the enormous social cost, it was decided to proceed with reform of the CMO, on the orders of the WTO.

([16]) See the impact study on this subject, which attempts to put a figure on the monetary value of the lives saved and illness avoided. A more recent impact study (for the draft 'pesticides' directive) makes no such attempt.

([17]) Green Paper: Modernising Labour Law.

([18]) Ekos Research Associates Inc. 'The use of social indicators as evaluation instruments', 1998 (report drawn up for the Canadian Government.

5.19 Composite indicators can integrate both qualitative and quantitative dimensions, can be disaggregated by age, gender and other significant criteria, but must also remain easily comprehensible. To take one example, how could we go about designing an indicator for quality of life in Europe? We could include aspects such as income, life expectancy, perceptions of the efficacy of the health system, pensions, average educational attainment and perceptions of satisfaction with work. But we could also include the unemployment rate, underemployment or housing conditions. And what weight should be accorded to each factor?

5.20 As we can see, the construction of indicators is not a purely technical question. It is closely bound up with a system of shared values or living traditions in a given society. It requires consultation with social organisations and ultimately reflects a particular ideological and political standpoint. At the current time 'few social indicator approaches actually include societal goals, which are a reflection of social values and standards against which performance may be gauged (…) A crucial element of this approach is the identification and ranking, through consultation and consensus-building, of (…) benchmarks in a number of social areas. Outcomes and inputs, as well as the links between them, are also decided in this process (…). In other words, for social indicators to be policy drivers, process must be part of the product'. (EKOS Inc. Associates 1998: p. 18).

5.21 Another issue which arises is the choice of the subject of statistical analysis: i.e. individuals, communities or the household, as the basic economic and social unit. Likewise, there is the issue of gathering data on particular ethnic groups, which poses problems with regard to the requirement for non-discrimination, but would also be a useful means of determining the nature and scale of discrimination, with a view to proposing policies for reducing and ultimately eradicating it in the longer term.

5.22 The selection of statistics and construction of indicators can be conducted with a view to evaluating an existing policy or with a view to exploring the various options available at an earlier stage. In the latter instance, a broader range of statistical data would probably be needed in order to determine a policy's objectives and the means of attaining them, and could then be narrowed down, once the most relevant statistics and indicators were identified. However, the process of selection is also closely bound up with empirical issues. It is not an exact science and the same statistical data, which include both economic and non-economic data, can be interpreted in many different ways.

5.23 For example, for each of the social indicators used in 'Society at a Glance: OECD Social Indicators — 2005 Edition' (see short bibliography), the OECD collected raw data on:

— general context indicators: i.e. national income per capita, age-dependency ratio, fertility rates, foreigners and foreign-born population, marriage and divorce;

— self-sufficiency indicators: employment, unemployment, jobless households, working mothers, out-of-work benefits, benefits of last resort, educational attainment, age at retirement, youth inactivity, students with impairments;

— equity indicators: poverty, income inequality, child poverty, income of older people, public social spending, private social spending, total social spending, old-age pension replacement rate, pension promise;

— health indicators: life expectancy, health-adjusted life expectancy, infant mortality, total health-care expenditure, long-term care;

— social cohesion indicators: subjective well-being, social isolation, group membership, teenage births, drug use and related deaths, suicides.

5.24 Eurostat uses the following social indicators:

— structural indicators:

  — employment: employment rate, employment rate of older workers, average age when leaving the labour market, gender pay gap, tax rate on low wage-earners, tax wedge on labour costs, the unemployment trap, the low pay trap, continuing education, accidents at work (serious or mortal), unemployment rate (total or by sex);

  — social cohesion: inequality of incomes distribution, at-risk-of-poverty rate, at-persistent-risk-of-poverty rate, dispersion of regional employment rates, early school-leavers, long-term unemployment rates, population in jobless households;

— sustainable development:

  — poverty and social exclusion: at-risk-of-poverty rate after social transfers, monetary poverty, access to the labour market, other aspects of social exclusion;

  — ageing society, old-age dependency ratio, adequacy of pensions, demographic change, stability of public finances;

  — public health: number of healthy years from birth by gender, protection of human health and lifestyles, food safety and quality, management of chemicals, environmental health risks;

— labour market:

  — harmonised unemployment;

  — labour costs index.

5.25 To what extent can this (non-exhaustive) list of indicators be successfully integrated into the general objectives of the Open Method of Coordination (OMC) of March 2006:

— promote social cohesion, equality between men and women and equal opportunities for all by means of appropriate social protection systems and social inclusion policies that are accessible, financially viable, adaptable and effective;

— interact efficiently and mutually with the Lisbon objectives aiming to stimulate economic growth, improve the quality and quantity of jobs and strengthen social cohesion; and with the European Union's sustainable development strategy;

— improve governance, transparency and stakeholder participation in policy framing, implementation and monitoring.

5.26 Furthermore, the concepts and methods used for certain indicators need to be more precise. In the case of poverty, for example, the French Council for Employment, Income and Social Inclusion (*Conseil de l'emploi, des revenus et de la cohésion sociale* — CERC) ([19]) has highlighted the 'multidimensionality' of the concept.

5.26.1 Thus, poverty comprises several dimensions: inadequate monetary resources, poor living conditions, inadequate cognitive, social and cultural resources. For each of these dimensions, two approaches are adopted to determine the poverty situation:

— The first consists in defining minimum needs 'absolutely'. Persons whose minimum needs are not met are defined as poor.

— The second approach defines poverty relatively. This was the approach adopted by the European Council in 1984 when it gave a definition of poverty for EU statistics work. People are poor when their income and resources (material, cultural and social) are so inadequate as to prevent them from enjoying living conditions that are considered acceptable in the Member State in which they live.

5.27 In summary and in conclusion, the social indicators aim to draw the attention of public opinion and decision-makers to social issues which risk being underestimated or poorly understood. Focusing the attention of decision-makers on the key points is particularly important as they generally have to deal with too much information. Herbert Simon put it nicely when he said that too much information kills the information.

5.27.1 From a functional point of view, the purpose of a system of indicators is to achieve 'optimum aggregation of information'.

5.28 An indicator is more than a statistic:

A system of indicators is not a mere collection of data. It has a number of consequences:

1) It should be possible to justify each individual indicator through reference to an analysis of the complex phenomena that it is supposed to summarise.

2) Similarly, indicators need to have 'expressive' qualities, i.e. be able to cogently represent and evoke reality. In this respect, some observers refer to the 'metaphorical' value of indicators.

3) In view of their purpose (to draw the attention of policy-makers and public opinion to the most important issues and trends, with a view to influencing policies), the most useful indicators relate to values whose variations can be given an unequivocal value (positive or negative). This is what we mean by 'normative clarity'. A counterexample can be provided by the increase in part-time work, which is not unanimously regarded as a positive phenomenon, unless it is chosen by the worker. This criterion of clarity can lead to a number of indicators that are less relevant here, for example, relating to lifestyles or to cultural trends (clothes, musical tastes, etc.) being kept out of the scoreboards, even though they have an impact on the organisation of work and the economy.

4) From a practical point of view, the choice of indicators should be warranted by their function. They are, in fact, more or less tailored to the three following types of use: international or inter-regional comparisons; intertemporal comparisons; monitoring and evaluation of public intervention/quality and performance of public services.

5) Finally, indicators need to be divided into categories and subcategories within a structured framework that can be readily understood. It is particularly important to distinguish between context, method and result indicators, objective indicators and subjective indicators.

5.29 In practice, the features of an indicator are:

— Clarity: an indicator is only useful if there is no ambiguity as to the nature of the phenomenon that it reflects (traditional counterexample: data on crime and offences are a reflection both of crime trends and of police force activity).

— Representativeness: an indicator is particularly useful if it can validly summarise a wide range of phenomena in a single figure.

— Normative clarity (see above).

— Reliability, regularity: the information needed for the indicator must be provided regularly, by means of reliable surveys.

— Comparability in time and/or in space (between countries, regions, etc.): comparability is closely linked to clarity and reliability.

([19]) http://www.cerc.gouv.fr.

5.30 Features of a parameters system:

— Completeness: the main features of the phenomenon observed must be taken into account.

— Balance: the number and status of the indicators devoted to each topic must reflect its relative importance. No single feature can receive undue attention to the detriment of others.

— Selectivity and/or hierarchy: indicators must be confined to just a few or clearly arranged hierarchically.

6. The EESC calls for the evaluation of the social impact of EU legislative and policy initiatives to be incorporated in all policy areas. In other words, the Commission should carefully assess the social impact of all relative initiatives without worrying about which DG is in charge of the initiative. This is important if Europe genuinely wants to create a 'social Europe' and gain public support. The 'better lawmaking' initiative offers a suitable springboard to push ahead in this direction.

6.1 This assessment should examine individually specific groups which might be affected in different ways by the new legislation. Special attention should be paid to disadvantaged groups such as women, disabled persons and ethnic minorities. In some cases, depending on the subject matter of the initiative concerned, it might even be necessary to examine specific subgroups individually, such as blind persons, for example.

7. **Conclusion**

7.1 What emerges from the above and from the public hearing organised by the European Economic and Social Committee on 28 March 2007, is that the multi-dimensionality of certain concepts makes it impossible to develop a social indicator based on a single criterion. By its very nature, the debate on social issues brings into play concepts whose edges are blurred and necessarily vary from one country or one social reality to another. Furthermore, the inclusion or exclusion of particular indicators reveals implicit or explicit ideologies or values. The selection of indicators is closely bound up with empirical issues, and this should, in principle, stand in the way of a rigid approach.

7.2 Although it is laudable and necessary, if not vital, to draw the attention of political decision- makers to the social impact of proposed legislation, there is a methodological problem here, since 'too much information kills the information'. The European Economic and Social Committee considers that particular emphasis should be placed on the methodology, which has yet to be determined.

7.3 Therefore, the European Economic and Social Committee considers that, at this stage of the reflection process, it is vital to draw the attention of the Commission, and other players, to the quality standards that must be met by all indicators, namely:

— clarity,

— representativeness,

— normative clarity

— reliability and regularity, not forgetting comparability in time and/or in space and not forgetting that the quality of a system of indicators ultimately rests on a need for completeness, balance and selectivity and/or hierarchy.

7.4 The European Economic and Social Committee also calls on the Commission to incorporate the evaluation of the social impact of EU legislative and policy initiatives in all Community policies, without having to worry about which DG is responsible for deciding whether a social impact analysis needs to be carried out. This is vital if we genuinely want to create a 'social Europe' and gain public support.

7.5 The Committee should take full account of the road map and impact assessment alongside the legislative proposal referred to it for an opinion and should begin its work immediately, as soon as the communication accompanying the legislative proposal has been published.

7.6 It is vital to conduct regular assessments of all legislation for which prior impact assessments were conducted and, where necessary, to make adjustments to the way the legislation is implemented and to involve the social partners and, if necessary, stakeholder NGOs in this process. This is important in order to verify the validity of the indicators that were used, to combine them in the social impact assessment and draw lessons or, if need be, persuade the legislator to look into possible changes.

7.7 In certain specific and highly socially sensitive cases (such as labour law), consultations with the social partners should take place at a still earlier stage, so as to identify the most appropriate indicators for conducting as comprehensive and objective an impact analysis as possible.

7.8 There is no doubt that the 'Better lawmaking' initiative offers a suitable springboard for pushing ahead in this direction, i.e. proposing vital and effective legislation, whose consequences are both predictable and stable for its addressees and more closely incorporated in the impact analysis and evaluation process conducted by the EU's consultative bodies (the EESC and the CoR) and, depending on the nature of the legislation, by the social partners and the relevant NGOs in the area concerned.

Brussels, 31 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the implementation of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts'

COM(2006) 514 final

(2007/C 175/07)

On 21 September 2006, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 May 2007. The rapporteur was Mr Pegado Liz.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May) the European Economic and Social Committee adopted the following opinion by 61 votes, with 4 abstentions.

1. **Summary**

1.1 With this Communication on the implementation of Directive 1997/7/EC, the Commission is not only informing the Council, the European Parliament and the EESC of the results of the directive's transposition and implementation, but is also opening up a public consultation of the interested parties, with the aim of gathering their opinions. The Commission does not, however, put forward any proposal for reviewing the Directive until the broader review of the consumer *acquis communautaire* is concluded.

1.2 Whilst noting the delay in the publication of this communication in relation to the deadlines set down in the directive, the EESC welcomes the initiative and agrees with a great number of the Commission's comments, many of which have in fact already been made in the Committee's own opinions, specifically those on the proposals for a directive on distance selling in general and on the distance selling of financial services in particular. The Committee also agrees with the need to bring the rules in this area into line with those of other legal instruments introduced in the meantime, in some cases without the necessary coordination and joint planning.

1.3 The EESC is of the view, however, that it would be valuable for a review of these rules to be carried out immediately, in conjunction with a review of those on the distance selling of financial services and certain aspects of electronic commerce, without waiting for work on the review of the Community *acquis* concerning consumer contracts to be concluded, out of a concern to make all the disparate provisions more accessible and easier to understand.

1.4 To this end, the EESC urges the Commission to carry out a detailed analysis of the responses to its public consultation exercise that have been received in the meantime, to which it should add reliable statistical data on the scope and scale of distance selling in the internal market, culminating in a public hearing of the interested parties.

1.5 The Committee agrees with most of the Commission's suggestions on improving the directive's wording and structure but reaffirms its position — already stated in previous opinions — that the directive's scope should not be confined to business/consumer relations and that it would be extremely useful to reconsider this aspect in order to bring it into line, in fundamental aspects, with the scope of the regulations on electronic commerce.

1.6 The EESC disagrees with the Commission's assessment of the consequences of the use made of the 'minimum clause', which it does not consider to be the cause of the directive's implementation problems — which are rightly highlighted. The Committee does not, however, reject the possibility of envisaging a move towards total harmonisation, by means of regulation, provided that consumers are guaranteed a higher level of protection.

1.7 With the aim of contributing to an in-depth review of the rules on distance-selling, the EESC is putting forward a broad range of specific recommendations, which it considers should be studied, at the present stage of development of the internal market, in order to boost consumer safeguards and confidence, guaranteeing protection in this type of transaction equivalent to that enjoyed by consumers concluding contracts face-to-face.

1.8 The EESC also points to the need for a particular focus on providing contracting parties — particularly less well-informed consumers — with real information, and also that there should be an effective system for sanctioning practices that breach existing legal provisions.

2. **Gist of the Communication**

2.1 With the Communication on the implementation of Directive 1997/7/EC of 20 May 1997 (COM (2006) 514 final of 21 September 2006), the Commission sets out to report to the Council, the European Parliament and the European Economic and Social Committee on the directive's transposition and implementation in the period of around 10 years since its publication, thus fulfilling the requirement set out in Article 15(4) of the directive, albeit with a delay of some six years.

2.2 As well as identifying some problems in the Directive's implementation ([1]), arising mainly from its 'wording' and from 'translation problems' in some language versions, the Commission comments on what it considers to be 'significant divergences between national laws as a result of the use of the minimum clause' and the Directive's potential inability to cover 'new technologies and forms of marketing'.

2.3 Lastly, the Commission has drawn up a 'questionnaire', to be returned by 21 November 2006, aimed at ensuring that there is 'public consultation' of the parties concerned, in order to confirm or disprove its observations, and envisages a public hearing.

2.4 Despite acknowledging that the rules put in place reveal design faults and difficulties of interpretation, which are the cause of problems in implementation, the Commission does not consider it 'appropriate' to put forward any proposal for reviewing the Directive until the diagnostic phase of the review of the consumer *acquis communautaire* is concluded, and no firm deadline has been set for this.

2.5 While this opinion was being drafted, the Commission made available 84 responses received to the above-mentioned consultation and published a working paper summarising many of the responses received. The Commission proposes to complete its analysis of the remaining responses in the near future and to carry out a more detailed impact study.

3. **The EESC's main comments on the Commission's observations**

3.1 *General*

3.1.1 The EESC welcomes the Commission initiative, but deplores the fact that it was not implemented by the date originally scheduled (June 2001) or, at the very least, within the four-year deadline for transposition (June 2004) and considers that most of the issues raised today could have been addressed and resolved at least three years ago, with obvious benefits.

3.1.2 The EESC would point out that many of the issues now raised in the Communication have already been addressed in EESC opinions, dating right back to the Directive's drafting phase.

In its opinion on the Proposal for a Council Directive on the protection of consumers in respect of contracts negotiated at a distance (distance selling) ([2]), the EESC had already warned of the need for some of the concepts set out in Article 2 of the directive, specifically those concerning contracts covered by the directive and the very concept of 'the consumer'.

The EESC had also expressed the view that the Commission should be clearer as regards the right to withdraw from a contract set out in the directive which, in its opinion, should be understood in the context of the right to reflect and should not be confused with or jeopardise consumers' right to terminate the contract, provided that this has not been completed or that fraudulent practices have been detected.

The EESC also drew attention to the fact that the right to withdraw from a contract within seven days is less generous than that already existing in other directives and in current legislation in some Member States and advised the Commission to harmonise time limits for exercising this right. The EESC's call for clarification of the rules on the right to reflect was, in fact, reiterated in the opinion on the Proposal for Distance Selling of Financial Services ([3]).

Furthermore, similar criticism had already been made a long time ago in the most highly respected specialist academic publications ([4]).

3.1.3 The EESC is surprised at the purported lack of information available to the Commission on the date of entry into force of various Member States' provisions for transposition ([5]) and is also surprised that, given that some flagrant breaches in transposition by some Member States have supposedly been observed, there has been no news of infringement proceedings being brought against these Member States or of the outcome of any such proceedings.

3.1.4 The EESC also considers that it would have better reflected a genuinely participatory process if the Communication had been *preceded* rather than followed by public consultation, in order to avoid many of the Commission's comments and observations being based merely on subjective 'impressions' or 'opinions' ([6]).

The Committee also recalls the 10 March 2000 report on Consumer complaints in respect of distance selling (COM(2000) 127 final) and recommends that a similar exercise be carried out, but this time on the basis of an objective analysis of all the responses to the public consultation, updating and comparing data and thus creating an objective basis for reflection.

([1]) The Commission decided deliberately to exclude from the scope of its observations and comments aspects such as 'inertia selling', 'payment by card' and 'redress'.

([2]) EESC opinion published in OJ C 19/111, 25.1.1993, rapporteur: Roberto Bonvicini.

([3]) EESC opinion published in OJ C 169/43, 16.6.1999, rapporteur: Manuel Ataíde Ferreira.

([4]) See, for all of these, *'La protection des consommateurs acheteurs à distance'*, minutes of the seminar organised by CEDOC, edited by Bernd Stauder in 1999, the most important papers being those by Hans Micklitz, Jules Stuyck, Peter Rott and Geraint Howells (Bruylant, 1999).

([5]) Belgium (?), Hungary, Latvia and Lithuania.

([6]) See, for example, the second paragraph of point 3 *'… it feels that …'*, and the third paragraph of the same point *'The Commission believes that …'*.

3.1.5 In the present circumstances, the EESC supports the Commission's suggestion and calls for a public hearing to be held, involving all parties concerned, whilst ensuring that the issue is not subsumed into the broader debate on the Community consumer *acquis*, on which a lengthy technical study of some 800 pages ([7]) was published only recently, together with the Commission Green Paper ([8]).

3.1.6 Given the progress of the CFR-net's ([9]) work to date, the EESC doubts that it would be beneficial or advisable to make a review of this directive dependent on completion of the work and consultations on the entire Community *acquis* relating to consumer law and on the decisions that might eventually be taken, even in the latest slimmed-down version presented by the Commission ([10]).

3.1.7 The EESC further suggests that the legal nature of the Community instrument to be used in a future review of the directive might be reconsidered, if it is felt that the conditions could be met to ensure that the fundamental changes required in this area are made by means of regulation, which would be the most appropriate approach ([11]), whilst preserving the basic aim, which is to re-establish balance and equality between the parties concerned, as is supposed to be the case in face-to-face transactions concluded on business premises.

3.2 *Specific comments*

3.2.1 The Commission's comments on the Directive can be divided into two types:

a) Comments concerning its wording/structure

b) Comments concerning its implementation.

A) Wording/structure

3.2.2 With regard to the directive's wording/structure, the EESC agrees with the Commission on the following points:

a) some concepts and definitions should be revised, in order to clarify their meaning ([12]);

b) timing and rules on communicating prior information should be clarified, in order to avoid divergent interpretations;

c) the harmonisation of some provisions with the Directive on Unfair Commercial Practices ([13]);

d) improved information on pricing in premium rate services;

e) the crucial need for a more complete description, classification and definition of the nature of the withdrawal or 'cooling-off' period, in its dual task of *'a technique for protecting the contractual intent to ensure that the consumer has given full consent'* and of *'sanctioning failure to respect formalities that the supplier must observe in order to meet information obligations'* ([14]), in order to bring it into line with similar, but legally distinct concepts, such as the right to reflect (or to 'warm up'), the right of withdrawal and the right to terminate;

f) likewise, harmonisation is required of this time limit, of the way in which it is calculated, of the effects, in particular the financial effects, resulting from its application (reimbursement, return, etc.), of the way in which contracts are rendered null and void by explicitly or implicitly excluding this time limit, and also of the exceptions to the rule ([15]);

([7]) *'EC Consumer Law Compendium — Comparative Analysis'*, Prof. Dr. Hans Schulte-Nolke, Dr. Christian Twigg-Flesner and Dr. Martin Ebers, 12 December 2006, University of Bielefeld (drawn up for the European Commission under the Services Contract No 17.020100/04/389299: 'Annotated Compendium including a comparative analysis of the Community consumer acquis').

([8]) COM(2006) 744 final, of 8 February 2007, on which the EESC has already set up a Study Group to work on its opinion, for which the rapporteur will be Mr Adams.

([9]) The need for which is called into question by some of the best recent theory (see. *'The need for a European Contract Law — Empirical and Legal Perspectives'*, Jan Smits, Europa Law Publishing, Groningen, 2005).

([10]) In fact, of the 22 Community legal instruments identified by the Commission in May 2003, the review's scope has now been whittled down to just eight directives.

([11]) The regulation option would help to remedy the various situations described by the Commission where the directive on distance selling has not been transposed, or has been incorrectly transposed, for example, as regards Article 4(2) on the principle of good faith, Article 6 on time limits for reimbursement when the right of withdrawal is exercised and situations excluding the right of withdrawal. A regulation of this nature could, to be specific, cover areas such as the definition of concepts, their application to goods and to individuals and their respective exceptions, the form, content, scope and timing of the provision of information, the exercise and consequences of the right of withdrawal, completion of the contract and payment arrangements and the principle of fair trading, which is particularly relevant.

([12]) For example, the concepts of 'organised [distance] selling', 'operator of means of distance communication', 'immovable property rights', in particular those concerning 'timeshare' property, 'regular roundsmen', 'transport', including car rental, 'specific circumstances', 'durable medium', etc.

([13]) Directive 2005/29/EC of 11 May 2005, OJ L 149, 11.6.2006; EESC Opinion: OJ C 108, 30.4.2004.

([14]) See: Cristine Amato: 'Per un diritto europeo dei contratti con i consumatori' [Towards a European consumer contract law], p. 329, Giuffré, Milan 2003.

([15]) It should be noted that, when adopting Directive 97/7/EC, the Council issued a statement urging the Commission to study the possibility of harmonising existing methods of calculating reflection periods in current consumer protection directives.

g) the need to review, in particular, the exclusion of 'auctions', bearing in mind not only that the same expression has different legal meanings in the various translations and national legislative traditions ([16]), but also that 'auctions' held on the Internet raise specific problems that were not known at the time the Directive was being drafted ([17]).

3.2.3 The EESC does not agree with the Commission, however, on:

a) the exclusion from the outset of financial services from a single directive on distance selling ([18]);

b) whether the distinction should be maintained between the 'distance selling' and 'electronic commerce' directives, given the partial overlap of their content and the fact that they offer contradictory solutions in various key aspects of their rules concerning situations that are in practice identical ([19]); the apparent justification for this lies merely in the fact that the internal 'origin' of the legal texts is not the same or has not been properly coordinated between the different departments.

3.2.4 The EESC also recommends that the Commission endeavour to simplify all the provisions relating to distance selling, which are currently scattered across a number of different instruments, and make them more accessible and easier to understand.

B) Implementation-related issues

3.2.5 As regards the Directive's implementation and given the EESC's knowledge of experience in some Member States, it can agree with and support most of the Commission's comments, but considers that more detailed work should be carried out in order to give a complete rather than a piecemeal overview of situations where there is divergence or incompatibility regarding the Directive's transposition or interpretation in all Member States.

The EESC, therefore, urges the Commission, once it has studied the answers to the questionnaire, to carry out such a study, and to make its results known.

It should be added that the Commission has not yet provided the statistical data which make it possible to assess the proportion of distance selling to consumers in all cross-border transactions, or which show the volume of this type of business in relation to transactions with consumers in each Member State. Such information cannot be gleaned with the necessary objectivity from the most recent data collected by Eurobarometer ([20]); this information is crucial to assessing criteria for inclusion and for determining whether the exemptions set out in the directive are appropriate.

3.2.6 The EESC is concerned at the position adopted by the Commission, when, on the one hand, it identifies a number of problems in the directive's transposition and yet, on the other, expresses doubts regarding its relevance to consumer confidence, stating that it will not make any changes and failing to announce more vigorous measures to address these transposition-related problems.

3.2.7 First and foremost, concerning the scope of Directive 1997/7/CE, the Commission itself acknowledges that the exemptions set out in the directive have been transposed differently in the Member States and that some of these exemptions should be reconsidered. The EESC thus calls on the Commission to take more concrete measures in this area.

3.2.8 Regarding the effects of the use of the 'minimum clause' the EESC disagrees with the Commission that all of the situations it lists result from the incorrect implementation of the clause set out in Article 14.

3.2.8.1 The EESC considers, rather, that most of the very real discrepancies observed are not the consequence of the minimum clause being used improperly, but rather of identified shortcomings in the Directive's design, wording and transposition/translation.

3.2.8.2 The EESC is of the view that the minimum clause, which allows Member States to go beyond Community requirements in directives for minimum harmonisation, while complying with the Treaty, as stipulated in Article 153, is a useful tool that will ensure a high level of consumer protection, and will help ensure that account is taken of each national system's specific cultural, social and legal characteristics.

3.2.8.3 The EESC nevertheless suggests that, insofar as a higher degree of consumer protection is indeed secured, certain areas of law should be subject to total harmonisation — and preferably in the form of a regulation — as a means of guaranteeing uniformity, and this could also apply to the directive under consideration.

([16]) For example, the Portuguese legal concept of 'leilão' does not have the same meaning as the terms 'vente aux enchères', 'auction', and 'vendita all'asta'in French, Anglo-Saxon or Italian law.

([17]) See the important article by Prof. Gerard Spindler, of the University of Gottingen, *'Internet-Auctions versus Consumer Protection: The Case of the Distant Selling Directive'*, in German Law Journal, 2005 Vol. 06 no 3 pp. 725 et seq.

([18]) As stated in the opinion on the proposed directive concerning the distance marketing of consumer financial services (EESC Opinion published in OJ C 169/43, 16.6.1999), rapporteur: Manuel Ataíde Ferreira. This was also the opinion expressed by the European Parliament at its two readings.

([19]) Directive 2000/31/EC of 8 June 2000, OJ L 178, 17.7.2000; this was, in fact, the view set out in the Opinion on the Directive, published in OJ C 169/36, 16.6.1999, rapporteur: Harald Glatz.

([20]) See Eurobarometer Special Edition No 252, *'Consumer protection in the Internal Market'*, September 2006, requested by DG SANCO and coordinated by DG Communication. These data do, however, give some indication of the broad consumer trends in light of Community work on completion of the internal market.

C) Issues not covered

3.2.9 The EESC considers that there are other issues that might warrant reassessment in a review of the Directive and to which the Communication does not refer.

3.2.10 Specifically, these are:

a) whether the Directive on the distance selling of financial services should be reviewed together and at the same time as this Directive; the EESC wishes to express its clear disagreement with the thrust of the Commission Communication of 6 April 2006 (COM(2006) 161 final);

b) retention of the 'exclusive' nature of the use of means of distance communication instead of the concept of 'predominance' (Article 2(1));

c) the legal nature of the request to conclude a contract as an invitation to purchase and the essential nature of its terms and characteristics as constituent elements of the subject of the sales contract itself;

d) the entire 'burden of proof' system that the Directive fails to regulate, or regulates poorly, deferring to the general principles of Member States' law, which governs contracts with consumers, unless they make use of the mechanism for reversing the burden of proof provided for in Article 11(3);

e) retention of relations with 'consumers' — regardless of the debate as to whether its definition is correct (on where there is disagreement) — as the Directive's only focus, when the matter generally concerns a certain type of selling, with certain characteristics, and not solely the recipient, as is correctly provided for in the e-commerce Directive;

f) clarification of what is meant by *'means of distance communication'* and *'organised distance sales or service provision scheme'* and the need for a more in-depth study of the justification for retaining this criterion and of the reasons for excluding special protection for consumers purchasing at a distance from businesses using these means only sporadically;

g) retention of the seemingly unjustified exclusion of its application to package holidays and timeshare contracts, as well as to the distance-selling of foodstuffs;

h) the absence from the list of prior information to be given to consumers of after-sale services and commercial guarantees, to be reviewed in line with the Directive on guarantees ([21]);

i) the rules on the right of use, the duty of care and the risk of an item's loss or deterioration during the withdrawal period and its transport, either from the business to the consumer or vice-versa, in the case of returns, regardless of the reason (a decision to withdraw or the item being non-compliant/defective/broken), in line with the rules established by the directive on guarantees;

j) the issue of the language of contracts, which should no longer be 'a matter for the Member States' (recital 8);

k) the definition of a 'working day' in European Community law, which is essential for a harmonised calculation of deadlines, in particular where cross-border sales are concerned, or simply the setting of all deadlines for consecutive calendar days;

l) the form in which the right of withdrawal is communicated — whether or not proof of receipt of communication is required — with the respective legal consequences;

m) prevention of the risk of non-compliance with the contract and the rules on failure to complete the contract in time or on partial fulfilment of the obligation to supply goods or to provide services ([22]);

n) retention of the exclusion of goods made to the consumer's specifications;

o) the need to give greater consideration to the growing phenomenon of business conducted by telephone or by mobile phone (m-commerce), including contemplation of a general 'opt-in' system to protect against unsolicited offers;

([21]) Directive 1999/44/EC of 25 May 1999, OJ L 171, 7.7.1999. The EESC had already stated, in its opinion on the proposed directive on distance selling, that consumers should be given information on the existence of the rules on guarantee, in particular in the event of failure or delay in fulfilling the contract.

([22]) The EESC has already stated its position on this matter in the opinion on the directive on distance selling, alerting the Commission to the need to reaffirm safeguards for financial interests and the prevention of risks arising from non-fulfilment of the contract, for example by setting penalties. The EESC has also suggested that a guarantee fund be created by the companies in the sector to cover these situations.

p) the reference to the rules set out in the Directive on the counterfeiting and certification of goods and the protection of copyright and associated rights that are weakened in distance selling in particular;

q) the extension of the obligation to provide information to all interested parties, with particular emphasis on the most vulnerable groups of consumers, such as minors, the elderly or the disabled, as already set out in the directive on unfair commercial practices;

r) the need to provide for effective and sufficiently dissuasive sanctions for non-compliance with the obligations set out in the Directive.

3.2.11 The EESC is of the view that proper consideration of these issues is crucial to achieving the aims that the directive proposes to guarantee, in other words, that consumers of goods and services purchased at a distance should enjoy protection equivalent to the protection rightly provided in contracts concluded face to face.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited companies as regards the requirement for an independent expert's report on the occasion of a merger or a division'

COM(2007) 91 final — 2007/0035 (COD)

(2007/C 175/08)

On 29 March 2007, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 May 2007. The rapporteur working without a study group was **Ms Sánchez Miguel**.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May), the European Economic and Social Committee adopted the following opinion by 143 votes, with 26 against and 12 abstentions.

1. **Introduction**

1.1 The Commission's proposal to amend the legislation governing mergers or divisions of public limited companies is part of the plan to modernise company law and improve corporate governance in the EU ([1]). It provides for an action plan to complete a radical legislative reform for the short, medium and long term that does more than simply execute the proposals for Directives still pending.

1.2 Also, at a more general level, Annex III of the Action Programme for Reducing Administrative Burdens in the European Union ([2]) presents ten specific proposals for introducing 'fast track actions', with the aim of reducing minor requirements that do not change the level of legal protection. This is the purpose of the proposal under discussion, which simply abolishes the expert report on the draft terms of mergers or divisions, provided 'all' shareholders agree.

1.3 It should be noted that Article 8(4) of Directive 2005/56/EC on cross-border mergers of limited liability companies ([3]) already waives the requirement for an expert report on the draft terms of mergers if all the members of the companies agree. Similarly, the last amendment of Directive 77/91/EEC on the formation of public limited liability companies and the maintenance and alteration of their capital ([4]) introduced two new articles, 10a and 10b, under which the expert report is not required for non-cash contributions in circumstances where the real value of the assets contributed can be guaranteed.

([1]) Communication from the Commission to the Council and the European Parliament, COM(2003) 284 final.
([2]) COM(2007) 23 final.
([3]) OJ L 310 of 25.11.2005, p. 1.
([4]) Directive 2006/68/EC, OJ L 264 of 25.9.2006.

2. **Content of the proposal**

2.1 The purpose of this amendment to the Directives on mergers or divisions of public limited liability companies is to align their content with that of the Directive on cross-border mergers with respect to the involvement of experts in drawing up the report on the draft terms of mergers or divisions, provided that all shareholders and holders of securities giving the right to vote have so agreed.

3. **Comments on the proposal**

3.1 The EESC welcomes the process of simplification, and in particular the reduction in the administrative burden for European companies. It is in this sense that we understand the content of the proposal, which in particular protects shareholders' interests by requiring their unanimous agreement for not drawing up an expert report on the draft terms of mergers or divisions.

3.2 The EESC nevertheless still sees problems, in particular relating to mergers of large companies, owing to the diversity of shareholders, most of whom are investors. If shares are not managed directly, minority shareholders may be unprotected and obliged to accept agreements adopted by the bodies that manage their securities. Although prevailing rules provide for the right to oppose and withdraw from such agreements in cases where shareholders object to the economic outcome of the operations, especially in relation to share swaps, it will be much more difficult to exercise this right if there is no expert report on the draft terms of mergers.

3.3 By the same token we believe that companies' creditors and employees are vulnerable if they are kept in the dark for lack of an objective evaluation under the responsibility of experts. The right of creditors to oppose a merger once the merger notices have been published is recognised, provided their claims are not secured. However, it must be borne in mind that neither the Directive on mergers nor the Directive on divisions sets out any right for workers, whereas the Directive on cross-border mergers provides the option of employee participation (Article 16), which promotes a better outcome by means of appropriate information channels.

3.4 The effectiveness of legislation depends on whether it safeguards the rights of all those involved in legal processes — in this case mergers and divisions — since their complexity makes it necessary to promote ways of making them transparent without creating conflicts between all the parties concerned. Abolition of the expert report subject to the approval of all the shareholders should happen in the circumstances set out in Article 10 of Directive 2006/68/EC, i.e. when the assets are in the form of transferable securities or money-market instruments or have recently been valued by independent experts, since the value is then verifiable and has been ascertained in accordance with the relevant standards.

4. **Conclusions**

4.1 The EESC realises that the proposal to amend the Directives on mergers or divisions of public limited liability companies is part of the plan to reduce the administrative burden on European companies. It must nevertheless be borne in mind that this type of legal process generally involves large limited-liability companies whose shareholders comprise both portfolio managers and individual investors, who have differing interests. Individual investors want to maximise the exchange value of their shares.

4.2 The point of the amendment should be to promote the general interest of all those involved in such legal operations, where expert assessments ensure greater transparency and reliability of the offers contained in the draft terms of mergers or divisions, since the experts are independent and therefore lay down objective criteria for the content of the draft terms.

4.3 In addition, the EESC considers the basic rules for involvement of experts to be contained in Articles 10, 10(a) and 10(b) of the second Directive, where waiving the requirement for an expert report is conditional on the existence of recent, verifiable valuations.

4.4 On the other hand, the EESC believes that account should be taken of the provisions of the 10th Directive, not just because it was published recently, but because it is more in line with the new criteria relating to interests protected by company law, considering not just shareholders and creditors, but also employees, who are part of the company structure. We therefore think that the scope of the present proposal should be widened in accordance with Article 16 of the above-mentioned Directive, since this is more consistent with the objective of aligning national rules on mergers or divisions.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which were voted on together, were defeated despite receiving a quarter of the votes cast.

1. **Delete point 3.2:**

'~~*3.2 The EESC nevertheless still sees problems, in particular relating to mergers of large companies, owing to the diversity of shareholders, most of whom are investors. If shares are not managed directly, minority shareholders may be unprotected and obliged to accept agreements adopted by the bodies that manage their securities. Although prevailing rules provide for the right to oppose and withdraw from such agreements in cases where shareholders object to the economic outcome of the operations, especially in relation to share swaps, it will be much more difficult to exercise this right if there is no expert report on the draft terms of mergers.*~~'

Reason

The purpose of the draft amendment to the Directives on mergers or divisions of public limited liability companies is to align their content with that of the Directive on cross-border mergers with respect to the involvement of experts in drawing up the report on the draft terms of mergers or divisions, provided that all shareholders and holders of securities giving the right to vote have so decided. The proposal to simplify the procedures is designed to promote the efficiency and competitiveness of entrepreneurs, without curtailing the protection granted to the company's minority shareholders and creditors.

Where decisions are made unanimously, the problems referred to in point 3.2 no longer apply. Share management bodies are elected by shareholders in order to defend their own interests. Therefore, the problem of making decisions which run counter to the interests of minority shareholders does not arise, since they will be in favour of the decision.

2. **Delete point 3.3:**

'~~*3.3 By the same token we believe that companies' creditors and employees are vulnerable if they are kept in the dark for lack of an objective evaluation under the responsibility of experts. The right of creditors to oppose a merger once the merger notices have been published is recognised, provided their claims are not secured. However, it must be borne in mind that neither the Directive on mergers nor the Directive on divisions sets out any right for workers, whereas the Directive on cross-border mergers provides the option of employee participation (Article 16), which promotes a better outcome by means of appropriate information channels*~~'

Reasons

With reference to point 3.3, it must be pointed out that both mergers and divisions are problems specific to companies. Creditors have the inalienable and acknowledged right to exercise their veto, once the notice/draft terms of merger have been published. The legislation proposed by the Commission is not intended to abolish this right, but rather to simplify the procedures. With reference to the rights of employees, whether or not draft terms of merger have been drawn up or an expert evaluation carried out has no bearing at all on their situation; indeed, the costs inherent in commissioning an expert report are often high, and these funds could be used to improve working conditions and remuneration of employees.

3. **Delete point 3.4:**

'~~*3.4 The effectiveness of legislation depends on whether it safeguards the rights of all those involved in legal processes — in this case mergers and divisions — since their complexity makes it necessary to promote ways of making them transparent without creating conflicts between all the parties concerned. Abolition of the expert report subject to the approval of all the shareholders should happen in the circumstances set out in Article 10 of Directive 2006/68/EC, i.e. when the assets are in the form of transferable securities or money-market instruments or have recently been valued by independent experts, since the value is then verifiable and has been ascertained in accordance with the relevant standards.*~~'

Reason

Point 3.4 of the draft opinion refers to Article 10a) of Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital, which does not apply in this case and is not amended by the draft directive. Article 10(a) of Directive 2006/68/EC provides for a prior fair valuation by a recognised independent expert, and for subsequent revaluation on the initiative and under the responsibility of the administrative or management body. If there is no such revaluation, the minority shareholders (holding at least 5 % of the company's subscribed capital) are entitled to request a valuation by an independent expert. Given that the proposal refers to an extremely rare but clearly defined situation, i.e. the respective unanimity of all shareholders, the problem of creating conflict between different parties, described in point 3.4 of the draft opinion, does not arise.

4. **Amend point 4.1 as follows:**

'*4.1 The EESC realises that the proposal to amend the Directives on mergers or divisions of public limited liability companies is part of the plan to reduce the administrative burden on European companies, and thus endorses the proposal.* ~~*It must nevertheless be borne in mind that this type of legal process generally involves large limited liability companies whose shareholders comprise both portfolio managers and individual investors, who have differing interests. Individual investors want to maximise the exchange value of their shares.*~~'

Reason

To be given orally.

5. **Delete point 4.2:**

~~'*4.2 The point of the amendment should be to promote the general interest of all those involved in such legal operations, where expert assessments ensure greater transparency and reliability of the offers contained in the draft terms of mergers or divisions, since the experts are independent and therefore lay down objective criteria for the content of the draft terms.*'~~

Reason

See reasons given for the deletion of points 3.2, 3.3 and 3.4.

6. **Delete point 4.3:**

~~*4.3 In addition, the EESC considers the basic rules for involvement of experts to be contained in Articles 10, 10(a) and 10 (b) of the second Directive, where waiving the requirement for an expert report is conditional on the existence of recent, verifiable valuations.*~~

Reason

See reasons given for the deletion of points 3.2, 3.3 and 3.4.

7. **Delete point 4.4:**

~~*4.4 On the other hand, the EESC believes that account should be taken of the provisions of the 10th Directive, not just because it was published recently, but because it is more in line with the new criteria relating to interests protected by company law, considering not just shareholders and creditors, but also employees, who are part of the company structure. We therefore think that the scope of the present proposal should be widened in accordance with Article 16 of the above-mentioned Directive, since this is more consistent with the objective of aligning national rules on mergers or divisions.*~~

Reason

See reasons given for the deletion of points 3.2, 3.3 and 3.4.

Voting

For: 44

Against: 104

Abstentions: 28

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community and Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs'

COM(2007) 90 final — 2007/0037 (COD)

(2007/C 175/09)

On 11 May 2007 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Gkofas as rapporteur-general at its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May), and adopted the following opinion unanimously.

1. **Conclusions and recommendations**

1.1 The proposal submitted to the EESC entails the amendment of two regulations: they are Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community, and Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs.

1.2 With regard to Community policies for better regulation, the European Economic and Social Committee considers reducing the administrative burden placed on businesses by existing legislation to be a necessary and crucial factor in boosting competitiveness and achieving the goals of the Lisbon agenda. The Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on *A strategic review of Better Regulation in the European Union*, and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on an *Action Programme for Reducing Administrative Burdens in the European Union* certainly contribute to this purpose.

1.3 The first amendment regards Regulation No 11, which of course dates back a very long way, concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community. The EESC agrees on abolishing the obligation to provide information on routes, distances, rates and other transport conditions, and allowing the use of consignment notes to provide information on the remaining requirements related to the current transport document, because it provides for a reduction of unnecessary administrative burdens while the same level of essential information continues to be available.

1.4 The EESC therefore agrees with the amendment to Regulation No 11, and more specifically with the deletion of Article 5 and the amendment of Article 6 deleting the fifth and sixth indents of paragraph 1. It also agrees with the amendment to Article 6 deleting the third sentence of paragraph 2, and replacing paragraph 3 with the following text: 'Where existing documents such as consignment notes or any other transport document give all the details specified in paragraph 1 and, in conjunction with carriers' recording and accounting systems, enable a full check to be made of transport rates and conditions, so that the forms of discrimination referred to in Article 75(1) of the Treaty may be thereby abolished or avoided, carriers shall not be required to introduce new documents'.

1.5 The EESC agrees with the amendment of Regulation 852/2004, intended to provide for the exemption of the relevant businesses from the requirements of Article 5(1) of Regulation (EC) No 852/2004, since operators must comply with all the regulation's other requirements. Under Article 5(1) of the Regulation, all food businesses which are micro-enterprises predominantly selling their products directly to the final consumer, such as bakeries, butchers, grocery shops, market stalls, restaurants and bars, and which are micro-enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, must put in place, implement and maintain a permanent procedure or procedures based on the Hazard Analysis Critical Control Point (HACCP) principles.

1.6 However, the EESC considers that the exemption of the above-mentioned businesses who sell their products directly to the final consumer, such as bakeries, butchers, grocery shops, restaurants or bars should also be extended to small enterprises, as defined by Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises.

1.7 Extending the exemption in this way will probably mean incorporating two requirements in the amendment of Article 5 of Regulation 852. The provision would include small enterprises — defined of course as having no more than 50 employees, a number too high for exemption from HACCP — and with their inclusion a specific reference and restrictions for catering businesses would be introduced.

1.8 The first requirement could be strict compliance with the hygiene guides and specific hygiene requirements set out in Article 4 of Regulation 852/2004 which, together with staff training, would be sufficient to ensure food product hygiene, while at the same time making it easier for businesses to meet their legal obligations.

1.9 The second requirement — with the same aim of exempting small catering enterprises, which by definition have fewer than 50 employees — could be that, in the specific case of these businesses, there could be no more than 10 persons per shift working on product preparation (production unit-kitchen). The enterprise would be required to provide, in advance, a list of those workers engaged in preparation.

1.10 The introduction of these distinctions and clarifications complies with the provisions of Recommendation 2003/361/EC, while laying down production and shift restrictions specifically for catering businesses such as bakeries, butchers, grocery shops, restaurants and bars so as also to satisfy the conditions necessary to protect and safeguard public health.

2. **Introduction**

2.1 The Commission has asked the EESC to draw up an opinion on the amendment of two regulations: Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community, and Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs.

2.2 Regarding Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community, considers the possibility of deleting outdated requirements and modifying certain requirements in order to minimise the administrative burdens on businesses. Article 5 notably requested transport undertakings (as well as Member States' governments) to provide information on transport tariffs, rates and conditions before 1 July 1961. Article 6(1) of the Regulation requires a transport document containing several information elements concerning the consignor, the nature of the goods carried, the place of origin and destination of the goods as well as the route to be taken or distance to be travelled, including frontier crossing points where appropriate. Since these latter elements are no longer indispensable to achieve the objectives of the Regulation, they can be deleted. The third sentence of Article 6(2) of the Regulation requires the carrier to retain a copy showing the full and final transport charges and any other charges and any rebates or other factors affecting the transport rates and conditions. This sentence can be deleted, as nowadays this information is available in the accounting systems. Article 6(3) is to contain an explicit reference to consignment notes, which are very well-known and often used in the inland transport sector. This reference improves legal certainty for transport undertakings as it clarifies that these consignment notes, if containing all details required by paragraph 1 of Article 6, suffice.

2.3 Another 'fast track action' relates to Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs. The purpose is to exempt micro food businesses able to control food hygiene simply by implementing the other requirements of Regulation (EC) 852/2004 from the requirement to put in place, implement and maintain a permanent procedure or procedures based on the hazard analysis and critical control points ('HACCP') principles. This exemption applies to micro-enterprises that are predominantly selling food directly to the final consumer.

3. **General comments**

3.1 The EESC welcomes the amendment to Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community, envisaging the deletion of outdated requirements and the modification of certain requirements in order to minimise the administrative burdens on businesses.

3.2 With regard to the amendment of Regulation (EC) No 852/2004, the EESC considers that small enterprises should also be taken into account, in keeping with Recommendation 2003/361/EC of 6 May 2003. A degree of flexibility is needed for these businesses, as has been shown in practice.

3.3 It must be recognised that, as in the case of micro-enterprises, it is not possible for some small enterprises to establish HACCP criteria, but only critical control points. This is specifically on account of the difficulty in storing documents, which would place an excessive burden on these businesses.

3.4 Recommendation 2003/361/EC defined micro-enterprises as those employing a total of fewer than 10 persons and with a turnover of less than EUR 2 million. This definition may well be appropriate regarding the number of employees for enterprises in some Member States; however, in proportion to this number of employees and in these Member States, the EUR 2 million turnover is excessive.

3.5 Moreover, the definition given in Recommendation 2003/361/EC makes no distinction between catering or commercial enterprises, at least with regard to the number of employees, The EUR 2 million criterion was added specifically for commercial enterprises, because with only three employees they can — in some Member States, at least — generate a turnover of more than EUR 1.5 million. This unacceptable anomaly has been corrected only for a specific type of enterprise. It is therefore reasonable, at least for the present opinion, to consider that catering businesses operating in various Member States cannot be argued to be micro-enterprises only when they have fewer than ten employees and turnover of less than EUR 2 million. In some Member States, catering businesses operate two shifts and consequently employ considerably more than ten persons, while their turnover is naturally well below EUR 500 000.

4. **Specific comments**

4.1 The EESC considers that the reference to Recommendation 2003/361/EC made in the text under consideration in the present opinion, concerning the definition of enterprises, and specifically to applying HACCP, should take a different approach.

4.2 Extending the exemption in this way will probably mean incorporating two requirements in the amendment of Article 5 of Regulation 852. The provision would include small enterprises — defined of course as having no more than 50 employees, a number too high for exemption from HACCP — and with their inclusion a specific reference and restrictions for catering businesses would be introduced.

4.3 The first requirement could be strict compliance with the hygiene guides and specific hygiene requirements set out in Article 4 of Regulation 852/2004 which, together with staff training, would be sufficient to ensure food product hygiene, while at the same time making it easier for businesses to meet their legal obligations.

4.4 The second requirement — with the same aim of exempting small catering enterprises, which by definition have fewer than 50 employees — could be that, in the specific case of these businesses, such as bakeries, butchers, grocery shops, market stalls, restaurants and bars, there could be no more than 10 persons per shift working on product preparation. The enterprise would be required to provide, in advance, a list of those workers engaged in preparation.

4.5 The introduction of these distinctions and clarifications complies with the provisions of Recommendation 2003/361/EC, while laying down production and shift restrictions specifically for catering businesses so as also to satisfy the conditions necessary to protect and safeguard public health.

4.6 In particular, the EESC considers that the following sentence should be added to Article 5(3) of Regulation (EC) No 852/2004:

4.6.1 'Without prejudice to the other requirements of this Regulation, paragraph 1 may be amended so that small catering enterprises, bakeries, butchers, grocery shops, market stalls, restaurants and bars, as defined and clarified in Recommendation 2003/361/EC, are also exempted from the application of HACCP, on condition of strict compliance with the hygiene guides, the specific hygiene requirements set out in Article 4 of Regulation (EC) No 852/2004, which, together with staff training, would be sufficient to ensure food product hygiene, while at the same time making it easier for businesses to meet their legal obligations. The protection of public health is the key prerequisite'.

4.6.2 'Similarly, for small catering enterprises, bakeries, butchers, grocery shops, market stalls, restaurants and bars, which of course by definition have less than 50 employees, the additional and specific condition must be met that no more than 10 persons per shift may work on product preparation (production unit-kitchen)'.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council relating to the installation of lighting and light-signalling devices on wheeled agricultural and forestry tractors'

COM(2007) 192 final — 2007/0066 (COD)

(2007/C 175/10)

On 11 May 2007 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

Considering that the content of the proposal is entirely satisfactory and requires no comment on its part, the Committee, at its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May), approved the proposed text by 162 votes to 1 with 8 abstentions.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and the Council concerning the export and import of dangerous chemicals'

COM(2006) 745 final — 2006/0246 (COD)

(2007/C 175/11)

On 21 December 2006, the Council decided to consult the European Economic and Social Committee, under Articles 133 and 175(1) of the Treaty establishing the European Community, on the abovementioned 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 8 May 2007. The rapporteur was Mr Pezzini.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 148 votes to 2 with 1 abstention.

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) has always supported the active role played by the European Commission in introducing and implementing the Rotterdam Convention on the prior informed consent (PIC) procedure for hazardous chemicals and pesticides in international trade, together with the Stockholm Convention on Persistent Organic Pollutants (POP).

1.2 The Committee agrees that a harmonised approach by the Commission is necessary, aimed at improving the protection of human health and the environment in importing countries, especially developing countries. It also agrees on the need to use streamlined, clear and transparent mechanisms based on smooth, uniform procedures to ensure the prompt provision of proper information, to countries that import dangerous chemical products and substances.

1.3 The Committee considers that the more stringent provisions under Regulation (EC) 304/2003, which was annulled by the Court of Justice on the grounds of its wrong legal basis, and reinstated in the present proposal for a new regulation are a key element in overall safety and the management of dangerous chemicals.

1.4 The Committee supports the Commission's aim to use the opportunity provided by the correction of the legal basis of the regulation in order to increase the effectiveness of the

Community instrument and boost legal certainty, tying in closely with Regulation (EC) No 1907/2006 on chemicals legislation (REACH) which is to come into force in June 2007.

1.5 In the Committee's view, the new legislation should include provisions on, firstly, the drafting of practical guides and information documents and, secondly, the organisation of training courses based on Community standards, intended primarily for customs officials, with contributions from relevant Commission and, in particular, Joint Research Centre (JRC) staff.

1.5.1 The Committee emphasises the importance of using the language of the importing country on labelling and the safety data sheets.

1.6 The EESC warmly welcomes the fact that provision is made for exports to proceed on a temporary basis, while further efforts are made to obtain explicit consent.

1.7 The EESC is convinced that the key to the effective, smooth and transparent functioning of the proposed mechanisms lies in the customs control arrangements, and in full cooperation between the customs authorities and the national authorities designated to apply the regulation (DNAs).

1.8 The Committee emphasises that it is essential for the proposed improvements to the Combined Nomenclature, and the development of a version of the EDEXIM database specifically for customs authorities, to be backed by information and training initiatives that are systematic and harmonised at Community level.

1.8.1 The EESC views the financial and human resources available to the Commission and, in particular, the JRC for this purpose to be entirely inadequate to the task of:

— preparing harmonised information and training packages, and guides for the various categories of user;

— ensuring the accuracy of safety data sheets for intermediate and final users, especially workers;

— establishing a dialogue with technical assistance to importing countries, especially developing countries and those with transitional economies;

— ensuring greater awareness in civil society of existing risks and how to prevent them.

2. **Reasons**

2.1 The European Committee has previously ([1]) expressed its support for the aims and mechanisms of the Rotterdam Convention ([2]), which set up a prior informed consent procedure for the export and import of dangerous chemicals, at the same time improving access to information and providing technical assistance to developing countries.

2.2 The Committee agreed with the views of Member States, that it was 'appropriate to go beyond the provisions of the convention in order to fully assist developing countries' ([3]).

2.3 Regulation (EC) No 304/2003 concerning the export and import of dangerous chemicals, which was adopted on 18 January 2003 and come into force on 7 March 2003, was in fact primarily aimed at implementing the Rotterdam Convention with regard to the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

2.3.1 However, the regulation contained some provisions which went beyond the requirements of the convention.

2.4 More specifically, the regulation stipulates that the exporter of a chemical listed therein must notify the designated national authority prior to the first intended export of the chemical. Once the notification has been checked for full compliance, it is forwarded to the Commission, which registers it in the EDEXIM database as notification of a Community export, specifying the product and the importing country.

2.5 Likewise, in the event of a Community import of a chemical from a third country, the Commission receives the relevant export notification, acknowledges receipt of the notification and registers it in the EDEXIM database.

2.6 More generally, the Commission is responsible for ensuring proper application of the regulation. In practice this means it must manage the export and import notifications.

([1]) EESC Opinion of 20.6.2002 on the *Proposal for a Council Regulation concerning the export and import of dangerous chemicals*, OJ C 241 of 7.10.2002, p. 50.

([2]) The Rotterdam Convention, which was signed on 11 September 1998 and came into force on 24 February 2004, governs the export and import of certain dangerous chemicals and pesticides, and is based on the fundamental principle of prior informed consent (PIC) on the part of the importer of a chemical product. More than 30 chemicals are currently covered by the PIC procedure under the terms of the Convention.

([3]) See footnote 1.

2.7 The EU export notification procedure currently applies to some 130 chemical products and groups of products/substances, listed in Annex I, Part 1 of Regulation (EC) No 304/2003 ([4]).

2.8 Lastly, clear obligations are imposed concerning packaging and labelling.

2.9 Regulation (EC) No 304/2003 also provides for penalties in the event of infringement, specifying that such penalties must be 'effective, proportional and dissuasive', and are to be determined by the Member States.

2.9.1 In addition, Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the registration, evaluation, authorisation and restriction of chemicals (REACH) was adopted on 18 December 2006, and will come into effect on 1 June 2007 ([5]).

2.10 In its judgments in Cases C-94/03 and C-178/03 (both of 10 January 2006), the Court of Justice of the European Communities established that the legal basis of Regulation (EC) No 304/2003 should have Articles 133 and 175 of the EC Treaty and not on Article 175 alone and that, consequently, the regulation itself was annulled. The Court did however specify that the effects of the regulation would be maintained pending the adoption, within a reasonable period of time, of a new regulation founded on appropriate legal bases.

2.11 The report covering the 2003-2005 period ([6]), presented on 30 November 2006 in accordance with Article 21 of Regulation (EC) No 304/2003, reviewed the following aspects:

— implementation to date of the regulation;

— problems encountered in the procedural phases;

— changes needed to increase its effectiveness.

2.12 All the Member States now have the necessary legislation and administrative systems for the implementation and enforcement of the Regulation: 2 273 export notifications have been made to date (more than 80 % of them originating from Germany, the United Kingdom, the Netherlands, France and Spain), while the number of importing countries rose from 70 in 2003 to 101 in 2005.

2.13 Customs control arrangements are the most sensitive part of the system. Closer cooperation between designated national authorities and the customs authorities is needed, with regular exchange of information and clearer provisions, particularly regarding the specific obligations of exporters and the application of improved control instruments to the Combined Nomenclature and the Integrated Tariff of the European Communities (TARIC).

([4]) Subsequently amended by Commission Regulation (EC) No 777/2006.
([5]) See ITACA No 3 (December 2006), p. 8 — Rome, Sergio Gigli.
([6]) COM(2006) 747 final of 30 November 2006.

2.14 The Committee agrees that a harmonised approach by the Commission is necessary, aimed at improving the protection of human health and the environment in importing countries, especially developing countries. It also agrees on the need to use streamlined, clear and transparent mechanisms based on smooth, uniform procedures in order to ensure the prompt provision of proper information, free of red tape, to importing countries about EU exports of dangerous chemical products and substances.

3. **The Commission proposal**

3.1 In addition to rectifying the legal bases, which had led to Regulation (EC) No 304/2003 being annulled, the Commission's proposal for a new regulation introduced other changes, in the following areas:

— new legal bases;

— new definitions. The definition of 'exporter' needs to be extended, and the concept of 'preparation' needs to be corrected;

— a new explicit consent procedure;

— reinforcement and strengthening of customs control;

— new comitology rules ([7]).

4. **General comments**

4.1 The Committee restates its full support for Community strategies in favour of sustainable development, including the voluntary SAICM framework ([8]), and highlights the need for a preventive approach to chemicals management in order to guard against any harmful effects for human health and the environment, as it previously pointed out several times ([9]) in its contribution to the introduction of the REACH legislation.

4.2 The EESC thus supported the introduction of the REACH system, especially the move to make manufacturers, importers or users responsible for preparing documentation on chemicals with a view to registration and an initial risk assessment; for this reason the EESC supported the establishment of an EU registration system and of a Community body to manage it ([10]).

