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II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Directive fixing certain rates and target rates of excise duty on mineral oils [1]

(91/C 159/01)

On 11 March 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 12 April 1991. The Rapporteur was Mr Petersen.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee unanimously adopted the following Opinion.

1. Introduction

In December 1989 the Commission submitted a proposal for the rates of excise duty to be applied to mineral oil from 1 January 1993 [2]. In this proposal minimum rates were proposed for all mineral oil products. Rate bands (i.e. maximum and minimum rates) were laid down for road diesel, heating oil and heavy oil. A further proposal was announced which would establish the target (i.e. guideline) rates on which the tax rates of the Member States must in the long term converge. Target rates for the other types of excise duty have already been proposed in draft Directives.

2. The Commission proposal

2.1. To complement its December 1989 proposal the Commission is proposing target rates for petrol (leaded and unleaded) and kerosene used as a propellant.

The proposed target rates are:

Leaded petrol: 495 ECU per 1 000 litres;

Unleaded petrol: 445 ECU per 1 000 litres;

Kerosene used as a propellant [3]: 495 ECU per 1 000 litres;

2.2. The rate band to be applied to road diesel as from 1 January 1993 is raised and widened. The Commission justifies this step by pointing out that the 1989 proposal made provision for a two-yearly adjustment of rates in the light, in particular, of environmental and transport considerations.

The rate band for road diesel is fixed at: 245-270 ECU per 1 000 litres.

2.3. The Commission states that the target rates and the higher road diesel band include a CO_2 supplement of 45 ECU per 1 000 litres.

2.4. The Commission has not set any target rates for the other mineral oil products in view of their insignificant contribution to total revenue from mineral-oil excise duty (10 % only).

[1] OJ No C 66, 14. 3. 1991, p. 14.
[2] COM(89) 527 final.
[3] Except in commercial air transport.

3. **Comments**

3.1. The Commission proposal can generally be approved. The consideration given to ecological requirements is to be especially welcomed.

3.2. The establishment of target rates is a necessary step towards greater convergence of national excise duties on mineral oils. The levels of the proposed target rates are considered *a priori* to be appropriate. However, the Committee would point to the serious shifts in taxation patterns, especially in Greece and Luxembourg. In Greece's case, special rules should be adopted to make these shifts less marked; since Greece does not have a common frontier with any other Member State, competition will not be distorted.

3.3. The consideration given to the problem of CO_2 in the proposal deserves recognition. Experience shows however that at most, tax instruments have a one-off and short term guiding effect. It is the revenue aspect that tends to predominate. The attempt to alter consumer habits for environmental reasons will of course not succeed in those Member States (Ireland, Italy and Portugal) where current excise rates are higher than the Commission's proposed target rates or rate bands and so would have to come down. In terms of environment policy, however, the proposal does give some sort of a signal.

3.4. The retention of the rate differential between leaded and unleaded petrol is particularly welcomed. In a number of Member States unleaded petrol has already significantly increased its share of the petrol market, partly because of tax incentives.

3.5. The widening of the rate band for road diesel can be expected to facilitate the process of convergence. It does however also increase the risk of distortions of competition in this area. Even small divergences in the rates of duty levied on road diesel provide incentives for tax evasion.

3.6. In some Member States, particularly the Benelux countries and Greece, the increase in the rate band for road diesel will lead to a considerable increase in taxation from 1 January 1993 at the latest, thereby noticeably pushing up the cost of road diesel in these countries. The rise will hit road haulage particularly and will mean increased transport and freight charges. Because of this, there could be substitution effects (a switch to other modes of transport) in some Member States.

3.7. As the Committee made clear in point 3.1 of its Opinion CES 833/90 of 5 July 1990, the taxation of fuels cannot be treated in isolation. It has to be taken together with road tolls, road tax and any other charges arising from the ownership and use of motor vehicles, and overall harmonization has to be achieved in this area. The Commission has already submitted a draft Directive [1] to this effect.

3.8. The Committee doubts the Commission statement that an increase in excise duty on road diesel is also needed to help offset infrastructure investment. At least in some individual Member States revenue from mineral oil duty far exceeds funds invested in road construction and maintenance. Moreover, since revenue from excise duties is not earmarked for any specific purpose, there is no guarantee whatsoever that it would in fact be used for financing infrastructure projects.

4. **Final comment**

The Committee would welcome a consistent Commission policy in other areas—such as research and development and road tax incentives for diesel engine passenger vehicles with lower exhaust emissions—which would ensure that the more rapid development of environment-friendly technologies is not impeded by restrictive harmonization measures.

[1] COM(90) 540 final.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Directive determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods [1]

(91/C 159/02)

On 15 January 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 12 April 1991. The Rapporteur was Mr Giacomelli.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion unanimously.

1. Explanation of the background to the new proposal

1.1. The new proposal for a Directive aims to consolidate, i.e. present a coordinated version of, Council Directive 83/181/EEC 'determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods'. Since its entry into force on 28 March 1983, the parent Council Directive (83/181/EEC) has been substantially amended, the last occasion being by Directive 89/219/EEC. Consolidation has now been deemed advisable to make the text clearer and more accessible to interested parties.

Given the lapse of time, it will no doubt help to recall Article 14(1)(d) of Directive 77/388/EEC of 17 May 1977 (termed Sixth VAT Directive) which states:

Article 14 — Exemption on importation

'1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemption and of preventing any possible evasion, avoidance or abuse:

.....

.....

d) Final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff or which would qualify therefor if they were imported from a third country. However, Member States shall have the option of not granting exemption where this would be liable to have a serious effect on conditions of competition on the home market;'

.....

.....

1.2. Directive 83/181/EEC of 28 March 1983, which takes up no less than 18 pages in the OJ of 23 April 1983, sought to determine the scope of the provision quoted under paragraph 1.1 above. It covers the importation of personal property belonging to individuals coming from countries situated outside the Community (goods imported on the occasion of a marriage, personal property acquired by inheritance, imports of negligible value, school outfits, scholastic materials and other household effects belonging to pupils or students); capital goods and other equipment imported on the transfer of activities; the importation of certain agricultural products and products intended for agricultural use; the importation of therapeutic substances, medicines, laboratory animals and biological or chemical substances (laboratory animals and biological or chemical substances intended for research, therapeutic substances of human origin and blood-grouping and tissue-typing reagents, pharmaceutical products used at international sports events); goods for charitable or philanthropic organizations (goods imported for general purposes, articles imported for the benefit of handicapped persons, goods imported for the benefit of disaster victims); importation in the context of certain aspects of international relations (honorary decorations or awards, presents received in the context of international relations, goods to be used by monarchs or heads of State); the importation of goods for the promotion of trade (samples of negligible value, printed matter and advertising material, goods used or consumed at a trade fair or similar event); goods imported for examination, analysis or test purposes; miscellaneous exemptions (consignments sent to organizations protecting copyrights or industrial and commercial patent rights); miscellaneous documents and articles; ancillary materials for the storage and protection of goods during their transport; litter, fodder and feedingstuffs for animals during their transport; fuels and lubricants present in land motor vehicles; goods for the construction, upkeep or ornamentation of memorials to, or cemeteries for, war victims; coffins, funerary urns and ornamental funerary articles).

[1] OJ No C 23, 31. 1. 1991, p. 48.

1.3. Council Directive 85/346/EEC of 8 July 1985 amended Directive 83/181/EEC (summarized in paragraph 1.1 above) by replacing the text of Article 83 with a more wideranging provision regarding the fuel contained in the standard fuel tanks of commercial motor vehicles, and notably a higher minimum fuel level for coaches. It also amended Directive 83/181/EEC by rewording Article 84(a) which gives Member States the right to limit the amount of fuel exempt from VAT on admission in the case of commercial motor vehicles engaged in international transport from third countries to their frontier zone (first indent) and from another Member State to their frontier zone (second indent). By removing the second indent, the limitation no longer applied to transport from another Member State.

1.4. Council Directive 88/331/EEC of 13 June 1988 further amended Directive 83/181/EEC, notably by replacing, amending or expanding Article 11(2); Article 22; Article 35(1)(b) second indent; Chapter II and Article 38 to which was added a Chapter II(a) (reference substances for the quality control of medical products) and an Article 38(a) defining the consignments in question; Article 56 to which was added a point (d) (concerning the awards, trophies and souvenirs of a symbolic nature and of limited value); Articles 62 and 63 (printed matter and advertising material) which were replaced by other texts; Article 79 to which was added a point (s) on the importation of official publications; Chapter VI whose title was amended to include fuels and lubricants not only present in land motor vehicles but also found in special containers, Articles 82 and 83 of Chapter VI being replaced and amended accordingly. Finally, Articles 90(3) and 91 were expanded, with a new point 91(c) referring to exemptions in the context of agreements entered into on the basis of reciprocity with third countries that are Contracting Parties to the Convention on International Civil Aviation (Chicago 1944).

1.5. Commission Directive 89/219/EEC of 7 March 1989 sought to amend Article 1 of Directive 83/181/EEC (referred to under paragraph 1.1 above) by replacing the reference to the Common Customs Tariff by a reference to CN codes (combined nomenclature) in the new Article 1(2)(d). The same Directive introduced a new text of the Annex to Directive 83/181/EEC on visual and auditory materials of an educational, scientific or cultural character.

2. General Comments

2.1. The Economic and Social Committee welcomes the Commission's proposal for a Directive even though it should be made clear, en passant, that it makes no substantive changes to the provisions of the Directives referred to in Section 1 of this Opinion. All the new proposal does in fact is consolidate a number of legislative instruments which cover the same field and successively amend Directive 83/181/EEC, the latter having been drawn up in pursuance of Article 14(1)(d) of the Sixth VAT Directive.

2.2. Although the Commission has only committed itself to producing consolidated, i.e. coordinated, versions of legal texts no later than after their tenth amendment (see decision of 1 April 1987—COM(87) MIN 868), it has been motivated, especially in the case of Directive 83/181/EEC which is of particular interest to ordinary European citizens directly concerned by VAT exemptions, by a desire, shared by the European Parliament and also expressed on many occasions by the Economic and Social Committee, to make Community law clearer and more accessible to readers and users. The Economic and Social Committee is thus grateful to the Commission for having agreed to bring consolidation forward in this particular instance.

2.3. Through the instrument of legislative consolidation, the new directive encompasses and replaces all existing Directives relating to the determination of the scope of Article 14(1)(d) of the Sixth VAT Directive on exemptions from value added tax on the final importation of certain goods.

2.4. As the present system of taxation in the country of destination will be maintained for a transitional period after 1 January 1993 (the date of entry into force of the Single Market), the proposal to consolidate legislation at an earlier stage, i.e. after only the third amendment to the parent Directive, is especially justified, even though the proximity of the 1 January 1993 deadline, not to mention a system of taxation in the country of origin originally to be introduced on the same date, might have rendered the whole Directive null and void. However, even in the event of the introduction of a Community system of taxation in the country of origin, the text remains fully applicable with regard to third country imports.

3. Specific Comments

Since legislative consolidation in this case merely results in existing Directives being replaced by a new Directive without any changes at all to the substance of the consolidated provisions, except for the formal amend-

ments required by the operation of consolidation itself, the proposal gives rise to no particular comment.

4. Conclusion

The desire to render Community legislation clear and accessible to the ordinary European citizen should encourage the Commission to aim at greater simplification by means of legislative consolidation—at least whenever appropriate and whenever texts have been amended, expanded and replaced so many times that it is virtually impossible for the layman and the uninitiated to find the thread which will lead them out of the labyrinth. By so doing, the Commission will provide interested parties with more comprehensible texts and save them time and money lost through having to consult Official Journals and work back through a multitude of amendments to this or that Community directive, regulation or decision.

In support of this we would mention the meeting of the informal Council on the Single Market of 8 and 9 March this year when the Luxembourg Presidency raised the question of the 'post 1992 legislative period', pointing out that 'when all Directives have been adapted and brought into force, they should be consolidated to make it easier for all citizens to read and become acquainted with them'. The Luxembourg Presidency considered in particular that 'legislation on the Single Market is not at the present time accessible and transparent, but tends to be opaque'.

With the deadline of 1 January 1993 approaching fast, the Commission should buckle down to this task immediately.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Decision adopting an action programme to promote youth exchanges and mobility in the Community: the Youth for Europe programme [1]

(91/C 159/03)

On 17 December 1990 the Council decided to consult the Economic and Social Committee under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr B.N.J. Pompen.

At its 286th plenary session (meeting of 24 April 1991) the Economic and Social Committee unanimously adopted the following Opinion.

1. Introduction

The proposal for a second phase of the Youth for Europe programme [COM(90) 470 final] is based on the Youth for Europe Decision of 16 June 1988 (see Committee Opinion SEC 769/86 of 17 September 1986). The Proposal is broadly endorsed by the Committee.

The second phase of the programme is to run for three years, from 1 January 1992 to 1 January 1995.

The immediate purpose is to promote informal education and training outside the official system by pro-

[1] OJ No C 308, 8 12 1990, p 6

viding incentives for cross-frontier exchanges. It is also proposed to help youth workers to broaden their experience via international contacts. The longer-term aim is to make young people aware of the European context within which they are increasingly living and working.

Prior to the programme, the Commission has set up a number of Community-level schemes. These include:

— the Comett programme for industry-university training, which promotes transnational placements for students,

— the Erasmus programme, which promotes inter-university student exchanges,

— exchange programmes for young workers and for students in lower and intermediate vocational training (under the Petra programme).

The Youth for Europe programme focuses on exchanges outside the formal education and training system. It can thus be seen as a back-up scheme catering in particular for young people not eligible for the above-mentioned specific programmes.

If has two components:

— action I(A) provides direct support for youth projects involving exchanges and mobility,

— action I(B) is concerned with study visits and the vocational development of youth workers,

— action II covers back-up measures for Action I (A and B).

The relative importance of the two Actions is shown *inter alia* by the Commission's proposal that 80% of the programme's appropriation should be earmarked for Action I(A) and 20% for Action I(B) and Action II.

In both 1989 and 1990 the programme enabled some 20 000 young people to participate in exchanges. The aim for the next three years is some 60 000 per annum — i.e. approximately 0,1% of 15-25 year olds in the EC. In other words, the Commission indicates that less than 0,5% of 15-25 year olds will benefit from the programme over the three year reference period. The cost will rise from approximately ECU 10 million in 1992 to 15 million in 1994, giving an annual average of ECU 12,5 million.

The 1992-1994 phase is to be amplified in two respects:

— Increased emphasis on disadvantaged young people. The Commission says that the programme has not catered for enough disadvantaged young people. It is proposed to remedy this as follows:

  • At lease one-third of the budget is to be specifically earmarked for this target group and

  • Financial assistance for disadvantaged participants may run-up to 75% of the expenditure incurred as against the normal maximum of 50%.

— As an experiment, grants are to be provided for young people who take part in voluntary service activities in the educational, cultural and social fields.

2. General comments

Below, the Committee comments on the short-term policy to be pursued and puts forward some ideas on the longer term aspects.

The comments on short term policy (1992-1994) relate to the draft Council Decision which has been referred to the Committee.

The comments on longer-term policy (1995 onwards) relate to the memorandum entitled 'Young People in the European Community' [COM(90) 469] which is largely concerned with the Youth for Europe programme after 1994. The Committee wishes to make a number of comments on those aspects of the memorandum which coincide with the subject matter of the draft Decision, because the Commission has asked it to do so but does not intend to make a specific referral.

2.1. *Comments on the Draft Decision [COM(90) 470] with respect to short-term policy (1992-1994)*

2.1.1. The Committee readily endorses the proposed new three-year phase of the Youth for Europe programme. This programme is needed to provide facilities for exchanges, outside the official education/training system of, in particular, young people not eligible for the other EC programmes.

2.1.2. The Commission proposal lays considerable emphasis on the disadvantaged as a target group. A proportion of the programme appropriation is to be earmarked for the disadvantaged, and they are to be eligible for higher refunds of a higher proportion of expenses incurred. The Committee has some sympathy for this idea, since it is designed to ensure that disadvantaged young people make up a fair proportion of programme beneficiaries. The Committee considers that to achieve this aim, the supervisory councils and boards of the executive agencies in the Member States should include representatives of organizations which provide support for the disadvantaged in society.

The Committee would make three further comments.

— The purpose of the programme is above all to spread the European idea among young people by promoting informal education/training at European level. This involves providing information on the Europe of the future, making contact with inhabitants of other countries, providing an insight into each others' culture and way of life, etc. Excessive targeting of the disadvantaged might lead to the participation of individuals who are not (yet) able to pursue with reasonable success the abovementioned aim of international exchanges.

— The term 'disadvantaged' is unclear. The Commission definition refers to 'young people suffering from geographical, mental, physical, cultural, social or economic disadvantage'. The Commission considers that the definition can best be spelled out separately for each Member State, within the framework of these criteria and the specified budget allocation. This is consistent with the decentralized approach of the programme and with the subsidiarity principle. The Committee assumes that in its contacts with the Member States the Commission will harmonize the decentralized definitions of 'disadvantaged' as far as possible.

— It will have to be remembered that the term 'disadvantaged' has unfortunate connotations. This criterion will have to be used cautiously when it comes to implementation.

2.1.3. The Committee welcomes the proposal that the programme should embrace voluntary service activities undertaken on an individual or group basis. The Commission proposes to limit these to educational, social and cultural activities. The Committee is not certain that this limitation is advisable.

Worthwhile activities in other fields can make an equal contribution to the aim of the programme, namely to make young people aware of the European dimension by familiarizing them with people and circumstances in other countries. The Committee does not rule out any activities in either the public—or private—sector, it urges a balanced spread across the two sectors.

When selecting voluntary service activities, account should be taken of the preferences and ideas of young people.

2.1.4. The decentralized implementation of the programme at national level presupposes the existence of high-grade, professional national agencies in each Member State. The Committee presumes that there will be no question of the Commission providing subsidies until these agencies exist.

2.1.5. Committee Opinion SEC 769/86 recommends including non-member countries in the programme in 1992-1994. As stated in Commission memorandum COM(90) 469, the separate Tempus programme has now been established for Eastern and Central Europe, *inter alia* in the broader context of the Phare programme. In the draft 1991 budget the Commission also proposed a separate line for exchanges in particular with the USSR; this line was not however endorsed by the European Parliament. The Committee still considers that in addition to the USSR, young people from the European Free Trade Association (EFTA) and Mediterranean countries should be eligible for exchange programme. A number of these countries do not have national agencies capable of initiating and organizing exchanges. The Committee suggests that in these circumstances the Commission liaise with international youth organizations which have good contacts with young people in EFTA and Mediterranean countries.

2.1.6. The Committee considers that Community institutions should set a good example in making young people aware of Europe. They should, for instance adopt a positive approach to applications from young people to take part in fact-finding trips and in service training. The budget should cater for this.

2.1.7. The Committee should be on the list of recipients of the annual Commission report on the implementation of the programme.

2.2. *Comments on long-term policy*

2.2.1. Among other points, Commission memorandum COM(90) 469 on Young People in the European Community devotes a considerable amount of space to the Youth for Europe programme in the post-1994 period. The Commission has invited interested parties to comment on the memorandum. The Commission representative drew attention to the memorandum in the course of Study Group discussions. As the Commission is not referring the memorandum to the Committee separately, we take this opportunity to make a few comments.

2.2.2. The Committee endorses the concept that young people should be systematically involved in building a new Europe in the longer term too. Alongside the plethora of programmes targeting special groups—such as Comett, Erasmus, Petra, Tempus and structural-fund support measures—there is room for a general programme such as Youth for Europe, catering in particular for young people who fall outside the special target groups.

2.2.3. It is recommended that the limited Community funds available be spent on building up a sound Com-

munity infrastructure for youth exchanges. This infrastructure should include:

— one week or two week courses for young Community citizens on the history, culture and unification of Europe and its expected future dimension. Meetings on specific topics could also be arranged —for instance on demographic trends, multi-ethnic society and relations with other cultures,

— the establishment and maintenance of an inter-Member-State network responsible for exchanges and for evaluating the impact of the programme.

— the establishment of a Community-level information centre, with branches in the Member States; this centre would provide information on future meetings, work camps, individual voluntary service arrangements and other activities,

— promotion of European ideas, for instance via courses for teachers, youth leaders and others involved in youth work.

2.2.4. The Committee considers that young people from third countries (EFTA, Maghreb, Central/Eastern Europe) should also be allowed to participate in Community exchange programmes. The main emphasis, however, should be on proper organization of multilateral exchanges within the Community.

2.2.5. The Committee feels that post 1994, action should also be taken to promote exchanges of 11-15 year olds. This would make it possible to involve very young school children in the programme.

2.2.6. Organization at Community level must be as straightforward and transparent as possible. The Council and the Commission should be responsible for policy development and follow up. The establishment and running of the Community infrastructure, on the other hand, could well be contracted out to a professional body. Policy implementation should remain the prerogative of the Member States, in accordance with the subsidiarity principle.

2.2.7. It is recommended that steps be taken to facilitate exchanges with countries in other continents, in addition to those with the countries already covered by the current programe.

3. Specific observations

3.1. It is presumed that the Commission will, where appropriate, amend the draft Decision in the light of the above comments. The Committee therefore does not propose to comment on the individual articles.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Directive concerning the minimum requirements for the provision of safety and/or health signs at work [1]

(91/C 159/04)

On 5 February 1991, the Council decided to consult the Economic and Social Committee under Article 118 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Social, Family, Education and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr Carroll.

At its 286th plenary session (meeting of 24 April 1991) the Economic and Social Committee unanimously adopted the following Opinion.

1. General comments

1.1. The proposal is based on Article 118a of the Treaty and is in the form of an individual Directive within the meaning of Article 16 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at the workplace [2].

1.2. The proposal is one of the new initiatives announced by the Commission in the Communication on its action programme relating for the implementation of the Community Charter of Basic Social Rights for Workers [3]. The aim of the proposal is to extend the scope of Directive 77/576/EEC and to strengthen some of its provisions.

1.3. The aim of the 1977 Directive was to ensure that a limited group of safety signboards and signs for obstacles and dangerous locations comply with certain principles. The current proposal is aiming to make the use of signs compulsory under certain conditions and it introduces new signboards and other types of signs, such as for the location and identification of containers and pipes and of fire-fighting equipment, markings for certain traffic routes, luminous and acoustic signs, adequate verbal communications and hand signals.

1.4. The Economic and Social Committee has been supportive down the years of European Community policies for improving safety and health at the workplace and has been constructive and innovative in suggesting improvements and in highlighting particular problems arising from or associated with Commission proposals. The Committee is no less committed now in its consideration of the proposed updating and extension of the 1977 Directive on safety signboards and signs for obstacles and dangerous locations.

1.5. Therefore, the Committee gives a general welcome to the proposals but is concerned that there could be, albeit unwittingly, a consequential proliferation of signboards and signs with the attendant danger of a not 'seeing the wood for the trees' syndrome.

1.6. Furthermore, the Committee must warn against the introduction of signs and/or signboards merely for the sake of attempting to provide for every possible type of contingency in the area of safety at the workplace, bearing in mind that signs and signboards of themselves cannot be a substitute for a well-informed management and workforce with the requisite education and training in the whole area of workplace hazards and accident control and prevention.

1.7. This applies equally to small and medium-sized enterprises (SMEs) as well as to major establishments but SMEs may need special help and consideration to enable them to cope with the requirements of the proposed Directive.

In this regard, national Governments have an obligation to ensure that the measures to be taken by them to give effect to the Directive include means whereby those charged with the overseeing responsibility for safety at the workplace have adequate educational possibilities, including leafleting, pamphlets, seminars, workshops and the generation of public-awareness programmes.

1.8. In its Opinion on Directive 77/576/EEC issued on 30 September 1976, the Committee made a number of points which are valid in respect of the current proposal. The Committee then said, *inter alia*,

'— a proliferation of safety signs should be avoided, as this would detract from their effectiveness,

— the symbols must be sufficiently expressive and eye-catching, especially for more vulnerable sections of the population such as children, elderly

[1] OJ No C 53, 28. 2. 1991, p. 46.
[2] OJ No L 183 of 26. 6. 1989, p. 1.
[3] COM(89) 568 final.

persons and migrant workers, and in the case of certain particularly dangerous types of work,

— the technical requirements for these signs must take into account the psychological effect on persons who are not sufficiently well informed.'

1.9. In addition, the Committee also submits that great care has to be taken in respect of workplace locations or job sites to which the public has access so as to ensure that the location and number of signs (visual and verbal) and signboards do not in themselves create a hazard to the workforce because of the technical nature or application of specific signs as opposed to an overall well presented and located general danger-warning sign or signal.

1.10. The Committee is aware that the Advisory Committee on Safety, Hygiene and Health Protecion at Work, set up by Council Decision 74/323/EEC of 27 April 1974, was consulted and issued its Opinion which the Commission states was taken into account in the drafting of the proposal.

2. Specific comments

2.1. *Article 7*

While noting that the exemptions permitted under this Article are confined to luminous signs and/or acoustic signs, the Committee is concerned that such exemptions might become too regular a feature even though there is a requirement that exemptions are dependent on alternative measures being taken which afford the same level of protection.

The second paragraph of this Article also stipulates that exemptions are also dependent on prior consultation witht he national employers and workers organizations.

2.2. *Article 8*

Paragraph 1 of this Article does not stipulate when the workers and/or their representatives are to be informed of all the measures to be taken concerning the health and/or safety signs used at the workplace. The question is: should this be done sufficiently in advance to allow for familiarization and/or instruction and, who will so determine?

Paragraph 2 of the Article signals the requirement for suitable instruction concerning the signs used at work. The Committee would urge that there is an accepted understanding of what 'suitable' instruction means and that there is adequate monitoring of the standard of this instruction by the appropriate national authority.

2.3. *Annex 1*

2.3.1. Paragraph 2.5 of this Annex requires that luminous and acoustic signs and/or verbal communications should be used when required. The weakness of this is that the expression 'when required' is open to various interpretations as to whom makes the judgement and what criteria should be used when that judgement is being made. Even if there is an agreed and sustainable case to govern 'when required' (apart from a reference to common sense) it has to be borne in mind that a situation can arise or develop in the workplace not already provided for and, in the event of an accident, 'when required' and how this was interpreted and applied could well feature prominently in any subsequent proceedings.

2.3.2. The same applies to the term 'if equally effective' used in paragraph 3.1 of this Annex. Who makes the judgement called for and with what responsibility and authority and against what criteria?

2.3.3. These points are made to emphasize the absolute necessity for the utmost clarity and understanding of what is intended so as to avoid any confusion, misunderstanding or misplaced obligations. In paragraph 5 of this Annex (Annex 1) there is a warning against the placing of too many signs too close together, and that two luminous signs which are likely to be confused should not be used at the same time. It also warns against using a luminous sign in the proximity of another indistinct sign.

The Committee has no difficulty in accepting the object of these requirements but, again, has to draw attention to the difficulty of ensuring their implementation against the background of imprecise language and having regard to particular practices in workplaces and the variations which may occur in assessing or defining the qualifying requirement. It is one thing for the Annex to say 'the effectiveness of a sign must not be adversely affected by ... etc.', but it is another thing to have a clear understanding (possibly for legal purposes) of what adversely affected really means, more especially if there has been an accident, and someone has been hurt.

2.3.4. This is another argument in favour of maximizing safety information, education and training and of ensuring that national or local safety authorities establish appropriate standards in the context of understanding and applying the terms of this Directive.

2.4. *Annex 2*

2.4.1. The points made in respect of Annex 1 apply equally to paragraphe 1.3 of this Annexe and especially to the second paragraph, 2.1. The requirement is to use reflective materials or artificial lighting where the level of natural light is inadequate. Bearing in mind the basic requirements of the framework directive, there is still a need for clearer criteria for assessing such situations. This point is made not just to find fault but to emphasize the necessity of ensuring maximum conformity to common standards bearing in mind the purpose of the entire exercice, to minimize and, indeed, to prevent accidents at the workplace.

2.4.2. The Committee acknowledges the need for uniformity in all these signs and for that uniformity to coincide with accepted and understood safety sings. However, the Committee wonders if the number and variety of the signs indicated are not too many and is less than convinced that alle the signs proposed are necessary and will in any event be effective. It may well be that usage and growing familiarity will increase the effectiveness of all the signs set out in the Annex but some of them could be open to misinterpretation and might even add to or create confusion. This applies particularly to the following prohibitory signs:

— Do not extinguish with water,

— Not drinkable,

— No access for unauthorized persons,

— Do not touch,

— Corrosive materials,

— Laser beam,

— Oxidant material,

— Biological material,

— Low temperature.

Under Section 3.5, fire-fighting signs, the Committee would have to be convinced that the sign depicting 'Fire-fighting Equipment, General' is appropriate.

2.5. *Annex 3*

While appreciating the value of a colour code for pipes, the requirement for the use of eight different colours raises the question of the need for a colour-code key to be readily available for persons who would not normally or regularly be in a workplace location with pipes and, hence, would have no familiarity with the contents of pipes or with their purpose. And the matter of colour-blindness must also be taken into account in assessing the worth of pipe colour coding.

The Committee would also draw attention to the possibility of problems arising:

— due to existing variations in colour coding in Member States,

— as regards the effectiveness of colour coding in circumstances of poor lighting,

— in situations where pipes and containers are subject to multi-purpose usage.

2.6. *Annexes 5, 6 and 7*

These Annexes require very special attention as to their implementation. It is very important to ensure that good levels of hearing and eyesight are not taken for granted and, therefore, all the more attention must be given to situations of casual attendance at the workplace where hazards exist.

2.7. *Annex 8*

There is a possibility of much confusion in regard to verbal communications and it is imperative that in the educational programmes associated with these signals due regard is had to the use of the vernacular by workers in some situation so that casual visitors or workers at such workplace are not mislead or unwittingly confused by verbal signals.

The Committee would highlight the need for workers to have knowledge of the language necessary in order to protect their own health and safety.

2.8. *Annex 9*

The coded signals to be used need careful monitoring as to their effectiveness and, in particular, the 'move forward' and 'move backwards' arms signals are liable to lead to misunderstanding. It is suggested that the 'move backward' signal should start at waist level, hands facing down, and proceed downwards and back to waist level.

3. Conclusions

3.1. The Committee repeats and emphasizes its ongoing support of the Commission and Council in the development of measures to improve workplace safety. It suggests, however, that the Commission should guard against an over-perfectionist approach to specific stan-

dards which may be extremely difficult to achieve and, some of which, may not really contribute much to the overall objective of protecting the worker's health and safety at the workplace.

Done at Brussels, 24 april 1991.

The Chairman
of the Economic and Social Committee
François STAEDELIN

Own-initiative opinion on the Status of migrant workers from third countries

(91/C 159/05)

On 31 January 1991 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its Rules of Procedure, decided to draw up an Opinion on the Status of migrant workers from third countries.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr Andrea Amato.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion by a majority vote, with two abstentions.

1. Introduction

1.1. In recent years, the Committee has issued three Opinions on the situation of third country migrants:

a) own-initiative Opinion of 25 October 1984 on migrant workers [1],

b) opinion of 29 May 1985 on guidelines for a Community policy on migration [2]. This Opinion largely reflects the earlier one, particularly in its comments on third countries,

c) opinion of 12 July 1989 on the Mediterranean policy of the European Community [3]. The Opinion sets out proposals for a policy for migrants from non-EC Mediterranean countries.

1.1.1. The Committee's assessment of the limits of EC policy in this field, and the recommendations and conclusions as to needs set out in the above Opinions, have not been taken up by the Council and remain largely valid.

1.1.2. Nonetheless, the changes which have since occurred in Member States' circumstances and legislation, and the changes wrought the Community integration and the ensuing need for a new institutional framework, suggest to the Committee that further assessments and recommendations are needed.

1.2. The Hanover European Council of June 1988 recognized that immigration needed more detailed Community consideration, and instructed the Commission to draw up a report on the social integration of migrants.

1.2.1. This report, on the social integration of third country migrants residing on a permanent and lawful basis in the Member States [4], was followed by an experts' report (drawn up on the Commission's behalf) on policies on immigration and the social integration of migrants in the European Community [5]. This latter report is an important contribution to the subject, and its conclusions and recommendations are considered in the present Opinion.

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[1] OJ No C 343, 24. 12. 1984.
[2] OJ No C 188, 29. 7. 1985.
[3] OJ No C 221, 28. 8. 1989.
[4] SEC(89) 924 final, 22. 6. 1989.
[5] SEC(90) 1813 final, 28. 9. 1990.

1.3. The Rome European Council on 14 and 15 December 1990 gave further consideration to the subject. Its conclusions call on the Council and the Commission to decide on measures relating to the crossing of external borders. The conclusions go on:

> 'The European Council took note of the reports on immigration and asks the General Affairs Council and the Commission to examine the most appropriate measures and actions regarding aid to countries of emigration, entry conditions and aid for social integration, taking particular account of the need for a harmonized policy on the right of asylum.'

1.4. On the initiative of several governments, the extension of Community responsibility in the field of immigration has been put on the agenda of the intergovernmental conference on political union, launched in Rome last December. The Commission Opinion of 21 October 1990 on the revision of the Treaty with a view to political union [1] contained proposals on this.

1.5. A Court of Justice judgement of 9 July 1987 [2] helped to clarify the Commission's existing responsibilities under the terms of the second paragraph of Article 118 of the Treaty. The judgement illustrates the possible range of Community responsibility for immigration matters.

1.5.1. Furthermore, on 31 January 1991 the Court of Justice [3] ruled that the provisions of the EC-Morocco Cooperation agreement concerning non-discrimination in pay, employment and social security conditions were directly applicable to Member State regulations. Logically, the decision must apply equally to the other Cooperation and Association Agreements (with Tunisia/Algeria/Yugoslavia and Turkey, respectively) containing similar provisions.

1.6. The time thus seems ripe to frame a fully-fledged Community policy on immigration.

1.6.1. The report of the European Parliament Committee of inquiry on racism and xenophobia also suggests the need for such a step [4].

2. Purpose and scope of the Opinion

2.1. In the light of the above, a Community immigration policy should have three main planks:

a) planning of migrant flows, and regulation of entry and the right to asylum (considered in a separate Opinion currently being drafted);

b) economic and social integration and free movement within the Community for legally resident immigrants;

c) voluntary return to the country of origin.

2.2. The present Opinion focuses on the 'domestic' aspects of a Community immigration policy. It will concentrate on the questions raised by the presence in the Community of migrants from third countries, as regards their living and working conditions and their impact on the economic and social situation of the Community.

2.3. The term 'migrants from third countries' here means people who have moved from their country of origin to an EC Member State to work there as employees or self-employed, and who are legally resident there either temporarily or permanently.The term extends to family members (spouses, children under 18, other dependent offspring, and dependent relatives in the ascending line) and workers in receipt of retirement or invalidity pensions in a Member State.

2.4. The present Opinion therefore does not cover the special problems of Member State citizens whose country of origin is outside the EC, except with reference to the more general question of practical discrimination. The Committee has already insisted on the need to ensure that:

> 'all EC nationals, including those who are from ethnic minorities, are assured a share of and a future in a "People's Europe", and that rights of residence, of freedom of movement and employment, and the mutual recognition of diplomas and qualifications are applied accross the board' [5].

2.5. It is clear that the 'domestic' aspects of immigration policy include the conditions governing the entry of migrants into the Member States. Various forms of coordination of entry conditions are already developing. They should be examined by the Community, with full involvement of the democratic institutions and representative bodies.

2.6. The Committee is aware of the link between Community immigration policy and development in the migrants' countries of origin, particularly those nearest the Community. This topic will be covered in the forthcoming Opinion.

[1] COM 60-90-200 — Luxembourg, 21 October 1990.
[2] European Court Reports 1987/7, page 3203.
[3] Judgement C 18/90.
[4] Rapporteur: Glyn Ford Mep, Doc. A3 — 195/90, 23. 7. 1990.
[5] OJ No C 23, 30. 1. 1989, p. 33.

3. **Towards a Community statute for migrant workers from third countries**

3.1. The social integration [1] of immigrants in the EC has become an important matter which must be addressed:

— over eight million migrants from third countries now live in the EC,

— although the presence of these migrants has varying implications in individual Member States, partly because migration has occurred over differing periods, it may create similar tensions on the labour market and in society as a whole.

3.2. The Community must, as a body, set out to encourage the social integration of immigrants; not only because this is in keeping with the general values which underpin the Community, but also because failure to integrate has adverse implications for employment and, more generally, for living and working conditions in the Community. Similarly, a misguided form of integration could produce social exclusion and alienation, particularly among young members of migrant families.

3.2.1. Sensitive social insertion, based on equality of rights and opportunities, is the key to preventing the formation of pockets of social isolation and is essential if illegal employment, the underground economy and tax and social security fraud are not to be encouraged.

3.2.2. Discrimination against immigrant workers could lead to 'social dumping' within the Community. A Community policy for the social integration of immigrants is therefore essential to the proper working of the single market.

3.2.3. Granting migrant workers a proper place in the labour market, with equal rights and opportunities, should not be viewed as a further burden on Member States' social systems but rather as an opportunity. For example an increase in the workforce could have a beneficial effect on the social security system, which is currently weakened by negative population growth in the industrialized world.

3.2.4. The Community should aim not only to combat and forestall the problems caused by the absence of social integration, but also to make the most of what immigrants, particularly the younger generation, have to offer in terms of economic, social and cultural development in a multi-racial and multi-cultural Community.

3.3. The completion of the Single Market wll significantly alter the immigration situation, and requires the Community to approach the problem from a new angle: [2]

— the forthcoming removal of controls at the Community's internal borders highlights the disparate provisions and instruments pertaining in the Member States,

— even if the removal of internal borders allows immigrants to move freely within the Community, under present legislation this does not necessarily mean that they can legally work in all Member States.

It is likely that an increasing number of immigrants will seek to use greater mobility within the Community as a means of escaping the fluctuations of the national labour markets; this could lead to a sharp increase in undeclared work.

3.4. The Community must therefore set itself a twofold aim:

a) to harmonize legislative provisions, regulations, instruments and measures for the social integration of migrants in the Member States;

b) to define conditions for implementing freedom of movement for migrants from third countries under equal conditions to those of Community citizens.

Failure to pursue these two aims would not only foster discrimination (wtih all the moral implications of a

[1] The term 'social integration' is used as it has become established in Community terminology. 'Social insertion' would be more appropriate; it avoids confusion with 'assimilation' and does not imply a challenge to immigrants' cultural identity.

[2] The ILO has devoted considerable attention to this matter, and has issued three papers:
— Informal summary record of the informal consultation meeting on migrants from non-EEC countries in the Single European Market after 1992 — Geneva, 27-28 April 1989.
— Some economic, social and human rights considerations concerning the future status of third country nationals in the Single European Market by W.R. Böhning and J. Werquin (Working Paper in World Employment Programme), Geneva, April 1990.
— Informal summary record of the inter-regional tripartite round table on migrant workers from non-EEC countries in the internal market, Geneva, 15-17 October 1990.

Community based on injustice, restricting the rights of some of those contributing to its development), and hinder the proper working of the single market, but would betray the very ideals underpinning it. The aim of a single Community employment market, alongside a single market in goods, services and capital, would effectively be abandoned: national labour markets would remain, kept separate by their different treatment of third country workers.

3.5. We should not underestimate the link between free movement of migrant workers and harmonization of social integration policies in the Community on the one hand, and coordination of entry conditions on the other.

3.5.1. The primary factor is time: the harmonization of social integration policies and the achievement of free movement should not be delayed pending the definition of common policies to regulate entry.

3.5.2. There is also a cause and effect factor—the future response to the question of migratory flows, for example, is bound to affect the chances of success of policies for social integration and free movement. Proper implementation would not be feasible if entry conditions were too liberal and the Community was faced with a massive influx — but failure would also result if entry conditions were so stringent as effectively to halt legal immigration and, inevitably, to generate illegal immigration. This would, among other things, put benign Community public attitudes towards immigrants — a precondition for the successful achievement of social integration and freedom of movement — at risk.

3.5.3. The way in which 'domestic' questions are addressed will in fact have a decisive effect on immigration controls. For example, if the Community 'pull' factor (which combines with the 'push' factor in the countries of origin to cause migration) were basically positive (e.g. no longer consisting of a market for illegal labour), this would inevitably affect the number and type of migrants and the measures adopted to regulate their entry.

4. The present Opinion has sought to define the rationale, guidelines and general aims of a Community immigration policy, and more particularly the status of migrant workers from third countries. The Committee will shortly issue an additional Opinion offering specific proposals on economic and social integration and free movement (basic rights, adaptation and harmonization of legislation, active policy), voluntary return to the country of origin, information, and Community coordination.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Decision setting up a programme for an information services market [1]

(91/C 159/06)

On 13 February 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 3 April 1991. The Rapporteur was Mr Nierhaus.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee unanimously adopted the following Opinion.

1. Introduction

1.1. The Commission proposal for a Council Decision setting up a programme for an information services market (Impact. 2 programme) is a direct follow-up to the Council Decision of 26 July 1988 on the implementation of a two-year action plan in this field (Impact. 1) and, as such, represents the continuation of Community policy on the establishment of a common information services market, which was initiated in the early 1970s by a Council Resolution on increasing the availability and use of information services through coordinated action at Community and national levels.

1.2. Between 1975 and 1983, three successive action plans provided basic support for the creation of a network, the development of data banks and the removal of language barriers. The subsequent five-year programme (1984-1988) concerned the development and promotion of the European information services market, greater availability and accessibility of information and promotion of the use of new technologies for the creation and application of information products and services.

1.3. The Committee has repeatedly commented on this issue, and voiced its fundamental approval of the Community's goals and action in the Opinions of March 1984 and June 1986. The basic position outlined there remains valid and forms the background to the following observations.

2. General comments

2.1. The Committee strongly supports the present Commission proposal for a new Community programme, since it regards an efficient information services market as crucial to the maintenance and improvement of the Community's international competitiveness, particularly in the context of the completion of the internal market. This is true, as regards both the competitiveness of the information market itself, and the importance of information for virtually all sectors of the economy.

It is also clear, as the Commission proposal notes, that almost all sections of society depend on information services.

2.2. Community action is particularly necessary because:

— the volume of information services produced in Europe is still smaller than in the USA, even if the gap has narrowed slightly,

— the Japanese information services market is also expanding rapidly and could threaten Europe's position unless special efforts are made,

— the fragmentation created by linguistic, legal and technical barriers puts the European economic area at a particularly serious disadvantage which, in the final analysis, can be overcome only by the combined efforts of all the Member States,

— the marked North-South gap created by imbalances between advanced and disadvantaged Community regions must be eliminated, and whilst this will essentially entail national action, the Community must also play a part.

3. Specific comments

3.1. The Committee particularly welcomes the increase in funding from Community resources (to ECU 100 millions) by comparison with Impact. 1. In conjunction with the cost-sharing contributions of individual project participants, this produces a programme total of approximately ECU 225 millions. In the light of

[1] OJ No C 53, 28. 2. 1991, p. 65.

the programme's ambitious objectives and the need to spread this amount over five years, however, the proposed aid appears rather modest.

3.2. Experience gained under Impact.1 indicates that a reasonable balance must be struck between the level of assistance provided and the administrative expenses incurred by project participants. In the case of Impact. 2, too, it seems unlikely that all acceptable applications can be approved; consultation aimed at precluding administrative expenditure should therefore precede the application procedure where, in particular, projects have little prospect of success. Some reimbursement of expenses incurred under the application procedure would also be particularly beneficial for small and medium-sized enterprises and other eligible non-governmental organizations.

3.3. Since the Committee regards the work of the European Information Market Observatory (IMO) as extremely important and valuable, it welcomes the continuation of its activities under Action Line 1. At the same time, its results must be far more efficiently disseminated. The extension of the national correspondents' network and closer relations with relevant European and national associations should facilitate this task. In this connection, it is absolutely essential to ensure that the annual IMO report is sent to the ESC as well as to the Council and Parliament.

3.4. The Committee also regards the removal of legal and administrative barriers (Action Line 2) as an extremely important task, for which cooperation between the relevant Community and national bodies is indispensable. The retention of the Legal Advisory Board is therefore to be welcomed. Its terms of reference should, however, be extended beyond the provision of documentation on legal issues and general developments and the elaboration of contract guidelines; they should cover the drafting of amendments to the regulatory framework as a means of promoting the harmonization of national and European legislation, in order to eliminate barriers to the development of an efficient Community information services market. At the same time, priority must be given to such broader considerations as the protection of personal data and of intellectual property rights.

With a view to even more efficient use of the LAB's results, its modification to involve public bodies and important market operators is also welcomed.

3.5. The user-friendly development of information systems is a major component of an overall Community strategy to promote the information market. The Committee thinks that, in addition to the Impact Programme, priority must be given to:

— the development of a Community-wide integrated services digital network (ISDN),

— the standardization of interfaces and terminals with a view to the provision of uniform equipment for the maximum number of services,

— the simplification of access to information by the development of ergonomically optimum software which will enable non-experts to make direct use of existing data sources,

— the simplification of settlement procedures, particularly for small-scale users, for example using Kiosk information services,

— the extension of existing videotex systems and the harmonization of standards, in particular to ensure inexpensive access to electronic data bases by small and medium-sized businesses (SMB) and by individuals,

— the provision of facilities designed to remove language barriers in particular linguistic areas (e.g. multi-lingual glossaries, machine translation systems, etc.).

3.6. The Committee also welcomes the special importance attached to initial and further training in the electronic supply of information under Action Line 3. Inexpensive access to data bases for target groups such as teachers, instructors, students and schoolchildren, together with written teaching and information materials, would help to increase demand and users' skills. Appropriate financial assistance from Community funds, possibly in conjunction with other Community aid programmes, should be made available for this purpose.

3.7. Experience gained under Impact. 1 suggests that the involvement of small and medium-sized businesses and non-governmental organizations (e.g. employers' and workers' organization, consumer organizations and associations representing the handicapped) should receive greater support. This could take the form, in particular, of quicker processing and more advice and assistance in connection with the preparation of proposals and the search for project partners.

In this connection, the Committee would confirm its approval of the impact statements.

3.8. The Committee notes with regret that the present programme, like its predecessors, fails to define a coherent overall Community strategy approved by the Member States with regard to the status and creation of a Community information services market.

3.9. The Committee also regrets the failure to take greater account of such broader questions as the protection of personal data, the growing dependency of information services (e.g. in the event of breakdown), the

effect of different data-collection procedures on education and training and the relative social importance of the different information services (provided for by Action Line 4 and aimed, for example, at employers' and workers' organizations, consumer associations and associations representing the handicapped), which the 1984 Opinion identified as crucial to the definition of assistance priorities.

3.10. The Economic and Social Committee expects the Commission to take due account of these comments when taking further action.

Done at Brussels, 24 April 1991.

The Chairman
of the Economic and Social Committee
François STAEDELIN

Opinion on the modification of the Proposal for a Council Directive on the Charging of Transport Infrastructure Costs to heavy goods vehicles

(91/C 159/07)

On 13 March 1991, the Council asked, under Article 198 of the Treaty, the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for the preparatory work, adopted its Opinion on 10 April 1991. The Rapporteur was Mr. Moreland.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion by a majority vote, with 3 abstentions.

1. Introduction

1.1. In 1986 the Commission put forward a document [1], concerning the elimination of distortions in competition in goods transport: Survey of vehicle taxes, fuel taxes and road tolls. The Economic and Social Committee [2] agreed in principle to the objectives of the Commission with regard to the future taxation of goods vehicles such as:

— elimination of distortions in competition within and among modes of transport,

— charging of the overall economic infrastructure costs to the user,

— sufficient tax yield for Member States,

— free flow of goods and passengers within the Community,

— acceptable transit agreements with Non-Member States.

In its report, unanimously passed, the Committee emphasized *inter alia* that:

— distortions in competition must be eliminated by 1992,

— in this context an agreement on tax structures must be reached, covering at least the marginal costs,

[1] COM(86) 750 final.
[2] OJ No C 232, 2. 7. 1987, p. 87.

— the levy of taxes according to the principle of territoriality would be a reasonable solution, in the long-termed option but saw practical problems,

— road tolls except for bridges, ferries and tunnels should be abolished at the end of contractual agreements,

— the chosen solution should not entail a complicated tax practice and avoid any administrative overburden.

1.2. Next the Commission presented in 1987 a first proposal for a Directive on the charging of transport infrastructure costs to heavy vehicles [COM(87) 716 final]. The Committee [1] gave its opinion to this and stated in its report, carried by a majority of votes:

— that in the long run a regulation must take allowances for the economic and social costs of each mode of transport,

— that the introduction of the principle of territoriality could lead to the harmonization of competing conditions as well as to the charging of infrastructure costs to the actual user and that the same principle should obviously be in force for road transport, railways and inland shipping,

— that the Committee supported the principle of territoriality although it recognized practical problems in following fully this principle.

1.3. The Commission has now modified its proposal for a Directive. With regard to the charging of infrastructure costs it draws a distinction between motorways of the Community being financed directly by way of road tolls and those that are not liable to way tolls. With regard to the harmonization of vehicle taxes the Commission proposes a gradual approach, so that beginning 1992 minimum rates are fixed for the different categories of goods vehicles, which are to be increased in 1993 and 1994. From 1995 the vehicle and fuel tax rates should be related to infrastructure costs and, where necessary, be gradually increased to the end of 1999 when the Commission expects to have precise data on the impact of infrastructure costs. Thus there will be a gradual increase in the coverage of infrastructure costs ensuring that commercial vehicles pay for the infrastructure costs they cause from 2000. To avoid vehicles being charged twice for infrastructure costs through the application of tolls, Member States will have the opportunity, without obligation, to credit the paid toll against vehicle taxation.

[1] OJ No C 208, 3. 6. 1988, p. 88.

2. General Comments

2.1. The Commission had made a number of attempts to obtain agreement on goods vehicle taxation since 1968. So far all have run into difficulty in the Council. The Committee must stress, as it did in its 1986 and 1987 Opinions, that 'a solution to the problems of commercial vehicle taxation is important in the context of the removal of distortions of competition on the internal market'. It is concerned that time is not on the side of the Council in meeting the 1992 deadline.

2.2. Consequently the Committee stresses the importance of agreement to be taken in June 1991 as envisaged by the Council. Nevertheless, the Committee realizes that the solution may have to be an 'acceptable' and/or 'step-by-step' solution rather than an 'ideal' one. Given that the problems essentially lie between the Member States the Committee believes that the onus is on the Council rather than the Commission to seek a solution, and consequently believes that this modified proposal need not be the only possible solution for discussion and, for example, a simple solution based largely on ensuring that related infrastructure costs are covered, may be an alternative.

2.3. The statements made by the European Parliament and the Economic and Social Committee are only partly taken into account by the Commission's proposal. It refers exclusively to goods vehicles with a permissable total weight of 12 t and more. The inclusion of other transport systems into a global policy of the charging of infrastructure costs, as demanded by the Committee, remains unsettled.

2.4. The Committee notes that while the Commission refers to the European Parliament's amendments it makes no mention of the Committee's amendments on the original proposal. The Committee believes that, while some amendments appear to have been overtaken by the Commission's amendments, others are still relevant and are repeated in the specific comments.

2.5. In coming to a solution, the Committee believes that the Council should tale the following into account:

— that in principle the taxation of goods vehicles should cover all costs caused by such vehicles — at the very least it should cover the marginal costs caused by such vehicles,

— that territoriality is a 'fair' basis for taxation and should be the ultimate objective,

— that solutions must not add to the complexity of taxation or impose additional administrative burdens.

2.6. While the Committee maintains its view that road tolls except for bridges, ferries and tunnels should be abolished at the end of contractual agreements, it realizes that practical and political problems are involved in their abolition. However, the distinction between toll roads and non-toll roads together with the deduction of paid tolls from the vehicle tax could lead to the additional introduction of toll motorways in Member States. The proposal could induce Member States to introduce toll motorways, for its transport infrastructure would be partly financed by other Member States.

2.7. The calculation of infrastructure costs is essential for the future charging of road haulage. The definition and calculation of the costs are essential for taxation charges of road haulage. However it cannot be considered as a technical question to be settled only by the Commission.

2.8. An emphasis on 'territoriality' would be highligted with an increasing emphasis on fuel tax, *vis-à-vis* vehicle tax. While, there is a strong argument in favour of the fuel tax to cover variable infrastructure costs, a fuel tax rate of ECU 245-270/1 000 l. implies a considerable tax increase for many road hauliers in some Member States and thus an increase in costs. For that reason the Committee is in favour of a step-by-step approach.

2.9. The taxation system allows for a certain double taxation. Goods vehicles using toll motorways are charged with toll as well as fuel taxes and partly vehicle taxes. Smaller goods vehicles are charged with taxes and levies that are out of proportion compared to those of bigger goods vehicles.

3. **Specific Comments**

3.1. *Preamble (New fourth paragraph)*

3.1.1. The Committee welcomes the use of a 'certain threshold tonnage' and believes it would be unnecessary and unduly bureaucratic to include small goods vehicles.

3.2. *Article 2*

3.2.1. The Committee welcomes the modification which, *inter alia*, simplifies the directive.

3.3. *Article 3*

3.3.1. The Committee notes that the Commission does not propose to modify this Article. As the Committee stated on the original proposal, the Commission should update the list of vehicle taxes affected by the Directive.

3.4. *Article 4*

3.4.1. It is not clear why the Commission considers its modifications to be 'technical'. The Committee would feel it regrettable and out of line with the public interest if Member States are restricted from taking pollution costs into account when devising vehicle taxation. This should be dealt with in the new Article 10. As Paragraph 2(b) is 'Parking fees and urban traffic charges', 'tolls' which are a separate issue should be a new indent say 2(c), making 2(c) 2(d).

3.4.2. The Committee reminds the Commission and Council that in its original Opinion it said that 'the reference to 'minor' specific taxes or dues' should be clarified (or amplified) in order to rule out abuse on the part of the Member States.

3.5. *Article 5*

3.5.1. 1 (b)

3.5.1.1. The Committee is surprised that paragraph 1(b) is not revised. As it stated in its original Opinion it is too imprecise.

3.5.2. New second paragraph

3.5.2.1. The Committee (as stated in 2.6) remains opposed to tolls. Nevertheless it falls to see the advantage of the new paragraph over the simpler old paragraph. In any event the new paragraph is confusing, e.g. what is a 'specific' motorway? It is also not clear if a 'motorway' must satisfy all or only one of the criteria listed in (1), (2) and (3).

3.6. *Article 6*

3.6.1. As in its original Opinion the Committee 'expressly endorses the basing of vehicle taxation on the maximum permissible weight'.

3.7. *Article 8*

3.7.1. Notwithstanding its overall opposition to road tolls, the Committee welcomes the removal of the original 8 (2b).

3.8. *Article 9*

3.8.1. The rates planned for the transition period seem *a priori* to be acceptable as a compromise with regard to a gradual harmonization and charging of infrastructure costs. However, a final judgement requires a clarification of the methodology (see 3.11.1.).

3.9 *Article 10*

3.9.1. The Committee supports this proposal in principle but believes it to be desirable to leave the Member States more flexibility in fixing their rates.

3.9.2. Some clarification is needed as regards 'social costs'. Before any decisions can be made in this context, the Committee believes more information is needed on the nature and result of the calculation of social costs, not least the costs related to pollution.

3.9.3. The Committee is surprised at the fact that the Commission wants to put forward an infrastructure cost account for the entire Community as an average value, thus drawing back from its originally advocated point of view that the infrastructure costs vary from one Member State to the other and consequently must lead to different charges. In case the differences of these infrastructure costs would be insignificant such an average value could be accepted in order to introduce a possible uniform and non-bureaucratic procedure. However, one should take care that the information furnished by each Member State are actually comparable. The bookkeeping rules of the Community could serve as a basis.

3.10. *Article 11*

3.10.1. This Article appears to leave reimbursement to the discretion of individual Member States (which presently could occur under existing Community law) (see 2.6). Logically to meet the requirement of territoriality the reimbursement should be mandatory.

3.11. *Annexes*

3.11.1. Apart from a reference to the 1989 Nuclear Energy Agency (NEA) report and the coefficients published by the UK Department of Transport no basis or reason is given for the taxation figures set out in Annex 2. Consequently, more complete information is needed. Given the implication that this proposal will lead to higher vehicle taxes in certain Member States, more information — before agreement — is required.

4. Further Comment

4.1. The Committee would draw attention to the conditions governing the taxation of vehicles from third countries at common borders.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Decision on the Loran-C radionavigation system [1]

(91/C 159/08)

On 11 February 1991 the Council decided to consult the Economic and Social Committee, under Article 84(2) of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 10 April 1991, in the light of the Report by Mr Colombo.

At its 286th plenary session (meeting of 24 April 1991) the Economic and Social Committee unanimously adopted the following Opinion.

The Committee endorses the Commission proposal, subject to the following comments:

1. Introduction

1.1. The aim of the proposal is to raise the level of maritime navigational safety to the maximum currently possible.

1.2. To achieve this aim, pending the development of the satellite systems which are not expected to be operational before 1995, Loran-C has been identified as one of the most reliable instruments; this makes it essential in the necessary transitional phase.

1.3. Even after the satellite systems have been brought into operation Loran-C will be of great assistance to navigation, since it is a terrestrially-based system which can naturally complement them on a regional scale.

1.4. The complementarity of the systems should lead to a doubling of the level of safety by adding two independent types of technology together, bearing in mind also that it would be difficult to avoid the satellite systems being used mainly for military purposes, and that such systems can easily be blacked out by countries at war (as occurred recently during the Gulf War).

1.5. The decision to tackle this problem at Community level is called for not only by the need to improve the level of maritime navigational safety but also by the decision of the US Coastguard service to cease funding and manning all Loran-C stations outside the US at the end of 1994. This was accompanied by an offer to transfer all or part of Loran-C station equipment to host countries free of charge once the stations have closed down.

1.6. The Loran-C system is based on a technology which, apart from involving lower operating costs than other available systems, offers the greatest accuracy; in addition, the system can easily be expanded, making it possible to set up regional chains to cover the whole European area. A wide variety of high-precision instruments are commercially available at relatively low cost in relation to the safety they guarantee (it is possible to obtain an instrument giving optimum safeguards and accuracy for upwards of $ 1 000).

1.7. Loran-C operates on the principle of measuring the difference between the times of arrival of pulses of radio-frequency energy radiated by a chain of synchronized transmitters which are hundreds of miles apart.

1.8. Although the Loran-C technology now makes it possible to obtain further information on the same instrument (speed of the vessel, registration of a route between two nautical points with automatic indication of vessels which have diverged from their route, etc), there is no doubt that the main value of this technology lies in the safety field. It enables any vessel to signal its position at any moment, with considerable accuracy, thus facilitating any rescue operations, for which there is likely to be a growing need, as a rapid increase in pleasure-boat traffic has been forecast.

1.9. The Loran-C technology is not covered by exclusive patents. This means that continuous future improvement of the instruments is possible; in combination with visual navigation systems (lighthouses, navigation lights, buoys, etc.), it will help to raise the level of maritime navigational safety.

1.10. The Loran-C system can be extended to cover air and land use in addition to maritime navigational safety tasks.

[1] OJ No C 53, 28. 2. 1991, p. 71.

2. **The Committee's comments**

2.1. In the light of the general picture given above, the aims of maximum safety in maritime navigation and of protecting the marine environment are to be welcomed.

2.2. The Committee thinks it essential for the development of the Loran-C system—a technology proposed also by the Member States themselves—to involve a role for the Community bodies in coordinating the various initiatives and giving positive encouragement to ever broader participation of the Member States at the European level.

2.2.1. Apart from making it possible to cover increasingly wide areas, it is important to achieve a rational and balanced distribution of the costs between the various users and governments.

2.2.2. Whereas satellite technology is the most suitable for global coverage, adding zones together can make the Loran-C system also suitable for covering areas larger than that of Europe.

2.3. The Committee thinks it necessary, as a matter of priority, to solve the problems arising in the Eastern Mediterranean from the closure of the station at Kargaburun in Turkey, which leaves a large navigation area uncovered.

2.4. The Committee fully supports the European Community's coordination efforts, intended to ensure the development of a compatible system and its inclusion of the largest possible number of European States.

It regards these efforts as a fundamental factor for the safety of maritime navigation in European and adjacent waters.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the Commission Communication entitled: Towards Europe-wide systems and services — Green Paper on a common approach in the field of satellite communications in the European Community

(91/C 159/09)

On 29 November 1990 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 10 April 1991. The Rapporteur was Miss Barrow.

At is 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion unanimously.

1. The package of proposals which the Commission has referred to the Committee is designed to facilitate and encourage the use of satellite communications. These have been developed dramatically during recent years and, as the European Community approaches the Europe-wide market of 1992, satellite communications are becoming a vital element for the trans-European services and networks needed for the single European market, and the broader continental dimension which is developing from the revolutionary changes in Eastern Europe.

2. **Introduction**

2.1. In recent years the dominant trend worldwide in telecommunications (including broadcasting) has been liberalisation, corporatisation and privatisation. Some

Member States have abolished their national telecommunications monopoly and established an independent regulatory body to licence the former monopolist and other organizations to compete in both equipment and services. In the UK, for instance, the Government separated British Post and Telecommunications in 1981 followed by the privatisation of British Telecom in 1984 and the setting up of the Office of Telecommunications to regulate a range of companies, including British Telecom, to provide equipment and services on a competitive basis. In France, Germany and the Netherlands, for example, the telecommunications administrations have been corporatised and moves have been made to separate operational and regulatory functions. As might be expected, the regulatory body's main objective is to create conditions in which market entry can take place to ensure that the former monopolist does not dominate the new situation.

2.2. In Europe satellites, which carry a small proportion of telecommunications traffic compared with the terrestrial sector, have not been greatly affected by these changes, for technical and administrative reasons. An added problem, inhibiting liberalization has been the need in most cases for international co-ordination.

2.3. Yet satellites can offer significant technical and economic advantages over terrestrial links. A satellite network path basically consists of the earth segment (including the transmitter and receiver) and a space segment (the satellite). Earth stations can be deployed very quickly, on a short-term basis and for a small volume of traffic (a thin-route) when it would be uneconomical to lay a terrestrial link. They can be deployed to fit a user's needs, instead of to fit in with the existing wired network.

2.4. In addition, there are some circumstances where satellites are the only means of communication available. The most obvious example is satellite-point to multi-point communication such as broadcasting, where the signal is distributed simultaneously to all households within a wider coverage area than terrestrial broadcasting and provides multichannel services without the need for any wires being laid. This kind of multipoint distribution is equally useful for the distribution of data, especially financial information.

2.5. Most current regulations at the national level do not allow these technical and economic advantages to be exploited to their full potential. Regulations restrict the direct marketing of satellite capacity to users. Either national regulation or the incompatibility of two (or more) sets of national regulations has meant that multipoint networks serving the Community as a whole are either not legally available or are only available in ways that inhibit their most economical use.

2.6. It should be noted that most international and national regulatory systems for satellites were devised in the 1970s using the technical and economic characteristics of satellite applications at that time. Today's satellites are much more powerful or can take advantage of technological advances which enable them to be accessed by relatively small transmitters and receivers.

2.7. The Commission wishes to ensure that Member States take account of these new circumstances in line with the Treaty of Rome and especially the 1987 Green Paper on Telecommunications ([1]).

2.8. The Commission sees an opportunity to (i) lower the barriers to entry to the provision of both satellites and satellite services, (ii) lower costs and (iii) allow more flexible user-oriented network configuration.

2.9. It also seeks to minimise, or curtail, conflicting approaches between national bodies that may prevent intra-Community cooperation and also may jeopardize the effectiveness of the Community as a whole to compete with other countries (e.g. USA).

3. General comments

3.1. The Committee supports the proposals in the Satellite Green Paper in light of the need to exploit the full potential of satellite technology and services in Europe. Liberalisation and the separation of operational and regulatory functions are, in the Committee's view, a prerequisite to achieve this.

3.2. The Committee agrees with the statement by the Commission (Satellite Green Paper page 101 English Version) that:

> 'In order to bring the regulation of access to—and provision of—space segment in line with general Community telecommunications policy, a number of basic principles will have to be emphasized:
>
> — the principle of open and efficient access, based on objective, transparent and non-discriminatory procedures,
>
> — clear separation of regulatory and operational functions,
>
> — full application of the provisions of the Treaty [of Rome], in particular competition rules.'

([1]) Towards a Dynamic Economy — Green Paper on the development of the Common Market for telecommunications services and equipment [COM(87) 290 (the 1987 Green Paper)].

3.3. The Committee agrees with the statement by the Commission (Satellite Green Paper page 119 English Version) that:

'A fundamental principle of the reform must be the establishment of objective, transparent and non-discriminatory procedures and the clear separation of regulatory and operational functions, both with regard to the provision and use of the earth segment, as well as with regard to access to—and provision of—space segment.'

3.4. To achieve 'objective, transparent and non-discriminatory procedures' it is fundamental that there be a clear separation of regulatory and operational functions. This is particularly so with regard to 'free (unrestricted) access to space segment capacity'.

3.5. Furthermore the Committee agrees with the statement by the Commission (Satellite Green Paper pages 101-102 English Version) that:

'The Member States are obligated to exercise their influence in order either to achieve an application of international agreements in conformity with the Treaty or to bring about an amendment of these agreements. The potential for conflict which may result from the current situation with regard to Treaty (of Rome) rules may be demonstrated by quoting from the principles set out in the Commission (draft) guidelines on the application of competition rules in the telecommunications sector, as regards application of Articles 85 and 86 to satellites:

"... agreements between Telecommunications Organisations (TOs) concerning the operation of satellite systems in the broadest sense are caught by Article 85. As to space segment capacity, the TOs are each other's competitors, whether actual or potential. In pooling together totally or partly their sales of space segment capacity they may restrict competition between themselves... Restrictions on third parties' ability to compete are likely to exclude the possibility of ... an exemption. It should also be examined whether such agreements strengthen any individual or joint dominant position of the parties, which also exclude the granting of an exemption. This could be the case in particular if the agreement provides that the parties are exclusive distributors of the space segment capacity provided by the agreement...

An exemption is unlikely to be granted also when the agreement has the effect of reducing substantially the supply in an oligopolistic market, and even more clearly when an effect of the agreement is to prevent the only potential competitor of a dominant provider in a given market from offering its services independently. This could amount to a violation of Article 86..."'

3.5.1. In the Commission's view (Satellite Green Paper page 111 English Version) the Member States should work towards a full review of the Eutelsat agreement and it is stated that:

'Such a review should include, beyond the measures set out above, necessary revision to allow

— direct access to the Eutelsat space segment, by far the largest one for use by domestic satellite services in Europe,

— full commercial independence and direct marketing of Eutelsat space segment to users,

— adjustment of provisions for financing and membership, as required,

— adjustment of the agreements to bring them fully in line with the obligations of the Member States under the Treaty [of Rome], in particular competition rules—concerning notably the future treatment of the economic harm provision as well as the future handling of the technical coordination procedures, and transparency with regard to cross-subsidization where it occurs.'

3.5.2. With regard to the measures referred to in paragraph 3.5.1, it is the opinion of the Committee that:

— direct access to the Eutelsat space segment should be permitted,

— full commercial independence and direct marketing of Eutelsat space segment to users should be permitted,

— for the reaons identified by the Commission (for example, Satellite Green Paper pages 108-109 English Version), there should be an urgent adjustment of provisions for financing and membership of Eutelsat. Such an adjustment should be fair and equitable and must bear in mind the interests of those Member States with relatively small numbers of investment shares in Eutelsat. It is the Committee's view that the adjustment should take place within a relatively short but nevertheless realistic time period laid down by the Commission. In the absence of agreement between the members of Eutelsat at the expiry of that period, it is the opinion of the Committee that adjustments should be implemented by the relevant regulatory authority in each Member State (assuming requisite separation of regulatory and operational function has already been implemented),

— furthermore, the process of adjustment of the relevant convention and operating agreements of Eutelsat should be undertaken immediately having regard to the obligations of the Member States under the Treaty of Rome, in particular with regard to the competition rules thereunder.

3.6. With regard to the International Telecommunications Satellite Organization (Intelsat) and Inmarsat, the Committee is in agreement with the phased approach set out by the Commission (Satellite Green Paper pages 109-110 English Version). However, it is the Committee's opinion, consistent with the comments contained in paragraph 3.5.2 above, that action on these matters should take place in a relatively short but nevertheless realistic time period, especially with regard to those measures which the Commission has identified as immediate steps which could be undertaken within the framework of the existing conventions and operating agreements.

4. Specific comments

4.1. The Commission has proposed four major changes (Green Paper page 3 English Version):

— Full liberalization of the earth segment, including both receive-only and transmit/receive terminals, subject to appropriate type approval and licensing procedures where justified to implement necessary regulatory safeguards.

— Free (unrestricted) access to space segment capacity, subject to licensing procedures in order to safeguard those exclusive or special rights and regulatory provisions set up by Member States in conformity with Community law and based on the consensus achieved in Community telecommunications policy.

  Access should be on an equitable, non-discriminatory and cost oriented basis.

— Full commercial freedom for space segment providers, including direct marketing of satellite capacity to service providers and users, subject to compliance with the licensing procedures mentioned above and in conformity with Community law, in particular competition rules.

— Harmonization measures as far as required to facilitate the provision of Europe-wide services. This concerns in particular the mutual recognition of licensing and type approval procedures, frequency coordination and coordination with regard to Third Country providers.

4.1.1. The Committee agrees with the above four major changes proposed by the Commission.

4.2. With regard to the Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (85/552/EEC) (known as the Television Without Frontiers Directive), the Commission states (Satellite Green Paper page 134, point 13, English Version) that:

> 'Satellite broadcasting to the general public—including both applications in terms of the definition used in the Radio Regulations for Broadcasting-Satellite Services, as well as broadcasting applications operating in the framework of the Fixed-Satellite Services—will continue to be subject to the specific regulations set up by Member States in conformity with Community law, as defined in particular by Directive 89/552/EEC (the Television Without Frontiers Directive).'

The Committee agrees with this statement, and notes that the International Telecommunication Union (ITU) will give consideration to these matters in 1992 and further notes that the Commission and Member States are already considering these matters at present.

4.3. The Commission has identified a number of important issues with regard to transmission standards (Satellite Green Paper page 134, point 14, English Version) and states that:

> 'Transmission standards requirements in this area are vital to ensure basic interoperability. As regards direct broadcasting applications, Directive 86/529/EEC([1]) has identified the MAC family of transmission techniques as the standard to be used.
>
> The development of concepts for the next generation direct Broadcasting-Satellites should ensure compatibility with ongoing activities in the field of High Definition Television (HDTV) and its Europe-wide harmonized introduction. This should be taken into account in future actions regarding transmission techniques in this area, particularly in the actions succeeding the current MAC-packet Directive mentioned above, which expires on 31 December 1991.'

4.4. With regard to transmission standards requirements and in particular the MAC-packet Directive, the Committee looks forward to giving its detailed views on what measures are appropriate to replace the MAC-packet Directive and the relationship with the development of HDTV in the Opinion which it will be called on to give on the specific Commission proposals.

4.4.1. Similar considerations apply to the harmonization of standards for conditional access, such as pay-TV.

5. Further specific comments

5.1. The Commission has proposed six measures for facilitating trans-Europe services (Satellite Green Paper pages 135 to 137 English Version):

([1]) Council Directive on the adoption of common technical specification of the MAC/packet family of standards for direct satellite television broadcasting (86/529/EEC) (known as the MAC/packet Directive).

1) 'Mutual recognition of type approval for satellite communications terminal equipment...';

2) 'A Community scheme concerning the mutual recognition of licences for satellite terminal networks...';

3) 'Strengthened frequency co-ordination related to satellite communications...';

4) 'Strenghtened co-ordination of Member States with regard to services to/from non-Community countries...';

5) 'Specific definition of Open Network Provision (ONP) concerning the connection of satellite terminal networks...';

6) 'Harmonisation of identified future transmission technique for satellite broadcasting to the general public...'.

5.1.1. The Committee is in agreement with the six measures above proposed by the Commission.

5.2. The Committee is in agreement with the proposal to initiate lines of actions (Satellite Green Paper pages 138-140 English Version) with regard to:

1) 'Working towards a review of the Eutelsat convention and its operating agreement...';

2) 'Defining a common position in the international fora related to satellite communications, in particular with regard to Intelsat and Inmarsat';

3) 'Accelerating standardization work in the European Telecommunications Standards Institute with regard to satellite communications equipment';

4) 'Promoting the full use of satellite technology in applications, by service providers and by telecommunications organizations...'.

6. Conclusions

6.1. In conclusion, the Committee is of the opinion that continued co-operation between Member States to implement the proposals contained in the 1987 Green Paper, the Satellite Green Paper and related measures, is imperative for facilitating and encouraging the full use of the potential of satellite communications in Europe. Therefore, the Committee is of the opinion that a realistic timetable for this implementation, particularly separation of operational and regulatory functions, should be established by the Commission which should take an active role in seeing that the timetable is met. The Committee suggests to the Commission that if the timetable is unlikely to be met by all Member States, that it should consider how best to achieve the subject matter of the timetable including whether there is a need for the Member States to vest authority for and responsibility to carry out implementation in an organization especially charged with appropriate responsibilities and authority. Such an organization should be centrally located with power to cooperate with and to liaise with the telecommunications administrations and organizations in each of the Member States and also with the Commission.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Directive on the harmonization of technical requirements and procedures applicable to civil aircraft [1]

(91/C 159/10)

In a letter dated 26 October 1990, the Council asked, under Article 84, paragraph 2 of the Treaty, the Economic and Social Committee for an Opinion on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for the preparatory work, adopted its Opinion on 15 March 1991. The Rapporteur was Mr Mobbs.

At its 286th plenary session (meeting of 24 April 1991) the Economic and Social Committee unanimously adopted the following Opinion.

The Committee fully supports the Commission's proposal subject to the comments below.

1. Introduction

1.1. This is a framework Directive and therefore the Committee has not become involved in the technical details. Instead it has concentrated most of its efforts into examining the background, the overall method of working and — in particular — the major parties involved.

1.2. The free movement of aircraft, that is the transfer of registration [as for ships in COM(90) 219 — CES 949/90 fin] within the EC is currently restricted, mainly due to the lack of a common set of Technical Standards for aircraft certification, operation and maintenance.

1.3. This results in many cases of time consuming and costly modifications when an aircraft is transferred between registers of Member States. Ordinary operational flying between countries is unaffected since once an aircraft is approved by a country, the rules of the International Civil Aviation Organization (ICAO) allow it to fly to other countries.

1.4. Differences in technical standards may also result in variations of safety standards, whereby differences in costs may arise in respect of the construction, maintenance and operating of aircraft.

1.5. This Directive addresses those aspects of civil aviation safety which relate to the airworthiness, operational approval and maintenance of aircraft, engines and other aircraft equipment and the organizations responsible for approving those who undertake these tasks. This Directive provides a framework to maintain the highest level of safety standards in the Member States, and to extend these through Europe, see Article 3 and relevant parts of Article 7.1 of the ESC Opinion on Development of Civil Aviation in the Community and Application of the Competition Rules to Air Transport (Second phase of liberalization) (CES 214/90 — Rapporteur: Mr Kenna).

1.6. All Member States are now involved in setting up the Joint Aviation Authorities (JAA) organization under the auspices of the European Civil Aviation Conference (ECAC) to develop a unified European approach to aviation safety. This should be welcomed by:

i) The Commission, as it will facilitate discussion between the EC and the European Free Trade Association (EFTA) on this topic.

ii) By Denmark, since one set of rules can apply to the Scandinavian Airlines System (SAS) currently frustrated by the need to abide by EC rules while jointly owned with Norway and Sweden.

1.7. The JAA draws up technical codes and procedures [Joint Aviation Requirements (JARs)] applicable to air transport in Europe. A number of these codes dealing mainly with the certification of aircraft, engines and other aviation products, are now complete and have been issued. Other codes concerning operation, maintenance and licensing aspects are being prepared.

1.8. The current effectiveness of the JAA could be limited by the fact that it is a purely voluntary arrangement, lacking a legal framework.

1.9. This Directive is intended to strengthen the JAA, making this voluntary arrangement binding by incorporating it into Community legislation. This would require the Member States to adopt common codes of technical requirements for aviation and to adhere to the administrative requirements and procedures of the JAA. Delays in incorporating JAR's into national legis-

[1] OJ No C 270, 26. 10. 1990, p. 3.

lation may lead to problems concerning the effectiveness of these harmonization measures. To avoid this problem, the Committee recommends that the proposal takes the form of a Regulation rather than a Directive.

1.10. The requirements and procedures covered by the Directive are listed in Annex 2 and will need to be regularly reviewed in the light of service experience and technical progress. To that end it is proposed that the Commission be empowered to adopt such amendments with assistance of a committee composed of representatives of Member States who are well-versed in aviation matters. In the opinion of the Committee, these should be the national representatives of the JAA.

1.11. It is relevant here to return to the document concerning A Competitive European Aeronautical Industry [SEC(90) 1456 of 23 July 1990], and summarize some of the comments therein:

i) Cost; overruns arising from cases of duplicated efforts must be avoided.

ii) Standardization and Certification; the American industry is not handicapped by different technical standards, nor should the Europeans.

iii) Standardization; agreement between the European Association of Aerospace Manufactures (AECMA) and the European Committee for Standardization (CEN) is already yielding good results.

iv) Certification; the Commission wishes to strenghten the work of the JAA.

1.12. The need to avoid duplication of work is important due to the high safety standards demanded in aviation, which requires a substantial number of very skilled people, of which there is a shortage. It is therefore important that additional committees, study groups, etc. are not set up which might unnecessarily duplicate work already being efficiently undertaken.

2. General Comments

2.1. *The Committee Status*

2.1.1. The Commission's preference for an advisory committee as stated in Article 11 can be understood within the general method of operation of the Commission. However in view of the highly specialized technical nature of the proposed Directive, the Committee suggests that such a committee should be of a regulatory nature and that procedure IIIa of the Council's decision on commitology (87/373) should apply. According to this procedure, the qualified majority rules of Article 148.2 of the Treaty apply to the decision-making in the committee, and proposals approved under this procedure can be executed immediately.

2.1.2. In case of the committee not approving the Commission's proposal with a qualified majority, the proposal is presented to the Council, which makes its decisions by qualified majority. Unless the Council with a qualified majority decides otherwise within 3 months, the proposals are automatically adopted by the Commission.

2.1.3. The membership of the committee is fundamental. Given the technical and safety nature of the subject, the committee should comprise the Member States' representatives of the JAA.

2.2. *International technical cooperation*

2.2.1. In order to facilitate the import and export of aircraft, close contact is maintained between international bodies; outside Europe, the international standard tends to be that set by the Federal Aviation Administration (FAA) in America. The long term aim is that all countries accept common technical standards. Manufacturers on both sides of the Atlantic and the JAA and the FAA are already working together in order to be able to sell and operate their aircraft to a common standard worldwide.

2.2.2. The FAA does not make any charge for its services. This is seen by some European manufacturers as providing a cost advantage to USA manufacturers. The FAA Strategic Plan — August 1990, sets as an objective that 'the FAA be user financed', by some suitable means.

2.2.3. It may therefore be considered that the treatment of costs needs reviewing in order to achieve fairness, initially in Europe, and later worldwide.

2.3. *The future*

2.3.1. The Commission refers page 4, item 7, paragraph 3, of the explanatory memorandum, to a single European Aviation Authority.

2.3.2. This is considered a worthy objective providing it is a regulatory body. However, it is recognized that such an achievement is not possible in the immediate future and that progress should be made on a step by step basis, in view of the important issue to be considered. Progress on this directive should not be held up by these considerations.

2.3.3. Some aviation bodies would like to see a firm commitment now and a timetable set for the establishing of a single, European aviation authority. Therefore, the following issues should be considered as part of a separate directive, so as not to hold up progress on the present one:

— The role of a single authority — should it cover only the work of the JAA or the wider issues dealt with by European Civil Aviation Conference (ECAC)?

— Treaty arrangements;

— Participating States control over the body;

— Legal Status (including product liability);

— Working arrangements with other bodies — Eurocontrol, the FAA, EFTA, Eastern European States.

3. **Specific comments**

3.1. *Article 1*

The Committee thinks that the first indent as written will cause problems with aircraft required/operated under leasing arrangements.

Therefore it asks to delete from first indent the words:

'registered in the Member States of the Community'

and replace with new wording:

'used by operators licensed or authorized by the Member States.'

3.2. *Article 2*

3.2.1. In view of the importance of the JAA (which body exists now), there should, therefore, be an additional definition:

'« JAA » means the Joint Aviation Authorities covered by the « arrangements »'.

3.3. *Article 3*

3.3.1. In recognition of the fact that JAR-codes are subject to a continuous process of development and modification, this Article together with Articles 10 and 11 provide the necessary flexibility to adopt these codes into Community legislation.

3.4. *Article 4*

3.4.1. The adherence to the arrangement documents now by all Member and EFTA States avoids problems with detailed wording of this clause since membership of the JAA is decided by the JAA based on its acceptance of its terms and conditions and not by Governements.

3.4.2. The JAA say that their present workload precludes consideration of any other applications for the time being. The terms for additional admissions might best be left until later, especially since an enlarged JAA will include countries from outside EC/EFTA. By then there may be a time table and set of clear objectives for the establishment of a European Aviation Authority.

3.4.2.1. Paragraph 2

Replace existing wording by:

'Member States will ensure that the existing relationship between the Commission and ECAC extends to the JAA (in order to avoid conflicts within the ECAC organization).'

3.5. *Article 7*

3.5.1. Amend line two to include ... and maintained 'or body/authority or person licensed'. The reason is that there is a need to be able to take action against a wider range of approvals than solely products.

3.5.2. The JAA presently operates a procedures by which the original Member State retains responsibility for ensuring that, when measures have been initiated, the Member State sees these through to a complete conclusion. This avoids a break or delay in the continuity of an action.

3.5.2.1. Thus Paragraph 2 should be deleted and replaced with:

New paragraph 2

'The Member State shall also inform the other Member States and the JAA of these measures and indicate the reason for its decision. The Member State shall also ensure that consultation takes place within the JAA on the measures taken.'

A new paragraph 3 will be required as a result of the foregoing changes.

3.5.2.2. New paragraph 3

'The Member State will report the results of the consultation, referred to in paragraph 2, to the Commission. Where the measure is attributed to shortcomings in the common requirements and procedures, the Commission shall ask the JAA to develop a new code or amendments to an existing code. A decision will be made using the procedures as laid down in Article 11.'

(as amended by the Committee).

3.6. *Article 9*

3.6.1. Insert in line one, after ... States shall 'through the JAA' ensure that ... (in order to avoid any go it alone action).

3.6.2. Insert in line two, after ... amended 'JAA defined' requirements and procedures ... (in order to avoid any go it alone action).

3.7. *Article 11*

3.7.1. This Article should be amended, taking into account the propositions made by the Committee in earlier general comments, whereby the committee should be regulatory and not advisory. This amendment should recognize the fact that the Commission representative, acting as Chairmain of the committee, should be non-voting.

3.7.1.1. Annex 1

Replace with the later version 'Cyprus, 11 September 1990'.

3.7.1.2. Annex 2

It should be noted that Annex 2 will be updated on a regular basis, showing the implementation date of JAR-codes as and when adopted into Community legislation through the committee.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Regulation (EEC) on improving the efficiency of agricultural structures

(91/C 159/11)

On 28 March 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr Charles Pelletier.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee unanimously adopted the following Opinion.

1. The Committee welcomes the consolidated version of Regulation (EEC) 797/85 as amended (12 amendments and one corrigendum), as consolidation helps make Community law clearer and more transparent.

2. A Commission decision of 1 April 1987 established the principle that a consolidated version of legislative instruments should be produced no later than after their tenth amendment. Although this decision was not respected in the present case, the resulting consolidated version is in fact more complete, since it embraces the most recent measures reforming the structural funds.

3. However, the Committee is concerned that certain measures are not included in the consolidated version,

more particularly those implementing extensification, the special allowance paid to upland farmers, and set-aside.

3.1. The Committee asks the Commission to consider the case for revising the document so as to make provision for insertion of the above-mentioned measures immediately, rather than waiting for future consolidation operations.

4. The Committee stresses the importance of consolidated legislation in connection with the Community's aim of establishing a single harmonized market in which regional inequalities are ironed out. By making the relevant Community legislation more accessible, the consolidation operation will help to further this aim.

5. Lastly, the Committee draws the Commission's attention to the need to stabilize Community law on this subject, so that farmers can have a clear and precise picture of all the relevant provisions.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Directive on a form of proof of an employment relationship [1]

(91/C 159/12)

On 23 January 1991 the Council decided to consult the Economic and Social Committee, under Article 100 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr Cavaleiro Brandão.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion by a majority, with five abstentions.

1. General comments

1.1. The Committee supports the proposal's aim of guaranteeing all workers the right to know the name of their employer, and their place and terms of employment.

Enshrinement of this right will make the labour market more transparent and secure. This will benefit freedom of movement and social mobility in general.

1.2. The proposal cites as its legal basis Article 100 of the Treaty, relating to the approximation of Member States' legislation.

The Committee accepts this legal basis.

1.3. As already stated, the Committee supports recognition of the right to know the name of one's employer and one's place and terms of employment.

Accordingly, the Committee defends recognition of

[1] OJ No C 24, 31. 1. 1991, p. 3.

a) the obligation of employers to provide all workers with written proof of their employment relationship;

b) the right of all workers to demand and receive a written document setting out their basic conditions of work and any other agreed terms.

1.4. Prevailing European legal theory and practice holds that an employment relationship can be proved by any desired means. This must continue to be the case.

Workers must be guaranteed the right of access to a contract or written document formalizing the main terms of their employment relationship. This document should be made available when the worker so requires, under the terms proposed in Point 2 below.

If a written document were te be made obligatory to prove the existence of an employment contract, then the absence of such a document might be presumed by the courts to indicate that no employment relationship existed. In such cases, the position of the worker would be worsened and it would be more difficult to prove the existence of an employment relationship.

1.5. Moreover, obligatory automatic issue of a written document to all workers could generate a vast amount of red tape for companies, with a corresponding—and largely needless—rise in costs, especially in smaller firms.

1.6. In the light of the above, the Committee considers that the proposal should be revised to take account of the following principles:

— access to a formalized expression, in a written document, of the main terms of their employment relationship should be enshrined as a right available to all workers,

— 'the conditions of employment ... shall be stipulated in laws, a collective agreement or a contract of employment, according to the arrangements applying in each country' (Article 9 of the Community charter of fundamental social rights for workers),

— enshrinement of the right to a formalized written expression of the main features of an employment relationship must not conflict with the goals of mobility and flexibility which must be pursued with an eye to the 1992 single market.

2. **Specific comments**

2.1. *Article 1*

Under this Article, a written document is only to be required in the case of employment relationships involving more than an average of eight hours' work per week. The Commission does not provide a satisfactory justification of this.

2.2. *Article 2*

2.2.1. In the light of the general comments made above, the Committee feels that Article 2 should be reworded along the following lines:

'1. The employer shall provide the employee with written proof of the employment relationship no later than one month after he or she has been recruited.

2. The employee shall have the right to obtain from his employer, at the start of employment or at any later stage, a written document setting out the main terms of their employment relationship.

3. The document mentioned in paragraph 2 shall specify the conditions agreed by the parties, and any other conditions, applicable by virtue of law or collective agreements, which either party wishes to be included.

4. Independently of this, the employment relationship and the conditions governing it may be proved by any suitable means.'

2.2.2. In addition to the above comments and proposed new wording for Article 2, the Committee would make the following comments on the Commission's draft of this Article.

2.2.2.1. Article 2(2) lists the elements which in the Commission's view make up an employment relationship and which must be included in the written declaration. As its proposed alternative text shows, the Committee feels that a more general wording would be preferable. Each Member State could then adopt the formula best suited to its particular situation. It would also avoid the disadvantages inherent in a fixed list which might go too far in some respects and not far enough in others.

The Committee has particular reservations about the required description of both the job and the category of employment. This seems excessive, and uses legal concepts with different meanings in different Member States.

2.2.2.2. Article 2(3) states that any substantive change to the particulars contained in the written declaration must be notified to the employee in writing.

However, it is not clear what constitutes a 'substantive' change.

2.2.2.3. The Committee stresses the importance of cases where the employee is required to work abroad (and not only in third countries). Separate regulations might be warranted in such cases and the Committee would urge the Commission to clarify this aspect of its proposal.

2.3. *Article 3*

The written declaration is not required in cases where there is a written contract of employment or a letter of appointment or other document referring to a collective agreement or to other regulations governing employment relationships.

The legal principles and practical implications of this provision do not seem sufficiently clear.

2.4. *Article 5*

In view of the differing traditions in the Member States with regard to the content of written documents formalizing employment relationships, provision could be made for each Member State to decide for itself what basic conditions should be included in the document referred to in Article 2(2) of the proposal and Point 2.2.1 above.

Done at Brussels, 24 April 1991.

The Chairman
of the Economic and Social Committee
François STAEDELIN

Opinion on the proposal for a Council Directive on unfair terms in consumer contracts [1]

(91/C 159/13)

On 2 October 1990 the Council decided to consult the Economic and Social Committee, under Article 100 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 2 April 1991. The Rapporteur was Mr. Hilkens.

At its 286th plenary session (meeting of 24 April 1991) the Economic and Social Committee adopted the following Opinion by a majority vote in favour and 4 votes against, with 6 abstentions.

1. Introduction

The Committee welcomes the proposal submitted by the Commission as it constitutes a major contribution to the functioning of the Internal Market for consumers, who have a role to play in the economic integration process. It is in line with the principles accepted by the Council Resolutions devoted to the Community consumer policy [2], as well as with those expressed in the European Parliament's Resolution of 21 February 1986 [3].

[1] OJ No C 243, 28. 9. 1990, p. 2.

[2] OJ No C 92, 25. 4. 1975, p. 1, OJ No C 133, 3. 6. 1981, p. 1 and OJ No C 167, 5. 7. 1986, p. 1.

[3] OJ No C 68, 24. 3. 1986, p. 194.

2. General Observations

2.1. *Objective and limits of the proposal*

2.1.1. The proposal for a Directive on unfair terms in consumer contracts introduces the principle of a standard for consumer protection against unfair contract terms throughout the European Community. Such a standard constitutes indeed a basic requirement for the acceptability of a Single European market for consumers, making it possible for the latter to engage in cross-border transactions on the basis of some common rules and will therefore promote consumer confidence in those transactions.

2.1.2. The Committee accepts that consumer confidence needs an approximated system of regulation of unfair terms in consumer contracts but acknowledges the fact that it is neither desirable nor the intention of the proposal to approximate contract law as such. The Committee also points out the limited value of approximation of legislative and regulatory provisions, and the increased risk of legal uncertainty, both for consumers and for suppliers, insofar as, in the area of contract law, a priority role is reserved to the courts: as a matter of fact, even on the basis of an approximated legislative instrument, national Courts will, with regard to the development of contract and consumer law in the respective Member States, and more generally with regard to their legal culture and tradition, construct (interpret) differently identical provisions.

2.1.3. The Committee highlights the importance of the regulatory instruments of international law applying to transfrontier contracts and underlines the fact that the Rome Convention concluded on 19 June 1980 will enter into force on 1 April 1991.

This Convention, Article 5 of which stipulates that in the given circumstances the consumer cannot be deprived of the protection afforded by the mandatory provisions of the law of the country in which he normally resides, must be read in conjunction with the Brussels Convention of 27 September 1968, Article 14 of which stipulates in the same circumstances that proceedings may be brought against the consumer only in the courts of the Contracting State in which the consumer is domiciled and that the consumer bringing proceedings may choose between the courts in the country in which he is domiciled and the courts in the country in which his opponent is domiciled.

2.1.4. In order to maximize the practical efficiency of this directive, the Committee proposes that the competent authorities of the Member States be obliged to set up a system within their jurisdiction which would make it possible to notify the Commission of all decisions, be they judicial or administrative, taken in application of the implementing provisions of the proposed Directive. Such a system of notification would enable the Commission, when preparing the report it has to submit on the operation of the Directive, to identify sectors or issues where diversity of interpretation is frequent and, if necessary, to propose more appropriate formulation of the existing provisions of the directive.

2.1.5. The Committee furthermore stresses the need, from the point of view of consumer protection, for efficient and collective monitoring procedures. Therefore, the Committee invites the Commission, with regard to Article 4, to specify some obligations for Member States to implement effective sanctions.

2.1.6. The Committee has also considered the major role to be assumed by the Court of Justice of the European Communities in refining the Community notion of unfairness in preliminary rulings requested by national Courts.

2.1.7. However, the Committee is reluctant to accept the idea of the creation of a body at European level devoted to the monitoring of unfair contract terms, as this seems bureaucratic and superfluous with regard to existing bodies at national level.

2.2. *Need and impact of a directive on unfair terms in consumer contracts*

2.2.1. The directive is intended to restore balance in consumer contracts. The explanatory memorandum to the proposal consistently describes the numerous imbalances which characterize consumer and which are totally inconsistent with the traditional principle of freedom of contract which is based on the assumption that the contracting parties have equal bargaining power. As equal bargaining power is so often absent in consumer negotiations, the proposal for a directive seeks to ensure this bargaining power or to rectify the imbalances.

2.2.2. The Committee recognizes the need for a European instrument intended to restore some balance in consumer contracts. As fear is expressed in some circles as to the negative impact of the directive on the industrial, commercial and other professional sectors, the Committee's reaction is that:

— the directive will not constitute a major departure from the law of contract in nine Member States (United Kingdom, France, Germany, the Netherlands, Spain, Portugal, Ireland, Denmark, Luxembourg), whose legislations related to unfair contract terms contain principles which are very close to those of the directive, and which already apply to the contracting parties in these States,

— the directive will not introduce dramatic changes in contract law in the three Member States (Belgium, Italy, Greece), where no specific legislation exists, as in these countries case-law already, even if sometimes with hesitation, penalizes unfair contract terms.

2.2.3. Therefore, the Committee considers that the Directive, rather than introducing new legal principles into the national legal systems, constitutes, at least partially, an approximation of existing national legislation and practice and harmonizes technical approaches to the problem of unfair contract terms.

2.3. *Scope of the Directive*

2.3.1. According to the Commission proposal, the Directive applies to all consumer contract terms, be they standard or individually negotiated. While the Committee accepts that the offer, by suppliers, of standard terms may indeed constitute a potential risk of imbalance for consumers, it considers that a different treatment should be given by the Directive to individually negotiated contract terms. Indeed, genuinely negotiated contract terms could be assessed on a different basis than standard terms, as the latter reflect situations where the risk of imbalance is most acute, while this may not be the case for the former. Therefore, the Committee invites the Commission to amend Article 2, para. 5 of its proposal in order to make it clear that the fairness or unfairness of a contract term is to be determined by reference to the surrounding circumstances at the time at which the contract was concluded, and specifically taking into account individually negotiated contract terms.

2.3.2. However, the Committee recognizes the problem of proof in case of litigation and the difficulty of drawing limits between the notion of standard term and individually negotiated term. Indeed the introduction of this distinction may give rise to practical problems and may make it more difficult for some categories of less well informed consumers to be protected against unfair terms. Therefore, in case of doubt, a contract term would be considered as standard.

2.3.3. More generally, the Committee calls upon the Commission to consider, in the very near future, the possibility of prohibiting unfair terms in all contracts, whether concluded with consumers or not, taking particular account of the problems experienced by small and medium-sized enterprises (SMEs).

2.3.4. Intermediaries will, after adoption of the directive, face the problem of consumers invoking the protection of the Directive without being able to turn to the importer or producer to invoke the same protection. The Committee considers that the drafting of Article 3, para 1, last sentence, does not allow any legal certainty for intermediaries and requests that the problem be explicitly dealt with in the Directive itself.

2.4. *Formulation of the directive*

2.4.1. The Committee urgently suggests that the Commission pay specific attention to the drafting of the directive, in order to ensure compliance with legal principles and the general balance of the contract.

2.5. *A negative approach*

2.5.1. The approach of the proposal is to prohibit unfair terms in consumer contracts. It does not force suppliers into any positive obligation towards the consumer. However, to prevent imbalances in consumer contracts, it is essential for the consumer to be in a position to make himself acquainted with the terms which are part of the contract (e.g. through delivery of contract form, posters in the shop etc.) and to be reasonably put in a position to understand them.

2.5.2. Therefore, the Committee proposes to include in the Directive, and in line with various national legislations or practices, an obligation on the supplier to inform the consumer, before contract conclusion, of the terms applicable to the contract. This would also be of interest in the case of individually negotiated terms, so that the consumer could become aware of the importance of the derogations to the standard conditions of the supplier.

2.5.3. The Committee suggests the introduction of an additional criterion of unfairness: the non-transparency of a contract term. However, this criterion should be drafted so as to allow evaluation on the basis of the objective criteria of 'prudent administration', in line with the experience developed in this respect in several Member States.

2.5.4. Moreover, a major problem which consumers will have to face in the internal market — diversity of guarantee and after-sales service — has been tackled by the Directive through the prohibition, in the Annex, of restrictive terms. The Committee, however, invites the Commission to engage, in the very near future, in more comprehensive discussions with all interested parties in order to assess the need for Community action in the field of after sales service and guarantee conditions. The problem of lack of consumer confidence in crossborder transactions due to diversity of after-sales service and guarantee conditions indeed seems to constitute a major barrier to crossborder trade.

2.6. *Minimum or total harminisation?*

The proposal is not explicit about its relationship to existing or future national legislations with regard to unfair contract terms. The Committee proposes to make clear that Member States may in any event maintain or adopt legislation which goes beyond the protection granted by the Directive.

2.7. *Relationship of the Directive to other legislative instruments*

The proposal makes no mention of any relationship with:

— other EC legislative instruments which also contain references to contract terms and contract content (e.g. product liability directive, package tours directive);

— international legislative instruments, which exist in many fields [e.g. the limitation and restriction of third party liability as accepted by international conventions under the aegis of the Comité Maritime International and the UN Intergovernmental Maritime Consultative Organization (IMCO)].

It is of prime importance that the relationship between these different legislative instruments be made clear.

2.8. *The annexed list of unfair contract terms*

2.8.1. While the Committee acknowledges the Commission's efforts to draft a list which would constitute a sufficient basis for a common list of unfair terms within Europe, it makes some suggestions to complement and improve the drafting of the annex.

2.8.2. The scope of the annex raises several questions.

The Committee takes the view that it must be made clear that the annex is non exhaustive and allows Member States to adopt more stringent provisions as to the terms contained in it. Moreover, it has to be clarified whether the annex is absolute (no possibility for a term to be exempted from prohibition) or does it still leave freedom to the national authorities to assess the contract terms it lists with regard to the context?

2.8.3. The Committee stresses the need for a systematic approach, as the annex concerns both terms which concern all types of contracts and terms which concern specific contracts, such as timeshare property. Neither are the clauses listed in a systematic way, as liability questions are found bot in a) and in e), and unilateral modification clauses are found in b) and in d).

2.8.4. The Committee invites the Commission to carefully revise the drafting of the different language versions of the annex, because many of the notions are not sufficiently clear and give rise to major difficulties of interpretation.

2.8.5. Some of the difficulties identified by the Committee are the following:

— clause b refers only to credit and debit,

— the warranty period provided for by clause c (1), fifth indent, should take account of shorter periods for second hand goods,

— clause c (2), first indent, should not refer to subjective assessment, but should refer to a more objective assessment,

— clause d also needs clarification and objective assessment: who is going to decide whether a price increase is too great in relation to the contractual price?

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on:

— **the proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data,**

— **the proposal for a Council Directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks, and**

— **the proposal for a Council Decision in the field of information security** [1]

(91/C 159/14)

On 2 October 1990 the Council decided to consult the Economic and Social Committee, under Article 100 a and Article 235 of the Treaty establishing the European Economic Community, on the abovementioned proposals.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 3 April 1991. The Rapporteur was Mr Salmon.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion by 80 votes to 13, with four abstentions.

1. General principles

1.1. The package of proposals presented by the Commission is designed to facilitate and encourage the free movement of personal data while strictly protecting the privacy of the individual.

1.1.1. The proposals seem justified in the light of the need to meet a number of basic requirements, and in particular those laid down in Council of Europe Convention 108 of 28 January 1981, and in subsequent sectoral recommendations, for the protection of individuals with regard to automatic processing of personal data.

1.2. Personal data undergoing automatic processing must be:

— collected and processed fairly and lawfully,

— stored for specified, legitimate purposes, and used in a way compatible with these purposes,

— adequate, relevant and not excessive in relation to the purposes for which they are stored,

— accurate and, where necessary, kept up to date,

— preserved in a form which permits identification of the data subjects for no longer than is necessary for the purpose for which the data are stored.

1.2.1. Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same applies to personal data relating to criminal convictions.

1.3. Any person must be enabled:

— to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file,

— to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form,

— to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of Convention 108,

— to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b) and c) of Article 8 of the Convention is not complied with.

[1] OJ No C 277, 5. 11. 1990, p. 3-12.

1.3.1. Accordingly, any person who orders or carries out the processing of personal information must undertake to take all the necessary precautions to preserve the security of the data and to prevent it being distorted, damaged or communicated to unauthorized third parties.

1.4. These principles are mainly covered by Articles 16, 17 and 18 of the proposed general Directive (SYN 287).

1.4.1. The fact that five Member States have no legislation of this type (notwithstanding Article 8 of the European Convention on Human Rights) is the chief cause for concern.

1.4.2. It is regrettable that the seven sectoral recommendations already drawn up by the Council of Europe are not mentioned with a view to the possible drafting of sectoral provisions.

1.5. The overall package must ensure a high level of protection and, more particularly, must not lower the level already pertaining in those Member States with relevant legislation. The Directive further clarifies and supplements the abovementioned Convention 108. It gives additional specifications of the rights of data subjects (e.g. in Article 14), and clarifies the conditions under which processing is lawful (Chapters II and III); in some cases these rest on the rights of the data subject (information, consent, etc.). The Directive also specifies conditions of notification and lastly lays down certain restrictions and provides detailed coverage of the question of security and the transfer of data to third countries.

1.5.1. It is not easy to assess the practical impact of these additional provisions and restrictions on the level of protection pertaining in the Member States.

1.5.2. The provisions combine basic legal concepts from differing national legislation (mainly French, German and Dutch) which are open to differing interpretations. Furthermore, the Member States are given relatively broad powers in deciding how to implement the Directive.

1.5.3. In practice, it is thus difficult to gauge whether the package will increase the level of protection or simply intensify the differences. Certain reductions in the level of protection are clearly apparent: restrictions on notification, fewer constraints on the public sector. The co-existence of different notification systems is accepted.

1.5.4. The free movement of persons should mean a minimum level of uniformity between Member States as regards the obligations incumbent on bodies which process personal information, the rights of data subjects, and the provisions for exercising these rights.

1.6. It is also surprising—to say the least—that the obligations placed on the private sector could appear greater than those on the public sector (notification possibly required for the communication of data by the private sector, no such requirement for the communication of data between public authorities). Some of the general and specific provisions on individual rights are inconsistent (right to information, consent, opposition).

1.7. To appreciate the impact in the Member States and at European level of the three proposals submitted to the ESC, it is necessary to consider the other texts contained in COM(90) 314 final.

1.7.1. The Committee would here draw the attention of governments to the following points concerning:

— the draft resolution of the representatives of the governments of the Member States of the European Communities meeting within the Council: the comments below on the public sector should also apply to those parts of the public sector which do not fall within the scope of Community law,

— the recommendation for a Council Decision on the opening of negotiations with a view to the accession of the European Communities to the Council of Europe Convention for the protection of individuals with regard to the automatic processing of personal data: in a case like the present where the protection of basic rights is at stake, it is going too far to empower the Commission to negotiate directly with the Council of Europe, replacing the seven Member States already represented on the consultative committee set up under Convention 108 and the other five Member States invited to adhere to it.

1.7.2. The Commission should join the consultative committee, though without infringing on the rights of the Member States by conducting the negotiations.

2. Proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data—SYN 287

2.1. *General comments*

2.1.1. The Committee approves the aim and rationale of the proposal. Several ESC Opinions have called for serious consideration of the question of high-level data protection [1] and a precise definition of the personal data which must be protected [2]. This latter Opinion stressed that public mistrust, whether justified or merely the result of ignorance, could, if neglected, rapidly create a serious political obstacle to the introduction of efficient communications technologies.

2.1.2. It should however be emphasized that the aim of this protection is to guarantee, in the territory of each party, respect of individual rights and fundamental freedoms, and in particular the right to privacy with regard to the automatic processing of personal data, irrespective of nationality or place of residence.

2.1.3. The recitals refer to Council of Europe Convention 108. All the national laws hitherto adopted apply the general principles of data protection laid down in this Convention.

2.1.3.1. These principles are common to national laws, and the draft Directive and explanatory memorandum are also based on them. They are restated by the Committee at the start of this Opinion.

2.2. *Specific comments*

These comments seek to illustrate the problems raised by most of Directive SYN 287's proposed additions and clarifications to the principles listed in Convention 108.

2.2.1. Article 1 — Object of the Directive

— The recitals refer to the European Convention on Human Rights and Council of Europe Convention 108, with a view to guaranteeing the individual's 'rights and fundamental freedoms, and in particular the right to the respect for privacy'. In the light of this, the Committee considers that the scope of the Directive should not be limited to the protection of privacy.

— Article 1(1) introduces the concept of 'data files' which fixes the scope of the Directive.

2.2.1.1. The concept seems too narrow: personal data can nowadays be processed in an expert system without necessarily having to be structured (integrated data-bases).

2.2.1.2. Moreover, it is the 'purpose' of the processing which is crucial in data protection, and which establishes whether or not the collection of data is legitimate.

2.2.1.3. Accordingly, the Committee feels that the concept 'processing of personal data', rather than 'file', should be used to define the scope of the Directive.

2.2.1.4. The term 'processing' should therefore replace the term 'file' in Articles 3, 4, 5, 7, 8(1)(c), 8(2) and 11.

2.2.2. Article 2 — Definitions

2.2.2.1. The Committee supports the decision to adopt the definitions contained in Convention 108. However the definition of 'depersonalize' is clearer than the explanation given in the explanatory memorandum.

2.2.2.2. The explanation limits the scope of the definition, allowing further attention to be given to data which, although depersonalized by their producer, remain associated, after communication, with personal data from other processing.

2.2.2.3. Moreover, 'excessive effort' should be deleted, for a processing task requiring an excessive effort today may require no effort at all next year.

File

2.2.2.4. The Committee feels that manual files should also be covered; this should include collections of files, particularly when they are directly linked to automatic processing.

2.2.2.5. However, an obligation to notify the existence of all manual files would not be feasible.

[1] OJ No C 41, 18. 2. 1991, p. 6.
[2] OJ No C 41, 18. 2. 1991, p. 12.

Processing

2.2.2.6. The definition of processing should include data collection.

Independent public authority

2.2.2.7. The Committee considers that the independent nature of the relevant national authority is a useful addition *vis-à-vis* Convention 108.

2.2.2.8. The defence of fundamental freedoms, and of privacy in particular, in information processing operations must require that the supervisory authorities are independent.

Distinction between the public and private sectors

2.2.2.9. The distinction should not only be based on whether or not such enterprises engage in commercial activity.

2.2.2.10. Enterprises which have a monopoly or a public service concession as defined by Article 90 of the EEC Treaty should be considered as being in the private sector, insofar as the application of the rules applicable to this sector does not obstruct the performance, in law or in fact, of the particular tasks assigned to such enterprises.

Communication

2.2.2.11. In order to clarify the implementing conditions of certain provisions of the Directive the term 'communication' should also be defined.

2.2.2.12. The definition should exclude the transfer of data within a body, where this is a necessary part of the processing.

2.2.3. Article 3 — Scope

2.2.3.1. The Committee endorses the proposed exemptions.

2.2.3.2. It considers that processing by trade organizations and charitable organizations should also be exempt.

2.2.3.3. Notwithstanding the proposed exemption conditions, the Committee considers that the general principles of Convention 108 should continue to apply to such processing to guard against improper use.

2.2.4. Article 4 — Law applicable

2.2.4.1. The exemptions for 'sporadic' use or a file being 'moved temporarily' could be dangerous. They would allow anyone to conduct highly sensitive but temporary operations without being subject to protection measures.

2.2.4.2. Furthermore, the term 'adequate level of protection' is surprising, as what is needed is equivalent protection on a case-by-case basis, depending on the category of data involved (*cf.* Convention 108).

2.2.5. Article 5 — Lawfulness of processing in the public sector

2.2.5.1. The Directive goes further than Convention 108 by seeking to establish criteria for deciding whether processing is lawful. These criteria appear inadequate or open to differing interpretations. The 'legitimate interests of the data subject' and the 'serious infringement of the rights of others' are two cases in point.

2.2.5.2. Moreover, the criterion of being 'necessary for the performance of the tasks of the public authority', even if laid down by law, is insufficient to legitimize *per se* the processing of personal data.

2.2.5.3. In large-scale applications whose design, programming and implementation can be very costly, risk analysis is done on a case-by-case basis long before the design stage, and not afterwards. Decisions made during the design of the data processing application must seek to minimize or eliminate any threat to the rights of the data subject, while reconciling the interests at stake.

2.2.5.4. Fear of the potential use which the authorities could make of immense data stores has triggered major public campaigns in some Member States.

2.2.5.5. At European level, research into telematic networks linking administrations or for use in the health sector has already given cause for concern.

2.2.5.6. Accordingly, the Committee considers that national supervisory authorities should be granted explicit powers of examination prior to the processing of particularly important or sensitive data.

2.2.5.7. Such controls should only be exercised selectively.

2.2.5.8. Provision should also be made for disclosure of the existence of data.

2.2.6. Article 6 — Communication

— In the public sector: the comments on Article 5 concerning the transfer of data between public bodies are even more relevant here. Certain communications should be subject to prior control by the supervisory authority. Article 6(2) makes this a possibility, but leaves it to the initiative of the Member States.

  Moreover, the application of the Directive to European-level plans for administrative coordination involving the exchange of personal data means that case-by-case preliminary examinations are needed.

— In the private sector: it is reasonable to leave the Member States to issue any authorizations. This being the case, the differing systems laid down for transfers between administrations and between private bodies seem unjustified.

By laying down systematic rules for the notification of the supervisory authority only in respect of public sector processing for communication purposes, the Directive assumes that this is the area of processing most likely to cause problems. This is not a proven fact.

2.2.7. In some Member States, the combined effect of Articles 5, 6 and 7 will be to reduce the level of protection, contrary to the objectives pursued by the Commission.

2.2.8. Article 8

2.2.8.1. Article 8 defines the conditions under which the processing of personal data in the private sector is considered lawful. The data subject must give consent, the processing must be carried out under a contract, and the data must come from 'sources generally accessible to the public'.

2.2.8.2. The term 'quasi-contractual relationship' is open to differing interpretations. 'A quasi-contractual relationship of trust' should not be interpreted too restrictively, as this would impede normal commercial activities. The term 'sources generally accessible to the public' is questionable and could even be dangerous.

2.2.8.3. The very existence of a wide variety of directories does not make it legitimate to use them indiscriminately.

2.2.8.4. More to the point, registers of births, marriages and deaths and electoral registers are all 'generally accessible' but should only be so for particular purposes and under precisely defined conditions.

2.2.8.5. The Committee therefore considers that reference to 'sources generally accessible to the public' should be used with extreme caution.

2.2.9. Articles 9 and 10

2.2.9.1. Unlike transfers between public authorities, the Directive obliges private sector operators to inform the data subject when a file is first communicated. The data subject also has the right to object to the communication or to any other processing. Exceptions are possible, but only with the authorization of the supervisory authority.

2.2.9.2. The principle is sound, but surely the information is redundant, and involves unnecessary cost, if it has already been supplied when obtaining consent (Article 12) or collecting the data (Article 13).

2.2.9.3. Special consideration should be given to the communication of medical data, which sould be subject to the agreement of the patient and should only be communicated to doctors actually treating the patient.

2.2.10. Article 11

2.2.10.1. As in the case of the public sector (Article 7), systematic notification in the private sector is only obligatory if the file data (the processed data) are intended to be communicated.

2.2.10.2. Notification should not be required in the case of communications made for reasons of security (restoration of data, back-up) or pursuant to a contract.

2.2.10.3. Rental of files for marketing purposes should however be subject to the agreement of the parties concerned.

2.2.10.4. Lastly and most importantly, the Committee considers that transmission of files pooled among members of professions (e.g. lists of bad debtors or of the issuers of dishonoured bills of exchange, cheques, etc.) should be subject to both *a priori* and *a posteriori* control.

2.2.11. Articles 12, 13 and 14

2.2.11.1. These Articles list the rights of data subjects and are based on the provisions of Convention 108, with the addition of certain specific rights currently contained in national legislation relating to the data subject's right to be informed and to oppose. The Directive also incorporates Article 2 of the French Law (banning of decisions taken solely on the basis of the automatic processing of Personal data defining the subject's personality profile) which is not used elsewhere.

2.2.11.2. However, some of these rights deserve to be interlinked and more flexibly applied in the light of their relevance to private data processing, in order to avoid the problems mentioned in 2.2.9.

2.2.11.3. Article 14(4) should specify that in all cases the data must be communicated by a doctor.

2.2.11.4. Lastly the Committee considers that the principle of cost-free right of access should be spelt out, particularly for real-time data access.

2.2.12. Article 15

2.2.12.1. Possible reasons for granting exceptions to right of access include 'paramount economic and financial interest of a Member State or of the European Communities' (e.g. in matters of taxation or exchange controls), and 'an equivalent right of another individual and the rights and freedoms of others'. The latter covers economic freedoms (business and commercial secrecy).

2.2.12.2. In some Member States, these exceptions could lower the level of protection to a dangerous degree.

2.2.12.3. In the Committee's view the application of these exceptions should be subject to control by the national data protection authorities, and this should also cover the private sector.

2.2.13. Article 16

This Article lists the main principles on data quality contained in Convention 108. It deserves a more prominent place in the Directive.

2.2.14. Article 17 — special categories of data

The Committee approves the use of the provisions of Convention 108 as regards sensitive data. Derogations should be subject to specific regulations.

2.2.15. Article 18

2.2.15.1. Article 18 provides a more detailed version of the provisions of Convention 108. Although it obliges the controller of the file to guarantee security and confidentiality, the controller may take into account 'the state of the art in this field, the cost of taking measures ...'. This seems dangerous, and will lower the level of protection in some Member States.

2.2.15.2. The technical means of protection used should of course be proportional to the risks (from the point of view of the person concerned), but should not depend on cost.

2.2.15.3. Either one has the means of protection and uses them, or one has not and does not. The regulatory power which the Commission confers on itself here could give rise to concern. The Commission should instead be helping to see that reasonably priced technical security devices are available on the market (the security market currently encourages the production of expensive systems specifically for the armaments and banking sectors).

2.2.16. Article 19

2.2.16.1. Article 19 provides for possible derogations for the press and the audiovisual media.

2.2.16.2. However, in the Committee's view these derogations should only apply to provisions of the Directive which clash with rules on freedom of information.

2.2.17. Article 20

2.2.17.1. Article 20 requires Member States to encourage business circles to assist in the drawing-up of European codes of conduct or professional ethics. The draft Directive borrows certain data protection provisions from national law (e.g. United Kingdom, Netherlands). It should be noted, however, that the legal scope of national provisions varies considerably. While it is sensible to cater for any implementing problems in particular sectors or processing categories (as have the Council of Europe, the international conference of data protection ombudsmen, and national authorities in, for example, the UK and France), the

draft Directive goes further in giving the Commission regulatory powers.

2.2.17.2. The formulation of these codes should take account of the comments made in 2.2.11. They should be subject to approval by the European data protection authority, and should not come under the regulatory powers of the Commission.

2.2.18. Articles 21, 22 and 23

The Committee endorses these Articles, which specify that compensation must be provided for any damage suffered, and that the Member States must make provision for criminal sanctions. Processing by a third party on behalf of the controller of the file must be governed by a written contract stipulating the responsibility of the third party with particular regard to confidentiality and security.

2.2.19. Articles 24 and 25

Transfer of personal data to third countries

2.2.19.1. The Committee considers that the Directive should adopt the principle of 'equivalent' protection, as laid down in Convention 108.

2.2.19.2. The proposed wording fails to draw the practical consequences of the draft Directive on the protection of personal data in telecommunications networks. Aside from the principles of Convention 108, the way to obtain effective equivalent protection at international level is to adopt practical common measures.

2.2.19.3. To be relevant, these measures must be devised for processing categories with common characteristics and common data protection problems.

2.2.19.4. Moreover, a procedure is needed for devising effective, specific protection measures for these common categories when their data are transferred to third countries. This procedure should involve the independent European data protection authority.

2.2.19.5. Equivalent protection for transfers to third countries could be based on the same pragmatic method. At all events, the European data protection ombudsmen have so far not signalled any particular problems in this area. This is why the Committee feels that the proposed procedure is inappropriate.

2.2.20. Article 26

2.2.20.1. This Article obliges each Member State to set up an independent supervisory authority with investigative powers and powers of intervention.

2.2.20.2. In the light of the comments in 2.2.5 and 2.2.10, the Committee considers that this authority should be empowered to conduct a prior examination of particularly sensitive processing operations (whether private or public), and to decide as they proceed which categories of processing do not impinge on the rights of the data subject and therefore do not need supervision.

2.2.20.3. The authority should conduct this examination within the Member States with consultation of the parties concerned (companies, trade unions, administrative bodies, consumer associations, trade organizations, and so on).

2.2.20.4. It should be possible to appeal against the authority's decisions.

2.2.20.5. Moreover, it would be dangerous if these authorities were in practice to be undermined by the regulatory powers of the Commission, should the comments on Articles 27 and 28 go unheeded.

2.2.21. Articles 27 and 28

2.2.21.1. The draft Directive provides for the establishment of a working party on the protection of personal data, made up of representatives of the national supervisory authorities, to advise the Commission on data protection issues in the EC and third countries. Its advisory duties should include following up the implementation of the Directive and its adaptation to technological change.

2.2.21.2. As in the case of the national authorities, the working party should consult the relevant bodies.

2.2.21.3. However, the working party does not seem fully independent. Its chairman will not be elected, but will be a representative of the Commission.

2.2.22. Articles 29 and 30

2.2.22.1. These Articles empower the Commission to adapt the Directive to the specific characteristics of

certain sectors, as regards security and transfers to third countries.

2.2.22.2. Article 30 provides for the establishment of an advisory committee made up of representatives of the Member States and (again) chaired by a Commission representative. The respective tasks of this committee and of the working party are not clearly distinguished.

2.2.22.3. The Committee's comments on control of the public sector, security, codes of ethics, and transfers to third countries would suggest that some other type of balance of powers is necessary.

2.2.22.4. In particular, the need to safeguard basic rights means that the authority in charge must be independent.

3. **Proposal for a Council Directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks (SYN 288)**

3.1. *General comments*

3.1.1. The proposal provides a good basis on which to work; it is clearly based to a large extent on the work carried out in this field by data protection officials.

3.1.2. The approach is the right one because:

— it adds principles which are specific to this sector to the principles laid down in the general Directive,

— in application of these principles, it specifies concrete measures for providing effective and equivalent protection service-by-service and network-by-network or whenever necessary. Technical aspects are also taken into account,

— in the interests of consistency with the general Directive (SYN 287), the Directive should only deal with (a) international telecommunications services so as to standardize their operation in all Member States, and (b) the effect of data protection on the design of specific equipment which is to move freely between Member States (joint technical specifications),

— it should not include provisions which by their nature ought to have been included in the general Directive, i.e. Articles 4, 5 and 6 on the purpose and length of storage and rights of subscribers.

3.1.3. For the Articles dealing with procedural matters (Article 22 et seq.) the Committee refers back to its comments on the general Directive.

3.1.4. The definition of the term 'telecommunications organization' (Article 3) refers to a 'public telecommunications network'.

3.1.5. In the Committee's view, this should be amended to read 'telecommunications network open to the public', to distinguish it from internal private networks.

3.2. *Specific comments*

3.2.1. Specific principles

3.2.1.1. The Committee considers that Articles 7 and 8 on the confidentiality of communications and the technical consequences thereof (especially as regards the encryption of radio communications) are relevant.

3.2.1.2. Protection must be effective and not 'adequate' [Article 8(1)], and it is dangerous in this respect to refer to the 'state of the art' or the cost of security, as proposed in the general Directive.

3.2.1.3. Another principle which should be included is that, notwithstanding the questions of payment, anonymous access to networks should be possible with a view to guaranteeing the freedom of thought and communication. Examples here include public phone booths operated by coins or prepaid non-personal cards and French videotex. (*Cf.* 1989 Berlin resolution of the International Conference of data protection ombudsmen, which stated that whatever the problems of billing may be, the multiple links between networks demand that anonymous access be made technically possible.)

3.2.1.4. A third specific principle could be to ban (a) listening to or recording a private conversation without a person's consent and (b) transmitting or recording the picture of a person taken in a private place without his or her consent. This principle would form the basis for the technical provisions proposed in Article 15 with regard to loudspeakers and recording equipment—provisions which may seem arbitrary.

3.2.2. Article 4(2) on the electronic profiles of subscribers: the outright ban is an extreme solution. Tele-

communications operators should be able to carry out statistical surveys for commercial or network-planning purpose, but abuses should not be permitted.

3.2.2.1. For example, it would be unreasonable, unless the client has previously approached the firm, to propose the purchase of an answering-machine to a client who often fails to answer incoming calls.

3.2.2.2. Before any decision is taken, this matter too should be examined by the European-wide coordinating body for data protection officials.

Services affected by the Directive

3.2.3. Directories

3.2.3.1. Although the question of directories is raised in Article 4 in connection with the processing of data, the problem has in fact been dodged, unless the Commission considers it dealt with in Article 8(1)(b) of the general Directive.

3.2.3.2. Under Article 8(1)(b) there are to be no specific safeguards with regard to data coming from sources 'generally accessible to the public' whose processing is intended solely for the purposes of 'correspondence'.

3.2.3.3. For example, there are to be no safeguards on the use of data from directories for canvassing by phone. This is unacceptable.

3.2.3.4. The Committee considers it vital that the question of telecommunications directories be tackled in the Directive.

3.2.3.5. The Directive should specify the conditions under which these data may be published. Non-inclusion in a telecommunications directory should be free of charge and should not have to be justified. The content (identification) of the data should not reveal the subscriber's sex unless the subscriber so wishes or make access to the home less safe. Accessing procedures should guard against unauthorized downloading from electronic directories, etc.

3.2.4. Articles 9-11 — detailed billing

3.2.4.1. Detailed bills listing the numbers called from a particular telephone are highly confidential. Mindful of the delicacy of this issue, but also of the need for this information to check the accuracy of bills, the Committee feels that full and detailed bills listing the numbers called should only be provided to subscribers who ask for them.

3.2.4.2. For their part, telecommunications organizations should widely publicize this innovation, and retain their policy of anonymous payment in public booths.

3.2.5. Articles 12 and 13: identification of the calling line

3.2.5.1. The first two paragraphs are correct. However, it should be explicitly stated that non-identification should not cost extra.

3.2.5.2. Article 12(3) deals with how a normal subscriber may be identified by another subscriber with equipment for displaying the calling line. The technical description of this situation seems inaccurate and the proposed safeguard inadequate.

3.2.5.3. The problem here is the link between a subscriber and his/her exchange, which may be either digital or analogue. Idenfication of a normal subscriber will constitute a very big change for these subscribers. This is why it is not sufficient simply to notify them of this change. Having to agree to the identification of their line is a guarantee that subscribers are being properly informed. Subcribers who accept identification must retain the right to decide otherwise at short notice.

3.2.5.4. At all events, under the Commission's proposal, the subscriber called will always be able to refuse unidentified calls.

Article 13(3)

The meaning of this sentence is unclear. There is a Community plan—which has not yet been put into effect—to standardize emergency numbers in the event of, for example, fire. However, emergency assistance will remain a national preserve. It is thus unclear why this derogation from the rule eliminating the identification of the calling line should be operational on a Community-wide basis—it should remain a national preserve.

3.2.6. Article 14 — forwarding of calls

3.2.6.1. The first paragraph poses no problems in principle. However, the feasibility of obtaining the con-

sent of the subscriber to whom the call is to be forwarded is questionable.

3.2.6.2. This would seem to be too restrictive and destroys the purpose of the service. On the other hand, there would seem to be a strong case for allowing third parties to cancel calls transferred to them in order to mitigate possible draw drawbacks of the service (transfer to a wrong number, for example).

3.2.7. Article 15 — Telephone terminals with loudspeakers or recording equipment

3.2.7.1. This provision is vital to the liberalization of the market in this equipment.

3.2.7.2. It should also cover terminals such as answering machines with remote access, which are very badly protected at the moment. In particular, there are often several different secret codes for one machine. Article 15 should specify that answering machines with remote access should be effectively protected against unauthorized access.

3.2.8. Article 16 — videotex services

3.2.8.1. There are grounds for wondering whether the provisions mentioned above regarding the identification of the caller and the confidentiality of correspondence do not in fact provide greater protection than the provisions of Article 16. If this is so, Article 16 would be dangerous or meaningless.

3.2.8.2. The Committee also thinks that there should be further sectoral specifications for these services.

3.2.9. Article 17 — unsolicited calls

3.2.9.1. The aim of these provisions is to use the national public list of persons not wishing to receive unsolicited calls as a means of protecting subscribers. the Committee feels that this approach is inappropriate.

3.2.9.2. All calls—by whatever form of telecommunications—not wanted by the addressee constitute an invasion of his/her privacy. Appropriate means of protection—not necessarily involving the operators of telecommunications networks—must be sought. In particular, the suppliers of services using automatic calling machines with prerecorded messages should obtain the prior approval of the persons concerned.

4. Proposal for a Council Decision in the field of information security

4.1. *General and specific comments*

4.1.1. The Committee endorses the need for coordinated action between Community-level projects on information and telecommunications technologies.

4.1.2. The Committee also endorses the need to promote products which better meet the needs of the business sector [such as Economic Development Institute (EDI)], and other non-governmental public and private sectors (administrative, medical, etc.) where data also need to be protected.

4.1.3. The Committee recognizes that security extends beyond the processing of personal data and the main security-related aspects of data protection (confidentiality, authentification). Overall vulnerability, availability, and other factors are also relevant.

4.1.4. The Committee notes that Member States retain ultimate control of the encryption services used by non-governmental sectors (private and public purely administrative or commercial sectors). Such issues as authentification, integrity and confidentiality cannot be resolved, when data are transmitted via telecommunications networks, without recourse to encryption techniques.

4.1.5. The Committee calls for the establishment of a committee and work plan. The draft Decision is imprecise as to the tasks, powers and working methods of the committee mentioned in Article 6. In particular, there should be no link between the procedures laid down by the general Directive and those contained in the draft Decision.

4.1.6. The Committee trusts that the first duty of this committee will be to assess needs, and that, after consulting the data protection authorities, it will draw up the necessary work plan in the near future.

5. Conclusions

5.1. The Committee is pleased that the Commission has taken account of the concern it has voiced on a number of occasions about the failure to protect personal data in plans for telematic networks, particularly those linking administrations. Nonetheless, it trusts that the definitive texts will be clearer and more consistent,

to ensure that the exercise of the rights established therein is practical, clear and homogeneous in all Member States.

5.2. The Committee draws the Commission's attention to four key principles which should underpin the Directive.

5.2.1. Protection must be provided against all processing of personal data, with a guarantee that this protection is strictly respected by all (States, institutions, public and private companies and organizations, etc.).

5.2.2. Once this has been established, telematic exchanges of data (using both present and future systems) must be permitted and developed, as they are vital to a dynamic Community (in trade, industrial, technical, social, cultural and other terms).

5.2.3. Materials and programmes used to this end must provide a technical guarantee of the above requirements at competitive prices.

5.2.4. Guarantees of data protection, developments in materials and programmes, and the technical means used to this end, must be the same for everyone throughout the Community.

5.3. The Council must immediately prevail on all Member States to take the necessary legislative steps to implement the principles of Council of Europe Convention 108.

5.4. The Committee is insistent on the following two points:

5.4.1. The processing of personal data by the public sector should be explicitly subject to prior examination by the independent public authorities set up to supervise data protection.

5.4.2. The obligations to notify or carry out other preliminary investigations must be relevant and equivalent in all Member States.

5.5. The Committee considers that an independent European authority, along the lines of the national authorities, should be responsible for monitoring the implementation of the principles of the Directive in certain sectors or categories of personal data processing. This authority should also be responsible for general follow-up and the formulation of security requirements and requirements for transfer to third countries.

5.6. The authority, to be attached to the EC Commission, should be made up of Member States' data protection ombudsmen.

5.7. When necessary, the authority should be able to bring matters before the Council of Ministers, and should submit an annual report to the European Parliament and the Economic and Social Committee.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on Training, Safety and Protection of the Environment

(91/C 159/15)

On 29 May 1990 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its Rules of Procedure, decided to draw up an Opinion on Training, Safety and Protection of the Environment.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr Nierhaus.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee unanimously adopted the following Opinion.

1. Importance of vocational qualifications for improving safety at work and the quality of the environment

1.1. All human activity has an impact on nature which places a strain on the environment. In view of the pollution caused by, *inter alia*, the industrial division of labour, a more discriminating use of natural resources is becoming increasingly important. Environmental protection must become the watchword both for management, which must exercise firmer control over the industrial use and processing of materials, and workers, who must carry out their tasks in the same spirit. All those working in production and administration need to have a thorough knowledge of environmental causes and effects if industrial society is to develop in an environmentally acceptable manner. Although management bears a special responsibility in this, the involvement of workers is essential. If they are better educated in this respect, workers will be able to put their ideas and knowledge regarding the environment to practical use; this should happen right from the training stage.

1.2. There will be an all-round improvement in industrial safety and the environmental acceptability of products if staff are qualified in this way. A comprehensive knowledge of the environment contributes to environmental innovation in products and production processes. Manufacturing, using and handling products in an environmentally responsible manner is the bounden duty of employers, workers and consumers. They cannot manage this, however, without proper education and training. By the same token, safety in the manufacture, distribution and use of products is the responsibility of employers, workers and consumers, who require the appropriate education and training. Hence instruction in environmental and safety matters is a strategically important element in environment- and safety-conscious management, whatever the size of the firm.

1.3. Individuals should be encouraged to assume more personal responsibility for the natural environment by action to increase their environmental knowledge and skills. In its Opinion on the proposed Council Decision on preventing environmental damage by the implementation of education and training measures [COM(88) 202 final of 10 May 1988—CES 952/88 of 29 September 1988] the Committee stressed that the inculcation of interdisciplinary knowledge and skills can lead to greater commitment. Environmental education should therefore be aimed at various target groups and should broaden and deepen knowledge of the environment through the use of appropriate teaching aids and methods.

1.4. The aforementioned proposal for a Council Decision calls on the Member States to promote the training of specialists in the various disciplines relating to the environment by introducing ecological subjects into training programmes. The aim is to encourage greater awareness of the need to conserve natural resources and protect the environment. In its Opinion on the proposal the Committee urged the Commission to set up pilot projects in the Member States in cooperation with the European Centre for the Development of Vocational Training (CEDEFOP) and the European Foundation for the Improvement of Living and Working Conditions. The measures proposed by the Commission for the training of environmental specialists is just one of the questions looked at in the present Opinion.

1.5. No one now disputes the need for a comprehensive environmental education. In addition to regulatory measures and economic incentives, selective action must be taken to safeguard the natural environment and future generations by encouraging environmental awareness. This means alerting people to the importance of environmental protection both in school and at the workplace, in handling both manufactured and natural products. This is best done by making environmental studies an integral part of vocational training, including in agriculture.

1.6. A work-related environmental education makes it possible to bring theoretical knowledge and skills

systematically to bear on environmental causes and effects. This integrated approach can also pinpoint the areas of conflict between, on the one hand, intervention in nature and its effects on the environment and, on the other, technical requirements and economic interests. Such a constructive approach to the tensions between ecology and economy, to the interaction between nature and work, can speed up the introduction of preventive environmental measures based on a thorough knowledge of the environment. Many people will learn to recognize earlier the warning signs of threats to the environment. To this extent environmentally aware and skilled workers are an important *sine qua non* for improving the quality of the environment at and outside the workplace.

2. The environment as a new component of training for all occupations

2.1. The subject of environmental protection, unlike that of safety, has hitherto played hardly any role in training in the EC Member States. Such knowledge must become an integral part of the qualifications for all occupations if environmental awareness is to be strengthened and more people are to acquire environmental skills. The Member States should take steps to include environmental objectives in all stages of training. An interdisciplinary approach is needed under which environmental problems are looked at in their totality and from a practical angle. Suitable teaching aids are required for this.

The use of vocational skills in the interests of environmental protection should be an examination requirement, so that the new subject is taken seriously by both teachers and pupils.

Exams should test the ability of workers to carry out their tasks without environmentally harmful consequences.

2.2. If environmental skills are successfully introduced into vocational training, workers will be environmentally-aware and able to use their knowledge and experience to help industry make a more effective contribution to environmental protection and to avoid mistakes in production which damage the environment. For industry this opens up the possibility of avoiding or reducing the costs which it would incur for eliminating pollution under the polluter-pays principle. The inclusion of general, work-related environmental studies in vocational training will therefore also help to avoid unnecessary costs and conserve natural resources.

A precise cost-benefit analysis can show whether and to what extent the extra training costs incurred are offset by reduced environmental costs. To this extent an early environmental education will also help to secure corporate objectives (markets, profits, jobs, etc.) and improve the company's public image.

3. Specialists in environmental protection

3.1. If the complex ecological problems facing a firm or comparable organization are to be tackled more successfully, what is needed—besides an environmental component in the vocational training of all staff—is opportunities for further on-the-job training. Workers who already have some training could do additional courses so as to qualify as specialists in environmental protection and act in this capacity for part of their working time. The selection and training of these specialists, in collaboration with workers' representatives, would be a priority for management. They would be responsible, along with the technical environmental specialists (eg. those supplying and disposing of materials), for providing detailed environmental information for individual departments and occupations. They should contribute to their firm's compliance with environmental laws and requirements and, in the interests of preventive environmental protection, develop proposals with other employees for making production processes and products more environmentally acceptable; these proposals should be compatible with the firm's production goals.

These environmental specialists, working in one department of a firm but taking a multi-disciplinary approach to environmental problems, could possibly in this way contribute to the prevention of environmental damage without thereby lessening the responsibility of individuals or the ultimate responsibility of the firm's management.

3.2. For practical purposes especially, safety at work and protection of the environment are closely connected. Like the industrial safety officers already found in many firms in Member States, the environmental specialist could help to monitor the environmental performance of equipment and workers, motivate the latter, and form a link with line management as well as with the industrial safety officer and the industrial environmental officer of the firm concerned where such posts exist. Because protection of the environment and of safety have a number of common features, it is both sensible and necessary for industrial safety and environmental experts to cooperate closely. Small and medium-sized businesses, whose production volume

and size of the workforce would not justify the employment of separate environmental health and industrial safety officers, could cover themselves by providing additional training (in environmental protection or industrial safety). In this way one employee could be responsible for both areas.

3.3. If these proposals are implemented, management should also have the opportunity to use environmental knowledge in quality circles to develop environment-friendly products and production processes. This will facilitate the introduction by management of Quality Assurance applied to environmental protection.

This does not exclude the possibility of a firm seeking outside environmental advice.

3.4. Environmental work should be handled separately, i.e. by an internal department separate from the safety and health committees.

The quality circles referred to in 3.3 would undoubtedly be an appropriate place. While safety is directly relevant to all of a firm's workers, the environment affects not only the firm and its workers but also the outside world, e.g. sub-contractors, suppliers, customers and, of course, the final consumer.

3.5. If the above proposals are implemented, attention will have to be paid to the danger of a distortion of competition affecting small and medium-sized businesses (SMB). Consideration should also be given to economic and social cohesion, especially in cross-border situations.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the Commission Proposals on the prices for agricultural products and on related measures (1991/1992)

(91/C 159/16)

On 14 March 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposals.

The Section for Agriculture and Fisheries, which was responsible for preparing the Comittee's work on the subject, adopted its Opinion on 11 April 1991. The Rapporteur was Mr Schnieders.

At its 286th plenary session (meeting of 25 April 1991), the Economic and Social Committee adopted the following Opinion by a large majority with 2 votes against and 8 abstentions.

1. Preliminary comments

1.1. The Committee notes the difficult situation on the agricultural markets caused by the continuing increase in production, stationary or declining consumption, reduced export opportunities, rising imports of cereal substitutes and of calves for fattening.

1.2. This difficult situation is reflected in falling producer prices and falling or stagnant farm incomes, growing surpluses held in stock, rising expenditure on export refunds and intervention.

1.3. As a result the budget guidelines laid down by

the Council in 1988 will be reached or exceeded in 1991/1992.

1.4. The internal problems of agriculture, which have led to the increasing sales difficulties, have been exacerbated by external developments, such as the fall in the dollar (though this has recovered considerably of late), a loss of sales in the wake of the Gulf crisis, a loss of market outlets caused by the growing economic difficulties in Eastern Europe and the full accession, without any transitional period, of the five new German Länder where agricultural production and marketing had been geared to completely different ends than those of the Community.

1.5. Here it should also be mentioned that the series of related measures which were intended to accompany the 1988 budget guideline and stabilizers have not been fully implemented.

1.5.1. While the prices of agricultural products have fallen dramatically once the fixed guaranteed quantities are exceeded, implementation of the related measures provided for in the Council Decision of February 1988, which were designed to present the guaranteed quantities being reached, has been unsatisfactory. This applies to the effectiveness of EC-wide set-aside, the introduction of a premium for cereals used in animal feed, a satisfactory curb on imports of substitutes and greater encouragement for the introduction of renewable raw materials.

1.6. The Committee acknowledges that the present budgetary situation obliges the Commission to propose measures to safeguard funding.

1.7. In its communication of 1 February 1991 ([1]) on the development and future of the common agricultural policy (CAP), the Commission sums up the dilemma:

> 'The contrast between, on the one hand, such a rapidly growing budget and, on the other, agricultural income growing very slowly, as well as an agricultural population in decline, shows clearly that the mechanisms of the CAP as currently applied are no longer in a position to attain certain objectives prescribed for the agricultural policy under Article 39 of the Treaty of Rome' ([2]).

1.8. The Commission states that the consequence is a crisis of confidence regarding the CAP among farmers, consumers and the Community's trading partners on the world market. This is so fundamental that the CAP should be comprehensively reformed.

1.8.1. The Commission's aims in this are:

— to keep as many farmers as possible on the land,

— to improve protection of nature and the environment,

— to develop and launch raw materials for non-food uses, in addition to food production,

— to promote regional economic development comprehensively,

— to curb agricultural production through lower prices, quantitative controls and extensification, so that balance is restored to the market and account taken of regional characteristics, the demands of environmental protection and the potential of renewable raw materials.

1.8.2. The Committee will shortly examine the proposals for CAP reform.

1.9. The Commission feels, however, that it cannot wait until discussion of its Reflections Paper on the future development of the CAP is complete. It states the following:

> 'Taking into account that in depth reform of a number of common market organizations is needed and that specific proposals to do so will be presented this year, the Commission would have preferred, at this stage, to propose a simple roll-over of present institutional prices for one year until the reform measures have been adopted and come into effect. However, the considerable deterioration of the budgetary situation for 1991 and the worsening prospects for 1992, obliges the Commission, in the interests of budgetary discipline, to supplement its roll-over price proposals for the 1991/92 marketing year by a number of specific proposals designed to contain agricultural expenditure in 1991 within the limits of the agricultural guideline, and to make the maximum savings in 1992' ([3]).

1.10. The Committee would also point to the brief which the Council gave the Commission for the negotiations ([4]) of the General Agreement on Tariffs and Trade (GATT) to put forward specific proposals as quickly as possible which embody appropriate financial solidarity, offer Community farmers a viable future and are compatible with GATT commitments. This approach could be based on the following factors:

— safeguarding the competitiveness of EC agriculture,

([1]) COM(91) 100 final.
([2]) COM(91) 100 final, Chapter I. point 1, 3rd paragraph.
([3]) COM(91) 72 final, Vol. I, page 14, point 27.
([4]) SN/286/1/90.

— a fair reform of farm support, based on the diversity of farm and production structures, which keeps production under control and ensures a reasonable level of income support,

— reinforcement of structural aids, including aid not connected with the volume of production, with the emphasis to be placed on those groups of producers or regions experiencing the greatest difficulties in adjusting to the new situation and greater importance to be attached to measures to protect the environment and product quality.

2. General comments

2.1. The Committee notes the Commission's assessment of the market situation and the figures for European Agricultural Guidance and Guarantee Fund (EAGGF) expenditure.

2.2. A lack of time has meant that the Committee has been unable to examine some details of the price proposals in depth.

2.3. In the light of the following arguments it nevertheless recommends that the Commission proposal be amended as set out below.

2.4. Some of the price cuts and related measures proposed by the Commission will result in substantial loss of income for farmers. Bearing in mind the situation of farmers, and with due regard for the comments made in 2.4.1 and 1.6, the Committee considers that no price reductions should be made before the reform discussions are concluded. The Commission itself states that:

> 'The per capita purchasing power of those engaged in agriculture has improved very little over the period 1975-89. This development is all the more worrying in that over the same period the Community's active agricultural population has fallen by 35 %' [1].

2.4.1. The Commission's budgetary latitude should be used to the full.

2.4.1.1. The Committee would point out that the introduction of stabilizers resulted in considerable savings in the 1989 and 1990 financial years.

2.4.1.2. The overrun in EAGGF expenditure is largely due to exceptional circumstances which have their origins both inside and outside agriculture.

2.4.1.3. The Committee is of the view that the additional funds to be provided for German unification—in line with Parliament and Council Declarations and Decisions—should be taken up. In this way the 480 million ECU overrun of the agricultural guideline forecast by the Commission could be easily absorbed. The Committee does not consider it justifiable that farmers should be the only ones to suffer from political developments.

2.5. Bearing in mind the GATT negotiations too, the Commission should avoid measures which undermine its negotiating position. Consequently the Committee urges that only a few urgent measures be taken, which ease the situation on the markets but do not further reduce farm incomes.

2.6. In the light of the foregoing, the Committee proposes that the 1990/91 prices be retained, that only a limited number of measures be adopted in connection with the structural surpluses in cereals, beef/veal and milk, and that a few changes be made in the proposals for Mediterranean products.

2.6.1. In view of the marketing difficulties and declining consumption of some farm products (meat and milk for instance), the Committee advocates special measures to raise sales.

2.6.2. Accompanying measures will also reduce budgetary expenditure.

3. Specific comments

3.1. *Cereals*

3.1.1. The Committee supports the Commission's set-aside proposals. They represent a first opportunity:

— to prevent a further increase in financing requirements;

— to prevent a further reduction in farm incomes;

— to reach a fair agreement in the GATT negotiations on how to restore order to world markets.

3.1.2. This measure is for one year only. The Committee would ask the Commission to ensure that it does not have adverse repercussions in the most disadvantaged regions.

3.1.3. The Committee would, however, point out that set-aside is a market measure and should receive more Community funding than hitherto. It calls on the Commission to ensure, through appropriate measures, that all regions participate adequately in the set-aside.

[1] COM(91) 100 final, p. 2.

3.1.4. With regard to the administrative aspect of the measures, the Committee calls on the Commission to submit practical proposals which obviate the need for unnecessary transfers of funds between vendor and buyer.

3.2. *Durum wheat*

3.2.1. The Committee can accept the 7 % reduction in the price of durum wheat, but only if such a reduction is offset in full by a corresponding increase in production aid in the traditional durum wheat growing areas of the Mediterranean.

3.3. *Rice*

3.3.1. The Committee thinks that the intervention prices should not be reduced and that aid for indica rice production in 1991/1992 should remain at the level of the preceding marketing year.

3.4. *Oilseeds, soya, protein crops, flax and linseed*

3.4.1. The Committee advocates dropping the 3 % reduction of the guide and intervention prices and the minimum and target prices and the abolition of the premium for OO rapeseed; in particular it proposes awaiting the results of the proposed set-aside scheme which is expected to cut oilseed production by reducing the area under cultivation.

3.4.2. Producer prices for rapeseed fell by a total of 21 % between 1986 and 1990 as a result of the stabilizers. Income from protein crops, flax and linseed has been declining for years. The shortfall in supplies of these crops, which are extremely valuable from an environmental angle, also justifies abandoning the proposed measures.

3.4.3. In addition, the market regime for oilseeds is closely linked to the results of the GATT negotiations.

3.4.4. The abolition of the OO rapeseed premium is premature. The currently available OO rapeseed varieties are still not as reliable as the previous varieties.

3.4.5. The postponement of the official harvest estimates for rapeseed, sunflower seed and soya will delay settlement between producers and first buyers. It is therefore proposed that this measure be dropped.

3.5. *Olive oil*

3.5.1. The maximum guaranteed quantity (MGQ) has not been changed and indeed has been fixed for the next three marketing years. The Committee has, for some considerable time, been calling for an increase in the MGQ and protection for small producers against the effects of stabilizers.

3.5.2. The 500-kg limit for aid to small producers has been retained. This threshold must be raised.

3.6. *Sugar-beet*

3.6.1. The white sugar intervention price and the minimum beet price should not be reduced by 5 %, especially as the costs of disposing of Community production surpluses are not met from the EC budget. Production is controlled by the quota system. Beet and sugar production in the Community has developed efficiently under this system. In view of the difficult situation of arable farmers, existing sources of income should not be curbed.

3.7. *Tobacco*

3.7.1. The Committee reiterates its proposal of 27 January 1988 [1] that the imbalance in the tobacco market be gradually eliminated by adopting socio-structural measures in the less developed regions. It further calls for a coherent policy for tobacco and tobacco products.

3.7.2. The Committee notes that a change in the present market organization machinery is expected soon. Basic mechanisms are to be proposed and implemented in time for the 1992 harvest.

3.8. *Fruit and vegetables*

3.8.1. The Committee calls for a vigorous, market-oriented quality policy to be pursued in all the Member States.

3.8.2. The intervention thresholds for apples should not be further reduced to 3 % of the average production for the last 5 years.

3.9. *Nuts*

3.9.1. In view of the serious situation in the Community dry fruits sector and the expectations aroused by the adoption of Regulation (EEC) No 789/89, it makes no sense whatsoever to amend this Regulation

[1] OJ No C 112, 7. 5. 1990.

again a little more than a year after its adoption on account of budgetary problems, especially as the Community is heavily in deficit for hazel nuts and almonds.

3.9.1.1. It must be borne in mind that this aid benefits quality and marketing rather than production, is described as fundamental in the communication on the development and future of the CAP, does not distort the markets and is in accordance with GATT.

3.10. *Cotton*

3.10.1. The MGQ has been retained. It should, however, be increased since the clearcut economic conditions prevailing at the time it was fixed no longer obtain. In addition, this product is in short supply in the Communty.

3.11. *Beef and veal*

3.11.1. The proposal to maintain institutional prices at their present level merely creates an illusion of price stability. The terms of intervention, which are based on these prices, are to be changed in a way which will probably lead to further falls in prices.

3.11.1.1. The proposed abolition of the so-called 'safety net', along with the drastic reduction in the trigger levels for intervention buying, undermine intervention to such an extent that it is worthless as an instrument of market support. The Committee rejects the proposed measures. Any cutback in the intervention measures should take the form of a limitation of intervention buying to certain times of the year, while maintaining the present quantitative restrictions intact. The triggers for intervention buying should remain at their present levels. According to the Committee, the Commission should reexamine its procedures in relation to storage costs, depreciation of stocks and disposal of stocks in order to determine whether part of the necessary saving can by borne by off-farm interests.

3.11.1.2. If intervention is to be cutback, the present premium system, i.e. the granting of premiums for cattle, should be extended by way of compensation. Measures to restore balance to the beef and veal market are urgently needed. A linking of premiums to the stocking rate per hectare forage crops—with a realistic ratio of 2.5 livestock units per hectare main forage area—would be acceptable. It is the small farmer who suffers most if environmental or operating restrictions are carried too far.

3.11.1.3. To restore balance to the market, imports of fattening calves into the EC should be limited as long as the surpluses persist. As part of the EC's extensification programme, incentives should also be provided for the temporary or partial set-aside of cattle-fattening capacity.

3.12. *Milk*

3.12.1. A change in the guaranteed quantity during the current year will raise major problems between the regions for which there are no satisfactory solutions (e.g. substantial fluctuations in milk production according to the month). The Committee notes the Commission's statement that, for legal reasons, it will no longer be possible to change the guaranteed quantity after 1 April. As a reduction in the guaranteed quantity is in the interests of market stability, the EC should immediately propose a voluntary programme to buy out structural milk surpluses.

3.12.1.1. Any change in the guaranteed quantity must be discussed in the context of CAP reform.

3.12.1.2. The Committee calls on the Commission not to aggravate sales difficulties on the international market by adopting a restrictive approach to prices and aid.

3.13. *Agrimonetary proposal*

3.13.1. Since green money will be phased out by the end of 1992, and since the remaining gaps (apart from the drachma) are small, the gaps should now be narrowed by at least half and not one third as suggested by the Commission.

Done at Brussels, 25 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

APPENDIX

(Article 43, fourth paragraph of the Rules of Procedure)

The following proposed amendment was rejected by the Plenary Session:

Point 1.8.2

Insert the following at the beginning of 1.8.2:

'The Committee endorses these aims and will look into what measures are needed to achieve them.'

Voting

For: 25, against: 45, abstentions: 10.

Opinion on the amendment to the Proposal for a Directive on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3,5 tonnes [1]

(91/C 159/17)

On 28 January 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned amendment to the Proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 10 April 1991. The Rapporteur was Mr Tukker.

At its 286th plenary session (meeting of 25 April 1991), the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. The Council has already adopted a number of Directives on the approximation of Member State laws relating to safety belts and their anchorages in various categories of motor vehicles. Directives 81/575/EEC and 82/318/EEC stated that their provisions were to come into effect by 30 September 1982, the corresponding date for the proposed Directive COM(88) 544 is 1 January 1993.

1.2. These Directives specify that front and rear-seat belts must be used in three categories of motor vehicles:

— Category M1: Vehicles used for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat.

— Category M2: Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum weight not exceeding 3,5 metric tonnes.

— Category N1: Vehicles used for the carriage of goods and having a maximum weight not exceeding 3.5 metric tonnes.

1.3. Broadly speaking, these three Directives only apply to persons aged 12 or more. With respect to children aged less than twelve, they merely specify that they must sit on a rear seat and not on a front seat.

2. Specific comments

2.1. The proposed amendment to COM(88) 544 final clearly states where and how children up to twelve years (i.e. aged eleven or less) may use category I, II and III vehicles. The use of safety systems is prescribed

[1] OJ No C 308, 8. 12. 1990, p. 11.

for such children. These systems may be separate from or additional to the adult seat belt.

2.2. In its Opinion of 2 May 1989 on Directive COM(88) 544 final, the Economic and Social Committee stated in section 2.3 (Article 7)

> '... there are already enough restraint systems on the market specially designed for small children (under 12) to justify an early adoption of a Directive for this category of passenger too.'

2.3. The Committee welcomes the fact that the Commission is now submitting a proposal to this end and broadly endorses its provisions. However, the Committee wishes to bring the following points to the attention of the Council

a) The Committee regrets that Directive COM(88) 554 is still being blocked by a few Member States, and has not yet been accepted. The Committee trusts that the Member States in question will drop their opposition and enable early implementation of the complete Directive COM(88) 554, including the amendments in respect of children's safety.

b) The Committee points out that utilization by children aged 4 to 12 of the standard adult three-point belt can involve hazards if there is no additional system to prevent neck injuries. An (automatic) lap belt without additional systems provides better protection for children aged 4 to 12 than a three-point belt without additional systems.

   Only children with a height of 140 cm (10- to 12-year age group) can use an adult three-point belt without problems. Smaller children using an adult three-point belt have to sit on a special cushion.

   Children who are somewhat older than 4 are well protected by a four-point belt, which ensures that they cannot be pushed under the lap belt (submarine effect). In the absence of anything better, a lap belt is a good alternative, certainly in the case of children aged about 6 or more.

c) The amended version of Article 2(3) recommended under (d) below ensures that all children under five occupying the rear seats of vehicles are properly protected if the necessary safety systems are fitted. This is also true for older children provided proper systems additional to the adult belt are fitted. If there are no supplementary systems, the obligation does not apply, thus ensuring that there is no obligation to use a three-point belt which can lead to injuries. In this case a lap-belt would be preferable.

d) The Committee proposes that Article 2(3) be reworded to read: 'Member States shall require that no later than 1 June 1991 all children up to 4 years of age and occupying the rear forward-facing seats of vehicles being used on the road in category M1 irrespective of the date of registration wear a restraint system where one is available. Such a system has to be approved by the competent authorities of a Member State and this approval has to be recognized by the other Member States for the system to be used in those States too. Children older than 4 must be restrained by the fitted approved safety belt or the most suitable restraint system referred to in Article 2(2) subject to use of an additional system approved for use by a child, having regard to the age and weight of the child.'

Done at Brussels, 25 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on the proposal for a Council Directive on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances [1]

(91/C 159/18)

On 17 January 1991 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 2 April 1991. The Rapporteur was Mr Proumens.

At its 286th plenary session (meeting of 25 April 1991), the Economic and Social Committee adopted the following Opinion by a majority vote, with one abstention.

The Committee approves the proposal only with strong reservations.

It considers that, while the measures may be calculated to improve the monitoring of traffic in illicit drugs, the provisions are not in themselves sufficient to stamp out drug trafficking.

In the Committee's view, and particularly in the light of some of the points discussed below, these provisions should form part of a wider strategy if they are to represent more than just a token gesture.

If should be noted that further international negotiations are currently being held in the United States. With the participation *inter alia* of the European Community, the list of substances will be extended.

The changes are important both for the fight against drugs and because they will improve the international balance of chemical manufacturers.

1. Gist of the Proposal

1.1. The proposal covers 'precursor' chemicals. These are substances which, while not illicit *per se*, are diverted from their normal use for the illicit manufacture of drugs.

1.2. The proposal meets a requirement laid down in the 1988 United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances.

1.3. It also complements the Council Regulation on the monitoring of foreign trade in precursors [2].

1.4. The substances concerned fall into two categories:

— substances of limited licit use (Table I of the Annex),

— substances of essential importance for legitimate commercial use (Table II of the Annex).

1.5. The monitoring of precursors has the support of the European Committee for the fight against drugs.

1.6. The proposal requires that records be kept of all transactions in the scheduled substances (Table I), with details of sales to firms holding a pharmaceutical authorization. The same information is required for transactions in the substances listed in Table II if the quantities involved exceed those indicated in Table III.

2. General Comments

2.1. The proposal is also to apply to preparations containing the scheduled substances.

This will be difficult to implement because normal trade in these preparations, other than those to be used in the pharmaceuticals industry, may not be of concern to 'operators' as defined in Article 1(2) (c).

2.2. The definition of 'scheduled substances' specifies that they 'cannot be easily used for recovered by readily applicable means'.

The Committee wonders how thoroughly the Commission investigated the question of preparations and the possible elimination of other of their components before arriving at the present list of scheduled substances.

[1] OJ No C 21, 21. 1. 1991, p. 17.
[2] OJ No L 357, 20. 12. 1990.

Furthermore, the Commission does not define 'easily applicable means'.

2.3. The Committee wonders whether the amounts listed in Table III are realistic, particularly in the case of acetone, ethyl ether and acetic anhydride.

These substances are widely used, often in large quantities. A threshold of one litre seems highly impractical.

The Commission in any case intends to amend Table III in the light of information provided by the European chemicals industry.

2.4. The Commission appears not to intend to oblige retailers such as pharmacies, hardware stores and cosmetic shops to keep registers; they will be monitored via their wholesalers or manufacturer-suppliers.

2.5. The Committee fully approves the provisions on notification (Article 5), designed to protect people who report suspected or definite cases of trafficking.

However, the Committee considers that the reference to information obtained 'by virtue of their professional activities' should be extended by insertion of the words 'for example'.

People outside the company may also hear of trafficking, and they should be accorded the same protection as employees.

Of course, improper and/or false accusations should be punished by the Member States' relevant authorities.

2.6. The Committee wonders how much freedom, and under what criteria, Member State authorities are to be allowed to prohibit the marketing or manufacture of scheduled substances, particularly those contained in a preparation, in accordance with Article 6(2).

2.7. Article 8 requires Member States to determine what sanctions to apply. However, the sanctions only cover infringement of the provisions of the Directive, i.e. the keeping of registers.

The Commission should induce the Member States to apply a graduated scale of sanctions, distinguishing between oversights in registration, failure to keep a register at all, fraudulent registration of quantities, and wilful concealment of important information. The Commission is already striving to do this.

2.8. The Committee feels it important that operators should inform the Member States authorities and/or the Commission immediately of infractions or even of suspicions, without waiting for trafficking to be brought to light by the compilation of information from registers.

2.9. The Committee is concerned at the provisions contained in the second indent of Article 9(1) concerning substances not included in the Annex which could be used in the illicit manufacture of narcotic drugs or psychotropic substances.

2.10. It will be difficult for certain operators whose role is strictly commercial, and who have no knowledge of the substances involved, to associate non-scheduled substances with illicit trafficking. The Commission should therefore make the list in the Annex as complete as possible.

3. Specific Comments

3.1. Given the importance of the subject, the Committee considered whether a Regulation might have been a more appropriate instrument than a Directive.

The Commission has opted for a Directive partly because certain Member States already have provisions on the subject, and partly because it proposes that the Directive will enter into force very quickly—Article 10 specifies 1 July 1991.

3.2. Although the administrative formalities required by the keeping of registers will entail certain costs for the businesses involved, these costs are marginal compared to the retail price of the substances concerned and will not materially affect the consumer of the licit finished products in which the substances are used.

3.3. An Appendix follows detailing the legitimate and illicit uses of the six substances listed in Table I and the six substances listed in Table II.

Done at Brussels, 25 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

APPENDIX

to the Opinion of the Economic and Social Committee

Uses of Table I and II Substances

TABLE I

Substance	Legitimate Use	Illicit Use
Ephedrine	in nasal decongestant preparations	manufacture of methamphetamine
Ergotmetrine (Ergonovine)	treatment of post partum haemorrhaging	manufacture of LSD
Ergotamine	in preparations for the treatment of migraine	manufacture of LSD
Lysergic Acid	manufacture of LSD	manufacture of LSD
1-Phenyl-2-Propanone (P2P, BMK)	occasionally used in manufacture of rat poisons and in perfumes	manufacture of amphetamine
Pseudo-ephedrine	in nasal decongestant and cough preparations	manufacture of methamphetamine

TABLE II

Acetic Anhydride	solvent used in manufacture of textile sizing agents, aspirin, and in polishing metals	processing heroine from morphine
Acetone	solvent used in manufacture of plastics, paints, varnishes	processing of heroine and cocaine
Anthranilic Acid	chemical intermediate required to manufacture dyes, pharmaceuticals, perfumes	manufacture of methaqualone
Ethyl Ether	solvent for the manufacture of munitions, plastics or extractant for fats, waxes, oils, perfumes, resins, dyes	processing of heroine and cocaine
Phenylacetic Acid	manufacture of penicillins and flavourings	manufacture of amphetamine and 1-Phenyl-2-Propanone (P2P, BMK)
Piperidine	solvent and intermediate curing agent for rubber and epoxy resins; catalyst for condensation reactions	manufacture of phencyclidine (PCP)

Opinion on the proposal for a Council Directive amending Directive 85/3/EEC on the weights, dimensions and certain technical characteristics of certain road vehicles [1]

(91/C 159/19)

On 23 November 1990 the Council decided, under Article 75 of the Treaty establishing the European Economic Community, to consult the Economic and Social Committee on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 March 1991. The Rapporteur was Mr Bagliano.

At its 286th plenary session (meeting of 25 April 1991) the Economic and Social Committee adopted the following Opinion by a majority, with two abstentions.

1. Introduction

1.1. The draft Directive gives detailed technical specifications to flesh out the concept of 'mechanical suspensions equivalent to air suspensions'. This concept had been introduced with no technical definition in EEC Directive 89/338 as a precondition for allowing well-defined total weights on the ground, confined to certain vehicles and combinations of vehicles, as follows:

— 3-axle vehicles, 25 t. or 26 t.: with air suspension or equivalent,

— 4-axle vehicles, 32 t.: with air suspension or equivalent,

— articulated 4-axle vehicles (2 + 2), 36 t. or 38 t.: with air suspension or equivalent,

— tandem-axle vehicles, 18 t. or 19 t.: with air suspension or equivalent.

1.2. Air suspension limits the destructive effect of the wheels on the road surface. A similar positive effect can, however, also be achieved with equivalent mechanical suspensions.

1.3. Air suspension does not seem to have any advantage over mechanical suspension. It should therefore be borne in mind that air suspension is important only in terms of wear effects on the road surface.

1.4. Directive 89/338 also laid down a maximum driving-axle weight of 11,5 t. for all vehicles, regardless of number of axles or type of suspension. The draft Directive, however, extends the obligation to use air suspension or its equivalent to driving axles when the maximum weight exceeds 10,5 t.

2. General comments

2.1. The Committee notes that the Commission's main concern in adopting the draft Directive was the need to find the best way of safeguarding the road surface against excessive wear and abrasion. The proposal also fits in with a set of standards seeking to define the characteristics of the 'European lorry', and starting in 1985 with Directive 85/3.

2.2. The Committee also notes that the present draft Directive does not provide directly or indirectly for any increase in weights in relation to those already laid down in earlier Directives.

2.3. The Committee cannot fail therefore to welcome this initiative in general terms, both for the above reason and because it lifts the reservations in Directive 89/338 by providing the technical definition of the suspensions.

2.4. However, the Committee has certain doubts about the present proposal:

a) it extends certain conditions for allowance of the 11,5 t. maximum weight on the driving axle to all motor vehicles indiscriminately; this is not provided for in Directive 89/338;

b) the technical section, which should have been the essential part of the proposal, is incomplete (see points 2.8, 2.9 and 2.10).

2.5. In connection with point 2.4 a), the Committee would point out that at present 9 Member States out of 12 have legislation permitting 11,5 tonnes or more on the driving axle without further conditions, and countries such as Germany, Belgium, Luxembourg and the Netherlands have recently amended their national

[1] OJ No C 292, 22. 11. 1990, p. 12.

laws to lay down 11,5 tonnes maximum weight on the driving axle in accordance with Directive 89/338 — without any condition as to the type of suspension.

2.6. Nor should it be forgotten that the motor-vehicle industry, on the basis of Directive 89/338's requirements and the national laws amended as a result of them, has already planned the production of vehicles with 11,5 tonnes on the driving axle, from the dates laid down by the Directive itself (1 January 1992 and 1 January 1993).

2.7. The Committee does not therefore fully support the approach of generalizing the use of air suspensions or their equivalent on the driving axle when it bears a weight of more than 10,5 t. However, it understands the underlying aims of this and therefore accepts it, while it would ask the Commission to review the time-scale for its implementation. In particular, the Commission proposal lays down 1 January 1993 as the date for the amendments to come into force—the same date as that laid down by Directive 89/338. It follows from the above that it would be desirable to postpone the date to 1 January 1995, bearing in mind that otherwise there would not be a long enough lapse of time after the proposal's publication for manufacturers to adapt to the new specifications.

2.8. In connection with point 2.4 b), the Committee also wishes to draw attention to another problem still unsolved by Directive 89/338.

This is the problem of mechanically connected tandem axles in which the load is distributed symmetrically or almost symmetrically between the two axles of the tandem.

It its rightly accepted by all concerned, including experts, that this design solution has a less destructive effect on the road surface and must therefore be seen as a 'road-friendly' suspension.

The Commission should use this amending proposal as an opportunity to introduce this basic clarification into Directive 89/338. The following should therefore be added to points 2.3.2, 2.3.3 and 3.5.3 of Annex I: 'there is no need to prove equivalence for tandem axles where the heavier axle does not exceed 9,5 t.'

2.9. Given that 4-axle vehicles are permitted by Directive 89/338 only under specific conditions (driving axle with twin tyres and air suspension or equivalent) with a 32-tonne limit (see point 1.1), the disparity of treatment between these vehicles and the others covered by the Directive is clear.

For 3-axle rigid vehicles and 4-axle (2+2) articulated vehicles, there is an alternative downgraded by 1 or 2 tonnes respectively, if the driving axle is not equipped with twin tyres and air suspension or equivalent.

The Commission should provide a downgraded alternative for 4-axle rigid vehicles as well.

2.10. Finally, as regards Annex III of the proposal:

The present heading should be replaced by:

'Conditions relating to the equivalence of air suspension for the vehicle's drive axle or axles.'

a) The present wording of point 1 should have the following sentence added:

'This also applies to tandem axles with a gross weight of above 18 tonnes.'

b) The provision on maximum tyre/road surface contact pressure (8 bar) should not be in Annex III. It has nothing to do with the provisions on the equivalence between mechanical and air suspensions.

Among other things, the provision in question applies to all the wheels (whether on the driving axle or not, with or without air suspension).

Point 2 of Annex III should be changed either by removing it from that Annex or by stipulating that 'the average contact pressure of the tyres must not exceed 8 bar'. This amendment would make more realistic and practical measurement possible.

c) The proposed frequency and damping values which determine whether a mechanical suspension is equivalent to air suspension do not take sufficient account of the fact that single drive axles and drive axles connected with another axle (tandem axles) behave in different ways: the proposed values were selected with single drive axles in mind, and different ones should be prescribed for tandem axles.

d) In determining the most suitable value for the damping coefficient, proper account has not been taken of the need to safeguard the efficiency of measures to improve comfort in the driver's cab while avoiding excessive road wear. The damping $>20\%$ should therefore become damping $>18\%$.

e) The methods for checking the characteristics of an equivalent mechanical suspension should also be adapted to the various drive-axle configurations.

In present circumtances, at least the following clarification should be added:

'other methods can be used provided that their equivalence has been demonstrated by the manufacturer to the satisfaction of the Technical Service.'

Done at Brussels, 25 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

Opinion on relations between the United States and Japan and between the European Community and Japan

(91/C 159/20)

On 27 March 1990 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its Rules of Procedure, decided to draw up an Own-initiative Opinion on Relations between the United States and Japan and between the European Community and Japan.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 9 April 1991. The Rapporteur was Mr Romoli.

At its 286th plenary session (meeting of 25 April 1991), the Economic and Social Committee unanimously adopted the following Opinion.

In this Opinion the Economic and Social Committee considers the development of economic relations between the United States and Japan and between the European Community and Japan.

The Opinion begins by recalling that recently feelings of distrust, frustration and hostility towards Japan have developed in the United States, in tandem with the increase in the US trade deficit, the penetration of Japanese products and the acquisition by Japanese firms of US industry and real estate (see point 1.1).

Japan has reacted with equal bitterness, pointing out (point 1.2) that the deterioration in the United States' economic situation was essentially due to the lack of competitiveness of US exports, an apparently dwindling entrepreneurial spirit and inadequate domestic savings, aggravated by the impact of deficits in the US balance of payments and federal budget and long periods during which the dollar was overvalued.

In 1990, with the aim of removing the main causes of the economic friction which had developed, the US and Japanese Governments concluded an agreement entitled the 'Structural Impediments Initiative' (SII) which constitutes an unprecedented experiment in bilateral relations (point 1.3).

Under the SII, each partner undertakes to take economic and social measures designed to improve the climate and conditions governing relations between the two countries. If successful, the SII may also improve relations with third countries.

On EC-Japan relations, the Opinion examines the situation of imbalance which developed in the '70s and '80s as a result of the sharp growth in Japanese exports and the closed Japanese market combined with the lack of interest shown by EC firms in exporting to Japan (point 2.1).

The Community's trade policy *vis-à-vis* Japan developed mainly through the application of the anti-dumping rules drawn up by the General Agreement on Tariffs and Trade (GATT) (point 2.2).

For Japanese firms, the arrival of the Community-wide single market by the end of 1992 continues to awaken fears that they will be hit by discriminatory protectionist measures (point 2.3).

On the other hand, they are aware of the attractions of a large homogenous market (320 million people) open to cooperation with the countries of Central and Eastern Europe.

The increase in direct investments by Japanese firms in productive plant in Europe is a response to these new prospects (point 2.4) and gives some indication of their desire to play an active part in the development of the European economy.

Special problems have arisen in the motor vehicle and other sensitive industries concerning the proportion of components and parts supplied by EC firms contained in the final products (point 2.5).

In January 1990 meetings were held between the Japanese Prime Minister and representatives of the EC Commission, followed by meetings at technical level. The two sides declared their wish to strengthen mutual cooperation and establish close relations on a permanent basis (point 2.5).

The final part of the Opinion sets out conclusions and puts forward recommendations for the improvement of EC-Japan relations.

The need to deepen understanding of each other's cultural and social aspects is stressed (point 3.4).

Japan's socio-economic structures are changing: the efforts of the Japanese authorities to open up the internal market, boost domestic demand and public investment and improve its population's quality of life must be followed with interest (points 2.2.5, 3.2, and 3.10).

EC entrepreneurs should step up their own efforts to establish themselves permanently on the Japanese market (points 3.5 and 3.6). The rise in direct Japanese investment in Europe should be welcomed, since it involves transfers of technological know-how and organizational methods, and a growth in new jobs (point 3.8).

Finally, the Opinion points out that the world's three main centres of political and economic power—the United States, the European Community and Japan—should cooperate more closely in order to solve the problems of the international economy (point 3.11).

The world scene against which this Opinion is set

From the end of the Second World War up to the mid-1980s the world stage was dominated by two countries exercising virtually absolute power: the United States and the Soviet Union.

The United States enjoyed clear superiority in the political, military, industrial, financial and scientific spheres. In contrast, the Soviet Union's ideological, military and economic leadership prevailed in extensive areas of the less developed world.

In the space of five years, between 1985 and 1990, this situation radically changed. The Soviet Union saw a rapid decline in its political power on the world stage and is currently torn by dramatic economic and structural upheavals. Nonetheless, its massive military force is still a factor to be reckoned with.

Today the international scene is dominated by three centres of power, each with its broad area of influence: The United States, Japan and the European Community.

The United States is now the only superpower to exercise international military, political and economic influence. However, its leadership is constrained by domestic economic and financial problems and the need to coordinate any international political action with its allies, within the responsible political institution (United Nations).

Community Europe, reinvigorated by the pending Single Market and reinforced by the reunification of Germany, faces an exciting future with the opening up of Eastern Europe and possibly the Soviet Union too. However, it still lacks political clout.

Japan, which has become a world economic and financial power, is in a similar situation to the EC.

All three centres of economic power, the United States, Japan and Europe, have market economies and already bound by very close ties: 60 % of international trade, 90 % of world investment, an overwhelming share of world Research and Development (R & D) capacity, a virtually exclusive monopoly over new technology and lastly, absolute pre-eminence in the financial and monetary sectors.

Nonetheless, in terms of their economic and social structures and cultural origins these three powers differ substantially from each other. In the economic sector,

however, all three adhere to the principles of the free market economy.

Relations between the three powers have had their ups and downs, with phases of productive cooperation and common objectives alternating with periods of friction and sharp clashes of interests.

Nonetheless the partners are united by their increasing interdependence and clear duty to draw up plans, within the framework of the United Nations, for an international order counteracting international instability and tensions and to frame new arrangements for cooperation between the industrialized countries and the less developed countries (LDCs).

The purpose of this Own-initiative Opinion is to shed light on the state of US-Japan and EC-Japan economic relations and to chart the way ahead for more effective cooperation in future on a number of fronts.

1. Relations between the United States and Japan: frictions between partners

1.1. *US anxieties*

1.1.1. In recent years a highly disquieting wave of frustration, distrust and mutual hostility has emerged in the two friendly partners.

In a recent US opinion survey, 68 % of the respondents mentioned Japan as an even greater threat to the United States than the Soviet Union had been in the past.

Assailed by criticism and accusations, Japanese public opinion reacted with resentment and intolerance reflected in a surge of nationalism.

1.1.2. The cause of the current unease in the United States lies in the general public's frustration and anxiety fuelled by the incomplete information provided by the press and declarations by certain politicians who find it easy to blame Japan for being the main cause of the woes of the US economy, the persistent trade deficit [1] and the difficulties faced by US exports.

The US mass media also tend to highlight the acquisition by the Japanese investors of major sectors of US industry and the property market.

In addition, the Japanese economy is spared the burden of heavy military expenditure [2].

1.1.3. In addition, US economic experts and politicians find the Treasury's increasing dependence on financing from Tokyo (which is now vital to cover the federal budget deficit) particularly disquieting.

Within a short space, as a result of the cumulative effect of these financial movements, the United States has slid into a state of heavy debt to international financial sources, particularly Japan.

Underlying the above developments is the vague fear current among public opinion, politicians and economists that the United States is gradually losing its traditional technological leadership and hence its 'status' as a world economic superpower.

1.1.4. Prompted by these anxieties, US moves have been in progress for some time to tackle the problem of economic relations with Japan by resorting to all manner of bilateral trade instruments and 'managed trade' arrangements, even if these breach commitments under GATT multilateral agreements.

Consequently, during the '70s and '80s a large number of general and specific agreements were framed which contained increasingly precise demands by the United States for Japan to liberalize certain categories of products or types of operations in order to give US exports preferential access to the Japanese market. Again and again the Tokyo Government was asked to give voluntary restraint undertakings as regards the export of particular products (cars, steel, semi-conductors, etc.).

The tangible results of these operations proved disappointing and fuelled further mutual recrimination and heated disputes.

1.1.5. Some groups within Congress and Washington intellectual circles have become increasingly convinced that it is wrong to harbour any illusions: the Japanese would never change their attitudes, their industrial policies or their desire to conquer world markets. The only way to fight back and curb such expansionist tendencies is direct, unilateral retaliation in the shape of appropriate legislation.

This line of argument led the US Congress to draft and approve the protectionist Trade Act of 1979, reinforced 10 years later by the Omnibus Trade and Competitiveness Act of 1988, which President Reagan signed in July that year.

[1] In 1987 the US ran a US$ 52 000 million trade deficit with Japan; this dropped to US$ 45 000 million in 1989 and US$ 38 000 million in 1990.

[2] Japan points out that it has stepped up its aid to the LDCs and now heads the list of donor countries (at over US$ 10 000 million per annum). In addition, Japan provides substantial aid to Eastern Europe.

The Economic and Social Council (ESC) has had occasion to express its views on these laws, which are inconsistent with the multilateral undertakings given by the United States in international forums and in particular undermined the Uruguay Round of GATT negotiations [1].

In July 1989 the Bush Administration took the initiative of proposing to the new Japanese Government headed by Prime Minister Toshiki Kaifu that it made a fresh effort on the bilateral front to get trade relations between the two countries off to a new start and improve the climate of mutual relations. This proposal, known as the 'Structural Impediments Initiative-SII' will be discussed below (point 1.3).

1.2. *Japanese response*

1.2.1. The wave of criticism and recrimination in the United States, which does not seem to have abated now that the Gulf War has ended, has directly affected Japanese political and economic circles, which remain highly sensitive to US arguments, and triggered heated and conflicting reactions.

Japanese public opinion is still largely favourable to the United States. The assistance provided during the difficult years of post-war occupation and the aid received during the period of reconstruction have not been forgotten.

However, such feelings have recently been marred by bitterness, disillusionment, pessimism for the future and certain symptoms of growing nationalism.

1.2.2. In the first place Japan refuses to accept the argument that it is mainly to blame for US economic difficulties.

Japan explicitly urges the United States to acknowledge that the root cause for its economic problems is the misguided economic policy pursued in the '80s. This period was not only one of proud expansion (as the official propaganda of the Reagan era has so often repeated) but also one which laid the foundations for the structural imbalances now becoming visible, which indicate that the country has been living far too long beyond its productive means.

The most obvious sign of this plight is the dwindling competitiveness of US exports on international markets, which in the past were further undermined by the policy of an overvalued dollar.

1.2.3. Japanese observers hold that one of the key reasons for this phenomenon is the psychological change that has recently taken place in US businesses, which seem to have lost their traditional creative drive and now focus solely on the mirage of short-term financial benefits and quick profit. [2] This approach is argued to have generated excessive faith in the idea of a 'post-industrial society' based virtually entirely on services, at the expense of manufacturing industry and production of consumer goods, which today the United States has to import on a large scale.

Japanese critics also claim that Japan cannot be blamed if the United States has in the past invested far less in plant and research than Japan and even Europe.

1.2.4. Further, the United States has had to fund its own needs from borrowed capital (a substantial part of which comes from Japan) since its own level of domestic savings was inadequate. It has therefore had to maintain high interest rates. This has sometimes led to an overvalued dollar fluctuating sharply against other currencies. This situation persists.

According to some Japanese (and even US) observers, the declining standards of the US educational system (especially at primary and secondary school level) may also have contributed to the difficulties besetting the country's economy.

1.2.5. However, the theories advanced by Japan were not confined to a defence against US accusations but included an analysis of the internal aspects of Japanese economic policy. This new development is of some importance.

Japan recognized, for instance, that its internal market had effectively remained isolated and sealed off for far too long and that the complaints of other countries are at least partially justified. Japan could not have continued to conduct a trade policy designed solely to boost exports without making space for goods and services imported from third countries.

Consequently urgent action was needed and the Uruguay Round of GATT negations are seen by Japanese political protagonists as an opportunity for a general reduction of non-tariff barriers by all contracting parties.

[1] OJ No C 332, 31. 12. 1990, p. 151.

[2] The President of Sony, Mr Akio Morita, in his much-discussed book 'The Japan that can say NO', co-authored with the politician Mr Shintaro Ishihara, claims that something has gone wrong with US business. Its only concern is four-monthly balance sheets and share ratings rather than long-term investment. Apparently it has forgotten that the creation of real wealth presupposes the creation of new value-added, especially in manufacturing industries able to compete on the international market.

1.2.6. A number of more recent Japanese studies indicate that the time has come to move to a new phase and away from a trade policy where national export priorities were established and efficient plans as to how targets were to be attained were drawn up by Japan's Ministry for International Trade and Industry (MITI).

It is claimed that the MITI's activities in recent years have been confined to identifying the long-term strategic objectives to be pursued by Japan.

Such claims are viewed with considerable caution in the United States and EC.

Though the MITI has apparently scaled down its direct efforts to guide and influence the various sectors of the economy, close-knit cohesion continues to prevail in Japan's systematic, consistent pursuit of long-term goals, which are invariably attained.

In practice the 'Japan Inc.' concept does not yet seem to have been superseded. Japanese firms are able, now as in the past, to make substantial profits on the domestic market, which is well-protected and allows the maintenance of high prices. In this way they can 'subsidize' their exports and frame long-term expansion programmes, which even allow for sustained losses over a lengthy period, for the ultimate aim of penetrating specific markets (including both the industrialized countries and LDCs) and establishing bridgeheads in pre-targeted sectors. In this connection, firms can rely on the direct support of government agencies and the cooperation of a powerful financial system which provides them with long-term funding at interest rates well below the rates prevailing on US and EC markets.

However, the Japanese economy seems to be undergoing major structural changes.

One important typical change is the climate of cut-throat competition between Japanese firms within one and the same industrial sector. This very specific form of competition is exclusively based on quality and innovation as opposed to prices (which remain very high on the domestic market).

Such competition extends beyond national frontiers to the markets of South East Asia, North America and Europe.

The large Japanese industrial conglomerates, on account of their size, financial authonomy and 'global' approach to the world market, are now de facto 'multinational' and no longer heavily dependent on Japanese economic policy.

1.2.7. Other observers and experts have also focused attention on the far-reaching upheavals currently under way in the very structures of Japanese society [1].

They have pointed out, for instance, that demographic indicators augur a significant ageing of the population, together with behavioral changes whereby individuals and families will gradually turn away from the values of sobriety, frugality and acceptance of spartan living conditions towards a higher standard of living.

The rejection of traditional values is particularly marked in the younger generation.

It is even claimed that changes are discernible as regards total dedication to work, loyalty to the group and the company and the relinquishing of individuality, all of which distinguished the Japanese worker in the decades from the end of the war to the present day [2].

These trends will obviously move very slowly. But, should they become established, could alleviate concern over the continued, unstoppable growth of Japanese economic power, entailing deficits and tensions with both the United States and the rest of the world.

We should therefore ask ourselves about the future of Japan as a country whose population wishes to model itself more on the behaviour of the affluent societies of the Western world and to derive more direct economic and social advantages from Japan's extraordinary economic success. There is greater willingness to participate and contribute to the world political and economic order while still retaining distinctive Japanese cultural characteristics.

With this in mind, even the large Japanese trade surplus [3] could ultimately be spontaneously reabsorbed as a result of the above phenomena of an ageing population, increased quality of life and domestic consumption and the sharp rise in social welfare costs.

As already mentioned, this will be a slow process and encounter much resistance but it seems reasonable to hope that the western countries (first and foremost

[1] See 'The Sun also sets — the limits to Japan's economic power' by Bill Emmott, *The Economist*, London, which received widespread circulation in Japan.

[2] Western observers, however, point out that the Japanese industrial workforce still work a far longer week/year than its EC or US counterparts. In some instances, working hours have actually increased if overtime is taken into account.

[3] The appended Table 1 sets out statistics on Japan's overall trade surplus, which was as high as US$ 82 700 million in 1986 (of which US$ 51 400 million *vis-à-vis* the United States). Other statistics indicate that the US ran a US$ 52 000 million trade deficit with Japan in 1987; dropping to US$ 38 000 million in 1990.

the United States and the EC) with which Japan has substantial political, economic and cultural relations will do everything possible to facilitate and encourage the trend in Japanese society that currently seems discernible.

1.3. *The 'Structural Impediments Initiative': An agreement 'sui generis' between the United States and Japan*

1.3.1. The SII talks, launched in July 1989 by President Bush, are unique. Though their stated aim is to remedy imbalances in trade between the United States and Japan, they focus on the root causes of the two countries' economic and social policies and take a new approach to matters previously considered to be the exclusive preserve of the individual governments.

The SII is less a traditional trade agreement than a reciprocal commitment autonomously given by each party on points suggested by the other.

This 'sui generis' agreement is therefore an attempt which, if successful, could influence relations between Japan and the entire community of Western countries. As devised, it is an innovatory model which the United States could also propose (or impose) in respect of other countries.

1.3.2. In April 1990 two 'ad interim' reports were signed in Washington which separately list the measures that the Japanese and US governments agree to take at the request of the other party. the following June the two provisional reports were consolidated in a single final document setting out in detail the aims which the two parties undertook to pursue.

During the talks, the United States presented an extensive set of proposals and suggestions, which were largely accepted by Japan.

The Japanese Government's undertakings can be summed up as follows:

— acknowledgement of the need to reduce Japan's current trade surplus by adopting economic policies aimed at stimulating non-inflationist growth generated by domestic demand;

— substantial increase in public investment (increase of YEN 430 trillion over ten years — approx. 10 % of GDP) with priority emphasis on urban infrastructure, housing, construction, airports and ports, environmental protection and conservation of the natural heritage. The stated aim is enhancement of the popuation's quality of life and the absorption of a substantial part of the capital constituted in Japan, thereby giving a sharp boost to domestic demand and imports and benefiting the national economy as a whole;

— alleviation of urban land cost discrepancies which are a major obstacle to the siting of foreign firms' offices and production units, by making more publicly-owned land available for building purposes;

— liberalization of the distribution sector which is now a de facto obstacle to other countries' exports reaching the end consumer in Japan;

— streamlining of import procedures;

— more stringent application of Japanese legislation protecting market competition from illegal intercompany deals, restrictive practices, cartels, monopolies, barriers to market access and providing for measures to check preferential agreements between large concerns designed to keep out foreign entrepreneurs (Keiretsu relationships);

— gradual alignment of the Japanese working week with practices in Western countries;

— more active and systematic curbs on price differentials between Japanese goods sold on the domestic marekt and the very low prices at which the same products are sold on external markets.

Lastly, the US negotiators explicitly requested preferential access for specific US industrial and agricultural exports and services (forestry products, satellites, aircraft, supercomputers).

1.3.3. Here it is clear that tradional trade clauses go hand in hand with measures relating to national economic and social policy which are unprecedented in the history of bilateral economic agreements. Some Japanese circles have condemned them as intolerable interference, infringing Japans's sovereignty.

Interestingly, however, many of the US demands are based on proposals which had already been tabled and discussed by Japanese politicians and economists in favour of opening up the country to the outside world (cf. the 1986 Mekawa report). This partly explains the favourable reaction of Japanese public opinion to this initiative.

1.3.4. The proposals addressed by Japan to the US Administration and accepted by the latter, also contain a number of new and somewhat surprising features.

Washington is asked to take decisive action to remedy the structural problems inherent in the federal budget deficit, the low US family savings ratio, the failure of

US products to compete successfully on the international market, the emphasis placed by US firms on short-term management, the low commitment to R&D and, lastly, the poor standard of schooling and vocational training.

Nor are the unduly tough discretionary regulations impeding Japanese imports into the United States overlooked.

These requests largely relate to US domestic policy and have already been identified by the Bush Administration as priority aims for the near future. However, they have been adopted as bilateral commitments *vis-à-vis* Japan, almost as if they exclusively concerned the two partners as opposed to exercising an undoubted influence on the balance of relations between the world's largest economic power and the rest of the world. From this angle, the SII agreement has been criticized by Community observers.

1.3.5. Cooperation within the SII framework has only recently got under way and a number of difficulties and delays are already on the horizon.

Regardless of this undertaking, US-Japan relations are bound to become increasingly close in the near future, especially if the predicted expansion of the 'Pacific Area' (which is far more dynamic than the North Atlantic area) becomes a reality.

2. EC-Japan relations

2.1. *From initial indifference to the flood of Japanese exports in the '70s and '80s*

2.1.1. Immediately after the war, up to the late '60s, relations between Japan and the individual European countries (grouped within the European Communities since 1959) were far from close.

Community businessmen saw no particular reason to take an interest in Japan, which they regarded as a remote, unfamiliar country, grappling with serious economic difficulties.

On the Japanese side, Europe was seen as a region with great cultural traditions, capable of substantial economic growth but of no immediate interest. Attention was focused primarily on South East Asia and on bilateral relations with the United States, which became very close after 1950, as a result of the Korean War.

2.1.2. It was not until 1970 that trade relations between the two areas rapidly gathered momentum, triggered by Japan's impressive industrial and trade potential.

During the decade 1970 to 1980 trade between the partners shot up from US$ 30 000 million to US$ 250 000. However, the balance was heavily in favour of Japan, which quickly accumulated a large export surplus. European exports offset only 34 % of imports from Japan and found it difficult to penetrate the Japanese market.

The Japanese 'economic miracle' therefore became a reality for Europeans as well as the United States.

2.1.3. European concern was soon translated into pressures for the adoption of protectionist-type measures to curb the flood of Japanese products. Several of the Member States' governments took the step of reactivating the large number of quota restrictions left over from the immediate post-war period. Others adopted new ones.

Such action was demanded by industry and the trade unions, enraged at aggressive Japanese export tactics. Such exports were sold at rock bottom prices (justified only partly by low labour costs) and targeted dangerously on specific sectors and segments of the market, jeopardizing national industrial firms and even forcing their closure.

The EC Commission—which only received full powers to conduct a common trade policy in 1970—initially stood by passively while the Member States tried to defend themselves in a period of serious economic crisis, inflation and growing unemployment, generated by the 1973 and 1979 oil shocks.

On its side, Japan seemed unperturbed by the absence of a uniform Community-wide trade policy and continued to step up contacts and talks with the governments of the individual Member States, offering pragmatic solutions in the shape of partial voluntary export restraint agreements. For a long time little notice was taken of the EC authorities in Brussels, despite the latter's right to discuss relations affecting the EC in its entirety on a global basis.

2.1.4. This disjointed state of affairs hindered EC trade relations with Japan from taking coherent shape so that for a long time they continued to be fragmented, with reactions varying from country to country. Hardly surprising in the circumstances that frictions and trade disputes proliferated.

The sectors worst hit by the first wave of Japanese exports were shipbuilding, electronic goods, audiovisual and photographic equipment, cars and motorcycles. In some sectors, the very survival of EC firms was threatened.

2.2. *Dynamic phase of EC trade policy*

2.2.1. In the '80s the EC Commission started to frame its own trade policy *vis-à-vis* third countries.

The starting point was effective application of the GATT multilateral anti-dumping agreements. With increasing frequency, procedures were instigated to stop third countries exporting goods at prices below those obtaining on their home markets. While this policy is not specifically directed against Japanese exports, the fact remains that Japanese products are frequently affected.

2.2.2. In 1982 the French Government took the controversial step of concentrating customs clearance operations for Japanese video recorders in a single regional customs office, at Poitiers, (a decision which was subsequently revised following EC intervention) (1).

In 1984 the EC instigated an anti-dumping procedure in respect of imports of electronic typewriters. In 1985 it was the turn of photocopiers and, in 1986 microwave ovens, printers and microconductors.

2.2.3. The purpose of these much publicized initiatives was primarily to impress on Japan that the EC would not stand by idly while its traditional or new technology industries were destroyed as a result of trade practices deemed to be unfair. Concurrently, Brussels explored the feasibility of adopting, within the framework of GATT, safeguard measures selectively targeted on specific countries.

The EC Commission has also focused attention on the expediency of supporting the US attempt to give legal substance to the idea that advantages must be equitably balanced in relations between the GATT contracting parties. Legal action and safeguard measures would then have been justified in the event of persistent Japanese structural trade surpluses. (This attempt as we know, was unsuccessful.)

With a view to improving its relations with Japan, the EC launched a number of positive measures, including training schemes enabling young business executives from the Twelve to spend extended periods in Japan for the purpose of studying, working and learning Japanese (2).

The Commission also made approaches to the Japanese authorities in an attempt to improve market access for EC goods and services.

2.2.4. In 1984, after lengthy debate, the EC approved a regulation (commonly known as the 'New Instrument') designed to strengthen EC trade policy to curb illegal trade practices by third parties that were not covered by anti-dumping legislation (Regulation 2641/84). These provisions came as a response to the US Congress measures reinforcing US unilateral trade safeguard powers (Section 301 of the Trade Act of 1979). The 'New Instrument', however, was of limited scope and was never applied *vis-à-vis* Japan (3).

Lastly, in 1987 the EC instigated a procedure (subsequently upheld) under GATT against discrimination in the Japanese system of levying duties on imported wines and alcoholic beverages. Here the EC started to turn its attention to the opening-up of Japan's internal market, a matter in which the United States alone had previously been interested.

2.2.5. The Japanese authorities reacted strongly, accusing the EC Commission of interpreting the GATT anti-dumping rules in an arbitrary manner applying devious and discriminatory procedures and introducing new protectionist instruments into its trade legislation.

In addition, the Tokyo Government drew the attention of the Community and the governments of the individual EC Member States to the changes effected in the mid-'80s in Japanese trade policy, reflected in substantial cuts in, and even abolition of, many customs duties, the scrapping of many import quotas and the improvement and streamlining of certification systems and import procedures.

Japan seems seriously committed to assuming a new profile, no longer anxious to push its own exports at

(1) In Japan the Poitiers episode triggered fierce indignation and for a long time was seen as symbolizing the EC countries' protectionist attitude.

(2) See European Community Export Programme 'Exprom' and, in particular, one of its key elements: the Executive Training Programme.

(3) The Commission is currently examining, in accordance with this Regulation, an official complaint submitted to it by the European Community Shipowners Association concerning the Japanese Harbour Management Fund. (The alleged illicit practices consist of contributions by the shipowners to a Harbour Fund on the basis of an agreement concluded under the threat of non-handling of containerships in Japanese ports if it was not signed.)

all costs but ready to meet US and EC demands for easier access to its internal market. At the same time however, the Tokyo authorities insist that low EC exports to Japan are not due solely to market access difficulties but first and foremost to the indifference and disinterest of Community businessmen, who fail to make the requisite effort.

The EC partners are also asked to bear in mind that Japan's strategies are currently undergoing rapid changes so as to allow considerable scope for direct investment in new manufacturing plant, as is occurring in the United States. Japan wishes the EC to take account of this new desire for cooperation.

2.3. *Japan's position in the run-up to the Community-wide single market in 1992*

2.3.1. The Community's announcement, in June 1985, that it intended to achieve complete unification of the markets of the Twelve by 1992 spurred Japan to review its policies *vis-à-vis* the 'old continent', which it had hitherto regarded as a conglomeration of widely disparate national economies.

Japan became keenly interested in the prospect of a large, economically and legally unified, market of 320 million consumers, once the last barriers to internal circulation of goods and services came down. There was growing realization of the potential advantages of uniform EC rules for imports from non-EC countries, accompanied by the phased dismantling of quota restrictions which, in some Member States, have restricted, and even totally blocked, some Japanese exports.

However, in Japanese eyes, completion of the large Community-wide single market and gradual progress towards greater political union were of even greater importance because they laid the foundations for a pooling of resources that could trigger, throughout the Community area, a surge of growth with huge potential. Commission reports on the general and sectoral impact of economic union are carefully scrutinized by the Japanese Government's economic departments and by the large Japanese multinational concerns, which now regard Europe as an integral part of their global strategies.

2.3.2. Events in Europe since 1985 have increasingly assumed the proportions of a historic change. The EC is the focus of international interest, after a long and troubled period, and is exerting a pull on many countries, both near and further away. Undoubtedly this process is influenced, among other things, by the current upheavals in Eastern Europe, and indeed in the Soviet Union.

Since then, spurred by fears that any new protectionist trends ('Fortress Europe', to quote the expression used in certain US circles) could create further problems for Japanese exports, Japan has recognized the need for a more active presence including the siting of industrial plant in the Community [1].

2.3.3. During this period, when the Uruguay Round of GATT negotiations got under way, the EC undertook to look harder at its own trade policy *vis-à-vis* non-EC countries.

The official stance of the EC Council and Commission (enshrined in the December 1988 Rhodes declaration) is firmly in favour of general multilateral free trade rules based on a substantial reinforcement of GATT.

On the 1992 single market, the Community authorities stated categorically that the benefits of Community liberalization could not be extended automatically to non-EC countries unless accompanied by negotiations on reciprocal concessions to give Community firms similar access to non-EC markets, preferably within the multilateral framework of GATT, which specifically provides for efforts to achieve mutually balanced advantages [2].

2.3.4. The Community's position *vis-à-vis* Japan is set out in its Communication of 15 March 1988 [3], the Commission states its intention of constructing 'a balanced relationship' safeguarding reciprocal interests as part of closer cooperation in the fields of trade, industry, services and science and technology.

However, the Commission stressed the need for a 'consistent and firm approach' to secure results from discussions with Japan, particularly to convince Japan to

[1] A number of surveys carried out by Japanese government bodies and industrial associations highlight persistent fears that the Community's 1992 target conceals future discrimination against Japanese exports.

[2] 'Europe 1992: Europe World Partner' — Commission information memorandum on statements made by Lord Cockfield and Mr De Clerck, Members of the Commission, at a debate on the external dimensions of the Single Market — 19 October 1988.

[3] 'Relations between the Community and Japan' — Commission Communication — 15 March 1988.

place less emphasis on exports and take serious steps to liberalize and reform its economic structures, while opening up its market to Community firms [1].

2.4. *Problems connected with direct investment by Japanese firms in the Community: the car industry*

2.4.1. The Commission's cautious and measured language regarding trade relations with Japan was prompted by the wide trade gap and differences of opinion between the two parties on the scope of GATT anti-dumping rules.

The Commission was inclined to interpret these rules broadly and adopted appropriate regulations to tackle a new aspect: the practices deployed by Japanese firms for the purpose of circumventing anti-dumping duties (parts and components are imported and then put together at assembly plants) [2].

The concept of a 'minimum local content' entitling a product to be considered as being of Community origin (i.e. exempt from the quota restrictions still applied by some Member States to Japanese imports) sparked off an impassioned debate.

However, standpoints differed significantly from one industrial sector to another. Some high technology sectors (e.g. the chemical industry) rejected even the principle of 'local content', which was deemed incompatible with GATT rules.

The industrial sectors most directly affected by the all-out onslaught by Japanese firms to conquer market segments are at the opposite extreme. In the motor vehicle sector, in particular, there is much heated discussion about cars assembled at UK plants but which are in fact of Japanese origin and hence subject to quota restrictions limiting sale in some Member States.

Attention gradually shifted to the percentage of EC-manufactured components and parts (60-80%) needed if such products were to qualify for Community origin.

In addition, the Commission pointed with concern to a dangerous trend emerging in Member States, prompted by a wave of competition to attract Japanese investment in certain manufacturing sectors.

2.4.2. Given the Community's hesitancy and internal dissension, Japan took action on two separate fronts.

Firstly, the Tokyo Government formally invoked GATT to challenge the legality of Community regulations on the circumvention of anti-dumping duties via the device of 'screwdriver' assembly plants.

After an investigation lasting several months, an arbitration panel supported the Japanese complaint and declared the EC provisions incompatible with Articles III and XXX(d) of the General Agreement. The Commission appealed against the procedure and validity of the panel's conclusions. The entire matter has now come within the scope of the Uruguay Round since the new anti-dumping code being framed should encompass the problem of circumvention of anti-dumping duties.

Secondly, Japanese car producers in the Community are tackling the roots of the problem. In an effort to enhance their image, they accept the substance of the arguments advanced by Community manufacturers and are losing no time in launching programmes for revamping their industrial plant sited in the Community in order to step up the proportion of EC-manufactured components and parts.

These decisions show that Japanese firms are anxious to reappraise their role and become 'good corporate citizens of Europe'.

2.5. *Top-level EC-Japan meetings in January 1990 herald the dawn of a new phase in cooperation*

2.5.1. In January 1990 a Japanese Government delegation, led by Prime Minister Toshiki Kaifu, held a meeting with the responsible Commission officials.

The cordial and constructive atmosphere of these talks highlighted both parties' willingness to achieve a quantum jump in their joint relationship, putting narrow clashes of short-term commercial interests behind them and espousing a broader, more farsighted approach.

Institutional cooperation between the Community and Japan entered a new phase. Official statements stressed

[1] In this connection, Japan pointed out that its GDP growth had for several years been based on increased domestic demand and not on export trends.

[2] The parent regulation setting out EC policy on anti-dumping dates back to 1984 [Regulation (EEC) No 2176/84]. These provisions were later supplemented by Regulation (EEC) No 1761/87, which dealt with 'screwdriver plants'. In 1988 the Council adopted a consolidated anti-dumping regulation [Regulation (EEC) No 2423/88] incorporating the previous regulations.

the need to establish close relations on a permanent basis, on a par with longstanding Japan-US and Community-US relations.

2.5.2. These talks were not confined to (often controversial) aspects of trade relations but embraced other broader issues such as the upheavals in Eastern Europe, EC economic and political union, North-South relations and relations with the US.

On behalf of his Government Prime Minister Toshiki Kaifu wholeheartedly welcomed the completion of plans for EC economic and political union as conducive to the progress and development of trade relations and to international stability.

Japan acknowledged the key role played by the Twelve within the 'Group of 24', whose task is to provide practical aid and assistance to the fledgling democracies of Eastern Europe. Japan was already an active contributor to the group's programmes and stated its intention of coordinating its projects in Eastern Europe with Community operations.

Further, as regards relations with the developing countries (LDCs), the Community and Japan proposed to coordinate implementation of their development aid and technical assistance policies more closely [1].

2.5.3. As to the future, the meeting in January culminated in the decision to place EC-Japan bilateral relations on a permanent footing operating at three levels: (a) meetings, at a personal level, between the Commission President and the Japanese Prime Minister, (b) regular annual meetings at ministerial level and (c) at a technical level, closer liaison and consultations in the economic, science and technology, environment, cultural and social sectors.

A ministerial-level meeting took place in Brussels in May 1990 and addressed key aspects of bilateral EC-Japan relations. A 'standing working group on trade questions' was set up with the task of identifying impediments to satisfactory two-way trade and discussing possible action and solutions in the individual sectors concerned.

The Japanese delegation confirmed that the measures envisaged in the US-Japanese 'Structural Impediments Initiative' would not be exclusively bilateral but applied *erga omnes* so that they could also be extended to the EC.

In response to Japanese anxieties the Commission representatives gave assurances that the future Community-wide Single Market would be open to non-EC partners (i.e. including Japan).

2.5.4. On removal of the remaining barriers to the Japanese market, the Commission announced a Community export drive to go hand in hand with a Japanese Government programme to promote Community imports.

Both delegations were particularly exercised by the matter of direct investment by Community firms in Japan, which is still very small. Proposals and suggestions for action will be framed in the near future.

An agreement was signed on cooperation in the field of nuclear safety and protection. Other joint schemes are planned to step up future cooperation in the fields of science and technology, the environment, social affairs and cultural exchanges.

2.5.5. The vexed issue of imports and Japanese investment in the car industry in the Community was not broached directly at the ministerial meeting in Brussels but discussed at separate talks both before and after the meeting.

The discussions, which are still going on, focus on the following points:

1) Definition of a 'transition period', running at least until 1991, to enable the Community car industry to restructure and boost its competitiveness in preparation for an entirely open Community car market.

2) During this period Japanese industry will restrict and monitor the number of vehicles exported to the Community; cars manufactured within the EC will also be included.

3) The quota restrictions on Japanese cars in a number of Member States will be phased out.

In a more general context, global trade reciprocity is another discussion topic.

2.5.6. High-level meetings between the Community and Japan will continue in 1991.

At the end of May, Commission President Jacques Delors will pay an official visit to Tokyo.

[1] Japan now tops the development aid league table to the LDCs ($... in...).

The Committee understands that the matter of a future joint declaration on EC-Japan relations is currently under discussion both in the Commission and in the Council.

A further ministerial-level meeting between EC representatives and the Japanese Government is planned in the autumn for the purpose of re-examining matters that are still unresolved and stepping up economic and political cooperation.

Additional bilateral contacts are scheduled in order to break the deadlock in the GATT Uruguay Round negotiations, which are of vital importance to both the EC and Japan.

3. ESC conclusions and recommendations on EC-Japan relations

3.1. In the light of the Committee's studies and deliberations on EC-Japan relations over the past years, a number of conclusions can usefully be drawn, in the shape of recommendations addressed to the Community authorities with a view to bringing about a speedy and substantial qualitative improvement in this relationship and translating hopes for closer cooperation into reality.

3.2. First, implementation of the decisions already taken or announced by the Japanese Government for an overhaul of Japan's economic and trade policy and structures will clearly require much time and effort.

However, it is encouraging to note that there have already been tangible signs of a change in direction. We will have to wait for these trends to be consolidated.

Increased Japanese domestic demand, due to greater public investment and a rise in personal consumption has become the key factor in national economic growth and is pushing up imports generally, and manufactured imports in particular.

For the first time for many years, the overall picture is one of Japanese imports rising faster than exports in terms of both value and volume, i.e. the overall Japanese trade surplus is contracting.

This welcome trend is reflected in the reduction of Japan's trade surplus vis-à-vis the US and EC. Although it is difficult to compare EC and Japanese statistics, they would seem to bear out this downward curve [1].

Japanese commentators take for granted that Japan's external trade patterns are becoming more mature (increased room for imports from the West of finished manufactures and consumer goods and from South-East Asia of semi-finished products and components for use in Japanese industry, plus of course continuing imports of raw materials and energy) [2].

Trade relations between Japan and its Western partners could improve rapidly if, as is hoped, this trend is consolidated in the near future. The US, Japan and the EC could then focus their attention and efforts on a substantial expansion of cooperation in all areas.

3.3. The Committee warmly welcomes the outcome of the latest meeting between Japanese Government and EC Commission representatives, which culminated in a joint decision to achieve a quantum jump in their joint relationship and espouse a broader, more far-sighted approach.

The Committee would welcome the issuing of the mooted joint declaration on EC-Japan relations, especially if it reinforces high level institutional contacts.

This new phase will have to be underpinned by institutional cooperation at top level between the Japanese Government and the Commission, and at technical level. But there must also be regular liaison and consultation in the economic, scientific, cultural and social sectors.

The Committee fears that this second facet of cooperation may progress too slowly or that unexpected difficulties may arise when it comes to implementing the requisite projects, with the risk that official declarations will ultimately prove no more than empty words. That would be most unfortunate since the hoped-for improvement in EC-Japan cooperation cannot conceivably be reduced to a formal list of dates.

The Committee calls for immediate steps to establish the planned contacts at all levels and in particular stresses the importance of determining arrangements to

[1] Official Japanese statistics indicate that Japan's trade surplus *vis-à-vis* the EC dropped to US$ 19 700 million in 1989 compared with US$ 22 800 million in 1988. EUROSTAT figures show an EC deficit of 21 200 million ECU for the first ten months of 1989, as against 24 500 million ECU in 1988. It is unfortunate, however, that the two parties cannot agree on a uniform method for quantifying such important data.

[2] See 'A l'Ecoute du Japon', 10. 12. 1990.

bring the socio-economic groups together in order to study their problems and compare notes.

With this in mind, the Economic and Social Committee could play a key role and assume significant responsibilities.

3.4. Appraisal of Japan-EC relations highlighted several cases where mutual ignorance of the other's cultural and social values proved a serious obstacle.

Europeans in particular are ignorant about Japanese society, which is rooted in spiritual and practical values that differ radically from European traditions.

In Japan, a considerable effort has been made for many years to study and understand the European (and US) past and present, with particular reference to economic and cultural (and, perhaps, to a lesser extent, social and political) aspects [1].

Europe therefore has to be better briefed about the distinctive characteristics of the Japanese population as a whole (including its culture, history and institutions), and the detailed workings of Japan's economic, manufacturing, financial and services sectors.

The Committee hopes that immediate plans will be made for constructive schemes on all fronts, starting at school and university, with the emphasis on direct contacts between EC and Japanese businessmen and ordinary citizens and stressing the value of meetings, visits and seminars facilitating a wide-ranging interchange of experience at all levels.

For instance, it would be useful to explore ways of exploiting fully the presence of thousands of families of Japanese businessmen and officials working in EC Member States. Similarly, ways should be found of awakening the interest of the waves of Japanese tourists and encouraging them to play their part in promoting two-way information.

3.5. EC-Japan economic and trade relations continue to be dominated by the need to boost the volume of EC exports to the Japanese domestic market.

Here it must be remembered that Japanese rules and regulations are changing fast: many formal obstacles and constraints have already been scrapped while the most obstructive non-tariff barriers are slowly being relaxed.

The Committee feels that the EC Commission must play a dynamic role in pinpointing the remaining direct or indirect obstacles and reach agreement with its Japanese counterpart on what action is required.

That does not mean that the Japanese market will be easily accessible to EC industrial firms. On the contrary, in the immediate future it will become increasingly clear that the main hurdles stem from the highly competitive Japanese domestic market, cut-throat competition both between local firms and against newcomers, strict rules and local practices and the psychological inhibitions of Japanese customers vis-à-vis foreign products.

Following the example of those Community firms which have already gained a foothold in the Japanese market, all Community businessmen eager to succeed in Japan will have to make a special effort to tailor their products and sales tactics to the dictates of an economic and social climate that differs in many respects from the situation in the Member States.

The EC Commission must give its backing and assistance to such drives which, over the next few years, will have to focus on improving the EC-Japan trade balance.

3.6. The dearth of EC manufacturing plants in Japan is clearly a source of concern.

Past explanations for this state of affairs are now well-known. However, as already mentioned in the case of EC exports to Japan, the situation is rapidly improving, partly as a result of the steps being taken by the Japanese government to liberalize trade, both on its own initiative and in connection with the Structural Impediments Initiative.

The Committee urges the Commission to conclude with its Japanese counterpart a set of rules and specific incentives to encourage the establishment of EC firms in Japan [2] and to flesh out the concept of 'reciprocity', which has so long been the subject of discussion.

Concurrently, the Commission should endeavour to persuade Community businessmen to try harder to

[1] It has been pointed out that one reason for successful Japanese penetration of ECU and US markets is the meticulous research carried out by Japanese entrepreneurs into Western consumers' requirements and preferences. EC firms by no means have a comparable insight into the Japanese consumer market.

[2] The Commission has already started to study the matter: see the recent publication—Guide to EC investment in Japan.

export to Japan's large and fast-expanding domestic market.

3.7. The Committee is concerned by the virtual absence of joint EC-Japanese business ventures in third countries, particularly the LDCs, which cater for these countries' development needs.

The increasing competitiveness of Japanese products on such markets, undermining long-established EC exports, highlights another weak link in the Member States' economies.

The EC authorities should keep a keen eye on the question of industrial cooperation in third countries at future talks with their Japanese counterpart and press for studies, seminars and practical proposals.

3.8. Particular attention should be focused on the problems associated with direct investment in Japanese manufacturing plant set up in the Community, partly because of the sharp increase in the number and size of such plants.

In principle the Committee would stress that direct Japanese investment in the Community must be welcomed, especially when it means a boost in 'technological value-added of Community origin [1] and the creation of new jobs.

Similarly, cooperation agreements and joint EC-Japanese business ventures, which are frequently accompanied by technological innovation and modern business leaderschip and management practices, should be encouraged.

Japanese manufacturing plant set up recently in the Community has frequently led to extensive transfers of know-how and organizational methods to the small and medium-sized EC sub-contractors who provide parts and components meeting the buyers' strict quality control rules [2].

However, careful Commission supervision will be needed to avoid distortion of competition caused by Member States trying to outbid each other in offering incentives. In addition, the Commission should ensure overall 'cohesion' between non-EC plants and Community-aided regional development schemes.

3.9. On the agricultural front, the EC and Japanese stances have many points in common. Both are under pressure from the US (whose agricultural policy is strongly protectionist) and other food producer countries to open their borders and cut farm-subsidies.

The EC and Japanese replies to such pressures have much in common. They can be summed up as follows:

— agreement to an all-round, but gradual, balanced and reciprocal reduction in subsidies,

— agreement in principle to the framing of multilateral rules governing international agricultural trade,

— willingness to review existing agricultural policies, while protecting the basic principles that underpin them. In both cases, these policies safeguard principles unrelated to the trade negotiations, such as preservation of the traditional rural values, regional and environmental protection and prevention of excessive dependence on food imports (particularly acute in Japan where the immediate post-war period is still a vivid memory).

Both the EC and Japan are convinced that the way ahead lies in strengthening the multilateral instruments concluded within GATT; both disapprove of the proliferation of calls for bilateral partial agreements on trade in specific agricultural products.

3.10. The Committee observes that EC and Japanese socio-economic problems in the long run have vital points in common.

For instance, the Ministry of International Trade and Industry (MITI), in presenting its internal reform programme to be implemented in the 1990s [3], listed among its key concerns improvement of quality of life, consumer protection, the emerging needs of an ageing society and protection of women.

These matters also receive considerable attention in the Community. The two parties could therefore profitably

[1] 'Technological value-added of Community origin' seems a more relevant criterion than 'minimum local content'.

[2] The Japanese government agency JETRO's International Economic and Trade Information Center undertakes periodical in-depth surveys of direct investment by Japanese manufacturing firms in the Community, the reasons prompting such investment and problems that have arisen. Its 6th Report 'Current situation of business operations of Japanese manufacturing enterprises in Europe', was published in March 1990. In this connection, the moves by Japanese businesses to set up Research and Development centres and 'Design Centres' in Europe are of interest; these centres seek to pinpoint the actual requirements of the Community market.

[3] Ministry of International Trade and Industry. 'International Trade and Industrial Policy in the 1990s ... Creating Human Values in the Global Age'. 5 July 1990.

cooperate closely in organizing a continuous two-way flow of experiences and monitoring the effectiveness of the chosen solutions.

The same holds good for the long-term development of the Japanese economy, flexible industrial structures, promotion of small and medium-sized businesses and energy and environmental policies.

In the Committee's view, exchanges of views and experiences in these fields could be accompanied by joint research and projects.

3.11. On the broader issue of economic relations and international policies, the Committee calls for a deepening and widening of EC-Japan relations to place them on a par with current EC-US and US-Japan relations.

The world's three main centres of political and economic power should also embark on a strategy of cooperation and coordination aimed at achieving the 'new international order'—on which the security, harmony and prosperity of all peoples hinge.

Done at Brussels, 25 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN

APPENDIX

to the Opinion of the Economic and Social Committee

TABLE 1

JAPAN's MERCHANDISE TRADE BY AREAS
(1977-89)

(US$M-Customs clearance basis)

	Total		Trade balance	with USA		Trade balance	with EC		Trade balance
	Exports	Imports		Exports	Imports		Exports	Imports	
1977	80 495	70 809	9 686	19 717	12 396	7 321	8 736	4 195	4 541
1980	129 807	140 528	(10 721)	31 367	24 408	6 959	16 650	7 842	8 802
1983	146 927	126 393	20 534	42 829	24 647	18 182	18 523	8 120	10 403
1986	209 151	126 408	82 743	80 456	29 054	51 402	30 675	13 989	16 685
1989	275 175	210 847	64 561	93 188	48 246	44 942	47 908	28 146	19 762

Source: Japan Institute for Social and Economic Affairs, Keizai Koho Center, Japan 1990—An international comparison, Tokyo 1990, page 36.

TABLE 2

DIRECT INVESTMENT: EUR 12

(Unit: million ECU)

Partner Country	Year				
	1984	1985	1986	1987	1988
Outward Flows					
USA	− 11 650	− 10 063	− 17 662	− 23 901	− 20 074
Japan	− 295	− 36	− 116	− 18	− 187
EFTA	− 929	− 760	9	− 1 826	− 2 306
Total World (1)	− 17 395	− 15 349	− 22 164	− 30 780	− 30 711
Inward Flows					
USA	2 919	1 766	2 484	2 356	606
Japan	390	646	445	1 502	1 461
EFTA	1 661	1 666	3 267	3 543	9 021
Total World (1)	6 177	5 637	6 840	12 578	14 278

(1) Excluding intra EUR 12 investments.

Source: EUROSTAT, Unit C3, Direct Investment of the European Community 1984 to 1988, Luxembourg 1990, pages 73 and 75 (UEROSTAT estimates).

Notes:

Outward flows:
A positive figure indicates a net disinvestment,
A negative figure indicates a net investment,
Excluding reinvested profits.

Inward Flows:
A positive figure indicates a net investment,
A negative figure indicates a net disinvestment,
Excluding reinvested profits.

TABLE 3

DIRECT INVESTMENT: EUR 12—USA—JAPAN

(Unit: million ECU)

	1984	1985	1986	1987	1988
made by:					
EUR 12	− 17 395	− 15 349	− 22 164	− 30 780	− 30 711
USA	7 128	1 233	− 8 796	− 8 605	− 1 997
Japan (1)	− 7 558	− 8 455	− 14 713	− 16 916	− 28 931
received by:					
EUR 12	6 177	5 637	6 840	12 578	14 278
USA	28 460	26 733	36 969	39 357	43 870
Japan (1)	− 13	841	230	1 010	− 410
net investment by:					
EUR 12	− 11 218	− 9 712	− 15 324	− 18 202	− 16 433
USA	35 588	27 966	28 173	30 752	41 873
Japan (1)	− 7 571	− 7 614	− 14 483	− 15 906	− 29 341

(1) These data are investments recorded in the Balance of Payments by the Bank of Japan, and not investments 'notified' to the Ministry of Finance.

Source: EUROSTAT, Direct Investment of the European Community 1984 to 1988, Luxembourg 1990, page 11

Opinion on the annual Report of the implementation of the Reform of the Structural Funds

(91/C 159/21)

On 28 January 1991, the Commission decided to consult the Economic and Social Committee, under Article 198 of the EEC Treaty, on the Annual Report of the Implementation of the Reform of the Structural Funds.

The Section for Regional Development and Town and Country Planning, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 16 April 1991. The Rapporteur was Mr McGarry.

At its 286th plenary session (meeting of 24 April 1991) the Economic and Social Committee adopted the following Opinion unanimously.

1. Introduction

1.1. Pursuant to Article 130d of the EC Treaty as amended by the Single European Act, a reform of the Structural Funds was undertaken in order to increase their efficiency with a view to promoting the Community's economic and social cohesion. The reform, which came into force on 1 January 1989 mainly focuses on the three Structural Funds [European Regional Development Fund (ERDF), European Social Fund (ESF), European Agricultural Guidance and Guarantee Fund (EAGGF)].

1.2. The reform is to involve the Community's other actions and financial instruments, e.g. the European Investment Bank (EIB), and Member States are obliged to conduct their economic policies in order to contribute to the cohesion implicit in the Single Act. Five principal Objectives were laid down·

— Objective I Promoting the development and adjustment of the regions whose development is lagging behind, where the Gross Domestic Product (GDP) per capita is less than 75% of the Community average.

— Objective II: Development of regions seriously affected by industrial decline.

— Objective III: Combatting long term unemployment.

— Objective IV: Facilitating the employment of young people.

— Objective V Reform of the Common Agricultural Policy.

Legislation giving effect to the reform was introduced, i.e. Regulation (EEC) No 2052/88 and Implementing Regulations (EEC) No 4253/88, 4254/88 and 4256/88.

1.3. In response to the Member States' applications and the submission of National Plans, the Community Support Frameworks were agreed. These map out the broad lines of the measures to be taken by the member States and the Community. These were followed in turn by the preparation of Operational Programmes by the national and regional authorities which were then implemented.

2. Objectives of the Annual Report [COM(90) 516 final]

2.1. Regulation (EEC) No 2052/88, Article 16 states that 'The Commission shall submit to the European Council, to the Parliament and to the Economic and Social Committee a Report on the implementation of this Regulation during the preceding year. In this report the Commission shall in particular indicate what progress has been made towards the achieving of the objectives set out in Article 1 and in concentrating assistance as required by Article 12.'

2.2. However, the Committee is of the opinion that the Commission has interpreted these objectives somewhat differently, namely 'to report on the application in practice of the basic principles laid down in the regulations, and to evaluate the working of the partnerships and the way the CSFs have been drawn up. The evaluation can be only limited ... since the implementation of the reform is a gradual process' (introduction). In particular, it states that 'its purpose is not to evaluate the full impact of the reform, particularly in relation to the objectives of economic and social cohesion spelt out in Article 130a of the Treaty' (p. 1 of Exec Summary).

3. General review of the principles of the reform and their implementation (Chapter 1)

3.1. *The principles of the reform and their implementation*

3.1.1. The Commission sees the interim results as largely positive (prompt submission of plans, effective

doubling of resources, partnership between the Commission and the national/regional authorities, consultations with the social partners).

3.1.2. However, the Commission is critical of certain aspects of the procedure:

— the Member States' plans do not provide a sufficient guarantee that the resources are truly additional;

— the procedure for preparing the plans has proved more cumbersome than initially expected.

3.1.3. The Committee shares this critical assessment by the Commission.

3.2. *Assessment of the operational phase for the five goals (Chapter 2)*

3.2.1. The annual report outlines the guidelines drawn up by the Commission, e.g. necessity for synergy between Funds, emphasis on production rather than infrastructure, concentration on a limited number of objectives. It outlines the various planning processes in the Member States and the negotiations which led to the agreement on the Community Support Frameworks.

3.2.2. Resources were allocated to the five goals as follows:

a) Resource allocation, by country, per applicable budget periods

	Objective 1 (millions ECU) (1989-93)	Objective 2 (millions ECU) (1989-91)	Objective 3 & 4 (millions ECU) (1990-92)	Objective 5b (millions ECU) (1989-93)	Total (millions ECU)
Greece (1)	6 667				6 667
Spain	9 779	735	563	285	11 362
France	888	700	872	960	3 420
Ireland (1)	3 672				3 672
Italy	7 443	265	585	385	8 678
Portugal (1)	6 958				6 958
UK	879	1 510	1 025	350	3 678
Belgium		195	174	33	402
Denmark		30	99	23	152
Germany		355	573	525	1 453
Luxembourg		15	7	3	25
Netherlands		95	230	44	369
Sub-Total	36 200	3 900	4 128	2 607	46 835
Community Initiatives	2 100	500	217	188	3 005 (2)

b) Resource allocation, other budgetary periods, no country breakdown possible

		(1992-93)	(1989) (1993)		
		2 805	1 353		
			1 752		5 910
Other					1 150
5a					3 415
Total	38 300	7 205	7 450	2 795	60 315

(1) Greece, Ireland and Portugal are Objective 1 areas entirely.
(2) Approved programmes only (e.g. Stride, STAR, Prisma).

3.2.3. As regards Objective 1 regions, the Commission notes that:

— stated needs were greatly in excess of available funds;

— some Member States (Spain, Greece, Ireland) made no use of EIB loans in their plans;

— although basic infrastructure accounted for half of ERDF funding, the situation varied considerably from one Member State to another (see Annexes IV and VII).

3.2.4. As regards Objective 2 regions, the Commission emphasizes that:

— aid should focus on productive investment, as it did in most Member States (the exception being Spain and the UK);

— the high level of existing commitments meant considerable cuts for the new measures;

— there were considerable differences between Member States in the importance attached to the different priorities (see Annex V).

3.2.5. For Objectives 3 and 4, the Commission notes that:

— demand far exceeded the resources available;

— the plans mainly provided for schemes to assist young people;

— there was a danger of overlapping where projects covered several objectives.

3.2.6. Aid for Objective 5b regions concentrated on rural development, mainly to support small firms, nature and the environment, and training schemes.

3.3. *Thematic analysis of Community assistance (Chapter 3)*

3.3.1. In the area of basic infrastructure, priority was given to transport, telecommunications and energy (see Annex VIII) (50% of all resources for Objective 1 regions).

Investment also covered strengthening of productive sectors, development of human resources and improvement of farm structures.

3.4. *Implementing arrangements and budgetary implementation*

3.4.1. The Commission is striving to step up controls with the introduction of a code of conduct. It has set up a system of monitoring committees (not described in detail) to monitor implementation of the CSFs. The Commission focuses on the technical assistance available to help implement the Fund reforms.

4. General Observations

4.1. The Committee notes, with satisfaction, that the Commission has acquired not only a statutory role within the CSFs, but has played an active role, in the period covered by the first annual report, in the setting up, coordination and implementation of the CSFs. The Committee agrees that the Commission should exercise greater control over future Community policies in this area. At the same time, the Commission should pursue its efforts to have the voice of the regions heard in this process, thus promoting decentralisation and transparency.

4.2. The Committee considers that the report gives an accurate but not a sufficiently thorough or systematic account of the actions taken by the Commission and the agreements reached with the Member States towards the implementation of the reforms.

4.3. The Committee notes the report's statement that 'the Community needed resources to respond adequately to the requirements of Article 130A' and that 'adequate financial resources were required... for a genuine economic impact...' and that 'these two concerns were satisfied'. The Committee does not feel that such satisfaction was justified. The Committee, therefore, recommends that such statements should in future be accompanied by more explicit information which can support them. This is further evidenced by the findings of the Fourth Periodic Report which provides confirmation of persistent and widespread differences between the regions and shows that transfers through the Funds can only have a limited impact on income disparities even after a doubling of the Funds.

4.4. The Committee notes that this first report is confined exclusively to the preparation stage of the CSFs. This should not be a precedent for future reports. The Committee recommends that future reports give a clear and thorough analysis of the implementation of the CSFs, the Operational Programmes and the links between the Funds themselves and EIB loan funds. Such analysis should include comparisons across regions and Member States in order to identify good and bad procedures in the interests of achieving the Community objectives. The report should detail the extent to which the various tasks of the Funds are being achieved and

the manner in which the endogenous potential is being mobilised.

4.5. Since the report is confined to the preparatory stage of the CSFs, there is no indication on whether progress has been made via the reform of the Funds in achieving the aim of social and economic cohesion through reducing disparities between the regions. The Committee requests, therefore, that future reports are not confined to the technical aspects of the implementation of the reform, but also give an evaluation of the impact of the reform in realising the goal of economic and social cohesion across the regions of the Community.

4.6. The Committee notes that there is considerable scope for overlap in the various reports of the Commission, while at the same time there is the possibility that these reports will not give the entire picture. The Committee therefore asks the Commission to review the overall reporting procedure, as presently required under the regulations, to indicate the respective roles of the Annual Reports on the Implementation of the Reform, the Periodic Reports and the Annual Reports on the individual Funds, so that a comprehensive reporting procedure can be assured without undue overlap — notably in view of future reforms.

4.7. Although the goal of cohesion is interpreted in the report as reducing the disparities between the different regions, no attempt is made to indicate any particular level of reduction or any time scale for such, or the adequacy of the structural Funds in achieving this goal. The Committee notes with concern the findings of the Fourth Periodic Report that disparities between the regions of the Community are, in general, growing. The Committee recommends that in order that policy makers be taken seriously by the public and that policies can inspire confidence, targets should be quantified, realistic time schedules be set out and the required budgetary implications be quantified and provided.

4.8. Since the report does not give any detailed information on the impact of the Single Market on the regions, the Committee remains unconvinced by summary statements, such as: 'growth of the least-favoured regions has been promoted by the momentum of the internal market.' The Committee asks the Commission to give clearer evidence on this point.

4.9. The Committee notes that the Reforms have been implemented within a rapidly changing environment, Single Market, common agricultural policy (CAP) reforms [accentuated by the General Agreement on Tariffs and Trade (GATT) negotiations] and the move towards Monetary Union, which will have an unequal impact on the core and the peripheral regions of the Community. The setting of appropriate baselines and ongoing effective monitoring is essential if the impact of the reforms is to be properly evaluated.

5. Specific Observations

5.1. *Partnership*

5.1.1. The Committee shares the commitment to the partnership approach and appreciates the Commission's efforts to implement it, even though time was very limited. The Committee suggests, however, that indications should be given on the degree of decentralisation which existed in each Member State in drawing up the CSFs and the Operational Programmes and in their subsequent implementation. A clearer indication should be given on how the partnerships between the different levels of authority were constructed and how effectively they operated in the different Member States. It further suggests that summary reports, especially on the findings of the monitoring committees, should be given in the annual reports. In order to evaluate eventual gaps between the proposals made on the local and regional level and the way in which these proposals are presented by the Member States, the Commission should continue to attribute great attention to the proposals of the local and regional authorities and help them to use their influence effectively.

5.1.2. The Committee, while noting that the period of consultation between the various partners was very limited due to the need to finalise the CSFs, feels that dialogue between the various authorities on the reform of the Funds should not be confined to the period during which the CSFs are being prepared. It therefore suggests that regional and local authorities should be encouraged to engage in a wide ranging debate with all the relevant interest groups in the region on their role and priorities in Community programmes.

5.2. *Role of the Social Partners*

5.2.1. The Committee notes with satisfaction the efforts made by the Commission to promote the participation of the Social Partners, especially by organizing meetings on the CSFs at the regional level. However, the Committee is not satisfied with the consultation of

the Social Partners on the national and regional level and recommends to the Member States systematic consultation of the social and economic interests at national and regional level as a means of strengthening synergy. This consultation should include the elaboration and implementation of programmes. The involvement of the social partners is essential in terms of choices for investment.

5.2.2. The Social Partners must have the possibility to intervene, notably on the following issues:

— setting up the priorities for regional development objectives and choosing the right types of intervention. The mix of infrastructure and productive investments must take into account the specific regional conditions;

— assure greater efficiency in the practical implementation of Fund intervention.

5.2.3. The Committee also recommends that the Social Partners benefit from technical assistance in order to help develop their role in regional development and put them in a position to forward their own proposals for the regional programmes.

5.2.4. The Committee notes again, that, apart from the Social Fund Committee and the consultation of the Social Partners on the European level according to art. 31.2 of Regulation (EEC) No 4253/88, the role of the Social Partners is not clear. The Committee asks the Commission to report specifically on the efforts made by the Member States and the Commission to pursue dialogue with the Social Partners and other interest groups at the national, regional and local level.

The Committee recommends that the role of the social partners in the new Regulations be fully recognized at all levels.

5.3. *Additionality*

5.3.1. The Committee has always strongly supported the principle of additionality and welcomes the Commissions vigorous efforts to implement it. The Committee deplores the fact that some Member States have not yet given sufficiently satisfactory answers as to the application of the additionality principle. The Committee expects a full account of the application of the principle in each Member State in the next report.

5.3.2. The Committee is of the opinion that supplementary information on the application of the additionality principle could be obtained from the monitoring committees. It therefore proposes that this be assigned as one of the responsibilities of these committees. It also suggests that the views of the regional and local authorities be solicited on this important subject.

5.3.3. The Committee accepts that there are operational problems in assuring that the principle is applied in Member States. It also recognises that there is not a penalty system in operation for situations where breach of the principle can be clearly demonstrated. The Committee therefore proposes that the Commission redefine the principle of additionality and use all means in its powers to guarantee its effective implementation.

5.3.4. The Committee is concerned that the national or regional authorities do not always take up the full amount of the Structural Funds allocated to them.

Where, in particular cases and for justifiable reasons, full use has not been made of the funds allocated to development programmes of a particular region the Commission should make every effort to ensure that the funds are spent in that region rather than lost. Eventually the CSFs in question may have to be redefined, for example with recurse to technical and organisational advice and assistance. This could also lead to a new mix of financing, including locally generated funds.

5.3.5. The Committee recommends that Community Initiatives should not be controlled by Member States and used to top up Operational Programmes. The possibility that Community Initiatives may be limited or under-used through Member State inability to provide a matching contribution could be overcome by allowing a role for other sources of matching funding.

5.4. *Sub-regional breakdown of fund allocations*

Since the regions designated under Objective 1 are often large, the report should contain more detailed information on the distribution of funds within these regions. The Committee is concerned that the goal of social and economic cohesion should be pursued at the sub-regional as well as at the regional level, as specified by Article 12, items 4 and 6 of Regulation (EEC) No 2052/88 and Article 130b of the Single European Act which calls for special attention to the least prosperous areas even within Objective 1 regions.

5.5. *Administrative procedures*

The time schedule for the preparation of CSFs was extremely short. Combined with this the actual procedures appeared to be rather complicated. The Committee is concerned that the resources of the Funds might not be spent adequately from a qualitative point of view. The Committee would have appreciated some reference in the report to the procedures and the difficulties encountered. The Committee requests the Commission to ensure that the time schedule for future CSFs will not be so short and that the administrative procedures at the Community, national and regional levels will be better coordinated. The Committee suggests that 'model procedures' be identified from the many CSFs which were prepared.

5.6. *Independent evaluation*

The Committee supports the Commission in its efforts to develop a reference framework for evaluation and to ask independent experts to carry out sample checks on the implementation of the reform. The Committee recommends that the findings of these experts be included in the annual reports. The Commitee notes that assessment of the implementation of the CSFs are currently being carried out. The Committee also recommends that the findings of these evaluations be used to amend the implementation of the CSFs where it is deemed necessary.

5.7. *Assessment and Monitoring committees*

5.7.1. According to Article 25 and 26 of Regulation (EEC) No 4253/88, Monitoring and Assessment are closely linked but are nevertheless distinct and separate. Whereas the Monitoring function is the responsibility of the Monitoring Committee set up within the framework of the partnership, the Assessment function is much more detailed requiring a greater degree of independence. The Assessment function is much more detailed and should refer to macro-economic indicators and descriptive and qualitative analysis. The *ex-ante* and *ex-post* assessment of measures which is specified must require a greater degree of independence than the monitoring function. The assessment procedures laid down in the CSFs seem to be at variance with the corresponding articles in the regulations.

5.7.2. The Committee, therefore, urges the Commission to give, in the next annual report, a clearer view of the interplay, in practice, between the above mentioned committees. The Commission should, in this context, not only coordinate the work of these committees, but it should assure a maximum of clarity with respect to their roles and the discharge of their responsibilities.

5.7.3. The Committee notes with interest the particular role accorded the Social Partners in Ireland in reviewing the implementation of the CSF and feels that this is a model which could be replicated elsewhere in the Community.

5.8. *Integrated development*

5.8.1. The Committee reaffirms its commitment to the integrated approach to development which requires a multifund approach, the integration of instruments, the application of funds across the different functional areas. The Committee recommends that the monitoring and assessment procedures pay particular attention to these various aspects of integration at the local level. An evaluation of the degrees of integration achieved and the obstacles to integration at the regional and local levels should be included in the annual reports.

5.8.2. It is of little importance to the region or local area whether the ERDF or ESF are involved in providing the funds for development. Such regions and areas are, however interested that their local or regional development plan is being approved on its merits in meeting development objectives, regardless of which Fund the grant comes from. In the light of this, the Committee invites the Commission to review the necessity of separate Funds for future proposals on the reform of the Funds.

5.8.3. The Committee notes that the sectoral expenditures differed between Member States. There is little illumination of the reasons for this in the annual report. It may reflect different stages of development in the regions or approaches to achieving the socio-economic objectives. The Committee is concerned that these unanswered questions raise doubt about the coordination of regional policy in the Community for which the Commission has responsibility. The Committee requests that a fuller explanation of these differences and the consistency of regional policy throughout the Community be included in future annual reports.

5.9. *Compatibility of structural policy and competition policy*

The Committee does not want to comment in depth on this point, but draws attention to the possible contradiction between Community policies in this area. The Committee recalls that it has adopted a major Opinion on 'National regional development aid [1] which highlights this problem. The Committee would like to see an in-depth study of this subject, focusing in particular

[1] OJ No. C 75, 3. 4. 1986.

on the consistency of competition policy with structural policy. The Committee is familiar with the Commission communication on industrial policy in an open and competitive environment [COM(90) 556] on which it is preparing an Opinion. With a view of achieving social and economic cohesion the Committee stresses the need for competition policy to be set out in conformity with EC regional development policy.

5.10. *Environmental policy*

5.10.1. The Committee notes with satisfaction that environmental objectives play an important role in the Community frameworks. It would like to see a fuller account of the impact of the structural Funds on the improvement of the environment and the links with other Community policies in this area.

5.10.2. The extent to which Environmental Impact Assessments have been applied to the various measures and operations are not referred to in the report.

5.10.3. The Committee would appreciate in future reports information regarding the extent of *ex-ante* assessment on the environmental impact of measures.

5.11. *Mix of loans and grants*

The report shows the mix of loans and grants in each Member State and by implication suggests that there were greater opportunities for profitable projects in some countries than in others. The Committee would welcome a greater elaboration on this issue in future annual reports.

5.12. *Technical assistance*

The Committee note that only limited use has been made of technical assistance. It calls on the Member States to make much greater use of the facilities available to satisfy the latent demand for such assistance from the regional and local level and facilitate access to technical assistance. The use of technical assistance should be an integral part of the implementation of partnership.

5.13. *Inclusion of 5a measures in the Structural Funds*

The measures applied under Objective 5a are 'horizontal' measures designed to improve the efficiency of agricultural structures in mountain and less favoured areas and were widely applied prior to the doubling of the Structural Funds. These measures which are becoming increasingly important as a means of direct income support to farmers are now included in the Structural Funds envelope. This procedure is causing particular problems where the Structural Funds are applied on an approximate *per capita* basis at the subregional level. The implication of this is that in the so called 'less-favoured-areas' where there is a high concentration of small farmers and where direct income payments are quite significant, there can be underexpenditure on structural measures designed for economic development *per se*.

5.14. *Take up of Global Grants*

The Regulations refer to Global Grants and to 'intermediaries' who 'must be present or represented in the regions concerned and shall associate adequately the socio-economic interests directly involved'. [Ref. Article 6 of Regulation (EEC) No 4254/88]. The Committee expresses its concern at the low level of take up of this type of funding, which could avoid much of the procedural complications, and at the lack of consultation with the socio-economic interests where this type of funding was taken up. The Committee requests the Commission to examine closely the take up and application of Global Grants and the degree of involvement of the socio-economic interest in the areas concerned and to report on this issue in the next report.

5.15. *The Classification of regions*

The Committee notes that whereas the Council decided on the regions to qualify for Objective 1, a more elaborate procedure was followed by the Commission in selecting Objective 2 and 5b regions. The Commission should report on the application and the usefulness in practice of selection procedures for eligible regions in order to provide more clarity. The Committee requests, in addition, the Commission to explain the process through which the socio-economic criteria were applied in determining the indicative allocation for the regions.

5.16. *Information*

The Committee supports the requirement for wide ranging information and awareness campaigns to be organized among recipients and regrets that the report does not detail the extent of such campaigns.

6. Conclusions and Recommendations

6.1. In its first annual report the Commission did not yet dispose of all information to fully meet all the regulation requirements. This is a further symptom of an underlying and fundamental difficulty with the reformed Structural Funds. The Committee calls for these shortcomings to be rectified in the next report, especially as far as operational details of the implementation, cross-regional analysis and the fund impact on cohesion are concerned.

The Committee notes that the Community has moved a long way to contribute to the achievement of the overriding goal of economic and social cohesion. It recalls that it has, on various occasions [1] made its proposals in this respect. The Committee is still concerned that the reformed Structural Funds as presently constituted might not achieve the aims of cohesion as laid down in the Singel European Act.

6.2. The Committee shares the concern of those who have advanced a number of reasons for a prospect of failure in achieving the aims of the reforms, among which the following are considered to be the most significant:

— inadequate research and analysis on the diversity of regions and their needs; continuing Member States' expectation of a guaranteed 'quota' for allocations from the Funds, a resistance to the new approach and a seeming failure to respect the principle of additionality,

— insufficient Fund resources to meet the effects of the internal market and increased pressure toward the spatial concentration of economic activity, the increase in the mobility of firms, labour and capital and the consequent enhanced economic and social risk to the weaker regions,

— inadequate implementation of procedures in the area of partnership and inadequate association of the social and economic organizations at the regional and local level.

These reasons must be clearly analyzed with a view to reform of the Funds after 1993.

6.3. The Committee therefore recommends that:

— the interim report to be published towards the end of 1991 contain maximum information on the implementation of the Funds and the achievement of cohesion as required by the Regulations,

— discussions and negotiations on the future of the Structural Funds commence immediately, fully involving the Social Partners who will be required to play a major role with responsibility in both the preparation and implementation of the reforms with the various administrative tiers,

— where the principle of additionality has not been respected, that the reasons be clearly identified and ways found of ensuring adherence to this principle in the future,

— the Commission address the problem of the complexity of procedures in the application of the reforms and investigate the practicality of one consolidated Fund in the case of Objectives 1, 2 and 5 b), and

— the Commission ensure the coordination of regional policies in the Community and that particular attention be given to the following:

a) Initial and analysis to determine the real needs of the regions and the setting of targets based on a clear definition of cohesion;

b) Consultation with the Social Partners and their involvement in *ex-ante* and *ex-post* assessment of measures;

c) Adequate budgetary resources taking into account the regional impact of the CAP reform, the Single Market, and EMU;

d) Appropriate amendments to the Legislation;

e) The establishment of clear socio-economic impact indicators;

f) A more flexible approach to regional development and more selective criteria which will take into account the diversity of the regional needs and potentials;

g) Further assessment of the Rural Problem and the co-ordination of regional and rural policies;

h) Co-ordination of regional policy with other relevant Community Instruments, e.g. Transport, Environment, Agriculture, Telecommunications, support for SMEs, etc.;

i) A study of the fiscal consequences for companies of structural Fund financing.

6.4. The Committee is prepared to play its role in the process of the future reforms of the Funds, and has taken the decision to prepare an Own-initiative Opinion which will notably reflect on the following areas:

[1] OJ No C 356, 31. 12. 1987.

— more precise operational aims in the context of a clear definition of economic and social cohesion and the budgetary means and timescale for bringing it about,

— new design of the role of the Social Partners in application of Article 118b and implication of all relevant interest groups in the process of monitoring and assessment,

— coordination of regional policy with relevant Community instruments and policies in the fields of agriculture, transport environment, etc.

Done at Brussels, 24 April 1991.

The Chairman

of the Economic and Social Committee

François STAEDELIN