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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive relating to motor vehicles and their trailers with regard to the transport of dangerous goods by road and amending Directive 70/156/EEC in respect of the type-approval of motor vehicles and their trailers' [1]

(97/C 296/01)

On 13 February 1997 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned 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 4 June 1997. The rapporteur was Mr Kubenz.

At its 347th plenary session (meeting of 9 July 1997), the Economic and Social Committee adopted the following opinion by 115 votes to three, with one abstention.

1. Preamble

The Member States (except Ireland) are contracting parties to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR Agreement) [2].

1.1. Directive 94/55/EC [3] transposed the provisions of the ADR Agreement into Community law as of 1 January 1997. The directive applies to the transport of dangerous goods and contains provisions relating to vehicle construction and equipment within the Community. However, it does not ensure that the construction characteristics of vehicles used to transport dangerous goods are accepted by other Member States. In order for this to be accomplished, a separate directive, within the purview of the European type-approval procedure laid down in Directive 70/156/EEC, needs to be accepted so as to provide for the free circulation of vehicles within the Community on the basis of harmonized construction characteristics.

1.2. This directive is therefore a companion directive to Council Directive 94/55/EC and lays down special provisions for

— the design and construction of the base vehicle intended for the transportation of dangerous goods; and

— technical specifications regarding

- electrical equipment,
- braking system (e.g. ABS and endurance braking system),
- fire risk prevention, and
- speed limitation.

1.3. These provisions are based on the provisions of Council Directive 94/55/EC (to which a direct reference is made in this directive). Compliance with all the relevant technical requirements of this directive will

[1] OJ C 29, 30. 1. 1997, p. 17.
[2] ECE/TRANS/110 (Vol I and II), Geneva 30. 9. 1957.
[3] OJ L 319, 12. 12. 1994, p. 7 (Economic and Social Committee opinion, OJ C 195, 18. 7. 1994, p. 15) annexes OJ L 275, 28. 10. 1996, p. 1.

ensure that the vehicles concerned can circulate freely within the internal market of the EU. Thus when a vehicle type is approved in accordance with this directive, Member States will be able neither to prohibit manufacturers from offering it for sale, nor to refuse its registration or entry into service for reasons relating to its construction.

1.4. Like all other separate directives relating to the type approval of commercial vehicles — except those on air pollution and noise emissions — this new directive will be based on optional harmonization. Member States may require that only the provisions of the separate directive apply. Alternatively they may maintain national legislation on this matter, in which case the manufacturer can choose between this and the harmonized provisions. Member States are free to oblige a manufacturer, who has not opted for EC type-approval, to comply with their national requirements.

1.5. This directive does not affect national or Community legislation relating to the use of such vehicles. The administrative provisions of the draft proposal are aligned with those of Directive 70/156/EEC, in order to ensure its continued applicability.

1.6. This directive will remain optional until such time as the framework Directive 70/156/EEC becomes mandatory for commercial vehicles in all Member States. Whenever a manufacturer chooses to avail himself of the provisions of this directive, he will be permitted to do so, and vehicles which meet the technical requirements of the directive will be allowed to circulate freely in the other Member States.

2. Introduction

2.1. The object of this proposal for a directive is to establish the technical requirements for the construction of motor vehicles and their trailers used for the transport of dangerous goods by road. The directive will help to ensure that the technical conditions obtain for the safe transport of dangerous goods.

2.2. The draft proposal lays down requirements on the basis of Article 100a of the Treaty establishing the European Community (measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market) and provides for total harmonization of the relevant technical provisions of vehicles intended for the transport of dangerous goods by road. This approach is consistent with the general approach followed in the motor vehicle sector as established in the framework directive regulating the type-approval of motor vehicles in the European Union [Council Directive 70/156/EEC [1] of 6 February 1970, as last amended by Directive 96/79/EC of the European Parliament and the Council [2]].

3. General comments

3.1. The Economic and Social Committee welcomes the Commission proposal to harmonize the legal provisions governing the type-approval of motor vehicles and their trailers by amending Directive 70/156/EEC and by issuing a separate directive on type-approval of motor vehicles and their trailers with regard to the construction of vehicles designed for the transport of dangerous goods.

3.2. As the Council has now adopted more than thirty-six separate type-approval directives for category N vehicles, the time has come to add type-approval provisions for vehicles designed to transport dangerous goods, too.

3.3. This means that the type-approval procedure is applicable to basic mass-produced vehicles. The superstructures and the vehicle as a whole must be submitted to an officially approved expert before they can be brought onto the market for the first time since the special licensing system (what is known as the B3 certificate) is to be maintained as a basic rule [3].

3.4. It is obviously useful to have a single Community-wide type-approval procedure for motor vehicles. The derogations for individually built and custom-made vehicles are sensible, since they take account of:

— vehicles manufactured in several stages;

— different variations and versions of a basic model;

— limited-edition vehicles.

3.5. The Committee agrees with the objectives of the proposed directive, but would point to the absolute need to standardize the scope of ECE and EC provisions.

4. Specific comments

4.1. The Economic and Social Committee would ask the European Commission, and particularly DG VII, to

[1] OJ L 42, 23. 2. 1970, p. 1 (Economic and Social Committee opinion, OJ C 48, 16. 4. 1969, p. 14).
[2] OJ L 18, 21. 1. 1997, p. 7.
[3] The initial B3 certificate may still be issued solely by the national authorities responsible for the licensing of the vehicle. Thus, an initial B3 certificate for a 'whole vehicle' manufactured in Germany may not be issued if the vehicle is to be licensed in France.

take appropriate steps to prevent the benefits of this directive, and of Directive 94/55/EEC as amended by Directive 96/86/EC[1], from being undermined by divergent construction specifications issued by the competent authorities or other organizations.

4.2. It must be ensured that the scope of ECE and EC provisions can be regarded as equivalent.

(1) OJ L 335, 24. 12. 1996, p. 43.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX

Directives and agreements on the transport of dangerous goods by road

1. **ADR**

ADR — the European Agreement concerning the International Carriage of Dangerous Goods by Road.

The agreement has been ratified by thirty-two countries. It contains detailed safety provisions to be applied in the transport of dangerous goods between the contracting states. Where it has not been ratified, national law applies in line with the principle of territoriality. The ADR made it necessary to adopt special arrangements for the single market. It has also meant partial harmonization of national provisions.

The general section of the agreement regulates the legal relationships between the contracting countries, while annexes A and B deal with licensing dangerous goods for transport, and provisions governing the construction and operation of the vehicles and containers used in such transport. The dangerous substances listed in annex A are put into thirteen classes. Marginals indicate the substances approved for transport and mandatory packaging and transport conditions.

Annex A has nine appendices (two of which are still open) which lay down testing procedures for substances and packaging and provisions relating to danger labels. Annex A relates mainly to the consignor of dangerous substances and items. Annex B contains general and specific regulations for the construction, equipment and operation of vehicles, containers, tanks and receptacles used in the transport of substances and items pursuant to Annex A.

Annex B has eight appendices which largely contain construction and operation specifications for all types of tank and the electrical fittings of the vehicles and approval provisions. Annex B relates mainly to the transporter of dangerous goods.

2. **The EC framework directive (94/55/EEC)**

The ADR framework directive (94/55/EEC) transposes the ADR in its entirety into Community law. The directive is based on Article 35 of the Treaty establishing the European Community and lays down arrangements for intra-Community traffic.

It is important to recognize that a type-approval granted under this directive is valid at national level only. Hence the need for a separate directive on vehicles used to transport dangerous goods, based on Article 100a of the Treaty establishing the European Community (free movement of goods).

A separate directive on the type-approval procedure applicable to motor vehicles and trailers used to transport dangerous goods by road would fully meet this concern expressed by business and industry. For these reasons, it is essential to adopt a type-approval directive based on Article 100a of the Treaty

establishing the European Community. In order to do this, the directive, like all other directives relating to motor vehicles, should be based on Directive 70/156/EEC in respect of the type-approval of motor vehicles and their trailers. This arrangement means that only one operating licence needs to be obtained for a basic vehicle and this must then be recognized in all 15 Member States.

3. ECE — United Nations Economic Commission for Europe

The Economic Commission for Europe was established by the United Nations in December 1946 with its headquarters in Geneva. Similar UN bodies exist in other parts of the world. The ECE's remit is to develop and coordinate the economy in Europe. Transport policy has its own department (WP) with divisions for general transport policy, railways, road transport and internal waterway transport. The transport department's remit comes from the inland transport committee. Air transport is an issue only insofar as it affects other transport modes. The ECE has no executive rights, drawing up recommendations, resolutions and conventions. The ECE seeks advice from the main accredited international interest groups.

4. ECE provisions for motor vehicles

The legislation enacted under the Agreement of 20 March 1958 concerning the adoption of uniform conditions of approval and reciprocal recognition of approval for motor vehicle equipment and parts delegated this work to WP 29, which thus has the remit for all provisions relating to motor vehicles. At the moment, WP 29 is working on a proposal on uniform provisions for the type-approval procedure applicable to motor vehicles used for the transport of dangerous goods by road.

5. WP 15 — Working Group on the transport of dangerous goods

WP 15's remit includes the ADR provisions (European Agreement concerning the international carriage of dangerous goods by road).

6. Definitions in line with Annex II of Directive 70/156/EEC

Vehicle categories

Category M — motor vehicles with at least four wheels used for the carriage of passengers;

Category N — motor vehicles with at least four wheels used for the carriage of goods;

Category O — trailers (including semi-trailers).

Each category is divided into subcategories, such as category N1, which encompasses vehicles used for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes.

7. Definition of a base vehicle

Article 2 of Directive 70/156/EEC defines a base vehicle as 'any incomplete vehicle, the vehicle identification number of which is retained during subsequent stages of the multi-stage type-approval process'.

8. Equivalence list

Annex IV of Directive 70/156/EEC lists the requirements for the purposes of vehicle type-approval. Part 2 of this annex determines which ECE provisions are recognized as being equivalent to individual EC directives. Thirty-five separate directives dealing with motor vehicles are deemed to be equivalent.

The aim of directives and the provisions relating to motor vehicles is to frame their scope and the requirements for approving vehicles and vehicle parts in such a way that the individual provisions can be incorporated into the equivalence list.

This is only possible where the scope and the technical requirements are deemed to be identical.

Note that the vehicle manufacturer thereby has the advantage that vehicles need only be checked once, yet once the findings of this technical examination have been consolidated, approval may be granted on the basis of the relevant EC directive and the corresponding EC provision.

Technical specifications for vehicles depending on the goods being transported

Technical specifications		Type of vehicle according to marginal 220 301(2)				
		EX/II	EX/III	AT	FL	OX
220 510	Electrical equipment					
220 511	— wiring		×	×	×	×
220 512	— battery master switch		×		×	
220 513	— batteries	×	×		×	
220 514	— tachographs		×		×	
220 515	— permanently energized installations		×		×	
220 516	— electrical installation behind cab		×		×	
220 520	Braking					
220 521	— Anti-lock		×	×	×	×
220 522	— endurance		×	×	×	×
220 530	Fire risks					
220 531	cab: materials cab: thermal shield	×	×			×
220 532	— fuel tanks	×	×		×	×
220 533	— engine	×	×		×	×
220 534	— exhaust system	×	×		×	
220 535	— endurance braking system		×	×	×	×
220 536	— auxiliary heating	×	×			
220 540	Speed limitation	×	×	×	×	×

Type of vehicle according to marginal 220 301

EX/II for vehicles intended for the carriage of explosives as type II transport units (1).

EX/III for vehicles intended for the carriage of explosives as type III transport units (1).

FL for vehicles intended for the carriage of liquids with a flash-point of not more than 61 °C or flammable gases, in tank containers of more than 3 000 litres capacity, fixed tanks or demountable tanks and for battery vehicles of more than 1 000 litres capacity intended for the carriage of flammable gases;

OX for vehicles intended for the carriage of substances of class 5.1, marginal 2501, item 1°(a), in tank-containers of more than 3 000 litres capacity, fixed tanks or demountable tanks;

AT for vehicles intended for the carriage of dangerous goods in tank containers with a capacity of more than 3 000 litres, fixed tanks or demountable tanks and for battery vehicles of more than 1 000 litres capacity, other than those of types FL or OX.

(1) Marginal 11 401 determines the quantities of a dangerous substance which may be carried in a vehicle of type I/II/III:
Type I: no special requirements, minor quantities;
Type II: certain requirements, average quantities;
Type III: larger quantities, stringent requirements.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on transportable pressure equipment' (1)

(97/C 296/02)

On 14 February 1997 the Council decided to consult the Economic and Social Committee, under Article 75(1) of the Treaty establishing the European Community, on the above-mentioned 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 4 June 1997. The rapporteur was Mr Lerios.

At its 347th plenary session (meeting of 10 July 1997), the Economic and Social Committee adopted the following opinion by 71 votes to three with eight abstentions.

1. Outline of the proposal

The proposal aims to ensure the safe transport of transportable pressure equipment and the free circulation of such equipment within the Community market.

It sets out to achieve this by introducing new procedures for periodic inspection of all existing pressure equipment, as described in Annex V Part II, and procedures for assessing conformity with the modules described in Annex V Part I covering all new pressure equipment.

2. General comments

2.1. Although the Council has already ensured a high level of safety in the transport of dangerous goods by adopting Directive 94/55/EC of 21 November 1994 (on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road, ADR) and Directive 96/49/EC of 23 July 1996 (on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail, RID), there is no such guarantee for the free movement of this type of pressure equipment from country to country, including refilling and reuse, inasmuch as there are additional national requirements relating to the above.

These restrictions would be eradicated if there were a harmonized system of approvals for such equipment at the time of periodic inspections in use and when subsequently attaching the appropriate approvals and marks issued by the notified inspection bodies which will then be recognized by all Member States.

2.2. From this it is clear that, if the internal market in transportable pressure equipment is to be completed, action at Community level is required. The ESC therefore endorses the Council's proposal for a directive inasmuch as the proposed directive is the result of consultations held by the Commission with both Member State governments and European trade federations (gas industry, liquid-gas association, chemical industry, representative bodies of inspecting agencies and the European standardization body CEN).

3. Specific comments

3.1. The ESC feels that rewording certain articles of the Commission document would facilitate implementation of the directive:

3.1.1. By removing the word 'refillable' from the second line of Article 2, gas cartridges, which are not refillable, will automatically be included in the directive, thereby ensuring their free circulation.

3.1.2. Article 13 calls upon the Member States to adopt and publish the laws, regulations and administrative provisions necessary for them to comply with the directive before 30 June 1998 and to implement these provisions from 1 January 1999. The ESC feels that depending on the availability of the relevant standards and specifications, these deadlines may require review.

3.2. The ESC feels it would be useful to include the following specific technical data either in this directive or in the ADR:

a) procedures for filling liquid gas cylinders and liquefied gas tanks, recommended and checked by notified inspection bodies,

b) operating specifications — construction — certification and marking of valves on the above-mentioned cylinders and tanks.

3.3. Implementing this directive will bring about a reduction in costs, i.e. some economic benefit for the manufacturers of pressure equipment, because, in future, approval and marking will take place only in one Member State and the equipment will then circulate freely throughout the EU. It follows that, with competition, the price of such equipment will drop. The ESC hopes that the industry (equipment manufacturers, i.e.

(1) OJ C 95, 24. 3. 1997, p. 2.

of cylinders, tanks and other components, and liquefied gas producers and distributors) will pass on the resulting economic benefit to consumers in the end price of its products.

Brussels, 10 July 1997.

The President
of the Economic and Social Committee
Tom JENKINS

APPENDIX

to the Opinion of the Economic and Social Committee

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

Insert two new points 3.1.3 and 3.1.4

'3.1.3. Add the following new recital: "Whereas the freedom of movement and use in the Member States of transportable pressure equipment manufactured in compliance with Directive 84/527/EEC must continue to be guaranteed;"

3.1.4. Add the following new Article 4(3) to the proposal for a directive: "The free movement and use within the Community of transportable pressure equipment manufactured in compliance with the provisions of Directive 84/527/EEC and bearing the M mark will be guaranteed, and no additional marking will be required".'

Reason

In Europe generally — and in certain countries in particular — there are several million LPG cylinders manufactured in compliance with Directive 84/527/EEC. The suppliers — monitored by the competent national authorities — are responsible for the marking system and for inspection of their state of repair. Forcing such cylinders to comply with an additional marking procedure would entail disproportionate expense with no tangible benefit to the consumer.

Result of the vote

For: 33, against: 44, abstentions: 8.

Opinion of the Economic and Social Committee on the 'Communication from the Commission on Benchmarking — Implementation of an instrument available to economic actors and public authorities'

(97/C 296/03)

On 21 April 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned Communication.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 June 1997. The rapporteur was Mr Malosse.

At its 347th plenary session (meeting of 9 July 1997), the Economic and Social Committee adopted the following opinion by 99 votes to three, with one abstention.

1. Introduction

1.1. This communication and that on Benchmarking the competitiveness of European industry stem from a number of recent proposals and communications on the subject of competitiveness, in particular the Communication on An industrial competitiveness policy for the European Union (COM(94) 319 final) and the Action Programme and related timetable (COM(95) 87 final) which the Economic and Social Committee has already supported in principle while expressing the hope that the Commission will give its initiatives more practical form. In its opinion adopted at the meeting of 22 November 1995 (rapporteur: Mr Petersen) [1] the Committee regarded it as unfortunate that 'there appears to be no plan as yet as to the steps to be taken or the timetable'. Since then two communications have been published, on the competitiveness of the chemical industry and the competitiveness of subcontracting in the textile and clothing industry. In commenting on these two communications, the Committee deplored their unambitious nature.

1.2. The need to improve economic and, in particular, industrial competitiveness in the European Union is discussed at length in two documents of a more political nature: the White Paper on 'Growth, competitiveness and employment' submitted by the Delors Commission in 1993 and the 1996 document tabled by the Santer Commission entitled 'Action for employment in Europe: a confidence pact'. The competitiveness advisory group, chaired by Mr Ciampi, presented its initial conclusions at the request of President Santer. The first report, which takes a broad view of the subject, stresses that competitiveness is not an end in itself but a means to improve the employment situation, raise standards of living and boost general welfare through improvements in productivity, efficiency and profitability.

1.3. The communication sets out a practical proposal for action. The Commission has recently produced two other working papers on this subject. The first, concerning A European quality promotion policy for improving European competitiveness (SEC(96) 2000), presents a background angle on benchmarking; the second is the report on the competitiveness of European industry published in 1996. On 20 November, while presenting an action plan to promote innovation, Mrs Cresson, the Commissioner responsible for this field, mentioned Europe-wide benchmarking, particularly in the quality sphere, as a means of promoting innovation.

1.4. Once again the Committee must stress the inconsistency and lack of transparency in the Commission's initiatives on this subject, which visibly proliferate and overlap. It would have been preferable to draw up a complete competitiveness action plan, with a precise timetable and including a quality scheme.

1.5. However, by presenting an additional communication on 16 April 1997 [2], the European Commission has met the desiderata of the Council of Ministers and the Committee. This communication sets out an overall Community framework and practical proposals to introduce a programme of Benchmarking.

[1] OJ C 39 of 12. 2. 1996.

[2] COM(97) 153 final.

2. The Commission's analysis of European competitiveness

2.1. The main reasons given in the Communication for the countries of the European Union lagging behind economically are the low level of intangible investment (in training and research particularly), of innovation and of fixed capital investment. It is above all the interaction of these factors which, it states, determines competitiveness. The communication also mentions structural problems such as a lack of labour mobility, high administrative costs for transport infrastructure, high levels of public deficit and the high share of taxation and similar charges in GDP, which rose from 34 % to 43 % between 1970 and 1995 in the European Union.

2.2. In its analysis of industrial growth, the Commission notes that the EU's share of OECD export markets has been declining. Its market share is said to have come down in the high-growth areas of east Asia and certain parts of Latin America. Over the last ten years, industrial value added increased by only 2,4 % in the European Union compared with 3 % in the United States and 3,8 % in Japan. In the manufacturing sector, productivity gains on a par with or above those of the EU's main competitors were achieved only in the food, drink, tobacco, wood and furniture sectors which enjoyed higher levels of investment than Europe's main competitors.

2.3. On structural analysis, the evidence points to generally higher costs in the European Union: higher prices for telecommunications and energy; interest rates in recent years higher than in the United States and Japan. By contrast, the analysis is not as clear about the role of labour costs, given that serious comparisons are complicated by the structural complexity of wage costs. However, the Commission notes that unit wage costs (trend in total emoluments in relation to production) have been falling slightly since 1992. These figures call for explanation and comment by the Commission.

2.4. In terms of investment, both tangible and intangible, the European Union's lag gives cause for great concern. The Commission document pays particular attention to the figures for research and development. Here, too, the Committee feels that further comment on these figures is called for, especially as regards investment in research and development.

2.5. In a chapter on the 'determinants of competitive performance', the Commission attributes the poor performance of European industry principally to weaknesses in the functioning of the markets and in industry's innovation capacity. On the question of free access to markets, the Commission document sees the major obstacles as follows: insufficient liberalization in certain key infrastructure sectors (telecommunications and transport), poor functioning of the capital markets (in particular restrictions on the activity of pension funds); lack of flexibility on the labour market and obstacles to professional mobility, and labour market regulations.

2.6. In the same chapter, the Commission lists the factors hampering innovation: insufficient intangible investment; deficiencies in education and training systems — particularly their failure to adapt to the needs of economic operators; lack of mobility of labour; European research which is insufficiently market-oriented; inability to properly exploit and disseminate research findings; delays in implementing quality control systems; inadequate funding for innovation (venture capital and seed capital) and for small and medium-sized firms. In this respect it would have been useful for the Commission to take into account a territorial approach, based on the regions, in its analysis of competitiveness.

3. The Committee's proposals on measuring competitiveness

3.1. The Commission mentions two key yardsticks of competitiveness: productivity and employment. However, the Commission acknowledges in its communication that there is more to the question than these two factors alone. If one accepts that competitiveness is a way of achieving better living standards and increasing the welfare of the population, then the degree of environmental protection, the rational use of energy resources and the crime level can also be regarded as relevant criteria, as can the level of social protection.

3.2. It is somewhat surprising to find no reference in the Communication to exchange rates and their movements inside and outside the European Union. In many industrial sectors, exchange-rate fluctuations can have decisive impact on firms' profit margins and market shares. This is, however, a circumstantial factor over which a firm, a sector or a region has no real control.

3.3. The Committee therefore draws the Commission's attention to the risk of too comprehensive an analysis covering haphazardly too large a number of factors which are difficult to compare. Competitiveness

is always relative, and the results of the analysis can differ radically depending on whether the comparison is with the USA, Japan or the emerging-market countries of Asia. A firm's competitiveness is measured in relation to its competitors, while that of a locality can be analysed in terms of attracting investors or capacity to create added value and jobs.

3.4. The Commission's analyses emphasize the concept of the Union's overall competitiveness in relation to its competitors. The Committee's view, however, is that too global and generalized an approach is not conducive to practical benchmarking measures. As regards the overall conditions for competitiveness, it is important to select precise areas which can be the subject of objective operational analysis. The Committee therefore prefers a sectoral approach which would make it easier to judge the relative importance of different factors, such as research and development in the biotechnology sector or labour costs and marketing for the textile and clothing sector. The Committee also stresses the desirability in a territorial approach to competitiveness factors of taking into account the regional — or 'job catchment areas' dimension, which would make possible a more detailed analysis of general conditions: local taxation, infrastructure, investment in research, outward spread from a university 'pole', creation of jobs and firms, inward investment. Too global a kind of benchmarking would be too close to existing analyses and would have less operational impact. For example, where establishment of foreign firms is concerned, the concept of locality is often much more significant in regional than in national terms. The level of analysis must therefore be as close as possible to the appropriate decision-making level, which will vary according to subject and country (for example, in Germany the Länder are responsible for education).

3.5. Many of the factors mentioned in the Commission analysis have to do with growth and welfare, but not necessarily with competitiveness. For example, the performance of an educational system should be measured in relation to the needs and aspirations of a population. These needs can vary considerably from one country to another, and it is difficult to see how a performance 'scale' can be established in this field. The welfare of the population is also in itself a factor contributing towards competitiveness.

3.6. The Committee would prefer the Commission, in a measurement exercise such as benchmarking, to follow a more rigorous and methodical definition of competition based on three key principles:

3.6.1. A clear differentiation between benchmarking measures at enterprise level and those relating to general conditions.

3.6.2. Prioritization and differentiation of the factors of competitiveness: general conditions of competitiveness (infrastructure, training), competitiveness of products (prices, and 'non-price' factors such as quality, after-sales service), results of competitiveness (firms' market shares, job creation in different areas).

3.6.3. Benchmarking differentiated according to the firms, sectors or localities with which a comparison is made: for example, for some industrial sectors it will be done in comparison with the main global competitors; for localities, it will make it possible to compare differing situations inside and outside the European Union.

3.7. On the basis of this more rigorous definition, the Committee identifies the following fields of analysis:

3.7.1. As regards localities, the Committee would prefer priority to be given to measuring the competitiveness of regions or employment areas (possibly frontier areas) within the European Union. Determining the causes of the success of a particular region within the Union and applying the same methods to less successful regions will be instructive, even if one must also consider including in the study external regions or localities where socio-economic conditions may be comparable to those in the European Union (e.g. in Japan, North America, Australia or New Zealand).

3.7.2. Benchmarking is already widely used by large companies, particularly multinationals. This benchmarking is a matter for them and cannot in itself be eligible for public support. The Community contribution should thus take the form of exchange of information and a selective approach by sector of activity, supplemented by analyses specific to small firms and to business start-ups. In this case, the approach must avoid any areal limitation and must cover European firms with branches in non-member countries and firms in non-member countries with branches in the European Union. Intra-firm analyses, particularly of multi-

nationals, will be very instructive in this context in terms of deciding on suitable indicators.

3.8. A combination of the territorial and sectoral approaches (including small firms and business start-ups) could yield valuable data on best practice and how to improve European competitiveness. In this area, with a view to avoiding general analyses which cannot be directly applied, the Committee recommends that the European Union, and particularly the Council and Commission, should analyse the fields where it intends to take initiatives. In the taxation sector, in the operation of the Single Market, in Community initiatives on regional development and on research and development, benchmarking the performance of the Union and its Member States in relation to other parts of the world would be an excellent aid to decision-making.

4. Benchmarking

4.1. Benchmarking is a method of analysis which identifies gaps in performance and their causes with a view to determining and publicizing best procedures and practices. This method is akin to a permanent mechanism for the transfer of knowhow and to exchange of experience on best practice, based on an economic analysis of the conditions and criteria governing competitiveness.

4.2. The Committee stresses the value of this method as an objective aid to decision-making. Benchmarking makes it possible to establish objective facts, and the decision-makers concerned must then draw conclusions from them. Benchmarking must always be geared to operational decisions.

4.3. The Committee therefore supports the Commission's initiative to set up a European benchmarking programme in partnership with industry and the Member States. This programme should begin with pilot projects which will serve as validation tests for the method.

4.4. Benchmarking must be a continuous, developing process, since excellence and performance — relative concepts — are constantly evolving. Such an exercise would only be worthwhile if designed to run for a fairly long period, involving pilot projects over several years.

4.5. The point of the benchmarking exercise is to achieve a certain objectivity. It is therefore essential to take account only of facts and realities (objective data) and to rely on a consensus of the parties concerned and if necessary public opinion. At the enterprise level employees must be closely involved, and the same applies to all the socio-economic forces at the locality level. It is only with objective data and a consensus on method that benchmarking can be effective. Indeed, best practice cannot be transposed without the agreement of those who will implement it. If the Community pilot projects pursue objectivity and consensus, they will really contribute to a better general awareness of the factors and means for improving competitiveness.

4.6. If applied directly at enterprise level, benchmarking falls solely within the responsibility of the enterprise itself. However, a certain number of programmes, both public and private, seek to promote benchmarking in respect of small and medium-sized enterprises (e.g. those of the Department of Trade and Industry in the United Kingdom). The Community's role in this case would be to organize exchanges of experience between Member States and to establish a 'European information network'. The Committee suggests that a pilot project be launched in the field of assistance and support for the setting up of firms, on the basis of the analysis already made by DG XXIII as part of the concerted measures for exchange of good practice. As well as the Community regions already studied, a number of countries or localities, within or outside the European Union, would be selected and pilot operations for transfer of good practice would be set up.

4.7. The Commission also suggests using benchmarking to analyse and develop competitiveness in specific sectors at Community level. Biotechnology, textiles and clothing, the automobile and chemical industries, already analysed at Community level, could be tackled first. It is important to select the sectors and comparison references carefully, for benchmarking, as an objective aid to decision-making, cannot ignore the socio-economic and cultural realities which can explain or justify differences in the underlying conditions of competitiveness, particularly in social terms. Benchmarking must also take care to analyse the performance and results of firms whose strategy can be multinational,

thus making it possible to study their strategies on internationalization and the attractiveness of certain countries or localities.

4.8. On the territorial approach, the Committee suggests that a study be made at the outset of the most important indicators for a region's performance (also using the results of analyses by large firms). The second stage would be the selection of regions (including cross-frontier regions) where there is a political, economic and social consensus on this experiment. As well as regions of the Union, this could cover comparable regions in non-member countries. Measuring the performance factors of these regions, on the basis of the indicators resulting from the study, would be done in close partnership with the socio-economic players concerned. On the basis of the results obtained, test knowhow-transfer projects would be carried out with assistance from the European Structural Funds (Article 10 of the ERDF).

4.9. As regards benchmarking the general economic conditions prevailing within the Union (costs and quality of essential services — transport, energy, telecommunications — information and administration, general productivity factors — cost of labour, cost of capital, taxation — level of skills and qualifications, development of innovation, efficiency in the environmental field), the Committee would prefer, for the reasons given above, pilot studies in precise fields where studies would facilitate Community-level decision-making, e.g. on the effectiveness of research and development programmes and regional development measures, on taxation systems as applied to firms, on the effectiveness of the Single Market, or on labour mobility. For a more global analysis, it would undoubtedly be wiser to refer to documents such as the 'World Competitiveness Report'.

4.10. The Commission's conclusions also refer to a European quality promotion policy which is dealt with in a separate working paper. Five specific measures are proposed at European level: a European quality prize, a quality benchmarking scheme, a European 'quality week', a European quality observatory and a European system for training quality professionals. The Committee would like to have more detailed information on this programme (budget, programme, consistency with benchmarking).

5. Conclusions

5.1. The two communications presented to the Economic and Social Committee constitute an appropriate working basis for implementing a benchmarking instrument. The Committee stresses the need for full consistency between this initiative and the implementation of other Community policies, such as research and development, innovation, economic and social cohesion, and companies policy.

5.2. The Committee endorses the idea of benchmarking as long as it is really a matter of starting an ongoing process based on objective data and covering well-defined fields so as to provide real assistance to decision-making in specific areas with operational prospects, helping to make best practice more widespread:

5.2.1. Assistance to decision-making on framework conditions, in priority fields covered by the powers and activities of the Union (company taxation, research and development, operation of the single market, regional policy, policies to encourage the creation of jobs and enterprises, labour mobility within the European Union).

5.2.2. Assistance to decision-making by firms at sectoral level as regards industrial and commercial strategies and the choice of location for investments.

5.2.3. Pilot projects for transfer of best practice, particularly at the level of localities, as regards aid for creating activities, stimulating local development, and developing training and research activities with a view to encouraging economic growth and innovation.

5.3. The Committee stresses that these proposals should be rapidly put into effect. It suggests, in particular, test pilot projects whose objectives and arrangements would be agreed with the parties concerned, including the economic and social actors. The Committee is pleased that the Commission has presented an additional Communication, meeting the requests of the ESC and the Council by including a precise implementation timetable.

5.4. The Committee asks to be actively associated with identifying the themes selected through experimentation, studying the reference criteria and launching and monitoring the pilot projects under this programme. The Committee could 'co-pilot' certain benchmarking test projects. In this connection, it emphasizes the prime importance of effective involvement of the socio-economic players concerned, from the outset, in the choice of subjects and the implementation process, in order to create the conditions for the success of benchmarking.

5.5. The Committee recommends that the European Union submit its own policies to benchmarking with a

view to assessing their effectiveness (internal market, regional policy, research and development).

5.6. The Committee suggests that the European Commission, in its work on measuring the competitiveness of framework conditions, should incorporate the regional dimension which makes possible better identification of performance factors for many fields: support for innovation, development of human resources, dissemination and use of information technology, etc.

Brussels, 9 July 1997.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Europe at the forefront of the global information society: rolling action plan'

(97/C 296/04)

On 29 November 1996 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 June 1997. The rapporteur was Mr Pellarini.

At its 347th plenary session (meeting of 9 July 1997), the Economic and Social Committee adopted the following opinion by 119 votes to one.

1. Introduction

1.1. The Economic and Social Committee has been asked to prepare an opinion on the communication from the Commission on the strategy, adopted by the European Union in July 1994 [1], for ensuring the establishment of the information society (IS) in Europe.

1.2. The communication comes as a follow-up to the July 1996 communication on priorities [2], which announced an amended and updated rolling action plan for phase II of the EU information society strategy.

1.3. The rolling plan is the result of a wide-ranging assessment of the information society, which has led to the identification of four new priority areas (see chapter II):

— improving the business environment, within a liberalized telecommunications framework, including new measures to assist SMEs;

— investing in the future, putting special emphasis on schools and young people;

— putting people first, with special emphasis on cohesion and employment;

— meeting the global challenge by establishing international rules on market access, intellectual property rights, privacy, protection against illegal uses, etc.

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[1] Europe's way to the information society — an action plan (COM(94) 347, 19. 7. 1994).

[2] The information society: from Corfu to Dublin. The new emerging priorities (COM(96) 395 final).

1.4. The aim of the plan is 'to present a list of all important actions, in particular legal measures, required to further implement the information society in Europe' (see chapter III). The annex to the communication lists the main measures taken by the Community in this sphere.

1.5. The communication therefore:

— serves as a navigation tool for the Member States and the EU institutions;

— helps the business sector to plan its investments;

— provides the social partners with full information, enabling them to comment and make suggestions;

— serves as a useful internal management tool for the Commission.

2. General comments

2.1. The communication is undoubtedly of great strategic interest and value, given that the information society will provide a key to economic and social opportunities for the individual Member States and for the EU as a whole.

2.2. As on many occasions in the past [1], the Committee stresses that the establishment of the information society is a complex challenge, and it welcomes the steps taken to revamp the action plan.

2.3. The efforts of the individual Member States and of the European Union (as a player in the political and economic spheres) should be directed to defining and establishing a European model for the information society.

2.4. In developing such a model, attention should not focus solely on achieving the highest technological standards, on framing laws and regulations (important though these are) and on the information society's effects on the economy, on finance and on trade.

2.4.1. As well as ensuring the highest possible level of competitiveness and full integration in the global market, the European IS model must also take account of social issues, i.e. employment, cohesion and equal conditions for all, and cultural factors.

2.5. As the Commission stated in its Green Paper on Living and working in the information society [2], the human dimension has top priority. So that this does not remain a mere declaration of intent without real substance, strategy and operative decisions in respect of the information society will have to accommodate the actual requirements of business, individuals, the social partners and those involved in the cultural sphere.

2.6. There is no doubt that the range of actions listed in the rolling plan (some major objectives already met, other measures under way and a programme for the future) provides a systematic response to such requirements.

2.7. However, because many interests are involved and, above all, because the information society will have a major impact on economic and social development, and even on the policy-making role of the European Union, it is essential that all the institutional players evaluate strategies and programmes very carefully indeed.

3. Comments

3.1. The rolling plan which, in the Commission's own words, is 'the result of a wide reflection process on the information society' (see chapter II, paragraph 5), also provides an opportunity to monitor the progress of the various information-society programmes and measures, and to assess them in general and in policy terms.

3.2. The Committee wishes, through the present opinion, to express its views on the strategy pursued to date, to identify some priority areas, and to reiterate those comments made in its most recent opinions on the information society which have not been followed up.

3.3. Indeed, a careful review of the rolling plan programmes immediately reveals some major problems.

3.4. First and foremost, there is the question of EU deadlines for implementing the information society, particularly those for telecommunications, and the path being followed.

3.5. Given all the measures still under way or yet to come, it is possible that the minimum legislation for the liberalization of the telecommunications sector might not be in place by the 1 January 1998 deadline.

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[1] Opinion on the Communication: the information society: from Corfu to Dublin. The new emerging priorities; and on the Communication on the implications of the information society for European Union policies — preparing the next steps; OJ C 66, 3. 3. 1997, p. 70.

[2] COM(96) 389 final.

3.6. It is worth recalling here the Committee's recently expressed surprise that the Commission has stuck to a strict implementation of its schedule, although it considers a clear-cut, stable legislative framework to be essential for the development of the information society [1].

3.7. It is clear, looking carefully at specific measures for which the decision-making process is either still under way or has not even started (see attached table), that some major directives and decisions have not yet been approved [2]. Without them, the full potential of telecommunications liberalization and of the information society would not be tapped, and economic and social imbalances could be exacerbated.

3.8. This does not mean, of course, that the liberalization deadline should be called into question. However, Community bodies should be prevailed on to ensure that clearly defined rules, designed to make liberalization useful for the public and the business sector, are framed by 1 January 1998.

3.9. The Member States should also take early steps to bring their rules and regulations into line with one another, especially with respect to telecommunications and audiovisual services.

4. Priority areas

4.1. The first question is both general and policy-related. The Geneva agreements on the liberalization of basic telecommunications and the agreement on information technology [3], due to be signed soon, open up new scenarios and a wealth of new opportunities. It has been said that telecommunications are the way ahead in the new millennium, and the figures bear this out: 50 million computers were sold in 1995, as against less than 35 million motor vehicles.

4.2. However, it will take at least four or five years for the real benefits of liberalization to work through. Although the agreement formally enters into force on 1 January 1998, many of the 69 participating countries will bring the more radical changes into effect over the following five years.

4.3. Liberalization's main beneficiaries will be the large industrial groups and the technologically and industrially advanced countries. Exactly how competition will be affected is anybody's guess. In the UK, British Telecom still controls more than 80 % of the fixed telephone market ten years after liberalization; in other Member States (Italy, for instance) the sector is still monopolized by a single company.

4.4. The likelihood is that vitally important matters will be resolved for the benefit of those who are able to exert the most political pressure. The trend for increasingly close links between telecommunications and media firms in many countries should be curbed via tighter checks and in keeping with Community competition rules.

4.5. As on many occasions in the past [4], the Committee again stresses that it is absolutely vital to define access to ownership, both in the telecommunications sector and in the media (Communication measures 106 and 111), and to examine the implications of convergence (green paper — measure 114), thereby ensuring that liberalization does not lead to media concentration and loss of pluralism.

4.6. Liberalization will also vastly increase the range of services offered. Ways must therefore be found to distribute costs fairly and squarely between cable network owners and operators, and programme suppliers and users.

4.7. The universal service is another issue which is not yet completely resolved. It is not merely a question of clearly defining universal service (this has already been done), but of making it clear who pays and how much, while at the same time ensuring that, after liberalization, the same conditions apply to traditional operators and new entrants.

4.8. Who will pay the costs of access to the 'social' networks, e.g. hospitals, universities or schools? How will geographical coverage be guaranteed in non-profitable areas?

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[1] Opinion on the Communication on the information society: from Corfu to Dublin. The new emerging priorities; and on the Communication on the implications of the information society for European Union policies: Preparing the next steps, OJ C 66, 3. 3. 1997, p. 70, paragraph 3.2.

[2] In particular, Commission measures listed under points 109, 110, 111, 112, 113, 120, 200, 201, 202, 203, 204, 205, 207, 208, 209, 210 and 211.

[3] The European Commission approved the terms of an agreement to be recommended to the Council: the EU will cut semi-conductor tariffs in three stages by 1999, and the US will eliminate tariffs on ECU 2,3 billion worth of EU exports in July 1997. As a result, the EU semi-conductor industry will become a full participant in the agreement reached between US and Japanese semi-conductor companies.

[4] OJ C 66, 3. 3. 1997, p. 70, Ibidem, point 3.3 referring to previous ESC positions.

4.8.1. It would be wise to clarify these important questions before 1998 and to spell out how the social costs, that might be ascribed to the universal service, would be funded.

4.8.2. Leaving this until after liberalization could make things even more difficult.

4.9. The three directives listed under points 203, 204 and 205 covering interconnection and universal service are of priority importance for effective liberalization, and will have to be finalized in the coming months.

4.10. Protection of encrypted services (measure 113), which is necessary to ensure the public's right to privacy, is another delicate and as yet unresolved problem. It is to be hoped that Europe will develop innovative and original technologies in this area too.

4.11. There is considerable uncertainty in the television sector as regards competitiveness, especially with respect to wide screens and advanced services (measures 109 and 201). Any delays here could heavily penalize European industry.

5. Public authorities' strategic role

5.1. Another major problem is the 'foot-dragging' and resistance to change by the public authorities.

5.2. Indeed, the Commission puts 'organizational inertia' (see chapter II, paragraph 4) at the top of its list of major obstacles to the information society.

5.3. A solution to this widespread problem has to be found, as many key services for both the general public and business are managed by public authorities. This is one of the major impediments to a successful information society. Ensuring that public authorities implement the IS should be given top priority, with the EU and the individual Member States allocating resources to bring this about.

5.4. Public authorities require funds for technological modernization, but they also require suitable human resources. There is therefore a need to continue and to strengthen training and retraining programmes for civil servants.

6. Towards a European information society model

6.1. The Committee remains convinced, as already stated in the opinion on the Green Paper on living and working in the information society [1], that the EU information society should be based on a coherent European model. The Committee also feels that this will require an overall strategy which should be implemented via the overall plan and the individual measures.

6.2. A European model should not only be designed to meet technological and industrial requirements, but should promote quality of life, cohesion, democratic principles, equal opportunities and cultural pluralism.

6.3. The design and implementation of a European information society model is all the more necessary as the pace of development of the information society has varied from one Member State to another, and between Member States and the countries seeking EU membership, such as the CEEC. A considerable effort will therefore be required to provide the technology that is lacking and to ensure that what is already available is compatible and homogeneous.

6.4. Care should be taken to ensure that the EU does not end up with an information society that is liberalized, yet very differentiated vertically (by social grouping), or horizontally (by geographical areas and countries).

6.5. When establishing a European IS model, the Commission should be pressured to act on at least three issues: protection of minors, training and information for young people and adults, and cohesion.

6.6. The strategy designed to protect minors and combat illegal on-line content should be buttressed by rapid operational decisions and effective actions. The Commission has done excellent work via its communication and green paper [2], on which it is conducting extensive consultations.

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[1] Opinion on living and working in the information society: people first; OJ C 206, 7. 7. 1997.

[2] Communication from the Commission on illegal and harmful content on the Internet, (COM(96) 487 final); and the Green Paper on the protection of minors and human dignity in audiovisual and information services, (COM(96) 483 final).

6.6.1. An international conference on these delicate issues, proposed by the German government and accepted by the Council of Industry Ministers on 8 October 1996, was held in July 1997, to which the UN specialized agencies were invited. The Committee understands that this was the import of measure 131, although this is not clearly stated.

6.7. In discussing training, the communication on the rolling plan oversimplifies matters when it states that 'broadly speaking, the information society is also a generation phenomenon' and that 'only by introducing specific actions focusing on the younger generation can the best conditions be prepared for access and acceptance of (the) information society by the population at large' (chapter 2.2).

6.7.1. The questionable nature of this statement is borne out by the mention, within the same paragraph, of 'life-long learning' in reference to 'Learning in the information society'.

6.7.2. It is not sufficient to involve young people. Adults too must be targeted via information and training programmes designed to ensure that they fully grasp and are able to exploit the opportunities held out by the information society.

6.7.3. Finally, special attention should also be focused on trainers and on all communications sector operators, in order to ensure that the measures taken have as wide and sustained an impact as possible.

6.8. Although the information society provides excellent opportunities for enhancing economic and social cohesion, it could also herald major new dangers.

6.8.1. Given the cost involved and the knowhow required, even today, substantial sections of society find it difficult to secure access to and may be unable to exploit the services which offer the most extensive range of contents and new technology. It is feared that future IS development could further marginalize the unemployed, the elderly and low-income groups.

6.8.2. Particularly important and welcome in this connection is the communication on cohesion and the information society (measure 122) [1] which examines the possible role of the Structural Funds in the sector; the Committee has been consulted on the communication and is to deliver an opinion.

[1] Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Cohesion and the information society (COM(97) 7 final).

7. Conclusions

7.1. The Committee is aware that the construction of the information society is a long and complex process, opening up ever new scenarios and a wealth of opportunities for economic and social development. The process will involve decisions that will have to be taken as part of the overall blueprint rather than separately, bearing in mind their legal, organizational, economic, social and cultural implications.

7.2. The Committee confirms its position, already expressed on numerous occasions, on the need for a European IS model laying equal stress on integration and competitiveness in the global market, and on social and cultural factors.

7.2.1. The European IS model must not only meet justified demands for technological development and economic profitability; it must also respond to the needs of a democratic society, promote pluralism and cohesion, and improve quality of life.

7.3. The Committee welcomes the sustained efforts undertaken by the Commission and all the EU bodies involved in the rolling action plan; although rather sceptical about the short timeframes, the Committee is hopeful that a solid legislative framework covering liberalization and guaranteeing competition and pluralism will be put in place by the 1 January 1998 deadline.

7.3.1. The Committee will closely monitor the Commission's efforts to enact the legislation that is essential to achieve the type of liberalization that will boost the telecommunications market and meet the needs of private individuals and businesses alike.

7.3.2. In particular, the Committee would ask the Commission to take all the measures set out in the rolling action plan which are designed to ensure sound management of the universal service, the licensing of services, and protection of the public's right to privacy.

7.4. The Committee is concerned that large, less favoured sections of society, such as the unemployed, the elderly and low-income families, might be unable to take advantage of the opportunities offered by the information society.

7.4.1. The EU and its individual Member States must take the necessary steps to ensure that they do not end up with an information society that is very liberalized, yet very differentiated vertically (by social grouping) or horizontally (by regions, depending on their prosperity levels).

7.5. Major importance should be given to the public authorities' role in developing the information society. In this connection, the public services' technological modernization programmes must be relaunched and strengthened, and a large-scale training programme for civil servants must be undertaken.

7.6. The Committee draws the Commission's attention to the need for information and training for adults, as well as for young people, to ensure that they are aware and make the most of the opportunities held out by the information society.

7.7. Serious attention should also be focused on providing protection for minors, in terms of the content of audiovisual services and Internet use. The Committee wishes to be kept informed of measures designed to address this delicate issue and hopes, in particular, that the international conference held in Germany identifies effective ways to help families control and guide minors' use of electronic media services.

Brussels, 9 July 1997.

The President
of the Economic and Social Committee
Tom JENKINS

TABLE

IS: Anticipated measures

Sectors	No	Time-frames (1)	No	Com-muni-cations	Deci-sions	Direc-tives	Recom-men-dations	Green papers	White papers	Nego-tiations	Confer-ences	Other
Business competitiveness	47	C1	24	10	1	7	1	5				
		B1	8		3	5						
		A1	15	9	2	3		1				
Further investment	14	C2	2	2								
		B2	5		5							
		A2	7	3	2	2						
Citizens	28	C3	11	3	4	1		2	1			
		B3	8		2	2					2	2
		A3	9	3	1			5				
Globalization	15	C4	2								2	
		B4	7		1					3	1	2
		A4	6	1							5	
Total	104		104	31	21	20	1	13	1	3	10	4

(1) NB: C = completed actions;
B = on-going actions;
A = forthcoming actions.

Opinion of the Economic and Social Committee on the 'Green Paper on vertical restraints in EC competition policy'

(97/C 296/05)

On 28 January 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the 'Green Paper on vertical restraints in EC competition policy'.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 June 1997. The rapporteur was Mr Regaldo.

At its 347th plenary session (meeting of 9 July 1997) the Economic and Social Committee adopted the following opinion by 120 votes to one, with two abstentions.

1. Introduction

1.1. The Green Paper on vertical restraints in EC competition policy is to be welcomed, since it presents a series of pointers for further consideration (options), on the basis of a careful analysis of the economic and legal context of the restraints, and of criticisms about their application. They provide grounds for further discussion in order to allow the Commission to decide on the direction and form of the Community's future policy in this field in the full light of all the facts.

1.2. The importance of this policy is confirmed by the fact that producer-distributor agreements (or vertical restraints), designed to enhance the efficiency of distribution between companies and to facilitate penetration of new markets, contribute significantly to achieving two basic objectives of competition policy: promoting the integration of Member State economies in a single internal market, and maintaining effective competition throughout the Community's territory — which are both preconditions for European economic competitiveness, economic and social cohesion, and promoting consumer well-being.

1.3. Although they are intended to promote efficiency and market integration, vertical restraints may be used to the opposite effect; they have therefore been accorded particular importance in the sphere of Community competition policy for over thirty years, because of the strength of their influence, which may be positive or negative. The overall balance is substantially positive.

1.4. Although Community policy on vertical restraints has developed in line with economic and social change, the Commission believes a review to be necessary for the following reasons:

— single market legislation for the free movement of products is now largely in place;

— the Regulations governing vertical restraints will soon expire;

— there have been profound changes in methods of distribution that may have implications for policy;

— current economic thinking emphasizes the importance of market structure in determining the impact of vertical restraints.

1.5. While the green paper examines all vertical relationships in the distribution chain, it focuses mainly on four types of agreement, for each of which the Commission has, over the years, drawn up a specific policy set out either in regulations, individual decisions, or in the Commission's own practice:

Exclusive selling:

Block exemptions Regulation (1983/83), expires 31 December 1997

Exclusive buying: (including particular arrangements for beer and petrol distributors)

Block exemptions Regulation (1984/83), expires 31 December 1997

Franchising:

Block exemption Regulation (4087/88), expires 31 December 1999

Selective distribution:

Individual decisions.

In this connection, the Committee stresses the absolute necessity to extend the current regulations on exclusive selling (Regulation 1983/83) and exclusive buying (Regulation 1984/83), which expire at the end of 1997, until at least 31 December 1999, so that these regulations are revised at the same time as that on franchising, which is due to expire on 31 December 1999.

1.6. In the green paper, the Commission invites the Economic and Social Committee to express an opinion

on the future of competition policy in the area of vertical restraints on the basis of a non-exhaustive list of four options:

— Option I: maintain current system;

— Option II: wider block exemptions;

— Option III: more focused block exemptions;

— Option IV: reduce scope of Article 85(1).

2. General comments

2.1. The Green Paper on vertical restraints fits into the broader context of competition policy, which the Economic and Social Committee recently discussed in its Opinion on the XXVth report on competition policy [1].

2.2. In its opinion, the Committee emphasized a number of points which it would be worth repeating in the present document on account of their relevance and implications for vertical restraints: the growing complexity of economic phenomena; legal certainty as a positive factor for proper competition policy; the need to examine cooperatives with the necessary flexibility in the light of Article 85(3); and the role of communication technologies and their impact on agreements. Referring specifically to vertical cooperation, the Committee asked the Commission to reconsider this aspect with the necessary flexibility, since it should not necessarily be prohibited under Treaty Article 85.

2.3. The Committee welcomes the green paper because as well as responding to these demands, it initiates a revision process in an area of great sensitivity for competition policy, company competitiveness and single market integration.

2.4. The question of distribution is of the highest importance, directly involving productive areas of the economy, businesses and consumers.

2.5. The analysis of the structure of distribution made by the Commission in the green paper is unarguably well-balanced, and takes due account of changes presently under way, while also noting the difficulty in distinguishing clear trends because the market is not uniform, and because linguistic, cultural and economic differences exist between the various Member States, resulting in differing distribution structures.

2.6. It is of great importance, with a view to competition, to understand the current structural changes in distribution, generated by an increasingly competitive, open market with constantly fluctuating demand, in order to make the necessary changes to present policy on vertical restraints.

2.7. Moreover, the new competitive setting in which companies are operating on the threshold of the 21st century is radically different to that of the 1960s, when the basic regulations implementing Treaty Article 85 were adopted. It demands the partial replacement of the economic and legal theories which underlay the earlier interpretation of Article 85, particularly in the area of block exemption regulations.

2.8. The green paper spotlights the emergence of new supply and demand requirements which, on account of the growing use of computer technology, entail new types of relationship — far more stable and integrated than in the past — between suppliers, producers and distributors, and which allow the latter to gather market data and direct suppliers in line with consumer demand.

2.9. Further significant structural changes concern the concentration and development of organized independent trade and consisting principally of SMEs, taking the form of commercial cooperation (purchasing groups — voluntary unions); the green paper also places particular importance on the frequent changes in the balance of power between suppliers, producers and distributors on account of the market effects which new types of cooperation between them can have.

2.10. The Committee endorses the Commission's view in the green paper on the need to promote and maintain integrated, competitive markets and to implement an efficient competition policy in order to defend consumer interests and encourage business competitiveness, among SMEs in particular.

2.11. From this point of view, however, the Commission should, in revising vertical competition policy, acknowledge that the effects, either horizontal or vertical, of commercial cooperation (purchasing groups — voluntary chains) between independent SMEs are no different from those of the conventional franchising system in terms of boosting competition or distorting markets.

2.12. In brief, the Committee believes that similar economic situations with a comparable horizontal or vertical market impact should be approached in the same way, even if certain aspects of their legal structures may differ.

[1] OJ C 75, 10. 3. 1997.

2.13. Consequently, the Committee more generally hopes that solutions will be devised for SMEs which facilitate their re-inclusion within the scope of the block exemption regulations, thereby helping them to measure up to market globalization.

2.14. The Committee shares the Commission's opinion on the basic validity of the policy so far practised in the sphere of vertical restraints.

2.15. Experience also appears to indicate that competition on the single market has worked, in terms of price structure, the growth of parallel trade and arbitrage, and market access for new producers and distributors.

2.16. The green paper clearly signals that a substantial new departure is both required and desirable in the next few years in Community competition policy with regard to vertical restraints.

2.17. However, the Committee suggests that this requirement, which must be defined in the light of the options proposed, should be integrated into the process of updating and modernizing the current legal and regulatory framework, rather than abandoning it.

2.18. The current block exemption regulations, which are certainly too rigid and often difficult to interpret, should be revised and adjusted in a flexible way, to bring them into line with the needs of a new culture of inter-firm cooperation, to enable them to provide sufficient room for the development of new types of distribution, and to ensure that future agreements enjoy the legal certainty they need.

2.19. The economic analysis contained in the green paper's conclusions confirm the general views previously expressed by the Committee. More specifically, emphasis is placed on the importance of the market structure in assessing the effects of vertical restraints, together with the need to focus on the market impact, rather than the formal content, of agreements. The consideration given to whether more favourable treatment should be given to vertical restraints accompanied by significant material or immaterial investment is of particular interest.

2.20. In the Committee's view, the list of criteria set out in the conclusions of the economic analysis contained in paragraph 85 of the Green Paper represents a potentially useful basis for assessing distribution efficiency and for defining political guidelines and general rules for competition policy in this area, while ensuring the legal certainty companies need.

2.21. The Committee would indicate the need for clarification of and coordination between the Commission's Notice on Agreements of Minor Importance ('de minimis', COM(96) 722 final) and the options set out in the Green Paper, especially Option IV which provides for rebuttable presumption of compatibility with Article 85(1) up to the 20 % market share threshold. In the Committee's view, this should be interpreted as follows:

a) The 'de minimis' note should be applied as soon as adopted, while Option IV's presumption of compatibility is understood to apply to the regulations on block exemptions or any communications which may result from the consultations on the Green Paper.

b) The rebuttable presumption of compatibility with Article 85(1) under Option IV is understood to apply to all vertical restraints, not only those coming under the exemption regulations, a form of negative clearance similar to that under the 'de minimis' notice (non-applicability of Article 85(1) up to 10 % of market share), with the exception that with a market share of between 10 to 20 %, an agreement may still fall within the scope of Article 85(1) if, on the basis of a qualitative analysis, it is deemed to restrict competition.

3. Specific comments on options

3.1. *Option I — maintain current system*

The Commission has pointed out the advantages of the present system (see Chapter V). However, there are also certain disadvantages in the present system. Some examples are the following:

3.1.1. The block exemptions are based on forms of distribution and too rigid. They fail to accommodate forms of distribution which represent dynamic adaptations to changing market conditions.

3.1.2. In the case of vertical distribution agreements between firms in highly competitive product markets, there should be no need for notifications for individual exemption when the competition concerns are limited.

3.1.3. There is a need to give greater recognition to the fact that horizontal forms of cooperation between SMEs in the distribution sector are not necessarily restrictions on competition under Article 85(1) (cf. Gottrup Klim) and should be accommodated either with a rebuttable presumption of negative clearance or, where they fall within the scope of Article 85(1), under a block exemption regulation.

3.1.4. On balance, therefore, the Committee is not in favour of maintaining the status quo.

3.2. *Option II — wider block exemptions*

In principle, the Committee is not against wider block exemption.

3.2.1. The Committee endorses the following general measures to increase flexibility:

— the block exemptions would cover not only the precise clauses listed, but also clauses which are similar or less restrictive;

— the inclusion of prohibited clauses might not deny the benefit of the exemption for the rest of the agreement. The current position reinforced by the decision of the Court of Justice in the Delimitis case exacts a disproportionate penalty for poor wording of agreements or for miscalculations in assessing the impact of the anti-competitive effects of agreements;

— the block exemption could apply to agreements involving more than two parties;

— the Committee is less certain about the advantages of a block exemption for selective distribution. There is already considerable guidance in Court of Justice judgments and Commission decisions. These could be consolidated in a Notice but at the present stage an exemption seems unnecessary;

— the Committee would also welcome the addition of a non-opposition procedure to the distribution regulations, apart from the franchising regulation. These procedures could be useful to businesses in difficult and unusual cases and, as long as they are not judged to place undue strain on Commission resources, they should be introduced.

3.2.2. The Committee would also support the following specific measures to increase flexibility, mentioned in paragraph 284 of the green paper:

— the block exemption for exclusive distribution and exclusive purchasing could be extended to cover services or to permit the distributor to transform or process the contract goods. Distributors could be allowed to add significant value by changing the economic identity of the goods without losing the benefit of the block exemption; this would allow agreements such as industrial franchises or trade mark licenses, which are important forms of distribution, to benefit from a block exemption;

— the block exemption for exclusive purchasing agreements could be extended to cover partial as well as exclusive supply;

— the block exemption for franchising agreement could be extended to cover maximum resale price maintenance as an exception to the general principle that resale price maintenance will not be exempted; this would allow franchising organizations to match the concessions given to the consumer by large business organizations with integrated operations;

— associations or independent retailers could be permitted to benefit from block exemption regulations, provided that the independent retailers are small and medium-sized enterprises and that the market share of the association remains below a certain threshold;

— the Committee is less certain about the wisdom of setting up an arbitration procedure for distributors denied admission to a selective distribution network under the competition rules. The issue seems to be more one of civil law than competition law. Moreover, as the Galec/Centres Leclerc judgment [1] indicated, it is a matter for national judges to decide whether the selection criteria approved by the Commission have been applied in a concrete case of a refusal of admission in a discriminatory or disproportionate manner and if so, to implement the remedies available within the national legal order [2];

— the Committee would also encourage the Commission to expand the block exemptions to apply to upstream linkages in the supply chain between producers and suppliers of necessary inputs. The wider the coverage of the block exemptions, the less the need for individual notifications of vertical agreements which pose no anti-competitive risk.

3.3. *Option III — more focused block exemptions*

3.3.1. In considering Option III attention should be drawn to the Committee's statement in its Opinion on the technology transfer block exemption [3], that it was opposed to the inclusion of market shares as a precondition to block exemptions for vertical agreements such as technology transfer. To add the calculation

[1] Court of First Instance judgment of 12. 12. 1996, case no T 19/92.

[2] It should be noted that the ESC adopted a favourable position towards the implementation of arbitration procedure in the car sector (Reg. 1475/95 — ESC Opinion, OJ C 133, 31. 5. 1995). However, the arbitration procedures do not relate to admission to the network.

[3] OJ C 102, 24. 4. 1995.

of market shares to the task of fitting the agreement into the detailed requirements of the block exemption would be to add costs to the process and would reduce its effectiveness as a system of regulation. The Committee also notes that the problem of dominance of markets can be regulated under Article 86. Moreover, the Commission can retain a power to withdraw the benefit of the block exemption in cases of anti-competitive agreements made by parties with more than a 40 % market share. This is the technique finally agreed upon in the technology transfer block exemption.

3.3.2. It is true that in distribution one does not encounter the problem of near 100 % shares that one finds in some innovation markets. Nevertheless, Option III would add to the regulatory burdens of distribution. It is not clear to the Committee that the introduction of the flexibilities mentioned in paragraph 284, i.e. the suggestions made in Option II, would be adequate compensation. There appear to be inherent limits to the extent to which flexibility can be introduced to block exemptions.

3.4. *Option IV — block exemptions with measures to specify the economic circumstances in which Article 85(1) applies*

3.4.1. The Committee appreciates the strategic opportunity presented by Option IV. There should be more flexibility in cases of agreements between parties with no significant market power. The system of competition law imposes unnecessary costs on such parties at the present time. The Committee notes the Commission's proposals to a new notice on agreements of minor importance with approval.

3.4.2. The Committee thinks that it would be desirable for the rebuttable presumption of compatibility to apply to certain horizontal forms of cooperation as well as vertical forms. A rebuttable presumption of compatibility — Article 85(1) — the negative clearance presumption — where the parties between them have less than a market share in the contract territory, appears to the Committee to be the best way to achieve this.

3.5. *Option IV — Variant I*

3.5.1. The Committee notes that the new Commission notice on agreements of minor importance will in any case provide a negative clearance to vertical agreements where the parties have a market share of less than 10 %.

3.5.1.1. The Committee strongly recommends Option IV, Variant I, which will offer a rebutable presumption of compatibility with Article 85(1) for vertical distribution agreements where the parties have a market share of less than 20 %

3.5.2. This represents a 'safe haven' from the Commission for vertical restraints apart from minimum resale prices, impediments to parallel trade, passive sales i.e. those contained in the distribution agreements between competitors.

3.5.3. The Committee notes that the 'haven' is 'safe' only from the Commission. It is not certain how the Courts will apply Article 85(1) to such an agreement.

3.5.4. The Committee also notes that an economic analysis is required. The presumption could be rebutted by market factors (see paragraph 296).

3.5.5. The Committee nevertheless considers this option to be a worthwhile step because it will reduce the regulatory burden on parties to vertical distribution agreements, particularly SMEs. The Committee also notes that the Commission will soon come forward with guidelines on the definition of markets which will help the parties to calculate market shares.

3.6. *Option IV — Variant II*

For the reasons mentioned in point 3.3 above, the Committee has reservations about Variant II. On the other hand, if the Commission were able to introduce Option IV, Variant I, combined with extremely wide block exemptions as under Option II, then the Committee could see a case for a procedural mechanism for monitoring vertical distribution agreements with high market shares. One possibility might be a requirement that firms with a market share of more than 40 % must use the non-opposition procedure.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on 'Equal opportunities for women and men in the European Union — 1996'

(97/C 296/06)

On 13 February 1997, the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on 'Equal opportunities for women and men in the European Union — 1996'.

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 26 June 1997. The rapporteur was Mrs Drijfhout-Zweijtzer.

At its 347th plenary session (meeting of 9 July 1997), the Economic and Social Committee adopted the following opinion by 113 votes to two, with two abstentions.

1. Introduction

1.1. The Fourth Action Programme on Equal Opportunities for Women and Men (1996-2000) launched the idea of an annual equal opportunities report. The ESC supported this initiative in its opinion of 22 November 1995. On 12 February 1997 the Commission adopted the 1996 report.

1.2. According to the foreword this first report has three main goals: to give visible expression to Community policy on equal opportunities (visibility), to encourage debate on the progress to be achieved and the policies to develop (strategy), and to act as a reference point for the Commission, the EU Member States and countries applying for membership (convergence).

1.3. The report also sets out to reflect in a balanced way progress and trends at both European and national level. As such the report also serves as a monitoring instrument for equal opportunities. The first part of the report broadly reflects the structure of the Fourth Action Programme. The second part tackles a specific subject in the equal opportunities debate.

2. General comments

2.1. In the past the Commission has played a very important part in giving shape to Community equal opportunities policy, e.g. through its legislative proposals which have led to the adoption of the equal opportunities directives and through the establishment of five-year action programmes. These action programmes have repeatedly given an impetus to a new wide-ranging discussion on the position of women. This policy has focused attention on equal opportunities and has helped ensure progress in the Member States, partly as a result of the case law of the Court of Justice. The adoption of this first, comprehensive report on equal opportunities is not only a welcome complement to existing Community policy, but above all marks a new, constructive step in the development of a general and coherent EU equal opportunities policy. It is therefore a very laudable initiative with which the ESC is particularly pleased. The document deserves to be widely distributed.

2.2. As has already been pointed out, however, in connection with the submission of the Fourth Action Programme, there is still a long way to go. It is important here to stress the statement in the report that 'action to promote equality requires an ambitious approach. This involves not restricting efforts to the implementation of specific measures to help women, but mobilizing all general measures and policies specifically for the purpose of achieving equality' (page 10).

The policy so far pursued has not (yet) had the desired effect and has not always produced satisfactory results; this is shown by the wealth of very recent statistical information contained in the report on many aspects of women's position in the labour market and their participation in decision-making. This information does not in fact add very much to what is already known. Nevertheless, bringing together this information in a single document is certainly worthwhile, particularly for individuals not directly concerned with equal opportunities policy, but who nonetheless encounter it or are likely to do so in the future. The emphasis on the state of play and the fact that the information given often covers an extended period raise the question as to whether the Commission document can really best be described as an 'annual report'. Whilst it is understandable that the first annual report should take this form, the ESC feels that a different format would be appropriate for subsequent reports. This question is dealt with at length in chapter 4 (suggestions and recommendations).

2.3. An important question to ask here is 'what is the purpose of an annual report of this kind?' The foreword

lists quite a few objectives and one wonders whether these are not perhaps too broad and ambitious. In a number of respects the report does not always completely fulfil the expectations raised by its objectives.

2.4. Although the Committee realizes that this may have to do with the lack of Community-level powers in certain fields, it has to be said that the balance sought has not always been achieved. This is certainly true of the account it gives of European and national trends in certain areas. Thus, for example, considerable space is at times devoted to national policy developments and only very little to Community developments (e.g. chapter 2 and paragraph 2.2 on employment strategy); or the other way round (chapter 5, where only Community developments are dealt with). There is also an imbalance in the relative weight accorded to different subjects and chapters (or sub-divisions of these). Far too little attention is paid to certain issues (e.g. chapter 5, exercising rights).

2.5. The Commission feels that the report should serve as a monitoring instrument for equal opportunities policy. Clearly one aim is to provide a way of looking at the impact of Community policy in the Member States. And in relation to a number of areas the Commission does this. For example the exercise has been successful in relation to EC structural policy and the implementation of the Structural Funds. But in other areas there is room for improvement (childcare, exercise of rights). It may be because of the nature and layout of the report that there is little (critical) evaluation of the Community's own policy. The form of report which the ESC would like to see offers more opportunities for this for the future (see point 4.1).

Another point is the way the Community establishes policy priorities, particularly given the current constraints on the Fourth Action Programme budget.

2.6. Quite apart from this, the focus of the report on equal opportunities is too narrow. It gives the impression that women already have equality as far as rights are concerned. But both aspects are essential; equal rights are the basis and equal opportunities the next step. The danger is that concentrating on equal opportunities and the idea of partnership and mainstreaming may cause us to lose sight of the need to continue to ensure that equal rights are guaranteed. That this fear is not an imaginary one is illustrated by the fact that the report pays too little attention to the implementation of the equal opportunities directives in the Member States and does not tackle properly the question of the effective application of the rights which women derive from (Community and national) equal opportunities law. This impression is confirmed by the fact that the report makes no mention of the current discussion of the incorporation into the EC Treaty of a general principle of equal treatment (see also the ESC's Kalanke opinion) [1]. The lack of a passage to this effect is all the more striking as chapter 4 of the annual report quotes from the text of the Charter of Rome, Women for the Renewal of Politics and Society of 18 May 1996: 'We ..., women ministers of different Member States of the European Union, ... affirm our commitment to the need of enshrining equality between women and men in the new European Union Treaty'. The ESC called for this both in its Opinion on the Fourth Action Programme [2] and its Opinion on the Commission proposal amending Directive 76/207/EEC [1].

2.7. A final point worth making is that the Community is increasingly resorting to all kinds of non-binding instruments in order to give form to Community law. It seems that the Commission assumes that recommendations, for example, also entail commitments for the Member States (see page 97). Even if there is no direct commitment, then at least the principle of Community obligations laid down in Article 5 still holds. The question is also to what extent these instruments/documents get through to the parties deemed responsible for applying them (e.g. the code of conduct on equal pay) and how compliance is monitored. The report is silent on these questions.

3. Specific comments

3.1. *Chapter 1: Building partnership in a changing society*

3.1.1. The global and integrated character of the new equal opportunities policy, as expressed in the introduction to the principle of mainstreaming, is positive. The annual report defines mainstreaming as 'the systematic consideration of the ... needs of women and men in all Community policies'. The report also rightly states that 'the simultaneous mobilization of legal instruments, financial resources and the Community's analytical and organizational capacities' is also needed in applying the principle of mainstreaming. Reference is also made to the need for a sound statistical analysis on which to base equal opportunities policy. The develop-

[1] OJ C 30, 30. 1. 1997 — Proposal for a Council Directive amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

[2] OJ C 39, 12. 2. 1996.

ment of equal opportunities policy is however so complicated and is proceeding so slowly that specific actions remain necessary in addition to mainstreaming, i.e. actions which promote opportunities for work and financial independence.

The report unfortunately confines itself to highlighting the complexity of applying the principle of mainstreaming in practice and identifying the problems encountered. Although a short summary is given of possible mainstreaming strategies at the various levels of policy, this is not further developed nor is there any indication of measures which the Community has adopted, or intends to adopt, in order to enable the principle of mainstreaming to make a real breakthrough. Nor does the report shed any light on the way in which the principle is being applied in the Member States (in connection with the adoption of the principle by the Community or otherwise). The sole exception here is the Netherlands.

The report's description of the situation in the Netherlands has two interesting aspects which would merit further study at European level. The first of these is the application of equal opportunities impact reporting as an instrument for the prior assessment of planned policy. Perhaps it would be possible to develop an instrument of this kind to assess Community policy; instruments of this kind existing in other Member States should also be used here. A recent development in the Netherlands shows that there may be risks in mainstreaming policy if, for example, it results in special equal opportunities bodies being closed down (as happened in the Netherlands with the Equal Opportunities Council) before it becomes clear how equal opportunities issues are being integrated into and considered by other (advisory) bodies.

The Commission communication entitled 'Incorporating equal opportunities for women and men into all Communitypolicies and activities' concludes that in 1996 significant progress should have been made on the introduction/application of the principle of mainstreaming. For example, measures should have been adopted to facilitate the on-going monitoring and evaluation of action and, in the light of this, appropriate analytical indicators and procedures established. It was also assumed that policy and measures at Member State level as well as EC-level actions in this area would be presented in the first annual report. The fact that there is virtually no reference to this in the report suggests that too little progress has so far been made in the Member States. This is regrettable.

3.1.2. The gradual increase in application of the principle of equal opportunities in Community structural policy, and consequently (now) in all the Structural Funds, and the positive impact this has had, for example, on the use of available funds to combat long-term unemployment among women is an encouraging development. Despite this improvement the impression remains that too small a proportion of Structural Fund resources goes to women. This also applies to projects carried out in the framework of programmes like Socrates and Leonardo. If the funds and programmes are to promote equal opportunities, on-going monitoring and evaluation from a gender perspective is necessary. This applies to all areas where obstacles to the promotion of equal opportunities arise.

3.1.3. Because this report is addressed to a broad readership, it is a pity to have to say that the paragraph on the social dialogue and the social partners has missed the opportunity of dealing with the subjects being discussed by the social partners in the framework of the social protocol. Thus for example little attention is paid to the outcome of the first phase of the consultation on the basis of the protocol on the protection of the dignity of women and men at work.

The ESC would like to stress however that the provisions of the Social Protocol allowing the social partners to establish their own rules do not absolve the Commission of its responsibility, especially with regard to difficult issues, to prepare equal treatment instruments.

3.2. *Chapter 2: Women and men in a changing economy*

3.2.1. More than half of this chapter is devoted to listing the many aspects of the position and participation of women in the labour market. One of the most important general conclusions is that there is still a large gender pay gap, the key factors here being the concentration of women in low-paid work and gender segregation on the jobs market. As already stated, there is little spectacular new information. It is worth stressing once again that one of the most important objectives of equal opportunities policy is the right to work and financial independence. The clear segregation of the labour market is both an obstacle to equal opportunities and a problem of quality in certain areas. The value of the information may lie in making employers and other involved parties more aware of the problem. It is a pity, however, that job evaluation has been completely omitted. The low classification assigned by job evaluation and pay assessment systems to work done by women is however an important cause of women's low pay.

3.2.2. Changes in the field of education are also important in breaking the mould. The ESC's Opinion on the balanced participation of women and men in decision-making [1] states, inter alia, that boys and men should be encouraged to enter traditionally female vocations. Research and development is needed in the field of education to give women greater freedom to study and to boost their self-confidence, enabling them to break into new and different areas of work, and also to encourage them to become self-employed. Systems of schooling and study subsidies have proved their worth in enabling all working women to keep their knowledge and skills up to date.

3.2.3. The chapter on wage disparities is inadequate both in its analysis and its conclusions. According to the very limited data provided by Eurostat, European women on average earn about 20 % less than their male counterparts. Little evidence is given for this figure and it appears to relate only to manual labour. The ESC awaits with great interest the results of the Eurostat study into wage differentials between men and women announced by the Commission. The study, to be carried out in accordance with a new system, is expected to be published in June 1997.

3.2.4. This chapter correctly rightly points out that differences between women are increasing. It is a great pity, however, that the position of the most vulnerable or weakest groups of women, such as immigrants, members of ethnic minorities, the elderly, lone-parent families, working women, women re-entering the job market and the disabled, are dealt with in this context inadequately or not at all. It is not only women who wish to work and are able to do so who are concerned here, but also women whose personal circumstances do not permit them to participate in the work process. The incomes of this last category are often low. The ESC feels that it is not enough merely to state that disparities between women are increasing, but that the situation of these vulnerable groups deserves closer attention and a more active approach on the part of the Community. The Committee urges Eurostat to begin collecting more data on these categories in the short term. The ESC notes with regret that there are also major geographical disparities in the situation of women in the European Union.

3.2.5. One positive development is the multiannual programmes for employment set up by the Member States in line with the five priorities established by the Essen European Council. These priorities explicitly call for attention to be paid to the difficult situation of unemployed women. Although most Member States have adopted measures in favour of, or specifically aimed at, women, it is a pity that the equal opportunities issue has generally played only a secondary role in the establishment of the multiannual programmes. Neither does the second series of programmes (1996) bring a gender dimension to general policy, except in the case of Sweden.

The unsatisfactory position of working women in the EU highlighted in the report and the fact that the multiannual programmes for employment in most cases do not have a gender dimension, although this is one of the most important aspects of current Community equal opportunities policy, call for a more active approach on the part of the Community. Although Community measures, among others, are considered to be of crucial importance, the Community does not appear to be going further than making political declarations on the promotion of equal opportunities (e.g. the report to the Madrid Council). Moreover, the action taken so far at EC level (excluding the Structural Funds) is too general and too vague for applying the principle of mainstreaming and introducing a gender dimension into policy.

3.3. *Chapter 3: Combining work with household life*

3.3.1. Having children is highly relevant to women's participation in the labour market. This has a major impact on combining work and family life. The ESC is concerned that budgetary austerity measures in a number of Member States are resulting in childcare budgets being cut back, with a detrimental effect on equal opportunities policy. The consequence of inadequate facilities to complement the family could be that women are able to take an only atypical employment or work not commensurate with their qualifications, or else that they cannot work at all.

To this detrimental effect can be added that of women's health. Recent findings in Sweden and Norway show that the double burden of working full time and (less-than-equal shared) unpaid work at home are having an increasingly serious effect upon women's' health.

But apart from raising children, tasks such as caring for parents/elderly people or a sick partner can also make it more difficult to combine work with family life. The

[1] OJ C 204, 15. 7. 1996.

report does not look at this problem in a broader perspective and the latter aspect of care is completely neglected. The possible consequences of combining caring and work and the lack of suitable social security facilities in this respect are also left out of the picture.

The report does devote some space to the situation of childcare services in the Member States, but the Commission states that it is not possible to conclude from the available information whether childcare services fulfil the principles set out in the childcare recommendation (availability of reliable care at a reasonable cost etc.). There is no system for the collection of standard data and their interpretation. The ESC feels that the Commission should take the initiative in developing a system of this kind.

The second and third equal opportunities action programmes established the European Commission Childcare Network. Through this network a number of the problems affecting opportunities for combining work and family life were tackled, including childcare facilities, the equal right to work and men's share of childcare. The network from the outset attached great importance to quality. When the fourth action programme was adopted the network was dissolved. Childcare facilities (including facilities outside school) are an area which receives too little attention, which is prejudicial to equal opportunities. The Committee feels that if no suitable Community initiative is developed to solve this problem the network should be re-established.

3.3.2. One positive feature of the report is its study of tax and social security policy in order to identify potential discrimination against women's participation in the labour market, and the greater attention paid to the tendency to base the social security and tax system on the individual. These systems have to be based on the individual. This is the only correct approach. However thought has to be given to the extent to which the abolition of derived rights worsens the financial situation of (the most vulnerable groups of) women in the absence of suitable compensation (combating of poverty). The comparative studies currently being carried out in the Member States can serve as a basis for future proposals in this area.

Attention should also have been paid to the possible consequences of privatization in the social security domain for women's position in the labour market and for the equal treatment of men and women. Thus, for example, in the Netherlands privatization of sickness insurance has had an impact on all workers, but it is above all flexible and household workers, who of course are often women, who have been hardest hit, e.g. with regard to obtaining sick pay. It should be borne in mind that social security arrangements are often not tailored to 'atypical' work (non-full-time work for an indeterminate period), although it is women who do this work. The Committee feels that this aspect of privatization is ideally suited to in-depth study in a future Commission report, with special emphasis as the impact on women.

It would also be advisable to look in the next annual report at social security problems in a more interrelated way, i.e. in conjunction with the existing directives (79/7, but also 86/613 concerning the self-employed) and the proposal for a third directive on equal social security treatment.

3.4. *Chapter 4: Promoting a gender balance in decision-making*

3.4.1. The report's detailed description of the current situation underlines once again how much ground women have to make up. By the end of 1997 it will be clear how far the Recommendation on the balanced participation of women and men in decision-making, adopted by the Council on 2 December 1996, is being effective in closing the gap. The fact that the Commission is putting this objective into effect in its own staff policy is to be welcomed but unfortunately this does not seem to be having enough effect. Provided that this policy can be properly fleshed out, it can serve as an example for the Member States, social partners, NGOs etc.

In the framework of on-going evaluation and debate it is however important that targets and timetables be established at the appropriate level to promote this participation.

3.5. *Chapter 5: Enabling women to exercise their rights*

3.5.1. The first point to be made here is that the title of the chapter does not fully cover its content. Only a small part of the chapter actually deals with the exercise of rights derived by women from Community (and also national) equal treatment law.

First of all, the Community legal framework and any developments in it are sketched. But this approach is incomplete and too limited for the following reasons. The report only deals with developments at EC level

(the case law of the Court of Justice and legislation). No attention is paid at all to the implementation of Community law and policy in the Member States, although it would be particularly interesting to know what shortcomings there are in this area (e.g. with regard to application of the concept of indirect discrimination). There is little point in recording developments at Community level if implementation in the Member States (which is in fact what it is all about) is not considered. Thus it is surprising that the information on the pregnancy directive is restricted to a summary of its contents. Although the Commission has perhaps not yet received the necessary official information from the national governments on the implementation of the directive (deadline October 1994), a report of the Commission's Legal Network does contain information on implementation in the Member States.

Apart from this, the report concentrates too much on recording developments without following this up. Thus it is a matter for concern that in social security cases the Court of Justice appears to be applying a more flexible test with regard to the objective justification of indirect discrimination (maintenance of financial balance, objective of legitimate social policy).

3.5.2. The Commission does not appear to be critical of its own activities with regard to the application of Community equal treatment law. The ESC is aware that the legal network has repeatedly called on the Commission to be more active in monitoring implementation shortcomings in the Member States and that it has proposed an Article 169 strategy in this respect. Article 169 proceedings have been specifically proposed with regard to various Member States. However, to date only 11 actions for infringement have been brought.

Little attention is paid to the problems encountered by women in enforcing their rights in the national courts. The report merely states briefly that a conference on the subject was held with the support of the Commission, without mentioning the exhaustive study in all the Member States which preceded this. The study did, however, reveal a large number of obstacles, such as lack of knowledge, the cost and duration of legal proceedings and the gathering of evidence and distribution of the burden of proof. Moreover, workers who feel that they have been discriminated against may be deterred from taking action by the fear of being victimized. This often leads to legal proceedings against the employer being dropped. It also appears that evidence is only one of the many problems encountered. Although the report lists the requirements enumerated by the Community (i.e. the Court of Justice) for guaranteeing effective legal protection, it gives no indication of possible follow-up action on obstacles identified. The Community (i.e. the Commission) seems too reticent on the issue.

3.5.3. With regard to the considerable space given to the Commission proposal to amend Directive 76/207, the ESC would point out this proposal was not endorsed in its opinion of 25 September 1996.

3.6. *Chapter 6: The advances of Beijing*

3.6.1. The ESC once again stresses the importance of the platform established at the Beijing conference; it deals with the same main questions and priorities as the European Union. The EU should, in its equal opportunities activities, accord high priority to international cooperation.

In 1996 little action had yet been undertaken on this chapter and little progress achieved.

4. Suggestions and recommendations

4.1. It would perhaps be preferable to carry out a general stock-taking every three years in conjunction with the evaluation of the current action programme and the process of formulating the next action programme, i.e. a progress report which would consider whether, on the basis of statistical information, the position of women had actually improved, and pinpoint areas where the action taken had been inadequate. The (shorter) annual reports could serve as a basis for this, concentrating on the specific effects of a given Community or national equal opportunities action or measure. It would be desirable for the report to concentrate on the effect of Community policy/legislation in the Member States, indicating what additional/new Community policy/legislation was necessary.

The foreword implies that future annual reports will have the same objective: reflecting the structure of the Fourth Action Programme. But is this desirable? In the first place, the structure of the report seems rather artificial, with some issues falling under a number of different headings and being referred to in different

chapters, involving needless repetition. Also, developments with regard to Community equal treatment legislation could be better integrated into the relevant chapters, as policy and legislation should not be considered in isolation from each other.

A more important point, however, is that as a result of the structure of the report the information it contains remains too general. It would perhaps be advantageous to highlight a number of principles or points of action and to consider how these have been introduced or implemented in specific areas. Thus, the implementation and impact of the principle of mainstreaming in various policy areas (e.g. transport, agriculture) could be looked into.

4.2. Chapter 3 of this opinion contains a number of suggestions. These are briefly summarized below and a number of new recommendations are added. The most effective strategy should be to develop and improve the competence and skills of women and continue to influence positive attitudes towards girls and women starting in family life:

— enshrinement in the Treaty of the principle of equal treatment of women and men;

— targets and timetables for the balanced participation of women and men in decision-making;

— campaign to raise awareness of the equal pay for equal work code of conduct;

— improvement of statistical research into wage differentials between men and women in order to judge whether equal pay policy is being effective;

— analysis of the future of women in the labour market;

— research into ways of strengthening women's labour-market position;

— research into the economic situation of weaker groups of women;

— adoption of Community initiatives in the field of childcare or, if this is not possible, re-establishment of the Network;

— in the interests of the clarity of the report, digressions on the situation in a Member State or initiatives taken in a particular area could be dealt with in an appendix or at the end of each chapter.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound'

(97/C 296/07)

On 30 May 1997 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture and Fisheries, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 July 1997. The rapporteur was Mr Kallio.

At its 347th plenary session (meeting of 9 July 1997), the Economic and Social Committee adopted the following opinion with 120 votes in favour, one vote against and three abstentions.

1. General comments

1.1. The proposal sets out to harmonize and simplify Baltic and EU fishing regulations. The section feels that this is a justified and worthwhile objective. The end result will be to simplify EU legislation and that of the Baltic region, thereby facilitating the activities and cooperation of the industry and of the authorities in the longer term.

1.2. The present regulation has no significance for fishing and those employed in fishing as it makes no change at all to current regulations. This being the case, there is no reason to assess the economic, social or business implications of this particular proposal.

1.3. Finding no factual or technical errors in the proposal, the Committee endorses it unreservedly.

2. Other observations

The Committee feels that the EU should go on to harmonize other specific fishing agreements with this kind of proposal. The approach adopted leads to greater harmonization of fishery policy and facilitates cooperation between industry and administration.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on the present and proposed Community role in combating tobacco consumption'

(97/C 296/08)

On 23 December 1996 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

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 3 June 1997. The rapporteur was Mr Fuchs.

At its 347th plenary session, held on 9 and 10 July 1997 (meeting of 9 July 1997), the Committee adopted the following opinion by 86 votes to 44 with 13 abstentions.

1. Introduction

1.1. With a view to reducing the public health impact of smoking on European citizens, the communication sets out a number of options for further action to combat tobacco consumption both at Community and at Member State level. The communication also takes stock of the range of existing measures and Community provisions to counter tobacco consumption. On the basis of reactions to the document, the Commission will subsequently consider the need to propose specific measures.

1.2. To underline the need for further action, the Commission points to the fact that progress to date in reducing smoking levels in the European Union is disappointing. Over 40 % of the Community population continues to smoke, and deaths from smoking are expected to rise sharply over the coming decades. The communication particularly highlights the need for measures targeted at a number of vulnerable groups, such as women, young people, people in less favourable socio-economic conditions and non-smokers.

1.3. The policy options suggested by the Commission build on a number of existing Community initiatives such as the 1996-2000 'Europe against cancer' programme and a number of directives regarding, inter alia, prohibition of television advertising of tobacco products, health related labelling requirements, a ban on marketing certain types of tobacco for oral use and the maximum allowable tar yield of cigarettes. The communication, which responds to a recent Council resolution on the need to fight tobacco consumption in Europe, is partly based on recommendations made by the High Level Cancer Experts Committee established in the framework of the 'Europe against cancer' programme.

1.4. The envisaged policy options cover a wide range of issues including:

— education and awareness raising;

— data collection and epidemiological research;

— cigarette content (tar, nicotine, additives);

— labelling;

— taxation and retail prices;

— sale conditions and advertising;

— passive smoking;

— cooperation with third countries and international organizations.

1.5. The Commission divides these policy options into two main categories: those which can be proposed and taken at the Community level itself and those where, in the light of the subsidiarity principle and the provisions of Article 129 of the Treaty, the Commission plays only a coordination role.

2. General comments

2.1. The Committee welcomes the Commission's intention to step up action to combat smoking.

2.2. The Committee highlights the significance for public health in the EU of the unanimous recommendation made by the High Level Cancer Experts Committee at its conference on 2 October 1996 that measures to reduce tobacco consumption be the top health priority for the EU. The recommendation is contained in the appendix to the Commission communication.

2.3. The Committee would emphasize the considerable importance of information, instruction and health education designed to prevent children and young people from smoking. These groups should clearly be a priority target area as smoking generally begins at puberty or earlier and there is a correlation between starting to smoke at an early age and long-term addiction to smoking. Pregnant women, too, should be given special protection.

2.4. However, the Committee is aware of the tobacco sector's socio-economic importance, especially in terms of employment. It would stress that raw tobacco producers have no possibility of financially viable conversion in the farming sector. Their case should therefore receive particular attention, for instance by studying measures which offer workable concrete suggestions for switching to other agricultural products or pave the way for job creation outside agriculture. At all events, the Committee, in line with previous opinions, underlines the need for a systematic on-going appraisal of current and proposed measures in order to determine their effectiveness in reducing tobacco consumption.

2.5. In the Committee's view the principle which should underlie the proposed measures is that everyone has the right to breathe clean air. It is, however, also accepted that smokers are entitled to smoke as long as they do not expose others to health risks. The aim is not to stigmatize smokers as individuals but to seek to prevent smoking and change attitudes.

2.6. The Committee agrees with the Commission that 'the Community is in a good position to promote a better and more coherent overall strategy to combat smoking' Moreover, the Committee shares the Commission's view that future Community action in the public health field must take account of the principle of subsidiarity and the requirement of proportionality.

3. Specific comments

3.1. Regarding cigarette content, the Commission proposes to evaluate possible health consequences of additives to tobacco products and to consider the case for a further reduction in the allowable maximum tar content (currently 15 mg from 31 December 1997, 12 mg under Council Directive 90/239/EEC), as well as the desirability of introducing a maximum admissible nicotine level.

The Committee broadly supports the phased limitation of the tar and nicotine content of tobacco, as proposed by the High Level Cancer Experts Committee; a scientific appraisal should however be carried out into the impact of the proposals on smoking habits and the public health consequences.

The Committee would also point out that a reduction in the tar and nicotine content of tobacco might well be taken advantage of by the industry for advertising purposes by, for example, describing tobacco products as 'light'. This downplaying of the dangers could lead to an increase in smoking.

3.2. Cigarette manufacturers should be required to prove that any additives used are harmless. Investigations carried out in the US indicate that additives are used to 'doctor' tobacco in order to enhance the effectiveness of nicotine, thereby increasing the level of addiction of smokers. This process must be banned.

3.3. On labelling, the Commission suggests considering the case for requiring bigger and more visible health warnings under existing labelling Directives 89/622/EEC and 92/41/EEC. The Committee welcomes this proposal and also suggests that consideration be given to taking further measures to bring about detailed labelling of tobacco additives, as is the case with, for example, the contents of medicinal products and food products.

3.4. Under the existing Directives on taxation of cigarettes and tobacco products, the Commission seeks to encourage Member States — in particular, those where current retail prices of cigarettes are below Community average — to use the available flexibility to increase taxation levels.

The Committee welcomes this proposal as a large number of scientific studies have demonstrated that availability of tobacco influences people's smoking habits. Upward harmonization of the consumer prices of tobacco products is one way of deterring in particular children and young people from smoking, given their limited funds. Tax revenue from tobacco products should be earmarked, on a pro rata basis, for information campaigns and general measures to promote public health by deterring people from smoking, rather than being used en bloc to bolster national exchequers. The Committee proposes that the abovementioned increase in taxation be excluded from the consumer price index, as far as this is used for compensatory income measures, in order to prevent it from fuelling inflation.

In connection with the proposed measures to increase taxation, the Committee highlights the need for rigorous measures to combat the smuggling of tobacco products.

3.5. The Commission does not present any specific proposals in respect of tobacco product advertising. In particular, no reference is made to its 1991 Modified Proposal for a Directive on advertising for tobacco products (COM(91) 111 final — SYN 194) that would ban all direct and indirect advertising of tobacco products (with the exception of publicity in dedicated tobacco sales outlets).

In its opinion of 23 September 1992 [1] the Committee emphasized that the European tobacco industry should be given the opportunity, under a self-regulatory scheme,

[1] OJ C 313, 20. 11. 1992.

to introduce binding rules on direct and indirect advertising. As self-regulation is mainly inadequate, the Committee supports the recommendation made by the High Level Cancer Experts Committee that tobacco advertising be banned, inter alia because such advertising helps to encourage children and young people to start smoking.

3.6. A number of the Commission proposals concern smoking in public buildings and at the workplace. These proposals, including the suggestion that the subject of protecting non-smokers be addressed in the Agreement on Social Policy, clearly deserve special consideration as, despite the right of smokers to smoke, non-smokers are entitled to breathe air which contains as few harmful substances as possible. The presence of harmful substances, such as asbestos and benzol, has to be limited by law to the lowest possible level which can be achieved in practice. As far as tobacco smoke is concerned, the lowest feasible level is zero. In order to safeguard the rights of non-smokers, every possible measure should be taken to reduce the level of tobacco smoke in the ambient air.

In this context, the Committee would draw attention to the positive experience of a number of Member States, such as Finland, in the field of statutory measures to protect non-smokers. It is also important that the Member States ensure that their legislation in this field (e.g. laws banning smoking in public places) is consistently observed. In this connection the Committee stresses the importance of consultation and the role of the social partners in the negotiation and application of measures regarding smoking in public places and at the workplace.

3.7. In the 1995 financial year, the EU paid out a total of ECU 993 million in grants and subsidies under the common market organization for raw tobacco, whilst only 1 % of this amount was earmarked for research and educational measures (under the Tobacco Research and Information Fund). The Commission has proposed that the proportion of the raw tobacco payments allocated to the Tobacco Research and Information Fund be raised to 2 %.

The Committee welcomes this proposal. The Commission is also urged to consider the feasibility of securing assistance from independent sources for information and educational services.

The Committee further believes that the funding for the 'Europe against cancer' programme (currently amounting to only ECU 2 million) should also be substantially increased.

3.8. Nicotine addiction should, in accordance with the Commission's proposal and in line with the stand taken in a large number of scientific publications, be classified as a 'drug dependence'.

3.9. The availability of tobacco, in particular to children and young people, should be further restricted by taking a number of measures, including the removal of public cigarette vending machines. In this context the Committee recognizes that a number of Member States have introduced successful programmes and it encourages all Member States to continue to develop and introduce such programmes.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX

to the Opinion of the Economic and Social Committee

Defeated amendments

The following amendments, endorsed by over a quarter of the votes cast, were rejected in the course of the deliberations:

Point 1.2

Replace by the following:

'1.2. The Commission points out that the incidence of smoking in the Community has been in decline for a number of decades, but that the rate of fall has slowed in recent years. The Commission notes that over 40 % of the Community population continues to smoke, and it anticipates a rapid increase in major smoking-related health problems in the next few decades. Eurobarometer 41.0 shows an even steeper decline in the number of smokers, and states that only just over a third (35 %) of EU citizens over the age of 15 smoke. The communication particularly highlights the need for measures targeted at a number of vulnerable groups, such as women, young people, people in less favourable socio-economic conditions, and non-smokers.'

Reason

The data cited in the communication differ from those given in Eurobarometer, an official instrument of the Commission. A more detailed reference is thus needed to the various factors entering into consideration, such as those contained in Eurobarometer 41.0, on Europe and smoking, issued by the Public Health Unit of DG V/F/I on 21 September 1994.

Result of the vote

For: 42, against: 92, abstentions: 7.

Point 2.5

Replace by the following:

'The Committee takes the view that the principle which should underlie the proposed measures is that everyone has the right to breathe clean air. It is, however, also accepted that smokers are entitled to smoke, as long as they do not endanger or bother others. The Committee highlights the important role to be played by the social partners in setting guidelines on smoking at the workplace. The aim is not to stigmatize smokers as individuals but to endeavour to promote non-smoking in the context of national cultures and to change attitudes.'

Reason

The social partners should always be involved in matters affecting people at their place of work. The best solution is for the people on the spot to reach agreement amongst themselves.

Result of the vote

For: 51, against: 87, abstentions: 10.

Point 3.5 — second paragraph

Replace by the following:

'In its opinion of 23 September 1992 the Committee rejected a ban on tobacco advertising. It wanted to give the European tobacco industry the chance to introduce self-regulatory measures, enforceable by the industry itself, for direct and indirect advertising, which would, in particular, not be directed at young people or linked to sport. As a result tobacco producers should refrain from advertising in publications mainly devoted to sport or read by young people. This self-regulation has functioned satisfactorily.

If the Committee is to be consistent, it must reaffirm its opinion of 23 September 1992 and once again reject a blanket ban on advertising, in the light of experience.'

Reason

Self-explanatory.

Result of the vote

For: 44, against: 90, abstentions: 8.

Point 3.8

Reword as follows:

'The Committee notes that the Communication proposes to reclassify nicotine addiction as a dependency, thus allowing it to be tackled through major Community public health programmes. In its opinion of 29 May 1991, the Committee stressed the fact that the word "addiction" seemed rather strong.'

Reason

It is legitimate to question the wisdom of reclassifying legally available products in order to be able to deal with them via Community programmes which mainly address the problem of illegal drugs. The Committee has already rejected this interpretation.

Result of the vote

For: 49, against: 71, abstentions: 5.

Opinion of the Economic and Social Committee on 'Taxation in the European Union — Report on the development of tax systems'

(97/C 296/09)

On 18 February 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on 'Taxation in the European Union — Report on the development of tax systems'.

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 June 1997. The rapporteur was Mr Geuenich.

At its 347th plenary session of 9 and 10 July 1997 (meeting of 9 July 1997) the Economic and Social Committee adopted the following opinion by 93 votes to 27 with 19 abstentions.

1. Introduction

1.1. In its paper of 20 March 1996 entitled Taxation in the European Union (SEC(96) 487 final) the Commission presented a view of taxation policy, which in particular highlighted the major challenges facing the European Union: the need to create growth and employment, to stabilize fiscal systems and to realize the single market in all areas, including that of taxation.

1.2. At the informal Ecofin Council meeting in Verona on 13 April 1996, finance ministers welcomed the Commission paper and agreed on the need to take forward the consideration of these issues in a High Level Group, to be set up and coordinated by the Commission.

1.3. In its Report on the development of tax systems of 22 October 1996 (COM(96) 546 final) the Commission summarizes the views expressed by members of the High Level Group on the issues first raised by the Commission's Verona document and sets out its own assessment of these particular issues and its planned approach for the future.

1.4. In this opinion the Committee confines itself to discussion of the two documents referred to above. Where the Committee has already expressed a view on problems raised in these two documents, reference is made to the relevant opinions, in particular the Opinion on Direct and indirect taxation of 20 December 1995 [1] and the Opinion on a Common system of VAT — a Programme for the Single Market currently being drawn up.

1.5. In this opinion, as in the reference documents mentioned above, only taxes which are of Community-wide importance, where national structures, or changes to these, affect other Member States, are discussed. These comprise income and withholding tax, corporation tax, taxes on labour, consumer taxes, particularly VAT, as well as a tax on energy and products harmful to the environment.

2. Rising burden of tax on labour

2.1. *Analysis in the Commission documents*

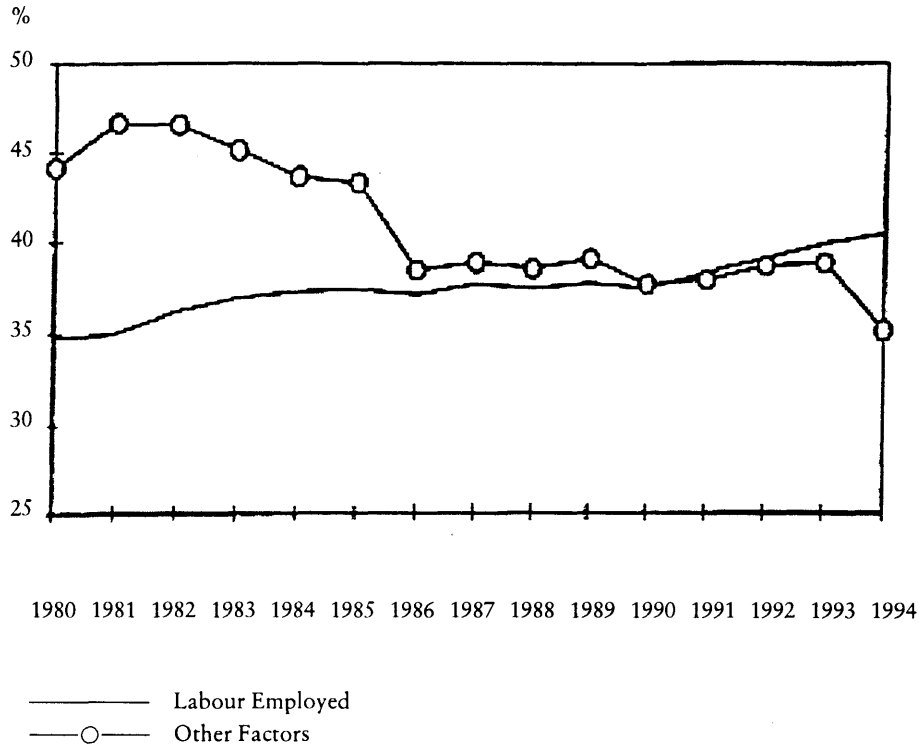
2.1.1. There is so far little evidence that fiscal erosion is affecting total revenue from taxes and social levies. Over the last fifteen years their share of Community GDP has remained constant or risen slightly. However, whilst labour has been increasingly heavily taxed, the tax burden on the other factors of production has fallen overall.

2.1.2. One method for analysing the long-term trends in the structure of taxation is to calculate implicit tax rates (i.e. tax revenues divided by the tax base) for factors of production and consumption.

Between 1980 and 1994, the European average of the implicit tax rate on employed labour increased steadily from 34,7 % to 40,5 %. The same rate for the other factors of production (capital, self-employed labour, energy, natural resources) decreased from 44,1 % to 35,2 % (see graph on page 38).

[1] Opinion of the Economic and Social Committee of 20. 12. 1995 — OJ C 82, 19. 3. 1996.

Implicit Tax Rates 1980-1994



2.1.3. The implicit rate for consumption was broadly stable, rising slightly from 13,1 % to 13,8 %. Again there were large variations between individual Member States however. Those Member States which had the largest rises in the implicit tax rate on employed labour over this period were mainly those where the level of total taxation had increased most.

2.2. *The Committee's recommendations*

2.2.1. The Committee welcomes the Commission's approach of looking at the tax system as a whole, as discussing each major type of tax separately automatically implies far-reaching changes in the financing structure both of the public sector and private households. The tax discussion should thus be comprehensive.

2.2.2. Mass unemployment is the EU's most intractable problem. All contributions to reducing this and the measures needed to do this thus have the highest priority. This is also one of the central themes of the Commission's White Paper on Growth, Competitiveness and Employment — The Challenges and Ways Forward into the 21st Century [1]. A way has therefore to be found of financing a reduction of the burden of tax on labour and reducing non-wage labour costs.

2.2.3. Public expenditure reductions are one way of financing a reduction of the burden of tax on labour, but are not on their own sufficient. Alternative sources of finance are indirect taxes (taxes on consumption), the introduction of minimum tax rates for energy products and consideration of the possible introduction of completely new types of tax such as, for example, a Tobin [2] tax applicable to the international financial markets, the discussion of which has been initiated by well-known economists and financial experts.

2.2.4. Although the Member States have to assess themselves the extent to which tax instruments are needed for the achievement of national environment-policy objectives, there is however clearly an area in which action at Community level is needed. This is true of the taxation of energy, which has an important role to play here if the goal of stabilizing CO_2 emissions at the level of 1990 by 2000 is to be achieved.

The Committee welcomes the Commission' proposals on the taxation of energy products [3].

[1] Growth, competitiveness and employment — Commission White Paper (COM(93) 700 final).

[2] James Tobin, A proposal for international monetary reform, The Eastern Economic Journal 4 (3-4), July/October 1978, pp. 153-159.

[3] Proposal for a Council Directive on Restructuring the Community framework for the taxation of energy products (COM(97) 30 final — 97/0111 CNS).

2.2.5. The approximation of European VAT rates can also help reduce the direct taxation of labour. In Member States where indirect taxation rises as a result of tax approximation, the direct taxation of labour must at the same time be reduced. In this way overall tax revenue trends will remain unchanged and job creation will be encouraged. At the same time flanking measures will be provided to alleviate the effects on the lowest income groups of an increase in indirect taxation.

The Committee would refer in this context to its Opinion on a Common system of VAT — a programme for the single market currently being drawn up and to its Opinion on Direct and Indirect Taxation [1].

2.2.6. To sum up, the Committee points out that the above financing opportunities, as well as the measures discussed below for the taxation of income from capital would have different effects on overall tax revenues in the various Member States and would thus differ in the extent to which they offer ways of financing a reduction of the burden of public levies on labour. Each Member State must therefore adopt the financing measures best suited to it in the framework of the Commission's existing requirements.

3. Fiscal erosion through tax switching

3.1. *Analysis in the Commission documents*

3.1.1. In comparison with many other areas of European integration, tax policy is clearly lagging behind. In tax policy terms Europe is a patchwork. As a result of erosion of fiscal bases, especially the more mobile ones, professed attempts to defend tax sovereignty have in fact had the opposite effect, a gradual real loss of tax sovereignty for all the Member States. More and more Member States are poaching other Member States' taxpayers, particularly in the field of business.

3.1.2. In the case of direct taxes there are two main ways of reducing the effective tax burden:

First, switching production and tax bases to low-tax countries, in order to benefit from low taxation of factor income. This makes it attractive for a state to reduce business taxes, because the resulting loss of tax revenue will, in the medium term, be counter-balanced by new revenue from tax and social levies arising from additional employment.

Secondly, manipulating the cost of inputs into the final product in multinational corporations via internal transfer prices with the goal of transferring taxable income to low-tax countries: this kind of manipulation is possible because inputs have no market value. The internal transfer prices fixed are thus to a great extent outside the scope of the tax authorities' checks on abuses.

3.1.3. Even indirect taxes, which are harmonized to a much greater extent than direct taxes, are not immune to fiscal erosion. A particular threat to VAT is that because of the country of destination principle firms active in two or more Member States will be registered in the same number of countries (two or more) for tax purposes. In contrast to the taxation of the turnover of a firm operating in the Community in a single location, there is no EU tax authority to cover such cases with an overview of the activities of a firm which could then be assessed at a single tax centre. In addition to this, there is the fact that, with the growth of cross-border services, new technologies are being used to switch taxable revenues to locations outside the net of the VAT system. Moreover, the differences between national rates of VAT offer more and more scope for tax avoidance. The reduction of checks on the cross-border movement of goods leads to substantial losses of VAT revenue for the budgets of the Member States and the EU itself.

3.1.4. The black economy also contributes to fiscal erosion. It should be borne in mind that there are always two sides to work in the black economy: the worker and his employer.

3.2. *The Committee's recommendations*

3.2.1. It is in the vital interests of the European Union, the internal market and EMU for tax dumping in Europe to be eliminated and prevented. Whilst fair competition between tax systems, aimed at creating favourable conditions for workers, employers and consumers is to be welcomed, destructive competition, benefiting few and hurting many, could undermine the whole EU:

— if net contributors to the EU budget are expected to pay ever heavier contributions while the tax revenues urgently needed to finance these are being undermined; and

[1] Opinion of the Economic and Social Committee of 20. 12. 1995 — OJ C 82, 19. 3. 1996.

— given that individual net contributors are estimated to be suffering annual losses of tax revenue of the order of ECU 25 to 30 billion as a result of tax dumping [1].

3.2.2. It must not be an aim of EU tax policy to harmonize business taxes simply for the sake of it. Measures are needed however to ensure that tax dumping between the Member States does not threaten to undermine the EU.

The Committee does advocate the setting of minimum standards for the rate of corporation tax and minimum harmonization of the main criteria used in determining the tax base. For further details the Committee would refer to its Opinion on Direct and Indirect Taxation [2].

3.2.3. The Committee feels that the same approach should be adopted as in dealing with direct subsidies, with due regard to the principle of subsidiarity. Direct subsidies continue to be the responsibility of the Member States, although the Commission monitors compliance with the rules of competition. Such monitoring is also needed in relation to taxation. The monitoring of tax support measures practised so far is not enough, as it extends only to deviation from the general systems of the Member States. This does not allow for the fact that, as things stand at present, distortions of competition are arising from the very differences in individual tax systems, which are in some cases even more serious than the distortions accentuated by specific tax incentives.

3.2.4. At present a Member State cannot on its own eliminate either all the tax obstacles or the individual causes of the fiscal erosion described. In this situation, the Committee feels, doing nothing is not an appropriate solution. The Commission must, whilst fully complying with the principle of subsidiarity, study and propose solutions to these problems, which the Member States cannot themselves solve by individual action.

3.2.5. The requirement for unanimity in the Council on tax decisions is clearly a barrier to progress on taxation and the requirements of the internal market. This is demonstrated by the large number of important Commission tax proposals currently blocked by the Council.

But the Committee feels that the Commission has the instruments at its disposal. Under Article 101 of the EC Treaty the Commission is in fact required to eliminate differences in the laws and regulations of the Member States which are distorting the conditions of competition in the common market. In such a case the matter is to be discussed by the Council of Ministers. Any decision is in principle required to be unanimous. But if no agreement is achieved a decision can then be taken by a qualified majority at the proposal of the Commission.

The Committee feels that the Commission should act as soon as possible under Article 101.

4. Tax fraud

4.1. *Analysis in the Commission documents*

The problem of tax fraud is particularly acute in relation to the taxation of income from savings. This is the most mobile base of all, and differences in taxation can cause serious distortions to capital allocation and flows. The elimination of currency risks and the reduction of tax rate differentials in stage III of EMU would lead to such differentials being even more extensively exploited than at present.

4.2. *The Committee's recommendations*

4.2.1. The further harmonization of the internal market progresses, the more clearly differences in tax systems are felt and the more relevant they become for the decisions of economic operators. The basic principle here is that minimum harmonization of taxes and tax bases is needed most where the tax base is at its most mobile, i.e. in relation to income from capital such as interest and dividends.

4.2.2. In order to rein back competition over taxes, to provide the resources needed for the creation of jobs and to ensure that the European Union is not at a disadvantage on the international capital markets, the Committee recommends the following measures, in implementing which international constraints must be considered:

4.2.2.1. Introduction of the concept of the Community resident: it is no longer acceptable on the one hand to abolish European internal frontiers and on the other to distinguish within the Member States between 'residents' and 'non-residents', as this implies the existence of frontiers.

4.2.2.2. Introduction of a European and international approach to the taxation of income from savings. In the context of such measures the existing differences between the Member States with regard to the taxation of income from savings (withholding tax or compulsory notification) must be respected, and it must be ensured

[1] Source: German federal finance ministry, quoted from press reports.

[2] Opinion of the Economic and Social Committee of 20. 12. 1995 — OJ C 82, 19. 3. 1996.

that no one system is preferred at the expense of another. Member States in which taxes are raised on the basis of a notification requirement must have the assurance that income earned by their residents on savings in other Member States will be notified to them.

In the reverse case, Member States with a withholding tax must have a guarantee that income earned by their residents on savings in other Member States will either be subject to withholding tax or systematically notified.

4.2.2.3. This would mean that Member States could choose between a withholding tax and systematic notification of interest and dividends paid to the authorities of the Member State in which the saver is resident.

4.2.2.4. Within the EU tax havens situated in the territory of Member States would be abolished. The regularization of European 'exclaves' outside the Union and exotic offshore centres should also be negotiated.

4.2.2.5. In view of the outflow of savings to non-Community countries, a solution based on that adopted by the EU should also be sought in the framework of the OECD, involving a withholding tax or the exchange of information.

4.2.3. The Committee agrees with the personal representatives of the finance ministers in regarding the intensification of cooperation between tax authorities in dealing with tax evasion and fraud in the internal market as a priority. This cooperation should not however be restricted to the exchange of experience on ways of stopping tax fraud; it should, rather, serve to improve checks and official cooperation between the tax authorities of the Member States. Here use should be made of the opportunity to carry out joint tax inspections in cases of cross-border economic activity.

4.2.4. By limiting tax fraud a contribution can be made to financing a reduction of pressure on labour in those states which are the source of savings and thus the basis for the taxation of interest.

4.2.5. The Committee refers for further details to its Opinion on Direct and indirect taxation [1].

[1] Opinion of the Economic and Social Committee of 20. 12. 1995 — OJ C 82, 19. 3. 1996.

5. The Commission's future strategy

5.1. *The Commission's view*

5.1.1. On the basis of the discussions of the EU finance ministers' personal representatives the Commission has developed a strategy for the future.

5.1.2. The personal representatives stressed the need for more coordination. The Commission then proposed the establishment of a new permanent Forum to deal with strategic tax policy questions to enable the Member States and the Commission to exchange information and discuss tax questions. This proposal was welcomed by the Dublin European Council in December 1996. Commissioner Monti chairs the Forum which brings together high-level representatives of the finance ministers of the Member States. With regard to tax competition, the Commission hopes that the work of the Forum may lead to initiatives in the following areas:

— securing broad agreement on what types of measures are harmful in a Community context;

— defining common standards across a range of areas (a 'code of good conduct');

— introducing greater coordination of measures that are taken by the taxation authorities of Member States and designed to prevent tax competition from harming the common interest;

— reinforcing cooperation between tax authorities in the mutual fight against tax fraud and evasion.

5.1.3. The following questions are also to be discussed in the forum:

— the role, functioning and possible coordination of double taxation treaties;

— the simplification of the tax environment for SMEs and other businesses;

— the interaction of taxes and social security contributions, in particular for cross-border workers;

— and the taxation of international services and the impact of new technologies.

5.1.4. The Commission proposes complementing the work of the Forum with the discussion of forward-looking initiatives on the development of tax systems meeting the Community's needs and facilitating the smooth operation of the internal market.

5.2. *The Committee's recommendations*

5.2.1. The Committee endorses the Commission's strategy for the future and recommends that the Com-

mission make use of Article 101 of the EC Treaty (see Appendix 1) so that strategies to block progress on EU-wide tax-policy coordination can be countered.

5.2.2. The Committee welcomes the initiatives announced by the future Luxembourg Presidency in the area of European tax policy, in the hope that progress will thus be made on solving the problems referred to in this opinion.

5.2.3. As an appendix to this opinion there follow a number of possible options for change to the EC Treaty aimed at enlarging the scope for action on European tax policy. The Committee stresses that the contents of the appendix are intended merely as a basis for discussion and not as binding recommendations.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX I

EC TREATY

Article 101

(Treatment of rules distorting competition).

'Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the common market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, the Council shall, on a proposal from the Commission, acting unanimously during the first stage and by a qualified majority thereafter, issue the necessary directives. The Commission and the Council may take any other appropriate measures provided for in this Treaty.'

APPENDIX II

1. Article 7a

~~The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 7b, 7c, 28, 57(2), 59, 70(1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty.~~

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty. **Double taxation or the absence of taxation is incompatible with the internal market. Where no other state is responsible, taxation shall be the responsibility of the Member State of residence.**

2. Article 73d

1. The provisions of Article 73b shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which **provide for different tax treatment for** ~~distinguish between~~ taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested; **this shall not however give rise to any difference in the tax burden;**

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this Treaty.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 73b.

3. Article 99

The Council shall, ~~acting unanimously on a proposal from the Commission~~ **acting in accordance with the procedure referred to in Article 189b** and after consulting the ~~European Parliament and the~~ Economic and Social Committee, adopt **the VAT** provisions. ~~for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market within the time-limit laid down in Article 7a.~~

4. Article 100

~~The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.~~

5. Article 100a

1. ~~By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 7a.~~ The Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. **In addition to the case referred to in the second half of the first sentence of Article 189b(3), the Council shall also act unanimously on taxes which are only partly destined for the Community budget and provisions** ~~Paragraph 1 shall not apply to fiscal provisions, to those~~ relating to the free movement of persons ~~nor to those relating to~~ **and** the rights and interests of employed persons, **if at least two Member States so require; if an application to this effect is lodged, the Council shall also act unanimously in relation to any subsequent decisions** [Article 189b(5) and (6)].

6. **Article 130s**

1. The Council, acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 130r.

2. By way of derogation from the decision-making procedures provided for in paragraph 1 and without prejudice to Article 100a, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt:

— provisions primarily of a fiscal nature, **if at least two Member States so require, in relation to taxes only partly destined for the Community budget;**

— measures concerning town and country planning, land use with the exception of waste management and measures of a general nature, and management of water resources;

— measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

3. In other areas, general action programmes setting out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee.

The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.

7. **Article 220**

Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

— the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals;

~~— the abolition of double taxation within the Community;~~

~~— the mutual recognition of companies or firms within the meaning of the second paragraph of Article 58, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries;~~

— the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.

Without prejudice to measures adopted under Article 100a, the Member States may enter into agreements with each other on the practical implementation of the prohibition of double taxation (Article 7a); they shall inform the Commission of such measures and the Commission shall bring these to the attention of the other Member States.

APPENDIX III

to the Opinion of the Economic and Social Committee

(Rule 47 of the Rules of Procedure)

The following amendments, which received at least one quarter of the votes cast, were defeated in the course of the Committee's debates:

The whole opinion

Replace the entire text by the following:

'1. **Introduction**

1.1. Taxation is a very complex and involved subject. In this opinion, the ESC confines itself to discussion of the documents SEC(96) 487 final and COM(96) 546 final. It has, therefore, elected to address only the most important macro-economic tax issues; sectoral matters are dealt with only where they raise questions of more general significance.

1.2. This document takes as its departure point the fact that unemployment in the EU is around 20 million and that this problem has exhibited a considerable degree of intransigence to all previous attempts to resolve it or even to alleviate its effects. It therefore approaches the subject of European taxation policy from the standpoint of how this can best be structured in order to contribute to the solution of what must be regarded as the most important and urgent problem facing the EU at the present time.

1.3. The long-term nature of this problem and the fact that the trend is showing little sign of improvement, underlines the need for radical thinking and a new approach rather than a repetition of the tired "remedies" which have so signally failed to provide a solution to date.

1.4. In this, the ESC is at one with the Commission which, referring to President Santer's Confidence Pact for Employment, said that:

"This highlighted in particular the need to reverse the tendency of taxation systems to be detrimental to employment, as part of a wide-ranging strategy to create more jobs in the Union."

1.5. As the Commission document notes, the European Council in Florence also requested the Council "to submit to it, before the European Council in Dublin, a report on the development of tax systems within the Union, taking account of the need to create a tax environment that stimulates enterprise and the creation of jobs..."

1.6. In the final analysis, job creation depends on sustained economic growth and the surest way of achieving this is to reduce the twin burdens of excessive taxation and excessive regulation on the wealth-creating private sector of the economy. Unless this fundamental truth is recognized, other measures aimed at reducing unemployment will be ineffectual and Europe will be doomed to suffer the scourge of unemployment indefinitely.

2. **The Commission documents**

2.1. The Commission proposed a new and comprehensive view of taxation policy in its reflection document 'Taxation in the European Union' dated 20 March 1996. In particular, it highlighted the major challenges facing the Union; the need to create growth and employment, to stabilize fiscal systems and to fully realize the Single Market.

2.1.1. At the informal ECOFIN Council Meeting in Verona on 13 April, Finance Ministers welcomed the Commission paper and agreed on the need to take forward consideration of these issues in a High Level Group, to be set up and coordinated by the Commission.

2.1.2. This High Level group met four times; the Council's Secretariat was also present at the meetings.

2.2. In its "Report on the Development of Tax Systems" dated 22 October 1996 the Commission sets out its conclusions drawn from the four meetings of the Group on the issues raised by its Verona document, gives its own assessment of these issues and indicates what it sees as the way forward for the future.

2.2.1. The Commission emphasizes that any proposal for Community action in taxation must take full account of the principles of subsidiarity and proportionality. It does not seek harmonization of taxation systems for harmonization's sake.

2.2.1.1. The High Level Group generally gave little support to minimum corporation tax rates or bases at this stage, even within the framework of the overall objective of ensuring some minimum degree of effective taxation within the Union.

2.2.2. It is felt that better cooperation at Community level requires the setting up of a permanent group where Member States and the Commission can share information on, and review, taxation policies. Such a group, chaired by the Commission, could be used to provide a strategic overview of taxation policies and of the work of the existing specialized committees. It would be tasked with helping to identify key initiatives, whether legislative or not, which could contribute to the realization of essential EU objectives while preserving the Member States' tax collecting capacities.

2.2.3. Sharing information more closely on policies and measures in other Member States should enable the group to address the question of tax competition. To that effect, the Commission will take forward a number of initiatives directed at:

— securing broad agreement on what types of measure are harmful in a Community context;

— defining common standards across a range of areas (a "code of good conduct");

— introducing greater coordination of tax measures taken by the taxation authorities of Member States which are designed to prevent tax competition from harming the common interest; and,

— reinforcing cooperation between tax authorities in the mutual fight against tax fraud evasion.

2.2.4. The group could also examine the major policy implications of certain specific issues, such as:

— the role, functioning and possible coordination of double taxation treaties;

— the simplification of the tax environment for SMEs and other businesses;

— the interaction of taxes and social security contributions, in particular for cross-border workers; and,

— the taxation of international services and the impact of new technologies.

2.2.5. There is also a need for further work on the interaction between taxation and shared Community goals, such as enterprise, employment and the environment.

2.2.5.1. The Commission document recognizes that enterprise is an essential force for the creation of growth, prosperity and employment within the Union. Creating an environment which enables enterprise to flourish is vitally important to maintain and enhance the Union's competitiveness world-wide. The Single Market is central to this; taxation is seen as one of the most important areas in which the Single Market has not been fully achieved. Tax systems must allow cross-border economic activity to develop within the Union; at the same time, they must ensure that neither double taxation nor tax evasion result.

2.2.5.2. To promote employment, there is widespread agreement on the need to reverse the trend in taxation structures towards an increasing burden on labour compared to other tax bases. The Commission underlines that, in accordance with the principle of subsidiarity, Member States should have flexibility in choosing the method of reducing taxes on labour and the means of financing those reductions. For the longer term, the Commission believes that there are great benefits to be gained in coordinating tax measures and presenting them as part of a Community-wide effort to reduce unemployment. It also considers that it is crucial to persuade economic agents that tax structures will be geared towards promoting employment from now on. There is a need to create the right environment for job creation by reducing the tax burden overall, including for businesses.

2.2.5.3. For the environment, the Commission acknowledges the need to explore an increased use of energy and environmentally-related taxes but current practice shows that environmental objectives are often best achieved when taxation instruments are combined with other measures, used consistently to change behaviour. In deciding the choice of instruments, the effects on competitiveness, on employment and on the environment should be carefully assessed.

2.2.6. Given that SMEs are the dominant source of new jobs in the Union, taxation policies should also facilitate and sustain their employment creating capacity.

2.2.7. The Commission advocates the introduction of a minimum withholding tax along the lines of its 1989 proposal as a first step in the regularization of the taxation of income from savings.

2.2.8. Even in the absence of new legislation on taxation, an increasing number of cases is coming before the courts, both nationally and to the European Court of Justice. There is concern that, unless Court judgements are supplemented by other instruments, the development of Community tax systems risks being piecemeal.

2.2.9. Bearing in mind the analysis and the lines of action outlined above, the Commission considers that there is a pressing need to make progress, both with regard to individual issues and to the broad direction of tax policies.

3. **General comments**

3.1. The Committee agrees with the broad thrust of the Commission's proposals.

3.2. In many EU countries the taxes on labour are high, representing around 23,5 % of GDP for the EU average. This figure is higher than in, for example, the USA (19,4 %) or Japan (16,6 %). Within the EU itself, there are large differences; figures range from 14 % in Greece to 32 % in Sweden.

3.2.1. It is disingenuous to pretend that increases in the taxes on labour, whether they are borne by the employer or the employee, are not inimical to the prospects for employment.

3.2.1.1. To the extent that they are levied on the employer, they increase the cost of employing labour and reduce the demand. By the same token, attempts to "protect" employment by increasing the cost to employers of releasing workers (which is, in effect, another form of taxation on employment since the payments made by the employer are, in part, a substitution for payments which the State would otherwise have to make) have the effect of making employers more reluctant to engage workers in the first place.

3.2.1.2. Where taxes on labour fall on employees, they have the effect of reducing their net disposable income and, therefore, their purchasing power. They are also inflationary, in that they stimulate demands for higher wages to offset the reduction in the workers' standard of living; if the increased wages are not matched by a commensurate increase in productivity, this pushes up the employer's costs, reduces the competitiveness of the business and further undermines economic growth and the prospects for employment.

3.2.2. The ESC therefore concludes that a reduction in the taxes on labour, whether levied on the employee or the employer, would make an important and positive contribution to reducing the current levels of unemployment in the EU.

3.2.3. This contribution would, however, be severely diminished if the reduction in taxes on labour were merely transferred to other forms of corporate taxation. A reduction in the overall burden of direct personal taxation and the taxation of enterprises is required in order to stimulate economic growth and create increased demand for labour.

3.2.3.1. In particular, the ESC is opposed to the introduction of new taxes on information technology, such as an Internet tax or a bit tax, or on financial services (a Tobin tax).

3.2.3.2. The former would be tantamount to a taxation on learning and would severely hamper attempts by the EU to catch up with the level of technological advancement already achieved by other leading nations; at a time when the governments of other countries are spending billions of dollars to promote computer literacy in their populations, it makes no sense for the EU to consider handicapping its own citizens by taxing the means of their knowledge acquisition.

3.2.3.3. A Tobin tax would risk damaging the competitiveness of the EU nations in the global financial markets and would drive many of these operations off-shore, with a consequent loss of jobs and international financial expertise.

3.3. There are various reasons for wishing to harmonize taxes, some good and some bad. A desire for uniformity just for its own sake is a bad reason. The ESC is therefore pleased to note that the Commission has no desire to harmonize for harmonization's sake and that it embraces the principles of subsidiarity and proportionality.

3.3.1. Whilst it accepts that the ultimate harmonization of taxes is a legitimate aim, and an inevitable concomitant of economic and monetary union, the ESC advocates a cautious approach. As long as individual Member States continue to exhibit different economic patterns and varying economic performance the governments of each individual state must have the freedom to adjust their fiscal policies to meet the budgetary requirements of their national economies. A strategy which is right for, say, Germany at any given moment may not be right for Portugal at the same time or, indeed, for Germany at some other time. It will require a much closer degree of convergence between national economies than that stipulated by the Maastricht Treaty before Member States can harmonize their tax rates and even that limited degree of convergence is still far from being achieved.

3.3.2. In any case, harmonization of tax rates is a pointless exercise without also harmonizing tax bases, structures, systems, rules and interpretation. Indeed, uniform rates without uniform application may increase distortions rather than reducing them.

3.3.3. In the context of the Single Market, differences in interpretation and application between various tax regimes and variations in the tax base constitute a much greater impediment to cross-border trade and the completion of the Single Market than rate differentials.

3.3.3.1. Tax differentials are perfectly compatible with free open markets. In the USA, Canada and Switzerland, companies and individuals are taxed both by the Federal governments and by the individual states, provinces and cantons at widely varying effective total rates.

3.3.3.2. Within the overall objective of reducing the burden of taxation, the ESC considers that a measure of harmonization would be beneficial and feels that efforts at harmonization should be concentrated on the removal of identified obstacles to the creation of a true Single Market, particularly in the fields of VAT and company taxation, reducing the compliance costs for tax-payers of all types of tax, protecting cross-border transactions from the effects of jurisdictional battles between revenue authorities and removing the discrimination against companies earning profits abroad which is caused by unrelieved imputation taxes. Once these measures had been achieved, it would be possible to obtain a much clearer view of the need and the scope for further levels of harmonization.

3.3.3.3. The ESC therefore endorses the Commission's proposals for the setting up of a permanent group to deal with the issues set out in the Commission document. It considers that the areas which offer the greatest scope for making substantial progress in the short term are the defining of common standards, achieving greater coordination of tax regimes, improved cooperation in the fight against tax fraud, the simplification of the tax environment and the working of double-taxation treaties. The ESC believes that, taken together, these issues constitute an agenda which could make real progress in bringing closer the realization of the Single Market.

3.4. The ESC endorses the High Level Group's refusal to propose the imposition of minimum corporation tax rates or bases at this stage. Any European tax policy cannot be conceived in isolation but must take account of world-wide policies and trends. Those who seek to impose minimum tax rates in the EU ignore this reality.

3.5. The ESC does not agree with the Commission's proposal for a minimum withholding tax on interest from savings. In its Opinion on "Direct and Indirect Taxation" [1] the ESC stated that a European approach to this problem "must respect the existing difference between the Member States as regards the taxing of income from savings (withholding tax or compulsory declaration) and should not prejudge one system to the detriment of the other." It reiterates this position.

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[1] Opinion of the Economic and Social Committee of 20. 12. 1995 — OJ C 82, 19. 3. 1996.

3.5.1. The introduction of a European standard withholding tax would result in an out-flow of capital to countries where the rates of taxation on these savings were lower and this movement could not be curtailed without the effective re-introduction of exchange controls, which would result in the marginalization of Europe in the global financial markets and would have the most seriously detrimental effect on the economic growth of the EU.

4. Conclusions

4.1. Government, in the conduct of its role in a modern economy well-developed public services, must prioritize expenditure and raise revenue. These actions inevitably place a re-distributive burden on the economy and include effects which are detrimental to encouraging faster economic growth. The ESC believes that efforts should be made to identify substantial and timely changes in areas where economic growth may be adversely affected by government actions, especially in taxation policies, without jeopardizing that level of social protection which is a hallmark of the European social model.

4.1.1. The ESC believes that, unless this can be achieved, the economic performance of the EU against its major world competitors, such as the USA, Japan and the emerging nations of the Pacific Rim, would continue to decline and that this decline would not only frustrate the desire to extend and improve the European social model but would imperil the maintenance of the levels of social protection which currently exist. It could also lead to further increases rather than a reduction in the level of European unemployment and the social tensions which this would create might well be greater than the fabric of European unity could withstand.

4.1.2. The ESC does not, therefore, see any dangers arising from rate reductions per se provided that measures are taken to avoid the distortions created by unfair competition. In fact, experience in different tax regimes across the world demonstrates quite clearly that, paradoxically, the total tax yield increases as tax rates fall, particularly in respect of corporate tax and personal income tax, and that the maximum yield from these taxes is achieved at an effective rate of about 18 %.

4.1.3. The arguments for imposing minimum tax rates and withholding taxes within the EU ignore the fact that this would simply drive business away to the many prosperous and expanding countries not hampered by such restrictions. As a result, they would continue to expand and grow increasingly prosperous while the EU contracted and became progressively more impoverished in comparison with them.

4.2. The ESC feels that a progressive, market-led move towards converging tax rates and bases, taking into account the different revenue-raising requirements of individual Member States, is likely to be more effective than an imposed one. A certain harmonization of tax systems and structures is a desirable aim.

4.3. Reforms to the tax system should concentrate initially on avoiding unintentional distortions to company location decisions, facilitating cross-border mergers within the EU and reducing the administrative burdens on businesses of transfer pricing and jurisdictional disputes between revenue authorities.

4.4. Small and medium-sized enterprises should be supported by reduced rates of corporate tax on their profits, within specified profit limits.

4.5. Employment creation would be most effectively enhanced by reducing the overall tax burden and by controlling or reducing public expenditure.

4.6. The ESC accepts the Commission's proposition that environmental objectives are best achieved when taxation instruments are combined with other measures that are used consistently to change behaviour and it agrees with the Commission that, in deciding on the choice of instruments, the effects on competitiveness, on employment and on the environment should be carefully assessed.

4.7. The ESC accepts the need to reduce the burden of taxation on labour but agrees with the Commission that Member States should have flexibility in determining the extent and the method of such reductions as well as the means by which they should be financed.

4.8. The introduction of new taxes on information technology or international financial markets would be severely damaging and should not be contemplated at a European level.

4.9. The ESC recommends that existing bilateral double-taxation agreements should be replaced by a single European double-taxation agreement. It would not be essential for every Member State to subscribe to such an agreement for it to work and deliver considerable benefits to taxpayers in the participating nations although, obviously, it would be preferable for this agreement to encompass the whole of the EU.

4.10. The ESC shares the Commission's concern that the development of Community tax systems should not take place in a piecemeal fashion.

4.11. The ESC supports the proposal to set up a group to improve the cooperation between tax regimes, to share information on and review tax policies, to coordinate measures against tax evasion, to identify key initiatives and to study the way forward to a more closely integrated tax system.

4.12. The ESC agrees that European taxation policy should take account of the impact on enterprise, employment and the environment.'

Result of the vote

For: 37, against: 84, abstentions: 17.

Point 2.2.3

In the second sentence delete the words: '... such as for example, an Internet Tax, a Tobin Tax applicable to the international financial markets or a bit tax'.

Reason

The three types of tax mentioned (an internet tax, a bit tax, and a Tobin tax applicable to international financial markets) would all have an undesirable distorting effect and should not be contemplated. An internet tax would inhibit the ability of Europe to keep pace with technological developments in the telecommunications field: a bit tax would be a tax on new learning techniques and would disadvantage the development of computer literacy in Europe in comparison with the rest of the world: a Tobin type tax would encourage some international financial operations to move to locations outside the EU.

Result of the vote

For: 44, against: 90, abstentions: 9.

Point 2.2.5

Add a new sentence at the end of the first paragraph:

'However, Member States which are required to reduce their VAT rates as a result of harmonization would not have this opportunity and would have to raise other taxes in order to make good the lost revenue.'

Reason

The present text is unbalanced in that it does not take into account the problems of those Member States which would have to reduce some VAT rates.

Result of the vote

For: 40, against: 87, abstentions: 16.

Point 5.2.3

Delete point 5.2.3 and the Appendix 2.

Reason

It is too late to propose Treaty changes since the Intergovernmental Conference is now over. Such proposals are therefore now irrelevant.

This paragraph and the appendix extend the remit of the opinion outside the scope of the documents which are being examined. The appendix raises issues which could need to be considered more carefully against a wider remit.

Result of the vote

For: 50, against: 59, abstentions: 22.

Opinion of the Economic and Social Committee on 'A common system of VAT — a programme for the Single Market'

(97/C 296/10)

On 18 February 1997 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on 'A common system of VAT — a programme for the Single Market'.

The Section for Economic, Financial and Monetary Questions, which was responsible for the preparatory work, adopted its Opinion on 10 June 1997. The rapporteur was Mr Walker.

At its 347th Plenary Session (meeting of 9 July 1997) the Economic and Social Committee adopted the following opinion by 78 votes in favour, 7 against with 4 abstentions.

1. Introduction

1.1. Since 1993, when the present, so-called transitional system of VAT was brought into effect, substantial developments have taken place at Community level. While the move to abolish the internal frontiers of the European Union was a major step forward, it only partly reflects the process of economic integration which has taken place.

1.2. A further strengthening of the Single Market policy is necessary if full advantage is to be taken of its initial conception. This is particularly true for a tax such as VAT, which is a tax on goods and services whose free circulation is a basic element in the construction of the Single Market and which is, in its conception and legislation, a Community tax. The existence of fifteen different systems of compliance and control is inconsistent with the principle of a Single Market and with the need for Europe to position itself competitively vis-à-vis the rest of the world.

1.3. As long as VAT is collected by fifteen different tax authorities in Member States with different legal and regulatory traditions, interpretations, processes, systems and languages, it is pointless to pretend that cross-border transactions (which involve two, or more, tax and legal jurisdictions) can be taxed identically to domestic transactions involving only one jurisdiction. That would be so, even if there were a single European currency. Changes should therefore be aimed at minimising distortions and the costs of administration and compliance.

1.4. For example, it is far from obvious which country has the fairest right to tax a transaction, say, between people who are temporarily domiciled in Austria and Belgium but whose respective normal places of residence are Portugal and Italy, which is carried out electronically via computers located in Spain and Luxembourg and concerns goods originating in Greece which end up in Sweden. It is equally difficult to determine how the liability is to be assessed or the tax collected. The difficulties are compounded when one or more of the countries involved are located outside the EU.

1.5. VAT is a tax where the practical details can make a huge difference, especially to the costs of compliance for businesses and the scope for tax avoidance and fraud. It is therefore essential that any proposals for amending the system should be examined carefully in order to assess the practical effects of their implementation on businesses and consumers and their implications for fiscal policy.

1.6. The Economic and Social Committee considers that the VAT transitional scheme has assisted the implementation of the Single Market by facilitating the movement of goods through the reduction of border checks but this scheme is complex, leads to more insecurity in certain cases, amplifies the risk of fraud and discriminates between domestic and intra-EU transactions. The ESC therefore accepts the Commission's proposition that steps must be taken to modernise the VAT system as soon as possible.

1.7. The present system lacks objectivity and imposes unacceptable compliance costs on traders because of the diversity of factors which have to be taken into account. These include the tax implications of:

— the place at which the seller and the buyer are established for tax purposes;

— the tax status of those to whom goods or services are supplied;

— the VAT identification number of the buyer;

— the location of the goods at the time of supply;

— who provides transport and the point of departure or arrival;

— the nature of the goods or services supplied;

— the turnover of the seller in the Member State in which the goods or services are supplied;

— the need to report intra-EU purchases separately from other purchases and to account for VAT on them;

— the need, as a rule, to treat the transfer of own assets to another Member State as though it were a sale and purchase.

1.7.1. In addition, there are other important defects in the existing system.

1.7.1.1. Traders face problems in obtaining the deduction or refund of VAT paid in Member States in which they are not established and may have to provide proof that VAT has actually been paid.

1.7.1.2. Businesses can also be required to register in other countries than their own Member State, even where they do not have any trading presence in those countries.

1.7.1.3. Furthermore, small firms, which might not have to charge VAT and would accordingly be relieved of any VAT obligations in their own Member State, because their relevant turnover is below a certain threshold, may still have to report intra-EU transactions and issue regular lists; they may also, in certain cases, have to be identified and account for VAT in their home country because they acquire goods in excess of a specified threshold value from suppliers in other Member States and/or may have to avail themselves of the services of tax representatives to meet their payment and declaration obligations in Member States within whose territory they have no physical establishment.

1.7.1.4. SMEs, and particularly the micro-businesses, have been prevented from exploiting to the full the opportunities which the Single Market should have presented to them.

1.7.1.5. The present system does not even provide equal treatment of all transactions within a single tax administration. For instance, in some countries, the deductibility of input tax connected with the raising of finance for business purposes is more dependent upon the method of financing than on the taxable status of the underlying business.

1.7.1.6. Trade and industry in the EU is hampered by the lack of a common system and by the uneven interpretation and application of the existing VAT directives by Member States.

1.7.1.7. There is evidence that fiscal degradation is increasingly eroding the VAT revenue yield.

1.8. The ESC is, therefore, in favour of a simpler and clearer scheme and in its Own-initiative Opinion on Direct and Indirect Taxation [1], it gave qualified approval in principle to a definitive system of VAT based on taxation in the country of origin and stated that 'a generalised application of this principle would be incompatible with excessive differences in VAT ...'. It went on to conclude that 'Without aiming at complete harmonisation of rates ... it is necessary to bring rates into a narrower band ...'

1.8.1. However, harmonisation of rates is a pointless exercise without a simultaneous harmonisation of the tax base.

1.9. The VAT rates currently in force in the various Member States are set out in Appendix I.

1.10. The ESC opinion stated that 'a definitive scheme should be introduced only if clear benefits (both initial

[1] Opinion issued on 20. 12. 1995 — OJ C 82, 19. 3. 1996, p. 49.

and on-going) have been identified which are of sufficient magnitude to warrant the cost of change.'

1.10.1. The criteria by which the proposed changes should be judged were and remain:

— there must be a reduction in compliance burdens on business;

— there must be no greater risk of fraud — and preferably less;

— there must be minimum distortion of competition;

— there must be less differentiation between domestic and intra-EU transactions;

— there must be no reduction in Member States' VAT revenues;

— tax neutrality in terms of competitiveness must be maintained, as far as possible.

2. The Commission's programme for introducing a common VAT system

2.1. The Commission's work programme is focused on the setting-up of a common VAT system which is to be based on three pillars:

— modernisation of the present VAT system;

— uniform application of the common VAT system throughout the EU;

— the taxation system itself being the new VAT system sensu stricto.

2.1.1. It is intended to address the most urgent matters at the beginning of the programme; the existing system requires modernisation in order to adapt taxation to recent technical and other developments in a number of fields.

2.2. The changeover to the origin-based system is scheduled towards the end of the programme. VAT being a tax on goods and services, and the free circulation of goods and services being at the heart of the Single Market, the Commission has based the new system on Single Market considerations.

2.2.1. To meet the Single Market criteria in the field of VAT, the Commission's declared objectives are:

— to abandon the segmentation of the Single Market into fifteen separate tax areas;

— to simplify and modernise the system to meet the challenges of the 21st century;

— to guarantee the equal treatment of all transactions carried out in the European Union;

— to ensure effective taxation and proper monitoring, thereby maintaining the level of VAT revenues.

2.3. In order to achieve this, the essential characteristics of the system under consideration are:

— no distinction between domestic and intra-EU transactions;

— all transactions within the EU to be taxed on the basis of the origin principle;

— a new mechanism to decide the place of supply of goods and services.

2.4. The key elements of the Commission's programme are intended to meet these criteria.

2.4.1. Each trader would have to register in only one country and that registration would cover the whole of the trade carried out by that trader within the EU.

2.4.1.1. All transactions in the EU, wherever they took place, would incur VAT at the rate in force for the time being in the trader's country of registration and the trader would have to account to the fiscal authorities of that country in the currency of that country for all output tax due in respect of those transactions.

2.4.1.2. This approach implies that the right to deduct must be exercised strictly and exclusively in the country of registration.

2.4.1.3. Traders with a presence in more than one Member State would be required to register in just one country but the basis on which the country of registration would be determined is not indicated.

2.4.1.4. Where a trader had a presence in a Member State other than the country of registration and that presence took the form of a branch of the main enterprise, then all such branches would be covered by the single registration and tax would be levied on the transactions entered into by each branch at the rate in force for the time being in the country of registration, regardless of the Member State(s) in which the branch(es) were located. Returns would be made to the authorities of the country of registration in the currency of that country. Where the presence took the form of a subsidiary company or other separate legal entity, then

this would be deemed to be a separate business for this purpose and would be required to register in the country in which it was located, charge tax at the rate prevailing in that country and account to the authorities of that country in the currency of that country.

2.4.2. Although VAT would be collected by national tax departments at their own rates from traders registered within their jurisdiction, the money collected would form a single fund to be re-allocated among the Member States in proportion to the consumption within their territories. The governments of the Member States would therefore collect the tax as agents for the central fund, to whom they would have to account for the sums collected.

2.4.2.1. The Commission stresses that the re-allocation of revenues between Member States cannot be based on data provided in the tax returns of taxable persons and considers that the best means of determining the revenues due to each Member State in terms of taxed consumption which occurs on its territory is to quantify that consumption by means of statistics.

2.4.2.2. The Commission argues that, on the basis of National Accounts, appropriate input-output tables and other information, such as statistical surveys and annual reports, it is possible to establish the yearly consumption of the various economic sectors, such as the private sector and the State sector, both classified by function and broken down into more detailed figures. Such information is also held to be available from other sectors and sub-sectors, such as non-profit making private bodies, the credit sector, insurance companies, the health sector etc.

2.4.2.3. Those parts of the economy which, though being final consumption, were not subject to taxation would need to be eliminated from the consumption figures used to calculate the amount of tax due to each Member State. Thus, the figures inserted into the GNP calculation for the shadow economy would have to be deducted again. The same would be true of consumption which was legitimately untaxed, such as supplies by traders below the threshold for VAT registration and supplies of services that were defined as exempt in the Sixth Directive or were outside the scope of VAT.

2.4.2.4. The share of each Member State in the total of all Member States' theoretical VAT revenues thus calculated would be the key to redistributing the total VAT revenue of the EU among the Member States. The consumption of each Member State would be weighted to take account of variances in the VAT rates between Member States and differences in the extent to which consumption was of goods and services liable to VAT at the reduced rates.

2.4.2.5. Member States would retain the revenues which they had collected on behalf of the central fund but monthly adjustments would take place to account for the difference between the sum which each Member State had collected and the amount to which it was entitled according to the statistically-compiled consumption ratios. These would be fixed for periods of one year and based on the most up-to-date figures available; typically, these are about two years out-of-date. Following the recent decision to adopt the 1995 version of the European System of Accounts (ESA) from the year 2000 onwards it is envisaged that the delay would be reduced to one year from that date. Retrospective adjustments would need to be made to bring the actual distributions into line with that theoretically required, once the actual figures for the period in question were available.

2.4.3. All supplies giving rise to consumption in the EU, made by a trader registered in the EU, would be subject to VAT and a distinction would no longer be drawn according to the Member State in which they were physically carried out.

2.4.4. The Commission accepts that the standard rates of VAT would need to be brought into much closer harmonisation.

2.4.5. As regards reduced rates, the Commission considers the harmonisation of their number and scope to be necessary from a purely technical standpoint and is convinced that only a small number of rates is compatible with the objective of simplification.

2.4.6. The introduction of the proposed system would require a uniform set of VAT rules across the EU. Although the Sixth Directive already lays down a single set of rules, there are numerous differences in practice. In the first place, the Directive itself gives Member States a choice between alternatives on various matters; secondly, Member States encountering difficulties have been granted derogations; and thirdly, the Directive's provisions are not interpreted or applied everywhere in the same way. The Commission proposes to widen the scope of the tax by limiting exemptions and other derogations to the system currently in force.

2.4.6.1. There would need to be widespread harmonisation of such matters as exercising the right to deduct, exemptions, the tax treatment of small firms, registration thresholds, VAT accounting periods, special schemes,

non-allowable expenditure and the methodology of tax authorities.

2.4.6.2. In order to ensure that a more unified approach is taken to interpreting this legislation, the Commission intends to propose that the VAT Committee be turned into a regulatory committee, with the Commission being given powers to take measures implementing acts adopted by the Council.

2.4.7. In the envisaged system, the individual responsibility of each Member State for the administration, control and collection of the tax would be replaced by a collective responsibility. All of the Member States would be responsible jointly and severally for the global tax receipts which were due to each of them according to their consumption. The effectiveness with which each Member State carried out these functions would directly affect the national budget of every other Member State.

2.4.7.1. This would place a greater emphasis on co-operation between the Member States; it would also require new tools and methodologies for co-ordination. The Member States would need to have mutual confidence in each other in relation to powers, tasks and performance. Each Member State would need to be assured, in respect of every other Member State, that:

— a sufficient minimum level of national control and collection powers existed;

— a sufficient minimum of common control and collection tasks would be carried out;

— the quality of performance of these tasks would meet acceptable standards.

2.4.8. The Commission has published a work programme together with a timetable for putting forward proposals, based on a step-by-step approach, under which the changes would be introduced in stages between now and mid-1999, and two years would be allowed for their implementation after their adoption by the Council.

3. General Comments

3.1. In its Opinion on the Completion of the Internal Market, the approximation of Indirect Tax Rates and harmonisation of the Indirect Tax Structure [1], the ESC stated that, 'the Committee fully endorses the aim of removing all frontiers and all border checks by 1 January 1993 including those checks now made for the collection of indirect taxes due (VAT and excise duties). The concepts of "export" and "import" shall cease to apply to intra-Community trade.'

3.1.1. It therefore welcomes many of the Commission's present intentions as constituting a further step towards the belated achievement of that ideal and particularly endorses the objectives of:

— abandoning the segmentation of the Single Market into fifteen separate tax areas;

— simplifying and modernising the system to meet the challenges of the 21st century;

— the equal treatment of all transactions conducted in the EU;

— ensuring effective taxation and proper monitoring;

— reducing the compliance burden on businesses.

3.1.2. In its Opinion on the common system of Value Added Tax (level of the standard rate) [2], the ESC stated that it 'considers that the proposed introduction of a definitive system should not be allowed to obscure the need for further interim reforms of the existing transitional system, which should then be carried forward into the new definitive system.'

3.1.2.1. The Committee therefore agrees with the Commission's decision to make modernisation of the present VAT system the first pillar of its work programme and to give priority to these measures in its timetable.

3.1.2.2. In this context, the ESC feels that the Sixth Directive needs to be modernised, irrespective of the final shape of the definitive VAT system. Many Member States are concerned that ambiguities in the Directive have led to judgements from the European Court which have differed from what was understood to be the meaning of particular provisions; of paramount concern is the fact that these judgements are invariably retrospective in their effect. This can lead to large revenue losses and often increased complexity by having to unravel what has been long-standing practice. It would be especially desirable for certain ambiguities to be removed from the Directive so that Member States can apply domestic and European law with certainty. Preferably, the Sixth Directive should be re-written as a VAT community code.

3.1.2.3. It is also of concern to most Member States that it takes a long time to amend any of the permanent provisions of the Sixth Directive. Where Member States wish to take quick action to stop abuse or introduce

[1] Opinion issued in July 1988 — OJ C 237, 12. 9. 1988, p. 14.

[2] Opinion issued in April 1996 — OJ C 204, 15. 7. 1996, p. 94.

simplification, theoretically Article 27 provides such a route but the use of this Article is limited and it or Article 29 should be given more flexibility.

3.1.3. In its Own-initiative Opinion on Direct and Indirect Taxation, the ESC declared that 'Detailed proposals should be worked out in conjunction with the social partners and the business community. Full consultation should take place from the outset on what business needs and on the compliance costs of alternative options, including the additional costs and administrative burdens of anti-avoidance measures.'

3.1.3.1. It therefore welcomes the Commission's approach of publishing a work programme as giving ample scope for holding such consultations and hopes that full advantage will be taken of this opportunity.

3.1.4. It notes the Commission's premise that there should be no distinction between domestic and intra-EU transactions and endorses this concept in principle but stresses that uniformity in the treatment of these two types of transaction must be achieved by simplifying the latter; it must not be obtained at the expense of increasing the existing compliance burden on domestic transactions.

3.2. However, the ESC has some reservations on certain detailed aspects which it considers could create practical problems if they were implemented as is currently envisaged and it feels that further consideration should be given to these matters before the Commission brings forward its concrete proposals for legislation.

3.2.1. The ESC accepts in principle the idea which the Commission has postulated of pooling the tax revenues and redistributing them between the Member States on the basis of consumption, as a means of avoiding the necessity for setting up a clearing-house system, which would otherwise be required in order to ensure a fair distribution of tax revenues between the Member States and which it believes would be cumbersome to administer.

3.2.1.1. However, it is unconvinced by the statistical basis on which it is proposed that the consumption of each Member State would be measured. Statistics constitute notoriously unreliable data. It would be necessary to establish in respect of the statistics produced by each Member State whether they were:

— suitable for the purpose for which they were required;

— sufficiently accurate;

— up-dated with sufficient frequency and promptness;

— prepared on comparable bases.

3.2.1.2. As regards suitability, the basis on which statistics are presently compiled may not be altogether appropriate for their new use. Statistics are useful for identifying trends and, in this context, a degree of approximation may be acceptable provided that it is consistent from one set of figures to the next, but that would not be the case where, as here, it is desired to determine absolute values. On the question of accuracy, a degree of accuracy which is acceptable for their present use may not be sufficient for their new purpose. Also, the present degree of accuracy may vary from one Member State to another. By the same token, there are widespread differences between Member States in the frequency and promptitude with which statistics are produced, as well as considerable variations in the way in which the figures are prepared and presented. The ESC recognises that the Commission feels that substantial progress is being made towards improving this situation but does not consider that true comparability can be achieved on anything other than an extended time-scale.

3.2.1.3. For instance, the ESC notes that it would be necessary to exclude that element of GNP represented by the shadow economy and would point out that the extent of this element is largely a matter for conjecture in most Member States.

3.2.1.4. The Commission document states that 'it is possible to establish the yearly consumption of the various economic sectors'. Bearing in mind that the consumption figures would be weighted by the VAT rates prevailing in each Member State, it would be necessary to distinguish between consumption at the standard rate, reduced rate consumption, exempt consumption and the consumption of goods and services which, although otherwise liable to VAT, had escaped taxation because they had been supplied by legitimately unregistered traders. It would also be necessary to quantify with reasonable accuracy the effects of the shadow economy. The ESC doubts whether all this would be possible.

3.2.1.5. For example, it is difficult to see how cross-border transactions between registered traders and final consumers or between unregistered traders could be accurately reflected in the statistics of the country in which the consumption had taken place.

3.2.1.6. It would appear that the system would require a carefully structured and strict regime of independent auditing in order to prevent any distortions caused by

the use of misleading statistics, whether inadvertently or otherwise.

3.2.1.7. The ESC considers it unlikely that it would be possible to establish a statistical base for these calculations from existing government data or in any other way which would be sufficiently accurate to provide an equitable basis for distribution and, more importantly, which would engender universal confidence.

3.2.2. While it understands and completely endorses the desire thereby to simplify the tax for businesses, the ESC has some reservations about the proposal for a single place of registration for each trader and the levying of the rate applicable in the country of registration to all transactions carried out by that trader anywhere in the EU. It does not feel that this would necessarily achieve the intended simplification and fears that it might lead to complications in other directions which would out-weigh the anticipated benefits.

3.2.2.1. To take the example of a retail business which is registered in, say, Germany and has branches in several other Member States, it would have to charge the German rate of VAT in each of them. This would produce a situation in, for example, the United Kingdom where the high street in a large town would have British-registered stores charging VAT at the UK rate alongside branches of Dutch shops charging Dutch VAT, Danish stores charging Danish VAT, Swedish stores charging Swedish VAT, French shops charging French VAT and Belgian shops charging Belgian VAT.

3.2.2.2. Where the stores were quoting VAT-inclusive prices, this might not impact the consumer, since the pressure of competition would force the stores concerned to approximate their selling prices for like items; this would place the traders registered in high-VAT countries at a competitive disadvantage. Even a standard rate band of 2 % would represent a significant difference, given the low margins on which many retailers work. It might thus discourage the companies registered in high-VAT countries from setting up branches in other Member States or force those with existing branches to convert them into separate legal entities, which is not consistent with the aims of a Single Market.

3.2.2.3. Non-EU businesses entering the European market would be free to select their country of registration and would tend to locate in the low-VAT states. This would give them an advantage over their European competitors, whose freedom to select their country of registration is likely to be more circumscribed.

3.2.2.4. While the need to register in only one Member State might seem, at first sight, to constitute a simplification, it has ramifications which could lead to increased complexity. Traders would have to account to the fiscal authorities in their country of registration in the currency of that country for all their transactions throughout the EU.

3.2.2.5. This would mean that all transactions carried out in other currencies would have to be converted to the currency of the country of registration. Unless and until all the Member States are in a single currency, this would be an onerous requirement and would create opportunities for manipulation at the fisc's expense.

3.2.2.6. There might also be a requirement to transfer funds back to the country of registration in order to pay the tax due and this would involve additional costs and administration even under the conditions of a single currency.

3.2.3. There is also considerable scope in these proposals for legitimate tax avoidance manoeuvres. For instance, a company in a high-VAT country could set up a subsidiary in a low-VAT country which, because it was a separate legal entity, would have a separate registration and would pay VAT at the rate of the country in which it was located. The parent company could 'export' all its production to the subsidiary and invoice the goods at its higher VAT rate although the goods had never left the parent company's country. The subsidiary would reclaim this higher rate of VAT as input tax in the country in which it was located and would then 'transfer' the goods to branches which it had set up in the country of origin at the lower rate of VAT. Similarly, a company could be created as a shell in a low-VAT country for the purpose of importing goods from outside the EU. The goods would be ordered and paid for by the subsidiary in the low-VAT country but would be shipped direct to branches in the high-VAT countries. This does not meet the criterion of avoiding distortion of competition.

3.2.3.1. Because these operations would be much easier for large organisations to set up, the net effect of these proposals would be to give an advantage to large companies at the expense of SMEs (and particularly micro-businesses) and to give companies domiciled in non-EU states an advantage over EU-based organisations.

3.2.4. There would be a strong incentive for enterprises with their designated principal place of business

in low-rate countries to organise their operations in higher-rate countries as branches, while those registered in higher-rate countries would have an equally compelling inducement to structure their operations in lower-rate Member States as separate legal entities, and this is almost certainly what would happen in practice. That would have the effect of reducing the aggregate amount of VAT collectable and would thus fail to meet the criterion that there should be no reduction in Member States' VAT revenues.

3.2.5. A further crucial point is that the fiscal authority in the country of registration would have to rely on the fiscal authorities of other Member States for verification of the transactions conducted outside its borders; this would not facilitate the process of preventing tax evasion and companies would, after all, have to deal with two or more tax and legal jurisdictions. The segmentation of the Single Market into fifteen separate tax areas would therefore be only partially removed and the objective of ensuring effective taxation and proper monitoring would not be achieved. In addition, invoices presented by suppliers in other Member States would have to be translated into the language of the receiving Member State in order to enable them to be checked.

3.2.6. In any case, the single registration facility only applies where all the trading entities in other Member States are branches of the parent organisation. Where this is not so (as would be the case with most manufacturing and trading entities except retail establishments, professional partnerships and some businesses in the financial sector) the organisation concerned would not be able to adopt a single registration. This would create a two-tier system with businesses in similar sectors being treated differently according to their legal structure. That would not meet the Commission's declared objective of guaranteeing the equal treatment of all transactions carried out in the EU and would also constitute a departure from the principles of a Single Market.

3.2.7. The ESC considers that, because of the difficulties for branch operations described above, most businesses with a presence in more than one Member State would be compelled to operate as separate limited companies and that, therefore, the principle of single registration would be of limited application. This would impair the declared aim to simplify and modernise the system.

3.3. The ESC would point out that the majority of businesses do not engage in cross-border transactions and are unlikely to do so in the foreseeable future. The proposed system should avoid disadvantaging in any way this majority, which would include a large number of SMEs and, more particularly, micro-businesses.

3.3.1. It would also observe that the majority of cross-border transactions are between VAT-registered traders and that the VAT charged by the supplier can be recovered by the purchaser as input tax. Under the proposed system of apportioning VAT revenues between Member States according to an index of consumption, a wide disparity of rates would not, therefore, cause any distortion of competition in relation to these transactions. They could, however, create tax-inspired cross-border shopping by individual consumers and by businesses which were not in a position to claim input tax deduction.

3.3.1.1. They might also give rise to a substantial increase in mail-order transactions between businesses located in low-rate countries and consumers in higher-rated countries and for these reasons a wide disparity in rates would not be sustainable under a system based on taxation in the country of origin.

3.4. Once agreement had been reached on the standard and reduced-rate bands or on the value(s) of single rate(s), it would be extremely difficult to secure agreement to alter them subsequently. The Commission argues that the constraints imposed by this factor would facilitate the achievement and maintenance of the Maastricht convergence criteria by Member States.

3.4.1. The freedom of action given by a rate band would probably prove illusory since any Member State charging more than the minimum rate would put its traders at a competitive disadvantage vis-à-vis traders registered in Member States with lower rates.

3.4.2. This gives rise to the thought that, in fact, the proposed system would not function satisfactorily unless there were a single rate of VAT and that its introduction would lead to the projected rate band being compressed into a single rate within a relatively short space of time.

3.4.2.1. The Commission document presages this development by acknowledging that 'As far as the standard rate is concerned, the introduction of a single rate would provide a perfect solution avoiding any tax-related distortion of competition and, above all, ensuring that the tax is applied simply and uniformly throughout the Union — nevertheless, an approximation within a band could prove sufficient.'

3.4.3. Whilst accepting the force of this argument, the ESC recognises that the process of achieving a significant convergence of rates is bound to create difficulties for the governments of those Member States which currently have high rates of VAT, as they would be forced to increase other taxes to compensate for the loss of revenue involved. Even in the unlikely event that harmonisation were to take place at the highest subsisting rates, these governments would still be placed at a serious disadvantage because Member States which currently have lower rates could offset the increased revenue from VAT by reducing non-wage labour costs, for example, thereby gaining a competitive advantage.

3.4.3.1. For these reasons, the ESC considers it doubtful whether this would be politically acceptable to all the Member States at present, bearing in mind that any decision would require unanimity in the Council. It therefore believes that rate harmonisation is likely to be most readily achieved by phasing it in progressively. A high degree of harmonisation will, however, need to be achieved before the new system can be considered to be fully implemented.

3.4.3.2. These considerations would apply with equal force to the reduced-rate band.

3.4.3.3. In its Opinion on the common system of Value Added Tax (level of the standard rate) [1], the ESC noted the Commission's report that 'with regard to the application of various types of reduced VAT rates (super-reduced rates, zero rates, "parking" rates etc.) no major distortions of competition had been ascertained under the transitional arrangements for intra-Community trade that could be attributed to the application of various types of reduced VAT rates.' Thus, there is no reason to abandon the concept of reduced rates.

3.4.3.4. The ESC therefore agrees with the Commission's agenda concerning reduced rates and considers that these would best be dealt with by the introduction of a relatively narrow reduced-rate band to be applied to all Member States.

3.4.3.5. The ESC would point out that VAT is an inescapable tax from which there are no exceptions for the end consumer and that it is paid at the same rate by rich and poor alike. It therefore bears most heavily on the disadvantaged members of society. For this reason, the ESC considers that the reduced-rate band should be fixed at a very low level and that it should cover all those items of expenditure which comprise the necessities of life.

3.4.3.6. In its Own-initiative Opinion on Direct and Indirect Taxation [2], the ESC declared that 'When harmonising tax rates it is important to maintain a reduced rate and a standard rate. For reasons of employment, environmental and incomes policy, consideration can be given to extending the range of goods and services taxed at the reduced rate.' The ESC reiterates this position.

3.5. The ESC agrees with the Commission on the need for harmonisation of the VAT rules across the EU in relation to such matters as VAT thresholds, exemptions, the right to deduct, the treatment of small firms and special schemes. It would like to have more details of the Commission's specific proposals. In order to minimise the impact of the system on microbusinesses it would advocate a relatively high threshold for compulsory registration.

3.6. The scheme would require a new department of the Commission as the consumption statistics would have to be gathered-in, chased if late, and checked. Similarly for the figures of VAT collected in each country. Then there would be the all-important calculation of the sum payable to or by each country, probably followed by corrections and adjustments. Member States which ought to pay into the fund might be late. There would be the contentious matter of sanctions against a Member State which had been slack in collecting VAT, followed by more discussion later if the Member State claimed to have collected its arrears.

3.6.1. The Commission department would also have to act on behalf of Member States in supervising the effectiveness of each Member State in collecting the full amount of VAT. One would expect this to include checking systems and also spot checks. This substantial volume of work would have to be paid for and it would not be reasonable to expect the cost to come out of the Commission's existing resources. It would be essential for the Commission's calculations to be audited for accuracy and fairness.

4. Conclusions

4.1. The ESC welcomes the general thrust of the Commission's work programme and, in particular, the

[1] Opinion issued in April 1996 — OJ C 204, 15. 7. 1996, p. 94.

[2] Opinion issued on 20. 12. 1995 — OJ C 82, 19. 3. 1996, p. 49.

benefits that traders should derive from the following factors, if it is implemented:

— the removal of the requirement to know the customer's Member State, whether the customer is registered for VAT and, if so, the VAT registration number;

— the removal of the need to show that the goods have left the seller's Member State;

— the removal of the need to enter EU supplies and acquisitions in total on the return;

— the removal of the need to provide a detailed EU sales list;

— the removal of the need to account for intra-EU purchases separately from other purchases;

— the removal of the need to treat the transfer of own assets to another Member State as though it were a sale and purchase;

— a uniform set of VAT rules, applied uniformly across the EU.

4.1.1. The ESC notes with approval that traders would no longer have to give so much information on their VAT returns but suspects that the consumption statistics available from Member States rely in part on this information. There would be no benefit to businesses if the simplification of the VAT return simply resulted in more statistical information being required in other forms. It is therefore not entirely convinced that the compliance burdens on businesses would be reduced to the full extent envisaged.

4.1.1.1. Nevertheless, some reductions in these burdens would constitute a highly desirable improvement and the ESC applauds the Commission's initiative in this regard.

4.2. The ESC strongly supports the principle of attribution of VAT revenues between Member States according to their consumption but it does not believe that a statistical basis can be established which would be, or be accepted as being, sufficiently accurate.

4.2.1. It therefore considers that some other consumption-based empirical formula should be found for re-distributing the central VAT fund between the various Member States.

4.2.2. The ESC doubts whether a statistics-based system would satisfy the criterion that there must be no greater risk of fraud. The use of statistical data for the calculation of consumption within each Member State would introduce an undesirable margin of error and scope for fraud into the system. For example, it would be difficult to calculate with any degree of accuracy the adjustment for the impact of the shadow economy on the consumption of a Member State whether this had been implicitly included in the GNP calculation or explicitly added to it.

4.3. The ESC feels that the concept of a single country of registration, while superficially attractive, would in practice create more problems than it would solve. It would have the following disadvantages, even with complete rate harmonisation:

— traders with establishments in more than one country would have to account for transactions in several currencies;

— funds would probably have to be remitted to the country of registration in many cases in order to pay the tax;

— invoices would have to be translated;

— the control of tax evasion would be made more difficult because transactions would be carried out in many countries and the regulatory authority in the country of registration would have to rely on the authorities in other states to check them.

4.3.1. For these reasons, the ESC considers that the application of the system of single registration is unlikely to be widespread, because the majority of traders would be induced to structure their operations in other Member States as separate companies, even in those instances where they are currently set up as branches, which are, in any case, a minority. It believes that there should be neutrality of treatment between branches and subsidiaries and therefore recommends that any new system should be based on the principle of traders having to register in each country where they have a physical presence and to account to the authorities of that country in the currency of that country for all transactions carried out in that country, including sales to customers in other Member States.

4.3.1.1. At first sight, this might seem to be imposing a greater burden on the traders concerned but establishing a physical presence in another Member State requires various types of registration in any case and the avoidance of the problems set out above would make this additional requirement worthwhile. For instance, businesses would have to register in each separate country for corporation tax purposes and in many Member States corporation tax and VAT are administered by the same government department. In any case,

the ESC considers that the vast majority of businesses with a physical presence in more than one Member State would be induced to operate as separate legal entities under the scheme outlined by the Commission and would therefore have to register separately in each country in any case.

4.4. The ESC accepts that an origin-based system would require a standard rate band with a very narrow spread and that it would work best with a single rate. It believes that progress towards this goal should be made with due consideration for the positions of individual Member States.

4.5. The ESC endorses the idea of a reduced-rate band with a narrow spread; it believes that this band should be fixed at a low level. There would need to be complete harmonisation of the scope of items included in the band.

4.6. The ESC accepts the Commission's proposition that the decision setting the rates or rate bands (both standard and reduced), as well as the determination of the items to be included in the reduced-rate band, should be a political one and that it should take account of the need to generate sufficient revenue, the need to share the burden among the main types of statutory charges and contributions (direct taxation, indirect taxation, social contributions) and the thrust of medium-term tax policy. Social and employment considerations should play an important role: examples would be low rates of VAT on items as basic consumption and, in particular, labour-intensive services or products.

4.7. The ESC would point out that the governments of the Member States would suffer an effective loss of control over their rates of VAT, which are an integral part of their existing fiscal policies. However, the principle of transferring control over monetary policy has already been accepted in relation to the single currency and the extension of this principle to fiscal policy might be regarded as a logical development.

4.7.1. In any case, the existence of wide disparities in the rates of VAT is not compatible with the operation of a Single Market.

4.7.2. It must be remembered that VAT is but one part of the revenue-raising mechanism and that alterations to its rates and structure will have implications for other elements in the overall tax system. The knock-on effects of the measures taken by Member State governments to adjust their fiscal systems in order to compensate for the VAT revenue lost or gained through having to harmonise or approximate their rates would impact a wide variety of social groups, including consumers, the unemployed, pensioners, low-paid workers and children. The ESC believes that the social partners and other socio-economic interest groups should be consulted about these changes.

4.7.3. The proportion of the total tax revenue accounted for by VAT receipts in each Member State is shown in Appendix II.

4.8. The ESC believes that there is a number of considerations which need to be taken into account in effecting the transition to the new common system.

4.8.1. In moving from the present system, nothing should be done which could harm European participation in global markets, particularly those involving commodities and finance products.

4.8.1.1. Specifically, a consistent and enlightened approach is needed to the treatment of holding companies in order to ensure that such companies do not bear burdens which reduce the attractiveness of the EU as a location for their activities.

4.8.2. The ESC believes that a central body for the public discussion of common interpretations is required in order that solutions for practical difficulties may be examined at a lower level than the European Court of Justice.

4.8.3. The Commission's work programme does not propose a re-examination of the system of fractionated payment but instead, presumably, accepts that it should continue to act as before. The ESC believes that, even if a decision is eventually taken to retain the fractionated payment system, alternatives should be considered, especially as some of them may well improve the cash flow of SMEs.

4.8.4. A study should be conducted to examine the operation of control mechanisms. This should include a complete compliance cost audit and a fundamental analysis of the effect of different systems of control on the incidence of fraud as well as their effect on the operating costs of businesses.

4.9. The ESC notes that, in order to be workable, the proposed system would require a much closer degree of co-operation and co-ordination between the relevant authorities in the various Member States. While it recognises that progress has been and is being made in this direction, it feels that, given the disparity of systems,

traditions, customs, practices, working methods, interpretations, legal frameworks and languages which exist between the Member States, it would take some considerable time for the requisite degree of conformity to be achieved and fears that, in the meantime, the working of the system would be impaired.

4.9.1. The process of apportioning the revenue collected between Member States would be very time-consuming and protracted. Not only would there be a delay before statistics relating to a given year were available but it is quite common for these statistics, once issued, to be subsequently amended, sometimes more than once. This would necessitate an extended process of re-adjustment and re-allocation; apart from being very inefficient, this process would be far from transparent.

4.10. The ESC agrees with the Commission that there would need to be very widespread harmonisation of the scope of the tax and the core VAT rules (the right to deduct, registration thresholds, exemptions and special schemes etc.). There would also need to be a close alignment between fiscal and Customs territories. Common application and interpretation of the rules by the Member States would need to be ensured. This would probably require the direct application of Regulations rather than Directives. The implication of these changes for excise duties should not be over-looked.

4.11. Particular account should be taken of the impact of the proposed changes on SMEs and micro-businesses, which is likely to be much greater than in the case of larger companies. This should be moderated by introducing much higher thresholds for VAT registration and permitting flat-rate schemes, where possible. Consideration should also be given to extending the use of cash accounting and/or annual accounting schemes for small businesses.

4.12. A desirable simplification would be for the new system to permit trading groups with operations in more than one country to have a group registration, so that transactions between members of the group could be carried out without charging VAT, regardless of whether they were domestic or intra-EU. This would satisfy another declared objective of the proposed system and should be introduced at an early stage.

4.13. The proposal that the VAT Committee be transformed into a regulatory committee implies a substantial transfer of power, as does the obvious requirement for the Commission to become involved in the process of calculating, auditing, adjudicating and administering the allocation of the central fund between Member States. The ESC believes that in order to ensure transparency in this situation the workings of the VAT Committee should be made more open by inviting tax consultants to participate and by the publication of results.

4.14. The ESC believes that the imminence of a substantial change to a definitive system should not be allowed to obscure the need for interim reforms to the existing transitional system, which should then be carried forward into the new definitive system. It therefore welcomes the Commission's decision to proceed by commencing with a modernisation of the existing system.

4.15. The ESC would wish to be consulted, where appropriate, at the various stages in the Commission's work programme and, in any case, prior to the formulation of any firm legislative proposals.

4.16. The ESC considers that the timetable set by the Commission is unrealistic and that full implementation of the work programme will require a more extended timescale than that envisaged.

4.17. The ESC welcomes the Commission's initiative and agrees in principle with the broad concept of its work programme. It has some reservations about how certain detailed concepts would work in practice and would urge the Commission to address these issues in consultation with the social partners and other interested bodies before bringing forward legislative proposals but criticisms of specific aspects should not be interpreted as calling into question the main thrust of the plan.

Brussels, 9 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

APPENDIX I

EU MEMBER STATES VAT RATES

(as at 1 September 1996)

	Standard rate	Parking rates	Reduced rates	Super-reduced rate	Zero rate ?
	%	%	%	%	
Austria	20	—	12; 10	1	No
Belgium	21	12	6	—	Yes
Denmark	25	—	—	—	Yes
Finland	22	—	17; 12; 6	—	No
France	20,6	—	5,5	2,1	No
Germany	15	—	7	—	Yes
Greece	18	8	—	4	No
Ireland	21	12,5	—	3,3	Yes (*)
Italy	19	16	10	4	No
Luxembourg	15	12	6	3	Yes
Netherlands	17,5	—	6	—	Yes
Portugal	17	—	12; 5	—	Yes
Spain	16	—	7	4	Yes
Sweden	25	—	12; 6	—	Yes
United Kingdom	17,5	—	8; 5	—	Yes (*)

(*) The application of the zero rate is wider in Ireland and the United Kingdom than it is in other countries.

APPENDIX II

EU MEMBER STATES

VAT as a percentage of taxation and GDP

	% (1)	% (2)	% (3)	% (4)	% (5)
Austria	19,5	29,5	50,9	8,3	42,6
Belgium	15,3	21,4	55,8	7,2	47,1
Denmark	19,4	20,4	55,6	10,0	51,5
Finland	17,8	27,5	58,2	8,5	47,7
France	16,8	30,3	49,7	7,4	44,0
Germany	16,6	28,2	53,4	7,1	42,8
Greece (*)	25,3	31,8	51,0	7,6	30,0
Ireland	19,6	22,5	46,6	7,5	38,3
Italy	13,9	19,5	45,2	5,6	40,3
Luxembourg	14,6	18,7	37,7	6,3	43,1
Netherlands	14,6	22,8	53,1	6,9	47,3
Portugal (*)	19,7	26,4	46,4	7,1	36,0
Spain (*)	16,1	25,6	52,7	5,8	36,0
Sweden	16,2	21,2	54,7	8,2	50,6
United Kingdom	20,0	26,5	47,6	6,8	34,0

(*) Estimated figures.

Source: European Commission.

(1) As a percentage of total direct and indirect taxation, including social security contributions.
(2) As a percentage of total direct and indirect taxation, excluding social security contributions.
(3) As a percentage of total indirect taxation.
(4) As a percentage of GDP.
(5) Total tax as a percentage of GDP.

Opinion of the Economic and Social Committee on the 'Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century — challenges and options for a new partnership'

(97/C 296/11)

On 26 November 1996 the Commission consulted the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the 'Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century — challenges and options for a new partnership'.

The Section for External Relations, Trade and Development Policy, which was responsible for preparing the Committee's work on this matter, adopted its opinion on 18 June 1997. The rapporteur was Mr Malosse.

At its 347th plenary session held on 9 and 10 July 1997 (meeting of 10 July 1997), the Economic and Social Committee adopted the following opinion by 123 votes to two, with three abstentions.

Recommendations

Convinced that a thorough overhaul of the Lomé Convention is needed to attune it to the present situation as we approach the year 2000 and to provide better assistance to the ACP countries in meeting the challenge of trade globalization;

Aware of the political and economic importance to the EU of preserving privileged relations with the Convention's 71 co-signatories;

The Committee, responding to the Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century — challenges and options for a new partnership, presents the following recommendations:

— The Committee calls for a strengthening of the spirit of partnership and dialogue founded on equality; this has been the moving force behind the originality and vigour of Europe's commitment to development cooperation. To be effective, however, this partnership needs to be extended on all sides to embrace new players, among them the economic and social interest groups. It would therefore recommend the creation of joint economic and social committees with responsibility for endorsing development programmes geared to the needs and expectations of the interest groups in the partner countries;

— The Committee would suggest overhauling the Convention to take more account of geographical differences and different levels of development. The Convention would thus become an EU political and economic cooperation instrument that is (a) open to new members, (b) is differentiated according to the geographical regions with which the EU has specific common interests, and (c) has differentiated arrangements for the recipient countries according to their level of development.

— The Committee would reiterate that the main objectives of cooperation are sustainable economic and social development, action to eradicate poverty and an across-the-board increase in living standards that will automatically and simultaneously flow from the growth of a dynamic, wealth-creating private sector and genuine social progress to build cohesion.

This objective will be attained all the more readily if a fabric of trade union and other interest groups is built up to ensure that all the socio-economic players are involved in the decision-making process; this must take place in the setting of a state governed by the rule of law, guaranteeing individual liberties and providing the services of general interest needed for social progress.

- In this connection, the Committee would point to the fundamental role played by women as leading players in development, and emphasize the need to promote their organizations and ensure that they participate fairly in advisory and decision-making bodies.

— The ESC takes the view that the following areas of cooperation should be prioritized:

- Education and training are vital since the human factor must be at the heart of all development policy. The Committee recommends that exchange and cooperation programmes between the EU and the ACP countries be organized in this field, and that particular attention be paid to the involvement of women;

- Support for the private sector and for the spirit of enterprise are the deciding factor where wealth creation and improving living standards are concerned. The new Convention should therefore be founded on these objectives;

- By virtue of its history and its experience, the EU must support all efforts directed at regional cooperation that aim to secure lasting peace and shared prosperity by means of joint projects, the

pooling of a number of resources, the creation of integrated regional markets and the emergence of properly structured and democratic regional organizations. This regional cooperation strategy should rely on the most prosperous countries to create a 'domino effect' to increase well-being and raise living standards, as well as promote investment attracted by sufficiently large markets;

- Environmental protection, the development of an agricultural sector that meets the needs of the people, urban planning, research, the dissemination of new technologies, and culture must also be encouraged because investment in these areas will, in the long term, secure the conditions for sustainable development.

— The Committee would endorse the option of 'differentiated reciprocity' to secure gradual participation of the ACP countries in international trade and to revitalize EU-ACP trade. This option will also encourage the emergence of regional markets made up of the ACP countries themselves.

— The Committee calls for sustained consistency between trade policy and development cooperation policy.

— The ESC makes a number of specific proposals to improve the operation of the Lomé instruments. These include strengthening programming and assessment tools (National and Regional Operational Programmes and Community Initiative Operational Programmes), introducing horizontal mechanisms for trade, cooperation and investment that can be accessed directly by all operators, and developing forms of budgetary investment that are straightforward and quick to use in support of micro-projects originated by, inter alia, trade union and employers' organizations, women's associations, the cooperative sector and NGOs.

- The Committee would highlight the benefit of horizontal programmes that afford a basis for sharing and transferring experience — including between ACP countries — and with operators in neighbouring regions (e.g. the Mediterranean region and Central Africa) to foster the dissemination of best practices and improve global access.

— The Committee urges that EU development aid policy be placed within a cohesive framework alongside the action carried out individually by the Member States. Having advocated the necessary inclusion of the European Development Fund in the Community budget, the ESC makes a number of suggestions to improve consistency between national and Community action. By the same token, the Committee calls for the EU to dovetail its actions more closely with those of international development aid organizations.

— As an EU body representing civil society, the Committee takes the view that for a new cooperation policy to be successful there must be more efficiency and transparency in the way in which the policy is managed, both in the EU and by the authorities of the ACP countries. At the same time, it must be ensured that economic and social interest groups and businesses are genuinely involved from the outset in the drafting of measures.

1. Introduction — Reasons for issuing a green paper and the role of the ESC

1.1. The fourth Lomé Convention covers the period between March 1990 and February 2000. It was revised mid-term by the agreement signed in Mauritius on 4 November 1995, in accordance with the provisions of the current Convention. Both parties — the EU and the ACP countries — are contractually obliged to start negotiations on a new Convention at the latest eighteen months before the current Convention expires, i.e. in September 1998. The EU has until then to clarify its position.

1.2. The aim of the green paper is to launch a wide-ranging debate in the Union on the prospects for these negotiations and the issues involved before the Commission proposes a negotiating mandate to the Council of Ministers in the second half of 1997.

1.3. The Committee welcomes the Commission's initiative which — for the first time — opens a debate on the main instrument of its cooperation and development aid policy. The Treaties gave the ESC the task of representing civil society in the EU; following the referral from the Commission, the Committee intends to play a key role in the discussions. The Committee itself is involved in the Lomé Convention since it is jointly responsible for organizing the dialogue between the Union's economic and social interest groups and those of the ACP countries. These take the form of annual meetings during which joint resolutions are passed and submitted to the Convention authorities.

1.4. Using the conclusions of these meetings as a basis, the Committee can provide a grass-roots view of the aims and operation of the Convention based on the analyses and accounts of the economic and social players. Many of the comments and suggestions contained in the green paper had already been made by the Committee as a result of these meetings: the insufficient impact of trade arrangements, the under-involvement of economic and social interest groups in the framing and implementation of the Convention's objectives, and the insufficient weight given to action to improve social cohesion and the living conditions of local people.

1.5. The Committee recently approved an own-initiative opinion [1] which takes a very innovative approach to the arrangements needed to make development aid programmes more effective. It calls, among other things, for the following: better management of official aid, increased involvement of the socio-economic interest groups through decentralized cooperation, measures to be taken against corruption and assistance to be given to local administrations to improve effectiveness.

2. New issues in the forthcoming negotiations

2.1. *Question-marks over Lomé as a model for cooperation*

2.1.1. Since 1975 the Lomé Convention has orchestrated trade and financial relations between the EU and the ACP countries, which now number 71. It is itself the successor of a cooperation policy which established ties with the Community's overseas countries and territories through the Yaoundé Conventions, which dealt mainly with French-speaking Africa.

2.1.2. The first Lomé Convention in 1975 established a model for cooperation and development aid which had far-reaching international repercussions. This was the first time that a group of countries had negotiated a binding multilateral cooperation agreement based on partnership. It contained a trade chapter that broadly favoured the ACP countries and aid programmes which were for the most part decentralized, together with a ground-breaking mechanism to stabilize the ACP countries' export receipts.

2.1.3. It was not until the 1980s that — under the pressure of outside events and constraints — the Lomé model was gradually questioned and discussed in the EU and elsewhere. Poor results in terms of development in very many, principally African, ACP countries added fuel to the debate. Levels of development vary, however, given that a number of African countries have had very promising growth rates in recent years. There are also differences between neighbouring countries, e.g. Haiti's position compared to the other Caribbean countries.

2.1.4. In terms of funding, the Lomé Convention currently remains the biggest of the EU's external budget headings, still representing between 30 and 35 % of foreign aid and worth approximately ECU 2 billion each year. This is channelled though the European Development Fund (EDF) rather than directly through the Community budget and is funded according to a specially designed formula which accommodates the particular interests of several Member States [2] (at 24,3 % of the total, France's contribution to the EDF is thus the highest). This special funding mechanism is outside the control and the remit of the European Parliament and is, in short, a relic of the past. The issue of including the EDF in the Community budget is therefore of topical interest; forecasts should be carried out to assess the impact of such a move on each Member State. Those Member States which are most committed to cooperation would be able to continue to give extra assistance over and above their contribution to an EDF that formed part of the Community budget by adding bilateral aid to the joint European allocation. This would enable national aid to be dovetailed more closely with Community aid.

2.1.5. The contribution made under Lomé is, however, considerable. The Commission has calculated that the total annual public aid given by the EU to the ACP countries over the past decade is between ECU 5 and 7 billion. This includes all the public aid provided directly to the ACP countries by the EU Member States and their various public institutions and bodies (some of which is given by the regions and local authorities). Discussion of the future of Lomé will obviously be affected by attempts to tighten budgets in all the Member States and the plans to do likewise with the EU budget.

2.1.6. The meetings between the economic and social interest groups of the ACP countries and of the EU — organized by the Committee — have highlighted a degree of ineffectiveness in the cooperation programmes. Most of the EDF programme management and operation has been made the responsibility of the governments of the recipient countries and has often appeared far removed from the needs and concerns of the private

[1] Opinion on development aid, good governance and the role of the socio-economic interest groups.

[2] Member States' current contributions to the budget of the 8th EDF.

Country	ECU million	%
Germany	3 000	23,4
Austria	340	2,6
Belgium	503	4
Denmark	275	2,1
Spain	750	5,8
Finland	190	1,5
France	3 120	24,3
Greece	160	1,2
Ireland	80	0,6
Italy	1 610	12,5
Luxembourg	37	0,3
Netherlands	670	5,3
Portugal	125	1
United Kingdom	1 630	12,7
Sweden	350	2,7
Total	12 840	100,0

sector and the economic and social players in general. Joint declarations to tackle these problems have unfortunately until now gone largely unheeded. The Committee would therefore wish to make specific proposals to bring about a genuine decentralization of action and secure the proper involvement of the economic and social interest groups.

2.2. *A changing European Union*

2.2.1. At the same time as discussions on the effectiveness and need for a Lomé Convention are starting, the EU is undergoing major internal change which is bound to affect the approach that it is currently able to take.

2.2.2. Successive enlargements have made many changes in the background to the political and economic relations between the EU and the southern hemisphere countries. The Union has also established a close partnership with Latin America outside the Lomé Convention. This is a part of the world with which it also has very strong historical and cultural links. The entry in 1995 of Austria, Finland and Sweden — three countries closely involved in development aid without a 'colonial' past — into the Union is also contributing to a reworking and updating of the EU's development strategy.

2.2.3. The Single European Act and the Maastricht Treaty made significant changes to the very nature of the EU. The completion of the single market and the prospect of a single currency have an effect on the type of economic and trade relations that the Union can offer its partners. The establishment of a more integrated market with high health and quality standards is altering the terms on which products from ACP countries can enter EU markets. Furthermore, the efforts made to meet the convergence criteria required for economic and monetary union will have a direct impact on Member States' capacity to contribute to development aid. Besides this, it is the EU's desire to build up political muscle internationally in line with its importance in world trade that is creating a new context for the negotiations. In future the Lomé Convention may indeed fall within the scope of the implementation of the CFSP (common foreign and security policy). The new Treaties that emerge from the Intergovernmental Conference are likely to accelerate this trend.

2.2.4. The Treaty on European Union set the objective of development cooperation (Article 130u), sustainable economic and social development, the smooth and gradual integration of the developing countries into the world economy, and the campaign against poverty.

2.2.5. Against a background of trade globalization, the collapse of the Soviet Union and its emergence on the international political stage, the EU established binding relations in the 1980s with other parts of the world such as the Mediterranean region, Eastern Europe and Asia. In some cases these relations included new types of trade advantages and arrangements for cooperation. Operators, businesses, universities, training organizations and local authorities often have direct access to these arrangements. As a general rule, these policies place greater emphasis on promoting and extending the private sector. Such achievements and experiences must now be considered in discussions on forging a new Lomé policy.

2.3. *A changing world*

2.3.1. The collapse of the Soviet Union changed the background of ideological rivalry and struggle for influence that affected both EU and ACP countries. It is still too early to measure the full impact. The development model founded on Soviet-style authoritarian, centrally planned economic management has now disappeared. There is, however, a definite feeling that new political and cultural rifts could appear (respect for human rights, religious freedoms, democratic systems) as well as economic and social rifts. It would indeed be incorrect to believe that only one type of development is possible. The EU must remain able to put forward its own view of how development should proceed.

2.3.2. The conclusion of the Uruguay Round in 1995 and the setting-up of the World Trade Organization (WTO) also create a new context which will influence negotiations — beyond simply ensuring that the new multilateral regulations are complied with — to work out EU-ACP trade relations. The Lomé Convention is temporarily exempt from WTO rules until it expires in the year 2000. After that date, the Convention's trade arrangements will have to be adjusted to the new multilateral framework or be negotiated. It is of more direct concern to the ESC that, on the whole, the ACP countries' share of global production and exports has decreased over the last twenty years. According to recent research carried out by the Harvard Institute for International Development, development in sub-Saharan Africa is lagging behind that of Asia and Latin America in part because its markets are not sufficiently able to take part in international trade. A review of the current terms of the Lomé Convention is thus necessary from the point of view of trade — not only to adjust it to the new international context, but also to meet the challenge which the consequences of globalization pose for the ACP countries themselves and to help them to play an increasing part in world trade.

2.3.3. Although the globalization of trade is a fact of life, the major world powers — the United States, Japan

and the EU — are nevertheless devising, or have devised, regional partnership strategies. The Lomé agreements cannot avoid this situation, and how a new Convention can and must embrace it needs to be determined: by linking Africa with the Euro-Mediterranean dialogue, coupling the Caribbean with the Latin America partnership, while the Pacific basin is inevitably influenced by its links with Asia. It is a source of unease that total European investment in the ACP countries has fallen over the last few years. Japanese and US investment, meanwhile, has increased.

2.3.4. Against this background, the EU's relations with the ACP countries are a key concern. The Committee therefore calls for the convention to be thoroughly overhauled to counter (a) the risk that the partnership might lose its special, preferential character and result in a reduction in Europe's political and economic influence, and (b) the current malaise created by a convention that in its present state seems unable to respond to the challenges and issues that face us as we approach the year 2000.

3. The Committee's priorities

3.1. The Committee congratulates the Commission on the clarity and relevance of the options set out in the green paper. On this occasion the Commission has put the practice of issuing green papers to excellent use since it sets out realistic options so as to launch a thorough discussion involving all the interested parties both inside and outside the EU. This is a vital contribution to the debate, given that the Commission presents the advantages and disadvantages of each of the options rather than emphasizing one option above the others.

3.2. The Committee's main concerns are to tackle the basic question of the relevance of the current Lomé framework, including its chapter on trade; to propose a new plan for European development aid policy; and to make a number of specific suggestions to improve the working of the current instruments.

3.3. As an EU body representing civil society, the Committee considers that — as a matter of principle — the priority of cooperation and development aid policy should be to contribute to sustainable and self-supporting economic and social development with a view to improving the standard of living and employment conditions in all sectors of the population, particularly those most deprived, and that special attention be paid to women. To this end the Committee takes the view that priority should be given to:

3.3.1. strengthening the structure of associations, trade unions, occupational groups and women's organizations which ensure — in such areas as education, participation in decisionmaking, and democratic life — a more cohesive social fabric and thus contribute to sustainable development;

3.3.2. bringing about a climate that genuinely favours the growth of a local private sector and a spirit of enterprise, which are the driving forces behind economic development and job creation;

3.3.3. making better use of women's and men's capabilities and potential by means of education, exchanges, occupational training and culture;

3.3.4. ensuring women's just and fair representation in education and in the decision-making process;

3.3.5. giving a boost to democratic and purposeful action in the public domain so as to help secure personal growth and security and ensure that the conditions are right for the creation of wealth and its fair distribution;

3.3.6. ensuring that more account is taken of protection of the environment and quality of life that require long-term investment;

3.3.7. ensuring that better use is made of public resources by means of more efficient management and effective measures to eradicate corruption. Action must address both management procedures and administrative channels in the developing countries, as well as the practices and behaviour of the authorities and operators in donor countries;

3.3.8. supporting all kinds of regional cooperation, particularly the creation of integrated regional markets. In this area the EU has a responsibility dictated by its experience and history.

4. The relevance of the current Lomé framework

4.1. The advisability of a new Convention, i.e. should the single framework that currently gives a structure to relations with the 71 ACP countries be kept in place, split up or extended? This is a matter that deserves consideration both for reasons of effectiveness and in relation to a broad strategic vision of the Union's external relations which takes account of the new realities of the present-day world: globalization and regional strategies. Whichever option is chosen, the historic preferential relations between several Member States and the current ACP countries will remain. The question that follows is whether it would be sensible to dismantle all of the existing framework, which would lead to the EU losing the benefit of these relations. Nevertheless, the options of creating distinct geographical zones (sub-Saharan Africa, the Caribbean basin and the Pacific) or extending the Convention to other

countries deserve consideration and debate with the EU's economic and social partners.

4.2. The Committee takes the view that consideration should be given to the geographical characteristics of the various regions and the EU's interest in maintaining privileged political relations with the ACP countries. At all events, the EU needs a stronger framework for cooperation that includes political dialogue and the implementation of the Union's two new pillars (CFSP and cooperation in the fields of justice and home affairs) to tackle immigration problems with the ACP countries. The question of preserving the single framework or introducing a reference convention containing separate instruments for various geographical areas should be the subject of detailed discussion between the Union and the ACP countries.

Whatever is decided, the Committee calls for an approach that allows real differentiation to be made, so that the economic and political problems of each of the major geographical areas can be dealt with and examined in an appropriate setting:

4.2.1. A cooperation framework with sub-Saharan Africa to include political dialogue with individual countries and groups of countries, inter alia the Organization of African Unity (OAU). Questions of mutual interest, extending cooperation, and matters pertaining to the EU's two other pillars (common foreign and security policy, and justice and home affairs) could be tackled within this framework. Respect for fundamental human rights and confidence-building measures to ensure peace and stability in Africa should be at the top of the agenda for this political cooperation.

4.2.2. Cooperation frameworks with the Caribbean and Pacific basins that include strong and permanent links both politically and operationally with EU programmes in neighbouring regions (south and central America for the Caribbean; and Asia for the Pacific).

4.2.3. The Committee considers that another specific framework could be established for the Indian Ocean region (the Seychelles, Mauritius, Madagascar and the Comoros).

4.2.4. As far as the Pacific, Asian and Indian Ocean regions are concerned, care must also be taken to ensure that measures to help the ACP countries and those taken for neighbouring OCTs (Overseas Countries and Territories) and the most remote EU regions are consistent and tie in well together.

4.3. At the least, the Committee calls for a strengthening of the binding partnership principle that provides a basis for the special features of the European approach. It is within this framework, founded on the inherent equality of sovereign states, that the future shape of the new convention should be planned. This framework should be expanded and made more consistent with the Union's overall external relations and CFSP strategy. If the overall Lomé framework is strengthened and differentiated on the basis of geographical regions, it could be extended to cover other countries and regions.

However, in any new cooperation agreement a balance will have to be struck between the concept of the inherent equality of states and the need to operate any future partnership flexibly so that the EU can, when necessary, manage the deployment of aid effectively.

4.4. The Committee also calls for greater coherence between Lomé policy, the other EU policies in — for instance — the areas of foreign affairs, foreign trade, labour and employment, security and justice, and Member States' bilateral action. In this connection, the Committee supports the approach taken by the Commission document and suggests a truly global approach to development aid. To this end it proposes permanent mechanisms for cooperation, such as: regular meetings of directors responsible for policy in connection with the CFSP; placing questions concerning immigration policy on the agendas of meetings of ministers responsible for justice and home affairs; an overhaul of the cooperation framework to include — as part of a global, geographic strategy for the Union's external relations — mandatory consultation on aid programmes in the form of agreed multi-annual planning within which EU and Member State co-financing will be sought.

4.5. Making the EDF part of the Community budget must be considered as part of an increased synergy between action at national and Community level. If not, the inclusion of Lomé aid in the 'Community remit' will come up against the reality of wide differences in opinion and commitment between the various Member States and their capacity to fund this policy. The Committee therefore calls for the EDF to be included in the Community remit; this would embrace horizontal action, regional cooperation aid programmes and operational programmes dealing with the most disadvantaged countries. The Member States, meanwhile, would be asked to make specific national contributions to the programmes and countries that they consider a priority. In this way, making Lomé part of the Community budget would be flanked by a real effort to secure consistency between action at Community level and national policies. The ESC takes the view that this effort to achieve consistency should be one of the main priorities of the reform of the current convention.

4.6. The Committee urges that Community action be better coordinated with the action and programmes carried out by international institutions, especially those in which EU Member States play an important and

sometimes leading part (e.g. FAO, ILO, UNDP, UNIDO, UNESCO and the World Bank). In this connection, the Committee would suggest the signing of contracts setting out objectives between the Union and these institutions. This would open up the possibility of EU funding for actions carried out by such bodies. This collaboration should take place at grass-roots level as part of a concerted planning of cooperation schemes, but also centrally by ensuring that the participation and strategy of the Member States and the EU itself are more consistent with those of such organizations.

4.7. The Committee also calls for partnership to embrace the grass-roots players, the private sector, trade unions and community groups. This is essential if cooperation is to be made more effective, given the aim of securing sustainable economic and social development. The economic and social interest groups should be involved from the framing of cooperation schemes to their actual implementation.

4.7.1. Drawing on its experience gained from the meetings of the EU-ACP economic and social interest groups, the Committee suggests that the present consultative system be strengthened by adding an economic and social cooperation mechanism run by the ESC in the form of joint committees. These committees would preferably be organized on a geographical and regional basis and ensure that civil society was fairly represented, with no discrimination on the basis of sex or ethnic group. Together with the parliamentary Joint Assembly, these committees would be called on to give their opinions on economic and social development plans submitted by the countries concerned and put before the EU for approval and funding. Where plans were not endorsed, recipient countries could be required to revise them.

4.7.2. The ESC would also wish to be directly brought into future negotiations on overhauling the convention.

5. A new framework for trade

5.1. A new framework in this area is especially important given that, overall, the terms of trade of the ACP countries have been in permanent decline. Their share of the EU market has fallen from 7 % in 1975 to 2,8 % in 1995, a pattern repeated in international trade generally (the world market share for the ACP countries' 30 most important export products fell from 9,7 % in 1975 to 2,8 % in 1995). This worrying trend in itself justifies a revision of the trade framework to make it more effective. The revision must also take into account the adjustment of the convention to the new international trade rules and the erosion in real terms of trade preferences under Lomé for the less developed countries, compared to the multilateral system of generalized preferences. The necessary improvements should draw upon the lessons to be learned from the various international trade success stories (e.g. Mauritius, Zimbabwe, Côte d'Ivoire, Fiji and Jamaica) and the generally more encouraging 1996 figures.

5.2. Concerning trade, the green paper proposes four principal options: including the trade chapter in the GSP in order to prevent any derogations from WTO principles; keeping the current system in place with some improvements; a uniform reciprocity system; and a differentiated reciprocity system. The Commission document sets out the advantages and disadvantages of each of the options, together with two additional options which are a combination of the main ones. The Committee wishes to assess these different options in terms of the following criteria:

5.2.1. the choices in respect of geographical coverage, particularly the interest expressed in regional cooperation between countries in the same area, with a view to encouraging the emergence of regional markets;

5.2.2. the wish to give the ACP countries simplified phased access to global markets;

5.2.3. efforts to achieve greater effectiveness given the mediocre results of the mechanisms which currently promote commerce and trade;

5.2.4. incorporation of the different economic development levels of the various countries;

5.2.5. the determination to preserve the Union's capacity to make a substantial contribution to supplying global markets while retaining the advantages that the convention has offered until now, particularly in terms of non-reciprocal trade;

5.2.6. the intention of achieving consistency between the EU's development and trade policies, and in order to prevent distortions of competition that would restrict the growth of local production;

5.2.7. agricultural development — where natural conditions permit — that addresses human requirements as a matter of priority.

5.3. Taking these criteria as a base, the Committee considers that priority should be given to the following:

5.3.1. Greater account to be taken of differences in economic development and capacity to play a part in world trade (cf. the contrasting situations of Mauritius and Madagascar). For this reason, the Committee does not favour preserving a single framework, including by means of the option of uniform reciprocity.

5.3.2. Efforts to improve effectiveness as part of the EU's special responsibility to its partners, especially in Africa. In this respect, simply applying WTO principles and GSPs will not provide sufficient guarantees and

will, at the same time, deny the more advanced ACP countries the key benefit of Lomé. There must, however, be awareness of the need to make the current arrangements eventually compatible with the rules of international trade and to promote the integration of these countries in trade at a global level. Consequently, the EU and the ACP countries must press the WTO to retain a number of nonreciprocal preferences for the least developed ACP countries on a temporary basis.

5.4. It is only the option of differentiated reciprocity — applied in full — that permits both differentiated treatment and the maintenance of a contract-based partnership. It also complies with the rules of the WTO. This would involve negotiations with geographical areas, groups of countries or single countries on phased programmes to bring about improved market access. The phasing-in of these arrangements would allow the least developed ACP countries to maintain, for a limited period, protection to support the development of a number of their economic sectors.

5.5. The ESC takes the view that there are two main advantages to opting for differentiated reciprocity. The first is to promote regional cooperation between the ACP countries insofar as such programmes to open up markets would, as a matter of priority, include an 'internal' chapter dealing with the region concerned, providing for accelerated free trade and increased cooperation between countries which, for the most part, have markets that are too small to increase their international competitiveness. The cumulation of rules of origin that would be granted by the EU could well increase the potential of such regional markets and thus encourage investment. The second is to give these countries enhanced credibility in the eyes of foreign investors by supplying the confidence and stability of a process that could be regarded as irreversible.

5.6. As part of this option, special attention would be paid to trade relations between the ACP countries themselves, together with neighbouring Community OCTs and most remote regions. The intention would be the speedy application of principles of reciprocity and trade liberalization to promote the emergence of genuine regional markets. These programmes would also tackle the removal of the technical obstacles to trade that exist among the ACP countries, standardization for instance. The Community's experience in this area could be very instructive.

5.7. The introduction of a policy of differentiated reciprocity should be flanked by action plans to genuinely enable these countries to increase production and thus find outlets on world markets. Such plans will have to tackle, inter alia, the quality and reliability of production chains. They would also aim to encourage producers' participation in the export and distribution sectors. Parallel to implementation of these plans, the EU could introduce a technical assistance and trade cooperation centre. It would be responsible for (a) disseminating best practice, building on the aforementioned success stories, and (b) informing exporters of arrangements governing access to EU markets (quality standards, health regulations, etc.). This action would be carried out in the ACP countries in liaison with UNCTAD and could be made the responsibility, within the EU, of the CDI. This would give the latter a wider remit, the link between industry and trade being self-evident.

5.8. The advantage of doubling up the choice of single framework in this way — by temporarily including the various options — would be both to preserve a clearly identified trade chapter and to respond to particular situations. Non-reciprocal preferences for the least developed countries, and a number of protocols on products such as sugar, bananas and beef, would also be kept in place on a temporary basis.

5.9. To make this approach clearer, the Committee recommends that only one option (differentiated reciprocity) be chosen. This would be compatible with WTO rules and is the one most likely to integrate the ACP countries in world trade. A single-framework implementation timetable for maintaining transitional and temporary arrangements could in any case accompany this option so as to ensure that the mechanism is phased in and a common framework maintained for trade.

5.10. There are special rules for trade in agricultural products between the EU and the ACP countries due to the Common Agricultural Policy. The impact of these rules is, however, very limited given the general differentiation between tropical and sub-tropical ACP products and EU products. The Union must make efforts to support a number of ACP products on the international market, prevent any possible adverse impact from the Common Agricultural Policy, and study any problems that may arise from it. The specific protocols for sugar, bananas and beef are important instruments in this connection. For a number of countries — such as Mauritius — these arrangements have had a very positive effect and have fostered development. In the case of other countries, and in respect of the free access to the Community market for ACP products not covered by the CAP (e.g. tropical products), inadequate product quality and marketing problems are the real reasons for the slow increase in agricultural trade between the EU and the ACP countries. The progressive creation of free-trade areas should therefore not pose any real problems for the Union in this sector, provided that

there are arrangements for maintaining — at least temporarily — certain product protocols. These aim to support ACP exports in the hope of boosting productivity and quality which will thus make them competitive on world markets. Differentiation in the application of these protocols to genuinely encourage the least favoured countries is likely to make them more acceptable internationally as far as their mandatory renegotiation after 2000 is concerned. It is also likely to make the beneficiaries actually consider them as exceptional measures.

6. A new view of development aid policy

6.1. The very concept of development aid is currently being questioned. The Committee notes that nowadays discussions tend to focus on a minimalist, humanitarian outlook (helping people below the poverty line) and on the ultra-liberal view that commerce and free trade are the only ways of securing development.

6.2. The ESC, on the other hand, calls for an original approach that is true to European traditions and is founded on the universal values that were paramount when the first Lomé Convention was signed: humanitarianism, solidarity and partnership. It is, however, an approach that must be adjusted to a changing Europe and a changing world. For this reason the Committee suggests that new operating principles and new priorities be adopted, without renouncing the basic principles of the European view of development aid.

6.3. The Committee would begin by calling for an overhaul of the partnership. This must accommodate the Union's new political dimension and include a dialogue on fundamental values: human rights, democracy, respect for religious freedoms, social and trade union rights, equality between men and women, a defence of private property and security of domestic and foreign investments, measures taken to combat all types of crime, and corruption prevention. The ESC understands dialogue to be a genuine partnership that needs to operate in both directions. In order to prevent corruption, for instance, action also needs to be taken in European countries; particularly by eliminating the tax arrangements that sadly still encourage it in a number of Member States.

This dialogue should not be the sole preserve of governments, either in the EU or in the ACP countries. If this is to be a genuine partnership, it must also include parliamentary bodies and economic and social interest groups. Extending the partnership in this way will breath new life into the convention and ensure its effectiveness and transparency.

6.4. The contractually-binding implementation of plans between the EU and the ACP states or groups of states, including a chapter on trade liberalization and technical and financial cooperation programmes, could be proposed as part of this improved partnership and genuine dialogue on common values. The Committee calls for these programmes to make a real contribution to economic and social development in the recipient countries. Aid levels should not be calculated mathematically but, rather, should depend on the quality of the programmes that are presented and the common determination to achieve the goals that have been set. The Commission should first decide on its cooperation priorities.

6.5. The ESC takes the view that one of these priorities should be to open up new areas for cooperation. Cooperation programmes should aim for sustainable development that works to the advantage of the whole of society in the candidate country and ensures parallel and balanced progress between the economic and the social. In other words, it should promote the growth of a private sector, which is a vital requirement for generating jobs, and create the conditions in which genuine social progress can take place, using ILO standards as a basis.

6.5.1. Human exchanges to foster mutual understanding should be put at the heart of cooperation programmes. The Committee believes that the meeting of different cultures can lead to considerable mutual understanding. This new approach will have very practical consequences: the replacement of projects by programmes, the organization of the transfer of know-how among grass-roots players, a significant extension of exchange programmes and the promotion of horizontal regionally-oriented measures.

6.5.2. In the ESC's view it is vital to improve intermediary structures for a dynamic civil society to function properly: entrepreneurs' associations, the cooperative sector, consumer groups, trade unions and chambers for different economic activities (crafts, agriculture and trade and industry). This can best be achieved by developing cooperation between EU and ACP players.

6.5.3. The growth of a dynamic private sector, particularly in the industrial and service sectors, is a key factor in creating jobs and securing growth and an improved standard of living. In this connection, a number of across-the-board projects should be considered to promote a spirit of enterprise, channel local savings into businesses, and support the development of SMEs. It is essential that these programmes are implemented in close collaboration with entrepreneurs and that the aid which is granted is of direct relevance to them. At the same time, the ACP countries should be encouraged to create confidencebuilding conditions to make investments secure and to promote private initiative: transparent, businessfriendly taxation, efficient services of

general interest, systems of justice that run smoothly, measures to eradicate corruption, and so on.

6.5.4. Cultural cooperation is one of the new areas for development that should be made a priority. It both encourages communities to blossom and is a very important way of securing economic and social development in LDCs. The Committee thus recommends that arrangements be introduced to promote exchanges and joint action between EU Member States and ACP countries. The Media programme, which assists in the creation and distribution of artistic works, supports film and theatre co-productions and fosters mutual understanding of cultural traditions.

6.5.5. Education and training, particularly technical and vocational training, should be central to all development policies; a substantial part of any programme or project receiving EU support should, from now on, be devoted to these aspects. This is a subject that is not properly dealt with in the Commission document and which the Committee — aware of the key importance of this issue as far as ensuring sustainable development is concerned — could tackle in an own-initiative opinion. It could suggest, for instance, extending the partnership between the EU and the ACP countries in this area through the organization of exchanges of personnel and advanced training courses. Particular attention should be paid in this field to cooperation with businesses and the development of distance learning techniques.

6.5.6. Domestic economic activity will not thrive and foreign investment will not be attracted if the country itself is inefficient, does not guarantee individual freedoms, is not capable of securing its people's support for collective projects and of providing satisfactory services of general interest. The EU could propose programmes to bring administrations up to date, in those ACP countries in which they were needed. Where appropriate, these could also involve the Member States. Such programmes must include a chapter on the closer alignment of legislation, the purpose of which would be to clarify and harmonize trade arrangements, simplify the protection of investments and tax and customs procedures, bring legal systems up to date, and secure social progress by introducing ILO standards. In particular, the EU could — given its experience and its history — provide practical assistance for regional integration projects.

6.5.7. Other priority matters that the Committee plans to raise include rural development and urban planning, which are closely linked. Desertification in the countryside and urban overcrowding are factors that in many ACP countries can increase tension and damage the environment. These are areas in which the EU's expertise and experience could be harnessed profitably. The development of an efficient farming sector attuned to the needs of local or neighbouring communities, flanked by the growth of multiple activities (such as tourism and crafts) and agricultural reform, should be a priority area of action, together with, for instance, measures to improve the quality of life in cities.

6.5.8. The Committee also calls for the subject of industrial cooperation and investment — which are, in the main, under-exploited in the current convention — to be examined in more detail. First of all, the matter of investment security needs to be included in all cooperation programmes because European businesses, and SMEs in particular, now turn away from many ACP countries due to a lack of confidence. Specific confidence-building arrangements and guarantees should be proposed, such as insurance and arbitration arrangements.

6.5.9. Other horizontal issues include research and development programmes (involvement of ACP businesses in certain EU programmes, dissemination and exploitation activities, and demonstration programmes in the field of energy saving), up-to-date information and environmental protection networks. The ESC calls for provision for these to be made in future conventions.

6.5.10. The green paper mentions direct budget aid to the ACP countries with the aim of helping them get out of debt. The Committee takes the view that such aid should only be envisaged as part of a plan to restructure the debt, including its possible cancellation, flanked by projects to maintain levels of public investment aimed at promoting sustainable economic and social development (education and training, health, services of general interest, basic infrastructure) and by structural action to encourage growth in the private sector and good administration.

7. Improving cooperation instruments

7.1. The problem of the effectiveness of the cooperation instruments is currently illustrated by the ever-increasing delay in committing EDF appropriations. There is the danger that the appropriations of the 8th EDF for the period 1996-2000 — fixed after lengthy negotiation at the European Summit in Cannes in June 1995 at ECU 13,3 billion — may not be used before the year 2000, i.e. following the expiry of the current convention. Although there are many reasons for the delay, due in part to political problems in a number of ACP countries, this does not alter the fact that it is a real barrier to the effectiveness of the present instruments. The Committee would therefore propose a number of courses of action to overhaul cooperation methods and instruments.

7.2. Replace projects by programmes: there is too little use made of programming, in spite of the existence of national indicative programmes. The Committee would suggest prioritizing programmes to enable a better link to be made between the aid and the objectives set out in the partnership arrangements. The Committee sees programmes as ambitious schemes that set out precise objectives for economic and social development and the measures to achieve them. They would also include arrangements for consulting the economic and social interest groups, for follow-up action, evaluation, and so on. These programmes could be termed National Operational Programmes (NOPs) or Regional Operational Programmes (ROPs). They would deal with groups of countries and be negotiated on the basis of binding contracts. They would also be referred to the Joint Assembly and the joint committees for economic and social consultation which the ESC would like to see set up. If these bodies did not endorse the programmes they would need to be re-drafted. They would set out the EU's financial commitments and, where appropriate, those of the recipient countries, Member States and other organizations, including international. As in the case of the EU's Structural Funds, the Commission could launch Community Initiative Operational Programmes (CIOPs) running concurrently in designated areas, such as support for the private sector, environmental protection, research and development activities, occupational training and education, and rural development and urban planning.

7.3. Introduce horizontal cooperation instruments administered by the EU with its grass-roots European partners. The EU's positive experiences acquired through its SME support measures (Euro-info-centres, Europartenariat meetings, support for joint ventures under the JOB programme, and so on), its programmes to promote education and training (Leonardo, Socrates, etc.), its cooperation programmes in the field of urban planning (MED URBS), its cultural programmes (Media, Raphaël, etc.) and its rural development programmes (Leader), would be usefully repeated in the new Lomé Convention. These instruments could be accessed directly by operators in ACP countries and the EU Member States and be assessed on quality alone. The dissemination of best practices and improved global access will be encouraged by the creation of synergies between these instruments and existing EU programmes, whether with the countries of the Mediterranean region, with Central America or with other regions in the world.

7.4. Promote credit and investment support measures for local businesses, particularly SMEs, implemented with the aid of the European Investment Bank and banks operating in recipient countries. These principally concern global loans that draw on the financial engineering experience of Community instruments (guarantees, venture capital, etc.), and the introduction of instruments designed to promote European investment in the ACP countries: bringing businesses together on the Europartenariat model, facilitated for European enterprises of the ECIP or JOP type.

7.5. The role of the Centre for the Development of Industry should be expanded. It should be given additional resources to enable it to give more practical assistance directly to European and ACP operators in liaison, for example, with the instruments to encourage investment. In the case of ACP operators, its activities could be extended to help with boosting trade and commerce, including compliance with quality and health standards, and the organization of distribution channels and partnerships. More and more the key issue for ACP manufacturers will be their capacity to produce products that are competitive on world markets. With its wider remit, the CDI could be re-named the Centre for the Development of Enterprise. It would be encouraged, more than in the past, to make use of local enterprise networks in the EU to lend force to its action. In a number of Member States this would make it more effective. With the same aim in mind, the Centre should improve its cooperation in the ACP countries with specialized international organizations such as UNIDO for industry and UNCTAD for trade matters, by carrying out joint or linked operations as part of common projects.

7.6. Modernize the STABEX and SYSMIN instruments: although they have had very positive results in terms of stabilizing raw material export receipts, they have not enabled the ACP countries to develop alternative export strategies. The position of most ACP countries on world markets has deteriorated and the automatic granting of aid does not make for competitiveness or growth. As far as STABEX is concerned, the solution could be to make the granting of aid dependent on programmes to develop exports in alternative sectors that have a high added value (industry, services, agricultural products and processed raw materials, and so on). Given the great potential of the mining sector, the Committee would, for the most part, propose that procedures be made more flexible and that the instrument be deployed more systematically to assist the private sector, either locally or in the EU. This would involve, for instance, funding feasibility studies and venture capital contributions.

7.7. Decentralize operation implementation: many programmes need the input of expertise and the transfer of know-how. The Committee takes the view that the economic and social interest groups and the various operators in the EU have this expertise. The experience of the Phare and Tacis programmes in eastern Europe has revealed the limits of the improper and costly use of consultants who neither assimilate into the countries concerned nor provide local decision-makers with the

proper training. That is why the Committee recommends using decentralized cooperation as a priority means of implementing technical assistance and cooperation schemes. This method would have the advantage of securing direct links without involving the government of the country concerned, which would save both money and time. It would also encourage partnerships. In this connection, the Committee looks forward to the creation of the permanent body for economic and social cooperation which could be responsible for encouraging the settingup of cooperation networks between ACP and EU players.

7.8. Appropriate budgetary provisions should be put in place to support direct initiatives taken by players in civil society. These provisions must be specially tailored to the specific ways in which these players operate, and should include separate budget lines for NGOs and organizations representing employers and workers. The access procedure must be tailored to the capacities of those seeking aid and response times should be short. Organizations in ACP countries must have direct access to the provisions; they should not be reserved for EU organizations as is presently the case.

7.9. Make the administration of operations more effective: for the horizontal instruments and Community Initiative Operational Programme in, for instance, the areas of investment, education and training, the environment, research and development, culture and urban planning, the ESC recommends that a team of specialists be set up in Brussels, with field offices in the ACP countries. Its primary task would be to guide and advise those carrying out projects, rather than simply making administrative checks. As far as operational programmes are concerned, the Committee does not take the view that the current problems would be solved by centralizing programme management in Brussels. On the contrary, the systematic use of decentralized cooperation and making the inclusion of a chapter on technical assistance mandatory in each programme would make such programmes more effective. This technical assistance could thus be provided by experts, staff on secondment working in the area of decentralized cooperation or experienced personnel from the Member States. All of these would be supervised by the Commission. In those countries with a suitable and efficient administration, management should be decentralized as far as possible. In the case of other countries, the local management responsibilities of Commission delegations should be extended.

7.10. Extend assessment and monitoring: the Committee proposes that Commission delegations be strengthened to include qualified and experienced staff from outside the Commission with a background in the private sector, in associations, or in the administrations of the Member States. At the same time, the ESC calls for the introduction of a permanent instrument to provide independent evaluation, under the responsibility of professionals in this field. There should be a mid-term assessment of all national and regional programmes. The results should be forwarded to the political authorities and the advisory bodies.

7.11. Ensure that development programmes do not clash: the Committee is most concerned that there should be genuine consistency and complementarity between action carried out at Community level and the bilateral operations of the Member States, together with those of international institutions such as the World Bank, the IMF and the ILO, and specialized UN agencies such as UNIDO, UNCTAD, UNESCO and FAO. Programming should therefore be used to this end. All programmes should include detailed information on complementary national and international action. Contracts setting out the objectives would be signed with the partners, including the Member States. They would cover both additional funding from, for instance, individual Member States or groups of Member States, and deal with the possibility of the EU making its partners responsible for the administration of certain operational programmes.

Brussels, 10 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) establishing a revised Community Eco-label Award Scheme' [1]

(97/C 296/12)

On 8 April 1997 the Council decided to consult the Economic and Social Committee, under Article 130 S of the Treaty establishing the European Union, on the above-mentioned 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 3 June 1997. The rapporteur was Mr Koopman.

At its 347th plenary session (meeting of 10 July 1997) the Economic and Social Committee adopted the following opinion by 66 votes in favour, with nine abstentions.

1. Introduction

1.1. In December 1996 the Commission published its long awaited Proposal for a revision of Council Regulation 880/92 which established the Community eco-label award scheme. The explanatory memorandum refers to certain difficulties which have been encountered in its implementation. In order to increase its effectiveness, efficiency and transparency, amendments are proposed aimed at improving and streamlining the approach, methodologies and working procedures of the scheme in accordance with Article 18 of the Regulation.

1.2. In its analysis the Commission mentions the difficulties which, in its view, have contributed to the slow progress of the scheme. These are:

i. the reluctance of producer organizations to accept competition between their members on the basis of better environmental performance;

ii. differences in market conditions within the Community;

iii. the low visibility for consumers;

iv. the existence of national schemes;

v. the cumbersome procedures for criteria setting;

vi. possible trade distortions and,

vii. the subsequent costs of the awards.

The Committee will give its views on these impediments when it discusses the measures proposed by the Commission to improve the scheme.

1.3. This is not a new subject for the ESC. The Committee expressed its views on the original proposal in a unanimously adopted opinion [2] and has also made numerous suggestions on the future course of the scheme as part of other recent opinions. These suggestions are contained in: point 2.7 ('sustainable consumption') of the Opinion on the Priorities for consumer policy (1996-1998) [3] and point 4.4.3 ('new instruments of environmental policy, including eco-labelling schemes') of the Opinion on International trade and the environment [4]. The present opinion will make use of these recommendations.

1.4. Furthermore, in providing the secretariat for the Eco-label Consultation Forum, the ESC has developed a good insight into the functioning of the scheme and the contribution of all the players involved. The drafting of this opinion has also benefited from the various inputs provided by the competent bodies, the European Environment Agency (EEA) and the European interest groups.

2. General remarks

2.1. The Committee is of the opinion that the development of the number of criteria for product groups adopted and the number of eco-labels awarded, should not be judged negatively, given the short period the regulation has been in force. The German 'Blue Angel' (1977) and the 'Nordic Swan' (1989), which now have recognized positions in their home markets and to some extent also abroad, initially faced similar disappointments and set-backs. They too were 'slow starters'.

2.2. The ESC also believes that the coming into existence of a number of eco-labelling schemes in Member States at about the same time as the EU-scheme was launched, was an element that contributed to its modest start. In addition, its necessarily more complicated organizational structure, which was designed in order to accommodate the desire of Member

[1] OJ C 114, 12. 4. 1997, p. 9.

[2] OJ C 339, 31. 12. 1991.
[3] OJ C 295, 7. 10. 1996.
[4] OJ C 56, 24. 2. 1997.

States to actively participate in its operation, also played a part in this. Recent information provided by the Commission, however, shows that by the end of March 1997, the Scheme awarded 27 licenses to 14 producers for a total of 108 products. These facts, taken together with the statistics published by the Commission in its Proposal, may be an indication that the Scheme is now gaining momentum.

2.3. The Committee is convinced that, also given the trade barrier implications of the national schemes, the future of environmental labelling lies with strengthening the EU-scheme. To achieve this, an effort should be made to harmonize as much as possible the criteria of these national eco-label schemes. ([1])

2.4. The successful implementation of the EU eco-label scheme is also of great importance since it is the only product-related and demand driven voluntary policy instrument to pursue the cause of sustainable consumption.

3. **Specific comments**

3.1. The introduction of a graded label

3.1.1. The Commission argues that industrial organizations are generally reluctant to endorse the eco-labelling scheme since it invites competition (on the basis of the environmental impact of the product only). Individual companies, however, seeking competitive advantage, may well be interested in the eco-label. The Commission also points to the different market structures for many product groups in the Member States and notes that for non-EU producers there exist significantly different conditions from those prevailing within the EU. These considerations have led the Commission to conclude that it will often not be possible to establish uniform criteria.

3.1.2. In order to meet these problems, the Commission proposes the introduction of a graded label based on different (flexible) criteria for each of the environmental aspects of the product group concerned. Sufficiently strict benchmarks for these separate aspects are to be established in order to guard the integrity of the label so that it satisfies the basic requirements.

3.1.3. First of all it should be stressed that the rationale for establishing EU-wide ecological criteria for product groups is the desire to reduce their environmental impact within the European Union. This implies that the selection of the environmental aspects for which criteria have to be established and the strictness of these criteria should reflect environmental conditions within the EU. It may therefore not always be possible to accommodate non-EU-producers, who may be operating under significantly different environmental and legislative conditions ([2]).

3.1.4. Secondly, one may cast some doubt as to whether the national conditions (including consumer expectations of high environmental standards) within the EU are so different that they necessitate national approaches with respect to the setting of criteria (establishment of different standards), especially as the single market will increase harmonization of economic conditions and environmental policies in the EU.

3.1.5. Thirdly, one may question the Commission's optimism that the reluctance of manufacturers to compete on the basis of environmental performance will be lessened by the introduction of a graded label. Admittedly, a graded label provides more flexibility for manufacturers to comply with the criteria, but its effects on competition are not at all clear, in particular because of the inherent lack of transparency of such a label.

3.1.6. It is highly questionable whether the introduction of a graded label will provide an answer to any of the concerns manufacturers have with respect to the EU eco-label scheme. So far, there is no evidence of a positive attitude of manufacturers or their organizations for a graded label.

3.1.7. It is true that such a system would provide the standard setting authority with more flexibility, in the sense that it allows for more nuances than the 'pass-fail' system. But it is unlikely that such freedom will bring much satisfaction to such an authority as it will lead to disputes regarding the choice of subsequent hurdles, due to the different (national) interests of producers. Furthermore, one has to be aware of the built-in pressure towards a lower base-line in a graded system.

3.1.8. Lastly, it is doubtful whether consumers appreciate being offered more choice through different 'bouquets' of flowers. It will be very difficult to explain the relevance and importance of the different labels to them. Consequently, it will be problematic for the consumer to choose between labels which show different scores for the various environmental aspects. Moreover, in general, the consumer does not like to spend much time on assessing information for the purchase of

([1]) See footnotes 3 and 4 and points 2.7.5 and 4.4.3.4 respectively.

([2]) The ESC expressed this view already in OJ C 56, 24. 2. 1997, point 4.4.3.5.

goods (1), notwithstanding his interest in information on specific impacts on the environment and the state of the environment at large.

3.1.9. It is true that the consumer takes more time to choose 'the best buy' when it concerns durables. But usually she will at least have a notion of the properties (fitness for use) of the products that are relevant for her. And even then, as all consumer organizations know, it requires great skill and effort to provide the consumer with understandable and relevant information on comparative tests of such products — a system which is analogous to the format of a graded eco-label.

3.1.10. In the latter case, the problem of the consumer is aggravated because he will usually be far less familiar with the environmental qualities of the product and even less in a position to express preferences for them. Consequently, the consumer will not take time to digest the information on the label which he may neither comprehend well nor even need in order to make a purchase decision. It is therefore understandable that consumer organizations have expressed their opposition towards the introduction of a graded label.

3.1.11. For the same reasons industrial companies have doubts about a graded label, as it has disadvantages as a communication tool in the market place.

3.1.12. And consequently, it is understandable that nowhere in the world a graded eco-labelling scheme has become operational.

3.1.13. For all these reasons the ESC does not believe that the introduction of a graded label will be an adequate tool to overcome the hesitations of industrial and trading companies for participating in the scheme. The Committee rather believes that sufficient adaptations can be made within the present 'pass-fail' system to drastically increase its attractiveness towards these companies.

3.1.14. Because of all the risks involved, the Committee urges the Commission, if it would not be inclined to heed its advice to abandon this new approach, to at least firstly enquire whether producers and retailers (who may feel a responsibility to help interpret the information to the consumer) would really prefer a (kind of) graded scheme to the present 'pass-fail' system and as a result would be much more inclined to participate in such a scheme.

3.1.15. And if that were to be the case, the Committee further suggests that the Commission pre-tests such a system, before it presents definitive proposals. The outcome of such a test may well show certain variations within Member States, although the label that ultimately will be chosen should have the same design throughout the EU. The Committee would also like to suggest that the consumer committee be involved in this pre-testing exercise (see also the reference in Article 7).

3.2. *The relationship between the EU scheme and national schemes*

3.2.1. The ESC can concur with the view of the Commission that in future national labels should only apply to product groups for which no specific Community eco-label criteria exist. It proposes however to change 'are established' into 'have been established' (Article 11.1) (2). The determining factor for the Committee is that there will no longer be any products in the market place carrying a national eco-label for which EU-labels have been established after the new regulation has been in force for five years. This adaptation would allow the presence of national labels in the market in the (sometimes long) period which lies between the announcement of the mandate for the development of criteria for that particular product group and the publication of the criteria by the Commission (Article 5.3). Furthermore it has to be recognized that this provision is only applicable to the so-called co-ordinated schemes because the governments of the Member States are not accountable for other, existing unregulated labels. The ESC recommends that the Commission will clarify the precise meaning of this paragraph. An exception may, however, be made for the adoption of (stricter) national criteria in the co-ordinated schemes to combat environmental problems which are genuinely of national significance. Such an exception is deemed appropriate as the TBT and SPS Agreements (3), under conditions, also allow for the establishment of national standards. The burden of proof for the establishment of such national labels should rest with the national authority for eco-labelling. It is not expected that much use will be made of such an exception clause.

3.2.2. The Commission proposes the establishment of criteria for only a very limited number of product

(1) A Dutch consumer research institute (SWOKA) found that for 45 % of a sample of consumers interested in information on genetically manufactured food products it sufficed to know that the product in question was 'approved' by an authoritative body. More information was not deemed necessary.

(2) In some languages, such as the Dutch language, the translation uses already the 'perfect tense'.

(3) Technical Barriers to Trade and Sanitary and Phyto-Sanitary measures respectively.

groups, given the modest financial contribution it is prepared to make. (1) Hence, not only would the logo's visibility hardly improve, but even worse, its share in the coordinated system of eco-labelling would most certainly even decrease. One way of arresting this unfortunate trend would be to back the commendable initiative of several national schemes to harmonize their criteria for particular product groups and so create additional EU-criteria. The ESC would like to emphasise that harmonization of criteria is to be preferred to a system of mutual recognition (of non-harmonized) criteria.

3.2.3. A cause for concern is the existence of uncoordinated national (private) schemes, a problem which is also referred to by the Commission. The ESC therefore welcomes the Commission proposal to allow retailers to apply for the eco-label for products marketed under their own brand name (Article 6.1) as it may tempt them to give up their own logo and to participate in either the official national scheme or the EU scheme. It urges the Commission to affirm that wholesale brands are also permissible in the scheme.

3.2.4. The proliferation of private labels and other environmental claims should be strongly discouraged. These unregulated labels confuse the consumer and their claims are sometimes misleading. Consequently, they harm the development of the EU eco-label and the national labels issued under the aegis of the competent bodies.

3.2.5. In order to enable national authorities better to tackle misleading environmental claims, the ESC recommends that the Commission — in collaboration with the Committee as proposed in Article 13 — scrutinizes existing legislation and codes of practice on misleading advertising, with a view to the need for introducing amendments taking into account the different national legal and institutional structures.

3.3. *The organizational set-up of the EU scheme*

3.3.1. The relationship between the EEO (2) and the Commission

3.3.1.1. The Committee concurs with the Commission proposal to encourage the setting up of a private international association of the eco-label competent bodies (3) that will assume the responsibility for the establishment and updating of the criteria, the corresponding assessment and verification requirements and the coordination of the activities of the competent bodies. The Committee has adopted this view as it recognizes that there does not exist a viable alternative to this Commission proposal.

3.3.1.2. The Committee, in preparing this opinion, has investigated the possibility of entrusting the EEA with the final responsibility for the establishment of the criteria. It has invited the director of the EEA to give his views on this thought. The director strongly believes that this administrative task of establishing criteria would impede his core business of independent collection and dissemination of information on the environment. Consequently the Committee recognizes that the EEA can not function as a viable alternative to the EEO.

3.3.1.3. The Commission is to be applauded for its 'retreat' from the execution of the scheme, as past experience has shown that the scheme is (also) vulnerable because of the driver's seat position of the Commission. This shift of responsibilities to the EEO is all the more appropriate, given the increased sensitivity about trade distortions (4). An additional advantage of the setting-up of the EEO, is that it may be conducive to the further harmonization of national schemes (see also point 3.2.2).

3.3.1.4. However, at an informal meeting of competent bodies and government officials discussing the proposal (29 till 30 May 1997), several delegations expressed a preference, at least at this juncture, for the Commission to retain ultimate responsibility for adopting the criteria.

The following arguments were offered in support of this view:

— the authority of the Commission, if needed, in defence of the adopted criteria;

— the competence of the Commission to negotiate in a European and international context;

— the sense of 'ownership' (feeling of responsibility for the body to be set up) and finally the financial consequences.

(1) See Financial Statement, paragraph 9.1. It envisages the creation of criteria for five new product groups per year, over a four-year period.

(2) European Eco-label Organization.

(3) The organization(s) in the Member States to which manufacturers or importers may apply for the eco-label and which are responsible for the implementation of the scheme in their home country.

(4) These responsibilities weigh more heavily for governments than for non-government organizations (Article 4 and Annex 3 of the TBT Agreement).

The Committee is of the opinion that these concerns should not be taken lightly and urges the Commission to find adequate solutions for these problems.

3.3.1.5. The concrete delimitation of responsibilities still leaves much to be desired. The proposal does not, for example, pay any attention to the question of liability for damages which may be awarded by the courts that emanate from decisions of the EEO. The ESC is of the opinion that the EEO should be indemnified by the Commission against damages which may arise from merely but properly discharging its mandate from the Commission.

3.3.1.6. Unfortunately, neither does the proposal present an unequivocal attribution of responsibilities between the Commission and the EEO with respect to the introduction of new criteria. It is true that the eco-label criteria will be established by the EEO, but they do not enter into force before the Commission is satisfied that the EEO has complied with the terms of the mandate. The mandate will specify procedural requirements for establishing eco-label criteria in accordance with the principles of annex 4. According to the proposal, see Article 5, paragraph 2, the Commission's responsibility consists of the selection of a product group and the verification of compliance with the procedural principles listed in annex 4.

3.3.1.7. However, the proposal sets out in point 32 that the Commission also has to verify that the tasks of the EEO are executed in conformity with the regulation. Moreover it sees an analogy with the 'new approach' procedure (point 33).

3.3.1.8. The ESC is particularly unhappy with this reference to the 'new approach'. In the first place the 'new approach' favours by its very aims and ambitions a national approach. Moreover, standardization (CEN) and eco-labelling (EEO) are fundamentally different concepts. While the former is technical, the latter is selective and a tool of policy. Hence the CEN-model and procedures are not suited for the operation of the EEO.

3.3.1.9. The Committee strongly believes that the task of the Commission should be to provide and stipulate proper rules of the game and to assure a level playing field. No more and no less. It therefore believes that the Commission's interests are sufficiently guaranteed by its role in co-drafting a proper charter for the EEO and by verifying whether the EEO has complied with the requirements of annex 4. In order to ensure sufficient compatibility with other environmental policy objectives and concerns, the Commission may, however, refer to any relevant EU-policy document in its mandate to the EEO to establish criteria for a particular product group. It will, however, be the EEO's responsibility to decide on its possible consequences for the determination of the criteria.

3.3.1.10. Given the nature of its functions, as defined in Regulation 1210/90 and the competence it has developed, the EEA may play an active role in assembling information which will be necessary for the determination of the product group (phase 1 of the procedural guidelines) and the drawing-up of the environmental impact assessment (phase 3). The EEA expressed a willingness to be engaged in these tasks. The Committee therefore urges the Commission to further investigate the formal involvement of the EEA in the Scheme [1]. In such a relationship it will be necessary to establish direct lines of communication between the EEA and EEO.

3.3.2. The relationship between the EEO and the Competent Bodies

3.3.2.1. The proposal does not say much about this relationship. This is understandable, as it will be an organ of the competent bodies and negotiations between the Commission and the Competent Bodies have hardly begun. As the proposal correctly states that the regulation will only enter into force, 'when the Commission decides (emphasis added) that the EEO is in a position to perform its tasks', it is a pity that the Commission has not yet presented any views on this relationship. Such guidance would accelerate the coming into existence of the EEO.

3.3.2.2. The ESC welcomes the opportunity to present some ideas on this relationship. It strongly believes that the EEO charter should clearly stipulate it is only answerable to the competent bodies, notwithstanding the Commission's responsibility for verification (see above). The competent bodies are to function as the EEO's supervisory board and would at the same time, to the extent possible, assume responsibility for the establishment of the draft criteria for the mandated product groups. In this manner, the staff of the EEO can be kept at a minimum. In order to guarantee its efficient functioning, routine decisions should be taken by simple majority voting, while for other decisions a system of qualified voting could be adopted.

3.3.2.3. The main functions of the EEO would be: i) to receive a mandate from the Commission to establish or revise criteria, ii) to give a corresponding mandate to one or more competent bodies to establish the draft criteria (the lead-country approach that functioned well in the early years of the present Regulation), iii) to approve the established (draft) criteria, iv) to seek the

[1] In order to assess the impact of the scheme, the Commission may also ask the EEA to perform such evaluations at regular intervals.

advice of the forum on the establishment of the draft criteria and on desired adaptations of its guidelines, procedures and working methods, v) to present the established criteria to the Commission, vi) to advise the Commission on measures it intends to take in connection with the regulation. The supervisory board of the EEO should also institute working groups composed of staff of the competent bodies to prepare for decision making as much as possible. The charters of the competent bodies may provide guidance for the drawing-up of the EEO charter.

3.3.2.4. The EEO will be free, after the regulation has entered into force, to adopt the necessary changes regarding its mode of operation, provided they do not conflict with the regulation. It should for instance be free to adjust its working methods if it deems that to be necessary. As far as the (initial) working methods of the EEO are concerned, it may be wise to stick as close as possible to the 'procedural guidelines' [1] agreed upon earlier. It may be worth investigating whether red tape and other provisions that impede a speedy procedure and add to the costs of its operation can be avoided without loss of the quality of the criteria [2]. A comparative analysis of the procedures applied by the (co-ordinated) national schemes may yield promising results. It is worth mentioning that such an examination has been performed by the Danish ministry for the environment.

3.3.2.5. If deemed helpful, the Commission and the competent bodies may agree to mandate an independent body to develop a proposal for a charter of the EEO on the basis of the relevant conditions stipulated in the draft regulation and this opinion. Such a draft charter may facilitate the negotiations between Commission and competent bodies on the early setting up of the EEO, which at present, unfortunately, lack direction. Its establishment is, as has been observed in point 3.3.2.1, a necessary condition for the repeal of the present regulation and the coming into force of a much needed new arrangement.

3.4. *The involvement of social and economic interest groups*

3.4.1. The Committee very much regrets that the proposal hardly pays attention to the involvement and position of different interest groups in the process of criteria setting. These interest groups are, according to Article 6 of the present regulation: industry and commerce (including trade unions as appropriate), consumer organizations and environmental organizations. The Committee wishes to make clear already that the involvement of the trade unions, which represent unique practical experience in workplace matters, should take place on the same footing as the other mentioned interest groups. Furthermore, the Committee supports the Commission's reference to the involvement of skilled crafts and SMEs through their most representative organizations.

3.4.2. The ESC wishes to reiterate its determined conviction that these interest groups have to play a vital role in the eco-labelling process in order to create and maintain a viable award scheme. It is therefore adamant in insisting that Article 6 of the present Regulation remain in force [3], with the notable exception that the Forum should now become answerable to the EEO and not to the Commission.

3.4.3. In order to further involve the ESC and to commit it to the successful implementation of the scheme, the regulation may entrust it with the task of formally appointing both the members of the Forum on the basis of nominations from the interest groups and the president of the Forum. [4] The fact that the Committee is bringing together the economic and social partners within the EU means that it is well placed to oversee the activities of the Forum and in doing so to ensure transparency, well-balanced representation and provision of information to both EU and non-EU interests alike. To date the ESC has housed and provided the secretariat for the forum on ad hoc basis. To ensure the continued efficiency of the forum's activities, the present arrangement for its secretariat should be formalized [5].

3.4.4. As is the case at present, the EEO's working methods should stipulate the involvement of the social interest groups in the working groups that prepare the draft criteria for designated product groups (see also point 3.3.2.3). These interest groups should be involved at all stages of the eco-labelling process as they are most closely involved with retailers, producers and consumers.

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[1] See also Commission information on eco-labelling, issue no 6, June 1994. It is obvious that the procedures have to be 'screened' with respect to the (dominant) role of the Commission in most of the phases which have been distinguished, notably, phase 1, 2 and 6.

[2] OJ C 295, 7. 10. 1996, paragraph 2.7.6.

[3] Taking into account the view of the Committee on the equal position of the trade unions and the involvement of SMEs it expressed in paragraph 3.4.1.

[4] Reference may be made to Commission Decision 97/150/EC of 24. 2. 1997, OJ L 58, on the setting-up of a European consultative forum on the environment and sustainable development, with the notable exception that the members of this forum are appointed by the Commission.

[5] OJ C 295, 7. 10. 1996, paragraph 2.7.7.

3.5. *Financial aspects*

3.5.1. In its financial statement, the Commission notes that it will end its financial involvement four years after the new regulation has been in force. In the Commission's view the scheme should then be self-supporting. The ESC would point out that experience with national schemes has made it abundantly clear that this view is untenable. The involvement of the EEA in drawing up the costly environmental impact analyses may however reduce the total costs of the scheme. It would nonetheless recommend that a review should take place at the end of the third year in order to assess to what degree the scheme can be financially self-sufficient.

3.5.2. The Committee can nevertheless concur with the view that the Commission cease financial support to the scheme provided that the competent bodies are willing and able fully to support the operations of the EEO. Because the competent bodies only have limited funds at their disposal, national governments would have to supplement the necessary resources. The Committee is of the opinion that agreement of the Member States with the cessation of EU-funding and their acceptance of its implications is vital for the realisation of this intention of the Commission. This question must also be part of the negotiations referred to in point 3.3.2. It is however convinced the rates mentioned in Annex 5 should not be increased as that would deter industry from applying for a label.

3.5.3. Since the social benefits emanating from the establishment of the criteria and from labelled products (through a reduced environmental impact for which no payment is made) will surpass the amounts collected as fees, the ESC is of the opinion that contributions from national sources (governments) to the competent bodies are appropriate and called for if the financial involvement of the Commission is ended.

3.5.4. The ESC is not able to fully assess the financial proposals contained in Annex 5. Although it sympathizes with the idea of offering extra support to applicants from SMEs and (indigenous) suppliers from developing countries (see point 3.5), it is not sure whether this preferential treatment would be consistent with the notion of fair competition. The ESC would recommend that the contents of Annex 5 be subjected to the scrutiny and judgement of the competent bodies, because they are not only truly competent to pass judgement, but, in the long run, also fully financially responsible for the scheme.

3.6. *Some comments on the articles of the draft regulation*

3.6.1. Article 4, Scope

3.6.1.1. The Commission is to be applauded for setting conditions for the choice of a product group as this guidance is lacking in the present regulation. The Committee agrees that the visibility of the product group in the market place is an important criterion. It would however be wise not to apply these criteria too rigidly and to grant sufficient room to the EEO for the precise definition of the product group concerned. Furthermore a clause should be added which stipulates that EU-produced products constitute a considerable share in the total sales in the EU. The reason for this criterion is that the eco-label is instituted to solve EU-environmental problems. It would thereby also avoid the introduction of undesirable trade distortions [1].

3.6.2. Article 5, procedures for the establishment of eco-label criteria

3.6.2.1. In Article 5.2, first paragraph, the Commission stipulates that eco-label criteria are to be reviewed at intervals of no longer than 3 years. According to Article 3, paragraph 5, the period of validity of the criteria shall however be specified within each set of eco-label criteria. The latter specification should therefore be applicable for the determination of the interval of its review.

3.6.2.2. In Article 5.2, third paragraph, the Commission intends to proceed to open consultations of all the interested parties, before selecting a product group. It is the view of the Committee that it suffices if the Commission, before selecting a product group, merely asks the advice of the EEO.

3.6.2.3. Paragraph 3 states that publication in the Official Journal [2] will take place when the Commission is satisfied that the mandate has been complied with. In line with the view expressed in point 3.3.1.7, the Committee would like to suggest that the Commission seek that satisfaction on the basis of a report by the EEO, in which it shows that it has complied with the requirements of Annex 4. An additional provision should be added saying that publication in the Official Journal will take place not later than one month after receipt of the said report, unless the Commission notifies the EEO that it was not satisfied because it had not complied with specific provisions of Annex 4.

3.6.3. Article 6, paragraph 4, verification

3.6.3.1. The Committee agrees that bodies entitled to perform tests and verifications in order to assess whether the application for the award is in conformity with the requirements, should comply with the standards of the

[1] OJ C 56, 24. 2. 1997, point 4.4.3.4, last nine lines.

[2] More precisely it states that the Commission will publish: the references to those criteria and requirements and their updatings. The ESC understands that this formulation implies that all the relevant data will be published as is the case under the present regulation.

EN 45000 series, or equivalent international standards. Because of its voluntary nature, it would, however, be in violation of competition rules to demand accreditation. The manner in which these testing institutes may wish to prove their compliance with these standards to the Competent body should be left open [1]. The second last line of point 4 should therefore read as follows: 'which comply with the standards of EN 45000 ...'.

[1] Notwithstanding the fact that most, if not all, laboratories etc. will use the opportunity to seek this accreditation.

3.6.4. Article 13, Advisory Committee

3.6.4.1. The ESC is pleased with the creation of an advisory body composed of representatives of the Member States, also in relation to the provisions contained in Articles 5, 11 and 12. The setting up of this committee is to be welcomed, because it also commits the governments of the Member States to the successful implementation of the scheme.

Brussels, 10 July 1997.

The President

of the Economic and Social Committee

Tom JENKINS