4.2.1 In connection with the reporting requirements laid down by the specific rules on dangerous chemicals, the Committee urges the Commission to review the list of products posing a risk to human health and the environment, and to replace them with less dangerous products and preparations wherever practical alternatives have been prepared and tested as a result of technological research and innovation.

([7]) See Decision 1999/468/EEC, as amended in July 2006.
([8]) SAICM: Strategic Approach to International Chemicals Management — UNEP.
([9]) See EESC opinions CESE 524/2004 and 850/2005 on chemicals legislation (REACH). OJ C 112 of 30.4.2004 and OJ C 294 of 25.11.2005.
([10]) See EESC opinion CESE 524/2004, point 3.1. OJ C 112 of 30.4.2004.

4.3 The EESC has always supported the active role played by the European Commission in introducing and implementing the Rotterdam Convention on the PIC procedure for hazardous chemicals and pesticides in international trade, together with the Stockholm Convention on Persistent Organic Pollutants (POP), aimed at eliminating the production and use of certain chemical products, including nine types of pesticide. The Committee has also recently drawn up an opinion on this issue ([11]).

4.4 The Committee considers that the more stringent provisions under Regulation (EC) 304/2003, which was annulled by the Court of Justice on the grounds of its wrong legal basis, and reinstated in the present proposal for a new regulation ([12]) are a key element in overall safety and the management of dangerous chemicals.

4.5 The Committee also believes that amendments should be made to the regulatory provisions, to close the operational loopholes and resolve the problems in implementation identified in the 2003-2005 report.

4.6 The Committee therefore supports the Commission's aim to use the opportunity provided by the correction of the legal basis of the regulation in accordance with the Court's judgment (on which the Committee drew up an opinion at the time ([13])) in order to increase the effectiveness of the Community instrument by ensuring greater clarity, transparency and legal certainty for both exporters and importers.

4.7 The EESC considers that the legal certainty, consistency and transparency of the proposed new Community legislation should be ensured by means of better definitions of the terms 'exporter', 'preparation' and 'chemical subject to the PIC procedure'.

4.8 In order to contribute to the process of simplification, removing red tape and speeding up procedures, the EESC fully supports the provision to allow exports to proceed on a temporary basis, while further efforts are made to obtain explicit consent, together with the provision to waive the consent requirement for chemicals to be exported to OECD countries.

4.9 The Committee also stresses the importance of the fact that requests for consent and period review of consent are to be channelled through the Commission, in order to prevent unnecessary overlaps or duplication, as well as misunderstandings and uncertainty in importing countries. It considers that the financial and human resources allocated to Commission and, in particular, JRC services for this purpose must also be adequate to the task of providing harmonised information and training packages, guides and safety data sheets for the different categories of user and, lastly, a dialogue with the importing countries, especially developing countries, with a view to identifying and clarifying problems arising from import/export notifications.

4.9.1 Given the seriousness of the work accidents sometimes caused by dangerous chemical substances, and in the light of the international conventions of the ILO on this matter ([14]), the Committee cannot overemphasise the importance of providing labelling information and safety data sheets in the language of the importing country. This would benefit intermediate and final consumers, especially those working in agriculture and SMEs.

4.10 The EESC is convinced that the key to the effective, smooth and transparent functioning of the mechanisms introduced under the proposed legislation lies in the customs control arrangements, and in full cooperation between the customs authorities and the national authorities designated to apply the regulation (DNAs). The proposed improvements, consisting in the inclusion of 'warning flags' in the Combined Nomenclature, and the development of a version of the EDEXIM database specifically for customs authorities, must be backed by information and training initiatives that are systematic and harmonised at Community level.

4.11 In the Committee's view, the preparation of practical guides and information documents, as well as training actions based on Community standards, should be stipulated in the new legislation, particularly for the newly-joined Member States.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([11]) See opinion NAT/331, CESE 23/2007. OJ C 93 of 27.4.2007.

([12]) Community provisions stipulate that notification must be given for the export of all chemical products/parasiticides which are banned or severely restricted in the EU, as well as for compounds containing such products, and the explicit consent of the importer must be obtained. This applies to products matching the criteria for PIC notification, even if they lie beyond the scope of the Convention and are not among those products already subject to the PIC procedure.

([13]) See footnote 1, point 5.10.

([14]) See Articles 7 and 8 of ILO Convention C 170 concerning Safety in the use of Chemicals at Work, 1990, and Articles 9, 10 and 22 of Convention C 174 concerning the Prevention of Major Industrial Accidents, 1993.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council concerning the placing of plant protection products on the market'

COM(2006) 388 final — 2006/0136 COD

(2007/C 175/12)

On 15 September 2006, the Council decided to consult the European Economic and Social Committee, under Articles 37(2) and 152(4)(b) of the Treaty establishing the European Community, on the abovementioned 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 8 May 2007. The rapporteur was Mr Van Oorschot.

At its 436th plenary session, held on 30-31 May 2007 (meeting of 31 May 2007), the European Economic and Social Committee adopted the following opinion by 65 votes to one, with one abstention.

1. **Summary of the conclusions and the recommendations**

1.1 The EESC welcomes the European Commission's proposal to introduce a new Regulation on the placing of plant protection products on the market (fungicides, insecticides, herbicides and similar products for use in agriculture and horticulture).

1.2 In addition to the goal of ensuring that the plant protection products placed on the market are effective and safe, a further top priority objective is to ensure that these products are used in a sustainable and safe way. The EESC therefore welcomes the fact that the European Commission is presenting, together with the proposal for a Regulation under review, a proposal for a Directive regulating the sustainable use of plant protection products.

1.3 The EESC notes that in the preamble to the proposal for a Regulation, strong emphasis is placed on preventing and limiting harmful consequences for humans and the environment arising from the use of plant protection products. It is, in the EESC's view, vital to prevent harmful consequences for the environment and human beings arising from the use of plant protection products. The EESC does, however, draw attention to the fact that, one aspect of an approach geared to ensuring sustainability is that, economic considerations, too, must carry equal weight. In addition to the growing level of interest in organic farming products, the vast majority of present-day consumers is interested mainly in being provided with high-quality products which are, furthermore, available throughout the year and at an acceptable price. The safety of products for consumers is an absolute prerequisite in this context. This requires considerable efforts to be made in the agricultural production value chain. The availability of adequate supplies of good, safe plant protection products is, in this connection, indispensable.

1.4 The EESC expresses its concern over the introduction of criteria for the approval of plant protection products based on the intrinsic properties of the active substances and the consequences which this measure may have with regard to innovation in respect of new and better plant protection products. Rigid application of these criteria may result in a substance which fails to meet one criterion, whilst representing an improvement vis-à-vis all the other criteria, being denied approval. The EESC calls for a risk assessment to be carried out which takes greater account of actual use and exposure.

1.5 The EESC takes the view that the proposed introduction of zonal authorisation and mutual recognition represents a first step along the road towards complete harmonisation of authorisations in Europe. The EESC proposes that mutual recognition of authorisations also be made possible on a cross-zonal basis, in the case of (neighbouring) states where similar climatic and agricultural conditions prevail.

1.6 The EESC supports the principle of carrying out comparative assessments of plant protection products containing substances that are candidates for substitution. The EESC does, however, call for evaluations to be carried out at less frequent intervals and for the normal period of data protection to be applied in the case of the abovementioned substances in order to maintain a degree of readiness to invest in these substances on the part of industry and thereby prevent bottlenecks in the agricultural sector.

1.7 The EESC considers that the proposal for a Regulation contains too few incentives for the authorisation of plant protection products for minor uses. The EESC proposes two measures for improving this situation. Firstly, a system could be introduced under which the initial applicant would be granted a longer period of data protection, the greater the number of minor uses that are included. Secondly, the EESC asks the European Commission to facilitate the drawing-up of an up-to-date list for the benefit of the Member States, setting out all the authorised (minor) uses.

2. **Introduction**

2.1 *General observations*

2.1.1 Plant protection products are used to afford protection and to promote plant health. They enable farmers to increase their yield and to make their production methods more flexible. This ensures reliable production of affordable, safe (food) products in local regions.

2.1.2 The vast majority of European consumers is becoming ever more demanding with regard to the quality of food and its availability throughout the year; food safety is regarded as an absolute prerequisite and a self-evident requirement in this respect. As a result, the agricultural production chain is facing major challenges. If it is to be in a position to satisfy the exacting demands of this large group of consumers, it must be able to have available a sufficiently broad package of good, safe plant protection products.

2.1.3 On the other hand, a number of other factors need to be taken into consideration: the use of plant protection products may have an impact on agro-ecosystems; these products may pose risks to the health of users; and they may have an impact on food quality and harmful effects on the health of consumers, particularly in cases where harmful residues of plant protection products remain in food products, as a result of inappropriate use of plant protection products (uses which are not in accordance with good practice).

2.2 *Regulatory framework*

2.2.1 The proposal for a Regulation under review involves replacing the currently applicable Directive 91/414/EEC on the marketing of plant protection products. This Directive seeks to take action at source in order to preclude risks by making provision for the application of a very comprehensive risk-assessment procedure in respect of each active substance and the products which contain these substances, before these products may be marketed and used.

2.2.2 The proposal under review also involves repealing the current Directive 79/117/EEC prohibiting the placing on the market and the use of plant protection products containing certain active substances.

2.2.3 The EU's regulatory framework for plant protection products also includes Regulation (EC) 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC which sets maximum residue levels (MRLs) of active substances in agricultural products.

2.2.4 Together with the proposal for a Regulation under review, a proposal is also presented for a Directive of the European Parliament and of the Council establishing a framework for Community action to achieve a sustainable use of pesticides (COM(2006) 373 final). The aim of this Directive is to regulate the use and distribution of pesticides insofar as these phases are not addressed in the proposal for a Regulation.

2.3 *Background to the proposal for a Regulation*

2.3.1 In connection with the European Commission's evaluation of Directive 91/414/EEC, the European Parliament and the Council called, in 2001, for the Directive to be amended with a view to:

— establishing criteria for the approval of active substances;

— tightening up criteria for the approval of substances with a high risk profile;

— introducing a simplified procedure for substances with a low risk profile;

— introducing the principle of applying comparative assessment and substitution;

— improving mutual recognition by introducing product authorisation zones for plant protection products.

2.3.2 Following an extensive period of consultation (lasting five years) with all stakeholders and the establishment of an impact assessment, the Commission presented its proposal for amending Directive 91/414/EEC in July 2006. The Commission decided to replace the Directive by a Regulation with a view to achieving simplification and further harmonising legislation in the EU Member States.

2.4 *Short summary of the proposal for a Regulation*

2.4.1 A positive list of active substances is to be drawn up at EU level by the Standing Committee on the Food Chain and Animal Health. Approval of the active substances is to be based on a set of clear criteria which will seek to ensure a high level of protection for human beings, animals and the environment.

2.4.2 When active substances are being assessed, there must, as a minimum requirement, be at least one use which is safe for both the user of the product and the consumer and there must not be any unacceptable impact on the environment. Clear deadlines are laid down for the various stages of the assessment and in respect of decision-making on the approval of active substances.

2.4.3 Member States, themselves, will continue to be responsible for the authorisation of plant protection products at national level; these products must be based on active substances included in the list of approved active substances.

2.4.4 When assessing the dossiers submitted in connection with applications for authorisation, the Member States should apply harmonised criteria, if such criteria are available, and take account of national circumstances.

2.4.5 In the case of substances with a low or normal risk profile, the Commission is introducing a system involving mandatory mutual recognition of authorisations for plant protection products within 'authorisation zones'. Under this system, in any of the three proposed climate zones (the Commission divides the EU into three zones), a Member State takes a decision on a national authorisation for a given product and the product is to be authorised only in those Member States where the producer has also applied for mutual recognition of the authorisation in question.

3. **General observations**

3.1 *The importance of plant protection products to the supply of high-quality food to the EU*

3.1.1 In the preamble to the Directive the recitals are listed which led to the drawing-up of the proposal for a Regulation. Express mention should also be made, in this preamble, of the importance, in respect of the reliable supply of safe and high-quality food to demanding European consumers, of having available adequate quantities of plant protection products.

3.2 *Making provision for provisional authorisations subject to certain conditions*

3.2.1 The Directive makes no provision for Member States to issue provisional national authorisations. This can delay the marketing of substances which update and improve those currently available. The Commission is endeavouring to tackle this situation by applying shorter deadlines designed to lead to the more rapid inclusion of new substances on the positive list.

3.2.2 The EESC proposes that the Regulation still provides for provisional authorisations to be granted at national level in cases where the set deadlines have been exceeded because of administrative delays and where the obligation in respect of maximum residue levels (MRLs), set out under Regulation (EC) 396/2005, has been complied with.

4. **Specific observations**

4.1 *Risk assessments in connection with the application of the criteria for approving active substances*

4.1.1 Article 4 of the proposal for a Regulation deals with the approval criteria for active substances, with reference to Annex II. Strict application of these criteria would result in active substances being denied approval already on the basis of a single property since all the requirements must always be met.

4.1.2 The application of such approval criteria for plant protection products, based solely on the intrinsic properties of their active substances without taking account of actual use and levels of exposure, would undermine the principle that decisions are to be taken on the basis of risk assessments. This situation will result in the gradual disappearance from the market of a number of existing products/applications, which may well be required in order to meet the need to have a broad range of products available.

4.1.3 In this way, Article 4 will prevent the marketing of innovative products which bring about improvements in respect of all criteria but fail to fulfil the requirements in respect of just one criterion. The EESC cannot endorse these provisions since they would unnecessarily curtail innovation in respect of new and better products. It takes the view that the intrinsic approval criteria for active substances should only be used to identify candidates for substitution and not to reject products in advance without carrying out a thorough evaluation.

4.2 *Extending zonal authorisation and mutual recognition*

4.2.1 The EESC believes that the system of zonal authorisation and mutual recognition represents an important step on the road towards establishing a completely harmonised European system for the marketing of plant protection products.

4.2.2 Introduction of compulsory mutual recognition of authorisations in the Member States in respect of same authorisation zone, alongside the standard authorisation procedure at national level, will prevent the duplication of work in the Member States and make innovatory, environmentally-friendly plant protection products available more quickly.

4.2.3 The EESC proposes that provision be made for mutual recognition of authorisations also on a cross-zonal basis, in the case of neighbouring countries having comparable conditions of production.

4.2.4 In the case of the use of plant protection products in greenhouses and in the case of post-harvest treatment, the Commission proposes that provision be made for compulsory mutual recognition by all the Member States in all zones (Article 39). The EESC takes the view that seed treatment, one of the cornerstones of integrated plant protection (IPS), should also be included under this regime.

4.3 *Adjustments to the comparative assessment procedure*

4.3.1 In the case of plant protection products based on more critical substances (candidates for substitution), Member States are to carry out a comparative assessment within a period of four years from the authorisation of the product (Article 48). This assessment is to be carried out with a view to finding an alternative substance, thereby making it possible to replace the more harmful substances, except in cases where the substance in question continues to be necessary in order to provide ongoing protection in the event of the development of resistance.

4.3.2 The EESC takes the view that (a) the stipulation that comparative assessments are to take place within four years of the granting of authorisation and (b) the seven-year period of data protection afforded to candidates for substitution do not provide the industry with adequate security and will lead to the early withdrawal of such products from the market, with possible damaging consequences as regards the availability of satisfactory products in the case of resistance and minor uses.

4.3.3 The EESC calls for comparative assessments to be carried out at less frequent intervals and for the application of the normal period of data protection in the case of candidates for substitution in order to maintain a degree of readiness to invest in such substances on the part of industry, thereby preventing bottlenecks in agricultural production and bottlenecks further on in the value chain in the direction of the consumer.

4.4 *Inadequate incentives for minor uses*

4.4.1 Article 49 entitles, amongst others, professional users and professional agricultural organisations to request that the authorisation of a plant protection product be extended to cover minor uses. Under this article, Member States are also to establish and regularly update a list of minor uses.

4.4.2 The EESC welcomes this article but notes that it does not provide holders of authorisations, themselves, with sufficient incentives to seek to bring about extensions of authorisations for minor uses.

4.4.3 The EESC proposes that holders of authorisations be given a bonus in the form of an extension of the period of data protection in cases where, following the granting of an authorisation, they are the first applicants to request several extensions of authorisations to include minor uses.

4.4.4 The EESC proposes that the European Commission facilitates the drawing-up of a centralised European list of minor uses and makes such a list available for inspection by the Member States, in place of the proposed lists to be drawn up by individual Member States under Article 49(6).

4.5 *Provision of information*

4.5.1 Under the proposal for a Regulation, it is possible to make it obligatory to inform any neighbours who have requested to be informed and who could be exposed to the spray drift; such neighbours are to be informed before the product is used (Article 30).

4.5.2 Whilst the EESC believes that transparency with regard to the use of plant protection products makes very good sense, it does, however, take the view that the proposed obligation to provide information would undermine the confidence in the law, on which the marketing of plant protection products is based. We are, after all, dealing here with the use of products which are deemed to be safe and imposing an obligation to inform neighbours could convey the opposite assumption.

4.5.3 The EESC believes that implementation of this article is not conducive to mutual understanding between users of plant protection products and their neighbours; it may, on the contrary, upset social cohesion in rural communities since making it obligatory to inform neighbours may give rise to the impression that the products being used are unsafe. This provision would, in this sense, be counterproductive.

Brussels, 31 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community'

COM(2006) 818 final — 2006/0304 (COD)

(2007/C 175/13)

On 8 February 2007 the Council decided to consult the European Economic and Social Committee, under Article 175 (1) of the Treaty establishing the European Community, on the abovementioned 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 8 May 2007. The rapporteur was Mr Adams.

At its 436th plenary session, held on 30-31 May 2007 (meeting of 31 May), the European Economic and Social Committee adopted the following opinion by 50 votes to 8 with 4 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee welcomes the proposed Directive which offers a carefully considered and pragmatic approach to moderating and compensating for the rapidly growing volume of greenhouse gases emitted by the aviation industry.

1.2 By bringing aviation within the remit of the European Emissions Trading Scheme (ETS) the scheme is itself potentially strengthened and made more robust as the pre-eminent model for tackling CO_2 emissions at a global level.

1.3 The proposal is realistic. It recognises the strength of political, economic and consumer pressures for the continuing development of air travel and transport whilst using the market

mechanism of the ETS to compensate for one of the main, damaging external impacts of the aviation industry.

1.4 The proposal is nevertheless vulnerable. It stands or falls with the ETS — a system which has met with criticism from many stakeholders, which has yet to prove itself and which in turn depends on fair allocation of CO_2 allowances, imaginative and innovative investment in CO_2 reduction and enforcement of National Allocation Plans by Member States.

1.5 The EESC welcomes the inclusion in the scheme of all flights into or out of Europe from 2012 but believes the start date should be 2011 as for European operators.

1.6 It is noted that the Directive allows the entry into the scheme of 'external' flexible project credits from the Kyoto Joint Implementation or Clean Development Mechanisms (JI/CDM). Support for carbon reduction, certified renewable energy/energy efficiency schemes in developing countries is positive providing strict auditing is maintained.

1.7 The Committee recognises that this is a complex issue but feels the proposal is somewhat opaque and fails to present its advantages clearly. The proposal appeals in different ways and at various levels to the EU as a whole, to individual Member States, to different sectors of industry and to the public. In particular the positive potential of the Directive to support and reinforce the ETS should be emphasised. It is also noted that active and complementary support will be required from other parts of the Commission, particularly Transport and Energy and Research.

1.8 The EESC therefore recommends that:

1.8.1 The inclusion of aviation in the ETS is used as an opportunity to revise the scheme, correct existing mistakes and strengthen weak areas so that it enables a genuine and effective market in carbon trading to develop — a critical element in supporting the EU's pledge to meet a 20 % CO_2 reduction by 2020.

1.8.2 The proposed emissions cap is lowered to require aviation to make an adjustment more comparable with other industries already in the ETS.

1.8.3 The proposed free allocation of allowances to operators should be eliminated or significantly reduced requiring all, or the majority, of allowances to be auctioned.

1.8.4 A common limit on the purchase of credits from JI/CDM schemes is applied to ensure that a high proportion of emissions reductions occur within the EU.

1.8.5 Advance planning is considered for how the effects of the Directive will be presented to the public. Not only will this further raise awareness of the impact of aviation on climate change but it should encourage more openness on the financial implications of the scheme for the customers and operators and minimise the risk of windfall profit-taking.

1.8.6 Member States should be asked to voluntary offset the emissions from flights by Heads of State, Heads of Government or Government Ministers, which are presently exempted for administrative reasons (flights mostly operated by military units), so as to set a positive example.

1.8.7 Complementary work on non-ETS carbon-reduction measures should also be given a very high priority. These include eliminating legal barriers to tax and regulatory steps — particularly on aviation fuel; restricting nitrogen oxide emissions; improving air traffic management and research into greater engine and airframe efficiencies.

2. **Introduction**

2.1 Aviation has been and remains an integral and important part of the expanding global economy. Aviation is, in many ways, a success story. Since 1960 it has grown each year by an average of 9 %, a rate 2.4 times greater than the growth in global GDP. This growth continues and on present trends air transport will double by 2020.

2.2 This success has inevitably created problems such as the growth and local impact of airports but in the context of climate change attention is increasingly focussed on how aviations' greenhouse gas and other emissions contribute to global warming. The aviation industry, as a service sector, provides about 0.6 % of the EU's economic added value but 3.4 % of its greenhouse gas (GHG) emissions. Emissions from aviation in the EU have increased by 87 % since 1990 whilst the EU's total GHG emissions from all sources fell by 3 % in the same period.

2.3 International flights have been historically exempt from fuel tax and are not covered by Kyoto Protocol targets. Taking into account the long working life of aircraft and the possibilities for further technical and operational efficiencies the growth of aviation means the sector will continue to increase its GHG emissions, undermining efforts made in other sectors where reductions are taking place. Although aviation has, by and large, seen great improvements in regulation, coordination and enforcement in matters of safety and security it has been difficult to reach international agreement on environmental issues which may also impact on commercial interests.

2.4 The Commission has been seeking a way to encourage or enforce reduction in aviation GHG emissions for some time. In 2005 it adopted a Communication, *'Reducing the Climate Change Impact of Aviation'* ([1]) In April 2006 the EESC in its Opinion on this communication ([2]) concluded that additional policy measures were needed to control the impact of aviation on climate change and recommended, *inter alia*, inclusion of aviation in the EU Emissions Trading Scheme. Similar positions were taken by the Council of Environment Ministers, The European Council and the European Parliament. The Commission have now proposed a Directive — the subject of this Opinion — which includes aviation in the Community scheme for GHG emission allowance trading.

3. **Summary of the proposed Directive**

3.1 In the introduction to the proposed Directive it is noted that growth in aviation emissions could, by 2012, offset more than a quarter of the EU's environmental contribution made under the Kyoto Protocol. Reaching international agreement on action is proving difficult but the proposed Directive is intended to provide a model for action at a global level and is the only imitative which offers this possibility.

3.2 The present proposal amends Directive 2003/87/EC on GHG allowance trading to include aviation in the Community scheme. An impact assessment accompanying the proposal concludes that whilst emissions trading is the most efficient solution to reducing the climate impact of aviation the impact of the measures would have 'only a small effect on forecasted demand growth' and therefore on the volume of emissions ([3]). It must therefore be understood that this proposal is not designed to restrict the growth of aviation *per se* but to ensure that some of its damaging environmental impacts are offset by actions mostly in other economic sectors.

3.3 The present EU ETS ([4]) covers about 12,000 energy-intensive industrial installations which are responsible for 50 % of total EU CO_2. Under the proposal airlines will receive tradable allowances to emit certain levels of CO_2 each year with an overall cap defined by the average annual level of emissions generated by the aviation industry in the three years 2004-2006. Operators can sell surplus allowances or buy additional allowances on the ETS market, e.g. from industrial installations which have reduced their emissions or from clean energy projects in third countries under the Kyoto Protocol mechanisms.

3.4 The proposed directive will cover emissions from flights within the EU from 2011 and all flights to and from EU airports from 2012. Both EU and foreign aircraft operators would be covered. It is estimated that by 2020 the proposal may add between EUR 1.8-EUR 9 to the cost of a return ticket within Europe and more for long-haul flights, e.g. EUR 8-EUR 40 for a return ticket to New York. The very modest impact of such a charge in the price-elastic airline industry is the reason why the scheme is seen as having little impact on growth.

3.5 It should be noted that the Commission recognises that inclusion of aviation in the ETS is just one of the possible steps that need to be taken at international level to deal with the increasing impact of aviation emissions on the climate. It suggests bringing forward proposals related to nitrogen oxide emissions following an impact assessment in 2008. The International Civil Aviation Organisation (ICAO) is also intending to make further proposals at its assembly in September 2007 though indications suggest that pressure is building to weaken and undermine the EU initiative.

4. **General comments**

4.1 The EESC welcomes the fact that the inclusion of aviation in the ETS is the first step, at international level, in getting air transport to pay some of the environmental cost it has been externalising since its inception. The inclusion of non-EU operators is also welcomed. In addition the proposed scheme will require aircraft that are less fuel-efficient to use a greater permit allocation, providing a modest stimulus for technical and operational efficiencies. As low-cost airlines have an average 10 % higher load factor than 'legacy' carriers the proposal will also have slightly less impact on the low fare carriers whilst encouraging the discounted sale of vacant seats by all airlines.

([1]) COM(2005)459 final 27.9.2005.
([2]) NAT/299 Climate Change Impact of Aviation.
([3]) Summary of Impact Assessment para 5.3.1.
([4]) See Appendix I for a short description of the ETS.

4.2 The Committee recognises that action on flight pattern efficiencies, alternative fuels, improved design and higher load factors will all make some contribution to reducing the growth of GHG emissions. Nevertheless, most of these measures have been actively applied in aviation since 1990 and yet this period has still seen an increase in emissions of over 85 % — a figure which continues to rise due to the significant increases in passenger numbers and freight carried.

4.3 This Directive proposes to tackle the growing contribution to climate change by the aviation sector by including it in the ETS. The ETS itself provides the only international, market-related large-scale CO_2 regulatory and compensatory mechanism but has experienced significant initial problems in its trial phase which ends in 2007. This was largely due to over-allocation of allowances by Member States. For the EU-ETS to meet its objective to be a market instrument of reducing CO_2 emissions it is essential that the Commission, supported by all Member States is resolute in determining and applying CO_2 quotas and ensuring compliance.

4.4 In practice the inclusion of aviation might be of great benefit to the ETS. Aviation is less price sensitive than most of the industrial process and energy-generation industries currently responsible for the majority of CO_2 emissions. As (inevitably) the CO_2 share from aviation increases then significant new funds will enter the ETS system providing investment for further carbon savings in other sectors. Whilst aviation itself may have limited capacity to make such savings it can provide a conduit for funds enabling other industries to do so.

4.5 For example, the Commission estimates that the Directive will result in net GHG reductions of 183 million metric tonnes of CO_2 by 2020 compared with a business as usual scenario. Projecting the price of carbon during that period is imprecise and depends on a firm allocation regime but if the aviation industry purchased 100 million tonnes during that period at an average price of EUR 30 it would, in principle, inject EUR 3 billion into CO_2 reduction.

4.6 The EESC in 2007 has commenced an extensive programme of encouraging action and best practice in civil society on climate change, an integral part of which is to minimise further contributions to GHG emissions. Whilst the Committee recognises that this proposal is, pragmatically, the best approach to the inclusion of aviation in a carbon-reduction strategy it must however point out that the proposed Directive will do virtually nothing to limit the ever-increasing output of GHGs by the air transport sector. This creates a major 'presentation' problem. The aviation industry is already the fastest-growing source of GHG emissions in Europe and this Directive indulges the industry in its insistence on growth without requiring a limit to emissions. The public will need to understand that the Directive can stimulate significant resources, which will be applied to compensatory CO_2 reduction.

5. **Specific comments**

5.1 In terms of achieving the stated objective of significantly cutting emissions from the industry the proposed Directive is terminologically inexact. As airlines can buy allowances at 'market' rate to cover emissions above the capped allocation the effect on reducing GHGs from the aviation sector will be minimal, estimated at a possible 3 % net reduction by 2020, or less than just one year's growth in GHG emissions from aviation. From the Commission's own figures it can be seen that the marginal cost increase in ticket prices will have little effect on the demand for air travel.

5.2 By issuing the great majority of initial allowances free of charge to airlines and allowing top-up purchasing within the general ETS (an open as opposed to a closed system for air transport — or possibly for transport as a whole) the Commission accepts the *status quo* and does little to affect the continued and rapid growth of a GHG-emitting aviation sector. However the heart of the problem is that such a restriction is currently politically and economically unacceptable. To make any progress the Commission has calculated that not only will the inclusion of aviation in the ETS drive some internal carbon reduction efficiencies but it will also, by balancing-off increased CO_2 emissions from aviation by reductions in other sectors, provide genuine market stimulus and finance for new research and applications for CO_2 reductions elsewhere.

5.3 The Commission notes that a 'closed' system of trading allowances — i.e. within the aviation sector only — the allowance price would be EUR 114-EUR 325 as opposed to the assumed EUR 30 per tonne. Such a closed system is likely to increase ticket prices by EUR 8-EUR 30 for a short haul flight. Whilst this may be thought a more realistic way of affecting both demand and supporting fuel efficiency and research into emission minimisation it is unlikely to be supported at EU level where there is evidence of differing transport priorities. A closed or 'transport only' system would make a global agreement even more unlikely.

5.4 In the proposed Directive the Commission has recognised but decided not to take account of the well-researched analysis that aircraft emissions are between two and four times more damaging to the climate than those from other industries ([5]). (This is largely because most emissions take place in the upper atmosphere and due to the effects of non-CO_2 emissions such as condensation trails and nitrogen oxides) Complementary action must be taken on reducing or compensating for nitrogen oxides.

5.5 Airlines already benefit from the exemption of aviation fuel from taxation and the free distribution of initial allocations of carbon allowances will further increase their state-supported advantages over other transport sectors. There is a risk that operators use the introduction of the ETS scheme to raise prices across the board. A clear presentation by the Commission to the public of the real financial impact of the scheme on industry costs may mitigate unjustified profit-taking.

5.6 Further thought should be given to the 'exclusions' proposed in the Directive. For example the exemption of flights by Heads of State, Heads of Government or Government Ministers is particularly inappropriate as this group should be setting a good example. Although there are administrative reasons for offering this exclusion (flights operated by the military units mostly) Member States should be asked to voluntarily offset these emissions, as some have already decided to do.

5.7 As the Commission has opted for an open top-up system there seems little justification for not bringing the baseline date of the scheme into closer alignment with the current EU commitment for the first phase of the Kyoto Protocol (an 8 % reduction between 2008-2012 from 1990 levels) and future commitments (e.g. 30 % by 2020 from 1990 levels). The choice of 2005 as the base reference year already allows the sector a 'starting point' already some 100 % higher than Kyoto. Of course, taking into account that the aviation is the first transport sector introduced in the EU-ETS, it is only fair to make initial allocation on the same principles as introduced in the EU-ETS rules.

5.8 This Directive is unlikely to achieve any significant impact on slowing the increase of total aviation emissions. Nevertheless the fact that it may stabilise net CO_2 emission through the ETS and in doing also provide resources for further reductions goes a long way towards justifying the cost and administrative complexity of implementation. The proposed Directive does more than offer an environmental fig-leaf to the aviation sector — it may positively increase public awareness, offer significant new carbon-reduction resources and provide a measure for internalising those external environmental costs which hitherto the aviation industry has been able to ignore.

Brussels, 31 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([5]) IPCC Summary for Policymakers 2007, The science of climate change. http://www.ipcc.ch/pub/sarsum1.htm.

APPENDIX I

to the Committee Opinion

The following amendments were rejected by the assembly, but were supported by more than a quarter of the votes cast:

Point 1.8.2

Amend as follows:

'1.8.2 The proposed emissions cap is ~~lowered to require aviation to make an adjustment more~~ set comparable with other industries already in the EU-ETS.'

Voting

For: 18
Against: 33
Abstentions: 9

Point 1.8.3

Amend as follows:

'1.8.3 The proposed free allocation of allowances to operators should be ~~eliminated or significantly reduced requiring all, or the majority, of allowances to be auctioned~~. set within the EU-ETS rules and guidance documents.'

Voting

For: 13
Against: 24
Abstentions: 6

APPENDIX II

In 2005, the European Union introduced a Europe-wide market in carbon dioxide emissions for major greenhouse gas emitting industries. This is the forerunner to a similar system that will operate under the Kyoto Protocol among its signatories from 2008. The EU ETS is designed to prepare European nations for Kyoto.

The scheme is based on the allocation of greenhouse gas emission allowances, called EU Allowances (EUAs), to specific industrial sectors through national allocation plans (NAPs) with oversight by the European Commission. These allowances can be traded. The first phase of the EU ETS covers the period 2005-2007, while the second phase coincides with the Kyoto Protocol's first commitment period, from 2008 to 2012.

The first phase of the EU ETS applies to 7,300 companies and 12,000 installations in heavy industrial sectors in the EU. These include: energy utilities, oil refineries, iron and steel producers, the pulp and paper industry as well as producers of cement, glass, lime, brick and ceramics.

The ETS imposes annual targets for carbon dioxide (CO_2) emissions on each EU country, and then in turn each country allocates its national allowance across those companies whose factories and plants are the major emitters of carbon dioxide — power utilities, building products manufacturers and other heavy industrial enterprises.

Each EUA gives the owner the right to emit one tonne of carbon dioxide. Companies that don't use up all their allowances, that is, emit less than they are entitled to, can sell them. Companies which exceed their emission target must offset the excess emissions by buying EUAs, or pay a fine of €40 a tonne.

To manage the trade in allowances and verify holdings, the ETS requires all EU Member States to create a national emissions allowance registry holding accounts for all companies included the scheme.

A market operates through brokers and on electronic exchanges where EUAs are traded on a daily basis. What is mainly being traded are EUA 'forward contracts', that is, EUAs for delivery at a future date. These future dates correspond to the end of the calendar years to which the allowances relate.

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation laying down specific rules as regards the fruit and vegetable sector and amending certain Regulations'

COM(2007) 17 final — 2007/0012 (CNS)

(2007/C 175/14)

On 14 February 2007 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 abovementioned 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 8 May 2007. The rapporteur was Mr Campli.

At its 436th plenary session, held on 30 May 2007, the European Economic and Social Committee adopted the following opinion unanimously.

1. **Conclusions and recommendations**

1.1 The EESC believes that the aims of the reform, if they are pursued as a whole, can form the basis for a coherent policy for developing this important sector of the European Union's agricultural, industrial and food economy.

1.2 The EESC welcomes the confirmation of the pivotal role of producer organisations in the Common Market Organisation of the fruit and vegetable sector.

1.3 The EESC considers financing to be an essential part of a coherent policy capable of ensuring the competitiveness of the European fruit and vegetable sector; it therefore calls on the Commission to think more carefully about the financial impact of the innovations it is introducing, positive and laudable though these are.

1.4 The EESC believes that the introduction of new and significant measures into the operational programmes will lead to an objective reduction in resources available for investment and employment.

1.5 The EESC supports the Commission's strategy aimed at turning the entire first pillar into a consistent and balanced whole by 2013; to this end, it calls on the Commission to put in place an appropriate transition programme for the fruit and vegetable sector so as to bring all the operators in the sector up to speed with the new system and, at the same time, to ensure that European consumers enjoy security of adequate supply in terms of quality and quantity.

1.6 The EESC welcomes the Commission's policy aimed at actively protecting the environment; with this in mind, it recommends flexible measures that reward the practices and approaches of the various operators. As regards promoting the consumption of fruit and vegetables by certain categories of consumer, it recommends a more definite strategy as part of the horizontal support policy.

1.7 The EESC recommends that the marketing standards aimed at protecting consumers be maintained, in particular those on food hygiene and the origin of produce.

2. **The Commission's arguments and proposals**

2.1 The Commission sets out the following objectives:

— encourage competitiveness and market orientation of EU fruit and vegetable production: in other words, help to make production sustainable and competitive both in the internal market and on foreign markets;

— reduce the fluctuations in producers' incomes due to crises;

— increase the consumption of fruit and vegetables in the EU;

— emphasise the sector's duty to conserve and protect the environment;

— simplify and, if possible, reduce the administrative burden for all stakeholders.

2.2 The architecture of the reform is based on three key pillars:

— budget neutrality;

— bringing the Common Market Organisation (CMO) into line with the 2003 CAP reform and subsequent regulations;

— consolidation of the structure of the CMO by strengthening producer organisations (POs).

2.2.1 The Commission states that the above-mentioned objectives have been identified taking into account the need for WTO (World Trade Organisation) compatibility; consistency with the reformed CAP, and conformity with the financial perspectives.

2.2.2 The Commission points out that EU-27 fruit and vegetable production accounts for 3.1 % of the Community budget and 17 % of total EU agricultural production.

2.2.3 The resources the proposed reform allocates to fresh fruit and vegetables remain at 4.1 % of the value of the marketed production of the PO, whilst the national maxima for processed produce are transferred to the Single Farm Payment (SFP) in accordance with the historical values for each country and, for the new Member States, in accordance with those set by the accession treaties.

2.2.4 In regions where the degree of organisation of producers is particularly low, additional national financial assistance may be authorised.

2.2.5 The co-financing rate of operational programmes is maintained at 50 %, except for some particular cases, where it may rise to 60 % (transnational actions, schemes operated on an interbranch basis, organic production, producers in new Member States, mergers of POs, outermost regions, regions where less than 20 % of production is organised).

2.2.6 Withdrawals of up to 5 % of production, for distribution to charitable organisations and foundations, penal institutions, schools, children's holiday camps, hospitals and old people's homes, may be 100 % financed by the Commission.

2.2.7 Provision is made for abrogating Article 51 of Regulation 1782/2003 and thus for the eligibility of fruit and vegetables for the SFP.

2.2.8 Member States are to establish reference amounts and eligible hectares under the single payment scheme (SPS) on the basis of a representative period appropriate to the market of each fruit and vegetable product and of appropriate objective and non-discriminatory criteria.

2.2.9 The Commission provides that at least 20 % of the total expenditure of each operational programme must be dedicated to agro-environmental measures.

2.2.10 The proposal does not affect the existing rules on external trade; however, it does propose the abolition of export refunds.

2.2.11 Part of the regulation of the fruit and vegetable sector provided for in the proposal was previously included in the proposed regulation on a single CMO (currently being considered by the Council).

2.2.12 In its proposed reform, the Commission also provides for a subsequent review of marketing standards, relating in particular to quality, grading, weight, sizing, packaging, wrapping, storage, transport, presentation, marketing and labelling. The Commission proposal confirms the key role of producer organisations in the fresh fruit and vegetable sector by:

— changing the list of products for which a PO may be established;

— conferring on POs the responsibility for crisis management not exceeding one-third of the expenditure under the operational programme;

— providing for levels of direct sales fixed by Member States, the minimum level being 10 %.

2.2.13 The proposal recognises interbranch organisations and provides for the rules for members of POs to be extended to producers who are not members of POs if the latter cover at least 60 % of the production of the area in question.

2.2.14 The Commission proposes that Member States establish a national strategy to enable POs to assess the effectiveness of the operational programmes.

2.2.15 Obligatory promotion actions targeted towards young people under 18 are proposed within each operational programme.

3. **General comments**

3.1 The EESC believes that the aims of the reform, if they are pursued as a whole, can form the basis for a coherent policy for developing this important sector of the European Union's agricultural, industrial and food economy. Indeed, the Commission itself, in its 'reasons for reform', states that 'of the 9.7 million agricultural holdings in the European Union (EU) of 25, 1.4 million produce fruit and vegetables. The sector farms 3 % of the cultivated area and produces 17 % of the value of EU's *[sic]* agricultural production. The sector is faced with pressure from the highly concentrated retail chains and with increased competition from third country products. […] The sector receives about 3.1 % of the Common Agriculture's *[sic]* budget.' ([1]) For its part, the EESC points out that the fruit and vegetable sector provides the highest level of employment in proportion to surface area used. Moreover, the fruit and vegetable sector faces an internationally competitive environment (WTO negotiations, Euromed free trade area in 2010), which will have an increasing impact on the development of European fruit and vegetable production.

3.2 In addition, the European Court of Auditors, in its special report 8/2006 entitled *Growing success? The effectiveness of the European Union support for fruit and vegetable producers' operational programmes*, whilst taking a critical look at the operation of producer organisations and also finding a 'significant advance on the initial situation', called for better monitoring of the effectiveness of aid, and asked for 'better target[ing of] the policy' so as to strengthen POs.

([1]) Commission Staff Working Document SEC(2007) 75 — Towards a reform of the fresh and processed fruit and vegetables common market organisations. Impact analysis summary.

3.3 The EESC points out the discrepancy between the stated objectives and the financial resources — a key component of a coherent policy — made available for the realisation of those objectives; this confirms an imbalance in the CAP as regards production in the Mediterranean.

The EESC notes that the Commission has made its proposals within the constraints of a budget that has not been increased. It also notes that by abolishing market withdrawals and export refunds, the Commission is bringing about an increase in the resources potentially available for future operational programmes, but that these resources risk being left unused and will not be available for investment by more efficient POs.

3.4 The EESC further notes that the proposal a) introduces new, politically and economically highly significant measures (management of market crises, environment policy, promoting consumption) into operational programmes and b) raises (to 60 %) the co-financing of certain measures that are considered strategic.

This innovative policy, combined with the maintenance of the upper limit to Community aid for operational programmes of 4.1 % of the value of the production marketed by each PO, results, de facto, in a reduction in the resources available for investment.

3.5 The Committee also notes that the introduction of total decoupling of support for processed products could very likely lead to a reduction in the value of marketed production and, consequently, a reduction of aggregate financial resources compared to the current situation.

3.6 For all these reasons, the EESC believes it necessary to introduce at least three corrections, whilst keeping to the principle of genuine budget neutrality:

— leaving the management of market crises out of the accounts relating to the PO's operational programme;

— derogating from the 4.1 % limit when actions are co-financed at 60 %, inter alia to allow POs that are already consolidated to continue fulfilling their role as a counterweight to 'the buying power of the Large Multiples' ([2]);

— including joint measures by two or more producer organisations among those which receive 60 % Community co-financing, so as to promote cooperation between producer organisations and group supply.

3.7 However, the EESC notes the Commission proposal to entrust crisis management to POs and calls on the Commission to put in place transparent criteria for crisis management to support non-member producers and ensure that the instruments made available for this purpose can be used by all producers, so that any intervention in the event of a crisis will be effective and enable the markets in question to recover.

3.8 The EESC is aware that the Commission has repeatedly stated its long-term strategy aimed at bringing all the CMOs into the SFP scheme by 2013. The Committee believes that it would be possible, inter alia in keeping with the reforms approved to date, to have an adequate transition period, taking into account the specifics of each Member State and of the various products. The EESC is well aware of the consequences of a hasty approach, which would be disruptive to employment and to the processing industry, which needs to embark upon a complex restructuring strategy — possibly including plant closures — for which the proposed reform does not provide for any specific support measures.

3.9 The Committee also notes that the Commission, in order to comply with the WTO, considers it necessary to replace Article 51 of Regulation 1782/2003. This will bring about additional competition within the sector between established fruit and vegetable producers and potential new producers. In order to avoid artificial distortions of the profitability of the sector, the EESC considers it essential to allow — for a transitional period — Member States to keep Article 51 in force selectively for certain sensitive products, or to provide for new rights for those fruit and vegetable producers whose past production did not generate any.

3.10 The EESC notes that the Commission, in the context of trade with third countries, proposes the abolition of export refunds for the sector, and points out that this is another aspect of EU policy that takes a generally piecemeal, not entirely consistent approach to the various sectors of agriculture. It also calls on the Commission to avoid making any commercial concessions that would weaken the principle of Community preference, and to ensure that tariff quotas are administered rigorously and maintain the special safeguard clause, not least because the EU is the world's biggest importer of fruit and vegetables, over 70 % of its imports come from countries that benefit from preferential trade agreements, and the sector includes so-called sensitive products.

3.11 The EESC, whilst it supports the aim of moving towards simplification, believes that maintaining marketing standards is vital, both for the protection they afford to consumers in terms of the safety and origin of the product, and because of the important role that they play in regulating the market. To this end, the EESC stresses the importance of the EU successfully introducing traceability, as a basic measure for managing risks to public health and plant protection, into the standards governing international trade.

([2]) OJ C 255, 14.10.2005, p. 44 — Opinion CESE 381/2005 — The Large retail sector — trends and impacts on farmers and consumers.

3.12 The EESC also highlights the need for the European Union to promote, at international level, the introduction and recognition of environmental and social standards with respect to workers employed in the production process.

3.13 The EESC welcomes the Commission's policy aimed at actively protecting the environment. In this regard, the EESC believes that, rather than setting limits and fixed percentages, it would be more effective to use an incremental co-financing method, starting from a mandatory minimum, aimed at rewarding operational programmes oriented towards those objectives.

3.14 As regards promoting the consumption of fruit and vegetables by certain categories of consumer, the EESC supports the emphasis placed on this objective by the Commission. It therefore calls on the Commission to draw up a specific promotion strategy within the scope of horizontal support policy, but is doubtful as to the effectiveness of making promotional measures, which will inevitably be limited in scope, mandatory within operational programmes.

4. **Specific comments**

4.1 The Committee points out that the Commission's proposal does not resolve the problem facing producers of red fruit for processing. The EESC believes it would be useful to create a system of direct support for producers of red fruit for processing, as is the case for other fruit and vegetables grown for processing (e.g. dried fruit).

4.2 The EESC welcomes the inclusion of culinary herbs among the products for which a PO may be set up and calls upon the Commission to ascertain whether the list set forth in its proposal meets the needs of all EU regions.

4.3 Based on comparable past experience in distribution for charity, the Committee would call the Commission's attention to the need to provide for fast and effective implementing measures.

4.4 The EESC calls on the Commission also to consider including non-food uses in measures relating to free distribution.

4.5 The EESC calls on the Commission to consider the particular difficulties faced by producers in the new Member States in co-financing crisis management.

4.6 The EESC believes that setting a minimum limit of direct sales by producers is contrary to the aims of the reform, and suggests that the wording of the previous regulation be kept.

4.7 The EESC is not opposed to the idea of the Member States framing a national strategy for operational programmes, inter alia to make best use of existing public bodies; however, it believes that these national strategies should be voluntary for the Member State concerned and should not lead to the drawing-up of new lists of positive actions at national level.

4.8 In addition, the EESC notes that, in some cases, Community policy facilitating group supply, including by merging POs, may prove to be in conflict with Community or national authorities' measures to safeguard competition. It therefore calls for the European dimension of the fruit and vegetable market to be taken into account when implementing competition rules.

4.9 The EESC proposes that the Commission set up a Community observatory on pricing and marketing practices, with the aim of improving market transparency for the benefit of all stakeholders.

4.10 Given that the proposed reform establishes an independent Common Market Organisation for the sector, the EESC calls on the Commission not to include additional standards relating to the fruit and vegetable sector in the regulation on the Single CMO.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council amending the Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, as regards the implementing powers conferred on the Commission'

COM(2007) 93 final — 2007/0036 (COD)

(2007/C 175/15)

On 19 April 2007 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 175, paragraph 1 of the Treaty establishing the European Community, on the abovementioned proposal.

Since the Committee has already set out its views on the contents of the proposal in question in its opinion, adopted on 28 April 2004 [1], it decided, at its 436th plenary session of 30 and 31 May 2007 (meeting of 30 May), by 159 votes with 11 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned document.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

[1] 2003/0282 COD, OJ C 117 of 30.4.2004.

Opinion of the European Economic and Social Committee on 'The Challenges and Opportunities for the EU in the Context of Globalisation'

(2007/C 175/16)

On 26 September 2006, in connection with the activities of the German Presidency of the European Union, H.E. Michael Glos, German Federal Minister for the Economy and Technology, requested by letter an opinion of the European Economic and Social Committee on: *The challenges and opportunities for the EU in the context of globalisation*.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 May 2007. The rapporteur was Mr Henri Malosse and the co-rapporteur was Mr Staffan Nilsson.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 31 May 2007), the European Economic and Social Committee adopted the following opinion unanimously

1. **Summary**

Advocating a common strategy to contend with globalisation

The EU may be regarded as a test-bed for a globalised world. It has been established in a democratic way, has no desire to achieve hegemony and shows respect for diversity of opinion and cultural diversity, whilst seeking to bring about economic and social cohesion and to open up markets. Even if the new world order cannot be cast in its image, the European Union must uphold its values and principles, whilst seeking to bring about a system of global governance based on the main achievements of the European venture. If it is to be credible, the EU needs to reflect its values and set out its integration model without any display of arrogance or desire to achieve hegemony. If the Union fails to have a vision or a common strategy for addressing the challenges and opportunities of globalisation, the peoples of Europe may feel themselves abandoned and wonder about the usefulness of the European Union.

1.1 *Establishing a 'planetary state governed by the rule of law'*

The initial response of the European Union must be to contribute more forcefully to the establishment of a 'state governed by the rule of law' which takes account of realities, without engaging in otherworldliness; the EU should, however, also not be sparing in its efforts to promote, by all means, a humanist globalisation based on the following criteria: multilateralism

rather than a power struggle; the fundamental rights of individuals, in particular employment rights and working conditions; a responsible management of our natural heritage; greater transparency on the financial markets; a high level of health and food safety for all population groups, in particular the most vulnerable; cultural and linguistic diversity and the sharing and dissemination of knowledge amongst everyone.

1.2 *Setting an example for others to follow*

Secondly, the EU can and must promote regional integration. It is clear that, apart from a few rare exceptions, most of the countries in the world are engaged in various processes of rapprochement, ranging from simple cooperation with regard to a specific issue to genuine processes of integration comparable to that being pursued by the EU. Globalisation would undoubtedly be easier to regulate if the EU were to manage to persuade more countries to follow its example and if a larger number of coherent regional groupings, based, as is the case with the EU, on pluralism, respect for diversity and the pursuit of consensus, were to establish a dialogue rather than simply engage in a power struggle. Regional integration is also undoubtedly one of the keys to the future for the most vulnerable regions in the world, for which confined markets represent an insuperable handicap and which are at present unable to make their voice heard.

1.3 *Balanced and responsible opening-up of trade*

In the field of international trade relations, the EESC takes the view that bilateral approaches are beneficial only insofar as they are complementary to the multilateralism pursued by the WTO. The EESC calls for progress to be made with regard to access to markets, reciprocity, and measures to combat obstacles to trade and illegal practices. The EESC proposes that a dialogue be opened on other aspects of global governance which have an impact on trade (such as labour and environmental standards). The EU must also contribute towards promoting an inclusive strategy so as to ensure that all developing countries, particularly those in Africa, benefit from the process of globalisation.

At EU level, the EESC takes the view that there is a need to make a careful assessment of the impact of any new trade concession, to make better use of trade defence instruments, in particular to defend the interests of EU manufacturers, and to promote joint actions in markets outside the EU. The EESC considers that the European Globalisation Adjustment Fund should be used as a strategic tool to assist people and regions affected by globalisation and should be replenished by national funding.

1.4 *Stepping up progress towards integration whilst preserving cultural diversity*

The more Europe becomes a coherent, integrated entity, the more convincing it will be and the more power it will have to sway the argument in favour of bringing about a multipolar, responsible system of global governance. Globalisation may now be a source of opportunity for the process of European integration as it forces us to step up the pace of integration. A race is now under way. The keys to achieving success could lie with innovation, universal dissemination of knowledge and democratisation. A number of steps are already long overdue, namely fully achieving the internal market, dismantling barriers separating networks of education and research and establishing new common policies, in particular in the fields of energy, the environment and research.

1.5 *Organised civil society should promote the achievement of globalisation 'with a human face'*

The EU itself should seek to achieve greater popular involvement, whilst at the same time supporting the dialogue between civilisations at global level. Having recourse to organised civil society, its organisations and institutions, such as the EESC, represents a course of action which has so far not been adequately explored. This approach takes on particular significance in the context of globalisation since, apart from just the states themselves, it is clear that the following players are also involved in international relations: the media, the social partners, enterprises, the scientific and cultural community, associations and all other civil society players.

2. **Meeting the challenges posed by globalisation by adopting an approach which is also global**

2.1 The development of the European venture has, from the outset, been based on a process of opening-up. By gradually doing away with its internal frontiers, the EU has been able to: establish a large internal market; modernise its economy; develop its infrastructure; and become one of the leading players in international trade.

2.2 The process of European integration represents much more than the creation of an internal market. The European Union has set out common rules, introduced its own legal order and due process of law, established a Charter of Fundamental Rights and introduced common policies. Special mention should be made of the policy of economic and social cohesion, which represents a channel for the application of the principle of solidarity between states and regions; this policy is designed to help reduce the discrepancies in levels of development which have increased following the recent enlargements of the EU.

2.3 Today, the challenge of globalisation is posed in a very different context and against a background of very differing conditions, characterised, inter alia, by: a form of global governance which is still in its infancy; temptations to pursue a hegemonic agenda; and growing tensions between developed countries and emerging economies. These global balances constitute a genuinely new order for the European Union.

2.4 The European venture was originally by no means a 'eurocentric' project. The instigators of the initial treaties already imagined that the European Communities could embrace all the peoples of Europe, once they had been liberated from dictatorships, and could also provide a model for a new world order based on: states governed by the rule of law; openness; and trust.

2.5 Globalisation demonstrates a number of similarities with the positive effects already experienced by the EU Member States in the wake of the reciprocal opening of their markets, such as the exploitation of comparative advantages and economies of scale and the opportunity to take advantage of new development dynamics and new markets.

2.6 Globalisation does, however, also give rise to many new challenges which call for responses and adjustments which are frequently highly complex, involving, inter alia: many difficulties and asymmetric conditions with regard to market access; the brain drain and the preservation of multilingualism and cultural diversity; migrations; extremely diverse working and production conditions; a hitherto unknown degree of internationalisation of capital and financial markets; established social rights in the developed countries becoming increasingly at risk as a result of exposure to global competition; and, finally, major challenges in terms of environmental protection, health and security.

2.7 Globalisation does not produce the same effects everywhere. Whilst it promotes economic and social development in certain parts of the world, it undermines this development in other areas, namely developed regions facing stronger competition and countries suffering from underdevelopment, which are the casualties of this process.

2.8 If it is to meet these challenges, the EU has to demonstrate that knows how to benefit from globalisation, rather than simply being carried along by it. The EU needs to take all the opportunities which arise but also to identify how globalisation is affecting regions, sectors and categories of the population in order to enable it to pinpoint, together with the Member States, the social partners and other civil society players concerned, concrete measures which will make it possible successfully to carry out the necessary adjustments.

2.9 The approach pursued in response to the challenges of globalisation cannot be purely economic. Political, social, environmental and also cultural issues are all closely involved. The EU response to the challenges of globalisation must therefore also cover all these fields otherwise there is a danger that it will lack the requisite strength of conviction and persuasion.

2.10 The approach, based on regional integration, which characterises the European Union enables it to speak on behalf of its Member States at meetings of the WTO. Other examples of regional integration are to be found in the world, but they have not reached a degree of integration equivalent to that of the EU. Thus, with the exception of CARICOM, which brings together Caribbean states, these regional entities do not speak with one voice at the WTO. A better structured and more effective form of global governance would, however, have much to gain from such a development.

2.11 Within the EU, the way in which globalisation is perceived differs according to the various categories of the population and the individual Member States. This diversity may be seen as a source of enrichment but, in view of the fact that the pace of development and the extent of the challenges of globalisation are increasing, there is now a need to adopt a common strategy, and to put forward concrete proposals.

3. **Helping to draw up more effective global rules to promote the achievement of 'globalisation with a human face'**

3.1 The values which underlie the European project (including diversity, collegiality, states governed by the rule of law, subsidiarity and the achievement of a balance between economic and social aspects and sustainable development) are today not sufficiently in evidence on the international stage.

3.2 The full range of phenomena involved in globalisation cannot be covered solely by relations at infra-state level. These phenomena include: migratory flows; movements of financial resources; pollution and damage to the climate; and channels of information, in particular the Internet. In addition to states, the following players are also involved, in one way or another, in the process of globalisation: multinational enterprises, the financial markets, the media, the scientific community, organised civil society and its institutions, the social partners, NGOs and many other players besides.

3.3 It is therefore vital that the EU continues to play a more decisive role in promoting global governance, involving:

— the relaunch of the Doha process at the WTO with a view to bringing about a greater opening-up of trade; this process should, however, be backed up by regulations to ensure more balanced and fairer trade;

— the development and efficient implementation of other world-wide regulations, such as the ILO conventions (dealing with labour law), UNESCO conventions dealing with cultural issues (diversity), the Kyoto Protocol on the environment, International Atomic Energy Agency (IAEA) decisions relating to energy matters, WIPO (World Intellectual Property Organisation) conventions dealing with intellectual property, WHO provisions dealing with health, UNIDO for industrial cooperation, and other regulations;

— coordination between the various instruments of global governance, under the auspices of the UN, with a view to establishing 'guidelines for creating a state governed by the rule of law', involving regulation and jurisdiction mechanisms based on respect for pluralism.

3.4 With these aims in view, the following action needs to be taken, in particular, in the context of international trade rules:

— finalising the WTO Trade Facilitation Agreement, with a view to establishing standards in respect of: customs rules and procedures, the simplification and lightening of procedures — in particular the introduction of a 'Single Window' system — the promotion of effective, transparent rules and the use of IT tools;

— stepping up the adoption, implementation and observance of public health and crop protection measures and SPS (sanitary and phytosanitary) agreements of the WTO (covering the safety of food products, animal health and plant preservation), together with measures in respect of the protection and welfare of animals;

— organising a more effective campaign to combat the pirating of products and counterfeiting, which cause a considerable and growing amount of harm to European products, by taking a number of measures, in particular the drawing-up of a genuine strategy for properly protecting intellectual property rights by having recourse to the TRIPS Agreement;

— linking progress in trade negotiations to respect for social, ethical and environmental standards;

— helping to develop the capacities of the emerging economies (in particular China and India) and the developing countries in the abovementioned fields.

3.5 *Other regulations*

3.5.1 Even if significant progress were to be made in respect of all these trade issues, such progress would, in itself, not be sufficient to provide the requisite conditions for genuine 'sustainable development', a goal which was, however, expressly recognised by the WHO in the agenda set out at Doha. If we are to make progress towards achieving such an objective, other regulations will be required and the European Union can also act as a driving force in bringing about the introduction of these regulations. These regulations concern primarily the following issues: the environment, security, fundamental rights, working conditions and cultural diversity.

3.5.2 Environmental protection is a fundamental requirement in view of the growing threats with which we have to contend (the need to protect the living environment and species and to combat the 'greenhouse effect' and pollution, etc.). This challenge which, by definition, knows no frontiers, is inextricably linked to the very concept of globalisation. It should become an integral part of the trade negotiations and be taken into account as a cross-disciplinary theme in the various negotiations. The European Union should give top priority to this requirement by:

— taking the initiative with a view to renewing the Kyoto Agreements on reducing emissions of greenhouse gases, with the aim of involving every country on the planet in these agreements in order to limit global warming (the report drawn up by the international Intergovernmental Panel on Climate Change (IPCC) endorsed the goal set out by the EU).

— developing — also jointly — research efforts and the drive to master environmental technologies which would, against the background of new global requirements, make available leading edge expertise in the fields of processes, products and services, involving a large variety of different areas (e.g. agriculture and rural communities, water and energy, industry and recycling, accommodation and spatial planning, etc.).

3.5.3 Security requirements have also taken on an increased and manifold importance. Reference may thus be made, by way of example, to: health protection against, inter alia, pandemics; measures to combat crime; nuclear monitoring; the protection of exchanges of IT data; and product safety, especially the quality of food. Globalisation must not, under any circumstances, be assimilated with additional insecurity. Effective rules therefore need to be devised for ensuring improved security in respect of the development of trade, the fundamental tasks which states have to carry out and in respect of living conditions. Progress in these spheres must go hand-in-hand with improvements in practices relating to governance and measures to combat corruption and threats of all kinds.

3.5.4 The social dimension of globalisation and, in particular, the requisite labour-law standards, based on ILO Conventions ([1]), have to be effectively implemented throughout the world. By invoking the concepts of 'decent work' and also trade which is 'fair and just', the EU, working in partnership with the ILO, can establish a body of underlying values and examples of good practice. The issue of the effective application of ILO Conventions, which could go so far as to cover the establishment of jurisdiction, needs to be raised.

3.5.5 Many highly encouraging social initiatives have been launched in developing countries by non-governmental actors, enterprises and the social partners. Reference may be made in this context to the policies developed by many European enterprises on the basis of guideline principles agreed within the framework of the OECD and ILO labour standards. Special mention should also be made of initiatives carried out by non-governmental players in the following fields: employment; training; health; and living and working conditions, including initiatives launched in connection with a regional social dialogue extending beyond national frontiers. The support provided by the EU to such initiatives should be stepped up, starting with initiatives in the ACP states. Aid provided by the EU should also be made more dependent upon the establishment of such programmes involving active participation by civil society players, including, and in particular, programmes at regional level.

3.5.6 In the face of the growing internationalisation of the financial markets, the Member States of the EU must be able to act as one with a view to making the IMF a genuine stabilisation instrument. The euro-area states should decide to unify their participation in the work of the IMF as this would give added weight to the EU. At the same time, and following the example set by the OECD Conventions, the EU should promote global governance with respect to measures to combat money-laundering and fraud.

3.5.7 With a view to the establishment of a system of global governance which serves the interests of the people, the questions of education and the sharing of knowledge are matters of fundamental importance. There is a need to develop UNESCO projects and to support networks for sharing expertise and knowledge amongst the greatest possible number of beneficiaries whilst paying due regard to the need to respect pluralism and whilst acting within the framework of an intercultural dialogue. The EU approach to bringing about better global governance should therefore take account of the issues of cultural diversity and multilingualism, which, whilst being key aspects for the EU, are nonetheless now under threat.

([1]) ILO Conventions: Convention No 87 on freedom of association and protection of the right to organise; Convention No 98 on the right to organise and to bargain collectively; Convention No 29 on forced labour; Convention No 105 on the abolition of forced labour; Convention No 138 on the minimum age for admission to employment; Convention No 182 on the worst forms of child labour; Convention No 100 on equal remuneration for men and women workers; and Convention No 111 on discrimination (employment and occupation).

3.5.8 Turning to the issue of fundamental rights, the EU should take concerted action with a view to making the provisions of the UN Declaration of Human Rights more effective and extending the role of the International Criminal Tribunal, whilst showing due respect for cultural diversity.

3.6 *The originality of the contribution made by the EU*

3.6.1 With a view to strengthening global governance, the EU could also tap into its experience in the following fields which could serve as keys for bring about the broadest possible acceptance of global governance:

— subsidiarity, the principle which makes it possible to attribute responsibility at the appropriate level, thereby providing the Member States, regions and also civil society players with real room for manoeuvre;

— the practice of managing a complex Union, which involves the application of procedures at differentiated speeds and calls for respect for cultural diversity;

— the consultation of economic and social players in respect of the decision-making process and their participation in this process.

3.6.2 As it is already doing in its dealings with the ACP states, the EU should therefore give priority — wherever possible — to the adoption of a regional approach in its political, economic and trading relations with its partners. The development of mutual contacts in this way between the EU and other regional entities, reflecting a spirit of emulation and mutual rapprochement, would benefit all the parties concerned, whilst at the same time backing up and strengthening, in an undoubtedly decisive way, the multilateral framework of the WTO.

4. **Developing a common strategy for the EU in respect of international trade**

4.1 *Multilateralism or bilateralism?*

A line of approach is set out in the European Commission's communication of 4 October 2006 entitled *Global Europe competing in the world*.

4.1.1 The difficulties encountered by the WTO in making progress with the Doha Agenda and the very limits of this Agenda should encourage the EU to undertake new initiatives. The European Economic and Social Committee therefore welcomes the fact that, in its Communication of October 2006, the European Commission recommends that a new commercial strategy be taken up, based on both bilateral and multilateral approaches.

4.1.2 The multilateral approach to tackling problems linked to globalisation is the most desirable approach as it offers the best guarantees for achieving well—balanced and sustainable results. The EESC therefore joins the Commission in reaffirming its support for the intrinsic merits of multilateralism and the WTO. The goal is still to successfully conclude the work on the Doha Agenda as part of an overall framework, committing all the participatory states to observe common rules.

4.1.3 The EESC draws attention to the need to take effective back-up action in respect of the proposals put forward by the Commission. In the face of the ongoing difficulties encountered in the negotiations in the framework of the WTO, the Commission takes the view that the EU should now explore more actively other complementary approaches, including bilateral approaches. One option would be to step up discussions with those emerging economies which are experiencing a high rate of growth (China, India, ASEAN, Mercosur and the Gulf States), whilst also, however, strengthening our strategic links with neighbouring economies (Russia, Ukraine, Moldova and Mediterranean states) and successfully modernising our relations with the ACP states (Africa, Caribbean, Pacific) by means of the regional economic partnership agreements currently being negotiated.

4.1.4 The EESC is sceptical with regard to these initiatives and points out that a redeployment, based on bilateral approaches, of the international strategy of the EU cannot take the place of the multilateral approach, which must remain the fundamental objective since such an approach is in line with European values.

4.1.5 There is a need to ensure not only that the approaches which are pursued are compatible with WTO commitments — a requirement which is rightly highlighted by the Commission — but also to ensure that these approaches:

— do not thwart opportunities to make progress in multilateral negotiations;

— rather serve, ultimately, to facilitate the latter negotiations as a result of the more in-depth discussions and the closer alignment of positions brought about by bilateral approaches.

4.1.6 Any bilateral approach adopted by the EU should therefore be confined to providing support for the multilateral approach, with the aim of either:

— preparing the ground for multilateral negotiations by, inter alia, highlighting the most important issues for the EU (the unresolved DOHA issues, commercial practices, measures to combat counterfeiting, public contracts, etc.), or

— making progress, via bilateral discussions, in respect of the other areas of global governance: political, social and environmental issues, cultural policy and energy.

4.1.7 Many clarifications and adjustments are still required in respect of, in particular: (a) the implementing procedures relating to the criteria to be applied and (b) the policies to be followed vis-à-vis a number of countries, in particular, such as China, Korea, India and also Russia.

4.2 *Enhancing relations with neighbouring states and special relations*

4.2.1 Special attention should be paid to neighbouring countries of the EU (in particular Russia, Ukraine, Belarus, Moldavia and the Mediterranean states) by establishing special partnerships as part of a coherent neighbourhood strategy and a strategy for promoting communities based on shared interests.

4.2.2 Within the framework of the transatlantic dialogue, the EU and the USA should step up their efforts to bring their respective visions of globalisation closer to each other and to provide a framework of stability for cooperation and trade between the EU and the USA.

4.2.3 The EU will also have to continue to promote, by means of its bilateral contacts, the development of regional integration in other continents (cf. the ACP states, Mercosur, ASEAN, etc.); such integration would make it possible to improve the structure and balance of global trade and to facilitate progress in the discussions at the WTO. Quite apart from the actual originality of this venture, the experience gained with integration in the EU should continue to inspire and provide support for other examples of regional rapprochement, which constitute an essential feature of any sustainable and structured globalisation. This approach is particularly valid as far as developing countries are concerned (e.g. the ACP countries). The negotiation of partnership agreements must go hand in hand with measures to promote regional integration processes which are undoubtedly one of the major means of ensuring that these countries do not get left behind by globalisation. The positive example of CARICOM is particularly significant in this light and gives cause for hope. The EU must support administrative capacities for regional integration and contacts among civil society stakeholders.

4.2.4 We can also endeavour to learn from examples of both good and bad practice drawn from other countries or regional groupings. The EU should continue to promote and give favourable treatment to regional groupings which, despite the fact that they are developing at a different pace and pursue different goals, nonetheless are following a similar path to that pursued by the EU; such regional groupings include Mercosur and ASEAN.

4.2.5 The role and the work of civil society actors in promoting such a bilateral approach must not be underestimated. We must acknowledge more and give due recognition to the full strategic importance of the EESC's participation in the civil society dialogue set up by the Commission as part of the follow-up to the negotiations within the WTO framework and to the work carried out by the EESC through the intermediary of the various structures which it has set up.

4.3 *A more responsible liberalisation of trade*

4.3.1 There is also a need to ensure that impact assessments of the advantages, limitations and concessions involved in any agreement, take due account of the economic and social consequences, particularly from a sectoral standpoint (including the impact on agriculture and industries which are highly labour-intensive). These assessments, carried out at the initiative of the European Commission in respect of all new negotiations, should involve local experts and representatives of civil society to a greater extent. There is also a need to define in greater detail the risk-management strategy addressed by the Commission in its Communication.

4.3.2 The EESC has expressed its support for the European Globalisation Adjustment Fund (EGF). It takes the view that the EGF should be used as a strategic tool to assist people and regions affected by globalisation. Even though the role of the EGF is complementary to that of national sources of funding, it is essential that its role should be visible and that it should have the requisite financial critical mass. As is the case with the European Social Fund, the EGF should, in the EESC's view, be managed by a tripartite committee, with the participation of the social partners.

4.3.3 Particular attention needs to be paid to the agricultural sector in this context. In addition to actual agricultural production, account also needs to be taken of agri-industrial products, which account for 14 % of EU added value and provide four million jobs. The CAP underwent a radical reform as of 2003, involving major sacrifices for the professions concerned, in order to make it possible to reach an agreement at the WTO. A future WTO agreement will therefore have to secure reciprocal access to markets and an equivalent significant reduction in the subsidies paid to US producers.

4.4 *Joint action in respect of external markets*

4.4.1 The EU Member States should take on board, to a greater degree, the goals of a genuine common strategy with regard to access to global markets and the means of achieving these goals: with this aim in view, steps should be taken, inter alia, to remedy three shortcomings:

4.4.2 Firstly, export credit insurance schemes continue to be organised mainly on a national level, despite the political, economic, financial and — following the introduction of the euro — monetary integration in the EU. The EU should support these national arrangements with a view to coordinating them and harmonising them in respect of all European enterprises, in particular, SMEs.

4.4.3 Secondly, the EU's main trading partners are visited, in turn, by trade missions which are essentially of a national nature and are competing with each other. The aim is not to question such bilateral approaches, which are often based on historic ties, but rather to complement them — when this can be justified on economic grounds — and strengthen them by introducing European-level sectoral promotion missions which reinforce our common identity.

4.4.4 Thirdly, the trade defence instruments (in particular, anti-dumping instruments) must be more widely known and used more effectively through the allocation of increased resources.

5. **Stepping up integration so that globalisation provides an opportunity for the people of Europe**

The EU should address the challenges of globalisation by stepping up economic integration, solidarity and the ongoing search for improved productivity, which are core aspects of the Lisbon Strategy. Only if it becomes stronger, will the EU be in a position to bring a substantial influence to bear in the process of globalisation vis-à-vis the commercial powers which have a continental dimension. With this aim in view, a number of steps have to be taken.

5.1 *Enhancing the attractiveness of Europe as a site for investment*

5.1.1 The first step which needs to be taken is to enable the EU to be in a position to rely on an internal market which is adequately integrated, effective and competitive. There would be no point in wanting to secure from our global-level partners concessions which we would be scarcely ready to grant to other EU Member States. We continue to lag far behind what needs to be achieved in this area.

5.1.2 Many old obstacles remain unchanged and European enterprises have scarcely been provided with the means to enable them to feel 'European'. Services, which account for two thirds of GDP, continue to be organised to a large extent on the basis of segregated national markets. As regards public procurement in the Member States, whether it is a matter of supplies, services or any work relating to the defence sector, the most recent serious studies carried out in this field — which have not been reviewed for ten years — show that over 90 % of these public sector contracts continue to be awarded to national suppliers.

5.1.3 There is a need to take care to ensure that the established body of EU law ('the *acquis communautaire*') is not threatened by sterile competition between the Member States involving dumping; subsidies; the policy of creating 'national champions'; and new barriers and obstacles. The development of a European industrial policy, covering also the defence sector, would make a considerable contribution towards strengthening the economic and technological standing of the EU in a globalised economy. It is also essential to bolster EU competition policy, to establish a transparent fiscal and social framework within the EU and to combat double taxation, the most blatant cases of distortion of competition and fraud involving intra-Community VAT.

5.1.4 The lack of infrastructure which is of a genuinely European dimension (in fields such as transport, energy, new technologies, technology parks and research centres) is now having a detrimental effect on Europe's ability to offer the best investment opportunities in what is still the world's leading market.

5.2 Expanding the skills and levels of training of Europeans with a view to creating a innovatory society and providing access to knowledge for all

5.2.1 Europe is not rich in raw materials and it cannot compete with the rest of the world by resorting to policies involving social, environmental or fiscal dumping. It cannot either become the 'supermarket' of the world and let Asia take on the role of the 'workshop of the world'. Europe's future depends, above all, on its capacity to innovate, its capacity for enterprise and on the talents of its men and women. Long-term investment in lifelong education is the key to the achievement of harmonious development. There is therefore a need to promote not just training and education but also voluntary mobility in the EU, fostered by multilingualism and career plans — also in the civil service — having a European and international dimension.

5.2.2 Europe remains too fragmented. The EESC calls for the adoption of large scale projects involving: the real development of a plurilingualism in schools; a mobility programme for young people, including those still at school, in apprenticeships or already working; European universities; European pathways for lifelong education; a common framework for the recognition of all qualifications, etc.

5.2.3 Europe therefore deserves to be the beneficiary of a wide-ranging European initiative in the fields of education, training and the dissemination of knowledge. Special attention will have to be paid to people and areas which have been the victims of industrial restructuring and relocations by providing training opportunities and creating new jobs.

5.3 *Equipping ourselves with effective means of meeting the challenges posed by globalisation*

5.3.1 The issues at stake as a result of globalisation make it necessary for the EU to enhance the competitiveness of both its products and its services. The economic interests of the EU are every bit as important as they are diverse. If it is to continue to be a leading player in global trade, the EU must, in particular, strengthen its position both in respect of 'top of the range' products and services — which make up half of its exports and satisfy one third of global demand in these categories — and as regards other types of products and services which satisfy popular aspirations.

5.3.2 The introduction of a European policy to provide support for entrepreneurship and innovation should, together with action in the field of education, training and the dissemination of knowledge, be a fundamental priority in future years, as part of a new European 'post-Lisbon' strategy. The EESC proposes that a roadmap be drawn up in these fields, bringing together the work carried out by both the Member States and the EU and funding provided by both public and private bodies.

5.3.3 Although there is no longer time to provide the EU with a better budget for the period 2007-2013, what we can do is to ensure that the best use is made of this budget, in particular by:

— providing proper funding for the priority trans-European networks, with the aid of public-private partnerships (PPPs);

— stepping up the capacity of the EU to provide loans and guarantees and developing more innovatory financial engineering in respect of the Structural Funds, which are currently overly confined to simply providing grants.

5.3.4 The euro now constitutes a major asset for Europe since it has become not only the single currency of 13 EU Member States, but is also a major international reserve currency and medium of exchange. The euro now provides a growing number of countries in the world with a credible and useful alternative to the dollar. It facilitates the conclusion of commercial contracts involving EU enterprises and promotes the financial security of such contracts. It ensures the existence of a real sentiment of a united Europe, both within and outside the Community. The euro does, however, lack a central decision-making body with regard to economic policy and this shortcoming is, at present, curbing the anticipated benefits of the single currency.

5.3.5 It is the common policies which underlie the cohesion of the EU. Although coal and steel can now no longer be regarded as constituting the cornerstones of cohesion, the economic and social players are very strongly in favour of the assumption by the EU of increased responsibility in the area of energy policy (maintaining resources, security of supply, new investments in non-polluting energies, energy saving and efficiency) and environmental protection. These two areas require more action at European level, in particular genuine common policies.

5.3.6 The Union must adopt a more comprehensive and consistent migration policy through coordinated integration and reception policies that comply with the European Charter of Fundamental Rights and the Geneva Conventions on the Right of Asylum, at the same time working more effectively to combat criminal networks. The EU should also more actively encourage the creation of high-skilled jobs in developing countries through a policy of partnership and the promotion of regional integration which should make it possible to offer prospects for mobility, improvement and new trade.

5.4 *Providing globalisation with a human face*

5.4.1 The European Union can rally the people of Europe, once again, behind its European integration project by invoking the theme of the European response to the challenges of globalisation.

5.4.2 From a general standpoint, the EESC stresses the need to fully involve the social partners and the various players representing organised civil society in the new overall approach which it advocates as a means of tackling the challenges posed by globalisation. The Council and the European Commission must be required to display greater transparency, including over the matter of trade negotiations. The EESC and its civil society partners in non-EU countries would, in particular, like to be involved in both bilateral and multilateral initiatives.

5.4.3 Specifically, the EESC advocates involving the social partners and other civil society players in:

— European information campaigns and debates on the issues at stake as a result of globalisation; these campaigns and debates should be conducted with civil society organisations;

— regular briefings and consultations on the new international strategy envisaged by the European Commission and the Council, along the lines of the briefings and consultations organised by the EESC on the subject of the European Convention;

— impact analyses regarding the economic and social effects of new trade agreements; participation in the management of the European Globalisation Adjustment Fund (EGF);

— participation in the various policies which need to be pursued in order to strengthen the EU policies (single market, cooperation strategies, cohesion, euro, etc.);

— support for the development of an effective social dialogue with regard to the various aspects of the adjustments and reforms which need to be carried out at EU level, in the Member States and in the regions, including cross-frontier adjustments and reforms;

— the follow-up to bilateral negotiations with regional groupings such as the EPA agreements with the ACP countries, for which the EESC can provide its expertise and that of its civil society partners in non-EU countries.

5.4.4 The EESC calls for the establishment of a European-level organisation of tasks in respect of services of general interest; this would go beyond just cooperation, and involve integrating resources in respect of economic security, civil and environmental protection, customs surveillance at the EU's external frontiers; police forces and even in the defence sector, rather than allowing such a blueprint to be suffocated by a system of 'national fortresses', which flies in the face of the achievement of further progress in the European venture.

5.4.5 The EESC also supports the adoption of a more participatory approach to the single market by encouraging: initiatives by the voluntary sector, the social dialogue, corporate social responsibility and socio-occupational self-regulation and co-regulation (in respect of, in particular, services, commerce, financial markets, the environment, energy, social aspects and consumer rights).

5.4.6 Organised civil society players do, themselves, have a direct, autonomous role to play in developing links with their counterparts in the countries and regional groupings which are trading partners of the European Union.

5.4.7 The achievement of both globalisation with a human dimension and European integration are matters which involve the people and organised civil society. If they are better informed and consulted and systematically involved, the peoples of Europe will take on board a strategy which they have shaped and which they can make their own.

Brussels, 31 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Green Paper — Modernising labour law to meet the challenges of the 21st century'

COM(2006) 708 final

(2007/C 175/17)

On 22 November 2006, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *Green Paper — Modernising labour law to meet the challenges of the 21st century*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2007. The rapporteur was Mr Retureau.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 140 votes to 82, with four abstentions.

1. **Introduction**

1.1 The Green Paper on modernising labour law sets out to:

— identify the main challenges that arise out of a gulf between the existing legal and contractual frameworks and the realities of the world of work. The emphasis is mostly on labour law as it applies to individuals, rather than collective labour law;

— launch a debate on how labour law could help to promote flexibility combined with security in work, regardless of the type of contract, and help to create jobs and reduce unemployment;

— stimulate the debate on the way in which different types of contractual relationships, and labour laws applicable to all workers, could benefit both workers and businesses by facilitating transitions on the labour market, encouraging lifelong learning, and developing the creativity of the labour force as a whole;

— contribute to the goal of better lawmaking by encouraging the modernisation of labour law, without forgetting to consider the overall costs and benefits thereof, and in particular the problems that small and medium-sized enterprises may face.

1.2 In doing this, the Green Paper quite rightly proposes to address issues as diverse as three-way employment relationships, the case of workers with self-employed status who are in reality economically dependent on their principal, as well as the revision of the working time directive and the serious matter of undeclared work.

1.3 With regard to the possible ways of modernising labour law, where the EU can undertake action complementing that of the Member States, the Green Paper is based on the idea that the standard contract (full-time, permanent contract) and the protections that go with it may turn out to be unsuitable for many employers and employees, hindering the rapid adaptation of business and developments in the market, and may therefore act as an obstacle to the creation of new jobs. For this reason, these provisions should be revised.

1.4 The Commission announces that the Green Paper, aside from the issue of individual labour law, paves the way for a debate that will feed in to a communication on flexicurity, to be published in June 2007 with the aim of fleshing out this concept, which exists in several Member States and, according to what we know, combines external and internal flexibility of workers with some kind of security whose scope and funding is not explained in any more detail at this stage. The debate in the second half of the year will thus continue over a wider subject area, within which it would certainly be helpful to look at the elements of flexibility that have already been achieved through the law or collective bargaining and at the funding of this flexicurity, without focusing on any particular model.

2. **General comments**

2.1 The Committee notes with interest the initiative the Commission has taken in launching a discussion on the way in which labour law meets the objectives of the Lisbon Strategy, which combine the quest for sustainable growth with that for more, but also better, jobs, aside from social cohesion and sustainable development. However, it condemns the tight timescale under which this consultation is being carried out and the fact that a whole lot of preparatory work is lacking.

2.2 The Kok Report (November 2003) suggested 'Promot[ing] flexibility combined with security in the labour market by focusing on improving work organisation and the attractiveness — for employers and employees — of both standard and non-standard labour contracts to avoid the emergence of two-tier labour markets. The concept of job security should be modernised and broadened with a view not only to covering employment protection but also to building on people's ability to remain and progress in work. It is important to maximise job creation and raise productivity by reducing obstacles to setting up new businesses and by promoting better anticipation and management of restructuring.'

2.3 It is useful to recall all these various ingredients of the Task Force's conclusions that were adopted by the Council, as they give a more complete picture of the labour market reforms intended to respond to the revised Lisbon Strategy than does the Commission's Green Paper, which focuses on limited points relating to individual labour law. The fact is, the Green Paper only deals partly with the issues addressed by Kok, and does not consider the issue of the 'more secure environment' proposed by the Social Agenda.

2.4 A simplistic approach would risk causing a loss of confidence among the European public, which is already increasingly sceptical towards the Social Agenda. The Commission suggests that it is appropriate to consider the revision of the degree of flexibility provided for in standard contracts (permanent, full-time contracts) as regards notice periods, the costs and procedures for individual or collective dismissals, and the definition of unfair dismissal. These things have historically formed the cornerstone of workers' job security.

2.5 The Committee is concerned about the implication that labour law is currently incompatible with the revised Lisbon Strategy in that it is an obstacle to employment, and that, as things stand, this labour law is not capable of ensuring that businesses and workers have a sufficient degree of adaptability.

2.6 The Committee notes that the strategy set in 2000 has not achieved all its aims. However, it considers that caution should be exercised when analysing the causes of this situation and that an exclusive focus on labour law should be avoided. The revised Lisbon strategy must aim to make Europe more competitive, but also be capable of returning to full employment in a society that is better focused on ensuring a balance between people's work and family lives, better adapted to the career choices they make, investing in people and combating social exclusion. The modernisation of labour law is only one instrument among others to achieve these objectives.

2.7 Therefore, before expressing a view on what direction any undertaking to modernise labour law in Europe should take, the Committee proposes to try to put into perspective a number of comments or initiatives that have come from the Commission itself, such as the report it requested from Professor Supiot, which receives too little mention in this context, or, for example, the conclusions of the EPSCO Council of 30.11.2006 and 1.12.2006 on *Decent work for all*. The aim of the Supiot report was to carry out a wide-ranging, constructive investigation into the future of employment and labour law in an intercultural, inter-disciplinary Community framework; however, the Green Paper does not appear to have drawn on this report sufficiently.

2.8 What conclusions can be drawn from publicly-available statistics on the performance of the protective framework of labour law whilst keeping in mind the objective of 'more and better jobs'?

2.9 The Supiot group's final report raised a number of topics that cover the right questions relating to developments in labour relations, i.e. the globalisation of competition and economic activities, the impact of consumers' habits and attitudes, the liberalisation of markets, technological changes, the fact that workers themselves are changing in that they are better educated and skilled, more autonomous and more mobile, more individualistic, not forgetting new business practices in terms of human resource management, remuneration of workers, and requirements for multiple skills or flexibility of working time. The Supiot report touched on the issue of flexibility and security, and also on the very important matter of transitions between jobs, announcing the 'abandon[ment] of the linear career model'.

2.10 Among the many specific democratic requirements that social law has brought into the socio-economic field, the Supiot group paid attention to four points that lose none of their relevance in the debate opened by the Green Paper ([1]):

These are:

— the requirement for equality, with the issue of gender equality and more generally of non-discrimination, remains relevant, as it is from this perspective that one can better understand how to solve the problems of insecurity and of a two-speed labour market;

— the requirement for freedom, which requires that workers be protected from dependency, is still a solution to the issues of disguised employment relationships, bogus self-employment and undeclared work;

— the requirement for individual security is still an answer to the increase in social uncertainty in its broadest sense felt by workers and recipients of social benefits;

— collective rights that become reality through workers' input into the meaning of work, its purpose, and economic development.

2.11 The Committee considers that the Commission should draw inspiration from previous requirements when framing the debate about modernising labour law and about the protection normally structured around an employment contract, such as health and safety, occupational accidents, arrangements for working time, paid leave, etc.

2.12 The Green Paper highlights the gulf that exists in most countries between the existing legal and contractual framework and the current realities of the world of work that have come into being in a relatively brief period since the late 1980s/early 1990s. However, at no point is the historical protective and emancipating role of labour law in the broad sense, including that resulting from collective bargaining, with its specificities connected to the cultural, social, economic and legal approaches of the various Member States, mentioned.

([1]) Beyond Employment: Changes in Work and the Future of Labour Law in Europe, Oxford University Press, 2001.

2.13 Maintaining a reasonable balance between the parties is not just the job of labour law, but also of social dialogue.

2.14 Any argument that considers protective labour law as an obstacle to growth and employment would be a simplistic vision in which labour law would be reduced to being merely a labour market policy tool or an economic variable.

2.15 Given that an employee is always in a relationship of dependence with his employer, the fundamental protective and emancipating role of labour law must be reaffirmed. Its enforcement should be better guaranteed to avoid pressure on workers and to take into account the new challenges of globalisation and demographic ageing. In this area, there is certainly a role for the European Union vis-à-vis its Member States.

2.16 In 2000, the Commission launched an initiative which aimed to launch discussions about the need to assess the key components of the legal system and collective agreements with a view to ensuring that they allowed for modern organisation **but also** for improvements in employment relationships.

2.17 This improvement initiative was discontinued, despite the fact that it would seem obvious that it should have been carried through so as to achieve the aim of modernising and improving working conditions, a theme that was taken up years later by the current Commission, from a different angle.

2.18 The Committee must point out a number of significant deficiencies, which significantly undermine the reasoning and perspectives advanced by the Green Paper. It would therefore like to highlight a number of points that it regrets have not been looked at in greater depth or emphasised:

— the aim of strong economic growth is not incompatible with the social dimension of European integration and its development;

— labour law consists not only of individual employment contracts but also of collective labour law;

— the concept of decent work exemplified by the commitments to EU-ILO (International Labour Organisation) cooperation and the positive efforts made by EU Member States and candidate countries in June 2006 when ILO Recommendation 198 on employment relationships, which puts forward sound definitions and operational principles aimed at removing the uncertainties regarding the existence of an employment relationship and thus ensuring fair competition and proper protection for workers in an employment relationship, was adopted, should not remain empty words ([2]);

— the social partners, both at national and at European level, have already, through their collective agreements, helped to make new kinds of contract, including non-standard ones, more secure, thus demonstrating their ability to adjust employment relationships to new circumstances and to provide for forms of flexibility backed up by appropriate guarantees;

— social dialogue is a means of co-regulation, which should therefore be strengthened and made more effective so that it provides a better framework for flexibility in employment contracts;

— job security is a prerequisite for improving productivity, as insecurity does not create new jobs. Mobility and flexibility can provide productivity gains and greater security, but any changes in labour law must not be made in such a way as to give rise to an increase in the working poor;

— the answer is not to be found in an argument that sets worker against worker and leaves them with the responsibility for finding a solution to unemployment and the skills gap;

— the new standard type of contract proposed in order to respond to the alleged conflict between 'insider' and 'outsider' workers must not leave workers to sort out how to put an end to the two-speed labour market; moreover, this contract, were it to come into existence, would not remove the real obstacles to job creation.

2.19 The Committee believes that the time has come to undertake a comprehensive, rigorous analysis, based primarily:

— on an assessment of the legal systems in the Member States as regards protection, their aims, the access to judicial and non-judicial conflict resolution bodies and procedures;

— on the contribution of social dialogue to modernising and improving labour law, decent work, and combating undeclared work and to the issue of the operation of the labour market and the organisation of work in businesses at appropriate levels (European, national, regional, businesses and groups, and also across borders, as is appropriate to each case);

— on consideration of public services and of the active role that efficient, high-quality public services play in employment and growth;

([2]) The employers' group did not support the adoption of the ILO Recommendation 198 on the employment relationship.

— on consideration of corporate governance, worker participation, and the mechanisms for monitoring and for alerting worker representative bodies (in particular on works councils) in adapting to change and faced with restructuring;

— on the recognised role of genuinely self-employed workers, whose role is key to promoting entrepreneurship and the creation of SMEs, not least in the social economy, and the establishment of appropriate protection for economically dependent workers, taking into account the specific situation of certain self-employed workers (e.g. direct sales workers);

— on promoting ILO Recommendation 198 (2006) on the employment relationship;

— on the impact of undeclared work, using the instruments for combating this practice via better coordination at European level of the competent authorities: a social Europol?

— on the impact of migratory flows, which need to be better coordinated;

— on win-win situations, i.e. making good use of flexibility in relation to the needs of businesses and to the needs and wants of workers, who can thus take back control of their lives;

— on the debate and the initiatives relating to basic and lifelong education and training, for example of workers, whether they are working, threatened by restructuring, re-entering the labour market after career breaks taken for personal reasons, and on secure careers, instead of banking on certain proposals for a hypothetical 'single contract'.

2.20 The German presidency's agenda, the reappearance of the quality of work at the informal meeting of employment and social affairs ministers in January 2007, and the recent letter from nine employment ministers entitled 'Enhancing Social Europe', the annex to which contained, in particular, proposals for employment and flexicurity policies, have opened the way for the in-depth analysis the Committee wants and for the relaunch of the social component of European integration.

3. **Specific comments: responses to or comments on the questions asked by the European Commission**

3.1 *What would you consider to be the priorities for a meaningful labour law reform agenda?*

3.1.1 Labour law has lost none of its validity as a law that protects both employees and employers; it gives the former an equitable basis for establishing a legally worded employment contract, balancing rights and obligations, taking account of the employers' powers of management and command to which they are subjected; it gives the latter very valuable legal certainty in that the various types of standard contracts are clearly established and their key clauses are fixed or given a framework, including for cases of termination by one side; moreover, in terms of civil liability, for example, labour law also provides workers and employers with guarantees and legal certainty in terms of compensation for and recognition of any incapacity suffered by the employee and of limitation of the employer's non-fault civil liability if safety standards were observed; collective bargaining and consultative institutions contribute to good industrial relations and, if necessary, to the search for appropriate ways of resolving differences.

3.1.2 In terms of changes that are desirable as a matter of priority, it would be appropriate that, with due respect to the laws and practices specific to each Member State, labour law regulates the new flexible forms of contracts that are developing so as to continue, under new conditions, its role of protection and of balancing the working relationship, as well as of ensuring legal certainty for the parties in the event of justified dismissal or of occupational accident or illness; moreover, modern labour law should enable employees to establish rights regarding their career throughout their working lives so that they can alternate lifelong learning, various types of contracts which may at various times meet individual needs regarding work-life balance, promotion or retraining, etc. and enabling employers to achieve long term benefits from the work of satisfied employees.

3.1.3 Labour law reforms must support positive actions in the interest of those most excluded from the labour market. Without creating precarious employment, such reforms must therefore also be instrumental in finding pathways into the labour market, including supporting access to lifelong learning and social economy initiatives providing employment integration.

3.1.4 It would also be appropriate to provide for better regulation of three-way employment relationships in order to specify the rights and obligations of all parties, inter alia in terms of civil or criminal liability; the case of workers who are economically dependent on one principal employer, to whom they are de facto subordinated in terms of how they work, should also enjoy suitable protection, in particular regarding occupational accidents, occupational diseases and social welfare. Any changes to the rules governing this area need, however, to be made with great care, taking into account the specific situation of various economically dependent groups of self-employed workers (e.g. those working in direct sales), to ensure that they are not deprived of their source of income or the opportunity to carry on activities meeting their expectations.

3.1.5 In addition, the fight against undeclared work and the legal formalisation of employment relationships are essential; it would be desirable to step up employment inspections, both with this in mind and more generally so as to ensure the effectiveness of the applicable legal or contractual provisions.

3.1.6 ILO Recommendation 198 on the employment relationship, adopted by the International Labour Conference in June 2006, provides a solid underpinning for the Member States in adapting labour law to the technological, economic and social developments that have been making profound changes to production, services and world trade for over two decades ([3]).

3.2 *Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? yes/no*

3.2.1 Experience shows that without relevant regulation, an increase in flexible contracts increases the segmentation of the market and increases insecurity, for example in terms of lower incomes in the most common (part-time) contracts, which do not make it possible to meet basic needs satisfactorily, and in terms of less social welfare (thresholds of access to unemployment benefits, to a supplementary pension, to lifelong learning). The length of the working day should also be taken into account, because if part- or full-time work is spread out over the day, workers cannot in practice use the time when they are not working for the pursuit of their personal interests.

3.2.2 Experience also shows that the most common flexible contracts (fixed-term and part-time contracts) are often offered to people who would prefer a full-time job. While these contracts can be a good starting point for the further working life of young people and an excellent opportunity for reconciling work and family life, or work and study, they are not always voluntarily chosen. Older workers have difficulty finding jobs, even temporary ones. The fragmentation of the market is not the workers' fault; it results from choices made by employers who ultimately decide unilaterally what kind of contract they want to offer. Labour law must seek to stop discrimination against young people, women and older workers in terms of access to the labour market and of pay.

3.2.3 If flexibility is to be a choice rather than a means of discrimination, providing greater security, giving workers the opportunity to organise their lives independently (young people on short-term contracts forced to live with their parents because housing is too expensive, one-parent families where the parent, not by choice, has a part-time contract, often leading him or her to join the ranks of the working poor), then sweeping reforms of labour law are needed in the direction set out in the answer to the first question, preferably by means of social, tripartite or bipartite dialogue depending on the country and at the appropriate level.

([3]) The employers' group did not support the adoption of the ILO Recommendation 198 on the employment relationship.

3.3 *Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?*

3.3.1 The Committee cannot answer on behalf of the 27 Member States. However, it does have some specific comments to make; the best way to compete is to keep innovating or to play the quality card.

3.3.2 The real factors in productivity are the workers' skills and thus their training and experience, and the introduction of new technologies, which depends on investment in education and training and in research and development, both public and private (it is primarily the latter that is lacking in Europe).

3.3.3 Regulation (whether legal or contractual, as a framework for action on training by the social partners) must therefore be aimed at continuing education and training and adjusting to the introduction of new technologies at work or during people's careers, and be applied fairly to all categories of employees; businesses that seek to build and maintain skills will have to make joint efforts with the public authorities or relevant institutions. Business will get a competitive advantage in return and employees will benefit from increased employability; legislation can encourage the improvement of skills and qualifications by organising or facilitating funding, training structures, by specifying rights to and incentives for training (training leave, time accounts) throughout the career (through successive contracts and employers), according to the laws and practices in force or to be put in place, and collective bargaining ([4]).

3.3.4 Pooling of education and training efforts can be encouraged by legislation and local financing for SMEs, for example, in order to share the costs over a geographical area, given that very small businesses and the self-employed cannot themselves organise and finance training of any duration, apart from the acquisition of on-the-job experience.

3.3.5 Labour law in the broad sense can, however, deal only with a limited part (lifelong learning, involvement of workers) of the factors needed to deal with new technologies and to adapt to industrial and social changes; higher education, research, venture capital, start-up incubators and innovation poles also have their role to play as part of a competitive and coordinated industrial policy at regional, national and European level.

([4]) See OECD, PISA 2003 and PISA 2006 on the effectiveness of education systems; the Nordic European countries do very well, with Finland in first place.

3.4 *How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?*

3.4.1 It is difficult to accept such an approach if flexibility means more, less secure job types. According to the definition, flexicurity provides the opportunity to combine different forms of labour market flexibility with security, in order to provide a balanced approach to enhancing workers' and firms' ability to adapt, while protecting them from risk. Consequently, flexicurity is more than just a balance between external flexibility and social security systems. The more flexible the contract is, the less job security one has, and the stronger the protection needs to be (social protection, secure careers or security of employment throughout the career) ([5]).

3.4.2 The question implies that flexibility creates jobs; there is no demonstration nor evidence to back up this assertion. Security has more to do with social legislation, which is not covered by the Green Paper.

3.5 *Would it be useful to consider a combination of more flexible employment protection legislation and well-designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?*

3.5.1 Truly well-designed support for the unemployed must, in any event and whatever the level of employment 'protection', include worthwhile training or credible retraining. Moreover, it means tailored support for enterprises which are ready to employ people at the margins of the labour market (long-term unemployed, etc). An 'active labour market policy' does not mean compulsory acceptance of any job that is offered, even a less skilled or less well-paid one, on pain of complete loss of benefits.

3.5.2 Solutions vary from country to country depending on history, the role of collective bargaining, and the social situation. Subsidiarity has an important role to play in the area of labour law, including in the implementation of European directives, whether they are the result of a European framework agreement or an EU initiative. To be sure, the Community level must also take its responsibilities, encourage negotiation, submit concrete proposals within its areas of competence, and must not confuse 'better legislation' with 'deregulation'.

([5]) In this context, it is important to recall that 78 % of work contracts in Europe are full time and permanent, and that 18.4 % of workers are part-time, also with permanent contracts. Fixed-term contracts account for around 14.5 % of the workforce in the EU and temporary work for 2 % of employment across the EU27. Nonetheless, over 60 % of new work contracts are flexible.

3.6 *What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?*

3.6.1 It is essential to have solid and sustainable standards to provide for lifelong learning and transitions between jobs; the relative importance of legislation and collective agreements will vary according to the models that exist in countries where legislative and social conditions, the strength of representative organisations, and traditions and customs differ, depending on the social history and the means of ensuring that compromises accepted by the social partners are kept to for the very long term. This brings us back to the creation of genuine statutory protection of employees.

3.6.2 The system that needs to be set up involves employment contracts and needs to be implemented in institutions that provide support for transitions, financial support (the forms of financing to be negotiated or discussed) and public, collective or cooperative training establishments, or on-the-job training (learning company) with recognition of the qualifications thus acquired.

3.6.3 It is in this area that labour law could make an effective contribution to the Lisbon objectives, both in the area of the knowledge society and in that of security that enables people to organise their lives and plan for the future, which in turn makes a direct contribution to productivity and the quality of work.

3.7 *Is greater clarity needed in Member States' legal definitions of employment and self-employment to facilitate bona fide transitions from employment to self-employment and vice versa?*

3.7.1 To be sure, a debate could be held on this matter, on the basis of sufficiently in-depth comparative studies, but this question seems largely theoretical, to the extent that the harmonisation of labour law or of social protection are not on the agenda; the national definitions and the corresponding case law are working, and it would seem more appropriate to leave them in place, as there is a clear distinction between labour law and civil (commercial) law.

3.8 *Is there a need for a 'floor of rights' dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?*

3.8.1 This all depends on what is included in this 'floor of rights dealing with […] working conditions'. If we are talking about such things as working time, flexible working, and pay, these are determined by the type of contract and the legally applicable general conditions.

3.8.2 If we are talking about rights of participation, fundamental freedoms, the principle of equality and non-discrimination, the right to protection against the unforeseen — accidents, sickness, unemployment, etc. — these are obviously independent of the employment contract; they are fundamental rights. It would be completely unacceptable to propose that they be described as 'minimum requirements' or to envisage their 'flexibility'.

3.9 *Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in 'three-way relationships'?*

3.9.1 Labour law is based on public social policy, which is binding on all parties. Principals must have some power to monitor or supervise their sub-contractors and must take the precaution of enshrining certain principles (compliance with applicable social and technical standards) in contracts, if they do not want to be unwilling accomplices to violations of labour law or other national standards applicable to building sites or workplaces.

3.9.2 Joint responsibility, with provision for principals to take action against defaulting sub-contractors, seems to be the solution that would best protect the rights of workers, who may find it very difficult to defend themselves if the headquarters of the sub-contractor is in another country, possibly outside the EU, while they are working on a building site managed by the principal. This rule establishing joint responsibility for working conditions and for guaranteeing the payment of salaries should apply whether the principal is a private or public entity or a mixture of the two.

3.9.3 The protection of employees working abroad must be improved. Non-national sub-contractors should make contributions to funds or institutions that guarantee the payment of money owed to employees if the employer becomes insolvent; legal provision should also be made in the Member States for compensation for possible repatriation to be included among the principal's obligations in the event of its sub-contractor becoming insolvent.

3.9.4 One of the problems of three-or-more-way employment relationships lies in the increased risk, for employees/workers, of failure of one of the links in the chain and of dilution of responsibilities. In the case of non-national sub-contractors' employees, only joint responsibility between the principal on the one hand and any and all of its sub-contractors on the other, supported by the legal rules, provides protection that is sufficiently complete to ensure that rights are respected and wages and social security contributions are paid. Appropriate national guarantee systems, based on the directive on the protection of employees in the event of the insolvency of their employer, should be sufficiently effective and even extended to companies in other countries if their national guarantee system is insufficient or non-existent, in which case the joint responsibility of principals would be proportionately reduced. In addition, national legal systems must provide for a mechanism to allow the use of a proportion of payments from principals to foreign sub-contractors to contribute to a mechanism guaranteeing the latter's outstanding financial obligations towards their employees in the event of their employer becoming insolvent ([6]).

3.10 *Is there a need to clarify the employment status of temporary agency workers?*

3.10.1 The absence of a Community legal framework is creating the risk of abuses such as evading legislation on temporary secondment. It would be useful to look actively for a consensus in the Council, which would enable regulation of the activities of temporary worker agencies at European level.

3.11 *How could minimum requirements concerning the organization of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers' health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?*

3.11.1 The 1993 directive that is currently in force, subject to the inclusion of case law established by the Court, offers a protective framework that can be improved, complemented or developed at national level as necessary, inter alia through collective bargaining at various levels.

3.11.2 The question implicitly recognises the link between the duration/length of working time and the risks of accidents or detriment to health; there is indeed such a link, and reducing actual working time could, over a longer period, improve workers' health, mainly by reducing stress and permanent fatigue, and at the same time also facilitate the creation of new jobs.

3.12 *How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of 'worker' in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?*

3.12.1 See answer to question 1 and ILO recommendation 198; due to current variations, the definition should remain within the competence of the Member States, as it affects not only employment contracts, but the application of social legislation (definition of beneficiaries, conditions for accessing benefits).

([6]) See Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.1980, p. 23).

3.12.2 There does not seem to be any real problem caused by European directives, which define the persons concerned according to the nature of the legislation; an in-depth study of this matter would certainly be necessary before any changes, if necessary, were considered.

3.13 *Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?*

3.13.1 The role of the social partners is indispensable, in the context of social dialogue and in the spirit of the treaties and the Charter, in looking at the implementation of and compliance with Community labour law.

3.14 *Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?*

3.14.1 The role of Eurostat should be developed so that the phenomena operating in the various countries can be properly understood; it appears that the role of informal or undeclared work in forming national GDP is underestimated; if the causes of this are more attributable to specific national situations, as some studies indicate, then action by Member States themselves should be strongly supported and encouraged.

3.14.2 Nonetheless, since little is known about these phenomena, it would be useful to clarify the links between these types of work and counterfeiting, the significance of criminal networks in undeclared work and links with illegal immigration, which could justify greater judicial cooperation within the Union, and an increased role for the EU, insofar as these forms or work also have an impact on the internal market and competition.

3.14.3 The social partners have an important role to play in combating undeclared work and in reducing the informal economy. Action should be taken at EU level to encourage the social partners in Member States to launch national and sectoral projects among themselves and in cooperation with the authorities to resolve these problems. The social partners could work together at EU level to analyse and publicise good practices in Member States.

3.14.4 The fight against undeclared work calls for effective cross-border cooperation and surveillance by Member State authorities and dissemination of information on the sanctions arising from performing undeclared work or making use of undeclared work.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Replace the entire opinion by the following:

'Today Europe is facing important challenges like a changing economy from an industrial economy to a service oriented and knowledge based economy, globalisation, rapid technological progress, ageing of European population, decreasing birth rates and changes in society and its needs.

Responding to these challenges as well as maintaining our European social model requires — inter alia — a modernisation of labour law.

Therefore, the European Economic and Social Committee (EESC) welcomes the Commission's Green Paper that launches a public debate about the modernisation of labour law. Input to this Green Paper shall enrich the planned Commission's communication on flexicurity. The balance between employment flexibility and security should mutually satisfy the needs of workers as well as enterprises.

The modernisation of labour law should support the Lisbon strategy objectives of growth, competitiveness, more and better jobs as well as social inclusion. To achieve these objectives the EESC suggests the following:

1. *The existing variety of contractual forms of employment should be kept provided that a stable legal framework is in place, which takes the needs of workers as well as the needs of enterprises, especially SMEs, into account. 78 % of employment contracts are on a permanent and full time basis, however, the number of new flexible contract arrangements is rising across Europe. Flexible work contracts such as part-time and fixed-term contracts can help develop work skills that are not learnt in*

a classroom environment, increasing the likelihood of finding a full-time permanent contract. Flexible work contracts can be a good starting point for the further working life of young people as well as an excellent opportunity for reconciling work and family life and can therefore contribute to the creation of an inclusive labour market. The protection against discrimination is important for these workers as established in European directives regarding part-time work and fixed term work which are based on European social partner agreements.

2. *The modernisation of labour law needs to take place mainly at the level of the Member States. As labour law is just one part of the flexicurity-principle the right balance between flexibility and security needs to be defined within the respective national framework. National reforms should be complemented by European action targeted at raising awareness through identifying and facilitating exchange of best practices.*

3. *The important role of social partners at national, sectoral and enterprise level for modernising labour law as well as for finding the balance between flexibility and security has to be supported. The collective bargaining has to be based on the principle of the autonomy of the social partners and will vary according to the history and culture of industrial relations in the different Member States.*

4. *A more flexible employment protection within indefinite labour contracts should be combined with active labour market policies providing tailored support for employees upgrading their qualifications according to the labour market needs. The focus should be on employment security rather than on the protection of particular jobs. Positive actions by social economy and enterprises should be supported to integrate the most excluded in the labour market. A close tripartite partnership between employers, workers and the public sector helps to identify training needs and to share the financial burden. Employment-friendly social protection schemes for workers as well as for the self-employed should contribute to facilitate transitions between different forms of work.*

5. *Self-employment highly contributes to entrepreneurial spirit, an area where Europe is lagging behind compared to its main competitors in the world and is the best sign of the dynamism of a modern economy. Economically dependent self-employment, however, has to be clearly distinguished from bogus self-employment: bogus self-employed should have the same level of protection as employees as regards e.g. social security, safety and health and job protection.*

6. *Undeclared work distorts competition and destroys the financial basis of the national social security schemes and the tax systems. Undeclared work is a complex phenomenon and its causes are multiple. Therefore combating undeclared work requires a good policy mix, with an adaptation of labour law, a simplification of administrative obligations, consistent wage policies, fiscal incentives, improvement of public infrastructure and public services but also controls and dissuasive sanctions. The European Commission should therefore take the lead in order to gather good practices and facilitate its dissemination among the Member States in order to stimulate action against undeclared work.'*

Reason

To be given orally.

Voting

For: 89

Against: 126

Abstentions: 7

New point 3.9.2

Add new point:

'In general terms principals do not have any influence on how contractors comply with their obligations to employees on a daily basis, and in addition they are neither aware of nor able to influence contractors' financial situation; they are not therefore in a position to gauge whether contractors are able to meet their obligations to employees. They are not therefore able to assume the accompanying financial risk.'

Reason

The Commission's question in the Green Paper is general and does not only apply to transnational relations. Therefore I propose to insert an additional point of general nature between 3.9.1 and 3.9.2. In this case, point 3.9.2, which describes in detail the exemption from this general statement (transnational relations) would be OK.

Voting

For: 75

Against: 122

Abstentions: 12

Opinion of the European Economic and Social Committee on the 'Proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning'

COM(2006) 479 final — 2006/0163 (COD)

(2007/C 175/18)

On 19 October 2006, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2007. The rapporteur was Mr Rodríguez García-Caro.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 156 votes to 1 with 1 abstention.

1. **Conclusions**

1.1 The Committee believes that there is a need for the proposal establishing a European Qualifications Framework, given that adequate transparency of qualifications and competences boosts mobility within the EU and ensures standardised, widespread access to the European labour market by enabling certificates obtained in one Member State to be used in another. However, the Committee has identified and set down herein a number of problems in the proposed model which could hinder its implementation.

1.2 The EESC notes that the legal form chosen for the proposal's adoption is the recommendation which, as set out in Article 249 of the Treaty Establishing the European Community, is not legally binding.

1.3 The EESC believes that greater clarity and simplicity are needed in the model's descriptors, especially where professional qualifications are concerned, in order to make them easier to understand by the general public, businesses and experts; in addition, there should be an annex giving Member States a reference on which to base their National Qualifications Frameworks, thus ensuring consistency throughout the reference system to be set up.

2. **Introduction**

2.1 The proposal forming the subject of the EESC's opinion meets one of the objectives set by the Lisbon European Council in 2000, during which it was concluded that by improving the transparency of qualifications and fostering lifelong learning, it would be possible to adapt European education and training systems in order to reach the targets set by the Council in terms of competitiveness, growth, employment and social cohesion in Europe.

2.2 This conclusion was recognised in 2002 by the Barcelona European Council, which resolved that Member States should encourage cooperation and build bridges between formal, non-formal and informal learning. This was seen as a prerequisite for the creation of a European area of lifelong learning, building on the achievements of the Bologna process in higher education, with the aim of making European education and training systems a worldwide benchmark for quality by 2010.

2.3 In the same year, the Seville European Council invited the Commission to develop a framework for the recognition of education and training qualifications, in close cooperation with the Council and Member States.

2.4 The Council and Commission's interim report of 2004 on the implementation of the Education and Training 2010 programme stressed the need to set up a European qualifications framework. The Copenhagen Council, held in autumn 2004, also stressed the need to prioritise the development of an open and flexible European qualifications framework, based on transparency and mutual recognition, that would become a common standard for education and training.

2.5 The conference of higher education ministers held in Bergen in spring 2005, during which a European higher education qualifications framework was adopted, highlighted the importance of protecting the complementarity between the European Higher Education Area and the European Qualifications Framework.

2.6 In the context of the review of the Lisbon Strategy, the employment guidelines for 2005-8 stressed the need to guarantee access to flexible learning, increasing opportunities for the mobility of trainees and students, improving the transparency of qualifications and the validation of non-formal learning throughout Europe.

2.7 The European Council of March 2005 called for the adoption of a European Qualifications Framework in 2006. This resolution was ratified at the European Council of March 2006.

2.8 This proposal and, particularly, the descriptors defining the European Qualifications Framework (EQF), were drawn up on the basis of: a methodical consultation process led by the Commission with the cooperation of the European Centre for the Development of Vocational Training (CEDEFOP) and the Bologna Process Follow-up Group; the working document *Towards a European Qualifications Framework for lifelong learning* ([1]), to which contributed the 32 countries involved in the Education and Training 2010 programme, the social partners, sectoral organisations, educational bodies and NGOs; the discussions at the Budapest Conference held in February 2006; and the work carried out by the groups of experts and consultants assisting the Commission.

2.9 After carrying out an impact assessment of the possible forms that the EQF proposal could take, it was decided to opt for a Recommendation of the European Parliament and of the Council.

2.10 At the end of September 2006, the European Parliament approved a report on the creation of the European Qualifications Framework ([2]).

3. **Summary of the proposal**

3.1 The proposal for a recommendation contains a reference tool that will make it possible to compare the qualification levels of the different national qualification systems. It is based on a series of eight reference levels which are described in terms of learning outcomes, covering general and adult education, vocational education and training and higher education. The proposal comprises the text of the recommendation, a series of definitions and two annexes (one setting out the descriptors for defining the levels of the EQF, and the other covering the principles for quality assurance in education and training).

3.2 The European Parliament and the Council recommend that the Member States:

— use the EQF as a reference tool for comparing qualification levels;

— align their national qualification systems with the EQF by 2009 and develop national qualification frameworks;

— ensure that, by 2011, all new qualifications and Europass documents include a reference to the corresponding EQF level;

— adopt an approach based on learning outcomes when describing and defining qualifications;

— promote the validation of non-formal and informal learning;

— designate a national centre for supporting and coordinating the national qualification system with the EQF, in order to:

  — correlate the levels of both systems;

  — promote and apply quality assurance principles during the correlation process;

  — ensure the transparency of the methodology applied in order to establish correspondences between levels;

  — guide interested parties and ensure their participation.

3.3 The European Parliament and the Council support the Commission's intention to:

— assist the Member States and international sectoral organisations in using the reference levels and principles of the EQF;

— set up an advisory group for the EQF in order to supervise, coordinate and ensure the quality and consistency of the correlation process between the qualification systems and the EQF;

— oversee the measures adopted and inform, within five years, the European Parliament and the Council on the experience gained and future repercussions.

3.4 The eight reference levels are described in Annex I, according to the individual learning outcome, based on what the person knows, understands and is able to do. These aspects are expressed in the level descriptors in terms of knowledge, skills and competence.

4. **General comments**

4.1 The Committee welcomes the proposal for a recommendation submitted for its opinion, subject to the observations made herein. The Committee believes that adequate transparency of qualifications and competences boosts mobility within the EU and ensures standardised, widespread access to the European labour market by enabling certificates obtained in one Member State to be used in another.

4.2 In the conclusions of its Opinion ([3]) on the Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications ([4]), the European Economic and Social Committee supported the creation of a joint platform for the recognition of all qualifications: i.e. higher education, vocational education and training, and non-formal and informal learning. The Committee considers that the European Qualifications Framework is an important step forward in the recognition and transparency of qualifications.

([1]) SEC(2005) 957.
([2]) A6-0248/2006. Rapporteur: Mr Mann.
([3]) See the EESC Opinion of 18.9.2002 on 'Recognition of professional qualifications', rapporteur: Mr Ehnmark, (OJ C 61, 14.3.2003).
([4]) COM(2002) 119 final.

4.3 As it is based on learning outcomes, the EQF should help to bring education and training closer into line with the needs of the labour market, which would also make it easier to validate non-formal and informal learning and encourage, in turn, the transfer and use of qualifications between different countries and education or training systems. In the EESC's opinion, these are the most important benefits of the initiative, together with the influence that the reference levels will have on employment.

4.4 The European Qualifications Framework should cater for the requirements of individual learning: validation of knowledge, skills and their social integration, employability, and the development and use of human resources. Validation of the non-formal and informal education of European workers should be one of the priorities driving the European Qualifications Framework.

4.5 The Committee believes that the EQF will help to make European education and training systems clearer and more accessible for citizens in general. The EU's workers and their potential employers need a reference framework that enables them to compare the qualifications obtained by a person in one or more Member States with the reference qualifications in the Member States to which the person wishes to relocate in order to work. The Committee therefore welcomes the effect that the proposal will have in overcoming the obstacles to transnational mobility. The European Qualifications Framework should build bridges between training systems, facilitating mobility between vocational training and general education (including higher education).

4.6 As regards the legal form given to the EQF, the Committee appreciates the analysis carried out by the Commission in its impact assessment ([5]), and notes that successive recommendations in the field of education, training and mobility have been supported to a greater or lesser extent by the Member States. However, the Committee believes that the recommendation, as a non-binding act and therefore without legal obligation for the addressees, might prove to be a short-term instrument which would not enable its objective to be met in the medium term, particularly if the reference must be established with a hypothetical National Qualifications Framework (NQF) from each Member State.

4.7 Furthermore, in this context, and in line with the outcome of the Budapest Conference of February 2006, five EU countries have already established a National Qualifications Framework and the rest are either developing one or have expressed their intention to do so, or are not going to develop a National Qualifications Framework in their country.

4.8 This initial approach means that, in the Committee's opinion, there could be great difficulties in completing the project and that, without a National Qualifications Framework, the EQF lacks content. As the Commission says in its document *Towards a European Qualifications Framework for lifelong learning* ([6]), 'from the point of view of an EQF, the optimal approach would be that each country set up a single National Framework of Qualifications and link this single National Framework to the EQF'.

4.9 The Committee believes that priority should be given to the effective validation and recognition of the various types of qualifications resulting from formal, non-formal and informal learning across countries and educational sectors, through increased transparency and better quality assurance. This reiterates the point made by the Council in its resolution of 27 June 2002 on lifelong learning ([7]). It should also be recalled that in this resolution, the Council calls upon the Commission to develop a framework for recognising qualifications within the context of higher education and vocational training. The Committee therefore stresses, taking this new argument into account, that the efforts to complete the eight reference levels of the EQF cannot be left until the end of the process, and subject to the will of the Member States — or, indeed, to the legal approach of a recommendation.

4.10 The EESC believes that the Commission should clarify the repercussions for the process in the event that one or more Member States should fail to adopt a National Qualifications Framework or to link it with the EQF. With this in mind, the Committee believes that the Commission should analyse this eventuality and its possible solutions in order to remain able, subsequently, to respond to unforeseen situations. The final document must provide an incentive for Member States to adopt this instrument.

4.11 The EESC is not calling for the creation of a uniform education and training system within the EU, nor is claiming to tell Member States what qualifications their education centres should dispense. What the Committee wishes to convey is the need to consolidate the steps being taken in the search for transparency, recognition and transfer of qualifications between the Member States. Sophisticated mechanisms also need to be put in place for guaranteeing quality — in particular the quality of certification bodies — at Member State level. Without this framework for action, student/trainee mobility has little meaning, and worker mobility is hindered.

At national and regional level, decisions relating to the National Qualifications Framework should be adopted jointly with the social partners. These partners, with the authorities responsible, should define and apply principles, rules and objectives for the design of the National Qualifications Framework. Consideration should also be given to the role of civil society organisations working in this field.

([5]) COM(2006) 479 final.

([6]) SEC(2005) 957.

([7]) OJ C 163/1 of 9.7.2002.

4.12 The proposal provides for the creation of an EQF advisory group responsible for overseeing, coordinating and ensuring the quality and consistency of the process to correlate qualification systems and the EQF. In this regard, and with the aim of ensuring uniform criteria in the correlation of national systems and the EQF, the Committee believes that the advisory group, given the profile of the proposed members, should also be responsible for validating the correlation between national levels and the reference framework, before this correlation is set in stone.

5. **Specific comments**

5.1 At the end of page 9 of the English version of the proposal, a reference is made to the 25 EU Member States. Following the last enlargement, this reference should be amended to 27 Member States.

5.2 The Committee believes that the deadlines referred to in the recommendation to Member States, particularly under point 2, are too early, given the situation regarding the National Qualifications Frameworks in the Member States. The Committee understands that the deadline is voluntary but notes that, given the current state of affairs, the timeframe is likely to be longer.

5.3 The tasks entrusted to the Commission by the proposal include, under point 3, that of monitoring the measures adopted and informing the European Parliament and Council of the experience gained, including a potential review of the recommendation. The Committee considers that to comply fully with Articles 149(4) and 150(4) of the Treaty establishing the European Community, the report should also be addressed to the European Economic and Social Committee.

5.4 With regard to the descriptors set out in Annex I of the proposal, as these criteria are to be used to establish the correlation of levels, the Committee believes that they should be worded more simply, so as to make them more understandable, clear and concrete, using language that is less academic and closer to the language of vocational training. The annex containing the descriptors could also be accompanied by a second, explanatory annex, which would make it possible to match qualifications to levels, thus making it easier to later transpose these qualifications on a comparative basis between Member States.

5.5 Clear definitions make it easier to understand the meanings of terms used in the document under consideration. In this context, the Committee believes that some of the definitions contained in the Commission document *Towards a European Qualifications Framework for lifelong learning* ([8]) are clearer than those in the proposal under discussion. More specifically, for instance, the Committee proposes that the definition of 'skills' be replaced by that given on page 47 of the abovementioned document.

5.6 The Committee supports the correspondence established between the last three levels of the EQF and the academic levels of the Bologna qualifications framework (bachelor, master and doctor). During these phases of education, the knowledge, skills and competences acquired should be classified according to the level of learning attained in the university studies undertaken.

5.7 The Committee agrees that it is necessary to continue applying quality criteria at all levels of education and training in the Member States. It has reiterated this point on several occasions, both in its Opinion on the Proposal for a Council Recommendation on European cooperation in quality assurance in higher education ([9]), and in its Opinion on the Proposal for a Recommendation of the Council and of the European Parliament on further European cooperation in quality assurance in higher education ([10]). More specifically, in the latter opinion, the Committee stated that '[t]he requirement for high quality education and training is vitally important for achieving the Lisbon Strategy objectives.'

5.8 The Committee endorses the content of Annex II of the proposal in its entirety. However, in order to adapt to current trends in the area of quality, in all fields, it believes that Annex II should be entitled 'Principles for the ongoing quality improvement in education and training', bringing the text of the annex into line with this title.

5.9 The Committee recommends that Member States, their education and training centres and the social partners work with the model set up by the European Foundation for Quality Management (EFQM). This accredited model, supported by the EU, could be the frame of reference on which educational establishments base their ongoing quality improvement processes.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([8]) SEC(2005) 957.

([9]) See the EESC Opinion of 29.10.1997 on 'European cooperation in quality assurance in higher education', rapporteur: Mr Rodríguez García-Caro (OJ C 19, 21.1.1998).

([10]) See the EESC Opinion of 6.4.2005 on 'Quality assurance in higher education', rapporteur: Mr Soares (OJ C 255, 14.10.2005).

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 — An EU strategy to support Member States in reducing alcohol related harm'

COM(2006) 625 final

(2007/C 175/19)

On 24 October 2006 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2007. The rapporteur was Ms van Turnhout and the co-rapporteur was Mr Janson.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 96 votes to 14 with 6 abstentions.

1. **Executive Summary**

1.1 The European Economic and Social Committee (EESC) welcomes the Communication from the Commission, *An EU strategy to support Member States in reducing alcohol related harm*. However, the EESC regrets that the Communication falls far short of a 'comprehensive strategy' which was invited in the *Council Conclusions* of 5 June 2001.

1.2 This Opinion addresses the public health issue of reducing alcohol related harm: harmful and hazardous alcohol consumption as well as under-age drinking contributes to alcohol related harm.

1.3 The EESC would have expected the Commission to have provided a more comprehensive and transparent analysis of all the relevant EU policy areas, as identified in the impact assessment, and of the difficulties some Member States have experienced in maintaining quality public health alcohol policies due to EU market rules.

1.4 The EESC urges the Commission, in recognition of its treaty obligations, to show strong leadership by actively supporting Member States in their efforts to provide a high level of health protection by reducing alcohol related harm and to ensure that Community action complements national policies.

1.5 The EESC recognises that cultural habits differ across Europe. These differences should be taken into account by the various initiatives and actions proposed.

1.6 The EESC welcomes the development of a common evidence base, including standardised definitions for data collection, which will provide a strong EU added value dimension. The EESC regrets that most of the priority areas identified do not include specific objectives with clear measurable targets and timelines.

1.7 The EESC regrets that nowhere in the Communication does the Commission acknowledge that one of the reasons for so much alcohol related harm is that alcohol is a psychoactive drug, a toxic substance when used to excess, and for some an addictive substance.

1.8 The EESC strongly supports children's rights and believes that children, due to their vulnerability and special needs, require special safeguards and care, including appropriate legal protection. The EESC recommends that, for the purposes of the strategy, the child should be defined as any person under the age of eighteen years, in line with the UN Convention on the Rights of the Child.

1.9 The EESC urges that a reduction in the exposure of children to alcohol products, advertising and promotions be included as a specific objective to provide greater protection to children.

1.10 The EESC urges the Commission to address the economic consequences of alcohol related harm. The negative effects go against the objectives of the Lisbon Strategy and have implications for the workplace, society and the economy.

1.11 The EESC welcomes the creation of the Alcohol and Health Forum which could be a useful platform for dialogue, between all relevant stakeholders, and lead to concrete action aimed at reducing alcohol related harm. The EESC would welcome the opportunity to be an observer at the Alcohol and Health Forum.

1.12 The EESC urges that education and awareness raising initiatives should be part of an overall integrated strategy to reduce alcohol related harm.

1.13 The EESC is concerned that there is a disturbing inconsistency between the research evidence-base of effective measures to reduce alcohol related harm and what are being proposed as Community actions. Throughout the Communication, education and information are frequently cited as the intended measures. However, the research evidence suggests that such measures have a very low rate of effectiveness in reducing alcohol related harm.

2. **Background**

2.1 The European Union has competence and responsibility to address public health problems related to harmful and hazardous alcohol use. Article 152 (1) of the Treaty ([1]) states that: *a high level of human health protection shall be ensured in the definition and implementation of all Community policies*. It states further that: *Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases and obviating sources of danger to human health*.

2.2 In 2001, the Council adopted a Recommendation on the drinking of alcohol by young people, in particular children and adolescents ([2]), and invited the Commission to follow, assess and monitor developments and the measures taken, and to report back on the need for further actions.

2.3 In its *Conclusions* of 5 June 2001, the Council invited the Commission to put forward proposals for a comprehensive Community strategy aimed at reducing alcohol-related harm which would complement national policies. In June 2004, the Council reiterated its invitation ([3]).

3. **Overall comments**

3.1 The European Economic and Social Committee (EESC) welcomes the Communication from the Commission, *An EU strategy to support Member States in reducing alcohol related harm* ([4]).

3.1.1 There are significant differences in alcohol consumption and harm between countries both in quantitative terms, with regard to the form taken by the phenomenon, and also in terms of the level of health-related and social dangers. In the light this the EESC believes that the 'Community activities' to be carried out 'while respecting Member States' competencies' should be understood as 'common guidelines' inspired by mutually-accepted concepts concerning the aim of reducing alcohol related harm, in all its forms. In the context of these common guidelines, individual Member State should decide on the means, the techniques and the intensity of the work to be done.

3.2 However, the EESC regrets that the Communication falls far short of the 'comprehensive strategy' that was called for in the *Council Conclusions*, despite the lengthy developmental process, the evidence of the EU-wide problems relating to alcohol consumption and their impact on the health, social well-being and economic prosperity of European citizens.

3.3 The Council invited the Commission to put forward a range of Community activities in all relevant policy areas to ensure a high level of health protection. The relevant policy areas included excise duties, transport, advertising, marketing, sponsorship, consumer protection and research, while respecting Member States competencies.

3.4 The EESC welcomes the recognition that harmful and hazardous alcohol consumption is a key health determinant and one of the main causes of ill health and early death in the EU. For many alcohol related conditions, there is no 'safe' limit of alcohol ([5]).

3.5 The EESC regrets that nowhere in the Communication does the Commission acknowledge that one of the reasons for so much alcohol related harm is that alcohol is a psychoactive drug, and is a toxic substance when used to excess, and for some an addictive substance. This is disappointing given that the strategy has been led out by the Public Health Directorate of the Commission, where medical expertise is extensive.

3.6 The EESC welcomes the acknowledgement that harmful and hazardous alcohol consumption impacts negatively not only on the drinker but on people other than the drinker especially in relation to accidents, injuries and violence. The EESC recognises that the most vulnerable group at risk are children, and that other vulnerable groups include people with learning disabilities, mental health problems, and those addicted to alcohol and other drugs.

([1]) Treaty establishing the European Community: http://europa.eu.int/eur-lex/en/treaties/selected/livre235.html.

([2]) Council recommendation of 5 June 2001 (2001/458/EC). Full report published at http://ec.europa.eu/comm/health.

([3]) Council Conclusions 2001 and 2004 http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/lsa/80729.pdf.

([4]) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — An EU strategy to support Member States in reducing alcohol related harm (COM(2006) 625 final). The Communication is accompanied by two comprehensive reports which were commissioned by the European Commission: P. Anderson and A. Baumberg, *Alcohol in Europe: A Public Health* Perspective, St. Ives: Cambridgeshire: Institute of Alcohol Studies, 2006. (http://ec.europa.eu/health-eu/news_alcoholineurope_en.htm); and a detailed economic analysis of the impact of alcohol on the economic development of the EU as part of the Impact Assesment procedure (http://ec.europa.eu/health/ph_determinants/life_style/alcohol/documents/alcohol_com_625_a1_en.pdf) — 'RAND Report'.

([5]) *Alcohol in Europe: A Public Health Perspective*.

3.7 Domestic violence is a serious problem in many countries ([6]). The EESC urges specific attention to this issue, given the strong links between domestic violence and heavy drinking ([7]). While domestic violence can occur in the absence of alcohol, heavy drinking contributes to violence in some people under some circumstances. Heavy drinking can involve more acts of violence and more severe violence. Treatment for alcohol dependence has been shown to reduce intimate partner violence. A reduction in heavy drinking not only benefits the victims and the perpetrators of violence, but also the children living in such families.

3.8 The destiny of Europe depends on a healthy and productive population. The evidence that a higher proportion of the disease burden from harmful and hazardous alcohol consumption is experienced by young people is therefore of grave concern to the EESC ([8]).

3.9 While different cultural habits related to alcohol use across Europe continue to exist, there has been a convergence of drinking patterns among young adults and children. The EESC is concerned at the increase in harmful and hazardous drinking among young adults and children in many Member States over the last ten years, in particular episodic heavy drinking known as 'binge drinking'. Social acceptance of a lifestyle in which alcohol is constantly present encourages these harmful drinking patterns.

3.10 The EESC urges the Commission to recognise that regular moderate drinkers who drink in harmful ways from time to time contribute to acute alcohol related harm, for example driving after drinking, alcohol triggered violence in public places, excessive drinking around sporting or other special events. Such occasional harmful drinking events amongst the majority of moderate drinkers can result in significant public health and public safety problems ([9]).

3.11 The strategy explicitly draws attention to the competence of the EU under the Treaty to complement national policies directed at safeguarding public health. It also notes the fact that the European Court of Justice has repeatedly confirmed that reducing alcohol related harm is an important and valid public health goal, using measures deemed appropriate and in accordance with the principle of subsidiarity.

3.12 In light of this, the EESC would have expected the Commission to have provided a more comprehensive and transparent analysis of all the relevant EU policy areas.

3.13 The impact assessment undertaken by the Commission did identify all the relevant policy domains and the difficulties that some Member States have experienced in maintaining quality public health alcohol policies due to cross boarder activity, such as exposure to cross border private imports and cross-boarder advertising. However, the alcohol strategy does not put forward any proposal to respond to this problem.

4. **Overview of harmful effects**

4.1 Globally, the European Union is the region where most alcohol is consumed, with 11 litres of pure alcohol per person each year ([10]). While the trend is that overall consumption is declining there is also a trend towards more harmful drinking patterns.

4.2 Noting that most consumers drink responsibly most of the time, the EESC is concerned that 55 million adults in the EU (15 % of the adult population) are estimated to drink at harmful levels on a regular basis ([11]). Harmful alcohol consumption is estimated to be responsible for approximately 195 000 deaths a year in the EU due to accidents, liver disease, cancers and so forth. Harmful alcohol use is the third biggest cause of early death and illness in the EU ([12]).

4.3 Harmful alcohol drinking also affects the economy, due to increased health care and social costs, and loss of productivity. The cost of alcohol related harm to the EU's economy has been estimated at EUR 125 billion for 2003, equivalent to 1.3 % of GDP which includes crime, traffic accidents, health, premature death and disease treatment and prevention ([13]).

5. **Priority themes**

5.1 The EESC regrets that, in relation to **four** of the five priority areas, the Communication does not include specific objectives with clear measurable targets and timelines.

([6]) EESC Opinion of 16.3.2006 on *Domestic violence against women* (OJ C 110 of 9.5.2006) and the EESC Opinion of 14.12.2006 on *Children as indirect victims of domestic violence* (OJ C 325 of 30.12.2006). Rapporteur: Ms Heinisch.
([7]) *Alcohol in Europe: A Public Health Perspective*.
([8]) Alcohol-related harm in Europe — Key data October 2006, Brussels, MEMO/06/397, 24 October 2006. Source: Global Burden of Disease Project (Rehm et at 2004).
([9]) *Alcohol in Europe: A Public Health Perspective*.
([10]) Ibid.
([11]) More than 40 g of alcohol, i.e. 4 drinks a day, for men and over 20 g, i.e. 2 drinks a day, by women.
([12]) Alcohol-related harm in Europe — Key data October 2006, Brussels, MEMO/06/397, 24 October 2006. Source: Global Burden of Disease Project (Rehm et al 2004).
([13]) Ibid.

Protecting children

5.2 Children are particularly vulnerable to harms caused by alcohol. It is estimated that 5 to 9 million children in families are adversely affected by alcohol that alcohol is a causal factor in 16 % of cases of child abuse and neglect, and that an estimated 60 000 underweight births each year are attributable to alcohol ([14]).

5.3 The Commission already recognises the rights of the child and supports necessary action to address their basic needs. The Commission identifies children's rights as a priority and has indicated that children have a right to effective protection against economic exploitation and all forms of abuse ([15]).

5.4 The EESC has strongly supported children's rights and believes that children, due to their vulnerability and special needs, require special safeguards and care, including appropriate legal protection. The EESC has also acknowledged the important role of the family and the responsibility of Member States to assist parents in their childrearing responsibilities ([16]).

5.5 The EESC recognises that exposure of children to harm from alcohol can have serious negative consequences for them, including neglect, poverty, social exclusion, abuse and violence, which can affect their health, education and well-being both now and in the future.

5.6 The EESC urges that the protection of children from alcohol related harm be included in the specific objectives of the proposed *EU Strategy on the Rights of the Child* in terms of setting priorities and in the consultation process.

5.7 The EESC recommends that the EU alcohol strategy adopts the definition of the child as any person below the age of eighteen years in line with the UN Convention on the Rights of the Child (UNCRC) and as acknowledged in the Communication *Towards an EU Strategy on the Rights of the Child*.

5.8 The EESC urges the Commission to encourage local community actions, given the positive research evidence-base supporting the role of such approaches in reducing underage drinking and alcohol related harm. Effective community actions combine shaping local policies and practices, supported by information and education, and involve all relevant stakeholders ([17]).

5.9 The EESC urges the Commission to acknowledge the WHO European Charter on Alcohol ([18]) adopted by all EU Member States in 1995 and in particular the ethical principle that *all children and adolescents have the right to grow up in an environment protected from the negative consequences of alcohol consumption and, to the extent possible, from the promotion of alcoholic beverages*.

5.10 The EU Council recommendation urged Member States to establish effective mechanisms in the field of promotion, marketing and retailing and to ensure that alcohol products were not designed or promoted to appeal to children and adolescents. In this respect, the EESC draws the attention to existing trends across Europe of teenagers drinking 'alcopops' ([19]).

5.11 The increasing trend of 'binge drinking' and the early onset of alcohol use among children in many Member States would suggest that current policies are not having the desired effects. In its Communication, the Commission recognises a need to consider further actions to curb underage drinking and harmful drinking among youth.

5.12 The EESC urges that a reduction in the exposure of children to alcohol products, advertising and promotions be included as a specific objective to provide greater protection for children.

5.13 The EESC welcomes the declaration in the Communication by the actors in the alcohol beverage chain of their willingness to become more proactive in enforcing regulatory and self-regulatory measures. The alcohol industry stakeholders have an important role to play to ensure that their products are produced, distributed and marketed in a responsible manner and by these actions contribute to reducing alcohol related harm.

5.14 The EESC urges that in order to protect young people, Member States could retain the flexibility to use taxes to deal with the problems that may arise from specific alcoholic beverages, particularly attractive to young people such as 'alcopops'.

Reducing alcohol related road traffic accidents

5.15 The EESC welcomes the specific target set out for reducing road traffic accidents, with a goal to halve the number of people killed on European roads from 50 000 to 25 000 within a ten year period (2000-2010) ([20]). Alcohol related road traffic accidents can also result in long term disability.

([14]) *Alcohol in Europe: A Public Health Perspective*.
([15]) Commission Communication — *Towards an EU Strategy on the Rights of the Child*, COM(2006) 367 final.
([16]) EESC Opinion of 13.12.2006 on *Towards an EU strategy on the Rights of the Child* (OJ C 325 of 30.12.2006). Rapporteur: Ms van Turnhout.
([17]) *Alcohol in Europe: A Public Health Perspective*.
([18]) World Health Organisation *European Charter on Alcohol*, Copenhagen: World Health Organisation, Regional Office for Europe, 1995.
([19]) Alcopop is a term coined by the popular media to describe bottled alcoholic beverages that resemble drinks such as soft drinks and lemonade. (http://en.wikipedia.org/wiki/Alcopop).
([20]) EESC Opinion on *European Road Safety Policy and Professional Drivers* (TEN/290). Rapporteur: Mr Etty.

5.16 The EESC agrees that enforcement of frequent and systematic random breath testing carries substantially more weight in effectiveness in reducing alcohol related road accidents and that education and awareness campaigns is a supporting strategy but not one that has shown effectiveness in reducing alcohol related traffic fatalities ([21]). The EESC recommends a maximum blood alcohol limit of 0.5mg/ml or less and lower limits for novice and commercial drivers, in line with the EU Road Safety Recommendation ([22]). Stricter legislation in the area of blood alcohol levels needs to be accompanied by effective monitoring and enforcement.

Prevent alcohol related harm among adults and in the workplace

5.17 The EESC urges the Commission to address the economic consequences of alcohol related harm. The negative effects go against the objectives of the Lisbon Strategy and have implications for the workplace, society and the economy.

5.18 The EESC recognises that there is a need for effective regulation around the availability, distribution and promotion of alcohol for example, opening hours, 'two-drinks-for-one offers' and age limits. The EESC believes that self-regulation in this area is not appropriate.

5.19 The workplace is a setting where alcohol can cause harm not only to the individual but also to third persons. Alcohol related harm should also be addressed in the workplace, in the framework of health and safety regulations, which is primarily the responsibility of the employer. Workplace alcohol policies could help reduce alcohol-related accidents, absenteeism and increase working capacity ([23]).

5.20 The EESC urges employers, trade unions, local authorities and other relevant organisations to take this issue more seriously and work together to reduce alcohol related harm in workplaces. There are in the Member States examples of close and long-term cooperation between the social partners with the objective of creating alcohol free workplaces ([24]).

Information, education and raising awareness

5.21 The EESC welcomes the Commission acknowledgement that one of the main roles of education and information is to mobilise public support for the implementation of effective interventions. A second important role, acknowledged in the Communication, is to provide reliable and relevant information on the health risks and consequences of harmful and hazardous consumption of alcohol.

5.22 The EESC urges that education and awareness raising initiatives should be part of an overall integrated strategy. Education should not be directed solely towards young people but should be based on a recognition that harmful alcohol consumption occurs among all age groups. Such initiatives should encourage young people to make healthy lifestyle choices and attempt to redress the glamorous images of alcohol, and the normalising of excessive consumption, which are commonly portrayed in the media.

Common evidence base

5.23 The EESC welcomes the development of, and support by the Commission for, a common evidence base to establish standardised definitions for data on alcohol use and alcohol related harm, taking into account gender differences, age groups and social class. The EESC also supports the evaluation of the impact of alcohol policy and of the initiatives in the Communication. The EESC would urge the development of a range of measurable indicators to track progress in reducing alcohol related harm in Europe. The proposed actions in this area provide a strong EU added value dimension.

6. **Mapping of actions by Member States**

6.1 Given that the Commission, in preparation for the development of this EU strategy, commissioned a comprehensive state of the art report including the research evidence of what is effective in reducing alcohol related harm, it is remarkable to see the evidence being ignored in the strategy ([25]).

6.2 The EESC is concerned that there is a disturbing inconsistency between the research evidence-base of effective measures to reduce alcohol related harm and what are being proposed as community actions. Throughout the Commission Communication, education and information are frequently cited as the intended measures to reduce alcohol related harm. However, the research evidence suggests that education and information have a very low rate of effectiveness in reducing alcohol related harm.

6.3 The EESC notes that in the mapping of actions implemented by Member States, the Commission omitted two of the effective strategies, namely pricing policy through high alcohol taxation and regulating alcohol marketing through legislation, used successfully by some Member States to tackle alcohol related harm.

([21]) *Alcohol in Europe: A Public Health Perspective*.
([22]) Commission Recommendation 2004/345/EC of 6 April 2004 on enforcement in the field of road safety, OJ L 111, 17.4.2004.
([23]) *Alcohol in Europe: A Public Health Perspective*.
([24]) See for example www.alna.se.
([25]) *Alcohol in Europe: A Public Health Perspective*.

7. **Coordination of actions at EU level**

7.1 The EESC urges the Commission, in recognition of its treaty obligations, to show strong leadership by actively supporting Member States in their efforts to provide a high level of health protection by reducing alcohol related harm and to ensure that Community action complements national policies.

7.2 The EESC welcomes the role of the Commission in facilitating the sharing of best practice among Member States and the commitment to improving the coherence between EU policies that have an impact on alcohol-related harm.

7.3 The EESC welcomes the establishment of the Alcohol and Health Forum and provided that it fulfils the role identified for it in the Commission's communication, the Forum could be a useful platform for dialogue between all relevant stakeholders, and lead to concrete action aimed at reducing alcohol related harm. The EESC would welcome the opportunity to be an observer at the Alcohol Forum.

7.4 With the exception of developing a stronger European wide evidence-base, the EU alcohol strategy relies on Member States to continue to lead out on policy measures to reduce alcohol related harm. However, the EU internal market rules will continue to cause problems for some Member Sates and so will potentially slow the pace of reducing alcohol related harm. The EESC regrets that the EU alcohol strategy has no recommended action to address this deficiency.

7.5 The EESC would urge a commitment by the Commission to undertaking health impact assessments as a best practice measure to ensure a high level of protection in other Community polices areas which would enhance the Treaty obligation in accordance with Article 152.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 54(3) of the Rules of Procedure):

Point 1.1

Amend as follows:

'The European Economic and Social Committee (EESC) welcomes the Communication from the Commission, An EU strategy to support Member States in reducing alcohol related harm, and supports the Commission's proposal to develop a common, comprehensive strategy to reduce the damage caused by alcohol abuse across Europe. ~~However, the EESC regrets that the Communication falls far short of a "comprehensive strategy" which was invited in the Council Conclusions of 5 June~~.'

Voting

For: 31

Against: 67

Abstentions: 6

Point 1.5

Delete entire point:

~~'The EESC regrets that nowhere in the Communication does the Commission acknowledge that one of the reasons for so much alcohol related harm is that alcohol is a psychoactive drug, a toxic substance when used to excess, and for some an addictive substance.~~'

Voting

For: 29

Against: 74

Abstentions: 5

Point 1.11

Delete entire point:

~~'The EESC is concerned that there is a disturbing inconsistency between the research evidence base of effective measures to reduce alcohol related harm and what are being proposed as Community actions. Throughout the Communication, education and information are frequently cited as the intended measures. However, the research evidence suggests that such measures have a very low rate of effectiveness in reducing alcohol related harm.~~'

Voting

For: 27

Against: 80

Abstentions: 2

Point 3.5

Delete the point:

~~'The EESC regrets that nowhere in the Communication does the Commission acknowledge that one of the reasons for so much alcohol related harm is that alcohol is a psychoactive drug, and is a toxic substance when used to excess, and for some an addictive substance. This is disappointing given that the strategy has been led out by the Public Health Directorate of the Commission, where medical expertise is extensive.~~'

Voting

For: 30

Against: 82

Abstentions: 4

Point 6.2

Delete entire point:

~~'The EESC is concerned that there is a disturbing inconsistency between the research evidence base of effective measures to reduce alcohol related harm and what are being proposed as Community actions. Throughout the Communication, education and information are frequently cited as the intended measures. However, the research evidence suggests that such measures have a very low rate of effectiveness in reducing alcohol related harm.~~'

Voting

For: 31

Against: 81

Abstentions: 3

Point 7.4

Amend as follows:

'With the exception of developing a stronger European wide evidence-base, the EU alcohol strategy relies on Member States to continue to lead out on policy measures to reduce alcohol related harm. ~~However, the EU internal market rules will continue to cause problems for some Member Sates and so will potentially slow the pace of reducing alcohol related harm. The EESC regrets that the EU alcohol strategy has no recommended action to address this deficiency.~~'

Voting

For: 28

Against: 83

Abstentions: 4

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on common rules for the operation of air transport services in the Community (recast)'

COM(2006) 396 final — 2006/0130 (COD)

(2007/C 175/20)

On 15 September 2006, the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2007. The rapporteur was **Mr McDonogh**.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 31 May 2007), the European Economic and Social Committee adopted the following opinion by 58 votes with 4 abstentions:

Recommendations:

1. All PSO airlines should be required to enter into a performance bond.

2. There should be a Service Level Agreement between the airports served by the PSO flights and the Contracting State.

3. Higher compensation than that outlined in Regulation [EC] 261/2004 should be available to PSO passengers, as no other alternative transport may be available.

4. The tender process for PSO *should* have a minimum of two *tenders*.

5. For European flights, the return leg should cost the same as the outward leg. If there is a considerable difference between the outward and homeward leg this must be justified.

6. PSO tickets should be refundable as all other airline tickets are, subject to conditions.

7. Fare calculations should be clearly displayed on tickets like taxes, airport charges, etc.

8. a) The approach to intermodality should ensure a level playing field for all modes of transport;

   b) Aviation bears a disproportionate burden in security costs. This shall be rectified.

9. The reference to high-speed trains should remain as in some Member States they do not exist.

10. The Commission should carry out audits to see that the national aviation regulators are carrying out their duties in the even handed and fair manner and that none of their actions distort competition.

11. One stop security as originally proposed by the Commission should be introduced for those passing through European airports.

12. This should include a modification of passenger screening at airports to include a fast track system (biometrics) to facilitate regular passengers.

13. Tickets purchased in advance of 1 month should have a cooling-off period to allow customers to cancel them without penalty within 48 hours. In the event of a cancellation of a ticket the customer should also be entitled to a refund of all air taxes.

1. **Introduction**

1.1 More than ten years after the entry into force the third package has largely played its role, allowing the unprecedented expansion of air transport in Europe. Old monopolies have been swept away, intra-Community cabotage has been introduced, and competition in all markets has intensified to the benefit of consumers.

1.2 Despite this success, most of the Community's airlines continue to suffer from overcapacity and from the excessive fragmentation of the market. The inconsistent application of the third package across the Member States and the lingering restrictions on intra-Community air services translate into the following effects:

1.3 Absence of a level-playing field: market efficiency is affected by competition distortions (e.g. varying application with regard to the requirements of the operating licence; discrimination between EU carriers on the basis of nationality; discriminatory treatment concerning routes to third countries; etc.).

1.4 Inconsistent application of rules governing the leasing of aircraft from third countries with crew, with consequent distortions of competition and social implications.

1.5 Passengers not reaping the full benefits of the internal market because of the lack of price transparency or discriminatory practices on the basis of the place of residence.

2. **Existing provisions in the area of the proposal**

2.1 The proposal aims at revising and consolidating the regulations.

2.2 The proposal reinforces the internal market by promoting a more competitive environment with European air carriers capable of taking on their international competitors.

2.3 Some of the proposed changes may have an environmental impact, since they will tend to encourage further expansion of air traffic. The EESC is conscious that the continuing growth of air traffic is becoming a significant cause of growth of greenhouse gas emissions and is currently preparing an opinion on that subject. Whatever needs to be done in that context, however, the Committee supports the reinforcement of a level playing field in the airline sector as proposed in the Commission present proposal.

3. **Impact assessment**

3.1 The revision of the third package does not intend to radically change the legal framework, but rather to make a series of adjustments in order to address the identified problems.

3.2 The 'no change' option leaves unaltered the present three regulations composing the third package of the internal aviation market.

3.3 The 'change' option includes a series of changes to the third package in order to ensure the homogenous and effective application of its rules. This should include a modification of passenger screening at airports to include a fast track system (biometrics) to facilitate regular passengers.

3.4 The draft regulation will ensure an efficient and homogeneous application of community legislation for the internal aviation market via stricter and more precise application criteria (e.g. for operating licences, leasing of aircraft, public service obligations and traffic distribution rules) It also reinforces the internal market by lifting still existing restrictions on the provision of air services stemming from old bilateral agreements between Member States and by conferring to the community the right to negotiate intra-community traffic rights with third countries. It enhances consumer rights by promoting price transparency and non-discrimination.

3.5 The experience with the third package on the internal aviation market has shown that the legislation is not interpreted and applied in a uniform way across Member States. This situation hinders the existence of a true level playing field between community air carriers.

3.6 The proposal provides for simplification of legislation.

4. **Detailed explanation of the proposal**

4.1 Reinforcement of the requirements for the granting and revoking of an operating licence. The financial health of the airlines is being checked with different degrees of severity depending on the Member State that issued the licence.

4.2 The proposal requires Member States to reinforce the supervision of the operating licences and to suspend or revoke it when the requirements of the regulation are no longer met (articles 5 to 10).

4.3 The proposal has been drafted in such a way as to allow for the possibility of a future extension of the competencies of the European Aviation Agency (EASA) for safety oversight and/or for licensing so as to ensure the most efficient and consistent supervision of the air carriers.

5. **The proposal strengthens the requirements for the leasing of aircraft**

5.1 Wet leasing of aircraft from third countries provides EU airlines with important flexibility. However, this practice has some disadvantages and can entail severe safety risks, as has been shown by several recent accidents.

5.2 The safety assessment of leased aircraft from third countries is not pursued with the same rigour in all Member States. Therefore, it is crucial that Article 13 (wet/dry leasing) is fully enforced by the licensing authority.

6. **The proposal clarifies the rules applicable to public service obligations (PSO)**

6.1 The rules applicable to public service obligations have been revised in order to lighten the administrative burden, to avoid excessive recourse to PSO and to attract more competitors in the tender procedures.

6.2 To avoid excessive recourse to PSO, the Commission may require in individual cases the production of an economic report explaining the context of the PSO and the assessment of their adequacy should be performed with particular care when they are intended to be imposed on routes that are already been served by **high speed** rail services with a travel time of less than three hours. The tender procedures have been modified by extending the maximum concession period from three to four years.

7. **Competition**

7.1 To ensure coherence between the internal market and its external aspects, including those of the Single European Sky, access by airlines of third countries to the intra-Community market should be managed in a coherent manner through negotiations at Community level traffic rights with third countries.

7.2 Remaining restrictions from existing bilateral agreements between Member States will be lifted, ensuring non-discrimination in respect of code sharing and pricing by Community air carriers on routes to third countries involving points in Member States other than their own.

8. **The proposal promotes price transparency for passengers and fair price behaviour**

8.1 The publication of fares that exclude taxes, charges and even fuel surcharges has become a widespread practice that hampers price transparency. Insufficient price transparency leads to distortions of competition and therefore consumers face on average higher fares. The Commission also still observes cases of discrimination on the basis of the place of residence of the passenger.

8.2 In the proposal, air fares have to include all applicable taxes, charges and fees and air carriers shall provide the general public with comprehensive information on their air fares and rates.

8.3 Air fares shall be set without discrimination on the basis of place of residence or the nationality of the passenger within the Community. Furthermore, for the access to a carriers air fares, there may be no discrimination on the basis of the place of establishment of the travel agent.

8.4 Air fares should be clearly stated. At present, many extra charges are being added on which can significantly increase the total fare; particularly noteworthy among these are airport charges which have been known to be inflated by the airlines in order to improve their yield.

Within Europe, fares are often distorted by currency differences although this should be less now with the introduction of the Euro. Still it is hard to explain how it is cheaper to fly to places like London, Rome, Madrid, and not vice versa.

This difference in fares between outward and return journeys is repeated throughout Europe on most routes.

8.5 We fully agree with the proposal that EASA be properly funded and staffed and be given the power of mandatory regulation in all EU countries. This we had proposed in our earlier document ([1]).

8.6 PSOs are necessary and still desirable to encourage services to more isolated areas. However, the rules and regulations for airlines getting the PSOs have been very lax. **Although the PSO states the number of flights and the seating capacity of aircraft, there appears to be no penalties imposed for bad time keeping or delayed flights.**

Brussels, 31 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([1]) OJ C 309, 16.12.2006, p. 51-54.

Opinion of the European Economic and Social Committee on the 'European Road Safety Policy and Professional Drivers — Safe and secured parking places'

(2007/C 175/21)

On 16 February 2007, the European Economic and Social Committee, acting in accordance with Rule 29 (2) of its Rules Procedures, decided to draw up an opinion on *European Road Safety Policy and Professional Drivers — Safe and secured parking places*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2007. The rapporteur was Mr Etty, followed by Mr Chagas.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 118 votes to 4, with 2 abstentions:

1. **Conclusions and recommendations**

1.1 For reasons of road safety, road freight crime, and health and safety of truck drivers more safe and secured parking places for professional drivers must be made available throughout the EU.

1.2 The International Road Transport Union (IRU) and the European Transport Workers' Federation (ETF) have formulated common criteria which are well taken and practicable and which must be taken into account when such rest facilities are constructed.

1.3 The EESC welcomes the initiative taken by European Parliament and supported by the European Commission to set up a pilot project with a view to test the feasibility and to provide start up aid to create safe and secure parking areas for professional drivers.

The Committee recommends that:

1.4 the Commission include the issue of safe and secured parking places for professional drivers in the design and co-financing of the Trans European Road Networks;

1.5 idem, when approving projects on road infrastructure, co-financed in the framework of the European Regional Development Fund. The European Investment Bank should do the same when granting loans for road infrastructure;

1.6 Member States consider the issue in the framework of their implementation of the Road Safety Action Plan;

(N.B.: with respect to these three proposals, special attention should be paid to the fact that more rest facilities for professional drivers are required, especially given that transport between the 'old' and the 'new' Member States continues to grow.)

1.7 the Commission assess, in the period from now until April 2009, the role which the EU could have in legislating relevant aspects of the issue and in developing soft law in areas which are primarily the competence of the Member States. This should allow the Commission and the Member States to take quick and coordinated action after the conclusion of the pilot project mentioned in pars. 2.9, 2.10 and 2.11 here under. The assessment should be made in the light of Article 71 of the Treaty, but also take into account the link between measures relating to working time and the health and safety of workers. This could include measures on safe and secured parking areas for professional drivers;

1.8 the Commission fully involve social partners in this exercise.

1.9 The Commission should explore how they could reinforce and help implement initiatives taken by organised civil society to address the issue of safe and secured parking places and support the organisations concerned to help their members to make optimal use of existing and newly constructed rest facilities. The Commission could, e.g. help them to complete and improve information on rest facilities and to make this information more accessible for their members, also on-line. Other examples are a system for certification of safe and secured parking spaces (utilising the joint IRU/ETF criteria) and a system of daily information on still available parking spots. Jointly with Member States and the organisations concerned, the Commission could develop methods to inform drivers in time.

2. **General observations**

2.1 European road safety policy, including *the Third European Road safety Action Programme* (2003) and *the European road safety action programme mid-term review* (2006), aimed at a target audience consisting, amongst others, motorcyclists, pedestrians, and young people, as well as professional drivers. However, the Commission omitted several relevant issues, one of them even being crucial in the eyes of the social partners. That is, as part of road infrastructure safety, rest areas for professional drivers. And in particular; safe and secured rest areas.

2.2 Why is this such a crucial issue? Three good reasons, at least, can be given as an answer to that question.

2.3 The first is the issue of road safety. The new regulation 561/2006 on driving and rest time has recently come into force. Implicitly it recognises the importance of a sufficient number of safe and secured rest facilities for professional drivers along the EU motorway network in Article 12 ([1]). In addition to this consideration, relating to EU regulation, mention should be made of national legislation prohibiting the circulation of heavy lorries during weekends in certain Member States. This requires better information supply by/and improved coordination among Member States.

2.4 Secondly there is the extent of road freight crime. Although statistical data from Member Sates are in several respects insufficient and difficult to compare, it appears that theft (of trucks and cargo) and assaults on drivers are on the increase. Various sources indicate that in international road transport some 40 % of criminal incidents occur at parking areas alongside motorways. A study currently being undertaken by the European Conference of Ministers of Transport and the International Road Transport Union will produce fresh data on attacks and violence against professional drivers in rest areas shortly.

2.4.1 Parliament has recently (May 2007) published a study on 'Organised theft of commercial vehicles and their loads in the EU' ([2]), which estimates that the loss of value caused by theft is more than EUR 8.2 billion, or a value of EUR 6.72 per loaded trip. According to the study, each year some 9 000 professional drivers are the victims of such transport criminality alongside the UE highways.

2.5 And, thirdly, health and safety of the truck drivers should be taken into account. A tired driver is a liability in terms of road safety. However, restriction of driving time is important in transport policy primarily in terms of competition. At best, this aspect only has a very modest place in its own right in current legislation.

2.6 There are also other issues. For example, professional drivers of vehicles less that 3.5 tonnes in weight are exempt from the European regulations on driving and rest periods and speed-limitation devices. This is despite the fact that transport by means of vehicles of this type continues to grow, including transport of highly valuable freight, and that the number of accidents involving them is on the increase.

2.7 And there is the whole issue of facilitating the application of the social elements in the legislation relating to lorry drivers, which has not been given sufficient attention so far.

2.8 Finally, safe and secured parking places located at adequate distances from each other along the EU motorways could also have a positive environmental impact and contribute to a better flow of traffic.

2.9 A debate is going on concerning the importance of safe and secured rest places for professional drivers. A major element in it is the recent (2006) request of employers and trade unions in the sector, IRU and ETF, to the EU and national, regional and local authorities in the Member States to develop a sufficient number of such facilities which meet a set of criteria they have jointly developed.

2.10 In Parliament, deliberations on the new Regulation 561/2006 included the element of safe and secured parking areas. An issue of special concern was road freight crime. At the initiative of Parliament, supported by the Commission, a budget of 5.5 million Euros was made available for a pilot project. This project is now under way. It includes feasibility studies and provides start up aid to create secure parking areas.

2.11 A '*Study on the feasibility of organising a network of secured parking areas for road transport operators on the Trans European Road Network*' was commissioned by the European Commission in 2006 and completed in early 2007 ([3]).

2.12 The start up aid has been granted to five model projects. Main objectives are: to define common requirements for secure parking areas and to construct a few new secure parking slots in at least two Member States. Among the key issues to be investigated are models for public-private partnerships.

2.13 The European Commission will evaluate the pilot project immediately after its completion by April 2009. It will involve the parties directly concerned in this evaluation, just as it will involve them during the implementation of the project. In 2009, the Commission may come forward with policy proposals (legislation, soft law, coordination, exchange of best practices, etc.) based upon the evaluation.

2.14 Parliament has further set aside EUR 2 million for the development of a certification system for safe and secured parking areas in the 2007 budget.

([1]) Article 12: Provided that the road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.

([2]) Provisional version, 3.5.2007, IP/B/TRAN/IC/2006-194. The study was done by NEA Transport Research and Training at the request of the Transport and Tourism Committee of European Parliament.

([3]) NEA Transport Research Training, Rijswijk, the Netherlands, January 2007.

2.15 The EESC has recently addressed the issue of safe and secured parking places for professional drivers briefly in its Opinion TEN/217 ([4]) and in TEN/270 ([5]).

2.16 The issue of availabilities in parking spaces is also being addressed in Parliament's report on Road Infrastructure Safety Management (2006/0182/COD, preliminary version) of 20 March 2007.

3. **Specific observations**

3.1 The Committee thinks that the Commission, by setting rules for driving and rest time has also taken responsibility for enabling professional drivers to comply with these rules. This means that suitable parking areas must be available along the main European motorways at such distances from each other that drivers can take their prescribed rest periods when required.

3.2 The criteria for such suitable parking areas, as developed by the International Road Transport Union and the European Transport Worker's Federation in March 2006, are well taken and practicable. They adequately reflect several of the policy recommendations made in the feasibility study referred to the para 2.10 above. The criteria cover two types of rest facilities, one for the most basic provisions and another requiring more obligatory facilities for strategic hub points. IRU and ETF have proposed, additionally, other facilities or services which are highly recommendable or optional for rest area operators depending on sufficient demand. The Committee is of the opinion that the criteria strike a proper balance between considerations of road safety, security of driver and freight, and occupational safety and health of drivers.

3.3 At present, there are insufficient parking places meeting the IRU/ETF criteria in the EU, both in the 'old' and the 'new' Member States. In Central and Eastern Europe, they should be included in the planning and construction phase of new motor highways. Special attention should be paid to border crossing at the external borders of the EU, where drivers often have to cope with long waiting periods.

3.4 The European Commission and the Member States should address this situation urgently, taking into account their respective responsibilities and competences. The Committee notes with interest the initiatives taken by the Parliament and the Commission and hopes that these will lead to early activities of Commission and Member States with a view to the preparation of policies to be developed after the pilot projects, referred to in para 2.11 above, will have been completed.

3.5 The Committee is pleased to note that organised civil society, in particular the social partners in the road transport industry, have addressed the issue of safe and secured parking places in a constructive and concrete way. It encourages the Commission to explore how they could reinforce and help implement this initiative and support the organisations concerned to help their members to make optimal use of existing and newly constructed rest facilities. The Commission could, e.g. help them to complete and improve information on rest facilities and to make this information more accessible for their members, also on-line. Another example is a system of daily information on still available parking spots. Jointly with Member States and the organisations concerned, the Commission could develop methods to inform drivers in time.

Brussels, 30 May 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

([4]) Opinion on 'Security of modes of transport', CESE 1488/2005 of 14.12.2005, see par. 3.10. OJ C 65, 17.3.2006.
([5]) Opinion on 'Road infrastructure safety management', CESE 613/2007 of 26.4.2007, see par. 4.8.

Opinion of the European Economic and Social Committee on 'Future eAccessibility legislation'

(2007/C 175/22)

On 26 February 2007, the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on *Future eAccessibility legislation*.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for the Committee's work on the subject, adopted its opinion on 7 May 2007. The rapporteur was **Mr Hernández Bataller**.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 136 votes in favour with three abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's initiative on eAccessibility, and urges it to further its work in the field. Given the strong interest raised by this topic, the Committee reserves the right to issue an additional opinion.

1.2 The EESC believes that the Commission should adopt a series of initiatives at EU level, as follows:

— strengthening existing legislation, making it consistent and binding, so as to avoid the disparities and discrepancies that currently exist between Member States, especially in the fields of electronic communications (particularly universal service) and public procurement; and boosting the corpus of legislation by adopting new supranational measures based on Articles 13 and 95 TEC, in order to protect accessibility requirements as public service obligations;

— extending eAccessibility, horizontally, to other EU policy areas;

— adopting non-binding measures on eAccessibility which would improve quality of life for people with disabilities and older people.

1.3 The involvement of civil society organisations is a key factor in the implementation of a proper eAccessibility policy, through the promotion of support measures, for example, with regard to codes of conduct or co-regulation.

1.4 Support measures should focus on areas which make it easier for people with disabilities and older people to access the information society, and introduce them to new technologies as an ideal means to become socially integrated, prevent exclusion from the digital world and improve their quality of life.

1.5 The public authorities in Member States should, in line with supranational guidelines, adopt various support measures to make it financially possible for disabled or elderly people's organisations to be involved in the digital world, and to facilitate their access to it.

2. Introduction

2.1 The EESC has received a letter from the Commission requesting that it draw up an opinion on the future legislative framework for eAccessibility, with particular focus on older people.

'eAccessibility' refers to the ability to overcome the technical barriers and difficulties that people with disabilities and other groups face when trying to access the information society under equal conditions. This concept falls within the broader issue of 'eInclusion', which also covers other, economic, geographical or educational barriers.

2.2 The overall aim is to identify the type of secondary legislation that will form the basis for the EU to achieve its objective of a fully inclusive society, within today's context of rapid economic and social change.

2.3 It is clear that this draft legislation is firmly rooted in the fundamental legal texts which express the values and principles of the EU, such as Article 13 TEC, and the specific references to the participation of '*all its inhabitants*' in democratic life and social progress in paragraphs 2 and 4 of the Treaty establishing a Constitution for Europe and, inter alia, in Articles I-3(3), II-81 and II-86 thereof.

2.4 Moreover, the EU institutions and bodies have already built up a significant corpus of positions and decisions which, although disparate, are helping to establish EU policies proactively committed to combating discrimination, and to eAccessibility. For instance:

— the Council Resolution of 2.12.2002 on *eAccessibility — improving the access of people with disabilities to the knowledge-based society* called upon the Commission to tap the Information Society's potential for people with disabilities and, in particular, tackle the removal of all types of barriers;

— meanwhile, the Telecommunications Council expressed the need to improve eAccessibility in Europe ([1]), and the Social Policy Council, in its Resolution on eAccessibility of 2003 ([2]), called on Member States to take all necessary actions towards an open, inclusive knowledge-based society accessible to all citizens.

2.4.1 In 2005, the Commission issued its i-2010 Communication ([3]) with the aim of establishing a new strategic framework for a European information society. This was followed by its Communication on eAccessibility ([4]), which proposed a series of political initiatives in order to promote the issue.

2.4.2 Specifically, the Communication on eAccessibility set out three different approaches for tackling the problem:

— promoting the establishment of accessibility requirements in public procurement;

— guaranteeing accessibility certification;

— making better use of existing legislation.

The Commission Communication was to be followed up two years after its publication in order to consider whether additional measures should be adopted.

2.4.3 The Committee adopted an opinion on the Communication ([5]), covering aspects relating to harmonised standards and interoperability, public procurement, certification and third party testing versus self-declaration, use of legislation, integration, Web accessibility, legislation and the new strategic framework for the European Information Society.

2.5 More recently, point 6 of the Council Resolution of 22 March 2007 on *A Strategy for a Secure Information Society in Europe* states that 'particular consideration should be given to [ICT] users that have special needs or have low awareness of network and information security issues', and this includes older people and people with disabilities.

([1]) Council Resolution on the eEurope Action Plan 2002: accessibility of public websites and their content. OJ C 86 of 10.4.2002.
([2]) Council Resolution 14892/02.
([3]) COM(2005) 229 final EESC opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — i2010 — A European Information Society for growth and employment. OJ C 110 of 9.5.2006, p. 83.
([4]) COM(2005) 425 final.
([5]) Opinion CESE 404/2006, adopted at the plenary session of 15.3.2006. Rapporteur: Mr Cabra de Luna. OJ C 110 of 9.5.2006.

3. **General comments**

3.1 The EESC welcomes the Commission's invitation to draw up this exploratory opinion and points out that, while Community initiatives to promote inclusion in the information society should generally apply to all, there are some groups, such as older people or people with disabilities, who require particular attention in order to be included effectively within the information society ([6]).

Moreover, given the particular interest of the topic in question, the Committee reserves the right to issue a supplementary or additional opinion.

3.1.1 This is also in line with point 8 of the Riga Ministerial Declaration ([7]), which states that: 'To convincingly address eInclusion, the differences in Internet usage between current average use by the EU population and use by older people, people with disabilities, women, lower education groups, unemployed and "less-developed" regions should be reduced to a half from 2005 to 2010.'

The EESC believes that, owing to the major political and social changes which have occurred in recent years, Community action on eAccessibility must become a priority and access to ICT must be confirmed as a civil right within public services.

This Community action should combine a legal instrument that would reinforce current legislation with other non-binding measures in various policy areas, given the added value that EU action can have.

The EESC supports this Community action, given that:

— in social terms, it improves citizens' rights; in economic terms, it improves economies of scale, the operation of the internal market, competitiveness in a key sector and innovation;

— the diversity and fragmentation of Member States' approaches cause certain problems, particularly due to their differing transposition of existing directives. These need to be clarified, particularly as regards public procurement and universal service;

— none of the above should prevent any support measures adopted from being effectively applied.

([6]) At the same time it is fair to say that the main impairment groups facing accessibility difficulties in ICT are: 'persons with cognitive and learning disabilities, persons with sensory disabilities (deaf and hard of hearing, blind and visually impaired persons, deaf blind persons, persons with speech disabilities) and persons with physical disabilities.' OJ C 110 of 9.5.2006.
([7]) The EU Ministerial Declaration on e-Inclusion, adopted in Riga on 11 November 2006 in the context of the i2010 initiative, reconfirmed the political committment to improving e-Accessibility. http://ec.europa.eu/information_society/events/ict_riga_2006/index_en.htm

3.2 With regard to the legal basis of the legislation governing eAccessibility issues, it is recommended that the following be applied:

— firstly, Article 13 TEC, which gives the Council the general power to adopt any type of Community act which combats discrimination;

— secondly, Article 95 TEC, which deals with aspects relating to the establishment and operation of the internal market, so that proposals are ensured a high level of protection.

This should not hinder the horizontal effect that eAccessibility issues should have.

3.2.1 Unfortunately, because the Constitutional Treaty is not in force, such acts cannot be adopted under Article III-124(1), which states that the Council is to act unanimously 'after obtaining the consent of the European Parliament'. As Article 13 TEC only provides for the Council to adopt such acts unanimously 'after consulting the European Parliament', they will be denied the possibility of a full democratic debate and the greater legitimacy enjoyed by EU acts adopted via the co-decision procedure.

3.2.2 Nonetheless, the express provision for unanimous adoption by the Council does prove particularly useful, given that all the legislative acts in question must respect the principle of subsidiarity. Logically, unanimous support from the EU governments will ensure that national administrations are more effectively involved in their domestic implementation and development. This will also mean that the measures to be applied will not be restricted to removing obstacles that exist in this field, but will actively help to promote inclusion, thus displaying the pro-activeness required of Community actions under Articles 13 and 95 TEC.

3.2.3 The appropriate type of legislative act would therefore be a directive, given the ample room for discretion that it generally allows Member States in choosing how to accomplish the objectives set at supra-national level.

3.3 As regards the specific content of the future Community legislative framework, it is essential that the following objectives be included, distinguishing between those with a general scope and those which are more specific.

3.4 The following should be considered as general objectives:

a) promoting the interoperability of ICT services via common standards and specifications, to ensure that the European standardisation bodies take accessibility into account when adopting and implementing the standards concerned;

— strengthening provisions on eAccessibility in the directives on electronic communications, in line with the recommendations of INCOM (Inclusive Communications group) ([8]), while promoting eAccessibility in areas such as the reform of the Directive on audiovisual services (TV without frontiers), as already stated by the Committee ([9]), or the Directive on Copyright in the Information Society;

b) simplifying access to ICT networks by providing hardware infrastructure and equipment in areas and regions of Europe where the digital divide is felt. The Structural Funds, Rural Development Fund and recently created R&D Fund should earmark specific amounts for inclusion, in order to ensure that 90 % of the EU has access to ICT by 2010;

c) ensuring that ICT products and services benefit all members of society, and that their design and operation cater for the most underprivileged sectors of society, particularly disabled and older people. To this end, there should be two levels of responsibility, shared by both public authorities and the private sector.

3.4.1 Firstly, depending on their respective powers, the EU's and Member States' authorities should set criteria for action aimed at businesses working in the ICT sector within the single market, particularly in fields such as standardisation, and should ensure that these criteria are properly met.

3.4.2 Wherever possible, these requirements should apply to the Common Commercial Policy so that the benefits of accessibility can be felt not just in Europe, but universally. Secondly, codes of conduct should be promoted in accordance with the needs of each underprivileged group, in order to create a culture of corporate social responsibility in this field.

3.4.3 The relevant civil society players should also be involved in technological innovation and the sharing of good practices for ICT access and use, by creating transnational networks which link up university research centres and the research centres of companies in the sector. Inter alia, the EU and national administrations should set up annual co-financed projects with this aim, and a culture of excellence in research should be promoted, including the creation of a European prize for high-quality new technologies which facilitate eInclusion.

([8]) The Inclusive Communications group (INCOM) was set up in 2003, and consists of representatives of the Member States, telecoms operators, user associations and standardisation bodies.

([9]) Opinion CESE 486/2006. OJ C 185 of 8.8.2006.

3.5 The following should be considered as specific objectives:

a) extending the scope of the Universal Service Directive (which covers access to public pay telephones, emergency and subscriber information services) to include broadband technology and mobile telephones, as called for by the EESC on several occasions;

b) ensuring that public administrations are prohibited from using ICT products and services which do not comply with the accessibility rules in force, and that future EU legislation on public procurement includes mandatory provisions on accessibility;

c) harmonising accessibility requirements for the use of IP networks which include emergency services and the use of interactive digital television;

d) ensuring, as already urged by the Committee ([10]), that Member States fully adopt version 2 of the Web Content Accessibility Guidelines and incorporate these into public websites;

e) encouraging the use of 'authoring tools', provided that they comply with version 2 of the abovementioned Web Content Accessibility Guidelines.

4. **Specific comments**

4.1 The over-65 age group is growing in relation to the rest of the population, mainly as a result of low birth rates and greater quality of life and life expectancy. For this reason, the Council presidencies have included population ageing as a topic for discussion in the joint presidency programme.

4.2 In the new society in which older people live, there are various factors which can lead to solitude, such as the disappearance of the extended family and the emergence of the single-parent family. The information society provides new opportunities for older people to break free from social isolation, promoting actions that reduce the existing digital divide.

This is particularly evident when it comes to eAccessibility. As stated in the Ministerial Declaration adopted unanimously in Riga, only 10 % of European residents over the age of 65 use the Internet.

4.3 Along with universal Internet access, cross-sectoral social policies should be proposed (in accordance with the subsidiarity principle) in order to encourage the inclusion of older people and people with disabilities in the information society, with the aim of ensuring equality and improving their quality of life, optimising services and promoting their involvement in the information society, and removing obstacles to digital training and free software.

By making it easier for people with disabilities and older people to access the information society, intellectual activity can be stimulated, and life can be made easier through the provision of services such as:

— free advice,

— provision of documentation at home,

— legal advice for individuals or at centres for the retired or disabled,

— recreational and leisure activities,

— special services for older people and contact with regional social services,

— training via virtual classrooms,

— holiday programmes, and

— optional telemedical services.

The EESC stresses the importance of ICT in fostering the economic and social involvement of older people and people with disabilities, through their representative organisations, in order to improve the situation in the EU. The involvement of organised civil society could be useful in areas such as co-regulation, drafting of codes of conduct and corporate social responsibility.

4.4 The EESC believes that support measures for projects and initiatives should be adopted, facilitating the access of disabled and older people to the information society, and introducing them to new technologies as an ideal means to become socially integrated, prevent exclusion from the digital world and improve their quality of life. In particular, these measures would include:

— the creation and promotion of digital networks to help make the management systems of the various bodies and associations more professional and effective. These networks should be properly equipped and able to cater to the needs of the various populations of older and disabled people;

([10]) Opinion CESE 404/2006, point 7.5.1: 'The EESC calls on all EU Member States to formally adopt, unchanged, Version 2 of the Web Accessibility Initiative Guidelines and to fully incorporate the Version 2 across all public websites.' OJ C 110 of 9.5.2006.

— pilot schemes based on applications and tools to help people with disabilities and older people live an active and independent life through their involvement in the information society.

4.5 Economic, social and territorial cohesion can be strengthened by applying the UN Principles for Older Persons in policies implemented by the EU, and promoting adequate access to education and training programmes.

4.6 In the context of the review of the 'new approach' to be carried out by the Commission, legislation being drawn up should take account of the needs of older people, in order to simplify the services provided through products being developed. Meanwhile, standardisation bodies and the industry should take these circumstances into consideration in their own areas of activity.

4.7 In terms of environmental protection, there is potential for increasing the use of digital technology in order to cut down on travel, by receiving certain services *'in situ'*. The Commission should explore this possibility in order to propose more ambitious supranational eAccessibility measures.

Brussels, 30 May 2007.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS