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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 Decision amending the Decision of 19 December 1996 adopting an action programme for customs in the Community (Customs 2000)' [1]

(1999/C 138/01)

On 11 December 1998 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 the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 1999. The rapporteur was Mr Giesecke.

At its 362nd plenary session (meeting of 24 March 1999) the Economic and Social Committee adopted the following opinion by 72 votes to 2, with 2 abstentions.

1. **Introduction**

1.1. Against the background of the completion of the internal market, the entry into force of the Treaty on European Union and the forthcoming accession of new member states to the Community on 19 December 1996, the European Parliament and the Council adopted an action programme for customs in the Community (Customs 2000) with the following objectives:

— speeding up customs processing to meet the rapid increase in cross-border movements of goods;

— more effective protection of the financial interests of the Community and

— uniform action by national customs administrations throughout the Community [2].

1.2. The package of measures adopted under the action programme comprised:

— measures to ensure effective, transparent and uniform implementation and application of EC law at all customs posts throughout the Community;

— the development of improved working methods and improvements in the common training measures set out in the Matthaeus Programme;

— improved procedures for informing and communicating with the Community's economic operators;

— reviews, carried out by working parties, of practice in the field of customs procedures and customs controls, and

— the establishment of an international environment, with a view to facilitating cooperation with the accession states and associated states, thereby also helping to improve surveillance of the EU's external frontier [3].

1.3. In accordance with the Decision of 19 December 1996, on 24 July 1998, less than 18 months after the Customs 2000 programme had effectively come into operation, the Commission presented an interim report on the implementation of the programme to the European Parliament and the Council [4].

1.4. The report is based largely on the observations made by the joint working parties, the 'teams of observers'; it contains both recommendations with regard to working methods and some fine-tuning of the relevant legal provisions.

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(1) OJ C 396, 19.12.1998, p. 13.
(2) OJ L 33, 4.2.1997, p. 24.
(3) OJ C 301, 13.11.1995, p. 5.
(4) COM(1998) 471 final, 24.7.1998.

2. **Amendments proposed by the Commission**

2.1. Against this background, the Commission proposes that the Decision of 19 December 1996 be amended to bring it into line with changed requirements. The basic changes proposed by the Commission are as follows:

2.2. All measures relating to working methods, computerization and basic and further training for customs officials are to be brought together in a single legal instrument and funded under a single budget heading.

2.3. The life of the programme is to be extended to 31 December 2002 (previous expiry date: 31 December 2000).

2.4. The Commission and the Member States are to develop new communication and information exchange systems, manuals and guides and are to be responsible for their operability.

2.5. The Commission and the Member States are to organize exchanges of officials and seminars which may be attended by officials from the Member States and the Commission.

2.6. The scope of the whole programme is to be extended to cover the applicant states in central and eastern Europe, Cyprus and Malta; Turkey may also take part in particular Community programmes.

2.7. An advisory committee is to be set up, comprising representatives from the Member States and chaired by the Commission representative.

2.8. The Commission is to submit to the European Parliament and the Council an interim report on the implementation of the programme, a communication on the desirability of continuing the programme and a final report on the implementation of the programme. These reports are also to be forwarded to the Economic and Social Committee for information.

2.9. Funding totalling ECU 142,3 million is made available for implementing the programme for the period 1 January 1996 to 31 December 2002. Almost half of this sum is to be used for the computerization of transit procedures.

3. **Observations**

3.1. In its Opinion of 13 September 1995 [1] the Committee endorsed the objectives of the Customs 2000 programme and welcomed their implementation. It is therefore natural for the Committee to give its support also to the proposed amendment under review which basically represents a logical extension and a necessary further development of the original programme.

3.2. The Commission is, in the Committee's view, acting in a consistent way by advocating in the recitals to the proposal for a Decision that all the measures linked to the programme be integrated into a single legal instrument and that the programme be financed from a single budget heading. There is a direct overlap as regards the content of the proposed measures; it is therefore not only justifiable but essential for the measures also to be integrated for legal and financial purposes. Such a step should also ensure that resources are used as efficiently as possible.

3.3. In this context the Committee assumes that the fact that the IDA budget is no longer to be drawn upon does not imply any renunciation of the principles of the IDA system [2]. It is absolutely vital that these principles — maximum cost effectiveness, a rationalized approach to establishing networks, and adaptability to technological progress — continue to be observed.

3.4. The Committee endorses the proposed two-year extension of the life of the programme to 31 December 2002. The remaining period of almost four years, is long enough in view of the complexity of the programme but not too long to keep track of developments.

3.5. The Committee generally welcomes the development of new communication and information-exchange systems. Steps must, however, be taken to ensure that the use of IT procedures really does make customs more efficient in the Community, whilst not involving any drawbacks for the Community's economic operators as a result of intensified customs checks.

3.6. In view of the general trend towards lower customs tariffs, checks should primarily be confined to goods and operators presenting a risk profile making a higher level of inspection advisable. Appropriate risk analysis techniques need to be developed for establishing risk profiles. These techniques should be applied in the most uniform way possible and continuously updated.

3.7. The Committee approves the Commission's proposal with regard to the exchange of customs officials and the organization of further training seminars. To ensure that customs law is applied as evenly as possible the Committee also welcomes and highlights the importance of the recently introduced practice of also inviting leading economic operators to the seminars. This practice should be extended to all Member States, wherever possible. In this context the Committee draws attention to the observations set out in point 3.5 of its opinion of 13 September 1995 [3] under the heading 'Improved information and communication links with business and professional circles'.

3.8. When providing technical training it should, however, always be recognized that all measures taken by the customs authorities must conform to the principle of proportionality.

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(1) OJ C 301, 13.9.1995, p. 5.

(2) OJ C 214, 10.7.1983, p. 33.

(3) OJ C 301, 13.9.1995, p. 5.

3.9. Extending the scope of the programme to include the applicant states of central and eastern Europe, together with Cyprus and Malta, is a logical step. Flexibility should also be shown with regard to the participation of Turkey, which is already joined to the Community in customs union, to prevent any appearance of discrimination.

3.10. In the context of these programmes, attention should be paid, to the consequences of the entry into force of the Amsterdam Treaty and, in particular, to the provisions on freedom of movement enshrined in the Treaty. Account should also be taken of the concerns of both the European Parliament's Committee of Inquiry and the Court of Auditors. Furthermore, importance should be attached to cooperation between the respective customs authorities of these states.

3.11. The Committee would draw attention to the fact that, in the interests of ensuring a smooth flow of trade, special care also needs to be taken to provide European customs authorities outside the EU with the requisite information.

3.12. The Committee endorses the Commission's proposal that an advisory committee be established, comprising representatives of the Member States. This would ensure that the practical experience gained by the Member States and their customs administrations is reflected in the programme and taken into account in an appropriate way in its implementation.

3.13. Finally, the Committee asks the Commission to brief it annually on the use and effectiveness of funding.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'European Tourism Policy'

(1999/C 138/02)

On 26 January 1999 the Economic and Social Committee, acting under the second paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Opinion on 'European Tourism Policy'.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 1999. The rapporteur was Mr Lustenhouwer.

At its 362nd plenary session (meeting of 24 March 1999) the Economic and Social Committee adopted the following opinion by 80 votes to three, with six abstentions.

1. **Introduction**

1.1. The development of a fully-fledged European policy for the tourism and leisure industry seems to have come to a dead end. At its meeting on 7 December 1998, the Single Market Council was (once again) unable to reach agreement on the content or the budget required for a multi-annual programme for the sector. The proposal for a programme of this kind, originally named Philoxenia, already considerably watered down by the Council presidency, would now appear to be impracticable.

1.2. The Committee, which has always supported [1] the Commission in its endeavours to develop a pro-active EU policy for the tourism-leisure industry and for the benefit of consumers of tourism products, is extremely disappointed at this state of affairs, but refuses to admit defeat.

1.3. Since a coordinated policy underpinned by a multiannual programme now seems difficult, we must look into other ways of taking account of the needs of the industry, and those of its customers. There is still a risk that EU activities will only be developed on an ad-hoc basis, without coordination between the various Commission departments, and without regard for the medium to long-term perspective.

1.4. The Committee is aware that the special Directorate for Tourism which the Commission recently set up in DG XXIII has a difficult task ahead of it. The Committee lends its full support to this venture, which must be launched and implemented in close cooperation and consultation with tourism, leisure organizations, and the social partners.

The Council's negative stance must not however be allowed to prevent the Commission's own departments from considering the needs of the industry and of its consumers in an integrated way.

2. **General comments**

2.1. The fastest growing industry in the European Union (2,5 % to 4 % growth per year in terms of turnover, and 1 % to 1,5 % in terms of employment opportunities) is — as is widely-known, affected by EU activities in numerous areas. Previous Committee opinions [2] have addressed this issue — as indeed has the European Parliament [3]. The Committee calls on the Council and the Commission — despite the adverse political climate — to make a real start on mainstreaming the challenges facing the tourist industry into all Commission policies. This approach is an important precondition for harnessing the sector's growth potential, which is particularly important in view of the relatively secure future of the tourism sector, as the tourism product does not run the risk of being left behind by technological change.

2.2. The most obvious areas for discussion include training for entrepreneurs (often small, independent businesses) and their staff; access to capital for investment in the future; the uncertain and often problematic relationship between leisure and environmental protection; implementation of new management technologies; employment terms and conditions; the effect of the information society, and electronic commerce in particular, on intermediaries; the impact of access development (for example, the shortage of airline capacity); access to information and know-how on consumer trends, which are important partly because of rapid changes in consumer preferences; and — last but not least — taxation.

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(1) Cf. inter alia: ESC Opinion on the Commission Green Paper on the Role of the Union in the field of Tourism, OJ C 301, 13.11.1995; ESC Opinion on the First Multiannual Programme to assist European Tourism (1997-2000), OJ C 30, 30.1.1997.

(2) Cf. for example the ESC Opinion on the Commission proposal on Community measures affecting tourism (1995-1996), OJ C 19, 12.1.1998.

(3) Cf. European Parliament resolution on the Commission proposal on Community measures affecting tourism, A4-0247/98 of 7 October 1998; cf. also European Parliament Resolution of 27 January 1999 on jobs with future prospects, rapporteur Mr Mann, A4-0475/98, PE 227.966 final, points 19-20 and 21.

2.3. The impact of European legislation and regulation is particularly evident in the area of taxation. VAT legislation has a considerable impact on the competitive power of the hotel and restaurant sector and other tourism industries. But many non-EU countries do not levy VAT on such services. The current reduced rate for the hotel, restaurant and tourism sectors should therefore be maintained. Furthermore, a lower VAT rate on those labour-intensive services which currently do not merit the reduced rate will enhance employment.

3. **The High Level Group on Tourism**

3.1. More generally, the EU must help to promote a more business-friendly legislative and regulatory climate. The Committee welcomes the approach taken by the Commission in setting up this so-called 'High Level Group on Tourism' [1] and agrees with its conclusions when it says, for example, that the recommendations made by the 'BEST Group' (Business Environment Task Force) must be implemented in the short term. The Committee is also interested in the ways the Commission proposes to implement the conclusions of the High Level Group. The report makes a number of important recommendations which can make a substantial contribution to promotion of employment opportunities in the tourism and leisure sector.

3.2. The High Level Group's report also shows that a sector which is predominantly engaged in cross-border activity deserves a European policy with a stimulating, innovative and pro-active approach to sustainable business development, preferably within a consumer protection framework, and in harmony with other requirements, such as those of the environment, for example.

3.3. In order to upgrade human resource attractiveness in the tourism industry, the High Level Group's report calls on the social partners in the other tourism and leisure sectors (which must surely include small and medium-sized business organizations) to follow the example of the hotel and restaurant sector to develop a sectoral social dialogue, particularly on employment qualifications and working conditions. Such consultations may help to improve the sometimes poor image that exists of working conditions in this sector and make it more attractive for job-seekers to look for work in the tourism and leisure industry.

4. **Specific comments**

4.1. As seen above, the difficult task ahead of the Commission will — in the Committee's view — only bear fruit as part of a structured dialogue with tourism and leisure industry representatives. The Committee therefore calls for the establishment of a (credible) European Advisory Committee on tourism and recreation.

4.1.1. The Committee applauds the fact that the Commission's recently published White Paper on Commerce [2] makes the connection between tourism and the retail trade. The Commission communication recognizes — rightly, in the Committee's view — that the retail and tourism industries have a number of interests in common. The Committee would emphasize that town centres in particular need to provide a variety of shopping facilities, and must make room for small independent businesses. A good variety of shops enhances a town's tourist appeal. The Committee believes that the retail trade must also work actively to constantly improve this appeal. After all, research has revealed the importance of the retail trade. A greater proportion of the money spent by tourists once they have arrived at their final destination is spent in the retail sector than, for example, in the restaurant and catering sector (a study in Amsterdam puts the ratio at approximately 60 % : 40 %). The Committee feels that the Commission's intention to stimulate this cooperation by organizing a competition with a prize is a creative way of raising the profile of successful projects.

4.2. Furthermore, the Committee notes that the presidency of the Council has not planned any meetings of ministers responsible for tourism — not even of an informal nature — during the German presidency. This total lack of interest on the part of the Council is frankly deplorable. The Committee therefore calls on the presidency in office and on the forthcoming Finnish presidency to put a Tourism Council meeting on its agenda.

4.3. The German presidency's work programme quite rightly states that attention is being paid to the repugnant phenomenon of 'child sex tourism'. As the Committee has pointed out in earlier opinions [3], no bridge is too far in the battle against such degrading practices. The Committee applauds both the Commission's actions so far in this area, and the fact that the industry has itself launched initiatives. Tour operators and travel agents in several EU countries have explicitly distanced themselves from such perverted practices and introduced sanctions — including expulsion of any their members who might be involved — to deter the active involvement of EU companies. The same goes for initiatives (like a code of conduct) taken by the international association for the hotel and restaurant sector. It should also be noted that this type of child exploitation and maltreatment has absolutely nothing in common with tourism and risks spoiling the industry's image. The Committee invites the Commission to continue and to further develop its actions in this respect.

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[1] Conclusions and Recommendations of the High Level Group on Employment and Tourism: New Partnerships for Jobs, European Commission, DG XXIII, Brussels, October 1998.

[2] COM(1999) 6 final, 27.1.1999.

[3] OJ C 284, 14.9.1998.

4.4. Input from all players will be needed to get the development of a European tourism and leisure policy back on the agenda. The Committee therefore endorses the High Level Group's call for the holding of an annual tourism summit. At its first meeting, the summit could set out and coordinate a rolling programme of activities, which could be assessed and adapted at subsequent meetings. By involving the Commission, the European Parliament, the Member States, industry and consumer representatives, the summit could map out the multitude of challenges ahead which lead us to the inevitable conclusion that: 'Europe can no longer refuse to give the recognition — politically and in terms of policy-making — that the fastest-growing sector of its economy deserves because of its economic and social position!'

5. **Conclusions**

5.1. The Committee lends its full support to these efforts, as witnessed also by the declaration made at the conference held in Luxembourg on 4 and 5 November 1997 by the former ESC president, Tom Jenkins: 'The Economic and Social Committee has, in several opinions, stressed the economic, social and cultural importance of tourism for the European Union, and called repeatedly for its role to be recognized, not just from a social, economic, cultural and political standpoint, but also as a means of integrating the Community's different peoples and geography.'

5.2. The Committee urges the establishment of a long-term EU strategy on tourism, endorsed by a Council decision, to ensure the political recognition EU tourism deserves as a leading player for growth and employment.

5.3. Such a strategy would contribute towards ensuring the effective use of Commission resources, whilst at the same time the recognition of the importance of the sector is the prerequisite for the achievement of the main Community objectives, such as employment, regional policy, environment, objectives related to enlargement, and the overall SME policy objectives.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Committee of the Regions and the Economic and Social Committee — Developing the Citizens' Network — Why good local and regional passenger transport is important, and how the European Commission is helping to bring it about'

(1999/C 138/03)

On 13 July 1998 the Commission asked the Economic and Social Committee for an opinion, in pursuance of Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was instructed to prepare the Committee's work on the matter, adopted its opinion on 9 March 1999. The rapporteur was Mr von Schwerin.

The Committee adopted the opinion set out below at its 362nd plenary session held on 24 and 25 March 1999 (meeting of 24 March), with 89 votes in favour and three abstentions.

1. Summary — general observations

1.1. The Committee welcomes the fact that, by submitting the present communication, the Commission reinforces the importance of the Green Paper on the Citizens' Network and thereby helps to bring about the further development of public passenger transport and boost the scope for intermodal links.

In its Executive Summary (page 2) the Commission lists a number of subjects to be dealt with in the work programme, in particular:

— stimulating information exchange,

— promoting benchmarking,

— the establishment of the right policy framework,

— the use of Community financial instruments, and

— endorse the application of the subsidiarity principle.

1.2. The Committee would, however, point out that the term 'the citizens' network' has not yet become an established concept to large sections of the population and a number of experts. More action needs to be taken in this respect.

1.3. The Committee hopes that the Commission will take concrete steps towards the creation of such a citizens' network. With this aim in view, there is a need to set out qualitative and quantitative objectives (such as changing the *modal split*), backed up by practical action which may be taken to achieve these objections.

1.4. When such action is carried out, however, account should be taken of the fact that, in accordance with the subsidiarity principle, public regional and local passenger transport is primarily the responsibility of regional and local authorities and comes under the legal responsibility of the Member States. The Commission should declare its unequivocal support for the subsidiarity principle also in respect of regulatory policy, rather than continuing to use the term 'mainly'. It should continue to be possible for the competent local authorities to take decisions on matters such as the type of organization or qualitative and quantitative requirements to be met by operators, acting in the light of local requirements.

1.5. The special requirements relating to local responsibility and an insight into the interests of transport users, reliability, punctuality, etc. in the field of public passenger transport at local level continue to justify the ban on cabotage operations in this field. Operators of public local and regional transport also have to be resident in the region concerned.

1.6. The projects in the fields of information, research and cooperation launched by the EU Commission are furthering the development of a citizens' network. The Committee attaches particular importance in this context to the development of quality criteria and projects such as benchmarking in respect of transport systems.

The projects should therefore focus, in particular, on qualitative criteria in respect of the provision of services, in addition to economic criteria, and also consider the interaction between the various transport modes. Other means of promoting public mobility, such as systems of cycle-paths or car-sharing, should also be covered. With these aims in view, all forms of mobility which are not damaging to the environment should be coordinated and assisted as part of an environmental alliance.

1.7. The Communication therefore rightly highlights the importance of interlinking the various means of transport which are on offer. Effective mobility management should be linked to consultations on mobility; parties such as user-groups and the social partners, should be involved in decision-making here.

1.8. Too little attention is, however, paid in the Commission's communication to the possibilities as regards urban planning [1], opened up by the organization of transport, and the complex nature of this issue. The same criticism could be levelled as regards spatial planning: mobility and equal opportunities for people living in rural areas should be improved by promoting local public transport, rather than by relying exclusively on private cars.

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[1] See the communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on sustainable urban development in the European Union: a framework for action.

1.9. The provision of an adequate measure of local public transport is a public service requirement. In the case of local public transport, the goal of promoting competition — which is broadly endorsed — must continue to be subordinated to the prime objective of providing essential public services.

1.10. The Committee would point out that, under the subsidiarity principle, the right of local authorities themselves to provide such essential public services in the transport sector must not be restricted by EU provisions.

1.11. In cases where exclusive rights in respect of local public passenger transport are allocated on the basis of tenders, the local authorities should — with due regard to the planned liberalization drive — be entitled to apply criteria to the tender procedure which are in line with local needs and which may, perhaps, also include acceptance of particular tasks or commitments, including, in particular, transport policy, environmental, economic and social considerations and a responsible employment policy. The intention here is to prevent competition for transport services being based solely on the cost factor, which would also have a detrimental effect on the integration of transport supply. It must also be possible for quality standards to be included amongst the criteria for awarding contracts. In cases where transport services provided by private operators take the form of essential public services, it must, however, also be possible to set conditions relating to the social obligations of operators.

Public and private transport undertakings should be placed on an equal footing for the purposes of the provisions governing essential public services and the granting of exclusive rights.

2. **Specific comments**

2.1. *Introduction*

2.1.1. In its communication the Commission underlines the importance of transport as a means of achieving the goal of sustainable development. The Committee also expressly endorses the description in Agenda 2000 of the importance of good, sustainable local and regional passenger transport — particularly also with a view to avoiding social discrimination and promoting the quality of life in rural areas.

2.1.2. The Committee endorses the views expressed in the communication concerning practical methods for organizing transport systems in a more sustainable way and for reducing excessive dependence on private cars. The Committee draws attention, in particular, to the fact that the creation of a 'door-to-door' transport system for the public represents a major challenge. Towns, cities and regions have a particularly important role to play in the establishment of such a network.

2.1.3. If we are to take up and put to good effect the 'Challenges and opportunities for change', the Committee would once again propose — as it did in its Opinion on the Citizens' Network Green Paper — that the Commission organize a series of events throughout the EU on the subject of the Citizens' Network. These events which should be underpinned by the Commission's administrative and financial resources should focus in particular on improving the situation in rural areas and promoting the interests of people with reduced mobility. The reference to centrally-organized events on the Citizens' Network falls short of what is required.

2.1.4. The Commission should pay special attention to the integration of transport services. With this aim in view, the establishment of transport associations, providing coordinated services and user-friendly and clear prices and operating systems should be promoted by following best practice.

3. **The work programme**

3.1. *Stimulating information exchange*

3.1.1. The Committee supports the promotion of information exchange; this provides an important basis for the further development of local and regional transport. The demonstrable demand for such information clearly indicates the need for action to be taken in this field as a matter of urgency.

3.1.2. The Committee welcomes the establishment of the European Local Transport Information Service (ELTIS), set up with the help of the POLIS network of cities and regions and the International Union of Public Transport (UITP). The Committee supports the Commission's intention to include in this service more information on other public transport possibilities, such as cycling and car-sharing, in addition to information on public local and regional passenger transport.

3.1.3. Round-table discussions and international specialist conferences are, in the Committee's view, good back-up measures for helping to achieve the objectives being pursued. The Committee welcomes the further development of networks for exchanging information on EU policy and programmes. Attention should be paid in this context to the particular problems facing regions situated at the periphery of the EU, such as the Mediterranean region.

3.1.4. The Committee welcomes the special attention paid by the Commission to the situation in the CEEC and the Baltic states. It is particularly necessary for these countries to be included in the information-exchange arrangements in view of the fact that the promotion of local public transport and the linking of these countries into regional and long-distance transport services is of key importance to their development. In this context the specific problems facing these states and the need to stipulate adequate transitional periods should be taken into account.

3.1.5. The European cycling associations provide an example of a field in which progress has been made in bringing together key actors.

3.2. *Benchmarking to improve transport systems*

3.2.1. The Committee regards EU-wide benchmarking as an interesting tool for comparing the performance of local transport systems in given areas with good practice elsewhere. This instrument will therefore provide important help to the authorities and transport undertakings responsible for providing local and regional passenger transport when they have to take decisions. Special consideration should be given in this respect to qualitative aspects of the provision of services, the networking of transport supplies (door-to-door service) and complementary services (cycle-hire, etc.). The Committee therefore eagerly awaits the results of a pilot benchmarking project for local transport systems being conducted jointly by the Commission and the Council of European Municipalities and Regions (CEMR).

3.2.2. The Committee emphatically shares the Commission's view that external factors, such as land-use planning and traffic management, need to be taken into account when assessing the performance of transport operators.

3.2.3. The Committee keenly awaits the presentation of the self-assessment system announced by the Commission and the quality criteria produced by the QUATTRO research projects. The Committee points out in this context that account has to be taken, also in accordance with Article 117 of the EC Treaty, of considerations relating to working conditions when providing services. Such aspects may include, for example, measures to ensure that staff are fit to drive and measures to improve the professional skills of drivers.

3.2.4. The European Committee of Standardization (CEN) can make a valuable contribution to the establishment of standard definitions in respect of the quality criteria for passenger transport.

3.2.5. The Committee welcomes the Commission's announcement that it is to make available a handbook on benchmarking public transport and other information. It does, however, point out that such information is intended to help local authorities and transport operators responsible for providing transport. These instruments should therefore be made available to these parties. As it already pointed out in its Opinion on the Green Paper on the Citizens' Network [1], the Committee regards the awarding of quality labels and/or prizes as a measure which will provide a real stimulus for quality-based competition.

3.2.6. Under the Commission's benchmarking project, the marketing aspect should be further developed with a view to tabling special marketing recommendations designed to stimulate demand.

3.3. *Establishing the right policy framework*

3.3.1. The Committee welcomes the Commission's intention to review how to encourage the adoption of good practice in transport aspects of land-use planning.

3.3.2. An increasing number of employers and undertakings are formulating plans for encouraging their staff and visitors to adopt sustainable patterns of transport behaviour. The Committee welcomes this development which is, however, only at an initial stage.

3.3.3. One way of promoting this development would be to involve the social partners and user-groups more closely in the planning of the supply of local transport. The Committee advocates the organization of a regional social dialogue on integrated local transport policy at both local and regional levels; such a dialogue should involve not only transport undertakings, business associations, trade unions, environmental and transport-user associations but also individual passenger and car-drivers.

3.3.4. The Committee attaches considerable importance in particular to active mobility management as a means of resolving transport problems. With this aim in view, local means of transport should be linked; steps should also be taken to integrate these means of transport, inter alia in a way in which is readily recognizable to the public. This task would be particularly facilitated if members of the public had to deal with only one body (or a small number of bodies) (single management body). In this context mobility management should be extended to include mobility consultation.

3.3.5. Fair and efficient transport pricing

3.3.5.1. In many EU Member States the current price structure for the various means of transport encourages people to use cars. One reason for this is that car-users in these States are not billed for external costs.

3.3.5.2. The Green Paper on Fair and Efficient Pricing in Transport [2] addresses the subject of internalizing the external costs of transport; the Committee generally endorses this concept.

3.3.5.3. The Committee does, however, regard the general introduction of road pricing in urban areas as problematic because of (a) the high level of local opposition to this idea, (b) the attendant administrative costs, and (c) the danger that traffic will be transferred away from central urban areas to outside areas, thereby jeopardizing the viability of inner-city areas. Rather than levying charges on traffic flows into urban areas, the levying of charges on stationary traffic (management of parking areas) should be extended; Park and Ride schemes could also be introduced in this context. The research projects currently being carried out in this connection are expected to provide valuable indications for further debate.

3.3.6. Transport telematics

3.3.6.1. The Committee shares the view that transport services can be made more efficient and quality can be increased by using transport telematics. It is, however, important that such measures are not used solely to optimize the management of private transport but are rather a network of other information, e.g. information concerning public transport routes and timetables. Greater use should also be made of telematics in regional and local public transport. Otherwise there is a risk that telematics will be used primarily as an instrument for promoting private transport.

[1] OJ C 212, 22.7.1996, p. 77.

[2] OJ C 56, 24.2.1997, p. 31.

3.3.6.2. The development of electronic payment and ticketing systems may also help to improve the accessibility of public transport systems and thereby promote 'modal-splits' ([1]).

3.3.6.3. The Committee attaches particular importance to the use of telematics in the field of traffic control involving priority for public transport vehicles at traffic lights. Such measures not only help to speed up the flow of public transport vehicles, thereby making it more attractive for the public to use these services, but also facilitate the more effective use of resources in public passenger transport; such services can therefore be provided more cheaply and offered at lower prices.

3.3.6.4. The Committee welcomes measures to establish compatibility between the various systems and to establish networks of telematics applications with a view to furthering the goal of providing trans-European services.

3.3.7. Vehicle and environmental standards

3.3.7.1. The Committee welcomes the proposal to introduce standards in respect of the use of buses in urban transport. These standards also cover sustainability and accessibility. The Committee supports the Commission proposals for tighter emission standards for vehicles, improved quality standards for fuels and stricter rules on inspection and maintenance checks ([2]).

3.3.8. Public services and competition in local and regional passenger transport

3.3.8.1. Public transport has an important role to play in reducing pollution and promoting economic growth and social cohesion. The viability of towns and cities is in jeopardy if they do not have effective public transport facilities. The transport supply must therefore be greater than the supply provided by operators on purely commercial grounds. Public service transport also needs to be provided.

3.3.8.2. The Committee attaches considerable importance in this context to the contribution made by local and regional transport to promoting integration. Most Member States provide for the possibility of awarding exclusive rights to operate particular forms of transport in specified geographical areas; this provision may help to promote such services. The Commission recognizes that the benefits of such exclusive rights — also with regard to promoting investment by operators — outweigh the possible drawbacks as regards competition law.

3.3.8.3. The Commission also deplores the fact that when exclusive rights or public service contracts are being awarded there is no obligation to take account of market forces. Attention is drawn in this context to the results of the ISOTOPE study which pointed to the fact that cost savings of between 10 and 35 % could be achieved through the use of tendering procedures.

3.3.8.4. The Committee draws attention to the lack of observations on the impact of such tendering procedures on the drive to achieve integration, particularly with regard to traffic planning and coordination with other transport modes. In this context there are indications that some negative consequences may also occur. The examples quoted in the ISOTOPE study also clearly demonstrate that local authorities already pay due regard to cost considerations when organizing transport networks.

The Commission's comment that freedom of establishment has led to 'cross-border initiatives' and is now bound to lead to the development of a common market is not accurate (see point 2.3.6 of the Commission's Communication). A more likely outcome — which has already occurred in some states — is a trend towards the establishment of oligopolies which restrict competition. The Committee would prefer to see local public transport systems controlled at local and regional level and backed up by corresponding SME-type business structures established under public or private law. The Committee endorses the Commission's intention to insist that provision be made for reasonable transitional periods for previous operators when new rules are introduced. The Committee expressly supports and attaches considerable importance to the Commission's endeavours to prevent the establishment of oligopolies.

3.3.8.5. The Committee already drew attention in its Opinion on the Citizens' Network Green Paper to the fact that competition on grounds of quality and performance is preferable to competition based solely on price. When assessing the suitability of instruments consideration should also be given to factors such as trends in passenger revenue, the impact on moves towards integrating networks and the quality of services, also with regard to social and physical accessibility.

3.3.8.6. National laws now give local and regional authorities in many states the opportunity to decide how public service transport is to be provided at local level. The Committee draws attention to the fact that in its communication the Commission fails to explain how EU initiatives on the establishment of a legal framework for regional and local transport are to be squared with the above-mentioned right, thereby respecting the principle of subsidiarity.

3.3.8.7. Transparent procedures should, in the Committee's view, be adopted in cases where public transport services are put out to tender. It would however stress that it must be possible for the competent local and regional authorities to apply criteria other than purely economic criteria to the tendering procedure. Other criteria which come into question here are, for example, social criteria or considerations relating to the quality and reliability of the service or the guaranteed maintenance of transport infrastructure.

([1]) OJ C 66, 3.3.1997, p. 23.
([2]) Auto/Oil Programme (COM(96) 248 final).

3.3.9. Women's transport needs

3.3.9.1. Women have special transport and safety needs, for example with regard to the accessibility of public transport systems; these needs must be taken into account. An adequate supply of local public transport services needs to be provided for both women and men — particularly those travelling with children — and not just in the rush hour and other peak travel periods. The specific requirements of elderly infirm people, disabled people, children and young people should, however, also not be forgotten.

3.3.10. People with reduced mobility

The availability of effective local and regional public transport systems is particularly necessary for people with reduced mobility. In the light of the needs of this group of transport-users minimum standards should be introduced in respect of the way in which infrastructure is organized (motor vehicles, bus stops, etc.). The Committee also welcomes the measures announced by the Commission for facilitating travel by people with reduced mobility.

3.4. *Using the European Union's financial instruments effectively*

Local and regional authorities are responsible for investment in local and regional transport networks. With a view to achieving the EU's objectives in respect of effective links between trans-European long-distance transport networks and local and regional transport networks, the EU should help to optimize the effectiveness of local and regional transport networks.

The Commission should instigate a special investment programme for the joint financing of interconnections with a view to promoting intermodality and links with the trans-European transport network (TEN-T). This programme would also boost short- and medium-term employment policy since the projects have already been prepared by local transport enterprises and they could be implemented rapidly.

3.4.1. The trans-European transport network

The Committee highlights the importance of the trans-European transport network (TEN-T) and encourages the Commission to revise the guidelines in this respect with a view to stimulating participation by territorial authorities and transport undertakings and providing for joint financing by the Commission, as called for in point 3.4 above.

3.4.2. Research, technological development and demonstration projects

The Committee endorses the projects listed by the Commission which are of particular relevance to the Citizens' Network, namely: 'Sustainable mobility and intermobility', 'Land transport and marine technologies', 'The city of tomorrow and cultural heritage' and 'Systems and services for the citizen'. The measures currently being taken to translate these projects into action should, in the Committee's view, be carried forward without delay.

3.4.3. Regional development and the Structural Funds

The Committee endorses the revision of the eligibility criteria and evaluation systems for the Structural Funds being planned by the Commission as part of Agenda 2000.

The establishment and further development of local public transport infrastructure in rural areas should be covered by the financing funds (stopping areas, interchanges, control centres, vehicles).

3.4.4. Information about EU funding

Sustainable local and regional passenger transport helps promote the objectives of a number of EU programmes. These programmes include the trans-European transport network, the Structural Funds, R and TD programmes in the fields of transport policy, transport means, telematics applications and energy, Phare, Tacis, Ispra, LIFE, SAVE and the loan programmes of the European Investment Bank.

The Committee supports the Commission's intention to issue a guide explaining how the abovementioned programmes can promote local and regional transport. The guide should also outline the key criteria and procedures for awarding financial aid under the respective programmes.

4. **Final observation**

4.1. The Committee would reiterate its proposal that competition and market regulation issues be addressed in a separate green paper which would deal in detail with the abovementioned links.

The 1998 NEA Opinion and the hearing organized by the Commission in Brussels on 29 June 1998 did not provide an adequate basis as a number of key questions were not properly resolved; these include: is absolute priority to be given to the subsidiarity principle; is local public transport to be included in the internal market (Article 3(c) of the EC Treaty); is local public transport to be covered by the EC Treaty articles governing transport policy (Articles 74 et seq.); what account has to be taken of Articles 90 (public undertakings) and 92 (state aid) of the EC Treaty.

4.2. It is suggested that a qualitative and quantitative monitoring system be set up for the political implementation of the work programme.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on port reception facilities for ship-generated waste and cargo residues' [1]

(1999/C 138/04)

On 31 July 1998 the Council decided to consult the Economic and Social Committee, under Article 84(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 March 1999. The rapporteur was Mr Chagas.

At its 362nd plenary session (meeting of 24 March 1999), the Economic and Social Committee adopted the following opinion with 91 votes in favour and three abstentions.

1. **Introduction**

1.1. The Marpol Convention, which was adopted by the International Maritime Organization (IMO) in 1973 and supplemented by Protocols in 1978 and 1997, was the first international convention to establish guidelines for preventing pollution caused by ships. It has been amended on a number of occasions with a view to updating and strengthening its provisions.

1.2. Marpol 73/78 contains a set of rules and provisions for preventing pollution of the marine environment by oil (Annex I); for the control of pollution by noxious liquid substances carried in bulk (Annex II); for preventing pollution by harmful substances carried in packaged form or in containers or tanks (Annex III); for preventing pollution by sewage (Annex IV) and garbage (Annex V); and for the prevention of air pollution by ships (Annex VI) [2].

1.3. Marpol 73/78 was the first instrument to oblige all ships — rather than just oil tankers — to be fitted with segregated oil tanks. It also introduced the concept of 'special areas'. These areas are considered so vulnerable that oil discharges are completely prohibited. The main special areas are the Mediterranean Sea, the Baltic Sea, the Black Sea, the Red Sea and the Antarctic.

1.4. Marpol 73/78 requires the contracting parties to ensure the provision of adequate port facilities for reception of the various types of substance classified in the five annexes and, in particular, discharges of oil (Annex I), noxious liquid substances (Annex II) and garbage (Annex V).

1.5. The convention seeks to strike a balance between the need to protect the marine environment and the wish not to impose obligations which would make shipping activities unduly costly.

1.6. Marpol 73/78 also seeks to strike an environmental balance between the interests of the flag states and those of the maritime states in which the ships operate, by establishing rights and obligations for all these states and laying down operational requirements for ships. Flag states have traditionally claimed sole jurisdiction over their vessels, while maritime states feel that they should be granted the authority to ensure that the convention is respected by all vessels which operate along their coasts.

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[1] OJ C 271, 31.8.1998, p. 79.

[2] Annexes IV and VI have not yet entered into force.

1.7. Another feature of the Marpol regime is that the contracting parties are to check on discharges from ships. However, despite all the rules and procedures that have been laid down, detection of offending vessels remains difficult because of the lack of resources and, in some countries, the state's lack of zeal in monitoring its waters. Most checks are made when the vessel is in port, as it is more difficult to check illegal discharges while it is at sea.

1.8. At all events, Marpol 73/78 is considered a useful instrument for combating marine pollution and it covers around 90 % of the world merchant shipping fleet.

1.9. The EU already has a comprehensive waste management system in place, and the present directive will form a part of this system.

2. **The Commission proposal**

2.1. The proposal seeks to reduce the discharge at sea, and especially the illegal discharge of ship-generated waste and cargo residue from ships using EU ports, by improving the availability and use of port reception facilities for such waste and residues and thereby enhancing the protection of the marine environment.

2.2. The directive is to apply to all ports and harbours of the Member States, including marinas, and to all ships, irrespective of their flag, calling at or operating within a port of a Member State, with the exception of any warship, naval auxiliary or other ship owned or operated by a state for non-commercial purposes. All ports and harbours must draw up and implement an appropriate waste-reception plan.

2.3. The Commission proposes various measures to ensure that port reception facilities are used. These include the mandatory delivery principle and a requirement for ports to establish cost recovery systems that encourage use of the facilities.

2.4. Member States must ensure that the cost of these port facilities and the cost of operating them are recovered through the collection of a fee from ships.

2.4.1. All ships calling at a Member State port must contribute substantially to these costs, irrespective of actual use of the facilities, by paying a fee which will either be incorporated in port dues or levied in the form of a separate waste fee.

2.4.2. Additional fees may be imposed, depending on the quantity and type of ship waste.

2.4.3. The fee must be transparent and non-discriminatory and must be set at an appropriate level. Port users must have access to information regarding the amount and the basis on which it has been calculated.

2.5. In order to ensure cooperation between the ship and the authorities and persons involved, the ship's master must inform the next port of call, prior to arrival there, of the available storage capacity and the volume of waste on board, and of his intention to use the reception facilities.

2.6. The waste must be delivered to a port reception facility before the ship leaves port, unless the master can confirm that the vessel has sufficient storage capacity for the intended voyage.

2.7. Member States may grant exemptions to ships engaged in scheduled traffic, provided there is sufficient evidence that the ship has an arrangement to deliver its waste at another port on its regular route.

2.8. The main way of ensuring that ships comply with the directive will be for Member States' authorities to carry out spot checks. Checks can also be carried out under Directive 95/21/EC on Port State Control [1].

2.9. Details of any infraction must be forwarded by the authorities to other EU ports at which the offending vessel is likely to call.

2.10. The Member States must lay down a system of effective, proportionate and dissuasive penalties for breach of the provisions of the directive. They must also introduce a procedure for compensating ships which are unduly delayed owing to the inadequacy of port-reception facilities.

3. **General comments**

3.1. Subject to the comments which follow, the Committee endorses the proposed directive as an integral part of the Community's waste management policy.

3.2. Community environment policy seeks to ensure a high level of protection, based on the precautionary principle and the principles that the polluter should pay and that preventive action should be taken [2].

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[1] Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port state control) (OJ L 157, 7.7.1995, p. 1 + corrigendum in OJ L 291, 14.11.1996, p. 42); ESC opinion in OJ C 393, 31.12.1994, p. 50.

[2] Article 130r(2) of the Treaty.

3.3. In its 1993 opinion on the Commission Communication on a common policy on safe seas [1], the Committee noted that the lack of waste-reception facilities undermined the effectiveness of pollution prevention legislation, and that many contracting parties to the Marpol Convention did not comply with their commitments.

3.3.1. The Committee also thought that the operation of such facilities should be kept at a reasonable cost and that the Community should help with the building of the necessary facilities in ports.

3.4. In its resolution of 8 June 1993 on a common policy on safe seas [2], the Council included among its priorities the need 'to develop the availability and use of reception facilities within the Community'. Under Directive 95/21/EC ships which 'pose an unreasonable threat of harm to the marine environment' will not be authorized to put to sea.

3.5. In order to prevent pollution more effectively and avoid distortions of competition, the environmental obligations listed in the proposal must apply to all Community ports and to all ships which use them, irrespective of their flag.

3.6. In order to combat the marine pollution caused by operational discharges from ships, ports must be required to have adequate reception facilities and ships must be required to use them.

3.7. The Commission has decided to make a distinction between ship-generated waste and cargo residues. The proposal only applies to the discharge and delivery of ship-generated waste, while cargo residues will continue to be regulated solely by the Marpol Convention.

3.7.1. The Committee considers that the aim of preventing ship-generated marine pollution would be more effectively achieved by including Marpol Annexes II and IV in the directive, and making no distinction between cargo residues and ship-generated waste. However, the Committee recognizes the practical difficulties that this would entail, and therefore understands the Commission's decision.

3.8. The proposal has exactly the same objective as Marpol 73/78, i.e. to protect the marine environment from operational pollution by ships, regardless of their flag. However, rather than regulating discharges of ships while at sea, which is the aim of Marpol 73/78, the proposal focuses on the control of ships while in Community ports by making it compulsory to deliver waste to port-reception facilities.

3.9. It is generally accepted that the main problems in the current international rules for combating operational pollution from ships relate not so much to insufficient standards as to inadequate implementation and enforcement.

3.10. In order to be effective, the Community regime must in the first place lay down extremely specific rules covering the requirements for ports and port states to provide adequate reception facilities. The absence of such facilities, or unawareness of their existence, may lead ships to discharge waste at sea illicitly.

3.11. Europe's ports use a variety of fee charging systems for the reception and handling of ship-generated waste by port facilities. The proposal is therefore flexible about the choice of system, and the Committee supports this. However, it is important that ports promote a transparent policy on fees, ensuring that fees are fair and proportionate to the services provided.

3.11.1. The Committee points out that it has recently adopted an opinion on the pricing of transport infrastructure [3], and asks the Commission to bear in mind the conclusions of that opinion.

3.12. A basic element of the proposal is the obligation for all ports to draw up waste reception and management plans. Details of the plans must also be made public. In order to make the plans more effective, users of the facilities and the people who work there should be consulted before the plans are drawn up.

3.12.1. Waste reception and management plans must also make provision for adequate vocational training for the workers involved.

3.13. The Committee notes that the Marpol 73/78 obligation not to cause undue delay to ships remains unchanged.

3.14. By its very nature, marine pollution has transnational implications. Preventive action in this field will therefore be more effective if it is taken at EU level, since the contracting parties are not in a position to take appropriate effective measures individually. It should also be stressed that a strict delivery regime such as the one being proposed requires considerable cooperation on information and monitoring procedures between neighbouring states, not only within the EU but also with third countries. The directive can only be competition-neutral if its application is generalized.

(1) COM(93) 66 final — ESC opinion in OJ C 34, 2.2.1994, p. 47.
(2) OJ C 271, 7.10.1993, p. 1.
(3) OJ C 271, 12.4.1999.

3.14.1. The Committee therefore suggests that funding for such projects be envisaged under programmes such as MEDA, Phare or Tacis, or the Lomé Convention.

4. **Specific comments**

4.1. *Article 4 (Port reception facilities)*

4.1.1. The obligations imposed on ships are clearly defined, but those for ports are too vague and need clarifying.

4.1.2. Cooperation between neighbouring ports should be encouraged, with a view to rationalizing costs. This is especially important for small ports situated near other better equipped ports.

4.1.3. Provisions are also needed to cater for the technical and economic problems which might make the directive difficult to implement, bearing in mind the number of facilities that will be needed in order to segregate incompatible substances.

4.2. *Article 6 (Notification)*

The Committee thinks that it would be helpful for both ships and Member States if a single addressee were designated for each port; this party would be responsible for passing on the information to all interested parties.

4.3. *Article 7 (Delivery of ship-generated waste)*

This article obliges the master of a ship to deliver all ship-generated waste. However, provision should also be made for cases where the port is not equipped to receive the waste.

4.4. *Article 8 (Fees for ship-generated waste)*

4.4.1. The requirement that all ships must pay a fee, regardless of whether they have used the port reception facilities, will place small ports at a disadvantage as they are unlikely to be able to recover reception and treatment costs from port users because of the low rate of use.

4.4.2. The calculation of the fee to apply will vary from port to port, and amortization of the costs of port facilities for waste treatment will be difficult as many of these facilities are privately owned and are situated outside the port area.

4.4.2.1 The Committee considers that when a Member State concludes that the operation of a particular waste reception and treatment facility is unprofitable and does not meet actual shipping needs, it should have the option of dispensing with it, thereby exempting it from payment of the operating fee.

4.4.3. It is suggested that the fee be made up of two elements, namely a basic standard sum and a further sum proportional to the quantity and type of waste actually discharged by the ship.

4.5. *Article 9 (Exemptions)*

4.5.1. The Committee welcomes the provisions in Article 9 allowing Member States to make exemptions. Ships which regularly use the same ports and ships which regularly leave their waste in other ports should not be obliged to pay the basic waste reception and handling fee at every port.

4.5.2. A ship which makes regular journeys between Community ports and ports in third countries, and which can prove that it regularly delivers its waste to third country ports where checks are made, should be exempted from payment of the waste fee in Community ports.

4.6. *Article 10 (Delivery of cargo residues)*

Unlike ship-generated waste, cargo residues are the property of the owner of the cargo. This article should therefore make the cargo owner responsible for the cost of delivering these residues.

4.7. *Article 11 (Enforcement)*

4.7.1. Enforcement of the provisions of this directive will significantly increase the Port State Control workload, as all ships which either do not provide the notification stipulated in Article 6 or provide inaccurate information will require priority inspection. Effective inspections are vital to the proper implementation of the directive, and the Committee doubts whether the current framework for Port State Control in the EU can guarantee this.

4.7.2. Article 11(3) prohibits the loading or unloading of cargo and embarking of passengers in cases where the procedures described in Article 11(1) and 11(2) have confirmed that an infraction has been committed. However the wording should be revised to make this interpretation clearer.

4.7.2.1 At all events, it should be noted that the proposal only contains penalties for ships which commit infractions. No such penalties are provided for ports. This seems unfair.

4.7.2.2 Moreover, when a ship does not fully comply with the terms of Article 7 or Article 10, a sufficient penalty would be to notify the next port on its route, which would inspect its logs and the quantity of waste on board, verify observance of the other conditions, and impose an administrative fine if appropriate. Keeping the ship in port, as stipulated in Article 11(2), seems rather draconian.

5. **Conclusions**

5.1. The need to equip ports with waste reception facilities is enshrined in Marpol Convention 73/78. However, this has given rise to difficulties ever since the convention was first implemented, both because of the lack of adequate facilities at ports and because of the failure of ships to comply.

5.2. The Committee considers that implementation of the proposed directive could significantly improve conditions in the EU's ports. The scheme should be extended to other maritime regions of the world, so as to establish uniform conditions in all ports and high marine-pollution control standards.

5.3. The Committee endorses the proposed objectives. It considers that approval of the directive must address the abovementioned considerations regarding the need to clarify the equipping of waste-reception facilities in ports, the calculation of the fees to be applied, and a guarantee of resources to enforce the provisions.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Directive 95/53/EC fixing the principles governing the organization of official inspections in the field of animal nutrition'

(1999/C 138/05)

On 28 March 1999 the Economic and Social Committee, acting in accordance with Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 March 1999. The rapporteur was Mr Colombo.

At its 362nd plenary session (meeting of 24 March 1999), the Economic and Social Committee adopted the following opinion by 89 votes to one, with four abstentions.

1. Aims of the proposal

1.1. Inspection measures in the field of animal nutrition are governed by Directive 95/53/EC, for both Community products and those originating in third countries.

1.2. In conjunction with the establishment of the internal market and the removal of internal border checks and on the basis of experience acquired during the BSE crisis, the European Union has laid down new rules requiring Member States to develop a number of common principles for organizing inspections for the circulation of goods within the Community.

1.3. The draft directive makes a number of amendments to Directive 95/53/EC in the light of changes in Community legislation and from the benefit of experience, which has revealed shortcomings in the implementation of inspection measures in critical situations where a rapid Community response is needed.

1.4. The proposed changes relate to:

— the harmonization of inspection procedures for all products imported from third countries;

— the need for a system of protective measures and a legal basis for on-the-spot inspections in third countries;

— the extension of the right to conduct inspections within the Community beyond the restrictive obligations imposed under Directive 95/53/EC;

— the Commission's right to check whether Community rules are being correctly applied and to take action to bridge any gaps preventing the rapid introduction of a coordinated programme, in the event of sudden contamination posing a serious risk to human or animal health or the environment.

1.5. The proposal is designed to enable specific inspection programmes to be drawn up at Community level in addition to the provisions made by Directive 95/53/EC.

2. General comments

2.1. The Committee endorses the Commission's stated objectives. The proposal succeeds in complementing Directive 95/53/EC on official inspections in the field of animal nutrition by opening the door to new and more effective inspection measures, particularly for products from third countries.

2.2. Recent experience has illustrated the importance of extending the inspections, to ensure that products imported from third countries are safe.

2.2.1. The import of quantities of citrus pulp contaminated with high levels of dioxin, gave a clear example of the potential gravity of problems when Community legislation does not provide for appropriate inspection measures in exporting countries.

2.3. Attention should also be drawn to the fact that in the event of an incident, preventive measures will be taken by either the Commission or the Member States.

2.3.1. The proposal makes important changes with regard to the implications for the Community budget, though the explanatory memorandum to the Commission proposal states the contrary.

3. **Specific comments**

3.1. The Committee stresses the continued relevance of the 15th and 17th recitals to Directive 95/53/EC on analytical methods and laboratories authorized to carry out inspections.

3.2. The Committee takes the view that the first indent of Article 9(b)(1) of the proposed changes should read as follows:

'— suspend imports from all or part of the third country concerned or from one or more specific production plants, and, where appropriate, any third country of transit and/or.'

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on the common organization of the markets in the sugar sector (codified version)'

(1999/C 138/06)

On 22 March 1999 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Economic Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 March 1999. The rapporteur was Mr Strasser.

At its 362nd plenary session (meeting of 24 March 1999) the Economic and Social Committee adopted the following opinion with 96 votes in favour and six abstentions.

1. The Commission's proposal to consolidate the CMO in sugar was drawn up on the basis of a consolidated version of Regulation (EEC) No 1785/81 and the instruments amending it. The new regulation therefore supersedes the various regulations incorporated in it.

2. The Economic and Social Committee welcomes the Commission proposal, as consolidation will satisfy the need for clarity in Community legislation. Examination of the text has revealed that the Commission proposal does not contain any substantive changes, merely the formal amendments required by the consolidation process itself.

3. The text contains misprints, mistranslations and errors which affect its meaning. The Committee calls on the Commission to vet the text for such errors and to make the necessary corrections.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'Financing the European Union'

(1999/C 138/07)

On 26 January 1999 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'Financing the European Union'.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 March 1999. The rapporteur was Mr Vasco Cal.

At its 362nd plenary session (meeting of 24 March 1999), the Economic and Social Committee adopted the following opinion by 105 votes to six, with nine abstentions.

1. **Introduction**

1.1. The European integration process is not confined to its budgetary aspects and these are not even the main aspects. All participating countries consider that the advantages outweigh the disadvantages, which vary from case to case and over time. Also, the main reasons for enlargement are political and not economic, even though studies show that some countries could benefit more than others.

1.2. The European Union has reached a decisive point in its history. With the completion of the internal market, the creation of the single currency, the strengthening of economic and social cohesion and the accession of central and eastern European countries, the European Union is embarking on a new phase in its development which demands a long-term response.

1.3. The Committee is convinced that the problems of financing the European Union can only be resolved by the application of empirical principles and by putting the common good before considerations of national interest. It calls on all the Member States to adopt a constructive and cooperative approach to this issue, eschewing partisan attitudes and recognizing that the achievement of an equitable and lasting solution is in the best long-term interests of every Member State. The Committee wishes to contribute to this debate by submitting, in section 4 of the opinion, a proposal for the future system of EU financing.

1.4. In its opinion on Agenda 2000 [1] adopted at the October 1997 plenary session, the ESC saw the need for a 'wide-ranging debate' on the costs and benefits to the various Member States of the system used to finance the Community budget with a view to creating a broad consensus in approving a revision of the financial perspectives.

1.5. The Commission report on the operation of the own resources system, although scheduled for the end of 1999, was published on 7 October 1998. The report allows an analysis of Agenda 2000 and the financial perspectives as a whole, taking account of the questions raised by some Member States about their budgetary imbalances [2].

1.6. Agenda 2000 is one of the key topics for discussion at the European Summit to be held in Berlin on 24 and 25 March, and the ESC feels duty-bound to help the summit to 'carry through a politically ambitious exercise commensurate with the building of a more solid, more integrated and more united European Union (...), which has been perceived by many of its citizens as a shared project for the future, and not as an extreme, short-term defence of national interests' (point 4.5 of the above-mentioned opinion).

2. **The Commission Report**

2.1. As part of the series of inter-linked policy proposals within the framework of Agenda 2000, the European Commission has published a wide ranging review of the operation of the present system of financial resources available to finance the budget of the European Union (COM(1998) 560 final). The review outlines the evolution of the different components in the past decade.

2.2. The object of the review is to better inform the debate about both the adequacy of the present system in making resources available and also the relative merits of the different options for variations, or major changes, in the sourcing of these resources. Since major decisions are under consideration for the main expenditure items in the budget (including the Common Agriculture Policy and the Structural Funds) it is important that the revenue resources should be adequate to meet the commitments.

[1] OJ C 19, 21.1.1998.

[2] Measured in terms of the disparity between contributions to and funding received from the EU budget.

2.3. The Commission report on the financing of the European Union:

— reviews the merits of the present own resources system, which combines revenue from the Traditional Own Resources, an earmarked levy on VAT revenue and a contribution based on relative GNP totals;

— considers the possibility of new own resources;

— in particular, considers the possibility of a direct payment to the European Union of a VAT related resource;

— reviews the suggestions that the present structure of contributions from some member states puts an unfair burden on them whilst others receive relatively generous treatment (which includes consideration of the mechanism to provide a partial rebate to the United Kingdom).

2.4. As regards Community budget resources, the Commission arrives at the same conclusions as those reached by the ESC in its Opinion on Agenda 2000, namely that 'contributions to the Community budget have become more proportionate with national wealth', leading to greater fairness (point 4.4.3 of the opinion). The Commission puts this down to the modifications introduced in 1988 and 1994, in the first and second Delors packages, which led to a greater share of GNP resource within budget contributions as a whole and a relative fall-off in the amount of traditional own resources and VAT (see Graph 1 in the report).

2.5. The Commission restates a qualification which the ESC had made in its earlier opinion and is important in any assessment of the impact of the EU on individual Member States. The ESC opinion pointed out that 'the situation as regards benefits is more complex. Expenditure on economic and social cohesion benefits the neediest countries and regions, but expenditure on internal policies is distributed differently and has a regressive impact in cohesion terms. Expenditure on the CAP in particular tends to favour the countries in which this policy has applied longest, and which have a higher aid capitation, although the 1992 reform has reduced this imbalance.'

2.6. The Commission acknowledges that, whilst the present own resources system generates a means of financing EU expenditure, the EU does not have genuine 'own resources' but depends mainly on transfers from the treasuries of Member States and, therefore, the relationship to citizens of the Union between contributions and benefits is even less transparent than between taxpayers and citizens within a Member State.

2.7. Whilst the Commission draws attention to the lack of genuine financial autonomy for the EU, the report does not develop the debate on whether the Commission, and the Governments of Member States, would wish to see the system of financing the Union made more dependent on revenue collection methods within the competence of the Union and less dependent on transfers from the Member States of funds from their treasuries.

2.8. The debate on the degree of financial autonomy for the Union raises critical issues of principal and operational detail. The discussion stimulated by the Commission on a possible agreement that the Commission, through the institutional procedures of the Community, should have the option to determine a (low) rate of VAT specifically earmarked directly for the Community budget, presumes that the increased degree of financial autonomy and the transparency of the arrangement would be beneficial.

2.9. Despite the technical, conceptual and accounting difficulties in measuring budgetary imbalances detailed in the report, the Commission has attempted to calculate these net balances by various methods (the operating balance method and the method used for UK correction), which, elsewhere in the report, the Commission claims has inhibited transparency in the financial relationships of the Member States and the EU budget.

2.10. As for solving these problems, if a political consensus can be reached, the Commission document sees three possible options which are not mutually exclusive: a more transparent and fairer system of financing, doing away with the correction mechanism in favour of the UK and making general use of the GNP resource; a system of expenditure where the CAP burden would be reduced by partially reimbursing direct aid payments from national budgets and a generalized correction mechanism.

2.11. The report concludes that neither the need for an increase in financial resources, nor the shortcomings of the present system, make it necessary to modify the current Own Resources Decision. This restates the view expressed in Agenda 2000.

2.12. The Commission acknowledges that options to vary the constituents or proportions of the present own resources system are available and could be considered for future implementation but none offers an ideal solution. If the question of budgetary imbalances attracted a sufficient degree of support, decisions on the best and most appropriate options would be needed.

2.13. However, with some anticipation of the impact of the enlargement of the Community, the Commission suggests that the change in the overall demands on the Community budget 'would appear to present a change of circumstances so significant as to justify such a major reform'.

3. **General comments**

3.1. As the ESC has already stated in point 4.4.4 of its Agenda 2000 opinion, 'the distortions which emerge in calculations of the net balance of contributions to and from the Community budget are not so much a matter of resources (Member States' contributions) as of the relative weight of the various expenditure headings. Agriculture still represents the lion's share (around 50 % of the total) and structural policies account for around a third of the total.'

3.2. Both Community revenue and expenditure are determined in the final analysis by the decisions taken by the Council in furtherance of the objectives laid down in the Treaty in fields such as the reform of the CAP, economic and social cohesion and scientific and technological research. The budgetary consequences of these decisions are frequently not apparent straightaway, for they depend on how the decisions are applied in the Member States and Member States' economic structures.

3.3. The compensation mechanism for the United Kingdom was agreed on in 1984 because of the UK's budgetary imbalance. This is due to the UK having a smaller and structurally different agricultural sector, resulting in lower CAP spending, plus the fact that the UK makes a proportionally higher contribution since its share of VAT is relatively higher than its share of total GNP. The rebate mechanism has meant that in recent years the size of the UK budgetary imbalance has fallen from – 0,5 % to – 0,2 % of GNP. If the same method of calculation is applied to Germany, the Netherlands, Austria and Sweden, it can be seen that they, too, now have a budgetary imbalance of around – 0,5 % of GNP. This has prompted their respective governments to request that they, too, should benefit from a rebate mechanism. The truth is that if the UK's rebate mechanism could be phased out, the budgetary imbalances of the main net contributors would be much smaller.

3.4. The simulations presented in Annex 6 regarding the consequences of a generalized correction mechanism based on the current UK model but which makes States contribute to the effects of the mechanism on others but not on themselves show that the United Kingdom would be the most affected in relation to the present situation, where it is the sole beneficiary of the compensation mechanism.

3.5. With regard to the progressivity in budget contributions proposed by Spain, the Commission has also produced simulations for the effects on Member States' contributions. In its analysis the Commission recognizes that the current system of own resources has degressive elements, but considers that the proposal does not make sufficient allowance for the budget's redistributive elements on the expenditure side, especially under the heading of economic and social cohesion.

3.6. The possibility of creating new own resources, so as to give the Union greater financial autonomy vis-à-vis national budgets, has been discussed at length by the Commission. It has presented various options (CO_2/energy tax; a modulated VAT tax; excise taxes on tobacco, alcohol and mineral oils; corporate income tax; communications tax; personal income tax; withholding tax on interest income; and ECB seigniorage) and discussed the advantages and disadvantages of each one. The inability to forecast the revenue which would accrue in many of these cases limits their widespread use.

3.7. Another possibility discussed by the Commission was the application of measures provided for in Agenda 2000, in particular the transfer of some of the spending on direct aid under the CAP to national budgets. This measure would lower Community budget payments by about 8 % and might consequently cut Member States' contributions, which would in turn reduce the current budgetary imbalances. Yet another possibility would be to make sure that agricultural spending, which is the largest item of expenditure, takes greater account than at present of the economic weight of each Member State.

3.7.1. Consideration has also been given to the possibility of bringing down farm prices to the level on world markets. This takes no account of the fact that world market prices are also distorted by large-scale support measures in the major producer countries.

3.8. All these options have their limitations and their application poses technical problems. However, the most serious consequence for the future of the European Union is that none of them is capable by itself of solving the current problems or guaranteeing stable and reliable resources within the framework of a fairer, mutually supportive and generally acceptable system which is sustainable in the long term and capable of absorbing the planned accessions.

3.9. The Committee would emphasize that there should be no confusion between the three facets of the current debate: the size of the budget and Community resources, the balance between different Community policies (CAP, structural policies, enlargement etc.) and equity between the Member States.

3.10. In addition, it was important for the Commission to draw up projections for the period 2000-2006 with regard to budgetary balances, for the balances calculated for 1997 and 1999 could be changed significantly in the long term by many of the proposed measures. For example, if the UK's rebate mechanism were to be ended, if the GNP resource were to be

used more widely instead of the VAT resource, if part of CAP spending on direct aid were to be transferred to national budgets, or if the monies set aside for the structural funds were to be reduced, the trend in budgetary balances would be much different in 2000-2006 that it has been in the present 1993-1999 period and the greatest differences might be outside those countries which want to benefit from a correction mechanism.

3.11. The ESC would emphasize that the real issue at stake in the budget debate surrounding Agenda 2000 is the burden of enlargement. Given the considerable difference between living standards in the EU and those in the countries of Eastern Europe, it is clear that the cost of enlargement for the EU budget has been seriously underestimated. It is therefore apposite to point out that there is a fundamental contradiction between the objective of enlargement and the insistent demands for EU budget contributions to be cut. The Committee suggests that prior to enlargement, the Council might amend its own resources decision, to improve the apportionment of budgetary expenditure resulting from enlargement.

4. **Proposal for the future system of EU financing**

4.1. Before the issues of Agenda 2000, the financial perspectives and the system of own resources are settled this year, a clear stance should be taken on financing in the long term. The accessions which are to take place from 2005/2006 provide a historic opportunity for introducing a new system of financing which is fairer and less imbalanced than the present one.

4.2. The principles of the future system must be the subject of an overall political agreement so that the measures to be taken in the short term which must apply until the entry-into-force of the future system do not conflict with the latter and do not make the future debate on the EU's system of financing even more difficult.

4.3. Bearing in the mind the wide range of arguments put forward about the subject of budgetary imbalances, the Committee is in favour of a general regulating mechanism for establishing a framework which takes account of the future system of own resources. Such a mechanism would establish a direct link between national prosperity (expressed in terms of per capita GNP) and the budgetary balances of each Member State. The purpose should be to safeguard the overall level of own resources for enabling the European Union to maintain and extend its role.

4.3.1. The curve which represents the graphical expression of this mechanism could not exceed the limits on budgetary balances.

4.4. The direct relationship between the two variables should not be expressed by a line but by a shaded area around that line so that the correction mechanism comes into play when the net situation in a Member State falls outside the shaded area and deviates considerably from the net situation in the other Member States with the same level of prosperity. The relationship between budget imbalance, measured in relation to per capita GNP and operational budgetary balances requires a formula which allows for year to year variations in budget contributions. Conceptually, the agreed mechanisms should envisage a margin of variation which would be acceptable when averaged over a period longer than one year. The scale of this margin should be sufficient to enable a better balance to be struck between the stability and reliability of the level of revenue and the corrections to be made to budgetary balances when they fall outside the accepted degree of variation. It will thus be possible to avoid generalized corrections every year.

4.5. One technical question which could cause problems in the future is the question of determining spending in each Member State. Many of the budgetary headings do not succeed in providing this information at present. However, as the system would not enter into force immediately, it would be possible to prepare the administrative system accordingly and it would always be possible to consider that certain expenditure such as that resulting from external actions or administrative spending should not be attributed in full.

4.6. An agreement in principle on the future system of financing will also facilitate the approval of various immediate proposals in specific areas, such as the ones considered in the Commission report, insofar as all Member States will be provided with a guarantee that the imbalances and the injustice will not become more pronounced.

4.7. It will also make it possible to make the current system of financing simpler straightaway, e.g. by applying the GNP resource more widely instead of maintaining the complicated calculations about the VAT contribution, or by increasing the deductions made by Member States with regard to traditional own resources, or again by reducing the basis on which the compensation granted to the UK is calculated. These immediate measures would reduce the imbalances in current contributions during the period 2000-2006 and would make the switch to the new system easier.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending for the second time Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms' ([1])

(1999/C 138/08)

On 23 March 1999 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 Economic and Social Committee decided to appoint Mr Chagas as rapporteur-general for its opinion.

At its 362nd plenary session (meeting of 24 March 1999), the Economic and Social Committee adopted the following opinion by 60 votes to four, with 10 abstentions.

1. **Introduction**

1.1. With Regulation (EC) 850/98, the Council adopted technical measures for the protection of juvenile marine organisms.

1.2. Provision was made in that regulation for complementary measures to be adopted by 4 May 1999 at the latest on rules for the use of mesh-size combinations.

1.3. The present proposal for a regulation amends Regulation 850/98 in the aforementioned respects; it introduces new provisions to facilitate controls, by making use of the logbook mandatory to note application of these rules and also any transboundary fishing.

2. **General comments**

2.1. The ESC approves the present proposal for a Regulation.

2.2. The Committee stresses that the resource conservation policy is necessary to ensure that fisheries develop smoothly as a profitable, competitive sector.

2.3. For technical conservation measures to be effective, they must be simple, workable and enforceable, and, if possible, tested inter alia by professionals in the sector.

2.4. The Committee has also recommended that the technical conservation measures must be supported by scientific and technological developments; for this reason it has advocated further research into fishing techniques, not just to find out more about the performance of current methods, but also — and above all — to allow more selective fishing gear to be introduced which prevents fish being discarded or juveniles being caught.

2.5. It is also clear that there is no point to the conservation and resource-management policy, or the series of instruments which comprise it, unless the rules are complied with. Dialogue to this effect with Member States' governments and professionals in the fisheries sector is therefore essential. Against this background, control has a key role to play: it must be effective and uniformly applied throughout the EU.

2.6. The Committee therefore has misgivings about how feasible it is for professionals, while fishing is actually being carried out, to implement the provisions set out in the new Article 4(4)(b). The ESC also has doubts about the feasibility of monitoring these new provisions.

([1]) OJ C 11, 15.1.1999, p. 9.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'Asbestos'

(1999/C 138/09)

On 19 and 20 March 1997 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Opinion on 'Asbestos'.

The Section for Employment, Social Affairs, and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 1999. The rapporteur was Mr Etty.

At its 362nd plenary session (meeting of 24 March 1999), the Economic and Social Committee adopted the following opinion by 55 votes in favour and 9 votes against, with 13 abstentions.

1. **Introductory remarks**

1.1. Asbestos has already been recognized by the EU for many years as a proven human carcinogen. Relevant EU legislation is in place since 1983.

1.2. The Committee has, in several earlier Opinions on asbestos — and asbestos related EU legislation, endorsed the Commission's view that all types of asbestos are carcinogenic. It has also maintained that 'it is not possible to lay down "safe" exposure levels for the harmful properties of asbestos (...). Even a very low dose can cause cancer. Therefore, the only truly "safe" solution is to ban asbestos. The limit values laid down for asbestos (...) must be regarded not as "safe" limits based on scientific findings, but rather as the outcome of a weighing-up process in which non-health considerations have played a role.' ([1]) New scientific findings have been followed systematically by stricter limit values.

1.3. Most of the serious, mainly deadly, illnesses caused by asbestos (a/o. different forms of cancer, asbestosis) become manifest only many years (5 - 10 or more) after first exposure. Despite protective legislation in the past decades, scientifically based forecasts for the occurrence of asbestos-related diseases are still alarming. For instance, a recent study commissioned by the Dutch Ministry of Social Affairs and Employment states that in the next 35 years 40 000 asbestos-related diseases will be diagnosed in the Netherlands. In the period 1945-1995, it is estimated, some 10 000 people have been exposed to asbestos in factories in the Netherlands, working with raw asbestos. Furthermore, some 330 000 people have been exposed to asbestos by handling and working with materials and products containing asbestos. 19 000 cases of pleural mesothelioma are expected, and 19 000 of asbestos-related lung cancer ([2]). In a very recent publication Dr J. Peto, a leading expert, has forecasted that a quarter of a million individuals will die of asbestos-related mesothelioma in Western Europe over the next 35 years. Peto's study focused on six countries: Germany, Great Britain, France, Italy, the Netherlands and Switzerland ([3]).

1.4. In the EU, only two of the three commercially used asbestos fibres (blue and brown asbestos) and the products containing them are completely banned since January 1986. White asbestos (chrysotile) is prohibited in fourteen product categories, but it is still used in asbestos cement products (e.g. drain pipes, roofing materials, wall claddings — some 85 % of use volume), friction materials (9 %), textiles, seals and gaskets (6 %) and in a few very specialized applications as medical filters.

1.5. Nine Member States (Austria, Belgium, Denmark, Finland, France, Germany, Italy, The Netherlands, Sweden) have now imposed a ban (with exceptions) on the first use (production, transformation, sale, importation and marketing) of asbestos. Ireland and Luxembourg support a ban in principle. The Government of the UK is presently engaged in consultations about the introduction of a ban. The Governments of Greece, Portugal and Spain, countries which have important asbestos cement industries, still support the status quo. They say that they do not accept the scientific reasons underlying the position of the other Member States and point to the adverse economic effects of a ban.

1.6. In addition to the risks for workers and consumers, related to the first use of asbestos, there is exposure of workers and the general public in the EU to existing asbestos, particularly in buildings, by demolition, maintenance, repair, and electrical and plumbing work. There is EU legislation in place pertaining to these situations and activities.

([1]) 'Opinion on the proposal for a second Council Directive on the protection of workers from the risks related to exposure to agents at work: asbestos', in: OJ C 310, 30.11.1981, p. 44, para. 1.9, repeated in the Committee's 'Opinion on the proposal for a Council Directive amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work' in OJ C 332, 31.12.1990, p. 162.

([2]) A. Burdorf et al *Schatting van asbest-gerelateerde ziekten in de periode 1996-2030 door beroepsmatige blootstelling in het verleden*, Den Haag, maart 1997.

([3]) British Journal of Cancer, vol. 79 (3/4). The number of lung cancer deaths caused by asbestos is at least similar to the number of mesotheliomas. So the total number of asbestos-related deaths in Western Europe over the next 35 years is likely to be more than 500 000.

1.7. Finally, there is the serious problem of environmental pollution (air, water) by waste containing asbestos (from asbestos industries and demolition) used for the maintenance of (countryside) roads, and by corrosion of asbestos cement pipes. Relevant EU legislation exists also in this field.

2. **Motivation for this own-initiative opinion**

2.1. There is ever overwhelming scientific proof of the harmful, and often fatal, effects of exposure to asbestos (including white asbestos).

2.2. It must be feared that existing EU legislation and enforcement do not sufficiently protect workers and the general public. First, there is the fundamental point, made earlier, that it is not possible to lay down safe exposure levels for the harmful properties of asbestos. Secondly, experts think that it is difficult in many cases to control exposure of workers and others who handle or use asbestos or products containing asbestos. Limit values set by EU legislation may often be exceeded.

2.3. The Committee is also of the opinion that the current derogations are far too wide, and allow the unnecessary importation and use of white asbestos, either where there is no need for the use of asbestos at all, or where safer substitutes are available. It is aware that in many cases only few Member States are still using these derogations, which suggests that if they had been needed at one stage — and some Member States used them initially — this is no longer the case.

2.3.1. Of more concern, however, is that such derogations should only exist where there are no comparable alternatives available. Since in almost all cases such alternatives do exist, we are left with a peculiar situation whereby the derogations should not be needed, but are in practice used to a greater or lesser degree (in one case, a Member State has a specific derogation but has used it only eight times). The Committee thinks that, where suitable alternatives exist, derogations are superfluous and should be abandoned.

2.3.2. The Committee is also concerned that the science used to determine whether derogations should be allowed has been flawed in that it has dealt only with the manufacture and initial use of such products containing asbestos, rather than their use after time, when they are being worked on or are decaying. Throughout the EU materials containing asbestos, which are indeed safe when in perfect condition, are crumbling and releasing fibres into the working and wider environment, whether they are being consciously disturbed or not.

2.4. The present situation in the EU, with nine Member States now in favour of a ban on the first use of asbestos, means that there is a clear qualified majority for an EU banning policy for white asbestos.

2.5. Industry has made significant progress in the development of regulated alternatives to asbestos judged to be safer [1]. Studies done for the European Commission have shown that there are now, for practically all uses of white asbestos, substitutes available which are considered to be less dangerous than the latter, such as polyvinylalcohol fibre, cellulose and p-aramid [2].

2.6. The Committee, taking these points into account, is pleased that the Commission has announced that it intends to prohibit the first use of white asbestos in the very near future. Allegedly, there will only be a very limited number of derogations from this ban. The instrument will take the form of an amendment to Annex 1 of 'Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos)'. It will include provisions for transitional periods.

2.6.1. Obviously, a ban on the first use of white asbestos will have important repercussions for the asbestos cement industries in Greece, Portugal and Spain. The Committee wishes to express its views on the matter.

2.7. The Social Affairs Council of 7 April 1998 asked for a strengthening of existing controls on the exposure of workers to asbestos. A Directive, totally banning or stringently restricting the marketing and the use of asbestos, will be an important step into the right direction. It will, however, not touch the enormous problems created by existing asbestos in the EU, which will remain with us for several decades to come. These problems must, once again, be addressed.

2.8. Another reason for the Committee to produce this Own-Initiative Opinion is the complaint which Canada, the world's biggest exporter of white asbestos, has lodged against France at the World Trade Organization (WTO) following the French decision to ban chrysotile. The complaint targets measures taken by France, in particular the Decree of 24 December 1996, with respect to the prohibition of asbestos and products containing asbestos, including a ban on imports of such goods. Canada alleges in its complaint (WT/DS 135) of 28 May 1998 that these measures violate Articles 2, 3 and 5 of the Agreement on the Application of Sanitary and Phytosanitary Measures, Article 2 of the Agreement on Technical Barriers to Trade, and Articles II, XI and XIII of GATT 1994. Canada also alleges nullification and impairment of benefits accruing to it under the various agreements cited. If Canada would succeed with its complaint, this could have highly undesirable consequences for relevant EU legislation.

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[1] All substitute fibres are regulated under Council Directive 80/1107/EEC of 27.11.1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (OJ L 327, 3.12.1980) and under the Chemical Agents Directive 94/24/EC of 7.4.1998 (OJ L 131, 5.5.1998).

[2] Environmental Resources Management (ERM) study underlying the CSTEE (Scientific Committee on Toxicity, Ecotoxicity and the Environment) Opinion of 15.9.1998.

2.9. Finally, The Committee's initiative is motivated by concern about the situation in several, and perhaps all, of the candidate Member States. In Central and Eastern European countries, for a very long period, little attention has been paid to the effects on the health of workers of exposure to asbestos. Most probably, large quantities of products containing asbestos have been used in building and construction. Many of the problems referred to above will exist in these countries — and on a large scale. According to the European Commission some of the candidate Member States have recently started to take legislative measures with regard to the protection of workers against the effects of exposure to asbestos.

3. **Current state of legislation in the EU Member States (in particular with regard to derogations)**

3.1. The main derogations allowed by European law are in terms of asbestos cement products; seals and gaskets; and friction materials. There are many detailed derogations for specific products in each Member State, but overall, the picture is as follows: where a country is not mentioned there is a general derogation for products where no suitable, safer alternative exists — the countries referred to below have either banned the use entirely or allow only very limited derogations.

3.2. Derogations for asbestos cement expired in 1994 or 1995 in Germany, Italy and Austria (with the exception of water pipes). Its use has been banned for much longer in Denmark, Finland, the Netherlands and Sweden. Its use was banned in France from 1997. Seven Member States still have general derogations for asbestos cement.

3.3. Derogations for seals and gaskets are allowed in a number on Member States — Denmark (for combined high pressure and high temperature conditions), Finland, the Netherlands (same conditions as Denmark) and Sweden (ditto) — but have expired in Austria (1993), Germany (except for diaphragms in chlor-alkali electrolysis in existing plants) and Italy. Even where the derogations exist, in each case alternatives must be used if available. Only in eight Member States does a general exemption exist.

3.4. Derogations for friction materials (banned as of 1.1.1999) existed in Denmark (but only where there is no substitute , and then only in vehicles registered before 1988), Finland (if no comparable substitutes available), France, the Netherlands (certain heavy transport vehicles) and Sweden (where there is no comparable substitute), in Germany (where they applied only to railway clutch linings) and Italy. Seven Member States until recently had a general exemption.

3.5. In addition to what the Committee has said explaining its motives for this Opinion in para. 2.3 above, it is also concerned about the implementation in practice of existing European legislation. It fears that practice in the EU falls short, and that capacity in the Member States to monitor and control implementation is, in many cases, not sufficient.

4. **Alternatives for asbestos**

4.1. If there are safer substitutes available, there is no need to retain derogations (especially because many derogations already allowed for the phased introduction of such alternatives).

4.2. Often, the 'substitute' for asbestos is simply not to use the product at all or to make it without asbestos in it. Asbestos has too readily been used as the safety solution for risks (e.g. fire) which did not, in practice, exist. In identifying the need to use asbestos products, the risks involved in not using those products ought to be considered and properly evaluated.

4.3. Thus, many roofs are built with materials containing asbestos when there is no need, and no need to use alternatives to asbestos either. Similarly, the need for materials containing asbestos (or their substitutes) can be engineered out of the buildings and processes for which asbestos or a suitable alternative is currently considered necessary.

4.4. The Committee is assured that there are alternative products on the market for almost all the current uses of white asbestos in the EU. Some differ marginally in performance criteria, and several differ significantly in terms of price (but the price differential in part depends on whether a ban is in place). Substitutes are least available for asbestos seals and gaskets used in conditions of simultaneous high pressure and high temperature.

4.5. There are often several alternatives for a product containing asbestos and, in some cases, some alternatives are natural products (often vegetable-based) rather than the synthetic mineral fibres which are often the focus of discussion about asbestos substitutes.

4.6. The Committee accepts that some of the alternatives to asbestos, especially in terms of synthetic mineral fibres, may well be hazardous, sometimes grievously so, and it notes what the opinion of the DG XXIV Scientific Committee on Toxicity, Ecotoxicity and Environment has to say on this matter. More research should indeed be conducted into these substitutes. The Committee welcomes the important conclusion that the three alternative products for chrysotile, mentioned in para. 2.5 above, involve a risk which, with regard to carcinogenesis and lung fibrosis, is likely to be lower. The Committee fully agrees with the SCTEE's recommendation to expand research in the areas of toxicology and epidemiology of the substitute fibres as well as in the technology of the development of new thicker/less respirable fibres. It also supports the SCTEE's call not to relax environmental controls of substitute fibres at workplaces.

4.7. The Committee rejects the suggestion made by some interested parties that, until further research has been conducted, workers should continue to be exposed to the known risks of white asbestos. A joint meeting of Canadian and UK scientists on 30 September 1997, organized to give the Canadians the opportunity to present evidence on the control

of health risks of chrysotile, agreed that white asbestos can cause lung cancer, mesothelioma and asbestosis [1]. In these circumstances, the known risks should be dealt with before dealing with the speculative risks of the other products — but the Committee agrees that these less understood products should be used with extreme caution.

5. **Relevant international instruments**

5.1. The ILO has Convention No 162 on Safety in the Use of Asbestos (1986) and Recommendation No 172 on idem. The Convention is about the controlled use of asbestos, including the types already completely banned in the EU and it allows derogations. It prohibits the use of blue asbestos and the spraying of all forms of asbestos. The protective and preventive measures deal with the same elements as relevant EU legislation, but generally they have a more procedural character and they are less strict and detailed. The same holds for the rules prescribed for surveillance of the working environment and workers' health, as well as for information and education of workers and employers with regard to health hazards inherent in exposure to asbestos, and for methods for prevention and control.

5.2. Up until now, the Convention has been ratified by 22 Member States of the ILO, among them are only five Member States of the EU: Belgium, Finland, Germany, Spain and Sweden. Portugal ratified the Convention by Presidential Decree No 56/98 of 2 December 1998; although the instrument of ratification has not yet been deposited. In the Netherlands, Parliament gave its approval in early 1999, so ratification will take place shortly.

5.3. This is the only specifically relevant international Convention and it is of great importance that as many countries as possible will become a party to it. It is unfortunate that most EU Member States have not yet ratified it. The reason for this is not that the Convention would conflict with existing EU legislation, but rather that the European Commission has, for some time, claimed exclusive competence with regard to certain important aspects of the ILO standard setting and implementation process in the field of safety and health.

5.4. Ratification by all EU Member States would not only contribute to the reputation of the ILO Convention as a major instrument for world-wide protection of workers' safety and health. It would also, and more importantly, eliminate the (false) argument, used by many developing countries, that the simple fact that only a few of the EU Member States are apparently capable of ratifying the Convention proves convincingly that the standards, set by this instrument, are excessively high and that therefore they cannot be expected to ratify it. This is certainly not the case. As stated earlier, EU legislation is much more detailed and strict than the standards incorporated in Convention No 162. (It should be noted that ILO Conventions and Recommendations are designed to provide minimal universal standards on which to build by countries in all stages of economic development, and not binding commitments in terms of maximum standards which cannot be improved upon in the national legislation of countries that have ratified the instruments.)

6. **Proposals for EU action**

6.1. As a point of principle, the Committee thinks that the EU should introduce a total ban on the first use of all asbestos. It welcomes, therefore, the Commission's intention to adapt Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos) by banning all forms of asbestos from being marketed or used.

6.2. It recognizes, that a ban without any exemption is at present not a realistic political option. Therefore, the Committee strongly recommends that if the EU will allow derogations, these should be limited to the utmost in both scope and time, and should not be wider that the strictest regime existing for that particular use within the EU.

6.3. To prevent stockpiling dangerous products, the Committee thinks that the use of products containing chrysotile which have not been applied by the time a ban comes into force should be prohibited at very short notice thereafter.

6.4. As regards the economic consequences of a ban of chrysotile asbestos for Greece, Portugal and Spain, and in particular for the asbestos cement industry in these countries, the Committee notes what the Environmental Resources Management report, commissioned by the European Commission, has to say about this: a five year transition period could provide sufficient time for adjustment of the asbestos cement industry in terms of investment in asbestos free production technologies (thus retaining employment) and absorption of redundant workers within local economies [2]. It also notes that the three countries will receive financial support

[1] HSE meeting between Canadian and the UK representatives, 30.9.1997; Report issued by HSE, 12.12.1997.

[2] In the three countries, 13 firms are operating 15 asbestos cement plants with in total 2 480 jobs. Indirect and induced employment is calculated by ERM as 5 695 (statistics for the year 1997). Products are roofing materials and pressure pipes. Greece has the only working asbestos mine in the EU since Italy stopped its mining operations in 1991. If Greece, Portugal and Spain will get a transition period of 5 years, ERM estimates that slightly over one third of the 2 480 direct jobs will be retained. Job losses in the asbestos cement industry will be offset to a considerable extent by the job gains which are likely to occur in companies manufacturing PVC pipes and steel sheets. It is possible that up to 1 000 jobs could be created in these companies.

from the EU Structural Funds in order to overcome the employment and economic restructuring difficulties caused by the ban, while other Member States, which have already banned white asbestos, have had to solve these problems by their own means.

6.5. A total ban (or a ban with strictly limited exemption) will require an extra effort by Member States in the field of monitoring and control of compliance with legislation. The Committee invites the Commission to investigate in the very near future compliance with already existing legislation and to move forward with proposals for measures to promote effective compliance and enforcement measures.

6.6. As regards demolition and maintenance, the Committee notes with concern that the occupational groups most at risk currently are those required to work with asbestos in repair, maintenance, refurbishment, demolition and removal. Their exposure is often dependent on chance rather than design, and unlike the manufacturers and installers of such products who already suffer such high rates of fatality and illness, the maintenance and removal workers are exposed to less than perfect states of the materials concerned. Many of them are self-employed. Because of the mobility of their work, they hardly ever see a labour inspector. The health and safety of these workers requires effective regulation of their employers (including effective licensing and quality assessment), proper regulation of the details of their working conditions, and effective enforcement of such regulations, including sufficient inspection by the public authorities. The Committee is not satisfied with the current implementation of the EU safety law in this regard. It requests the Commission to cooperate closely with national authorities to improve the situation and, if such cooperation does not lead to significant improvement in the near future, to come forward with proposals designed to remedy these problems.

6.7. Some Member States already have registers of buildings which contain asbestos (France, Germany, Netherlands) or have collected relevant data. As a first step, the Commission could study the underlying motives and experiences of these efforts at national level and make an assessment of the practical utility and value of a register. On this basis, the Committee urges the Commission to examine the practicability of a proposal for the establishment, in each Member State, of a register of buildings and installations which contain asbestos.

6.8. There is also need for national laws to require building owners to develop a plan, in cooperation with occupiers, to identify any asbestos in their buildings which, through the use of surveys for example. would ensure that no worker has to begin work without knowing whether there is asbestos present.

6.9. As regards removal and disposal, the Committee recognizes the vast amount of asbestos in the built environment of the EU, including workplaces and dwellings. Where such asbestos is effectively contained, there should be a higher priority to deal with other asbestos-containing materials in precarious condition, where there is a significant risk that workers or the public could be exposed to fibres. The first priority must therefore be to remove or repair damaged asbestos, and leave the removal of asbestos still sealed in place until the most hazardous sources have been addressed. This implies that, where asbestos is undisturbed, it should for the time being not be removed, as the risks associated with such operations can outweigh the risks of leaving the asbestos undisturbed.

When asbestos is removed, however, it is vital that it be removed safely, and disposed of with proper attention to the protection of workers and the environment. Asbestos removal should always involve the evacuation of staff not engaged in the removal operation; the use of permit-to-work systems before, during and after the removal; the licensing and monitoring of the quality and operation of the firms engaged in the removal; and stronger practical protective measures for the removal workers than those for maintenance workers outlined above.

6.10. It is highly desirable that effective measures be developed to prevent resale and second use of asbestos containing material.

6.11. In addition to the proposal made in paragraph 6.5 above, the Committee would like to see the Commission take new measures for reduction of the risks to workers. Proposals should include:

— tightening of limit values for exposure;

— training, education and information for employers, workers and the general public (including young people);

— obligatory investigations of the presence of asbestos by the owners of buildings in case of demolition or maintenance;

— information campaigns on safer substitutes, active promotion of the use of these by various means;

— information campaigns on the risks inherent in the use of substitutes.

The Committee hopes and expects that the relevant services of the Commission will be adequately equipped to cope with these tasks.

6.12. The Committee draws the attention to the very special case of military personnel. It fears that existing EU legislation does not adequately protect them, and it urges the Commission to develop ideas which must improve that situation.

6.13. The Commission should actively support research into the hazards for the health and safety of workers and the general public arising from the use of substitutes for asbestos.

6.14. In some Member States, interesting developments have taken place with regard to the recognition of asbestos related diseases as occupational diseases and to compensation schemes for the benefit of victims or their surviving family. Mesothelioma is recognised by the EU, WHO and most Member States as an occupational disease. Other asbestos-related diseases are generally accepted as occupational diseases. Some countries have registers of mesothelioma victims, but few do the same for other cancers caused by asbestos. Against this background, the Committee urges the Commission to re-examine its Recommendation of 22 May 1990 to the Member States concerning the adoption of a European Schedule of Occupational Diseases to see whether or not it is necessary to upgrade its current requirements [1].

6.15. Recent efforts by the Member States to improve legislation with regard to safety and health of workers have not only resulted in stricter legal instruments, but also in the development of 'soft law' and codes of conduct. Examples are practical 'step-by-step' guides for the removal of asbestos containing material from buildings, covering both technical and occupational safety and health aspects, and developed by employers' and workers' organizations at industrial branch level. The Committee recommends that the Commission stimulate a similar development at European level, in addition to legislation.

6.16. The Committee is extremely concerned about the possible impact of the Canadian WTO-complaint against the banning by France of chrysotile. It is very surprised that, as yet, there has been no public debate whatsoever about this matter in the EU. The Committee invites the Commission to open a debate with a critical assessment of the Canadian complaint. It invites the Council of Ministers to issue a strong statement of support for France.

6.17. With reference to the Committee's 1995 Opinion on EU/ILO-relations, it is proposed that the Commission urgently take an initiative for co-operation with the Member States in order to promote in the very near future ratification of ILO Convention No 162 on Safety in the Use of Asbestos by the 10 Member States which have not yet done so. Some elements of ILO Recommendation No 172 might be used for future European legislation and/or soft law.

6.18. The Committee thinks it logical at this point of time and with regard to new development of European legislation (the ban to be proposed), that the Commission take a fresh look at its relevant environment policy instruments.

6.18.1. One issue is the promotion of alternative technologies for treatment of waste containing asbestos. The usual way of disposing of such waste is controlled dumping. In some countries technologies, currently in use or under development, are designed to treat asbestos with high temperatures or chemical processes in order to destroy the fibres structure. These technologies are, so far, much more expensive than dumping. Some Member States are subsidizing research and development for such environmental technology. The Committee thinks it important for the Commission to get involved in this too.

6.18.2. The Committee also wishes to draw the Commission's attention to problems related to the production of granulated rubble, large quantities of which are used for road foundation. This material often contains asbestos, even if strict regulations exist for demolition. The Committee hopes that the Commission will support research into the health risks involved and into the development of normalized and validated measuring methods for asbestos in demolition waste and granulated rubble. If results would demonstrate the need for European measures, the Committee expects the Commission to come forward with proposals, including rules for imported material.

6.18.3. In several EU countries, asbestos waste has been used for many years (and possibly is used today) for maintenance of countryside roads in the vicinity of (former) asbestos cement factories. The Commission should encourage the Member States to investigate the situation and to take appropriate measures.

6.19. Finally, with a view to the accession of new Member States to the EU, the Committee wishes to draw the Commission's attention to asbestos-related problems they are facing, and in particular to the situation in Central and Eastern European countries. The Commission should open a discussion with the Governments of these countries on the problems and approaches discussed above, with a view to producing an inventory of their asbestos related problems and relevant existing policies. On the basis of such an inventory, certain forms of co-operation could be developed between the EU and the candidate members, for instance with regard to drawing up new legislation and in particular to implementation of this new legislation in practice.

[1] In this context, also see the ESC own-initiative Opinion on 'Occupational Medecine', OJ C 307, 19.11.1984.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive amending for the second time Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (2nd individual Directive within the meaning of Article 16 of Directive 89/391/EEC)'

(1999/C 138/10)

On 18 December 1998, the Council decided to consult the Economic and Social Committee, under Article 118a of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 1999. The rapporteur was Ms Polverini.

At its 362nd plenary session (meeting of 25 March 1999) the Economic and Social Committee adopted the following opinion by 81 votes to 22 with 14 abstentions:

1. **Introduction**

1.1. The Commission's proposal for a directive amends Directive 89/655/EEC [1] on minimum safety and health requirements for the use of work equipment by workers, with a view to incorporating a number of aspects relating to the equipment in question that were not included when the Directive was first amended by Council Directive 95/63/EC [2].

1.2. The aim of the proposal, based on Article 118 of the Treaty, is to improve health and safety standards in the use of equipment for temporary work at a height, and thus contribute to a substantial reduction in the number of falls. Statistics on accidents involving falls from a height (accounting for 10 % of occupational accidents) have confirmed that this type of work exposes workers to a high degree of risk.

1.3. The Commission states that ladders and scaffolding are the equipment most frequently used in performing temporary work at a height and that worker safety depends on the way the work is planned, the technical specifications of the equipment, and procedures and instructions for its use.

1.4. On the basis of the above, the annexe to the proposal gives details on the choice and use of work equipment enabling access to and presence at working places at a height, with particular detail on the use of ladders and the assembly and dismantling of scaffolding.

2. **General comments**

2.1. The Economic and Social Committee endorses the Commission proposal and its declared intention to protect workers who use equipment for temporary work at a height, given the seriousness of the problem of falls.

2.2. However, the ESC has a number of suggestions to make with a view to improving the terminology, which in some instances is imprecise. The chief aim of the proposals remains however that of ensuring proper worker protection, by means of higher safety standards in work planning, on the basis of specific technical requirements for the equipment used and of safe working procedures.

2.2.1. To that end, the Committee maintains that to cut the number of accidents drastic action must be taken with regard to work planning, first and foremost by establishing more precise 'written working procedures' giving specific equipment requirements (portable ladders and scaffolding) and mandatory instructions for use.

2.3. In this context, and echoing Directive 89/391/EEC [3] on improvements in the safety and health of workers at work, the Committee would stress that only workers who have received proper training should be employed to use equipment that presents a specific risk, such as that used for work at a height (scaffolding, etc.).

2.4. The ESC recommends that the Commission urge the Member States to prepare an incentive scheme to help small and medium-sized firms to implement health protection measures effectively, with a special focus on training staff to use work equipment.

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(1) OJ L 393, 30.12.1989, p. 13 — ESC opinion: OJ C 318, 12.12.1988, p. 26.

(2) OJ L 335, 30.12.1995, p. 28 — ESC opinion: OJ C 397, 31.12.1994, p. 13.

(3) OJ L 183, 29.6.1989, p. 1 — ESC opinion: OJ C 175, 4.7.1988, p. 22.

2.5. More specifically, in view of the intensive use of scaffolding by building, demolition and maintenance companies, the Committee calls on the Commission to draw up more detailed planning guidelines. Plans should contain a technical statement, instructions and assembly diagrams.

2.5.1. The statement could cover:

— a description of the scaffolding components, their dimensions and tolerance limits, and a general plan;

— the strength properties of the materials used and safety factors applying to individual materials;

— details of the load tests that the various components have undergone;

— design calculations for the scaffolding under various working conditions;

— instructions for scaffolding load tests;

— instructions for the assembly, use and dismantling of the scaffolding, in order to avoid the risk of falling, falling objects, work load injuries and other risks;

— standard scaffolding plans, indicating maximum overload capacity and scaffolding heights and minimum allowable deck widths, where calculations are unnecessary for every individual application.

3. **Specific comments** [1]

3.1. ANNEXE point 4.1.1, first paragraph: Replace 'adequate' with 'appropriate'.

3.1.1. Clearly, to eliminate the risk factor, safety standards for worker protection must be 'appropriate' rather than just 'adequate'.

3.2. Point 4.1.1: second paragraph: this amendment to the wording of the Italian language version does not affect the English version.

3.3. Point 4.1.2: Amend paragraph as follows:

*'**The use of portable** [2] ladders (may be used) as working places for work at a height (only under) **shall be strictly limited** to circumstances in which the use of other, safer work equipment is not justified in view of the short duration of use and low level of risk.'*

3.3.1. It should be stressed that portable ladders are not intended for use as working places, but only as a means for going up or down.

3.4. Point 4.1.4: Amend paragraph as follows:

*'Depending on the type of work equipment chosen on the basis of the foregoing requirements, the appropriate precautions to reduce the risks **inherent** (to which it gives rise) **in its use** shall be determined. (If necessary) Provision shall be made**, as a priority**, for the installation of collective fall **risk** protection **measures or** safeguards. These shall be of suitable configuration and of sufficient strength to prevent or arrest falls from a height and, as far as possible, to preclude injury to workers. They may be interrupted only at points of ladder or stairway access.'*

3.4.1. It is also worth referring to Article 6 of Framework Directive 89/391/EEC on the priority to be given to 'collective protection measures', which gives individual protection measures a supplementary role only.

3.5. Point 4.1.5: Add the following new paragraph:

'For reasons of health and safety, instructions for assembling, using and dismantling the necessary scaffolding and ladders must be made available to the workers using them. These instructions must be continually updated.'

3.6. Point 4.2.1: Amend paragraph as follows:

*'Ladders shall be so positioned as to ensure their stability during use. Portable ladders shall rest on a stable, strong, immobile and horizontal footing. Suspended ladders, other than rope ladders, shall be fixed in a secure manner to ensure that they cannot be displaced **or swing** (and prevent swinging).'*

3.7. Point 4.2.2: Amend paragraph as follows:

*'Before portable ladders are brought into service, their feet shall be prevented from slipping by securing the **uprights** at or near their upper or lower ends, by any anti-slip device or by (any) another arrangement of equivalent effectiveness. **As a priority, ladders should be secured firmly using all possible means. If this is totally impossible, the lower end should be held by another person. Ladders should be long enough for their uprights to protrude sufficiently beyond the access platform.** Ladders in several sections shall be so used as to ensure **that they are secure** (that the sections are prevented from moving relative to each other). **Portable** (Mobile) ladders shall be immobilised before any person steps onto them.'*

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(1) N.B.: proposed amendments to the Commission document are given in bold italics. The words removed or replaced are shown in brackets.

(2) Equipment for access to upper or lower working levels.

3.7.1. It is often impossible to attach or secure a ladder; in such cases, to prevent falls, the ladder must be held by another worker while anyone is going up or down.

3.8. Point 4.3.2: Amend paragraph as follows:

'Depending on the complexity ***or height*** *of the scaffolding chosen, an assembly, use and dismantling plan shall be drawn up* ***by a competent staff member.*** *It may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question.'*

3.8.1. Scaffolding should be erected in accordance with plans provided by the manufacturer or, when using other scaffolding designs, using predetermined plans drawn up by a competent staff member, who should also draw up a safety procedures plan.

3.9. Point 4.3.3: Insert the following sentence after 'effectiveness':

'***Scaffolding shall be braced both lengthways and crosswise.***'

3.10. Point 4.3.4: Amend paragraph as follows:

'The dimensions of scaffold decks shall be appropriate to the nature of the work to be performed and shall allow passage without danger. They shall be of a thickness such that they are entirely safe, having regard to the distance between two supports and the loads to be withstood. ***The planks forming the scaffold deck shall be secured against movement and properly attached to each other and to the construction. All outward facing sides of scaffold decks shall be provided with guardrails.*** *(Scaffold decks shall be so assembled that their components cannot move in normal use.) There shall be no dangerous gap between the deck components and the vertical collective safeguards.* ***Both guardrails and toeboard should be attached on the inside of the uprights. A gap is permitted between the scaffold deck and the brickwork, but this shall not be such as to expose workers to the risk of a fall.***'

3.10.1. In order to protect workers effectively and reduce the risk of falls, requirements relating to the use of scaffold decks, planking and guardrails should be specified in detail in order to avoid arbitrary interpretation by companies.

3.11. Point 4.3.6: Amend paragraph as follows:

'Scaffolding shall be assembled, dismantled or (significantly) altered only under the supervision of a competent person and only by workers who are trained in this type of work. Such training shall include interpretation of the assembly and dismantling plan, safety during assembly, dismantling or alteration of the scaffolding (concerned), prevention of the risk of persons' or objects' falling, ***working procedures for the use of individual protection safeguards, the effects of*** *changing* ***or adverse*** *weather conditions, load factors and any other risks which the operations may entail. During the work, (the)* ***a competent*** *person (in charge) and the workers concerned shall have available the assembly and dismantling plan mentioned in the present Annex (4.3.2.),* ***as well as the assembly, usage and dismantling instructions.***'

3.11.1. It is necessary to reiterate the need for the assembly and dismantling of the scaffold to be carried out by qualified staff, coordinated by a supervisor, in accordance with the procedures and the assembly plan.

3.12. Point 4.3.7: Amend paragraph as follows:

'When the performance of a particular task requires a collective fall prevention safeguard to be removed temporarily, effective ***alternative*** *(compensatory) measures shall be taken* ***and safe working procedures adopted***'.

3.12.1. In all dangerous operations — where the work requires the collective fall prevention safeguard measures to be reduced, the employer shall adopt 'written working procedures' concerning the use of individual safeguards (e.g. safety harnesses for tasks exposing workers to the risk of falling) to reduce risk.

Brussels, 25 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on:

— the 'Proposal for a Council Directive amending Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organization of working time to cover sectors and activities excluded from that Directive',

— the 'Proposal for a Council Directive concerning the organization of working time for mobile workers performing road transport activities and for self-employed drivers', and

— the 'Proposal for a Council Directive concerning the enforcement of seafarers' hours of work on board ships using Community ports' [1]

(1999/C 138/11)

On 23 December 1998 the Council decided to consult the Economic and Social Committee, under Articles 75, 118a and 84(2) of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 March 1999. The rapporteur was Mr Konz. The co-rapporteur was Mr Ribeiro.

At its 362nd plenary session (meeting of 25 March 1999) the Economic and Social Committee adopted the following opinion by 72 votes to 33 with 6 abstentions.

1. **Introduction**

1.1. The general provisions covering working time are set out in Directive 93/104/EC [2]. Certain sectors and activities are excluded from the scope of the directive. These are air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training.

1.2. In view of this the Commission has committed itself on a number of occasions [3] to introducing measures in respect of the sectors and activities excluded from the directive.

1.3. On 15 July 1997, the Commission adopted a White Paper on sectors and activities excluded from the Working Time Directive [4]; this white paper was regarded as the first round of the consultation procedure in respect of working time in the sectors and activities excluded from the directive. The white paper examined the nature and extent of the exclusion, the scale of the problem, the legal and contractual situation in the Member States and the initiatives taken. It provided a sector-by-sector analysis and assessment of the specific features and problems of each sector and activity.

1.4. On 31 March 1998, the Commission launched a second-phase consultation process on the content of its envisaged proposal, following the responses to the white paper. The Commission also continued to support the 'differentiated approach'.

1.5. Following the consultation process, discussions between the social partners were stepped up in most of the joint committees concerned. In some cases the discussions led to formal agreements, in other cases (such as the road-transport sector) no agreement was reached.

1.6. The communication under review, which takes full account of the agreements reached between the social partners, explains the Commission's proposals to protect workers not currently covered by the Working Time Directive (93/104/EC) against adverse effects on their health and safety and on the safety and welfare of others caused by working excessively long hours, having inadequate rest, having to work at night or having irregular working patterns.

1.7. The Commission proposes the following measures:

1.7.1. Horizontal measures

— Communication on the organization of working time in the excluded sectors

— Proposal for a Directive amending Directive 93/104/EC

Under the proposal the scope of the Directive is to be extended to cover all non-mobile workers, including doctors in training. It will also apply to offshore workers and mobile railway workers. A number of provisions are to be introduced with regard to other mobile workers.

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(1) OJ C 43, 17.2.1999, p. 1-25.
(2) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time (OJ L 307, 13.12.1993, p. 18); ESC Opinion: OJ C 60, 8.3.1991, p. 26.
(3) Communication from the Commission to the European Parliament — SEC(93) 1054 final of 7 July 1993 and the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the Medium-term Social Action Programme 1995-1997 — COM(95) 134 final.
(4) COM(97) 334 final — Opinion of CES: OJ C 157, 25.5.1998, p. 74.

1.7.2. Sectoral measures

a) A proposal for a Directive covering the road transport sector

— Proposal for a Directive setting out specific measures in respect of working time in the road transport sector. This proposal for a Directive has three key objectives:

— to guarantee a level of social protection equivalent to that currently applied to mobile workers in other transport sectors;

— to protect the health and safety of all road-users; and

— to remove unfair competition in the single market.

b) Two proposals for Directives and a Recommendation on the maritime sector

— Proposal for a Directive concerning the agreement on the organization of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers in the European Union (FST).

— Proposal for a Directive concerning the enforcement of seafarers' hours of work on board ships using Community ports.

— Recommendation on ratification of ILO Convention 180 (1996) and the 1996 Protocol to ILO Convention 147 (1976).

The three above-mentioned documents are mainly based on (a) the conclusions of the agreement of 30 September 1998 between the social partners and (b) international standards in respect of working time.

2. **General comments**

2.1. The draft Council directive amending Directive 93/104/EC concerning certain aspects of the organization of working time to cover sectors and activities excluded from that directive, and the proposed Council directive concerning the organization of working time for mobile workers performing road transport activities and for self-employed drivers, are based like Directive 93/104/EC itself on Article 118a of the Treaty establishing the European Community. This stipulates that the Member States:

> 'shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers ...'.

2.2. As regards compliance with the principles of subsidiarity and proportionality, the Commission rightly cites the judgment of the Court of Justice of the European Communities, dated 12 November 1996 [1], on the United Kingdom's appeal to have the Directive on working time set aside. The Court ruled in this case that:

> 'Once the Council has found that it is necessary to improve the existing level of protection as regards the health and safety of workers and to harmonize the conditions in this area while maintaining the improvements made, achievement of that objective through the imposition of minimum requirements necessarily presupposes Community-wide action.'

> '(...) the means which it employs are suitable for the objective pursued and do not go beyond what is necessary to achieve it.'

As the principles of the proposed directives do not go beyond the provisions of Directive 93/104/EC, the Economic and Social Committee supports the Commission's initiative and calls upon the Council to adopt them as soon as possible.

The ESC also supports the Commission's move to include self-employed drivers in the specific road-transport proposal on an equal footing with employed drivers, when they are driving a bus, coach or heavy goods vehicle, as in Council Regulation (EEC) No 3820/85, in order to protect their health and safety. This will also improve road safety and reduce the distortions of competition arising from the extreme fragmentation of road-transport companies into very small units.

2.3. As early as 18 December 1990, the ESC had by a large majority adopted its opinion [2] on the first draft directive on this subject, which did not provide for any exclusions. With regard to the objectives, the ESC endorsed the Commission proposals, but called for them to be strengthened and repeatedly drew attention to ILO standards on the subject.

2.4. Seven years later, on 26 March 1998, in its Opinion [3] on the White Paper on the sectors and activities excluded from the Directive on working time, the ESC therefore supported the Commission's idea of adopting minimum requirements, ensuring protection of health and safety at Community level, in respect of the working time of workers in the sectors and activities still excluded from Council Directive 93/104/EC.

2.5. Like the Commission, the ESC opted at the time for a differentiated approach which would involve:

— extending all the provisions of Directive 93/104/EC to all non-mobile workers;

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[1] Judgment of the Court, 12 November 1996 (United Kingdom of Great Britain and Northern Ireland vs. Council of the European Union — Council Directive 93/104/EC concerning certain aspects of the organization of working time — Appeal to have the Directive set aside) — Case C-84/94 — European Court Reports 1996, page I-5755.

[2] OJ C 60, 8.3.1991, p. 26.

[3] OJ C 157, 25.5.1998, p. 74.

— extending to all mobile workers (including sea-going fishermen) and to those involved in 'other work at sea' the provisions of Directive 93/104/EC on:

  • four weeks' paid annual holiday

  • health checks for night workers

  • guarantee of adequate rest

  • capping the number of working hours per year;

— adopting, for each sector or activity, specific legislation on working time and rest periods for mobile workers and *mutatis mutandis* those involved in 'sea fishing' and 'other work at sea'.

2.6. At the time, the ESC hoped that in the transport and sea fishing sectors the social partners would conclude mutual agreements. To that end, the ESC urged the Commission to persist in encouraging the social partners to shoulder their responsibilities in the various joint committees, while specifying the conditions which the new rules to be implemented should satisfy.

The new rules should:

1) have the binding force of a directive;

2) apply to all workers concerned, and hence also to new operators setting up in the sector;

3) not provide a pretext for a worsening of current working conditions;

4) incorporate the provisions of Directive 93/104/EC on possible and necessary derogations;

5) respect the subsidiarity principle, which allowed the said derogations to be negotiated in the forums and via the channels previously used in the various Member States;

6) be implemented simultaneously to avoid disastrous intermodal competition which could result from differing rules on protection of workers' health and safety;

7) stress the advantages which the population as a whole will derive from them, given that fatigue resulting from excessive working time constitutes a real, direct risk to the welfare and safety of others.

2.7. Today the ESC has to note the fact that formal agreements have been signed only in the rail transport and maritime transport sectors. It is a matter of great regret to the ESC that, despite the intensive negotiations held in the Joint Committee on Road Transport, the social partners did not manage to reach agreement at the last meeting on 30 September 1998, although many areas of convergence were found.

2.8. The ESC had advocated completing the negotiations between the social partners as soon as possible, and called upon the Commission to lose no time in submitting practical proposals to the Council to ensure effective protection in terms of working time, health and safety of workers in the excluded sectors and activities, while keeping enough flexibility to give firms adequate room for manoeuvre; it is only fair, then, to congratulate the Commission both on the efficiency of its approach and on its clear, relevant and well-balanced proposals, which by and large meet the above conditions set by the ESC.

2.9. The Commission proposals do not raise the question of the derogation for managing executives or other persons with autonomous decision-taking powers in Article 17(1)(a) of Directive 93/104/EC. The ESC therefore suggests that this question should be tackled when the results of the current study on the working hours of European managers come out. This category of workers should not be the last one excluded from the general directive on working time.

2.10. Finally, the ESC wishes to stress that all the legal provisions on work by women, particularly as regards maternity leave, will of course remain in force.

3. **Sectoral comments**

3.1. *Rail transport*

3.1.1. In this sector, the social partners meeting in the Joint Committee on Rail Transport reached agreement as early as 18 September 1996 on including all railway workers — whether non-mobile or mobile — under Directive 93/104/EC, subject to a specific derogation for 'drivers and railway staff on board trains'.

3.1.2. The ESC is pleased that the almost one million workers in this major transport sector — which by its very nature must operate round the clock and seven days a week — are covered by the current Commission proposal to amend Directive 93/104/EC. These workers, including those who may be taken on by new operators entering the sector — one which is still widely protected in social terms by national legislation or collective agreements entailing general obligation — will henceforth be protected by Community legislation laying down minimum requirements, as regards working time, against adverse effects for health and safety resulting from:

— excessive working hours,

— inadequate rest,

— night work, or

— irregular organization of work.

3.1.3. The advantages for the public in general deriving from such legislation to ensure greater safety in the operation of trains need no further proof, since it is well known that the fatigue which results from excessive working hours constitutes a real and direct accident risk.

3.1.4. Since they correspond to the agreement reached between the social partners, the ESC endorses all the proposals put forward provided that the derogation from the reference period for the application of Article 6 (maximum weekly working time) is not allowed to exceed 6 months (cf. Art. 17(4)(b), first par.), and that the new Article 17a on mobile workers is not applicable to railway workers.

3.1.5. The social partners concluded that any extension of the reference period beyond six months could have detrimental effects on firms which, towards the end of the year, might be unable to make use of a number of staff who had already completed their quota of working hours.

3.1.6. To avoid any misunderstandings, the term 'ferroviaire' should be deleted from the French version of the new point 7 on mobile workers to be added to Article 2. Article 17 (Derogations), (2), (2.1) (a) should also be modified to read: 'particularly drivers and railway staff on board trains'.

3.2. *Road transport*

3.2.1. In this key sector of the European economy, the ESC remains convinced that the problems of working time organization must be solved as soon as possible for the 3,2 million (approx.) mobile road transport workers employed 'for hire or reward'.

Although the 3,5 million (approx.) mobile workers employed by carriers operating 'on own account' are already covered by Directive 93/104/EC, they should be treated on an equal footing with other professional drivers working for an employer.

Similarly, minimum requirements on working time are needed to protect the health and safety of self-employed drivers. When they are driving a bus, coach or heavy goods vehicle, the safety of passengers, other road users and the goods carried is at stake. Such minimum requirements would also remove a serious distortion of competition impeding the proper operation of the single transport market.

3.2.2. There is also a need to protect EU-based road transport enterprises against unfair competition involving 'social dumping', practised by enterprises based in third countries where social standards are lower. The EU should ensure that applicant countries implement the Community acquis fully and without delay, by carrying out checks and imposing penalties. These problems would certainly have been avoided if all the countries of Europe had ratified ILO Convention 153 (1979) on working time and rest periods (road transport), which provides more effective protection for the workers in question and promotes more transparent and fairer competition.

3.2.3. Moreover, something must be done to provide constructive social solutions, particularly in road freight transport, which would avert major social conflicts and unacceptable social dumping.

3.2.4. Once again, the ESC deplores the social partners' failure to reach agreement in the Joint Committee on Road Transport (see 2.6 above). Against this background, the ESC can only congratulate the Commission, which lost no time in sending the Council its own proposals on the organization of working time in the road transport sector, as indeed the Committee had called for in its opinion of 26 March 1998.

3.2.5. The first proposal is for an extension of the scope of Directive 93/104/EC to cover all non-mobile workers and to cover mobile workers in the road transport sector in general.

3.2.6. In a second stage, the Commission proposes a separate directive, applicable to all mobile workers carrying out road transport work, including mobile workers employed by enterprises carrying out transport work 'on own account'. Self-employed drivers, when driving a bus, coach or heavy goods vehicle, are also included in this draft Council directive, which supplements with regard to working time the provisions of Regulation (EEC) 3820/85 [1] on driving and rest periods. The new draft Council directive [see Art. 1(4)] is without prejudice to this Regulation, which remains applicable in its entirety.

To avoid any misunderstandings, the ESC suggests supplementing the new point 7 on mobile workers added to Article 2 of Directive 93/104/EC by inserting the words 'and on own account' and a second paragraph as follows:

> 'Minimum requirements for the working time of mobile workers involved in road transport shall be listed in a separate directive in accordance with Article 14 on "More specific Community provisions".'

3.2.7. As the Commission points out, it has included in its proposals those passages prepared by the social partners on which views converged. On the points of disagreement it sets out its own proposals, which should be judged in combination with the elements where there was consensus between the social partners.

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[1] Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ L 370, 31.12.1985, p. 1) — ESC Opinion: OJ C 303, 25.11.1985, p. 29 and OJ C 104, 25.4.1985, p. 4.

3.2.8. The specific proposal for a directive on mobile workers in road transport lays down in particular:

— working time more broadly defined than in existing rules which cover only driving time and rest periods;

— 48 hours maximum average working week over a four-month reference period and maximum weekly working time of 60 hours;

— break of at least 30 minutes when the total working time is between 6 and 9 hours and at least 45 minutes when total daily working time is more than 9 hours;

— daily rest of at least 11 hours, which may be reduced to 10 hours provided there is compensatory rest of at least 12 hours within the following 4 weeks;

— weekly rest of 35 hours;

— a ban on night workers working more than 8 hours per day, or more than 10 hours as long as a daily average of 8 hours is not exceeded over a two-month reference period;

— a tighter definition of 'night work' than in the general working time directive.

The Commission also provides for derogations to:

— Article 3 (maximum weekly working time), Article 5 (rest periods) and Article 6 (night workers) by means of national legislation or through collective agreements or other agreements between the social partners, on condition that the workers concerned are provided with equivalent periods of compensatory rest;

— Article 3 (maximum weekly working time), to extend the reference period for calculating the average maximum weekly working time of 48 hours from four to six months, unless the average weekly working time is reduced to 39 hours and 35 hours respectively.

3.2.9. The ESC cannot accept that the four-month reference period for calculating the average maximum weekly working time of 48 hours laid down in Article 3(1) be extended beyond six months, even if the Member States grant a reduction in weekly working time.

The point made about rail transport (see 3.1.5) must be equally true for road transport: extending the reference period beyond six months could have detrimental effects on firms which towards the end of the year are unable to make use of a number of staff who have already completed their quota of working hours.

3.2.10. In the Committee's view, Article 7(3) 'Derogations' makes no sense unless it is redrafted as follows:

> 'For regular passenger-transport services over distances of less than 50 kilometres, breaks (delete: or layover time) may be split, by derogation from Article 4, into periods of at least 15 minutes' duration. These breaks may be merged with layover time at the terminus.'

Urban passenger transport activity is characterized by driving periods interspersed with layover times at termini. These paid layover times correspond to the time elapsing between a vehicle's arrival at its terminus and its next departure in service.

3.2.11. With regard to the texts proposed for 'night time' [Art. 2(6)] and 'night workers' (Art. 6) the ESC considers a re-examination of the stricter definition of night work desirable to avoid any imbalances, particularly in sparsely populated countries.

3.2.12. In general, the ESC endorses the Commission's proposals, and calls upon the Council to shoulder its responsibilities and to put an end as soon as possible to the legal vacuum in this area.

3.3. *Inland waterway transport*

3.3.1. Here again the ESC deplores the fact that serious negotiations between the social partners in the joint committee on inland waterway transport have not been held and that no agreement has been reached (see 2.6 above).

3.3.2. Against this background the ESC can only congratulate the Commission on fulfilling its responsibilities by including mobile workers in Directive 93/104/EC (see new par. 7 added to Art. 2), even though under the new Article 17A the provisions of Article 3 (daily rest), Article 4 (rest period), Article 5 (weekly rest) and Article 8 (duration of night work) do not apply. In return, the Member States must take the necessary measures to ensure that these mobile workers have a right to adequate rest.

3.3.3. The ESC cannot therefore accept any extension beyond six months of the four-month reference period stipulated in Article 16(2) for the application of Article 6, which lays down that the average working time for each seven-day period, including overtime, shall not exceed 48 hours (see 3.1.5 and 3.2.9 above).

3.3.4. In anticipation of the additional sector-specific provisions in preparation by the Commission (cf. table annexed to the Commission Communication of 18 November 1998), the ESC endorses all the proposals put forward.

3.4. *Maritime transport*

3.4.1. In view of the fact that a European agreement on the organization of the working time of seafarers, concluded by the ECSA (European Community Shipowners' Association) and the FST (Federation of Transport Workers' Unions in the European Union) and signed on 30 September 1998, is about to be implemented by a Council decision on a proposal from the Commission (in directive form), in accordance with Article 4(2) of the agreement on social policy, seafarers as defined in that agreement will be the only category excluded from the scope of Directive 93/104/EC.

3.4.2. Although the ESC is not called upon to give an opinion on this bilateral European agreement, it wishes to congratulate the social partners concerned and urges the Council to decide as soon as possible on implementing the agreement.

3.4.3. The ESC therefore endorses the Commission's recommendation of 18 November 1998 to the Member States to ratify as soon as possible ILO Convention 180 (1996) concerning seafarers' hours of work and the manning of ships and the 1996 Protocol to ILO Convention 147 (1976) on minimum standards for merchant shipping, so that they can come into force. This is an essential first step for the social partners in this sector which is totally exposed to global competition, because implementation of the abovementioned 'European agreement' largely depends on prompt ratification of the Convention and the protocol.

3.4.4. As maritime transport is not confined to the territory of one country, under the jurisdiction of a single state, but governed by international law, a basic principle of which is freedom of navigation, it is vital for internationally agreed maximum limits on working time and minimum limits on rest periods to be respected, since the health and safety of workers, and safety on ships both at sea and in port, are at stake.

The Member States acting as flag States will therefore have to develop systems to ensure that any ship registered with them conforms to the directive implementing the European agreement (see point 3.4.1 above) on seafarers' working time.

3.4.5. As the same Member States which have ratified the ILO Conventions (mentioned under 3.4.3 above) are empowered by ILO Convention 147 to take steps to ensure that the provisions of Conventions listed in the Protocol to that Convention are applied on board all vessels entering their ports regardless of their flag or country of registration, they should extend their checks to all such vessels.

3.4.6. In order to achieve this aim, advocated also by the social partners who signed the 'European agreement' on organization of seafarers' working time, the Commission proposes a Community approach. Using a draft Council directive on the application of working time rules for seafarers on board vessels calling at Community ports, the Commission wishes to introduce harmonized arrangements for verifying and checking whether such vessels conform to the provisions on seafarers' working time.

3.4.7. The ESC supports the Commission's Community approach and endorses the draft directive under consideration.

3.4.8. However the Committee suggests rewording Article 2(a) of the draft directive to ensure that the term 'ship' includes vessels of whatever flag calling at Member States' ports, as it is of the utmost importance that ships flying the flags of states which have not ratified ILO Convention 180 or which are not members of the ILO should also be subject to verification and enforcement of compliance with the MWT Directive.

3.5. *Air transport*

3.5.1. With the agreement of the social partners, non-mobile workers in this sector will be covered by Directive 93/104/EC.

3.5.2. While still awaiting an agreement to be reached on 'Flying Time Limitations' between the social partners in the Joint Committee on Civil Aviation, the ESC congratulates the Commission on fulfilling its responsibilities (as called for by the ESC in its opinion of 26 March 1998) to ensure that mobile workers in this burgeoning sector are also covered by Directive 93/104/EC (cf. the new paragraph 7 added to Article 2).

3.5.3. Since under the new Article 17A, the provisions of Article 3 (daily rest), Article 4 (rest period), Article 5 (weekly rest) and Article 8 (duration of night work) do not apply to mobile workers, the Member States will be obliged by the same Article 17A to take the necessary measures to ensure that these workers have a right to adequate rest.

3.5.4. The ESC cannot therefore accept any extension beyond six months of the four-month reference period stipulated in Article 16(2) for the application of Article 6, which lays down that the average working time for each seven-day period, including overtime, shall not exceed 48 hours (see 3.1.5 and 3.2.9 above).

3.5.5. While awaiting the Commission proposals (cf. point 40) and analytical table annexed to the Commission Communication of 18 November 1998) on a Community regulatory scheme limiting flying time on the basis of operational safety considerations, the ESC is at pains to stress the need for a complementary and parallel approach between the said draft regulation and appropriate arrangements to protect the health and safety of aircrews.

By the same token, the ESC is pleased that the social partners have resumed negotiations, and would like to encourage them to arrive as soon as possible at an agreement which would guarantee adequate protection of the health and safety of mobile workers in this rapidly changing sector.

3.6. *Sea fishing*

3.6.1. Here too, the ESC expresses regret that the social partners have not managed to reach agreement in the Joint Committee on Fisheries (see 2.6 above).

3.6.2. Against this background, the ESC can only congratulate the Commission on shouldering its responsibilities by adding a new paragraph 7 to Article 2 of Directive 93/104/EC to cover the mobile workers of this industrial sector, in which the number of fatalities and accidents at work is higher than in any other sector; however, under the new Article 17A the provisions of Article 3 (daily rest), Article 4 (rest period), Article 5 (weekly rest) and Article 8 (duration of night work) do not apply. In return, the Member States must take the necessary measures to ensure that these workers have a right to adequate rest.

3.6.3. The ESC cannot therefore accept any extension beyond six months of the four-month reference period stipulated in Article 16(2) for the application of Article 6, which lays down that the average working time for each seven-day period, including overtime, shall not exceed 48 hours.

3.6.4. In anticipation of the additional sector-specific provisions in preparation by the Commission (cf. table annexed to the Commission Communication of 18 November 1998), the ESC endorses all the proposals put forward.

3.7. *Other activities at sea (offshore)*

3.7.1. The ESC supports the Commission's idea of making Directive 93/104/EC apply fully to workers carrying out 'other activities at sea' (cf. the new par. 8 on offshore work added to Article 2).

3.7.2. The draft directive amending Council Directive 93/104/EC takes account of the special shift work arrangements required by this sector.

3.7.3. However, the ESC is reluctant to endorse the Commission's wish to authorize the Member States, via the new Article 17A(3), to extend the reference period stipulated in Article 16(2) (for the application of Article 6 which lays down that the average working time for each seven-day period shall not exceed 48 hours including overtime) from four to 12 months in respect of workers who perform mainly offshore work.

3.8. *Doctors in training*

3.8.1. According to the most widely accepted definition, doctor in training should be defined as a doctor in postgraduate, specialized, or specific (vocational) training who, simultaneously as part of the training, is working in a department in which employment in accordance with national regulations is required in order to achieve recognition or authorization as a specialist or some other postgraduate vocational category.

3.8.2. Doctors in training were excluded from the scope of Directive 93/104/EC. Around 270 000 doctors in Europe were thereby placed outside the protection conferred by that directive [1]. As a result, these doctors are subjected to excessively long working hours, with very little legal protection and with no uniform regulations encompassing all Member States.

3.8.3. The situation of these doctors in Europe can be summarized as follows:

— doctors in training are a totally integral part of the medical services;

— in the majority of cases, they bear the brunt of weekend cover and night duty;

— although the weekly hours worked by doctors in training vary from country to country and from hospital to hospital, it is reasonable to conclude that these routinely exceed 55 hours a week;

— the tasks they perform are the same as those performed by other doctors.

3.8.4. The position of doctors in training is particularly precarious as they cannot refuse to perform the tasks given to them, nor can they invoke rights and obligations which might clash with the interests of their superiors, as doing so may affect their evaluation at the end of the training period, or even their contract of employment, which is normally for a fixed term. Hospital administrations have learnt to make maximum use of this cheap manpower.

3.8.5. When considering the working time of doctors in training, two essential concepts should be borne in mind:

— actual working hours, meaning the time that one is actually on the hospital premises; it should also include time spent in lectures or scientific sessions in the hospital during normal working hours,

[1] See the Coshape Report, compiled by Coshape Ltd at the request of the Commission as part of the groundwork for the present proposals.

— 'on call', meaning that one is at the disposal of the employer, but not actually working. This should be dealt with according to national legislation or local agreement.

3.8.6. Against this background, the ESC reiterates the view expressed in its opinion of 26 March 1998 that there is no valid reason for excluding doctors in initial or specialized training given that (a) they are not 'mobile' workers, and (b) they carry out the same tasks as their fully trained, salary-earning colleagues who by definition fall within the scope of Council Directive 93/104/EC.

3.8.7. The wide variations to be found in this very special sector (even within the same country) pose a risk in the short and medium term not only to the physical and mental health of the staff concerned, but also, as a result of overlong working hours and insufficient rest, to the quality of treatment which they provide for the community as a whole.

3.8.8. Bearing in mind that there is no European-level body representing employers in this sector, the ESC therefore feels that the only way to solve the problem of doctors in training is for the Council to adopt legal provisions such as those proposed by the Commission, even though some specific aspects of the proposal can be improved upon, namely:

— daily and weekly working times should not exceed nine and 48 hours respectively;

— by way of exception, a daily working time of up to 11 hours would be permissible on a maximum of three occasions within a two-week reference period;

— doctors in training should not be called upon to do night work for more than seven nights per month;

— the seven-year transition period seems unduly long, and therefore, bearing in mind the length of time which is usually needed to transpose legislation, the Committee suggests that the transition period be no more than three years.

Brussels, 25 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the opinion of the Economic and Social Committee

The following amendment, which received at least one quarter of the votes cast, was defeated during the discussion:

Point 2.2

Add after the last sentence: 'ESC considers that self-employed drivers to be covered by the draft Directive do not include entrepreneurs who fulfil the financial standing requirements announced in the Directive 98/76/EC.'

Reason

The existing regulation on driving time and rest periods includes provisions on maximum driving time as well as rest periods. The provisions allow for about 12-13 hours' daily rest. The regulation covers any drivers, entrepreneurs as well as employees. This is considered sufficient to ensure transport safety.

Until now, no action has been taken concerning the working time of entrepreneurs in any area. This would, therefore, set an important precedent. The proposal conflicts with the European Commission's objective to promote entrepreneurship and competitiveness (COM(1998) 550 final). In particular, the proposal to register the working time of owners comes into conflict with the objective to reduce bureaucracy for small companies.

Result of the vote

For: 44, against: 68, abstentions: 5.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive relating to limit values for benzene and carbon monoxide in ambient air'

(1999/C 138/12)

On 10 March 1999, the Council decided to consult the Economic and Social Committee, under Article 130s of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 March 1999. The rapporteur was Mr Gafo Fernández, with Mr Chiriaco and Mrs Davison as co-rapporteurs.

At its 362nd plenary session (meeting of 25 March), the Economic and Social Committee adopted the following opinion by 91 votes to one, with six abstentions.

1. **Introduction**

1.1. The proposal under discussion follows on from Directive 96/62/EC on air quality, which laid down the need to guarantee ambient air quality by setting limit values for a list of pollutants, including benzene and carbon monoxide. The current proposal may therefore be regarded as a 'daughter directive' of Directive 96/62/EC.

1.2. The legal basis is Article 130s, although the recitals also refer to Article 130r (the precautionary principle) and Article 129 (health protection).

1.3. The impact of these pollutants on public health has been scientifically proven. More specifically, benzene is considered carcinogenic, although only in the event of long-term exposure. Carbon monoxide reduces the blood's capacity to carry oxygen and in high concentrations can cause lethal poisoning, although only in enclosed spaces.

1.4. Emissions of these pollutants have various sources, although the largest one is the use and combustion of fuel oil and petrol in road transport vehicles. In the case of carbon monoxide, burning of forest, savannah and agricultural waste accounts for half the global emissions. It is, therefore, no surprise that urban areas with dense road traffic have a high concentration of potential risk areas.

1.5. It is hoped that the entry into force of a number of EU environmental measures will significantly reduce the current concentration levels. In particular:

— In relation to road traffic: the entry into force of the Auto-Oil programme and of directives on improving the efficiency of private vehicles.

— In relation to industrial emissions: the entry into force of the IPPC Directive and the VOC Directive, Stage I.

1.6. In the lead-up to this proposal, the Commission considered a series of reference documents and studies, including the following:

— indicative air quality levels established by the World Health Organization (WHO) in relation to carbon monoxide;

— extending to benzene the principle, accepted in the drinking water directive, whereby limit values are set on the basis of a one in a million increased risk of contracting cancer over a lifetime;

— report entrusted by the European Commission to an external consultancy, on the economic assessment of air quality targets for benzene and carbon monoxide;

— studies and results of the Auto-Oil programme.

Experts from the Member States, industry, and non-governmental organizations (NGOs) were also consulted.

1.7. The lines of action to measure, monitor and enforce such air quality levels are structured around the following three types of measures:

— setting limit values for concentrations of benzene and carbon monoxide in accordance with a pre-established schedule;

— establishing a uniform network of measurement stations including alternative equipment or systems capable of measuring these pollutants throughout the Community;

— informing the public of the real air quality in each individual measuring area.

1.8. Lastly, by 31 December 2004 the Commission has to publish a report on the implementation of this directive as part of the air quality strategy; the report will also contain proposals for the revision of the directive.

2. **General comments**

2.1. The Committee welcomes this second directive arising from Directive 96/62/EC on ambient air quality and urges the Commission to submit proposals for the remaining pollutants still requiring regulation.

2.2. The Committee is aware that the database on the various parameters for ambient air quality for the Community as a whole is still inadequate. This stems from the extreme complexity of defining the areas, the responsibility of the national authorities in this matter, and the pinpointing of air quality 'hot spots' within specific areas. These factors are compounded by the complexity of the measurement systems, based on a combination of direct measurements, indirect systems, and mathematical estimation models.

2.3. Consequently, while it fully endorses the objectives laid down in Article 1, the Committee would have preferred references to establishing concentration limits for benzene and carbon monoxide or maintaining good air quality where it already exists to have been tied in with a parallel improvement in measurement and monitoring systems in general, and especially with the urgent identification of air quality hot spots, for which special measures need to be introduced.

2.4. The Committee takes the view that the general limit established for benzene and the temporary waivers for regions with severe socio-economic problems need to be differentiated in several respects. The reasons are as follows:

2.4.1. Insufficient accuracy of measurement systems (criteria for determining areas, the combination of direct measurement and modelling systems) compared with the extremely low permissible concentration limit for benzene in ambient air (0,000005 g/m^3 or 5 μg/m^3) as provided for in the draft directive.

2.4.2. The absence of WHO guidelines, which are replaced, according to the Commission document, by a range of between 0,2 and 20 μg/m^3, equivalent to the one in a million increased risk of contracting cancer if continuously exposed over a lifetime to such concentrations of benzene in ambient air.

2.4.3. The fact that it is difficult to identify these hot spots and generally impossible to reduce their average levels in a short space of time. Nevertheless, the Committee is in full agreement with the limit of 5 μg/m^3 proposed by the Commission.

2.5. The Committee believes that both the limit proposed for carbon monoxide (10 mg/m^3) and the date provided for its entry into force (1 January 2005) are acceptable.

2.6. The Committee calls on the Commission and the Member States, during the period up to the entry into force of this directive and all of those relating to air quality, to improve the systems used to define areas so that these directives may be implemented. It also calls on them to employ the best available measurement technologies in order to improve our knowledge and achieve more accurate measurement of air quality and of its development with the introduction of the set of measures described in point 1, and the precise and systematic identification of all air quality hot spots.

2.7. The Committee fully supports the public information system provided for in Article 6 and sees this as an essential aspect of informing the public and of making it generally aware of air quality problems and of the need to seek global solutions to these.

Brussels, 25 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the opinion of the Economic and Social Committee

Rejected amendment

The following amendment, which was supported by more than a quarter of the votes cast, was discussed and rejected in the plenary session:

Point 2.4.3

Replace by the following:

'The difficulty in identifying these hotspots, especially in urban areas, and the general impossibility of reducing their average levels in a short space of time could justify the option, in the case of socio-economic problems, of calling for blanket extensions of five years or more.

Consequently, to avoid failure to comply with the directive's rules, the 5 μg/m³ limit should be retained, along with a limit of 10 μg/m³ in hotspots only, to be accompanied by an obligation on the competent authority to adopt all suitable preventive measures to bring it down to 5 μg/m³.'

Reason

A literal application of the Commission Report's proposal under point 4.6.3 (page 17 of the English text) could compromise all limit values as the extremely wide range of socio-economic problems stemming from strict implementation of the rules could prompt all Member States to request an extension of the date of enforcement, both in and outside hotspots.

Result of the vote

For: 36, against: 57, abstentions: 7.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Regulation (EEC) No 1442/88 on the granting, for the 1988/1989 to 1998/1999 wine years, of permanent abandonment premiums in respect of winegrowing areas'

(1999/C 138/13)

On 24 March 1999 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 Economic and Social Committee decided to appoint Mr Sabin as rapporteur-general for its opinion.

At its 362nd plenary session (meeting of 24 March 1999) the Economic and Social Committee adopted the following opinion with 57 votes in favour and one abstention.

1. The purpose of the Commission proposal is to extend the deadline for the submission of applications for the Community grubbing-up premium provided for in Article 4(1) of EC Regulation No 1442/88 from 31 December 1998 to 31 March 1999.

2. There are a number of reasons why winegrowers are counting on this proposal:

— grubbing-up normally takes place between November (when harvesting ends) and April (when plant growth starts again).

— French national aid was granted for the permanent abandonment of vineyards in the Charentes region by decree of 14 December 1998. For technical reasons, it takes time for winegrowers to decide to grub up vines and do the grubbing-up. The extension of the deadline for the submission of applications is all the more necessary because eligibility for French aid is conditional on the granting of the Community premium.

3. Since the budgetary cost of this proposal is low and the cognac sector is in a crisis, the Economic and Social Committee endorses the Commission proposal.

Brussels, 24 March 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI