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Notice No | Contents | Page

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(Continued overleaf)

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(Continued on inside back cover)

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council modifying Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft'

(2001/C 155/01)

On 7 November 2000 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 March 2001. The rapporteur was Mr Colombo.

At its 380th plenary session on 28 March 2001, the Economic and Social Committee adopted the following opinion by 99 votes, with one against and one abstention.

1. Background and objectives

1.1. The Commission proposal to modify Directive 94/25/EC, which became fully operational in June 1998 after a four-year transition period, is justified by the need for the design and construction of recreational craft to be subject to harmonised standards for exhaust and noise emissions from engines installed on such craft.

1.2. The proposal satisfies the guidelines proposed on environmental issues and sustainable development by the European Council in Cardiff in June 1998, which were adopted by the Industry Council of November 1999 in its report 'Integrating sustainable development and industry policy'.

1.3. The lack of initiatives at Community level has prompted some Member States to independently take decisions designed to incorporate a number of environmental provisions into Directive 94/25/EC. In view of this situation, a rapid process of harmonisation would seem imperative in order to prevent individual national initiatives from hindering trade and violating the principle of free movement of goods.

1.4. Although pollution caused by recreational craft represents an almost negligible proportion of total emissions, it has a significant impact on air quality in areas with high concentrations of boats because the emissions produced consist of hydrocarbons and oxides of nitrogen, which are known precursors of ozone.

1.5. The second issue addressed by the proposal, namely noise, is one of the most reported forms of pollution. Many people consider noise generated by traffic, industrial and recreational activities to be their main environmental problem. The noise produced by personal water craft (PWC) is particularly significant because of their undulating motion and the so-called practice of wave-jumping, which exacerbates the discomfort to the extent that it becomes difficult to endure.

1.6. Both factors considered also cause harm to flora and fauna when boats enter remote areas used by fish and wildlife as nesting and reproduction habitat.

1.7. The extent of the problem addressed in the Directive is significant for two reasons: firstly, in view of the large number of lakeshores and navigable rivers across the EU and in neighbouring countries (e.g. Switzerland, Liechtenstein); and secondly, the size of the pleasure craft park, which is very large in relative terms (see Table 1) and is produced by an industry that represents a considerable technological and occupational asset for the European Union, accounting for 33 % of total world output.

Table 1

Boat park in Europe 1998

Sailboats	821 506
Motorboats	3 628 000
Inflatables	170 000 (not already included with motorboats)
Personal watercraft	10 700
Total:	4 630 206

Source: Estimates by ICOMIA (International Council of Marine Industries Associations)

2. **Commission proposal**

2.1. The purpose of the Commission proposal is to amend Directive 94/25/EC, in view of the need to establish Community rules on exhaust and noise emissions for recreational craft.

2.2. The legal basis for the proposed Directive is Article 95 of the Treaty (internal market), the proposal being to guarantee a harmonised approach in the EU to the essential requirements that must be met in the manufacture of watercraft falling within the Directive's scope.

2.3. The main aim of the changes is to apply harmonised rules for exhaust and noise emissions for such watercraft, introducing a number of requirements that can be verified through conformity assessment procedures, with the ultimate objective of protecting human health, ensuring citizens' well-being and promoting the smooth functioning of the internal market by removing any obstacles to trade.

2.4. Applying requirements that are noticeably different from national rules could actually create barriers to trade and fail to ensure uniform protection of citizens' health at Community level.

2.5. The following national regulations govern exhaust and noise emissions of watercraft:

— Bodensee shipping regulation (Stage 1) of 1/1/93

— Bodensee shipping regulation (Stage 2) of 1/1/96

— State of Brandenburg regulation

— Swedish regulation currently waived in anticipation of Community legislation.

To these should be added further measures currently in preparation in other EU countries that are temporarily on hold.

These rules can only develop into a joint approach guaranteeing a uniform level of protection if they are backed by a directive that harmonises requirements relating to exhaust and noise emissions of watercraft.

2.6. The Commission proposal is the fruit of a long period of consultation of the parties concerned by the directive — Member States, industry, consumers, the CEN [1] — which submitted their comments and requests. The proposed measures — which are important for the smooth functioning of the internal market, and for the protection of human health and citizens' well-being and quality of life — thus reconcile industrial policy with protection of the environment, and come at an important stage of the 'sustainable development' policy pursued in recent Community legislation.

2.7. In order to take due account of technological and design developments in the marine engines and watercraft industry, the Commission is also proposing to set up a regulatory committee which will be empowered to make any necessary change to technical aspects and to the exhaust emission limits. However, any other amendments to the Directive which alter the objective of the proposal must pass through the formal procedure provided for.

2.8. One particular feature of this Directive is the conformity assessment procedure. It should be borne in mind that the recreational boat industry is composed very largely of SMEs geared to producing small series of different models, though with similar technical features. To reduce the cost of the conformity assessment procedure, while ensuring that the requirements imposed are met, the idea of a 'reference boat' system has been introduced.

[1] European Committee for standardisation.

2.9. A list of reference boats will be drawn up that have been inspected under ISO standard 14509 and found to comply with the stipulated requirements. The list will form the basis for a comparison, conducted on the basis of the maximum permitted deviation, with other boats produced. This will allow the industry to use an alternative conformity assessment procedure to Module Aa [1].

2.10. At a purely technical level, the Directive sets limits on exhaust emissions from engines according to nominal power for 2-stroke and 4-stroke spark ignition engines and compression ignition engines. In the case of noise emissions, the Directive sets limits on the basis of nominal power, type of engine and its installation.

2.11. The test methods are rigorously enforced in accordance with the following standards:

— ISO 8178 for exhaust emissions [2]

— ISO 14509 for noise emissions [3].

2.12. The requirements for exhaust gas emissions are clearly stated in terms of values relative to the type of propulsion, as in the following table:

[1] Internal production control plus tests (Annex VI of the Directive).

[2] Standard for measuring gas emissions from internal combustion engines.

[3] Standard for measuring noise emissions from internal combustion engines.

Table 2

Type	Carbon monoxide $CO=A+B/P^n_N$ g/kWh			Hydrocarbons $HC=A+B/P^n_N$ g/kWh			Nitrogen oxides NO_x g/kWh	Particulates
	A	B	n	A	B	n		
Two-stroke spark ignition	150,0	600,0	1,0	30,0	100,0	0,75	10,0	Not applicable
Four-stroke spark ignition	150,0	600,0	1,0	6,0	50,0	0,75	15,0	Not applicable
Compression ignition	5,0	0	0	1,5	2,0	0,5	9,8	1,0

Where A, B and n are constants in accordance with the table, P_N is the rated engine power in kW and the exhaust emissions are measured in accordance with the harmonised standard.

2.13. Levels of noise emissions for recreational craft are also fixed in relation to engine power.

Table 3

Engine power in kW	Maximum sound pressure level = L_{pASmax}
$P_N < 10$	67
$10<P_N < 40$	72
$P_N>40$	75

P_N = rated engine power in kW at rated speed.

$L_{pAS\,max}$ = maximum sound pressure level in dB.

3. **General comments**

3.1. The Commission proposal goes in the direction the ESC had always hoped for, placing environmental and quality-of-life issues at the centre of all Community legislative initiatives, as a basic precondition for achieving high quality of life. Moreover, the ESC particularly appreciates the Commission's efforts to involve all the parties concerned at an early stage, with the aim of gathering and incorporating observations and reaching the best possible consensus. The ESC therefore naturally endorses the broad objectives of the proposal, though it intends to make several comments of a general nature, particularly regarding the need to protect the business of SMEs in the internal market and outside the EU.

3.2. It is necessary to standardise test procedures as far as possible and to base them on uniform methods, especially in the case of noise emissions. This means wherever possible basing tests on checks generally carried out on the manufacturer's premises. Clearly in the case of the engine/boat configuration it is easier to achieve this objective by carrying out the relevant engine checks as far as possible on the manufacturer's premises rather than on a fully equipped boat on the water. In the case of stern-drive engines (with traditional types of

exhaust) it can be assumed that the noise emission characteristics of the finished boat are guaranteed if the engine has successfully completed the conformity assessment procedure and has been installed on board in accordance with the manufacturer's instructions (see 'Specific comments' for details of proposed change).

3.3. The Directive requires that if a boat that is already on the market before its entry into effect replaces or substantially modifies the propulsion engine, the new noise emission requirements are applicable not just to the new engine, but also to the existing boat.

3.4. Apart from being complicated to apply for boats that have already been built, this requirement would have two counterproductive effects:

— in the case of boats already on the market with old engines that do not comply with the new exhaust emission requirements, standards would have to be applied retroactively, which is difficult to do for the whole boat, and so the owner would decide not to replace the engine but to keep it on board even in poor condition;

— such a constraint would cause serious losses for a large number of parts suppliers — engine manufacturers and on-board installation workshops — whose business normally consists in equipping boats with new engines.

3.5. Such a procedure is justified when the new engine is more powerful than the old one. However, if the power remains the same, users might choose to keep on board engines in poor condition and with high polluting potential, jeopardising their own safety and the environment. This would also hit a large part of the small-business sector, of which no less than 40 % of turnover comes from fitting new engines (see 'Specific comments' for details of proposed change).

3.6. Assuming that the Directive introduces compulsory application of well-defined standards and bearing in mind that the watercraft industry consists largely of SMEs for which the cost of external certification procedures (conducted by 'notified bodies') is prohibitively high, the possibility of self-assessment conformity procedures (Modules Aa and A, as applicable) should be provided for (see 'Specific comments' for details of proposed change).

3.7. Such a proposal would not make the requirements less technically effective or influence whether they are met, but it would help to make their application by SMEs simpler and less expensive.

3.8. The Committee stresses the importance of keeping abreast of technological advances obtained by scientific research in the broader field of engine design and manufacture, keeping close contact with larger-scale production activities (cf. the car industry), as the engines used on boats are often only transferred to the sector at a later stage.

3.9. Bearing in mind the need for a centralised database regarding the 'reference boat', the Committee hopes that measures in support of a specific programme will be envisaged in the 2002-2006 multiannual framework programme on RTD.

4. The Community legislative process and its links with world policy in the sector

4.1. The Committee agrees that it is important for the EU to rapidly acquire specific legislation on the gas and noise emissions from recreational craft, laying down harmonised conformity criteria and obligations for all Member States which will facilitate the smooth operation of the single market and help to protect public health and wellbeing.

4.2. Community legislation can provide a precise reference point not only for the applicant countries but above all for the other leading producers (USA, Japan, Australia) which still do not have specific regulations on gas and noise emissions from recreational craft.

4.3. Here the Committee would stress the importance of coordinated action by the Commission and the sector's representative organisations to ensure, in international bodies, that the future Community legislation is applied worldwide, preventing any possible obstacles to free competition.

4.4. In these international bodies, the Committee thinks that the first task is to affirm the basic principle that the increased costs which these standards will mean for the sector will be largely offset by the environmental and health benefits and by the guarantee of a level playing field for the free movement of goods. They may also encourage research schemes for increasingly 'eco-compatible' engines.

5. **Specific comments**

5.1. As noted in the general comments above (see point 3.2), in the case of traditional stern-drive engines (i.e. with the exhaust built into the stern drive), noise emission characteristics should be guaranteed if the engine has successfully completed the conformity assessment procedure and has been installed on board in accordance with the manufacturer's instructions.

5.2. The Committee therefore proposes that the Directive be amended as follows:

— Article 1(1)(c)(iv), Annex 1C(1.1), Annex 1C2 (first and second paragraphs), Annex VIB (second paragraph): After the words 'outboard engines' add 'and stern-drive engines with built-in exhaust';

— Annex XV3: after 'propulsion engines' add 'and stern-drive engines with built-in exhaust, where the standard craft method is used'.

5.3. To overcome the problems raised in the general comments (see point 3 above) regarding the fitting of new engines, a clear distinction should be made between replacement of the engine and major modifications to the craft. Whilst it is logical to demand a further verification when a major modification is made, replacement of the engine should not require further conformity assessment procedures for noise emissions.

5.4. The Committee therefore proposes that in the second indent of Article 1(3)(e), the words 'or the replacement of the propulsion engine by a different type or size of engine' be deleted.

5.5. As most manufacturers in this sector are SMEs for whom the cost of the notified-body certification procedures is excessive, the Committee proposes the use of simpler conformity assessment modules.

5.6. The Committee therefore proposes that:

— Article 8(3)(a): for exhaust emissions, Module Aa could also be used when the harmonised standard is applied, by adding the following: 'when the harmonised standard referred to in section 2 of Annex IB is applied: internal production control plus tests (Module Aa) as provided in Annex VI'.

— Annex VIII (Module C), new paragraph 4: The new paragraph on the verification of exhaust emission requirements should be deleted. Module C spot checks are not required under other directives nor under Directive 97/68/EC.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the European Parliament and the Council: Protection of air passengers in the European Union'

(2001/C 155/02)

On 26 June 2000 the European Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 March 2001. The rapporteur was Mr von Schwerin.

At its 380th plenary session of 28 and 29 March 2001 (meeting of 28 March) the Committee unanimously adopted the following opinion.

1. Introduction

The purpose of the Commission Communication on the protection of air passengers in the European Union is to improve the protection of air passengers' interests.

On the one hand, the Commission has launched a campaign to make passengers aware of their existing rights under Community legislation. On the other, it is looking to adopt legislation to improve the protection of air passengers' interests. However, it is also seeking voluntary commitments from airlines, and wants (i) to make it possible to compare airlines' performances and (ii) to strengthen the representation of passenger interests.

2. Gist of the Commission proposal

2.1. The Commission intends to adopt legislation in order to:

— enable delayed passengers to continue their journeys under good conditions, by giving them the right either to reimbursement of the ticket or to an alternative flight at the earliest opportunity;

— create new rights for passengers in cases of overbooking (denied boarding) and by setting minimum requirements for contracts in air travel;

— give passengers the information they need to make well-founded choices between airlines.

2.2. The Commission is seeking to promote the preparation and adoption of voluntary commitments by European airlines.

2.2.1. The Commission feels that airlines should adopt voluntary commitments designed to improve service quality as widely as possible.

2.2.2. Airlines should provide adequate care for delayed passengers.

2.2.3. Airlines should undertake to introduce simple procedures for lodging complaints and mechanisms for settling disputes out-of-court.

2.3. The Commission also wants to promote voluntary commitments by airports to set quality standards for services and to consider design standards for terminals. The Commission will continue to strongly encourage the involvement of all interested parties and act as coordinator when the responsibilities of airlines and airports overlap.

2.4. The Commission also intends to take the following initiatives:

— to discuss how best to strengthen the representation of passengers with Member States and passengers' organisations (consumer associations);

— to examine the effects on the market of sales and reservations via the Internet and their conformity with competition rules and the code of conduct for computer reservation systems (CRS);

— to study the effects on competition of code-sharing, in the context of individual competition proceedings, and of tariff co-ordination in interlining, in its review of the block exemption for interlining;

— to assess the impact of cabin conditions on passengers' health, by setting up expert groups to scrutinise existing research and draw conclusions on risks to health.

3. **The Committee's comments**

3.1. The Committee welcomes the Commission's plans to improve the protection of air passengers in the European Union and shares the Commission's view on the need to strike the right balance between Community legislation and voluntary commitments by airlines and airports. The Committee feels that legislation should be enacted laying down minimum requirements for air passengers' inalienable rights and that airlines and airports should enter into voluntary agreements which supplement this legislation. Adding its voice to the call made by the EU Council [1] on this issue, the Committee thinks that the voluntary agreements by airlines should certainly be in place by May 2001. If voluntary agreements by airlines and airports fail to address consumer rights adequately, the Committee feels that the entire field should be regulated by legislation. Air passengers must be fully informed of their contractual rights in so far as these are covered by airlines' conditions of carriage.

3.2. The absence of the proposed 'chain of contracts' between airports, airlines and other service providers is one of the main problems facing air transport. Normally, since a company is able to select subcontractors and suppliers according to its own criteria, it is also liable for any substandard performance on their part. This does not apply in air transport. Airlines have no influence on the airport as runway provider or on air traffic control. The Committee feels it would be unreasonable to make air carriers liable for shortcomings in these areas. Particularly in the field of air traffic control, the Commission is called on to submit and implement suitable proposals for improving the current situation.

3.3. Other legislation already contains a host of provisions to protect air travellers from sharp practices (Directive 93/13/EEC on unfair terms in consumer contracts) [2]. Enforcement of this protective legislation is no longer a matter for the Commission, but falls within the remit of the ordinary courts and ultimately the ECJ. Many of the problems cited by the Commission are covered by Directive 93/13/EEC. However, consumer rights and fares — insofar as they can be specified — must be made transparent. The rights of consumers affected by overbookings (denied boarding) and flight cancellations must be improved. The Committee would refer to its opinion on Directive 93/13/EEC [3].

3.4. The Committee fully endorses the view that Community legislation should not compromise companies' international competitiveness. Air safety must, however, always have top priority, and an appropriate level of passenger protection must be guaranteed.

3.5. It is possible to book flights and issue tickets 365 days in advance. In so far as the potential passenger is simply making a non-binding declaration of intent, the Committee regards a fare increase by the airline as not being inappropriate. However, once there is a binding contract between the passenger and the airline or the ticket has been paid for, the Committee thinks that the airline should not be allowed to increase the fare.

3.6. As the Commission itself notes, airlines are obliged under the current CRS code to inform passengers which carrier is operating the flight. At the same time, the Committee thinks that legislation should be enacted to close any legal gaps that may still remain.

3.7. The issue of which contract conditions apply in the case of code-sharing is normally resolved in the conditions of carriage of the particular airline. Moreover, under existing contract law, liability is always borne by the contracting carrier, and possibly by the operating carrier as well. Air passengers thus already have at least one clearly defined party to whom a claim may be made (the contracting carrier) and will in many cases have two. For the sake of legal certainty, the Committee nonetheless thinks that the question of liability on code-sharing flights must be the subject of voluntary or statutory arrangements.

3.8. The Committee supports the blanket transferability of air tickets, whereby steps must be taken to ensure that the conditions governing special fares cannot be systematically circumvented by 'phantom bookings' which are then passed on to late bookers. The number of no-shows might also rise, since agents would not sell their entire reserve stock of booked flights. This could disadvantage passengers on the waiting list for a specific flight. In this connection, the Committee welcomes the new IATA conditions of carriage (period of validity of a ticket, free baggage allowance, refunds, liability for damage).

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(1) Council Resolution of 2 October 2000 on the rights of air passengers, OJ C 293, 14.10.2000, p. 1.

(2) Council Directive 93/13/EEC of 5.4.1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

(3) Opinion of the Economic and Social Committee on the Proposal for a Council Directive on unfair terms in consumer contracts (OJ C 159, 17.6.1991, p. 34).

3.9. The rule on the sequential use of flight coupons is part of the product and price structure. It enables account to be taken of different market conditions and currency areas. More time-consuming indirect flights can be made attractive by making them cheaper than non-stop services. Dispensing with this rule would remove company control over pricing. This also applies to the reverse use of outward and return flight coupons. Incidentally, this arrangement is also provided for under the IATA's conditions of carriage.

3.10. The Committee fully supports the call for universal standards for the carriage of disabled people across the entire system. The Committee feels it is important that universal standards also apply to international journeys. These standards should be included in any move to align transport conditions on North Atlantic routes.

3.11. The Committee endorses Commission moves to improve the rights of disabled people and, for example, to introduce legislation providing them with assistance to and from the aircraft free of charge or ensuring that the cost thereof is covered. The Committee welcomes uniform and transparent rules on restrictions placed on the carriage of disabled people for safety reasons.

3.12. The Committee feels that the information to be provided to air passengers under the Commission proposal should be as comprehensive as possible.

3.13. As for the proposed voluntary commitment to ensuring baggage delivery within a given time, a distinction must be made as to the service provider. This is partly the airport, which is responsible for infrastructure in particular, but in some cases it is the airline. The Commission is therefore asked to find a voluntary solution with the actual party responsible for baggage delivery, which will improve matters on this front. A counter-objection to the call for higher limits on liability for baggage is that this issue will be covered under the Montreal Convention. In the light of the expected ratification of the Montreal Convention, the Committee considers that a voluntary commitment to apply this convention straightaway would make sense and be in the consumer's interest.

3.14. The Committee welcomes the work of the ACI (Airport Council International) to develop standards for European airports. Realistically, as with all transport operations, compliance with these standards cannot be expected at absolute peak times, such as the start of holiday periods. In any case, airport design standards such as transfer times, walking distances etc. are contingent on local conditions and cannot be laid down in an arbitrary way. Capacity cannot be increased at will. The Committee thinks it would be useful for each airport to indicate the voluntary services it offers.

3.15. The Committee feels that the inconvenience caused by delays cannot be equated with the problems caused by cancellation or denied boarding. Minor delays should not in principle trigger the payment of compensation. However, a reduction in the fare should be considered where a long delay is demonstrably the fault of the airline. On the other hand, passengers denied boarding because of overbooking must be compensated. It is essential to care for passengers while they are waiting — an obligation which should be made incumbent on airlines. The right to a fare refund should continue to apply only in the event of non-carriage.

3.16. The Committee shares the Commission's view that, in the case of delays, it is difficult to pass on the costs involved to the responsible party. However, in accordance with the principle that whoever is responsible pays, it should be possible to claim compensation from the party which has caused the delay if this can be proved. In air transport, safety must nevertheless always come first in any commercial decision.

3.17. The standardisation in passenger care sought by the Commission should be secured by introducing legislation on minimum standards. The Committee feels, however, that the Commission should aim for a high level of passenger care and should call on airports and airlines to make improvements on this front, inter alia by concluding voluntary agreements.

3.18. Consumer reports are to be drawn up to make airline and airport performance standards more transparent. The example given is that of the United States. The USA is a homogenous market. In the EU, on the other hand, there is much less market comparability. Hence, a comparison can be made only of equivalent airline and airport services for which the airlines and airports themselves are responsible. The Commission should ensure a fair procedure if its aim is to make performance standards more transparent and to offer passengers the fullest information possible.

3.19. Little would be gained from providing data on the proportion of low-price tickets. In addition to normal economy fares, a whole range of special fares is offered on a seasonal basis only. On each route, the proportion of lowest-fare tickets varies since this is a sales management tool designed to fill any residual capacity. The transparency being called for with regard to fares is difficult to implement meaningfully, because fares change almost daily. However, despite these difficulties, the Committee feels that passengers should be given as much information as possible in a way that is as simple and transparent as possible.

3.20. The Committee supports the disputes settlement scheme proposed by the Commission if a practicable procedure can be found.

3.21. Any passengers' organisation must have legitimate credentials, i.e. it must be representative of the consumer. A suitable proposal to this effect has not yet been presented. Consumer associations should therefore be involved in the search for appropriate machinery to represent air passengers' interests.

4. **Concluding remarks**

4.1. The Committee backs the Commission's intention to improve the protection of air passengers' interests.

4.2. The Committee feels that legislation should be enacted laying down minimum requirements for air passengers' inalienable rights and that airlines and airports should enter into voluntary agreements which supplement this legislation. The voluntary agreements by airlines should certainly be in place by May 2001. If voluntary agreements by airlines and airports fail to address consumer rights adequately, the Committee feels that the entire field should be regulated by legislation.

4.3. Both voluntary and statutory arrangements must make consumer rights and fares more transparent. The rights of consumers affected by overbookings (denied boarding) must be improved.

4.4. The Committee supports the blanket transferability of air tickets, whereby steps must be taken to ensure that the conditions governing special fares cannot be systematically circumvented by 'phantom bookings' which are then passed on to late bookers. The Committee also welcomes the new IATA conditions of carriage (period of validity of a ticket, free baggage allowance, refunds, liability for damage).

4.5. The Committee endorses Commission moves to improve the rights of disabled people and, for example, to provide them with assistance to and from the aircraft free of charge or to ensure that the cost thereof is covered.

4.6. The Committee feels that the Commission should ensure a fair procedure and compare equivalent services in the consumer reports it is planning in a bid to make airline and airport performance standards more transparent.

4.7. The Committee supports the disputes settlement scheme proposed by the Commission if a practicable procedure can be found.

4.8. The Committee feels that consumer associations should be involved in establishing machinery to represent air passengers' interests.

4.9. The Committee feels that this would serve both the Commission's aims and the interests of consumers, workers and employers in Europe.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Internet Top Level Domain ".EU"'

(2001/C 155/03)

On 15 January 2001 the Council decided to consult the Economic and Social Committee, under Article 156 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 6 March 2001. The rapporteur was Mr Morgan.

At its 380th plenary session of 28 and 29 March 2001 (meeting of 28 March) the Committee adopted the following opinion by 97 votes to one.

1. Introduction

1.1. The Economic and Social Committee is pleased to give its support to the proposal for a Regulation of the European Parliament and the Council on the implementation of the Internet Top Level Domain '.EU'. The ESC views this initiative as an essential element of eEurope [1].

1.2. The Regulation charges the Commission with the implementation of the .EU Top Level Domain (TLD), sets the conditions for such implementation, including the designation of a Registry, and establishes the public policy framework within which the Registry will function.

1.3. Detailed technical and policy preparations have been made by an Interim Steering Group (ISG) drawn from the existing European Community Panel of Participants (EC-POP) [2].

1.4. Particular attention has been paid to the work of the ISG, including, for example, its analysis of the eventual operational and technical characteristics of the Registry, contractual relationships between the Commission and the Registry and the options for the form that organisation could take.

2. The Registry

2.1. The Registry will ensure three essential functions:

a) Being the legal entity responsible for the Registry.

b) Implementing public policy rules, policies and procedures relating to the .EU TLD included in the regulation or adopted by the Commission according to the consultation period procedure provided by the regulation.

c) Organising, administering and managing the .EU TLD, including the operations of maintenance of databases, registration of domain names, running the name servers and dissemination of TLD zone files.

2.2. The Registry shall be a not-for-profit organisation operated in the public interest.

2.3. The proposals of the ISG report are very pertinent to the establishment of the proposed Registry (see chapters 2 and 3). In particular, the Committee endorses the proposals in section 3.4 relative to the selection of Registrars.

2.4. The ESC agrees the 'characteristics of the Registry' and 'obligations of the Registry' as defined in Articles 2 and 3 of the proposed Regulation.

3. Public policy framework

3.1. Subject to certain safeguards the detailed registration policy will be determined by the Registry in consultation with the Commission and according to the contractual arrangements. Relevant safeguards would include, for example, the respect of the applicable Community and national laws, and of technical and operational 'best practice' as determined from time to time by ICANN (Internet Corporation for Assigned Name and Numbers) and IANA (Internet Assigned Numbers Authority). The available options for the Registry's registration policy are discussed in the ISG report, including a discussion of the options for the creation of generic second level domains [3].

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(1) OJ C 123, 25.4.2001.

(2) 'The Dot EU TLD Registry Proposal'; http://www.ec-pop.org/1009prop/index.htm.

(3) See also COM(2000)202 final 'The Organisation and Management of the Internet — International and European Policy Issues 1998-2002' of 11 April 2000.

3.2. In this context the ESC notes that the Commission is currently examining the following questions:

a) Definition of the name space reserved for the use of the EU institutions.

b) Reservation of names associated with the European Union in all relevant languages.

The ESC will communicate its requirements to the Commission.

3.3. The ESC supports the regulations relating to 'the public policy framework' detailed in Article 4.

4. General comments

4.1. The ESC approves the proposal that the Commission shall be assisted by the Committee that is to be established by the proposed directive on a common regulatory framework for electronic communications networks and services [1].

4.2. The ESC endorses the proposal that all rights, intellectual property rights, relating to .EU TLD shall be retained by the Community.

4.3. The ESC supports the proposal that financial appropriations are needed to enable the Commission to maintain policy control over the Registry and endorses the sums proposed.

4.4. The ESC would expect to be consulted on future developments of the .EU TLD Registry.

5. Conclusion

5.1. The ESC welcomes the .EU TLD initiative of the Commission and supports its speedy implementation, taking into full consideration the recommendations of the ISG.

[1] COM(2000)393 final; OJ C 123, 25.4.2001.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'European policy on crossfrontier cooperation and experience with the Interreg programme'

(2001/C 155/04)

On 11 July 2000 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on European policy on cross-frontier cooperation and experience with the Interreg programme.

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 13 March 2001. The rapporteur was Mr Barros Vale.

At its 380th plenary session (meeting of 28 March 2001), the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. The present opinion is intended to provide an analysis of the practical experience to date of implementing the Interreg Community Initiative on crossfrontier cooperation in order to assess the effectiveness and efficiency of the programme with a view to introducing corrective measures in future.

1.2. In December 1999, the Committee had the opportunity to express its views on the Commission proposal on the Interreg III [1] programme in an opinion [2], but lack of time then means that a supplementary study of previous practical experience in implementing this kind of Community Initiative is now called for, which is the reason for drawing up the present opinion.

1.3. In drawing up this document, the regional bodies responsible for managing the programme in the Member States, as well as a variety of final operators, were consulted on their views and experience. The concerns which emerged, combined with the results of the hearing held on 19 December 2000 and a questionnaire, form the basis of this document.

2. General comments

2.1. The Committee notes the clear distinction between more and less developed Member States as regards the various stages of the programme, from conception to the type of projects, and including management and the procedures used. Opinion on the overall functioning and success of Interreg I and II is thus divided into two main camps, corresponding to the more and less developed and/or centralised countries.

2.2. Another aspect of the programme noted by the Committee are the high demands placed on the promoting bodies; promoters require a considerable amount of working experience, particularly as regards the implementation, monitoring and management of projects, especially cooperation projects. Although understandable and desirable, this requirement effectively excludes newer bodies which have not yet proven themselves fully from drawing up and submitting projects, some of which are of high quality.

2.3. The Committee feels that the Commission should establish simpler procedures to allow newer bodies access to the programme, otherwise we will continue to see the same institutions promoting cooperation projects to the exclusion of others which might be equally or more valid.

2.4. The Committee noted that there are projects where the promoters and bodies involved made substantial investments prior to submitting an application to Interreg and these investments were not accounted for in the application. The Committee feels that these bodies should be compensated retroactively for intangible costs incurred in the preparation of the project, even though the investments were made before the application was submitted, provided there is proof that such investments related to the project in question and did not infringe the Commission's general eligibility rules. Disregarding these sums may exclude projects which require the investment of own resources prior to application, such as studies, because the promoters have limited financial resources and are unable to take on the costs involved.

[1] COM(1999) 479 final.
[2] OJ C 51, 23.2.2000, p. 92.

2.5. Another point noted by the Committee is the lack of sufficient information on the programme and its functioning provided by the public authorities of the Member States and the limited amount of time allowed for this to filter through. Although it is distributed, information takes too long to reach project promoters, which leads to delays in implementing the programme. The Committee therefore feels that the Member States should make a greater effort to provide the end beneficiaries with information in good time.

3. **Specific comments**

3.1. A number of important points covering the various stages and components of the programme emerge from the analysis of past experience. The Committee feels that these should be given appropriate consideration by the Commission:

3.1.1. Effective and appropriate involvement by the various regions taking part in the same project, particularly with regard to the input of the various regional players

3.1.1.1. Some regions have 'cross-border agencies', bodies with responsibility for dealing with the various aspects of cross-border issues, and in particular, for promoting cooperation between border regions. These are composed of a vast range of representatives of regional operators. In such regions, the role played by these agencies has been fundamental, both in terms of procedure, and chiefly in terms of the regions' effective involvement in projects which have a clear relevance for them.

3.1.1.2. In countries where no such agencies exist, the difficulties involved are greater, as promoters have much less of a framework within which to initiate and monitor the programme, making it difficult to identify potential partners on the other side of the border. This often results in the selection of a partner with different characteristics, particularly as regards its financial capacity, which inevitably leads to regions having differing levels of involvement in projects.

3.1.1.3. In many cases, it seems to be particularly difficult to involve the various regional operators because of the absence of a cross-border coordination body.

3.1.1.4. Judging by the experience of regions which do have cross-border agencies, the advantages such agencies bring are clearly apparent. It would well behove the Commission to look into this issue with a view to promoting the creation of such agencies before the programme is implemented.

3.1.1.5. The lesser, or greater, involvement of the regions is determined by their specific interests, but it also depends on political interests at national level. These determine the type of projects approved in all cases where the decision-making process is too centralised.

3.1.1.6. The Committee feels that regional operators should be effectively involved, taking a leading role in projects between regions within the EU, with input coordinated at national level in the case of regions bordering onto the EU, as the experience of cooperation in such cases is still very limited or sometimes non-existent.

3.1.2. Definition of eligible regions, the (in)appropriateness of the method used and the consequences of this definition for the selection of projects

3.1.2.1. It seems to the Committee to be taken as read that eligibility is determined on the basis of NUTS, in order both to simplify procedures within the Commission and to allow use of an established and well-used nomenclature which is familiar to all Member States.

3.1.2.2. However, the inappropriateness of using NUTS to define areas eligible for Interreg becomes apparent in some cases, where relevant and high-quality projects are excluded because the promoters are not based within the eligible areas.

3.1.2.3. The Committee therefore feels that the criterion to be applied should be the region(s) benefiting from the project, that is to say, the project would meet the regional eligibility criterion as long as the benefits accrued to eligible regions. This procedure was used during previous programmes for some regions, with quite favourable results.

3.1.2.4. However, the nature of actions should be guaranteed so as not to distort the principles and objectives of the programme, which is cross-border cooperation.

3.1.3. Scope of action under different strands vs. the horizontality of projects

3.1.3.1. The Committee noted the existence of horizontal projects which did not 'fit' perfectly into any strand, but instead had features which met the specifications of more than one strand. This horizontality resulted in most cases in the project not being adopted, or being split up into several different projects, each applying under the relevant strand. This demonstrates the inflexibility of the selection criteria.

3.1.3.2. The Committee feels that such procedures in no way contribute to the success of the programme and sometimes serve to distort the objectives of projects, possibly even prejudicing their quality. (It should be borne in mind that the difficulty is often compounded by having to manage several different projects instead of a single, integrated one).

3.1.3.3. The Committee also feels that creating obstacles for the submission of applications and the analysis of projects is discouraging for promoters, as it further complicates a procedure which is already slow and complex. Once again, projects of high quality and relevance with great potential for success in terms of Interreg objectives may be excluded.

3.1.3.4. Here too there is a clear need to build greater flexibility into the project selection criteria so as not to reject valid and relevant projects.

3.1.4. Obstacles created by differing economic models, legal provisions, administrative regulations and procedures between regions participating in the same project

3.1.4.1. Judging from past experience, the Committee noted that differing legislation from one country to another makes the projects more difficult to implement. The Committee thinks that those responsible for implementing the programme should be prevailed on to lay down common standards allowing the use of coordinated guidelines and procedures across the Member States, so as to make procedures as effective as possible, especially as regards the preparation of applications, assessments and decisions on the projects receiving support.

3.1.4.2. This is also true of economic models, where the differences which exist impose constraints, particularly by rendering it impossible to find common routes to development so as to be able to define truly common projects.

3.1.4.3. At the project analysis and selection stage, the Committee noted that the different procedures and rules applied by the various countries led in some cases to hold-ups and sometimes even to projects being abandoned.

3.1.4.4. The Committee feels that, in order for there to be effective cooperation, it is advisable to establish common standards to facilitate relations between regions. The Commission must therefore promote the approximation of the processes and procedures adopted in the regions, and even of legislation. Promotion by the Commission of agreements between border regions with a view to establishing common rules under Interreg is a possible option which has already been successfully tried in some regions.

3.1.4.5. The Committee also noted that the situation is even more serious in regions which border onto the EU inasmuch as there are already rules and standards applying to all Member States which are not shared by neighbouring countries. The Committee feels the Commission should make greater efforts with respect to these regions so as to make cooperation effective.

3.1.4.6. The Committee feels that, by making it possible to define common rules for project management, having joint cooperation mechanisms (especially for programme management, payment and support) would address the differences which exist, thereby increasing the effectiveness of the programme.

3.1.5. Intervention by the Commission at the various stages of the programme, from its conception to the selection and monitoring of projects

3.1.5.1. The Committee feels that decentralising Interreg procedures brings benefits in terms of more effective and efficient implementation of the programme. The Commission and Member States' central administrations should not intervene in the selection of projects, but focus instead on the planning stage of the programme.

3.1.5.2. At the same time, excessive intervention by Member States' central administrations has the effect of inhibiting regional players.

3.1.5.3. The Committee nevertheless feels that in some circumstances the Commission should play a more pronounced role in order to ensure adherence to the programme's true objectives, making it difficult for funds to be used for other purposes, more especially by the central administrations of the Member States.

3.1.5.4. It would seem to be important for the Commission to have greater involvement at the planning stage as Interreg is also a vehicle for implementing European policy and principles which must at all times reflect the broad directions of the EU.

3.1.5.5. The Committee also feels that the Commission should have a greater presence in coordinating and advising those responsible for the programme at regional level.

3.1.6. Speed of the programme, from planning to the final stage of project implementation

3.1.6.1. Looking at past experience of Interreg implementation, the Committee notes that there are delays at various levels which mean that procedures are slower than necessary or desirable.

3.1.6.2. As information on the programme has not been provided on time, there have in the past been delays in implementing the programme. The Committee would reiterate that it is vital to ensure that Member States are provided with quality information in good time.

3.1.6.3. Another of the factors leading to delays are procedural differences from country to country. The Committee once again calls on the Commission to focus on this fact and the need to address it.

3.1.6.4. The greatest delays occur at the stage of submitting projects because of procedural differences between regions, as already mentioned, and at the stage of inspection for the payment of funding.

3.1.6.5. The Committee feels that, in addition to a single management authority, it would perhaps be desirable to have a single payment authority so as to speed up procedures.

3.1.6.6. It should also be pointed out that, in countries where decisions are taken closer to the centre, the time needed for project approval is even greater. The Committee feels that this is another reason for the programme to be decentralised further.

3.1.6.7. It should also be mentioned here that the slowness of procedures necessarily shortens the time available for project implementation, to the detriment of the whole programme. The Commission should therefore give consideration to these points with a view to speeding the programme up and making it more effective in the process.

3.1.7. Distribution of Interreg funding among different types of promoters

3.1.7.1. Throughout the implementation period of previous Interreg programmes, the Committee noted that central administrations accounted for a large proportion of the total number of project promoters in the less developed countries.

3.1.7.2. The Committee feels that Interreg applications from central administrations should be rigorously assessed, in order to provide transparency regarding the manner in which the funds are used, as such projects often distort the prime objective of the programme, which is cross-border cooperation. It is vital that the essential objectives of Interreg do not take second place to the priorities of central administrations. Once again, the problem is more acute in those countries where management of the programme is more centralised.

3.1.7.3. Attention should also be focused in this context on the enormous difficulty encountered by newer private-sector bodies in gaining access to the programme, rejected as they often are because of their limited experience in the management, monitoring and implementation of projects. The Committee therefore feels it is important, as mentioned earlier, that simpler procedures are applied when analysing newer promoters and when monitoring, maybe more closely, the projects promoted by them.

3.1.8. Continuity of projects beyond the end of Interreg

3.1.8.1. The Committee notes the high mortality rate of projects financed by Interreg once the programme is over.

3.1.8.2. It also notes that some of the projects which continue after the end of the programme have recourse to public funding.

3.1.8.3. The Committee feels that the capacity of a project to be self-supporting should be a relevant factor in the selection of projects. It is well known that allowing 'subsidy-dependent' projects to be implemented frees promoters of any responsibility. This in no way contributes to the development of a capacity for initiative and for effective cooperation in concrete terms.

3.1.8.4. It is the Committee's view that Interreg must serve to create structures, in this case in border regions, with the capacity to continue the work of cooperation beyond any Community programme or public funding by being self-supporting. This will give the programme a more lasting impact.

3.1.9. Involvement of the socio-economic partners in the various stages of the programme

3.1.9.1. The Committee has observed that the socio-economic partners are not involved to a sufficient degree in a number of Member States, from conception to practical implementation of the programme.

3.1.9.2. In order for the programme and the projects it comprises to be really in touch with the social and economic reality it is intended to serve, the Committee feels that the systematic involvement of the socio-economic partners in the various regions concerned is essential. The Commission should ensure that the Member States make this involvement a reality.

4. **Conclusions**

4.1. Some important points emerge from analysis of past experience of INTERREG implementation, which the Committee wishes to highlight:

4.1.1. In the various aspects of the programme and its implementation, a clear distinction is apparent between more and less developed countries, in that the problems of implementing and managing the programme are more acute in the latter category. The Committee feels that it is vital for the Commission to focus its attention on this issue with a view to preparing the ground for the less developed countries to implement the programme correctly. This would have a direct impact on the efficiency and effectiveness of the programme.

4.1.2. The second point concerns the lack of flexibility in project selection criteria which, as noted earlier, may exclude valid projects and promoters with major potential. The Commission should look into this issue and build greater flexibility into the programme.

4.1.3. The decentralisation of the programme is also an important point, as it enables regional players, who have a better knowledge of the realities in the regions where they are based, to manage matters more effectively and take a more direct and committed role in cooperation. Greater decentralisation also pre-empts the problem of Interreg objectives being distorted by central administrations.

4.1.4. The Committee feels that cooperation is increasingly a factor for success, and the EU is no exception. Promoting a rapprochement of regions divided by borders throughout history is a key element when setting out to achieve a true union of countries. Here the Committee would draw attention to the conclusions and analysis set out in its recent opinion on crossfrontier cooperation and Prism [1]. Interreg is an important and powerful instrument for the achievement of these objectives. Careful and thoughtful planning, involving regional players from the start, is fundamental, and consideration must also be given to the diversity between countries, whether in the economic models they follow, their legislation and procedures or even in their levels of development.

[1] OJ C 116, 20.4.2001.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe'

(2001/C 155/05)

On 11 September 2000 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 March 2001. The rapporteur was Mr Bento Gonçalves.

At its 380th plenary session of 28 and 29 March 2001 (meeting of 28 March), the Economic and Social Committee adopted the following opinion by 100 votes in favour and one abstention.

1. Introduction

1.1. The draft European Parliament and Council Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe [1] (ICZM) is based principally on the Communication from the Commission containing the Report on the progress of the ICZM Demonstration Programme [2], and on the Communication from the Commission on ICZM — A strategy for Europe [3].

1.1.1. The recommendation puts forward proposals on integrated national and Community strategies for ICZM, focusing on the Treaty objectives. The primary aim is to promote sustainable development while conserving available resources as part of an environmentally-aware approach.

1.1.2. The Demonstration Programme covered a number of projects implemented in 35 representative coastal regions in Europe and six horizontal thematic studies.

1.2. *Historical importance*

1.3. Throughout history, coastal zones have attracted human settlement and sustained development. They continue to offer considerable development potential to modern societies, performing major, multi-faceted functions: agricultural production, fish farming, fishery catches, leisure activities, nature and biodiversity conservation, biotechnology-based production, etc.

2. General comments

2.1. The draft recommendation highlights:

a) the social, economic, environmental and cultural importance of coastal zones for the EU;

b) the continuing and severe deterioration of Europe's coastal zones, as demonstrated by the European Environment Agency's report;

c) the need to implement an environmentally sustainable, economically equitable, socially responsible and culturally sensitive management scheme for such zones in order to maintain the full integrity of these resources;

d) the insistence of all earlier Commission communications on this subject [4] that integrated management must ensure that all the relevant players are involved;

e) the need to ensure coherent actions at European level, including cooperative interregional action, to help resolve problems affecting cross-border coastal zones, integrating them for this purpose into actions under the Interreg Community initiative;

f) earlier Council resolutions [5] identifying the need for concerted European action;

g) the Commission communication's proposal [6] for an ICZM Demonstration Programme, which has in the meantime been implemented;

(1) COM(2000) 545 final.
(2) COM(1997) 744.
(3) COM(2000) 547 final.
(4) COM(1997) 744 final and COM(2000) 547 final.
(5) Council Resolutions 92/C 59/01 and 94/C 135/02.
(6) COM(95) 511 final.

h) the fact that in accordance with the subsidiarity and proportionality principles set out in Community legislation, and given the diversity of conditions in the coastal zones and the relevant legal structures in the Member States, the action requires Community-level guidance in order to be effective.

2.1.1. ICZM is a dynamic, on-going and interactive process aimed at promoting sustainable management of coastal zones, by seeking to strike a lasting balance between their inherent ecological vulnerability and all the benefits of exploiting their various aspects.

2.1.2. The recommendation and the communication present a European strategy to flesh out the content of the EU Demonstration Programme [1], on which the Committee commented in its opinion of 11 July 1996 [2]. The comments on the present proposal carry forward the Committee's positions on the Demonstration Programme, which arose from an initiative by, and cooperation between, the Environment, Fisheries and Regional Policy DGs, and involving the Joint Research Centre.

3. **Specific comments**

3.1. *A Common Vision (I)*

3.1.1. The Committee generally agrees with this point. It would, however, suggest broadening its scope:

a) to ensure that economic opportunities are available to the zones in question and to promote initiatives leading to lasting jobs, provided that objectives reflecting the unique environmental features of coastal zones and their biophysical fragility are adhered to;

b) to ensure that action to exploit these zones economically respects the social and cultural identity of local communities;

c) to guarantee that adequate amounts of open land are set aside and developed for future enjoyment by the entire community, under balanced and sustainable environmental and landscape policies which also give consideration to the use of environmental exploitation approaches;

d) given the physical and environmental vulnerability of coastal zones, to promote and safeguard the integrity of the ecosystem, and sustainable management of both fish stocks on the continental shelf and the flora and fauna of the coastal zone and surrounding areas;

e) to extend the integrated management approach so as to incorporate the more remote inland sea areas and the hinterlands of coastal areas, throughout Europe.

3.2. *Principles (II)*

The Committee would make the following comments:

a) the Commission emphasises that the coastal zone management model must be applied in a broad, long-term perspective, drawing in all the social and economic players in these zones. The duration and impact of phenomena particular to coastal zones are not immediately clear. Their effects are also influenced by upstream human actions. Climate change too can trigger reactions which jeopardise the dynamics and stability of coastal zones, as in the case of the currently rising sea levels, caused by higher temperatures, which disrupt the coastal equilibrium;

b) the proposal argues that coastal zone management should be interactive and adaptive in response to new data generated by analysis of how coastal zones work;

c) coastal zone phenomena are influenced, or even determined, by upstream activities. Management strategies must therefore take account of local factors: economic players, local populations, existing ecosystems and their level of stability/fragility, possible upstream influences, aggressive impacts within the coastal zone (including transport of polluting or hazardous materials; overfishing; and discharge of effluents harmful to biodiversity);

d) all these factors must be addressed and quantified in input/output terms in order to plan coastal zone activities with the involvement of all the relevant players;

e) the management model, while essentially being environment-based and taking account of the fragility and vulnerability of coastal zones, must not stray too far from economic and social aspects, as mentioned earlier. An example of this is the Rance estuary model, which

[1] COM(95) 511 final.
[2] OJ C 295, 7.10.1996.

harnesses wave power to generate electricity and also uses the silt to produce raw materials for the building industry and organic compost fertilisers for agricultural use. Other comparable European experiences might be identified, as the related know-how should be brought to bear in other areas (e.g. the Netherlands' experience with using advanced technologies to restore polders);

f) coastal zone management must be based on systems under which factors harmful to the physical environment, biodiversity or the balance of terrestrial and marine ecosystems can be monitored permanently. Appropriate analytical methods, satellite remote sensing systems and Geographical Information Systems (GIS) are essential tools in integrated management of coastal zones.

3.3. *National Stocktaking (III)*

3.3.1. The Committee suggests amending point 2 as follows:

'Stocktaking should cover all administrative levels (local, regional and national), as well as identify the responsibilities and functions of the "social partners" who are representative of citizens and their socio-economic organisations'.

3.3.2. In describing and analysing coastal areas, all aspects of overall regional development policies — including the rural element — must be explored and if possible brought into association: economic, social, research, education, vocational training and job creation, and resource and waste management policies.

3.3.2.1. All the data gathered must be processed with a view to an integrated approach to coastal areas, providing the foundations for a comprehensive policy helping to consolidate economic, social and environmental sustainability.

3.4. *National Strategies (IV), Cooperation (V) and Reporting (VI)*

3.4.1. The Committee generally welcomes the guiding principles as set out in the proposal. The future reports should also contain all physical and financial implementation indicators, including *ex-ante* and *ex-post* evaluations.

4. Recommendations/suggestions for consideration in formulating ICZM planning options

4.1. ICZM must be specially concerned with protecting water in both the sea and water courses flowing into it. Water is the sector which will come under the greatest human pressure, influencing the development of all socio-economic sectors. In consequence, management of water quality and its use as a resource will be one of the 21st century's strategic issues and must be taken on board in ICZM.

4.1.1. Climate change, triggered by rising ambient temperatures (the greenhouse effect), is increasing evaporation rates and loss of water reserves; the Committee considers that ICZM should look closely at the approach to water savings in rivers and up-stream reservoirs. This should include testing new crop systems which minimise water consumption.

4.1.2. Scientists acknowledge the close link between stormy sea conditions, floods and rising air temperatures, which will affect the territorial stability of coastal zones. The Committee believes that ICZM must include spatial planning and land-use standards which reflect these new circumstances, without prejudice to the need for a land-use policy for coastal zones.

4.2. There has been a marked rise in the use of marine plants and animals in biotechnological research for the treatment of a wide range of diseases. The Committee is convinced that ICZM should be largely directed to conserving marine organisms in coastal areas.

4.3. ICZM must be more than a political commitment: it should be put into practical effect. The Commission should implement long-term strategies incorporating economically, socially and ecologically sustainable development.

4.3.1. The Committee's view is that ICZM should also cover action aimed at restoring coastal zones, particularly through the reintroduction of wild birds and replenishment of marine fauna resources. Environmental control should be backed up with monitoring, and estuaries and other coastal zones should be cleared of pollution (examples of this are the restoration of the Tagus estuary and the surrounding wetland areas and the restoration of the Guadalquivir estuary).

5. **Conclusions**

5.1. The Committee recalls and repeats the conclusions of its earlier opinion on this subject [1], which remain valid.

5.2. Planning and development in coastal zones depends on a Community and national level approach to the process. A range of budgetary resources (Community and national) must be available for funding ICZM implementation. This will enable the funds, structural and otherwise, to be tapped, applying the additionality and complementarity principles.

5.2.1. The financial package for implementing coastal zone initiatives should be drawn from the Structural Funds and from Community initiatives such as Interreg [2], without adding to its overall volume, under a legal framework similar to that for the Cohesion Fund. Member State projects should be submitted in the form of sub-programmes, geared to the specific objectives of sustainable coastal zone management, as previously identified by the Demonstration Programme.

5.2.2. Partnerships should be encouraged, drawing in all the public and private sectors, through their sectoral associations (social partners and other citizens' organisations) with a view to interesting them in planned initiatives in coastal zones and their funding.

5.3. The Committee supports the creation of a Community-level management and coordination unit for future action in coastal zones, bringing together the various Directorates-General involved in the process on an intersectoral basis.

5.3.1. In addition, each Member State should set up its own national ICZM unit and corresponding monitoring committee, comprising representatives of the social partners and of the scientific community, to monitor project implementation within its territory and coordinating with other countries' management units at Community level.

5.4. Given the encouraging results of the Demonstration Programme [3], the Commission could have submitted more practical proposals to resolve the numerous problems which have already been identified, in order to ensure that current decisions do not restrict future options.

5.4.1. The manifold importance of coastal zones and their natural resources (sea- and land-based) means they have a key role to play in meeting the needs and aspirations of Europe's present and future population.

5.4.2. Measures restricting improper and intensive use must be put in place, as such uses exacerbate unsustainable pressures which are incompatible with coastal zones' ecological fragility.

5.4.3. The following means of control are proposed for this purpose:

— monitoring of the pressures brought to bear on these zones;

— adjusting land-use regulations in coastal zones so that urban development is kept within sustainable and environment-friendly limits and ensuring that large natural open spaces are preserved;

— establishing a clear and robust legal framework to deter improper use of coastal zones which would destroy their fragile ecosystems.

5.5. Clearer details are needed of the policies to be implemented by the Member States or third countries or regions with coastal zones sharing a border with the EU, or crossed by rivers which flow into such zones. The Committee considers the importance of training, information and dissemination of initiatives within ICZM to be evident.

5.6. The Committee considers that the establishment of an information exchange centre (of an observatory type) for countries with coastal zones should be promoted, as part of ICZM.

5.6.1. This forum should draw in the economic and social partners involved in coastal zone issues, including the scientific and research community, training bodies, local and regional authorities and representatives of each Member State's central authorities, to discuss all questions affecting these zones from every point of view, against a framework encompassing global objectives and concrete future action.

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(1) OJ C 295, 7.10.1996.

(2) Annex II of the Communication from the Commission to the Member States C(2000) 1101 of 28.4.2000.

(3) COM(1997) 744.

5.6.2. The Committee believes that all Member States involved in ICZM should prepare reports on the working methods adopted, the results of initiatives, the degree of involvement of the social partners, etc. The reports would be one of the sources of information for discussion at meetings of the information exchange centre.

5.7. The Committee therefore welcomes the work accomplished with the demonstration programmes and believes it should continue: the strategy to be employed should also comply with the overall guidelines of Council Resolution 94/C 135/02.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof'

(2001/C 155/06)

On 25 July 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 March 2001. The rapporteur was Mrs Cassina.

At its 380th plenary session (meeting of 28 March 2001), the Economic and Social Committee adopted the following opinion with 101 votes in favour, no dissenting votes and one abstention.

1. Introduction and content of the proposal

1.1. The Commission adopted the proposal on 24 May 2000, in accordance with the relevant Treaty provisions [1] and pursuant to the mandate of the Tampere European Council. The need for an instrument to handle mass influxes of displaced persons from third countries has been highlighted in recent years by the arrival of large numbers of displaced persons from Bosnia and Kosovo. However, the proposal — which implements a Treaty provision — seeks to do more than just respond to a particular set of events; in tandem with other proposed and/or adopted instruments, it seeks to equip the Union with a comprehensive policy on visas, asylum and immigration.

1.2. The proposal establishes a temporary, exceptional instrument to deal with mass influxes of displaced persons from third countries who are unable to return to their country of origin without risking their life, liberty or dignity. The proposal consists of a set of minimum standards, both procedural and substantive, and measures to ensure a balance of efforts between Member States in receiving displaced persons and bearing the consequences thereof.

1.3. The aims of the proposal are as follows:

— to guarantee that when Member States deal with mass influxes of displaced persons, their procedures and actions respect a minimum common standard, so as to avoid the risk of distorting the spontaneous choice of host country;

[1] The main legal basis is Article 63(2)(a) and (b) of the Treaty.

— to ensure that such persons are treated humanely and receive assistance and protection allowing them to recover from the traumas they have suffered, and to provisionally enter into social, cultural and human relations in the host country or countries, on the same footing as refugees;

— to prepare such persons for the return to their country of origin;

— to ensure that Member States' asylum systems do not become bogged down with requests;

— to show solidarity with Member States in the support of their reception efforts: firstly, by allocating financial resources from the European Refugee Fund (which provides inter alia for the funding of emergency measures in the event of mass influxes), and secondly, by distributing displaced persons among Member States on a voluntary basis and with their agreement;

— to flesh out and increase the effectiveness of measures proposed in the past but not fully implemented;

— to clarify the link between temporary protection and the areas covered by the Geneva Convention, safeguarding the full application of the latter and introducing arrangements for consultation and cooperation with the UN High Commissioner for Refugees (UNHCR).

1.4. The proposal defines the main terms used in the directive: displaced persons from third countries who are unable to return to their country of origin; refugees; unaccompanied minors; residence permit; and mass influx.

1.5. Decisions establishing temporary protection are to be adopted by the Council by a qualified majority vote, on a proposal from the Commission (which will examine requests from the Member States). In each case, the decision will establish the temporary protection of the displaced persons concerned in all Member States. The Council decision must include:

— a description of the specific groups of persons to whom the temporary protection applies;

— the date on which the temporary protection will take effect;

— declarations by the Member States, indicating in figures or in general terms their respective capacity to receive such persons, or stating the reasons why they are unable to receive them. A Member State may subsequently notify the Council and the Commission of any additional reception capacity.

1.5.1. When adopting the decision, the Council will assess the situation and the scale of the influx, and the advisability of establishing temporary protection. It will take into account the potential for emergency aid and action on the ground or the inadequacy of such measures, and will assess the information received from the Member States, the Commission, the UNHCR and other organisations concerned. The European Parliament will be informed of the decision.

1.5.2. Temporary protection will cease when the maximum total duration has been reached (one year, although it may be extended automatically by six-month periods to a total of two years) or at any time by Council Decision adopted by a qualified majority if the situation in the country of origin is such as to permit long-term, safe and dignified return, in accordance with Article 33 of the Geneva Convention. The European Parliament will also be informed of this decision.

1.6. Temporary protection is without prejudice to recognition of refugee status under the Geneva Convention. A displaced person enjoying temporary protection may apply for refugee status at any time while under such protection.

1.7. Member States' obligations towards persons enjoying temporary protection include:

— providing them with a residence permit and facilities for obtaining visas (free of charge);

— issuing them with a document, in the official language(s) of the country of origin, in which the provisions relating to temporary protection are clearly set out;

— authorising them to engage in employed or self-employed activities under the same conditions as refugees;

— ensuring that they have access to suitable accommodation and receive the necessary assistance in terms of social welfare, means of subsistence and medical care if they do not have sufficient resources;

— providing appropriate medical or other assistance to persons with special needs, such as unaccompanied minors or persons who have undergone physical or psychological violence or torture;

— granting minors access to the education system under the same conditions as nationals of the host Member State, and allowing adults access to vocational training, further training or retraining.

1.7.1. Until two months before the end of protection, and subject to verification of the agreement of the family members in question, persons may be reunited with their spouse or partner (if the host country treats unmarried couples in the same way as married couples), with unmarried dependent children (irrespective of whether they were born in or out of wedlock or adopted), with other dependent relatives, or with family members who have undergone particularly traumatic experiences or require special medical treatment.

1.7.1.1. The absence of documentary evidence of the family relationship must not be regarded as an obstacle in itself to family reunification. Ascertainment of a pre-existing stable relationship is deemed sufficient. If members of a family are in different Member States, the Member States are to authorise the family to be reunited in the host Member State of their choice.

1.7.2. Unaccompanied minors must have a legal guardian or be represented by an organisation which is responsible for the care and well-being of minors, or by any other appropriate form of representation. Provision will be made for such minors to be placed with adult relatives, with a foster family or in reception centres with special provisions for minors. Where appropriate, they may be placed with a person or persons who looked after them when fleeing. In the latter case, the Member States must establish that the minor and adult(s) concerned agree to this arrangement.

1.7.3. Member States must respect the principle of non-discrimination.

1.7.4. Persons enjoying temporary protection must be guaranteed access to the procedure for determining refugee status at any time until the expiry of the temporary protection. Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration. Refusal of refugee status does not prejudice the enjoyment of temporary protection.

1.7.5. When the temporary protection ends, the ordinary law governing protection, entry and residence of foreign nationals in the Member States becomes applicable. Member States must consider any compelling humanitarian reasons which may make return impossible. Special attention must be paid to persons who, on the expiry of temporary protection, still need medical or psychological treatment that should not be interrupted. Minors, too, should be allowed to complete the current school period. Voluntary return is to be encouraged; Member States must ensure that the decision to return is taken in full knowledge of the facts.

1.7.6. Member States must appoint a national contact point for administrative cooperation and must regularly and promptly provide data on the number of persons granted temporary protection.

1.7.7. Persons may be denied temporary protection if they are regarded as a danger to national security, or if there are serious grounds for believing that they have committed a war crime or a crime against humanity, or if exclusion clauses of the Geneva Convention apply. Exclusion decisions must be proportionate and open to appeal.

1.7.8. Member States are to lay down the penalties applicable to infringements of the national provisions adopted pursuant to the directive. Such penalties must be effective, proportionate and dissuasive.

1.7.9. The Commission is to present a report to the European Parliament and the Council no later than two years after the entry into force of Member States' transposition provisions. After this, a report will be submitted every five years.

2. **Comments**

2.1. The Committee warmly welcomes the proposal. It congratulates the Commission on the text which, although somewhat dense (as can be seen from the lengthy summary given above), establishes minimum, simple and transparent harmonisation of procedures and actions. The text is prompted by elementary respect for basic human rights and values and offers a proper framework for solidarity between Member States. As pointed out by the Tampere Council, there is a pressing need for a special temporary instrument to deal with possible mass influxes of displaced persons, establishing a common action platform for the Member States. The Committee hopes that the Council will approve the proposed text promptly without any significant amendments.

2.2. The Committee points out that the particular circumstances which led Member States to experience massive influxes of displaced persons now appear to have eased somewhat, and that efforts to stabilise the economic, social and political situation in the Balkans — inter alia with the support of the EU and its Member States — seem to be bearing fruit. However, a recurrence of events similar to those seen in

the second half of the 1990s cannot be ruled out. The proposed instrument would be vital even if such events occurred at a greater distance from the EU. In short, the proposed instrument is not a 'Balkans Directive', but is geographically and historically neutral, to be deployed as and when it is needed.

2.3. Although the Committee notes and understands that the proposal only applies to people fleeing from political situations, it thinks there might also be a case for a directive providing temporary reception and protection mechanisms for persons displaced by natural disasters.

2.4. The Committee is pleased that the decision regarding the existence of a mass influx is to be taken by the Council, as an acceptance of joint responsibility at that level is the only way to ensure practical and effective action. This is particularly important because such events are always sudden and dramatic, and the decision has to be taken rapidly (e.g. a maximum of three months after the Commission proposal), albeit with due thought. Qualified majority voting is thus the appropriate procedure, as unanimity could require protracted negotiations between Member States and could also lead to an effective veto by a single state.

2.5. The Committee emphasises and approves the fact that the proposed directive is minimal in nature, i.e. it only defines the main procedures, actions and criteria that have to be harmonised, leaving Member States plenty of flexibility in their practical measures.

2.6. The Committee warmly appreciates the fact that the proposed directive makes a clear distinction between temporary protection and asylum policy, while allowing persons in receipt of temporary protection the option of applying for refugee status. This option — which remains open throughout the period of temporary protection — enables the persons concerned to consider the matter calmly, in full possession of the facts, before taking a decision. It will also ensure that Member States' asylum systems and the future Community asylum system are not inundated with a sudden flood of requests. Displaced persons often apply for refugee status because they have no clear alternative, even though such status may not meet their practical needs or expectations. In such cases, if refugee status is granted, red tape subsequently makes it difficult for the person concerned to return home promptly if the general conditions in the country or region of origin change for the better.

2.7. It is important that Member States be obliged to issue a document in the official language(s) of the country of origin, clearly setting out the rules governing temporary protection. The Committee notes however that often, on entry, the persons concerned may face further language problems, for example if they only speak regional languages or dialects. The Member States should cater for such eventualities by preparing provisions to help all displaced persons clearly understand their rights and duties so that they can immediately embark on an informed, responsible integration process.

2.8. The Committee greatly appreciates the concern for unaccompanied minors, as such cases are increasingly common. Their implications are particularly dramatic in emergency situations, in view of both their root causes and the dangers faced by such minors when fleeing their countries or after reaching (often with some difficulty) the EU. It is especially important that Member States ensure that minors who are put in the care of private individuals, pursuant to Article 14(3) in particular, do not fall prey to trafficking or exploitation rings.

2.9. Although the proposed instrument is temporary, it is also very important that the directive includes an obligation to promote integration, albeit only over a limited period. Access to employment, education and training is useful for persons receiving temporary protection because it enables them to provide for their needs (at least in part) and acquire skills and also to become acquainted with the social and cultural life of the Member States and overcome the traumas they have suffered. In order for access to be effective, all the necessary instruments and facilities must be provided to help them learn the language of the host country. For the EU too, integration is an investment in human resources which creates a network of human contacts and awareness. When people who have received temporary protection return to their country of origin, they can pass on their knowledge and provide a potential reference point for relations between societies in the EU Member States and in the countries of origin. In this way too, the directive makes a partial but direct and substantial contribution to the EU's peace, security and international relations policy. The rules on family reunification in the context of temporary integration seem both fair and prudent.

2.10. The Committee is pleased that the directive includes measures regulating the return home and laying down minimum, clear and farsighted provisions.

2.11. Turning to the question of practical solidarity between Member States, and welcoming the linkage with the European Refugee Fund, the Committee particularly appreciates the fact that the distribution of displaced persons between Member States is to be based on an extremely simple and transparent mechanism of declared availability, alerting everyone to their responsibility towards people in great need while also fully respecting the practical requirements of the Member States and considering the wishes of the persons concerned. The pass to be used for the transfer of persons between Member States (reproduced in Annex 2) is a model of simplicity and transparency, which could usefully be borne in mind in other situations.

2.12. The Committee thinks that the directive should make it obligatory (and not merely optional) for Member States to give minors enjoying temporary protection access to the education system, without prejudice to the need to provide these minors with the requisite linguistic tools.

2.13. The Committee is concerned that the duration of protection (one year, with possible extension up to a maximum total of two years) seems insufficient. It thinks that by way of exception in special cases, it might have been more appropriate to allow the deadline to be extended for a further short period. Displaced persons come from regions suffering war or conflict, or from countries whose systems threaten their life, personal integrity or dignity, and such situations are unlikely to change so quickly as to allow return 'in a secure and dignified manner' as mentioned in Article 21(1). However, as the ordinary law on protection, entry and residence of foreign nationals in the Member States becomes applicable when temporary protection ends, the Committee calls on Member States to take great care over the transition from the common legal system to the national legal system, particularly when the conditions and infrastructure in the country or region of origin are not yet stable or safe enough to receive the persons concerned. An extension of protection (or the establishment of another legal residence or protection system) based on national rules should always be possible in such cases.

2.14. The Committee hopes that mass influxes of displaced persons will be handled with the requisite synergies. In addition to cooperation through regular consultations with the UNHCR and the other relevant international bodies, Member States should ensure that the social partners and NGOs at national and local level shoulder their share of responsibility. This is particularly important when integrating displaced persons into employment, training or education, but also in order to organise their entry into appropriate accommodation and identify any specific needs, especially in the health field. Experience shows that crisis management in the past benefited greatly from the activity and competence of these bodies which, in some cases, completely took over reception duties and effectively made up for the administrative and regulatory shortcomings of the Member States.

2.14.1. The Committee calls on all Member States, in cooperation with the bodies mentioned in the preceding point, to make advance provision for emergency infrastructure that can be activated at the appropriate moment to handle mass influxes, particularly as regards:

— a network of interpreters who can be called on as soon as the influx starts;

— the introduction of simpler and more transparent administrative procedures;

— availability of accommodation;

— health care, psychological help, and general advice and guidance;

— access to education and training;

— help with integration.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the activities of institutions for occupational retirement provision'

(2001/C 155/07)

On 27 November 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

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 14 March 2001. The rapporteur was Mr Van Dijk.

At its 380th plenary session of 28 and 29 March 2001 (meeting of 28 March), the Economic and Social Committee adopted the following opinion by 79 votes to 27 with 10 abstentions.

1. Background

1.1. There are large disparities in the EU with regard to retirement provision for workers. The system can in general be said to have three pillars. The first of these is the state-financed pension. The second is the supplementary pensions to which many workers subscribe through their employment. The third pillar enables citizens to build up their pension entitlements further on an individual basis [1].

1.2. The relationship between the various pillars varies from one Member State to another. This directive applies exclusively to institutions providing supplementary pensions, i.e. the 'second pillar'. It does not apply to:

a) institutions managing social security schemes that are covered by Council Regulation (EEC) No. 1408/71 [2], or are listed in Annex II thereto, and Council Regulation (EEC) No. 574/72 [3];

b) institutions that are covered by Council Directive 79/267/EEC [4], Council Directive 85/611/EEC [5], Council Directive 93/22/EEC [6] and Directive 2000/12/EC of the European Parliament and of the Council [7];

c) institutions that operate on a pay-as-you-go basis;

d) German 'Unterstützungskassen' and other institutions operating in a similar way;

e) companies using book-reserve schemes with a view to paying-out pension benefits to their employees.

1.3. In the early 1990s the European Commission tried to establish an internal market for supplementary pensions. In 1990 it published a working document on completion of the internal market in private retirement provision. In this document the Commission announced measures aimed at enlarging the freedom of cross-border investment management and activity and cross-border access to institutions for retirement provision. In attempting to turn these intended measures into a specific directive, however, the Commission encountered a great deal of opposition from the Member States. The directive published in 1991 [8] was withdrawn in 1994. The greatest stumbling block was the provision that pension institutions were only required to invest a certain percentage of their funds in assets denominated in their home currency. This watering down of the legal requirement was unacceptable to many Member States.

1.4. In 1997 the Green Paper on Supplementary pensions in the single market was published [9]. This was followed in 1999 by a Communication entitled 'Towards a Single Market for Supplementary Pensions' [10]. This announced legislation for the coming years. The first of the new legislative proposals was to be a directive on institutions for retirement provision, which aimed to improve the protection of members of pension funds. A proposal for a directive was published on 11 October 2000.

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(1) See Opinion CES 950/99 on the Communication from the Commission — Towards a Single Market for Supplementary Pensions — Results of the consultations on the Green Paper on Supplementary Pensions in the Single Market (COM(1999) 134 final), OJ C 368, 20.12.1999, p. 57. The ILO distinguishes between four pillars, but in the EU a division into three pillars has been generally accepted.
(2) OJ L 149, 5.7.1971, p. 2.
(3) OJ L 74, 27.3.1972, p. 1.
(4) OJ L 63, 13.3.1979, p. 1.
(5) OJ L 375, 31.12.1985, p. 3.
(6) OJ L 141, 11.6.1993, p. 27.
(7) OJ L 126, 26.5.2000, p. 1.
(8) Proposal for a Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision, COM(91) 301 final, OJ C 312, 3.12.1991, p. 3; ESC Opinion, OJ C 169, 6.7.1992, p. 2.
(9) COM(1997) 283 final of 10 June 1997; ESC Opinion 1403/1997, OJ C 73, 9.3.1998, p. 114.
(10) COM(1999) 134 final of 11 May 1999; Opinion CES 950/99, OJ C 368, 20.12.1999, p. 57.

2. **Content of the directive**

2.1. The aims of the directive under consideration are as follows:

— ensuring a high level of protection for members,

— free choice of portfolio managers,

— level playing field for institutions offering supplementary retirement provision,

— elimination of obstacles to cross-border operations,

— secure and efficient investment,

— establishment of a single market for financial services and supplementary pensions.

2.2. The directive defines institutions for occupational retirement provision. They must:

— be related to occupational activity;

— operate on a funded basis for the sole purpose of providing retirement benefits to members;

— be established separately from the sponsoring undertaking.

2.3. Article 2 lists institutions to which the directive does not apply. In principle these are pension institutions which serve the first and third pillars of the pensions market. Other directives and regulations apply to these institutions.

2.4. Article 8 stipulates a legal separation between the sponsoring undertaking, i.e. the company which pays contributions to the institution for retirement provision on behalf of its employees, on the one hand, and the institution on the other. This provision is important as a way of safeguarding the rights of members, and ensuring that their pension entitlements are not affected in the event of the bankruptcy of the company which employs them.

2.5. Article 9 lays down a number of quality requirements for the institution for retirement provision, such as qualified managers, rules regarding the functioning of the pension scheme and realistic evaluation of liabilities by an actuary.

2.6. Articles 10 and 11 lay down a number of requirements regarding information for members. Thus, members and beneficiaries may request the annual accounts and the annual report. They are also to receive, within a reasonable time, any relevant information regarding changes to the pension scheme rules.

2.6.1. Members are also to receive, on request, information regarding the amount of pension benefits they should receive, their accumulated rights in the event of early withdrawal from the scheme, the way in which the accumulated rights are financed and, where the member bears the investment risk, full information on investments.

2.6.2. Beneficiaries are also to be provided with full information on the retirement benefits due and the corresponding payment options.

2.7. Information must also be provided to the competent supervisory authority on the investment principles and risk management methods applied by the institution (Article 12).

2.8. Articles 13 and 14 contain provisions relating to the competent supervisory authority, thus fleshing out the supervisory requirements.

2.9. In order to protect members' rights, Articles 15 and 17 stipulate that the institution must always have sufficient assets to cover its liabilities. Deviations from this principle are permitted only for a limited period, on condition that a plan is drawn up to make good the temporary shortfall.

2.10. Article 18 contains provisions relating to investments. The general rule is that Member States may not require institutions for retirement provision to invest in particular categories of asset. In principle complete investment freedom is allowed. There are, however, certain exceptions to this general rule:

— No more than 5 % of funds may be invested in the sponsoring undertaking.

— Member States may draw up more detailed rules. The Member States are not, however, allowed to require the institutions for retirement provision to invest more than 70 % of funds in matching currencies, or more than 30 % of funds in securities other than shares.

2.11. Article 20 provides for cross-border membership of institutions for retirement provision. Rules are also laid down regarding the competent supervisory body.

3. General comments

3.1. The Economic and Social Committee welcomes this initial directive and endorses its aims. The Committee believes that protection of members is a matter of high priority and that this directive is a step in that direction.

3.2. The Committee also endorses the objective of establishing an internal market in retirement provision. In this way institutions for retirement provision will be able to make use of the broader opportunities offered by the internal market; at the same time sufficient safeguards are laid down for the protection of members [1].

3.3. The Committee believes that the approach chosen by the Commission, in leaving out of the proposal any consideration of the taxation of institutions for retirement provision, is sensible. This means that the proposal can be adopted by qualified majority, whilst the tax issues would have to be decided unanimously.

3.3.1. The Committee hopes, however, that the directive on the tax treatment of pensions will be submitted by 1 July 2001. The Committee regrets, therefore, that the Commission at present intends to publish only a communication on the subject in April 2001, rather than draft legislation, such as a directive. In drawing up the communication account must be taken of the social security systems of the Member States and their different financing methods. A communication of this kind must not be guided purely by the requirements of the single market.

3.3.2. The Committee would also draw attention to the Pensions Forum in which, inter alia, ways of achieving cross-border transferability of pension rights are currently being discussed.

3.4. The Committee feels, however, that a number of comments are called for on the scope of the directive. The directive applies exclusively to institutions for retirement provision which:

— are separate from the sponsoring undertaking;

— are not responsible for statutory social security schemes;

— operate on a funded basis.

3.4.1. Other institutions for retirement provision do not have to comply with the provisions of the directive. In practice, therefore, this directive will have an impact wherever funded pension schemes exist alongside the pay-as-you-go and balance sheet pension provision systems. Funded schemes play a particularly prominent part in the Dutch, British and Irish systems.

4. Specific comments

4.1. The Committee has a number of questions concerning the exceptions to the investment rules applicable to institutions for retirement provision. The Committee wonders whether it is still necessary for Member States to have the option of requiring pension funds to invest at least 70 % of assets in instruments denominated in their home currency. In view of the introduction of the euro this does not seem to make sense. This could place the Member States not participating in the euro at an advantage vis-à-vis the participating States, as the euro is equated with the national currencies.

4.2. The same applies to investment in securities other than shares. Sufficient guarantees are already laid down elsewhere in the directive.

4.3. The Committee does, however, support the requirement that pension funds invest no more than 5 % in the sponsoring undertaking.

4.4. The Committee feels that Article 20(1) should read in such a way that it does not conflict with requirements to belong to institutions for retirement provision of the kind that exist in a number of Member States. The Albany Judgment [2] clarified the situation with regard to the legality of requirements to participate in company (or sectoral) pension funds.

4.4.1. In the interests of clarity, the Committee proposes that Article 20(1) be amended to read as follows:

> 'Member States shall allow the undertakings and individuals located within their territories to sponsor institutions for occupational retirement provision authorised in other Member States, unless a collective agreement between workers and employers exists — which may possibly have been declared generally binding — which requires the workers and undertakings covered by the agreement to participate in a company pension fund.'

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[1] Moreover, the Report from the Lamfalussy Committee of Wise Men on the Regulation of European Securities Markets has stressed the priority of reforming 'out-dated investment rules for pension funds' if an integrated European financial market is to be established.

[2] Judgment of the Court of 21 September 1999: Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie. Case C-67/96. European Court Reports 1999 page I-5751.

4.5. Arrangements for contributions to second-pillar retirement provisions should preferably be laid down in collective agreements. These agreements should also make it clear that all employees of a firm covered by the collective agreement are required to participate in the pension scheme. It will thus be clear who is to finance the scheme. Logically, the board of management of the pension scheme should be made up of representatives of these groups, i.e. workers and employers.

4.6. The Committee supports the provision of article 16, which requires that the institution must always have sufficient assets to cover its liabilities but permits deviations from the principle for practical reasons for a limited period on condition that a plan is drawn up to make good the temporary shortfall. The Committee believes that in the context of the single market similar provisions should apply to institutions which engage in cross-border activity and that Article 16.3 should therefore be deleted.

4.7. A number of technical comments on the articles concerning supervision:

4.7.1. Article 13(c)(iii) could be mitigated to some extent by wording it as follows:

'(iii) asset-liability studies used in developing investment principles;'.

4.7.2. Hardly any EU Member State already applies these provisions. For this reason the Committee feels that there should be a transitional period for the Member States where this provision does not already apply.

4.7.3. Article 18(7) should spell out the circumstances under which the supervisory bodies are to be allowed to conduct individual prudential supervision. The rules need to be fleshed out at national level.

4.7.4. The Committee notes that specific European rules will be necessary to require the exchange of appropriate information between national supervisory bodies.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments were defeated, but received at least one quarter of the votes cast:

Point 3.1

Amend as follows:

'… endorses its aims, particularly protection of members, which it regards as a priority. It is not yet clear, however, whether the proposal for a directive meets this requirement.'

Reasons

Such liberal investment rules are extremely risk-laden, as current developments on the stock markets make clear. It must be possible with an instrument for collective retirement provision to have a rough idea of what future payments will be. This is not the case if most of a pension fund's assets consist of highly-volatile securities.

Result of the vote

For: 44, against: 49, abstentions: 8.

Point 4.2

Replace with the following:

'The Committee expresses reservations, however, about the very liberal investment rules. In view of stock market volatility and the long periods over which these funds are usually invested, these rules carry an unacceptably high risk for future pensioners.'

Reasons

Such liberal investment rules are extremely risk-laden, as current developments on the stock markets make clear. It must be possible with an instrument for collective retirement provision to have a rough idea of what future payments will be. This is not the case if most of a pension fund's assets consist of highly-volatile securities.

Result of the vote

For: 44, against: 52, abstentions: 7.

Point 4.4.1, second paragraph

Amplify as follows:

'Member States shall allow the undertakings ~~and individuals~~ located within their territories to sponsor institutions for occupational retirement provision authorised in other Member States~~.~~, ~~unless~~If a collective agreement between workers and employers exists — which may possibly have been declared generally binding — which requires ~~the~~those workers and undertakings covered by the agreement to participate in a specified company pension fund, the Member States should guarantee that the employees and employers concerned are excluded from it if they become members of an at least equivalent old age pension scheme with an institution in another Member State that is authorised to provide occupational retirement provision.'

Reasons

Delete the term 'individuals', since it is the standing jurisprudence of the ECJ that the term 'undertaking' covers all types of businesses, from a PLC to a one-man business.

The aim of the directive, alongside the equal treatment of all service providers, is to create an internal market for financial services as well as an internal market for supplementary old age pensions. But this goal would be frustrated if, through the conclusion of collective agreements, foreign providers of certain lines of business in a Member State could be excluded, in extreme cases, from the whole of a Member State in the event of the national social partners agreeing on a monopoly for a given national pension fund. For this reason at least, an opt-out possibility should be provided for in the rapporteur's proposal where there is an equivalence of systems.

Result of the vote

For: 36, against: 71, abstentions: 6.

Point 4.6

Reword as follows:

'The Committee believes that institutions for retirement provision must always have sufficient assets to cover their liabilities In the event of a temporary shortfall a plan must be drawn up to make it good.'

Reasons

Shortfalls should not be licensed.

Result of the vote

For: 45, against: 59, abstentions: 5.

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Authority, and laying down procedures in matters of food safety'

(2001/C 155/08)

On 22 December 2000 the Council of the European Union decided to consult the Economic and Social Committee, under Articles 37, 95, 133 and 152 (4) (b) 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 8 March 2001 The rapporteur was Mr Verhaeghe.

At its 380th plenary session (meeting of 28 March 2001) the Economic and Social Committee adopted the following opinion by 92 votes to six with five abstentions.

1. Introduction and antecedents

1.1. On 8 November 2000, the Commission approved its proposal for a Regulation of the European Parliament and Council laying down the general principles and requirements of food law, establishing the European Food Authority, and laying down procedures in matters of food safety.

1.2. The proposal is a centre-piece of the 84 legislative measures on food and feed safety to be proposed over the next three years as a result of the Commission's White Paper on Food Safety, adopted in January 2000. The White Paper is a fundamental rethink of the EU's existing food and feed policy and a response to the growing consumer concern over the safety of our food.

1.3. The White Paper was discussed in the ESC and lead to an opinion [1], adopted by a very large majority, in May 2000.

1.4. A number of suggestions included in the ESC report on the White Paper have been incorporated in the proposal, namely those concerning increased attention to crisis management, the inclusion of some competence on nutrition as well as of drinking water in the foodstuffs definition and questions relating to aquaculture, fisheries and sea produce.

1.5. It is also worth noting that Article 29 of the proposal reflects the major concerns raised by the ESC over potential conflicts between national and EU scientific opinions, although, as indicated in the detailed comments, the ESC feels that the solution offered does not go far enough in giving the European Food Authority (EFA) scientific precedence. Article 35 demonstrates commitment to resolve problems of coordination between the respective EU and national authorities, again a point considered of primary importance in ESC discussions on the White Paper.

1.6. Suggestions not taken up include those concerning social aspects, which have been referred to other legal instruments. The Committee stresses that the opinions adopted by the EFA may have significant consequences on aspects such as safety at work, employment and industry competitiveness and will return to these issues in future Opinions on specific aspects of food safety.

1.7. In earlier discussions on the subject of an EU Food Authority, many members raised questions on the composition of the Board of the proposed European Food Authority (EFA), underlining, for example, the need to include primary food producers so as to underline the integrated approach to the food chain. Also, major doubts were voiced about the EFA's ability, given its limited funding, to communicate with the public.

1.8. This opinion will look in detail at the proposal, subdivided into Chapter 2 'General Food Law', Chapter 3 'European Food Authority (EFA)', Chapter 4 'Rapid Alert System, Crises Management and Emergencies' and Chapter 5 'Procedures and final provisions'.

2. General comments

2.1. The Committee appreciates the efforts by the Commission to bring this proposal forward speedily. It will ensure

[1] OJ C 204 of 18.7.2000, p. 21.

equally efficient treatment of the proposal and hopes the other Institutions involved will do likewise, taking into account the public concern in this field and the need to dispose as soon as possible of an adequate European instrument for risk assessment in these matters.

2.2. The Committee regrets that revision of the legislative measures set out in the White Paper antecedes agreement on the new fundamental principles and requirements of EU Food Law and the establishment of the EFA. Thus, the EFA will play a key role in future food law development but will be established only after these measures are revised. In view of the timetable indicated at the Nice Summit in December 2000 (EFA to be operational in early 2002), the Committee invites the European institutions to consider if some elements of the proposal could be put in place before that date.

2.3. The Committee favours greater use of the Regulation as EU legislative means since this strengthens uniform application and implementation and contributes to improved functioning of the Single Market for the benefit of consumers and industry alike. In this case however, the ESC is surprised at the high number of concepts for which the definition is either vague or non-existent (e.g. in Article 19, the expressions 'where possible', 'at an appropriate stage', 'representative organisations', 'in appropriate fashion', Article 6 paragraph 3, 'other factors as legitimate to the matter under consideration', paragraph 1 'the circumstances of the case or the nature of the measure'). Since law laid down by Regulation is directly applicable such vagueness could lead to problems of legal interpretation and as such is unacceptable.

2.4. The Committee feels more clarity is needed as to whom exactly the various Articles of the Regulation are addressed. There should be no place for ambiguity in respect of the responsibilities of Member States, stakeholders and others. One example of this potential for confusion is Article 8, where the first indent seems to be addressed to Member States, while the second seems to place an obligation on food producers. The current proposal has also to take account of the fact that the food-chain players are very diverse and have different needs with regard to the rules they have to comply with, in order to achieve the intended result, namely food safety. Hence the special situation of the SMEs in the food chain should receive appropriate attention.

2.5. The Committee is surprised at the degree of inconsistency between the recitals on the one hand and on the other the body of the draft Regulation as found in the Articles. This seems unjustified and could lead to further problems of interpretation. By way of example, the fifth recital indicates that the principles and definitions of food law listed in the Regulation should form a common basis for all measures governing food, while in Article 3 it is stated that the definitions given there apply 'for the purposes of this Regulation'.

2.6. The Committee welcomes this new approach to EU Food Law, with its emphasis on food safety, but recommends a continuous integration with firmly established key principles on which much food regulation has been based, such as free movement, mutual recognition, proportionality and subsidiarity. Among the objectives of food law, reference should be made not only to food safety but also to other aspects, developing the 'European food model' based on the principles of quality, diversity and safety, as defined at the Biarritz Agriculture Council.

2.7. The Committee is also convinced that the emphasis which it shares given to consumer protection will sustain other prime objectives of the Union, such as the better functioning of the Single Market and the competitiveness of the EU food industry. Only by restoring consumer confidence and guaranteeing proper monitoring, traceability and controls will it be possible to avoid disruption of the Single Market and neo-protectionist attitudes.

2.8. As regards the EFA, the ESC reserves its right to comment in more detail once the EFA has been in operation for a reasonable period of time. Although structures, working methods and the like appear to have been thoroughly thought through, only the working of the new body in practice will allow proper evaluation of its strengths and weaknesses. Therefore, the Committee insists that it be included with the EU Institutions specifically listed to receive EFA working programmes and activity reports (see comments on Article 24, 7, 3).

2.9. The Committee feels that the proposed Regulation should contain more of a blueprint for effective action. In order to ensure that food safety remains a priority also within the ESC, the Committee will organise periodically an ad hoc evaluation of developments in this area, in order to enable an on-going involvement of organised civil society and to contribute to transparency, dialogue and communication towards the public.

2.10. The ESC agrees with the term 'Authority' chosen for this new body since this underlines the clear intent for this

new structure to be the cornerstone of the new EU policy on food safety. The ESC is, however, aware of the different implications that the term 'Authority' might have in different jurisdictions of the EU and therefore would recommend a list of the key characteristics of this term, and of the specific topics on which scientific advice must be required prior to any legislative act. The new body should be empowered to act as a final arbitrator in the case of conflicting scientific opinion, or, at least, take precedence in cases of conflict concerning issues within its realm of responsibility.

3. **Specific comments**

Chapter I: Scope and definitions

3.1. Article 2 ('Definition of foodstuff'). The definition seems very broad and corresponds to the 'integrated approach' towards the food chain. On certain aspects, however, the definition is much tighter. By defining foods in relation to pharmaceuticals the definition runs the risk of not taking into account recent developments in the food market. Foods making health claims, such as 'disease risk reduction' claims, which some would today consider to be equal to prevention claims, could therefore fall under the definition of a medicine and not under the category of foods with claimed health effects where they actually belong.

3.1.1. The second paragraph of the definition does not include 'food supplements' even though a vertical Directive on this is currently going through the co-decision process [1]. The Committee would recommend the inclusion of this term in the definition, since in the past it has often given rise to classification difficulties, especially in relation to pharmaceutical products.

3.2. Article 3 ('Other definitions'). Under indent 1, it is interesting to note that while excluded from the definition of 'foodstuff', animal feed is considered to be an integral part of 'Food Law'. It is the ESC's view that the use of terms and concepts in the various Articles should be double-checked in order to avoid any kind of misunderstanding. Also indent 3 (food business operator) needs further explanation, particularly when considering the translation given in other language versions of the Regulation and the important responsibility given to these 'operators', for example, under Article 10. The Committee regrets the missed opportunity to define concepts such as 'misleading', 'adulteration', etc.

Chapter II: General Food Law

3.3. Article 5 ('General objectives'). With reference to the comment under point 2.7 above, the proper functioning of the Single Market should be included in paragraph 1. The Committee notes that questions relating to protection of animals and the environment are included in a regulation on food law. The Committee assumes that these two objectives will be considered only to the extent that they are directly relevant to food safety. The Committee also wonders how the Commission intends to ensure that these objectives are also complied with by imported food, as provided for in Article 16(1) ('requirements which are at least equivalent').

3.4. Article 5 ('General objectives'). Paragraph 3, while generally in line with the basic principles of the SPS agreement, is loosely phrased enabling the EU to opt out of international obligations seemingly without having to provide detailed justification.

3.5. Article 6 ('Protection of health'). As referred to above (point 2.3), the statement in paragraph 1 that Food Law be based on risk analysis 'except where this is not appropriate to the circumstances or the nature of the measure', needs to be clarified. Diverging from a principle which could be considered as one of the most fundamental in the new approach, should only be possible in well-defined circumstances. The reference to 'other factors as legitimate to the matter under consideration' in paragraph 3 needs the same clarification/definition and also pre-empts discussions currently being held at international level. In conformity with the ESC's opinion on the White Paper, it should be decided how these 'other legitimate factors', such as the environment, sustainability and animal welfare, are to be properly represented and balanced in a food policy in which safety is the primary objective (see White Paper opinion point 3.18).

3.6. Article 7 ('Precautionary Principle'). It is not very logical that a principle which has received such high-level attention remains undefined in the Regulation. Moreover the concept of 'scientific uncertainty', on which the Precautionary Principle seems to depend, needs to be made more specific. It is a generally accepted fact that 'scientific certainty' is not a realistic goal in this context. Concerning the Precautionary Principle, the ESC refers to its own opinion on this issue, adopted on 12 July 2000 (see conclusions point 14.2) [2].

3.7. Article 8 ('Protection of consumers' interests'). The Committee shares the Commission's fundamental concerns as

(1) OJ C 14, 16.1.2001.

(2) OJ C 268, 19.9.2000.

voiced in this Article. However some further detail on how it can be ensured that the labelling, advertising and presentation of foods will not mislead the consumer should be considered. Much research has, for example, been done on the labelling needs of consumers and the frequent requests (see conclusions of Intergroup Food of the EP) for a fundamental review of existing EU labelling policy are not taken up in this proposal.

3.8. Article 9 ('Traceability'). The Committee thinks in principle that the traceability of foodstuffs should be secured at every stage — or in successive stages — from primary production to final consumers. It assumes that a number of open questions remain regarding the practical application of this principle in the various food sectors and the financial impact of the corresponding systems, and that these will require clarification.

3.9. Article 12 ('Food safety requirements'). The exact relation between the text of this Article and the General Product Safety Directive needs clarification.

3.10. Between Article 16 ('Food imported into the Community') and Article 17 ('Food exported from the Community'), the Commission should consider introducing an Article dealing with so-called 'transit goods'. Under indent 1 of Article 16, the Committee feels the term 'at least equivalent' should be made more precise in order to avoid many different interpretations. As far as the exportation of food and feed under Article 17 is concerned, the ESC feels that this should be done in accordance with the laws and regulations of the importing country, taking into account as a minimum the agreed Codex rules on the respective issues, except when there is evidence that public health is at risk.

3.11. Article 19 ('Public consultation'). The Committee considers that this Article should be rephrased as follows: 'There shall be open and effective stakeholder consultation throughout all stages of the elaboration of food law.'

3.12. Article 20 ('Public information'). Communication of this kind of potentially sensitive information should always be correct and objective. 'Public authorities' in line 4 of this Article should be properly defined.

Chapter III: European Food Authority

3.13. Article 21 ('Mission of the Authority'). The Committee welcomes the broad scope of this mission but emphasizes the need to set priorities in the interest of efficiency. It is the view of the ESC that the tasks and responsibilities of the EFA should be clearly defined and demarcated. The extension of the EFA's responsibilities to areas which could jeopardise its core mission should be avoided.

3.13.1. True to its position on the White Paper, the ESC welcomes the inclusion of nutrition as an integral part of the EFA's mission and trusts that clear boundaries will be drawn around its remit, which should relate to scientific issues and focus on food safety. Health promotion programmes and the like should remain the responsibility of the Commission and its specialised services.

3.13.2. More clarity is needed on the accountability of the EFA. The draft Regulation seems to indicate that the EFA is ultimately only accountable to the Commission. This is not in line with the ESC's opinion on the White Paper, which stated that the EFA should also be made accountable to the European Parliament and the Member States (see White Paper Opinion point 3.17).

3.13.3. Under indent 3, in order to ensure that the opinions of the EFA and the role of science in decision-making is formally recognised, the ESC would suggest that during the decision-making process on food matters the EFA should be consulted to check the scientific logic and consistency of proposals at the time of their introduction into the process and before their final adoption.

3.14. Article 22 ('Tasks of the Authority'). In indent a) the ESC considers it be included under the 'Community Institutions'. Indent l) in combination with Article 39 ('Communication') indicates that the public will receive direct information from the EFA on the Risk Assessment aspects of a certain issue, while the Risk Managers will communicate on the legislative and other measures taken on the same issue. This gives rise to crucial questions about the means and effectiveness of the EFA's communications, which could affect its public credibility and indeed its prospects of success. The EFA has to command respect for the depth of its scientific resources, the soundness of its judgements, and the speed of its response to emergencies. It will need very quickly to win the confidence of the consumers via the existing media, and it is vital that the maximum benefit be gained from having a single authoritative voice.

3.15. Article 23 ('Bodies of the Authority'). The Committee feels that the change in the terminology for the scientific bodies in indent d) could confuse users, or be seen as a reduction in their authority and their capacity to provide adequate technical scientific support in the longer term.

3.16. Article 24 ('Management Board'). Clarification is needed on the likely composition and procedures/criteria to be used for the selection of candidates. As stated above, the ESC would stress the need for primary, secondary and tertiary operators of the food sector to be on the board so as to underline the integrated approach to the food chain (see 1.7). The ESC regrets that mention is made neither of this Committee nor of the Committee of the Regions, even though both have proven that as far as food safety is concerned, their membership provides valuable contributions. In the same spirit, the ESC draws attention to indent 7, paragraph 3, as already referred to in point 2.8.

3.17. Article 26 ('Advisory Forum'), paragraph 6 and Article 27 ('Scientific Committee and scientific panels'), paragraph 8. The participation of the Commission (Risk Manager) in the meetings of the Advisory Forum, (as well as in the Scientific Committee, the Scientific Panels and the Working Groups, as scheduled under Article 27) must demonstrate an overriding determination to keep a clear frontier between Risk Assessment and Risk Management.; paragraph 8 of the Article should therefore be reinforced. Indent 1 should provide for deputy representatives. It is difficult to see how one representative alone can ensure proper feed-back and involvement of the widest possible national network.

3.18. Article 27 ('Scientific Committee and Scientific Panels'). The ESC would like to see the possibility included of organising specific Task Forces on issues which do not fall specifically under the responsibility of one of the announced Panels. The possibility of organising hearings should also be included in this Article. The titles of the Panels should be more flexible so as to include subjects as consequences of pollution on the food chain, and food intolerance. The Committee stresses also the need to include a panel on the delicate question of traditional production and food safety.

3.19. Article 28 ('Scientific opinions'). The question arises of how and by whom decisions will be made as to which of the many opinions requested from the EFA will be given priority.

3.20. Article 29 ('Conflicting scientific opinions'). Paragraph 3 seems to indicate that in case of conflict between Risk Assessors the final decision on a risk assessment issue is taken by the Risk Manager. Surely, as already mentioned in 2.10, the final arbitrator in such cases must be the EFA. Paragraph 4 does not give a solution for this kind of potential conflict and needs further clarification.

3.21. Article 32 ('Collection of data'). The ESC should be included in the list of Institutions mentioned in indent 6, to which the EFA will communicate its results on data collection.

3.22. Article 33 ('Identification of emerging risks'). The ESC should be included in the list of Institutions receiving information on emerging risks.

3.23. Article 34 ('System of Rapid Alert'). The ESC is aware of the concern of several Member States relating to the management of the Rapid Alert System by the EFA. It should be made absolutely clear what is understood by the 'day to day management' of this system and what the specific roles of Commission and EFA are.

3.24. Article 41 ('Consumer and other interested parties'). The ESC notes that the Commission has taken on board its recommendation regarding dialogue with consumers and stakeholders, and hopes that the final text might be enhanced with a statement to the effect that this dialogue should be secured with all those involved in the food chain.

3.25. Article 42 ('Adoption of the Authority's budget') in combination with Article 44 ('Fees received by the Authority'). The Committee feels that the terminology in certain language versions should be changed in order to make it clear that it is not a matter of taxes or duties but of the cost of services rendered. Fees to be received for services performed should never jeopardise the independence and objectivity of the Authority. The ESC requests an indication of which services performed by the EFA could potentially lead to the payment of fees.

3.26. Article 48 ('Participation of third countries'). The ESC feels that due to the imminent and crucial importance of this issue, the suggested rules should be made much more precise and specific.

Chapter IV: Rapid Alert System, Crises Management and Emergencies

3.27. Article 53 ('Crisis unit'). The ESC feels that the role of the Crisis Unit in this Article is focused too much on the management of crises once they have occurred and does not mention what this Committee considers of much greater importance, i.e. the prevention of crises. The Crisis Unit should therefore not be a body set up only once a crisis has occurred but a permanent one intended to help avoid crisis situations. In the case of an actual crisis, it could always be strengthened by adding extra staff and resources.

Chapter V: Procedures and final provisions

3.28. Article 59 ('Mediation procedure'). This Article seems to introduce a special complaints procedure for free trade in cases relevant to food safety. The ESC wonders if this is necessary and if it would not be more appropriate to amend the overall procedure.

3.29. Article 60 ('Evaluation'). Paragraph 2 of Article 60,1 indicates that the Management Board will study the conclusions of the evaluation and then, if necessary, make recommendations to the Commission on changes to the EFA and its working methods. Following a thorough evaluation of conclusions would the Management Board itself not be in a better position to decide on ways forward? Formulated like this, the impression is easily gained that the EFA is to all intents and purposes just another division of the Commission. The ESC feels that this evaluation report should also be presented to the other EU Institutions, including the ESC, and that comments of all these need to be taken into account in the ultimate conclusions.

3.30. Article 62 ('Competence of the European Medicines Evaluation Agency'). Although this Article states that the Regulation should apply 'without prejudice to the competence' of the EMEA, the ESC would like to stress, as it did already in its opinion on the White Paper (see point 3.17 c), that the EFA's relationship with EMEA will be particularly important, especially when dealing with borderline products where there may be difficulties determining whether a product is a foodstuff or a medicine. Some further detail on how this relationship will develop in practice seems justified. The ESC also feels that, in the same spirit, a special Article should be devoted to the link between the EFA and the Dublin office for food controls (FVO).

4. **Conclusions**

4.1. As stated above, the Committee appreciates the major effort by the Commission to bring the current proposal together, which illustrates the key importance it attaches to food safety. The introduction of an all encompassing plan, with improved structures, involving the whole food chain and based on the principles of openness, excellence and transparency can only be applauded.

4.2. However, the vagueness of certain articles and principles, the inconsistency between various parts of the document as well as lack of clarity concerning the exact division of various responsibilities requires further work if the Regulation is to achieve its aims.

4.3. The Regulation should primarily contain a blueprint for effective action. The real challenge is to do things better than before and to increase overall confidence in the whole food chain. The ESC intends to follow future developments in order to ensure that developments on food safety issues will focus mainly on results and preventive measures; it will therefore organise periodical ad hoc evaluations of developments in this area, ensuring consistency and dialogue on these issues.

4.4. In order to be able to evaluate progress on food safety matters and to judge if the new system is living up to its expectations, the ESC stresses the need for evaluation criteria, such as increased/decreased consumer confidence, the occurrence and handling of food crises, closer co-operation between stakeholders, etc.

4.5. If there is a general consensus about the important role of the future EFA, the ESC feels that this should be taken to its logical conclusion, which would be to allow the EFA a role within the decision-making process on food, focusing on the protection of scientific consistency, maintaining at all times both a neutral stance and a realistic separation between Risk Assessment and Risk Management. The ESC volunteers to transform this concept into more concrete plans and suggests setting up a joint working group on this issue with all the other European institutions and relevant stakeholders.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

Defeated amendments

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

Point 3.8

Add the following:

'It is therefore necessary to establish, depending on whether the product is for human or animal consumption, the thresholds for substances and ingredients contained in the product, in order to make the traceability system feasible and functional, in particular for SMEs'.

Reason

The proposed wording allows a reasonable interpretation of the traceability principle, by establishing the substance thresholds for certain types of product, and thus enabling operators to fulfil their obligations.

Result of the vote

For: 24, against: 63, abstentions: 3.

Opinion of the Economic and Social Committee on:

— **the 'Proposal for a Regulation of the European Parliament and of the Council on the hygiene of foodstuffs',**

— **the 'Proposal for a Regulation of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin',**

— **the 'Proposal for a Regulation of the European Parliament and of the Council laying down detailed rules for the organisation of official controls on products of animal origin intended for human consumption',**

— **the 'Proposal for a Council Regulation laying down the animal-health rules governing the production, placing on the market and importation of products of animal origin intended for human consumption', and**

— **the 'Proposal for a Directive of the European Parliament and of the Council repealing certain Directives on the hygiene of foodstuffs and the health conditions for the production and placing on the market of certain products of animal origin intended for human consumption, and amending Directives 89/662/EEC and 91/67/EEC'**

(2001/C 155/09)

On 17 July 2000 the Council decided to consult the Economic and Social Committee, under Articles 37, 95 and 152(4)(b) of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 March 2001. The rapporteur was Mr Verhaeghe.

At its 380th plenary session of 28 and 29 March 2001 (meeting of 28 March) the Economic and Social Committee adopted the following opinion by 78 votes to one, with ten abstentions.

1. **Introduction**

1.1. *Overall summary*

1.1.1. The present proposals result from a recast of Community legislation on

— food hygiene as contained in Directive 93/43/EEC on the hygiene of foodstuffs and in a number of directives governing the production and placing on the market of products of animal origin,

— animal-health rules related to the placing on the market of products of animal origin, as contained in a number of directives,

— official controls on products of animal origin contained in the current directives.

1.1.2. These directives (seventeen in total) have been gradually developed since 1964 in response to the needs of the internal market, but also with due regard to the need for a high level of consumer protection. The large number of directives involved, the intermingling of different disciplines (hygiene, animal health, official controls) and the existence of different hygiene regimes for products of animal origin and other food have led to a complex situation. This situation can be improved by recasting the legislation and separating the food hygiene aspects from the animal-health and official control issues.

1.1.3. The Commission proposals respond to a number of actions announced in the annex to the White Paper on Food Safety [1]. The recast of existing legislation makes for a comprehensive and integrated approach, covering all food from the farm to the point of sale to the consumer. This leads to better coherence and transparency of food legislation. In addition, the role of the various stakeholders in the food chain is better defined.

1.1.4. The leitmotif throughout the recast of the hygiene rules is that food operators bear full responsibility for the safety of the food they produce. The observance of basic hygiene rules (GHP) [2] and — for operators in fields other

[1] COM(1999) 719 final.

[2] GHP: Good hygiene practice, as set out in the annex to Directive 93/43/EEC and the Codex Alimentarius international code of practice.

than primary production — the implementation of the principles of the HACCP system [1] must ensure this safety. This is in line with the approach advocated at international level by the Codex Alimentarius.

1.1.5. The recasting exercise has resulted in the drafting of four proposals for regulations on (i) overall food hygiene, (ii) specific hygiene rules for food of animal origin, (iii) official controls and (iv) animal-health rules governing the production, placing on the market and importation of products of animal origin intended for human consumption. A directive is also attached repealing existing legislation in the above-mentioned fields.

1.1.6. The Commission believes that Community law in the form of regulations presents a number of advantages, such as the guarantee of uniform application throughout the single market, better transparency and the possibility for rapid updating to take account of technical and scientific developments.

1.2. *Integrated approach*

1.2.1. The overall hygiene rules currently found in Directive 93/43/EEC are to be applied to all foodstuffs, including products of animal origin which at present fall outside its scope.

1.2.2. At the same time, these rules have been revised in order to take account of recent developments in food hygiene. From now on, the revised rules are to apply to the entire food chain 'from farm to table'. Under these rules, the seven principles of the HACCP system have to be applied as set out in the Codex Alimentarius. They also require the traceability of food and their ingredients, and they refer to the concept of food safety objectives (FSOs) [2].

1.3. *Food of animal origin*

1.3.1. The present hygiene rules for food of animal origin are being simplified by recasting fourteen directives. This has made it possible to identify a set of rules common to all food, thus avoiding the repetitions, overlaps and inconsistencies in the current directives. Some specific rules have been retained, however, for the various classes of foodstuffs.

1.3.2. The regulation is divided into sections as follows: scope (retail sale and product definition), approval of establishments, health marking, detailed requirements, microbiological criteria, temperatures for storage and transport, small production units, imports from non-member countries, quality and labelling and the exclusion of certain materials from the manufacture of products.

1.4. *Animal-health requirements*

1.4.1. The animal-health rules are designed to prevent the spread of animal diseases not considered transmissible to humans through products of animal origin. Since these diseases have no direct impact on consumer health, it made sense to address them separately from hygiene rules as such.

1.4.2. A high level of protection is also required in this field. The proposed regulation indicates — among other things — which animal diseases may be transmitted via products of animal origin, and how to eliminate transmission risk.

1.5. *Official controls*

1.5.1. In accordance with the Commission's intentions announced in the White Paper, a proposal covering official food and feed control is expected to be available shortly. The current proposal for a regulation covers only the control of products of animal origin intended for human consumption. It establishes in particular the responsibilities of the official services in the Member States, the action to be taken in the case of risk to the consumer, the training of control officials, the application of contingency plans, controls on imported products, inspections by the Commission and safeguard measures.

1.5.2. It must be remembered that, because of their specific nature, some products such as meat require particular rules. Intensive discussions are under way at the moment on the revision of current inspection procedures so as to address the hazards that are linked to modern methods of food production. So that the Commission can react promptly at the end of these discussions, the separate proposal that has been drawn up sets out the inspection procedures in detail. Pending the outcome of the scientific assessment, the present rules are to continue to apply.

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(1) HACCP: Hazard Analysis Critical Control Points.

(2) FSO: Food Safety Objective in line with Article 6(2) of the new proposed Regulation on the hygiene of foodstuffs.

1.6. *The external dimension*

With the globalisation of the food market, growing concerns are emerging about food safety. Countries are particularly sensitive to risks relating to microbiological or chemical contaminants which have to be eliminated during foodstuff production and transport. This is reflected in international obligations and agreements, and in the enhanced role of international organisations such as the Codex Alimentarius and the International Office of Epizootics. The Commission proposals seek to respond to this challenge by introducing requirements with regard to the hygienic quality of imported food taking account of international standards and guidelines.

1.7. *Ongoing development*

It is likely that in the coming years there will be a need to adapt legislation again depending on the outcome of the self-checking regimes run by operators, the establishment of codes of good hygiene practice, Member States' implementation of inspections and audits and all new technical developments.

2. **General comments**

2.1. The new Commission food hygiene proposals largely reflect earlier Committee opinions. On the whole, these proposals represent a major step forward, for which the Commission is to be commended.

2.2. The Committee endorses in particular:

— the principles underlying the new proposals (recitals 3 and 12 of draft Regulation (EC) No 2000/0178), including:

  — the primary responsibility of food operators for food product safety. Each operator is to be responsible for the safety of products under his or her control from primary production to delivery to the consumer;

  — the 'farm to table' approach;

  — the obligation to apply HACCP (in the sectors concerned) and traceability;

  — compatibility with international trade agreements;

— the choice of regulations rather than directives, because by restricting Member States' scope for interpretation, these make for better consumer protection and fairer competition between companies (section IX of the explanatory memorandum).

3. **Specific comments**

3.1. *Hygiene of foodstuffs*

3.1.1. Scope

The Committee is pleased that the new regulations are to apply to all stages of food production and distribution. In particular — and in contrast to current legislation — they are to apply henceforth to the primary sector, i.e. to products of the soil, of stock farming, of hunting and fisheries. The Committee feels, however, that the scope should broadly cover the production of all food ingredients, including products of mineral origin and products that are the result of chemical synthesis. Article 2 of draft Regulation (EC) No 2000/0178 should be reworded accordingly.

3.1.2. Definitions (Article 2 of draft Regulation (EC) No 2000/0178)

3.1.2.1. Pending a definition of 'food safety objective', the list of definitions should be expanded to include, among others, definitions of 'food', 'objective', 'performance standard' and the English term 'requirements' which has been translated in different ways — in French, for example, as *dispositions* ('provisions') or *conditions* ('conditions').

3.1.2.2. With a view to simplification and also to avoid confusion, the definitions should be brought into line with the Codex Alimentarius definitions that have been drawn up or revised recently, e.g. food hygiene and food safety.

3.1.3. Responsibility of food business operators

3.1.3.1. The wording of the first indent of recital 12 of draft Regulation (EC) No 2000/0178 should be amended to state that responsibility for food safety rests with all food business operators for the section of the food chain covered by their operations, in line with the wording of Article 3 — General obligation — of the proposal for a regulation on the overall hygiene of foodstuffs.

3.1.3.2. In particular, the text (Annex I of draft Regulation (EC) No 2000/0178) should stress the responsibility of the various partners in the primary production chain which, from now on, is to be covered by food hygiene law. These partners — whether the agrochemical industry, seed producers, feed manufacturers, the developers, vendors and carriers of such products or farmers themselves — must see to it — each in his or her respective field — that agricultural produce placed on the market does not contain unacceptable levels of biological or chemical residues. While maintaining a high level of health protection, the administrative burden borne by small firms and the craft sector should be kept to a minimum.

3.1.4. Regional aspects (Article 4(4) of draft Regulation (EC) No 2000/0178)

To avoid penalising typical European products, the Committee emphasises the need to adapt hygiene rules to their traditional production methods, and to the production of small quantities without in any way compromising food safety. Moreover, the Committee feels that the requisite adjustments must be laid down and supervised at Community level in order to ensure optimum protection of consumers' health and fair competitive conditions. The future European food authority could play a scientific assessment role here.

3.1.5. Retail trade (Article 9(2) of draft Regulation (EC) No 2000/0178 and Annex II, point 2 of draft Regulation (EC) No 2000/0179)

The Committee feels that the exclusion of the retail trade from the scope of the new regulations is wholly unwarranted in the case of major distribution establishments (supermarkets and hypermarkets) with rooms in which large quantities of animal products are prepared (e.g. meat cutting rooms). Such establishments must meet the appropriate specific hygiene rules.

3.1.6. HACCP/Hygiene guides and codes (Articles 5 and 7 of draft Regulation (EC) No 2000/0178)

3.1.6.1. The obligation placed on food operators to apply the seven principles of the HACCP system as defined by the Codex Alimentarius is a welcome move, but greater stress must be put on the prior need to comply with good hygiene practice.

3.1.6.2. In this respect, the Committee stresses the importance of training that is commensurate with the work of staff, since product safety requires the involvement of all players — each at his or her respective level (Annex II, Chapter XII of draft Regulation (EC) No 2000/0178).

3.1.6.3. The Committee feels that the Member States should be encouraged to assess their own working and employment conditions in the light of the HACCP system, paying particular attention to the consultation of sectoral representatives, workers and consumers.

3.1.6.4. The Committee feels that the adoption of food safety objectives (FSO) should make for the more uniform application of food hygiene law.

3.1.6.5. After a reasonable adjustment period, renewed consideration should be given to the retention of all the hygiene rules set out in draft Regulation (EC) No 2000/0178 for animal products alongside the requirement that HACCP principles must be applied.

3.1.6.6. In the interests of uniformity, the hygiene guides provided for under Article 7 of draft Regulation (EC) No 2000/0178 — whether compendiums of good hygiene practice or guides for using HACCP — should be based on the Codex Alimentarius models. Where these relate to industrial products marketed and/or manufactured across the European Union, they should be drawn up from the start at European level.

3.1.6.7. The purpose of these guides is to help food operators comply with the legal requirements concerning food hygiene and safety. For example, the codes of good practice provided for in Chapter II of Annex I of draft Regulation (EC) No 2000/0178 describe the measures to be taken for good stock-farming and animal-health management, and especially for the proper use of veterinary medicinal products [1]. In this respect, the Committee thinks that the Regulation should specify the framework within which these codes must be developed in order to ensure that the requisite zootechnical and veterinary skills are catered for. This must be done in consultation with all interested parties.

[1] See appendix, point 1.

3.1.7. Microbiological criteria/storage temperatures (Article 6, draft Regulation (EC) No 2000/0178) — product quality provisions (section II, point 2(j); explanatory memorandum)

3.1.7.1. The Committee is pleased that the microbiological criteria and storage temperatures laid down in the current vertical directives are to be reviewed and, where required, substantiated scientifically, as the Committee itself was calling for. This procedure will make it possible to bring European legislation into line with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures [better known as the SPS Agreement [1]].

3.1.7.2. Moreover, the Committee takes due note of the Commission's undertaking to remove non-health-related quality provisions from hygiene documents as quickly as possible.

3.1.8. Traceability — Registration or approval of food businesses (Articles 9 and 10 of draft Regulation (EC) No 2000/0178)

3.1.8.1. The Committee feels that, where required, it must be possible to quickly determine the origin of foodstuffs placed on the market, or even to establish their full history. To do that, all food operators must be able to retrace the origin of the ingredients or products for which they are responsible. Traceability of foodstuffs is thus secured at every stage — or in successive stages — from primary production to final consumer.

3.1.8.2. The Committee therefore endorses the fact that the rules are to oblige all operators to ensure the traceability of their products. It feels that the rules must confine themselves to the principles involved and leave it to the operators, especially small firms, to choose how to ensure the traceability of their products. This approach is necessary to respond to conditions which sometimes vary widely depending on the sectors and products involved.

3.1.8.3. The Committee feels that registering all businesses in the food chain is an enormous administrative task which may be carried out at local, regional or even national level, depending on circumstances. Registering businesses is a key factor in traceability. For processed products, it is an additional tool alongside the indication of the manufacturing batch.

3.1.8.4. In theory, approval of an establishment is an assurance of compliance with good hygiene practice. The Committee supports the retention of the approval system as the rule for establishments which manufacture or handle microbiologically sensitive products, particularly products of animal origin. However, in order to secure both a uniform level of safety and fair competition, it is essential that the Commission draw up unambiguous criteria on which to base the decision to approve or simply register an establishment.

3.1.9. Health mark (Annex II, point 4 of draft Regulation (EC) No 2000/0179)

3.1.9.1. As its name implies, this mark affirms that the products to which it is affixed are deemed to be safe. For example, the health mark on meat or shellfish guarantees consumers that the products have been subject to an official inspection covering both their origin and state. The Committee feels that, nowadays, this official guarantee is indispensable.

3.1.9.2 There is a different rationale behind the health marking of processed products, such as prepared meats and milk products. In this case, the health mark guarantees that approval has been granted to the production plant concerned — i.e. that it meets the requisite hygiene rules. For the company, therefore, the health mark is a certificate of conformity (such as those issued by certifying bodies) but does not mean that the products themselves have been subject to inspection. Accordingly, the Committee feels that, in the case of processed products, the health mark need not be administered by the public authorities. The Committee would like to see further consideration given to this issue in order to establish cases where the health mark could be administered by recognised private bodies.

3.1.10. Composite products (Annex I, point 8.1 of draft Regulation (EC) No 2000/0179)

The Committee is pleased that composite products no longer fall under the hygiene rules specifically designed for animal products. However, there is still room for improving the current draft since, in some cases, specific rules should nonetheless apply to composite products (e.g. breaded fish fillets which warrant a priori the same hygiene precautions as non-breaded fillets).

[1] SPS Agreement: WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

3.1.11. Export to non-member countries (Article 12 of draft Regulation (EC) No 2000/0178)

The Committee recognises the need to raise the profile of European foodstuffs on external markets, not least in developing countries. However, this must not damage the competitiveness of European companies. Hence, the Committee feels that the requirement that exported products conform to European legislation must be adapted to take account of specific circumstances in the importing countries. For instance, specific local conditions in the importing country may warrant the use of preservatives banned in products marketed in Europe.

3.1.12. Committee procedures (Article 15 of draft Regulation (EC) No 2000/0178 and Article 6 of draft Regulation (EC) No 2000/0179) — entry into force of the new regulations (Article 17 of draft Regulation (EC) No 2000/0178 and Article 7 of draft Regulation (EC) No 2000/0179)

3.1.12.1. Although not stipulated in the current draft, the Committee welcomes the fusion in due course of the Standing Committee for Foodstuffs and the Standing Veterinary Committee. This fusion should make for simpler, more coherent administration.

3.1.12.2. Moreover, the Committee considers that it would be more reasonable to provide for a brief adjustment period starting on the date on which the new regulations enter into force, not least to give the primary sector time to draw up codes of good hygiene practice correctly.

3.2. *Official controls on food products of animal origin (draft Regulation (EC) No 2000/0180)*

3.2.1. The Committee feels that the respective responsibilities of the Member States and the Commission are not sufficiently clear from the text. The Committee opinion on the White Paper on Food Safety [1] has already stressed the importance of effective Commission supervision of enforcement of Community rules.

3.2.2. Moreover, there are still too many texts [2] relating to veterinary checks and general and specific rules for official controls. It would be clearer and more practical to consolidate all these texts.

3.2.3. The Committee notes that official controls on farms [Annex I, point 1(a)] cover not only compliance with hygiene rules, but also compliance with animal welfare rules and legislation on animal feed and residues. On the issue of controls on animal feed, the Committee feels that controls on manufactured products should be carried out at the production stage before such products reach the farm.

3.2.4. Meat inspection rules (Annex II) have been revised, not least to give more importance to ante-mortem inspection. In this connection, it should be made clear that ante-mortem inspection must take account of the stock-farming data which farmers are required to collect (Annex I, Chapter II, point 2 of draft Regulation (EC) No 2000/0178).

3.2.5. The Committee feels that the text should include a reference to harmonised legislation on animal products deemed during the veterinary inspection to be unfit for human consumption.

3.3. *Animal-health rules relating to trade in food products of animal origin (draft Regulation (EC) No 2000/0181)*

3.3.1. The purpose of this Regulation is to prevent the spread of animal diseases via food products of animal origin in intra-Community or international trade.

3.3.2. The proposal also includes provisions for official controls. The Committee notes furthermore that, in this area, the Commission's supervisory role is clearly stipulated (Article 6).

3.3.3. The animal-health rules for imports from non-member countries overlap with the hygiene rules set out in the proposed Regulation relating specifically to the hygiene of food products of animal origin; this generates confusion. In particular, the text stipulates that a list of approved third countries is to be compiled in the light of animal-health criteria [Article 8(1)], while the specific hygiene Regulation also provides for a list to be drawn up — this time on the basis of hygiene criteria (Annex III, point 1 of draft Regulation (EC) No 2000/0179).

(1) OJ C 204, 18.7.2000.

(2) See appendix, point 2.

3.3.3.1. All these provisions should be consolidated so that there is just one set of rules covering both the public health (hygiene) and animal health aspects.

3.3.4. The Committee notes that the annexes to this Regulation contain some very interesting information. This is particularly true of the table *Treatments in order to eliminate animal health risks from meat* and the point entitled *Treatment to eliminate animal health risks from milk*.

3.3.5. Endorsement of these health measures at international level would greatly assist international trade in food products of animal origin. The Committee thus strongly encourages the Commission to endorse and promote these measures.

4. **Conclusions**

In conclusion, the Committee would make the following food hygiene recommendations.

4.1. The same hygiene rules and the same control methods must apply at all stages in the food chain — from primary production to delivery to the final consumer.

4.2. All raw materials and ingredients used in food production, including minerals and substances that are the result of chemical synthesis, must be covered by these hygiene regulations.

4.3. The obligation placed on food operators to apply the seven principles of the HACCP system is essential, but, equally, the prior need to comply with good hygiene practice must also be underlined.

4.4. Each operator at each stage in the food chain remains fully responsible for the safety of his or her products.

4.5. Traceability must be secured at every stage or in successive stages throughout the food chain, though the type and size of the enterprises should be borne in mind.

4.6. Certain key definitions are missing from the drafts (e.g. the definition of food). These definitions should be established under general food law, which is also under discussion and to which hygiene documents will have to refer.

4.7. Basic safety standards will have to apply to 'regional' and/or 'traditional' foodstuffs since these will circulate freely within the single market.

4.8. Retail outlets in which large quantities of food of animal origin are prepared and/or cut must meet the specific hygiene rules applicable to these food products.

4.9. European foodstuffs intended for export outside the EU must meet the appropriate standards laid down in the legislation of the importing country and/or the Codex Alimentarius. In the absence of such standards, it is perfectly justified to require that these foodstuffs comply with European legislation.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX I

to the Opinion of the Economic and Social Committee

Point 1

Definition of 'veterinary medicinal product' under Article 1 of Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, and Article 1 of Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products, which includes hormones: ('any substance or combination of substances which may be administered to ... animals with a view to ... modifying physiological functions').

Point 2

— Directive 89/397/EEC of 14 June 1989 (official control of foodstuffs) and Directive 93/99/EEC of 29 October 1993 (additional measures concerning the official control of foodstuffs),

— Directive 89/662/EEC of 11 December 1989 (veterinary checks in intra-Community trade with a view to the completion of the internal market) and,

— Directive 90/675/EEC of 10 December 1990 as last amended by Directive 97/78/EEC of 18 December 1997 (principles governing the organisation of veterinary checks on products entering the Community from third countries).

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APPENDIX II

to the Opinion of the Economic and Social Committee

Defeated amendment

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

Point 3.1.2.3.

Add a new point (3.1.2.3.), to read:

'Without wishing to compromise on the objectives of the proposal to amend a number of hygiene directives, closer examination of certain definitions and how they are applied in practice is necessary in order to avoid unworkable situations.'

Reason

If the proposal is finalised in its present form, primary producers and small-scale traditional farms in particular will face serious problems as a result of numerous general definitions and implementation decisions that are not consistent with practice.

Result of the vote

For: 24, against: 46, abstentions: 12.

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Opinion of the Economic and Social Committee on 'Freedom of movement for workers in the single market (Single Market Observatory)'

(2001/C 155/10)

On 2 March 2000 the Economic and Social Committee decided to draw up an opinion, under Rule 23(3) of its Rules of Procedure, on 'Freedom of movement for workers in the single market'.

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 8 December 2000. The rapporteur was Mr Wilms.

The Committee adopted the following opinion at its 380th plenary session (meeting of 28 March 2001) by 80 votes to 13, with 31 abstentions.

1. The right of freedom of movement — importance and future prospects

1.1. *Importance and acceptability of the right of freedom of movement*

1.1.1. Freedom of movement for individuals is one of the most important objectives of the Community, as enshrined in the European Treaties. It is, in particular, a key basic right of workers and their families. Freedom of movement was identified as one of the key elements of the single market by the Treaty of Rome ('The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty').

1.1.2. Freedom of movement for workers is, in the ESC's view, a key factor in the achievement of an ever closer Union. It is also one of the most concrete expressions of the concept of Union citizenship [1].

1.1.3. The ESC highlights the need to continue to give priority to improving employment opportunities throughout Europe and, in particular, in disadvantaged regions. Since not even the best common labour market policy in the EU is able to bring about a completely level playing field as regards job opportunities and income prospects, freedom of movement for workers from regions still suffering disadvantages or for workers possessing skills which are not sufficiently in demand on their home labour markets, provides them with new opportunities to share in the growing prosperity of the EU. Ideally it also eases the labour market problems in the country of origin without creating new labour market problems in the host country at the same time.

1.1.4. Further steps need to be taken to promote the mobility of Union citizens. The ESC takes the view that the fundamental right to work, recently adopted by the European Council, obliges Member States to pursue an active employment policy and also boosts employment opportunities by creating the conditions required for increasing the mobility of Union citizens. The ESC therefore welcomes measures to promote mobility which are of a voluntary nature for Union citizens or are designed to remove state obstacles to freedom of movement.

1.1.5. Workers going to work temporarily in another EU Member State take their culture, knowledge and experience with them to their new country of residence and broaden their horizons during their stay, to the benefit of both countries. As a result, the workers themselves and the other people with whom they come into contact both in their home countries and in the host countries no longer perceive Europe as an abstract concept but rather as something tangible. The way in which freedom of movement is organised in practical terms will, however, also determine whether these experiences are seen as being positive or negative.

1.1.6. Exploitation of the right of freedom of movement has up to now not had a disruptive effect on the wage-bargaining and welfare structures of the host countries. This contrasts with the frequent abuse of the freedom of establishment and the freedom to provide services by individuals masquerading as self-employed persons and by dishonest posting enterprises and labour-brokers, and also with the incidence of illegal employment. It is generally the case that persons making use of the right of freedom of movement are recruited on the same terms as nationals. The level of acceptance of this form of migrant work is accordingly high.

1.1.7. The Committee also stresses that certain reprehensible acts, referred to in the opinion, which have occurred in the Member States, possibly involving some employers, are fringe activities carried out by a small, criminal minority; they reflect neither the attitude nor the actions of the vast majority of employers or their organisations. The impact of such actions should not be over-stated and the misleading impression should not be created that they are commonplace.

[1] See appendix.

1.2. *Possible consequences of EU enlargement*

1.2.1. The high level of acceptance of freedom of movement for workers could change as a result of EU enlargement, if this were to result in migratory movements being concentrated on a small number of sectors and particular Member States or if the continued existence of major discrepancies in wage levels [1] on both sides of the EU's current eastern borders (the difference can be as high as 1:11) were to result in large numbers of cross-border commuters. In view of the demographic trends in most of the present EU Member States, it is largely accepted that further immigration from both the applicant countries and non-EU countries will be required in the coming decades in order to meet the general need for labour within the present EU. This does not mean however that in individual cases increased immigration could give rise to or exacerbate specific problems in particular sectors and regions which already have a high level of unemployment. The anxieties felt by people in these sectors and regions should not be dismissed and disregarded as an absurd fear of foreigners. To do so would give further encouragement to anti-European and xenophobic forces. Appropriate measures should rather be taken to prevent a concentration of immigration in these problematic regions and sectors, leading to social upheavals in the host countries.

1.2.2. The few studies available on this subject, such as the recently published studies by Boeri/Brücker [2] (drawn up for the European Commission) and the German Economic Research Institute (DIW) [3], nonetheless predict that the numbers of migrant workers entering the current territory of the EU (several hundred thousand per year initially following implementation of freedom of movement for workers) will be well below the figures frequently quoted in public discussions (in the millions in some cases).

1.2.3. These same studies take the view that if immigration is not controlled, it will be distributed unevenly between EU Member States and sectors and not evenly throughout the EU as a whole.

1.2.3.1. The Boeri/Brücker study states that 80 % of the migrant workers from the CEEC are likely to seek work in neighbouring states such as Denmark, Sweden, Finland, Germany and Austria, where they will be employed above all in the construction sector, agriculture and forestry, basic services and catering. Whilst in some of these countries there is already high unemployment and an ongoing decline in the number of jobs, in the construction sector in particular, so that an influx of additional workers could have damaging consequences for both job-holders and job-seekers, in the other sectors referred to there is in some cases a lack of suitable local workers.

1.2.4. Social upheaval could be the result, particularly if the use of the right of freedom of movement by new EU citizens leads to an increase in the number of cross-border commuters. Bearing in mind the major discrepancies in wage levels (ranging from 1:4 to 1:11) and costs of living (1:4) on the two sides of the EU's current eastern borders, the introduction of full freedom of movement without any transition may put short-term strain on the labour markets of these border regions. Practical experience, both past and present, e.g. in respect of seasonal agricultural workers and workers posted for short periods, confirms that such phenomena may occur in cases where there are high wage differentials between workers' countries of residence and countries of employment. In the longer term, however, the opportunities presented to the border regions will outweigh these effects, as wage differentials of this kind will also provide an incentive for new investment.

1.2.5. In the worst-case scenario, the immediate introduction — without any transitional period — of freedom of movement for cross-border commuters could thus have the effect of exerting downward pressure on the level of wages in the border region of the host country and bringing relative social hardship for workers. As a result of the squeeze on prices, employers who were ready to maintain wages at an adequate level would also encounter difficulties. Such a development would not only run counter to the objectives of the EU, as set out in Article 2 of the EC Treaty, but could also bring about considerable social tension, particularly in border regions, and encourage nationalist tendencies.

1.2.5.1. The Committee welcomes the planned EU aid measures for border regions designed to underpin structural change in these areas through the expansion of infrastructure, targeted training measures for workers and the promotion of small and medium-sized enterprises. In order to counteract the use of casual jobs as a means of 'wage dumping', the key instrument is the Directive on the Posting of Workers. For this Directive to have a practical impact, effective surveillance is particularly important. Failing this, there will be serious risks of substantial cuts in wages in certain regions and sectors.

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(1) The gross hourly wage for skilled workers in the manufacturing industry in west Germany is approximately DM 28.50. The corresponding rate for western Poland is DM 4.80 (six times lower), whilst for eastern Poland it is still only DM 2.70 (eleven times lower).

(2) Boeri, Tito and Brücker, Herbert: Study on the impact of the eastward enlargement of the EU on income and employment in the current EU Member States; study commissioned by the Directorate-General for Employment and Social Affairs of the European Commission and published on 23 May 2000; Berlin and Milan 2000.

(3) German Economic Research Institute (DIW) Weekly Report 21/2000: Eastward enlargement of the EU: Mass immigration not expected; Berlin 2000. The study is divided into two parts. Part 1 summarises the DIW's findings on the expected extent of future immigration from the CEEC. Part 2 — prepared by the Institute for the Future of Work (IZA) — analyses the possible impact of immigration on wages and employment.

1.2.6. Freedom of movement provides highly-skilled workers from the applicant countries with the opportunity to make better use of their skills, as there is often a lack of suitable jobs in the applicant countries or at least a lack of jobs offering wages commensurate with skill levels. If these workers were to avail themselves of the freedom of movement in large numbers, this could result in a brain-drain, which would further exacerbate the economic imbalance between regions; i.e. less-developed regions would find themselves funding the training of workers whilst highly-developed regions could, in the short-term, benefit from these skilled workers and, as a result, might fail to pay adequate attention to training their own new generation of skilled workers. The only way to solve this problem in the medium-term is for countries which have a large demand for highly skilled workers to increase their efforts to provide the requisite training.

1.3. *The provision of information — a key issue*

1.3.1. Workers who are interested in finding employment in other Member States need to be provided with accurate, reliable information in their own language. They need to be protected against dishonest service-providers who peddle worthless information or useless services for a high price or place them in jobs where conditions are unfavourable.

1.3.1.1. Before workers set out to find jobs in other Member States, they need to be provided with detailed information on the conditions applying there in order to prevent dishonest labour-brokers, employers, emigrant-worker agencies, landlords, language schools etc. from taking advantage of their inexperience. Such information should cover, in particular: the local employment situation, the rules on working conditions set out in collective agreements, usual wage levels in particular areas, the level of rents, etc. This information should be provided by public bodies or non-profit organisations, such as trade unions, welfare associations or chambers of trade or industry.

1.3.1.2. The information required to enable workers to avail themselves of the right of freedom of movement should be made available via the European Employment Services (EURES) network [1]. The ESC would highlight the importance of this network and welcomes its establishment. As far back as 1997 the Report of the High Level Panel on Free Movement of People, chaired by Mrs Simone Veil, issued on 18 March 1997 ('Veil Report') [2] criticised, albeit indirectly, the fact that this network was not well-known and ineffective. Although the situation has improved somewhat in the meantime, it is not yet satisfactory.

1.3.1.3. The EURES network regrettably remains unknown to many of the workers who are specifically interested in looking for work in other Member States, even though there has recently been a marked increase in the number of people accessing the website.

1.3.1.4. If the information currently provided by EURES on its web pages is representative of its work, it fails to provide jobseekers with an accurate insight into the situation in a chosen sector or at a chosen place of employment. Instead, EURES includes, for example, comparisons of national, inter-sectoral index-linked wage levels — which do not therefore have very much meaning — with reference to wage levels in, of all places, Zurich in Switzerland. The members of the ESC are unable, in their wildest imagination, to see how workers from EU Member States are able to derive the slightest benefit from these comparative figures when endeavouring to make a concrete appraisal of job offers.

1.3.1.5. There continues to be a clear discrepancy between the number of job vacancies in the Member States listed by EURES and the much higher number of vacancies on the files of the placement offices in the Member States. The ESC welcomes the discussions recently launched by the Commission with a view to ensuring that jobs listed in online databases in the Member States are also publicised on the EURES network. The ESC does, however, point out that the information currently contained on the EURES web pages with regard to job vacancies would, in many cases, not satisfy the requirements set out in point 1.3.1.1 above. The job offers usually do not even include details of working hours, wage levels or the exact place of employment or whether the work is temporary or permanent.

1.3.1.6. In the intervening period since the Veil Report was issued in 1997 there has regrettably only been a patchy improvement in cooperation between EURES and the social partners in the Member States.

1.3.1.7. The work of the EURES network is severely handicapped above all by the fact that EURES has only some 220 advisers, 90 of whom are voluntary with a full-time job elsewhere.

1.3.2. Trade unions, welfare bodies, trade associations and employers' organisations, in particular, are therefore continuing to provide the lion's share of advisory services and having to spend large amounts of their own money on this. Even in the EUR-15 it is hardly possible to fund this work. The addition of 12 further Member States and 12 further languages would definitively overstretch the staffing and funding resources of such associations, which are, in the main, financed by members' contributions.

[1] The European Employment Services (EURES) network seeks to facilitate freedom of movement for workers in the 17 EEA states. Partners in the EURES network include public employment services, trade unions and employers' organisations. This partnership is coordinated by the European Commission.

[2] Report of the High Level Panel, chaired by Mrs Simone Veil, on Free Movement of People (18 March 1997) ('Veil Report'). Available on Internet at http://europa.eu.int/Comm/internal_market/en/people/hlp/hlphmtl.htm, pages 25 et seq.

1.3.3. The — generally underfunded — trade unions and associations in the applicant states would, without the strong support of the EU, be in even less of a position to provide budding migrant workers in their countries with advice or protect them against dishonest practices. The ESC would point out that the establishment and promotion of strong (i.e. efficient and adequately funded) trade unions and employers' associations in the applicant states is also essential if the freedoms offered by the single market are to be realised, and that the Commission must play an active part in preparing the ground here.

2. **Need for a new opinion**

2.1. This own-initiative opinion follows on from earlier opinions issued by the Economic and Social Committee [1]. It carries forward and expands upon these earlier opinions since, though some of the demands made by the ESC have been implemented by the EU bodies, a number of the issues raised in the previous opinions have yet to be resolved and not all of the requests made by the ESC have been met.

2.2. Union citizens who have exercised their fundamental right of freedom of movement are still being treated less favourably in many fields than citizens of the host country.

2.2.1. A number of examples are set out below from the rapporteur's home country of Germany. Similar examples could also be provided from most other EU Member States.

2.2.1.1. Citizens of other EU Member States have to pay higher fines than German citizens for failing to carry their identity cards.

2.2.1.2. Particularly in the case of persons applying for income support, the authorities are keen to invoke formalities which have fallen into disuse in order to find a way to expel them. Only recently — on 16 October 2000 — the German press reported the case of an Italian applicant for income support in Baden-Württemberg who was to be expelled after living in Germany for 41 years because he had failed to apply in good time for a permanent residence permit. This permit should, however, have long been issued automatically to him without his having to make a special application. The lack of such a permit should also not have lead to expulsion as it is not vital to the right of residence. This would not appear to be an isolated case, as workers with insufficient income are regularly expelled — particularly from Baden-Württemberg — when they apply for income support if they failed to apply for permanent right of residence at a time when their personal circumstances were more favourable. Pensioners, too, run into problems with the German authorities responsible for foreigners if, for example, they have resided for more than two years in their home country and then wish to return to Germany.

2.2.1.3. Even after persons have returned home from the country where they worked, problems still often occur as a result of differences in social security systems. Pensioners returning to live in Portugal, for example, and therefore having to leave the German sickness insurance scheme can no longer be insured on a voluntary basis under the German nursing care insurance scheme, despite the fact that this form of social insurance is not available in Portugal, as persons can only contribute on a voluntary basis to the nursing care insurance scheme if they pay into a sickness insurance scheme in Germany.

2.2.1.4. A series of tax discriminations also continue to apply. For example, the tax allowances for children entitled to maintenance are normally included on a worker's wage slip in Germany, but for workers from another Member State with children still living in that Member State, these allowances cannot be claimed until later. As a result, more tax is deducted initially and can only be reimbursed at the end of the calendar year.

2.2.2. Disabled Union citizens seeking to exercise their right of freedom of movement also face considerable difficulties if they are so severely disabled that they are dependent on supplementary income support to lead a normal life. The authorities frequently use 'dependence on income support' — irrespective of the cause of such dependence — as a general excuse for refusing residence applications. Although the Community has on the whole not sought to harmonise provisions in this difficult area of the law so far, the ESC thinks that, at least in the case of disabled persons, dependence on supplementary income support must no longer constitute a legitimate reason for refusing residence applications.

2.2.3. When taking up public service employment in a different Member State, Union citizens continue to be discriminated against in many cases over the recognition of periods of comparable employment — and therefore with regard to the income bracket in which they are placed and promotion. In the private sector, too, previous periods of employment and vocational training courses completed in a workers' country of origin are not always recognised. As a rule, collective wage agreements make no provisions to this effect, with the result that the granting of such recognition frequently depends on whether or not individual agreements are reached between employers and workers.

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[1] ESC opinion on the Proposal for a Regulation (EC) of the European Parliament and the Council amending Council Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community (OJ C 169, 16.6.1999, p. 24), ESC opinion on the Communication from the Commission on an action plan for free movement of workers (OJ C 235, 27.7.1998, p. 82) and the ESC opinion on the Proposal for a Council Directive on the right of third-country nationals to travel in the Community (OJ C 153, 28.5.1996, p. 38).

2.2.4. In the case of school children, persons undergoing vocational training and students who move to a different Member State before concluding their education or training, it frequently happens that recognition is not given to periods of education already completed and the knowledge thereby acquired. As a result parts of their education become devalued and the remaining period of education or training is unnecessarily prolonged. Existing rules governing recognition mainly cover completed courses of education or training and to a large extent do not take account of the problems of children moving home with their parents.

2.2.5. The action plan drawn up by the EU Ministers of Education [1] pinpointed a series of further problems in the field of education and training which should, the ESC believes, be addressed without delay.

2.2.6. Non-EU citizens legally resident in an EU Member State (e.g. as workers or the spouses of EU citizens) already have to contend with a great variety of problems; these problems are drastically exacerbated when the persons involved move to another EU Member State. Although the problems with non-EU nationals posted to a Member State by enterprises from another Member State are close to being solved, many problems affecting freedom of movement for workers remain unresolved. Workers legally resident in a Member State frequently find themselves nonetheless denied access to particular jobs which are reserved for citizens of the host country and other EU Member States. Consideration of all the problems facing non-EU citizens would go beyond the scope of this opinion. The ESC would however point out that the problems arising in this connection must be resolved through closer coordination of migration policy by the EU. If immigration of non-EU citizens into individual EU Member States is regarded as a common policy area for the EU, it then inevitably follows that the problems arising for the persons concerned will also have to be tackled on an EU-wide basis. The aim must be to enable legal immigrants to benefit, on an equal footing, from the freedoms available in the EU.

2.2.7. There are a number of problems standing in the way of achievement of true freedom of movement for workers; one of the problems which has been discussed for the longest time and caused the greatest difficulty is the earning of rights in another country and the possibility of transferring the earned rights under different collective pension schemes, including supplementary pensions. Solutions must again be sought to this problem, both as regards freedom of movement among the existing fifteen Member States and to ensure such mobility for the applicant countries, too.

2.3. The impending enlargement of the EU also prompts the ESC to reiterate its call to the EU bodies to address issues and problems arising in connection with cross-border migrant workers and freedom of movement as a matter of priority and to put forward solutions as soon as possible.

3. **Urgent nature of the opinion**

3.1. In view of the large-scale EU enlargement planned for the near future and the structural differences between the existing EU Member States and the applicant states, increased use will be made of the right to free movement and the right to take up employment as a migrant worker in whatever way.

3.2. Even today in the EU-15 there are still a number of unsolved problems with regard to social security, taxation, discrimination, the recognition of training and service periods and qualifications and cooperation between the social, legal and police authorities in the Member States.

3.3. Tax legislation poses problems, in particular, for people going to work abroad and leaving their families at home. Such workers are often treated differently to nationals of the country where they work. This discrimination ranges from non-recognition of a second place of residence to failure to take account of children.

3.4. Despite the fact that EU provisions have long existed in the field of social security (such as Regulation 1408/71/EEC [2]), the different types of systems mean that there are still a number of unsolved problems affecting workers wishing to make use of the right to free movement and members of their family staying in their country of origin; the field in which such problems occur is sickness insurance. Although the Regulation has generally proved its worth, problems do arise in particular in cases where tax-funded schemes and schemes funded by contributions are jointly involved. Problems also occur, particularly for pensioners, in cases where given social security benefits are not available in their country of origin.

3.5. The problems already existing in the EU in its current form, as a result of the difficulty in bringing 15 different social security and taxation systems into line with each other, will be exacerbated by the accession of the applicant states.

3.6. The problems raised in the 1997 Veil Report and in the ESC opinions have only been partially solved. It is vital to rectify the unsolved problems, with a view to — and prior to — the accession of the applicant states, since it is likely to be much more difficult to find solutions subsequently. It is also in the interests of the people concerned in the applicant states that reliable and practicable rules exist and advisory and information facilities are in place prior to the introduction of freedom of movement. The applicant states themselves will also be spared needless expenditure if the necessary changes are made to the existing body of EU legislation before their accession.

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[1] Press release: 12928/00 (Press 420), dated 9.11.2000.

[2] OJ L 149, 5.7.1971, p. 2.

3.7. Although the single market as an economic entity has been virtually completed in many areas, much ground still has to be made up as regards the combating of abuse. The wars being waged against illegal employment, social security benefit fraud, evasion of income tax and social security contributions and illegal practices relating, in particular, to the posting of workers make this abundantly clear.

3.7.1. It is virtually impossible for the courts and prosecuting authorities in the host country to enforce civil-law judgements and impose fines on labour-brokers or posting enterprises in a worker's country of origin who have been found guilty of acting illegally. This is because of the lack of EU provisions. It is thus generally impossible to obtain reliable data on enterprises in a worker's country of origin and the social security contributions actually paid since there is no European business register or joint European database for social security organisations.

3.7.2. Workers recruited by dishonest employers or placement bodies to work in other Member States find it virtually impossible to claim their entitlements. This applies particularly in cases where workers are unable to find subsequent employment and join a trade union in the host country. Language barriers and difficulties encountered in continuing to pursue legal action once workers have returned to their country of origin help to prevent such fraudulent practices from being stamped out. A further contributory factor is the lack of cooperation between police authorities and the lack of reciprocal recognition of judgements and fines. Organised crime is exploiting these shortcomings more and more frequently. A solution needs to be found as a matter of urgency. Consideration should be given to establishing a European body to help workers claim their entitlements.

4. **Conclusions — need for regulation**

4.1. *Framework conditions*

4.1.1. Immigration — a joint task for all Member States

4.1.1.1. The ESC thinks that immigration has already become an issue which can only be tackled jointly. EU-wide freedom of movement for non-EU nationals who have been legally resident in one Member State and the labour-market disruptions caused by illegal immigration into a Member State (e.g. Mediterranean states or states along the EU's present eastern border) are ultimately matters of common concern to all the Member States. There is therefore an urgent need to step up the coordination of immigration policy.

4.1.2. Freedom of movement in the enlarged EU

4.1.2.1. The aim is to establish complete freedom of movement for workers, without any discrimination, in the enlarged EU. In order to ensure continued acceptance of freedom of movement for workers, even after EU enlargement, measures will need to be taken to organise the expected migratory movements in terms of timing and the regions and sectors to be included. Steps must be taken to ensure that the migration potential in the applicants states is not concentrated on a small number of neighbouring EU Member States.

4.1.2.2. Complete freedom of movement for workers in regions situated on the EU's present external frontiers, in particular, must not be introduced without a transitional period in order to avoid the possibility of local economic and social upheaval. Given the particularly large discrepancies in purchasing power and wage levels, there is a very considerable danger that cross-border commuters from the applicant states will accept wages which would not provide them with a living wage if they lived at their place of work; this will put local workers out of a job and distort competition between enterprises, which could, in turn, make freedom of movement for workers no longer acceptable.

4.1.2.3. Generally speaking, however, the EU must not allow its actions to be dictated by a defensive strategy, if we are to achieve dynamic economic development in the applicant states. Insofar as interim measures to curtail freedom of movement for workers and freedom to provide services are deemed necessary, the following approach should be adopted: the deadlines set should differentiate between different regions and sectors; criteria should be set out providing for a regular review of the situation and appeal clauses should be agreed upon, with a view to ensuring flexibility in the implementation of the measures.

4.1.3. Comparability and availability of the data held by social security bodies

4.1.3.1. The ESC proposes that consideration be given to the establishment, in the long term, of a joint database for social security bodies at EU level in order to (a) help workers document their employment and contribution periods, (b) clamp down on illegal practices, and (c) facilitate the work of the welfare and inspection authorities. The proposed database should cover employment data, contributions paid and benefits drawn. Attention should be paid to the need to ensure data protection in this context.

4.1.3.2. The ESC recognises that it would not be possible to set up such a joint database in the short term in view of the costs and the different types of systems. Steps should, however, be taken to move towards this goal. As an interim measure, a machine-readable social security card, conforming to a uniform EU pattern and containing these data, should first be introduced [1].

4.1.4. Making data from national business registers available

4.1.4.1. Although the single market has been almost fully established, job-seekers, inspection bodies, labour-brokers, legal representatives, business partners, customers and the courts have so far only been able with difficulty, and at the cost of much time and considerable expense, to obtain reliable information on the registered office, the registered owner and the current status (whether they are still listed or whether they are already in receivership) of enterprises in other Member States. A small minority of dishonest enterprises are exploiting these shortcomings in a large variety of ways, e.g. for the fraudulent recruitment of workers.

4.1.4.2. The ESC therefore proposes, as an interim measure, that EU-wide rules be adopted on (a) the minimum data to be collected when businesses are registered by the Member States and (b) the exchange and release of such data when required by other Member States. In the long term, consideration should also be given to linking national business registers to form a publicly accessible European database.

4.1.5. Improving the advisory services provided for emigrants and immigrants

4.1.5.1. A uniform certification scheme should be introduced throughout the EU for reputable providers of advisory services to Union citizens wishing to migrate and providers of special services, such as cross-border placements. The aim should be to exclude untrustworthy service-providers lacking the requisite specialised knowledge and to shield Union citizens from operators charging high fees for services provided free or for a small fee by public bodies or non-profit organisations. The ESC therefore proposes the introduction of a Directive stipulating that such services may only be provided by accredited non-profit organisations or public bodies. At the very least there should be an EU-wide ban — obtained by transposing the relevant ILO rules into EU law — on the charging of placement fees to workers by private service-providers.

4.1.5.2. The ESC urges the Commission to play an even more active role in the establishment and promotion of an advisory and support network for migrants to supplement EURES. The ESC welcomes the fact that the EU is already providing considerable funding in this area, but sees a need for additional funding, particularly in the context of EU enlargement. Providing know-how and the information actually required for the advisory and support services is just as important as the funding itself.

4.1.5.3. The aim must be to achieve closer interplay between the work of public advisory and placement bodies, trade unions, welfare associations, chambers of trade and industry and other non-profit organisations. Since the work of NGOs in this field actually constitutes a public service, it should be subsidised. In particular, financial assistance should be provided by the EU and national administrations for the appointment of special advisors and for the production, translation and distribution of information material.

4.1.6. Improvements to EURES

There is still a need for substantial improvements to the publicity given to the work of EURES and its level of professionalism. The ESC would expressly refer in this context to proposals to this end made in the Veil Report and would welcome an even more dynamic publicity and information campaign.

4.1.6.1. The information provided by EURES needs to be considerably enhanced and made more readily accessible. When vacancies are publicised via EURES, concise information should be provided about the wages, whether or not the post is temporary, working hours, place of employment and any requirements as regards languages and qualifications.

4.1.6.2. EURES should seek to cooperate still closer with the social partners, particularly at national and sectoral level, in order to obtain the up-to-date information required and provide persons seeking information with the most accurate possible picture of requirements and living and working conditions in other EU Member States.

4.1.6.3. Under Directive 68/1612/EEC, at least all vacancies for long-term posts or posts of unlimited duration held by national placement services and available online should also be published, as a matter of course, by EURES. The ESC welcomes the fact that the Commission has recently started to try to achieve this goal.

[1] Cf. also the similar proposal put forward for consideration in the Veil Report that the computerised cards issued by the respective national social security bodies be made readable in all Member States (loc. cit. p. 53).

4.1.7. Making penalties and fines more readily enforceable

Steps should be taken to ensure the enforcement throughout the EU of, in particular, penalties and fines imposed on employers for failing to meet their legal obligations in respect of, for example, payment of the minimum wage and social insurance contributions. The aim of such measures is to make it possible to take effective action against dishonest employers, particularly those engaged in the posting of workers. The ESC proposes that a Directive be adopted on this matter to replace the few existing bilateral agreements.

4.2. *Other proposed measures*

4.2.1. The ESC proposes that the Commission keep its Single Market Observatory (SMO) regularly briefed on the following subjects and activities:

— coordination of the work of public bodies, EURES and non-profit organisations;

— licensing of non-profit organisations providing advisory services to migrants;

— coordination of material and financial aid for advisory networks;

— analyses and statistics covering freedom of movement;

— assistance for the Member States and the social partners on all matters relating to freedom of movement.

4.2.2. Discontinuation of the practice of refusing residence to disabled persons requiring income support and to long-term non-national legal residents

The ESC proposes the addition of the following provisions to the relevant Directives:

— the submission of applications for income support by long-term non-national residents may no longer be used by Member State authorities as grounds for terminating their residence;

— disabled persons' supplementary income support needs may no longer be used by Member State authorities as grounds for refusing residence.

4.2.3. Automatic issue of a permanent residence permit to long-term legal residents

The ESC proposes that the existing rules be amended to stipulate that workers and their families who are legally resident in another Member State are to be automatically issued with a permanent residence permit after no more than five years without having to apply for one.

4.2.4. Establishing best practice

In certain cases, solutions to some of the problems linked to the free movement of workers has been found at decentralised levels. The PRISM-database of the Economic and Social Committee's Single Market Observatory lists some of these solutions, for instance the Euregio initiative, defending employees' rights in the region through a collaboration of trade unions in Belgium, the Netherlands and Germany, or the voluntary agreement on Social Security Contributions, organising holiday payments for the temporary labour force moving from Germany to France and vice versa by creating a simple administration system. A systematic listing of such initiatives may be able to solve some of the outstanding problems in the field.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

1. **Percentage of the population (aged between 15 and 64) in gainful employment**

	1999	1998	1997	1996	1995
EU15	68,6 %	68,0 %	67,5 %	67,3 %	67,7 %
B	64,6 %	63,2 %	62,6 %	62,2 %	62,1 %
DK	80,6 %	79,3 %	79,8 %	79,5 %	79,5 %
D	71,2 %	70,7 %	70,6 %	70,4 %	70,5 %
EL	62,9 %	62,5 %	60,8 %	61,0 %	60,1 %
E	62,1 %	61,3 %	60,8 %	60,0 %	59,5 %
F	68,8 %	68,2 %	68,0 %	68,2 %	67,6 %
IRL	66,4 %	64,7 %	62,9 %	62,3 %	61,6 %
I	59,6 %	59,0 %	57,7 %	57,7 %	57,3 %
L	63,2 %	62,1 %	61,4 %	61,2 %	60,4 %
NL	73,6 %	72,6 %	71,5 %	69,9 %	69,2 %
A	71,6 %	71,3 %	70,8 %	71,1 %	71,5 %
P	70,9 %	70,3 %	68,2 %	67,5 %	67,4 %
FIN	76,4 %	73,1 %	72,8 %	71,7 %	72,1 %
S	76,5 %	75,5 %	76,4 %	77,1 %	80,1 %
UK	75,2 %	74,9 %	75,1 %	74,9 %	74,7 %

2. **Percentage of (1) above represented by nationals of the Member State**

	1999	1998	1997	1996	1995
EU15	65,3 %	64,7 %	64,3 %	64,1 %	64,5 %
B	58,9 %	58,1 %	57,7 %	57,1 %	57,2 %
DK	78,6 %	77,2 %	77,8 %	77,7 %	78,0 %
D	64,9 %	64,6 %	64,4 %	64,1 %	64,1 %
EL	60,5 %	60,1 %	59,5 %	59,9 %	59,1 %
E	61,4 %	60,7 %	60,3 %	59,5 %	59,0 %
F	64,5 %	64,0 %	63,8 %	63,9 %	63,3 %
IRL	64,1 %	62,6 %	60,7 %	60,1 %	59,7 %
I	59,0 %	58,5 %	57,4 %	57,4 %	57,0 %
L	36,8 %	36,5 %	36,4 %	36,7 %	36,7 %
NL	71,1 %	70,0 %	68,9 %	67,3 %	66,5 %
A	64,7 %	64,2 %	63,6 %	64,1 %	64,6 %
P	68,9 %	69,3 %	67,5 %	66,7 %	66,8 %
FIN	75,5 %	72,3 %	72,1 %	71,1 %	71,6 %
S	73,3 %	72,2 %	72,9 %	75,5 %	76,8 %
UK	72,3 %	71,8 %	72,2 %	72,2 %	72,0 %

3. **Percentage of (1) above represented by nationals of another EU Member State**

	1999	1998	1997	1996	1995
EU15	1,3 %	1,3 %	1,3 %	1,2 %	1,2 %
B	4,1 %	3,7 %	3,7 %	3,8 %	3,4 %
DK	0,8 %	0,7 %	0,7 %	0,7 %	0,7 %
D	2,2 %	2,2 %	2,2 %	2,2 %	2,0 %
EL	0,2 %	0,2 %	0,1 %	0,1 %	0,1 %
E	0,2 %	0,3 %	0,2 %	0,2 %	0,2 %
F	1,7 %	1,7 %	1,8 %	1,7 %	1,7 %
IRL	1,8 %	1,7 %	1,9 %	1,8 %	1,5 %
I	0,1 %	0,1 %	0,1 %	0,0 %	0,1 %
L	23,9 %	22,7 %	22,9 %	21,9 %	21,8 %
NL	1,3 %	1,1 %	1,3 %	1,3 %	1,2 %
A	1,2 %	1,2 %	1,0 %	0,9 %	0,8 %
P	0,3 %	0,3 %	0,1 %	0,1 %	0,2 %
FIN	0,2 %	0,1 %	0,1 %	0,1 %	0,1 %
S	1,4 %	1,4 %	1,6 %	1,6 %	1,7 %
UK	1,3 %	1,3 %	1,3 %	1,2 %	1,2 %

4. **Percentage of (1) above represented by non-EU nationals**

	1999	1998	1997	1996	1995
EU15	2,0 %	2,0 %	1,9 %	1,9 %	2,0 %
B	1,6 %	1,4 %	1,2 %	1,3 %	1,5 %
DK	1,2 %	1,5 %	1,3 %	1,1 %	0,9 %
D	4,1 %	3,9 %	4,0 %	4,1 %	4,4 %
EL	2,3 %	2,2 %	1,2 %	1,0 %	0,9 %
E	0,5 %	0,4 %	0,3 %	0,3 %	0,3 %
F	2,5 %	2,5 %	2,4 %	2,7 %	2,5 %
IRL	0,5 %	0,4 %	0,3 %	0,5 %	0,4 %
I	0,5 %	0,4 %	0,3 %	0,2 %	0,2 %
L	2,5 %	2,5 %	2,1 %	2,5 %	1,8 %
NL	1,2 %	1,4 %	1,3 %	1,4 %	1,5 %
A	5,7 %	5,9 %	6,2 %	6,1 %	6,1 %
P	0,7 %	0,7 %	0,6 %	0,7 %	0,5 %
FIN	0,7 %	0,6 %	0,6 %	0,5 %	0,4 %
S	1,7 %	1,9 %	1,8 %	NA	1,7 %
UK	1,6 %	1,8 %	1,6 %	1,5 %	1,5 %

Source: EUROSTAT 2000.

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee, the Committee of the Regions and the European Central Bank: Practical aspects of the euro: state of play and tasks ahead'

(2001/C 155/11)

On 19 September 2000 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on 'Practical aspects of the euro: state of play and tasks ahead'.

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 13 March 2001. The rapporteur was Mr Burani.

At its 380th plenary session of 28 and 29 March 2001 (meeting of 29 March), the Economic and Social Committee adopted the following opinion by 73 votes to one with four abstentions.

1. Introduction

1.1. As the date for the euro's entry into circulation as banknotes and coins approaches, the Commission thought it useful to take stock of the situation with the Communication [1] of 12 July 2000, which was followed by the Recommendation 303/05 of 11 October 2000. Between the two dates, the Commission brought out two Euro Papers [2] which complete the picture and provide much valuable information.

1.1.1. By means of this opinion, the Economic and Social Committee intends to make its own contribution — in the light of the experience and knowledge of the social and occupational groups whom it represents — to an objective assessment of the problems, at the same time formulating proposals which it hopes will be useful.

1.1.2. A rational approach would lead it to examine first and foremost the Communication and the Euro Papers which make up the basis for a line of reasoning, and then the Recommendation which is the practical consequence of that line of thought.

1.2. The ESC has already dealt with the practical problems concerned with the introduction of the euro on a number of occasions; in particular it draws attention to the following opinions:

— Opinion on the Green Paper [3];

— implications for the market (own-initiative opinion) [4];

— practical aspects [5].

It would point out that nearly all the observations and forecasts made in the past, in these and other opinions, have been borne out by events; at the same time, it cannot but confirm the validity of some of its suggestions which, although not taken up, are still well-founded.

2. Part I — The Communication and the Euro Papers

2.1. *The current situation*

2.1.1. Enterprises

2.1.1.1. Many of the large enterprises — especially multinationals — have already adopted the euro as their accounting currency and others are at an advanced stage of preparation. The Commission expected a 'snowball' or 'trickle-down' effect [6] in relation to the SMEs, but this effect did not occur. In this context the Committee had pointed out [7] that 'the need to establish some form of interface between Single Currency internal operations and transactions in national currency could be a source of increased costs and complications'. This point — based on the rationality of the choices — is still relevant and will remain so until the end of 2001: it should be borne in mind when planning actions for the intervening period before the euro comes into circulation.

2.1.1.2. However, the rationality of earlier choices does not in any way justify either the failure to recognise the strategic consequences of the switch to the euro or, in practical terms, the disturbing tardiness of many — too many — firms in preparing themselves for the introduction of the euro: whilst

(1) COM(2000) 443 final.
(2) No 38 and No 41 of August 2000.
(3) OJ C 18, 22.1.1996, p. 112.
(4) OJ C 56, 24.2.1997, p. 65.
(5) OJ C 73, 9.3.1998, p. 130.
(6) See point 1 (a) of the Communication.
(7) OJ C 18, 22.1.1996, p. 112, point 6.5.1.

60 % of large firms are due to complete the conversion by the end of 2000, more than half of SMEs estimate that they will not be ready for the final deadline of 31 December 2001. If this is a realistic picture of the situation, it is more than disturbing: the Commission takes the view that there is a serious risk that at the end of 2001 bottlenecks may develop in terms of availability of IT and accounting resources. The Committee had drawn attention to this aspect [1], calling upon the Commission to ascertain, in cooperation with the computer industry, whether the latter's resources were consistent with planned deadlines and the resources available.

2.1.2.1. However, IT preparation is the final stage of the administrative preparation phase — rather a lengthy task even in the smallest enterprises. The most serious problem, therefore, is not that of a possible lack of IT resources, but that of a lack of preparation tout court. If a large number of firms were unprepared, a risk would arise for society — other firms and citizens/consumers — from a nucleus of firms incapable of working in the legal currency. For the moment, the risk is only theoretical, but the Member States should devote all possible attention to this possibility: in addition to preventive measures, it must be decided what to do if the risk does in the end materialise.

2.2. *Citizens/consumers*

2.2.1. Acceptance of the euro on the part of most citizens/consumers has been somewhat lukewarm — 'significantly less than was anticipated before the introduction of the euro on 1 January 1999' [2]. This lack of interest has perhaps been sustained by the euro's disappointing performance against the dollar, particularly in 2000. The fact is that demand for new accounts in euro has been minimal, as have been payments in euro, apart from those for transactions in securities which are compulsorily expressed in euro; the payment terminals (50 % of which are already designed to work in two currencies) are very little used. It is also worth noting that institutional investors have shown much greater interest in the euro than have ordinary consumers.

2.2.2. The Communication [3], like the Euro Paper [4], proposes that 'owners of terminals could be encouraged to speed up the conversion to the euro'; more generally, it states 'thought will have to be given to the ways of prompting citizens to make more active use of the euro means of payments'. It attributes the fall in interest on the part of consumers to a reaction to the high bank charges on financial transfers in the euro area, among other reasons.

2.2.3. The reasons given by the Commission for the fall in interest appear to have no basis, at any rate in this field: the opening of accounts and the use of terminals have nothing to do with international transfers, which in any case constitute a tiny proportion — 1 % — of the total of domestic transfers; bank charges (which will be discussed below) are the same for transfers in the national currencies of the euro zone as in euro, and it does not seem that their overall value has diminished. The Committee thinks that the reasons are to be found elsewhere, as it will explain in more detail below.

2.3. *The dual display of prices*

2.3.1. The Communication [5] points out that the dual display of prices is very widespread in a majority of countries, particularly in the large scale retail sector and in trading and service firms of a certain size. As was predictable, SMEs account for the most significant exceptions, as they lack the necessary means and know-how. However, questions are beginning to be asked 'as to the real effectiveness of dual pricing. It seems that consumers pay little attention to prices in euros'. The Committee had foreseen this in its opinion on the Green Paper, [6] had strongly advised against 'adopting any measures which imposed dual display of amounts' and had suggested alternative or complementary solutions which would probably be more effective.

2.4. *Public administrations and local authorities*

2.4.1. Public administrations in general, with one or two significant exceptions, seem to be well advanced in preparing for the transition to the euro; the situation with local authorities appears to be less positive, as they give the impression of having underestimated in many cases the importance and implications of the problem; that at least is the apparent conclusion to be drawn from the Communication [7].

2.4.2. By contrast, the efforts made in terms of communication to the citizens by the Member States and the public administrations — and to some extent by the local authorities — are really considerable. In the light of the previous point, one could be forgiven for thinking that some public authorities are giving priority to those programmes regarded as 'easier' and 'more popular', i.e. direct communication with citizens/electors, before tackling the more difficult and more technical problems of reorganising their own administration.

(1) OJ C 18, 22.1.1996, p. 112, point 5.3.4.
(2) See the Commission's Euro Paper No. 38 of August 2000, point 2 (page 5 of the English-language version).
(3) Point 2a.
(4) Euro Paper No 38.
(5) Point 2b.
(6) OJ C 18, 22.1.1996, p. 112, point 6.1.5.
(7) Chapter B, 2a.

3. **Communication**

3.1. In the entire history of the European Union, no initiative has been the subject of such massive commitment in terms of resources and funds as the adoption of the euro: commitment by all parties — Commission, European Parliament, Member States, European Central Bank, Economic and Social Committee, Committee of the Regions, public administrations and private organisations — has been intense, aware, indefatigable and unstinting as regards funds. There is no similar precedent even in the history of world currencies: in the past, changes of currencies have been a recurring event of which not too much was made, accepted fatalistically as inevitable in economic life: examples are decimalisation of sterling and the switch in Brazil from the cruzado to the real .

3.1.1. The Commission has carried out coordinating work but has also taken the initiative, in many directions. The campaign on the euro — 'A single currency for Europe' was launched in 1996 and is still continuing. Over the last two years, 117 million euro have been spent, two-thirds of which through agreements with Member States. Funds have been allocated for preparatory work (publications, conferences, seminars, teaching in schools, etc.); the financial commitment of the Member States is at least equal to the funds allocated by the Commission.

3.1.2. Funds have also been allocated for 'multiplier' organisations, for the 'Euro Made Easy' programme and for pilot operations in regions and cities. For a more 'technical' public, the Commission has organised seminars in the major financial centres and 80 initiatives of various kinds in third countries. All this, in addition to education and training courses and seminars (both general and specifically targeted on 'vulnerable' social groups), participation in international fairs, publications, documents, the InfEuro periodical, kits, guides, videos and posters, as well as an Internet site with an interactive data base. One can say that no field of communication has been neglected.

3.1.3. The European Parliament, for its part, has allocated sums for similar activities, including some with a direct commitment on the part of some of its Members, but more often in association with the Commission and the Member States.

3.1.4. The Member States and public administrations, too, have multiplied their general or sectoral initiatives, above all addressed to citizens, firms and disadvantaged groups in the population; at present, there is a lack of precise data on the way the funds have been used, but it is certain that the effort has been general and made with conviction.

3.1.5. The ECB, for its part, prepared the ground impeccably for the transition to the euro in 1999 by the European financial system; as well as setting up the TARGET system, which operated smoothly from the start, it contributed to the formulation of a 'euro policy' both in the euro zone and in relation to third countries. Its task was by no means easy — to coordinate the work of the national central banks in preparing coins and banknotes — and this was accompanied by an extremely efficient communication effort. It should be noted that the ESB has earmarked a substantial sum (80 million euro) to publish brochures depicting the new coins and notes.

3.1.6. The Committee has not neglected its duty towards civil society: many ESC members have launched or taken part in information campaigns aimed at the general public and national and international organisations.

3.1.7. Private organisations have responded to the appeal by the Commission and the governments in a knowledgeable and unstinting way. Consumer organisations have carried out their work, as one might expect, with citizens/consumers in general and the more disadvantaged groups, whereas vocational organisations have worked mainly with their members; it is estimated that in practice, all firms have been reached by the communication work channelled to them by their own sectoral organisations. The financial sector (banks, in particular) has informed all its clients and the public in general — through brochures (estimated at a total of 300 million copies), publication of financial results in euro, and with information printed on every piece of paper sent to their customers, repeated at every opportunity. The dual display of amounts is almost universal practice now.

3.2. *The results*

3.2.1. Inevitably, the sector which has best adapted to the euro is the financial one: having had to adopt the single currency for monetary, financial and stocks transactions from the beginning of 1999, and having the small-scale, but significant, experience of clients opening euro accounts, the conversion of all dealings at the end of 2001 — or even earlier — does not give rise to special problems, except perhaps in terms of volume of work.

3.2.2. On the other hand, as stated above, the muted response from SMEs and citizens/consumers is generally disappointing and in some respects worrying. Surveys by Eurobarometer and private organisations paint a picture in which either no-one knows anything about the euro, or they have forgotten it, or they will provide for it at the 'right time', or they doubt whether the euro will really be adopted.

3.3. *Lessons to be drawn*

3.3.1. Except for the financial sector, which was obliged to adapt itself to the euro, and those who saw immediate advantages in it (above all, large firms and multinationals) it can be said that experience provides the proof of the principle which marketing and communications experts know all too well: they can influence individual patterns of behaviour through communication and other means, but it is virtually impossible to impose choices on people if there is no direct and immediate interest involved.

3.3.2. As far as firms in particular are concerned, the Communication states that 'A communication drive is therefore necessary to inform businesses of the exact stage the timetable ... has reached and to impress on them the existence of a 31 December 2001 deadline and the need to speed up their preparations'. The Committee takes the view that the 'communication drive' should be geared primarily to sectoral organisations, which should make it their business to send a message to businesses, using the content and style with which they are the most familiar. Generally speaking, this message should urge their members to consult the documentation — which is already copious — and to take the necessary steps in good time; otherwise, the consequences will have to be borne by those who fail to meet the deadline. It is the task of the Commission and the Member States to inform trade organisations and keep them updated on the practical arrangements for the change to the euro, but it is these organisations which must forward this information to their members: in other words, the Commission does not consider the use of 'European' public funds to finance campaigns directed at business circles to be acceptable. Each Member State must be able to decide — in circumstances which the Committee hopes will be exceptional — to grant financial assistance to the most 'needy' national organisations.

3.3.3. As regards citizens/consumers, a calm, balanced analysis must be made, which must not be influenced by extraneous considerations. The Commission [1] notes that 'most people have received some information on the single currency but may be forgetting it. After the massive publicity following the launch of the euro ... there were encouraging levels of public interest in, awareness of, and support for the euro. More recent polls suggest that, with some notable exceptions, this has since fallen; and people are tending to forget what they once knew'. This confirms a basic principle of mass psychology: a message which is not of direct and immediate interest tends to be ignored or forgotten.

3.3.4. The only group of consumers which appears to have higher than average 'euro-awareness' is that of bank customers, particularly those who are more up-to-date (but not necessarily richer). This, too, confirms the validity of the Committee's observations [2] that 'companies (especially the banking sector) should clearly be primarily responsible for getting information across on a wide scale, for the obvious reason that only such messages are practical and of direct interest to the consumer.'

3.3.5. In brief, the experiment has shown up the failings of purely theory-based assumptions: apart from the predictably meagre results of dual display of prices, the Green Paper's assumption that competition would induce private operators to offer services in euro, resulting in considerable benefits for the consumer, also proved unfounded.

3.3.5.1. The Committee had warned against certain unfounded assessments; in the opinion already cited, it stated that running accounts in euro would be 'a mere accounting strategy which might well be useful in familiarising the consumer with the new currency, but would be of no practical use'. Only now is it being realised that barely 1 % of consumers have opened accounts in euro. The messages were technically excellent; unfortunately, they ignored the principle set out in point 2.2.1: recommendations fall on deaf ears if consumers see no direct, immediate benefit for themselves.

3.3.6. The idea now is to resume the information campaign with renewed vigour; the Committee strongly recommends that it be limited to the practical and technical arrangements for transition to coins and banknotes in euro, conversion of accounts, cash amounts, etc. without dwelling on other aspects; a few simple concepts are most likely to be retained. Most importantly, the actual event should be 'played down': the message must be conveyed that conversion is perfectly accessible to everyone, with a minimum of normal care: separate plans should however be made for the most 'vulnerable' sectors of society (the blind, those living in poverty, illiterate or semi-literate people or inhabitants of remote areas), for whom specific measures and messages should be devised.

3.3.6.1. The information campaign should not, however, be 'Europe'-driven, but implemented mainly by the Member States: only they are aware of their general environment and

[1] Euro Paper No 38, point 2.2, p. 10.

[2] OJ C 18, 22.1.1996, p. 112, point 8.2.3.

the way their citizens think, and can judge the right approach to cope with specific national or local situations. They should take particular care to ensure that the necessary information is conveyed to geographical areas and sectors of society which are hard to reach via mass communication.

3.3.6.2. Another recommendation concerns the implementation timetable: the campaign should be prepared in advance, but launched only towards the last three months of 2001. To start earlier would be once again to run the risk already identified by surveys: information given too early is forgotten.

3.3.6.3. As already argued in the case of businesses, in the area of communication with the general public, public money should be used only if and when spontaneous initiatives by the mass media or private sector do not achieve the aim: the Commission and above all the Member States should have a full picture of the situation in the various sectors — private individuals, companies and public bodies — and should take any measures to 'fill the gaps'. Hence it is necessary to avoid overlapping and duplication of measures.

3.3.6.4. It is essential that the temptation to combine two messages — one 'technical' and the other, on the benefits of the euro, 'political' — be resisted. Linkage may be useful in some cases, but it should be left to individual Member States: further confirmation of the need for 'national' rather than 'European' campaigns (see point 3.3.6.1).

3.3.7. The Committee trusts that, in the preparatory campaigns for practical introduction of the euro, account will be taken of a suggestion which it has repeatedly made but which seems to have gone unheeded: the Committee recommended [1] that information campaigns on the practical aspects of the introduction of the euro should highlight the benefits of extensive use of payment cards which would make conversion calculations automatic and remove the need to calculate change. This aspect should be stressed in all the messages, especially in the banking and commercial sectors: if the calculations seem complicated or one does not have confidence in those made by the other party in the transaction, cards should be used as much as possible.

3.3.8. One consideration, which the Committee regards as not unimportant, concerns the 'tone' of the communication: earlier campaigns were based on stressing the advantages of the euro, and encouraging the public to prepare themselves. The approach should change to one based on the urgency and the compulsory nature of the transition to the euro: those to whom the messages are addressed must understand that time is short and that those who do not adapt — by learning and/or taking adequate measures — will run into all the problems associated with being 'out of the loop'. In short, the principle which applies is 'ignorance of the law is no excuse' — a principle of Roman law which underpins all legal systems. A 'robust', albeit politely-worded, message, designed to recall the addressees to their duties as citizens towards society while protecting their own interests, is worth more than any number of invitations and exhortations delivered in an almost apologetic tone.

3.3.9. Rounding-off of prices in euros, which may occur especially in countries which are not, or no longer, used to using 'cent' denominations in their currency, is an aspect which needs to be looked at. While in a free market vendors retain the ability to set prices, a widespread tendency to round prices upwards may well trigger an increase in inflation, although this should be inhibited by inter-company competition. Companies and consumer organisations should be alerted to this issue, which will also prevent conflict being generated over it.

4. **The introduction of the banknotes and coins**

4.1. In the Communication the Commission states that the euro coins are more secure than any of the national coins in circulation; the Committee takes note of this, but warns against any complacency: technology is now so far advanced, and the resources available to organised crime are so considerable, that one cannot afford to 'lower one's guard'. The central banks, the OLAF and Europol are taking protective measures which are already far from being a simple task: although obvious and possibly already catered for, it might be worth recalling the need for coordination with Interpol, since the euro is set to be in wide circulation across the world.

4.2. The Commission adds that it is satisfied with the parameters that enable the coins to be recognised by automatic vending machines. It does not mention the recognisability of banknotes used in machines in a number of countries, particularly in car parks and filling stations. In view of the high value of banknotes in euros and the costly technology for their recognition, it would be desirable for the use of vending machines which accept banknotes to be discouraged. Thus the machines should only accept coins or payment cards.

[1] OJ C 73, 9.3.1998, p. 130, points 5.4 and 5.4.1.

5. **Measures against counterfeiting**

5.1. The Committee takes note of the Council Decision of May 2000 on reinforcing protection of the euro [1], which recommended that the Member States lay down effective, proportional and deterrent penalties for counterfeiting the single currency and trafficking counterfeit notes. However, it notes with regret that once again the suggestion for the decision to include similar preventive and repressive measures against counterfeiting and use of alternative forms to cash (cards, cheques or travellers' cheques) has not been taken up [2].

5.2. Given the spread of these means of payment and the likely increase in them with the introduction of the euro (already in some supermarkets in certain countries payment by card constitutes 70 % to 80 % of the daily turnover), it is advisable to protect alternative means of payment through similar measures — albeit proportionately less severe — to those adopted for the cash form of the official currency.

5.2.1. Such measures should be taken both with a view to protecting citizens' interests and — even more so — as part of the effort to combat organised crime. Confining attention to protection of the official currency displays a limited vision of protection of the public interest, confined to the state as such; the interests of society (defence of the citizen and combating organised crime) are equally important, in economic terms but above all in social terms. The Committee trusts that the Commission will take urgent action to ensure that suitable measures are adopted.

5.3. The question of counterfeiting and trafficking in official currency and means of payment comes under the broader heading of combating organised crime, discussed in an earlier Committee opinion [3]. The opinion called upon the Member States to take urgent steps to reorganise their structures and regulations to achieve effective coordination of anti-crime action. The Commission has proposed a regulation on the matter, restricted to counterfeiting of euros, but adoption seems to be held up by delays and obstacles which are completely unjustifiable given the urgency and importance of the problem.

6. **National cash changeover plans**

6.1. The period immediately after 31 December 2001 will perhaps be the most delicate phase of the whole 'euro operation' since it involves not just groups who are professionally prepared but also the general public, including sectors of society who cannot be expected to have perfect knowledge of the rules and procedures. Each Member State has taken appropriate measures, which presumably take account of the needs and customs existing in each country.

6.2. As regards advance supplies of banknotes and coins, each Member State has adopted its own policy. In the retail sector and for service companies, especially those located in remote areas, the greatest problem will be having sufficient funds available from the first day to give change in euros to customers, as well as familiarising staff with operations involving the new currency. For the general public, on the other hand, the main question is getting used to recognising the various coins and banknotes; for that purpose it should be enough to look at pictures in the booklets and leaflets already in circulation, or which will be reprinted and distributed at a suitable time. As regards being able to recognise forgeries, it is doubtful whether the ordinary citizen could acquire the necessary skill to distinguish them from genuine currency.

6.3. The sectors which most need to defend themselves against forgeries are the retail and services sectors: they ought to have available to them — from the very start! — low cost, efficient equipment capable of recognising forgeries. It is possible that suitable measures to this end have been adopted or are in the process of being adopted, but the Committee has no information on this.

6.4. Two of the main problems seem to be firstly, that of avoiding the formation of queues at bank counters to acquire the new currency on the first day and secondly, in retailing, where — insofar as is possible — change in euros should be given for payments made in national currency. Here communication must play a decisive role — and it should be remembered that television is the most effective, convincing means, with low cost per contact. The citizen must be informed that the national currency can go on being used without problems for a certain period two months after the changeover (two months almost everywhere):, it would however be useful for him or her to pay into a bank account in December all the cash which is not essential to meet immediate expenditure, although this should not be compulsory. Neither will it be a problem if traders who are temporarily out of euros give customers change in national currency. The message must therefore play down the assumed complications and difficulties, provided that the citizen is prepared to do what is suggested. In this respect, the Committee would redirect attention to its proposal — made on a number of earlier occasions — to convince consumers and trade to adopt the widespread use of electronic means of payment. These are the only means which do not involve conversion calculations with the resulting checks and doubts, or having to give change in cash.

[1] See also the steps to establish a Steering Group and a common interinstitutional strategy for the protection of the euro (Europol/European Central Bank Joint Press Release, 24.3.2001).
[2] OJ C 18, 22.1.1996, p. 112, points 7.13 and 7.14.
[3] OJ C 268, 19.9.2000, p. 48.

6.5. Currency exchange in banks will be free of charge in 'reasonable' quantities, but in this connection it will be worth pointing out that only the national currency can be exchanged free of charge, whereas foreign currencies (banknotes) remain subject to the payment of the costs of handling and return to the relevant countries, under the existing conditions which must not be changed, unless it is to lighten them. It should also be specified that the exchange of foreign coins is not usually provided for, given the excessive cost of their handling in relation to their value. This is only a minor problem for individuals: in some countries publicity campaigns are under way in favour of donating coins to charities or research institutes. Such initiatives should be encouraged everywhere.

6.6. On the problem of exchanging modest — or better, 'reasonable' — sums, for people who do not have a bank account, the banking system should make provision free of charge. If approached properly, the question should not give rise to serious problems: those who do not have a bank account are unlikely to hold significant sums. However, the maximum amount must be such as not to facilitate money laundering by organised crime; the latter could take advantage of the opportunity to convert ill-gotten gains through a number of people going to different bank counters and claiming that they do not hold an account.

6.6.1. In contrast to the point made above, it has been noted in some countries that not everyone has a bank (or postal) account, and that many people still hoard large sums of money at home. Since compelling individuals to open bank or postal current or savings accounts is inconceivable, the problem of distinguishing 'legitimate' from 'illicit' money remains: this can be done by using existing money laundering legislation. In most countries such laws stipulate that the possession of cash sums over certain limits must be justified by clearly-identified persons: any exception to this rule would be to open a door to launderers which the law had already sought to shut. The Committee urges that this rule be applied universally.

6.7. One aspect affecting the practical arrangements for converting paper and metallic money into euro is the logistical one; the general public has little knowledge of the volume of currency involved, the problems of transport, guarding, protection, distribution, collection and destruction of the currencies which are no longer in circulation. The central banks and national banking systems have been seeking for some time to tackle the difficult problems involved, but the Committee has the impression that some of them have not yet been entirely solved. A recommendation of greater diligence seems out of place, and would run the risk of being unfair to the professionalism of those dealing with the matter; however, the Committee thinks it useful to draw attention to the possibility that practical obstacles arising at the last minute may make impracticable some of the measures now regarded as rational and useful.

7. **Part II — The Recommendation**

7.1. As stated in the introduction, the information and considerations contained in the Communication and the Euro Papers find a logical conclusion in the Recommendation. The Committee has adopted a similar layout, commenting on the various documents in the same order, with a view to clarifying its views and making its viewpoints more comprehensible.

7.2. Article 1. The recommendations in this article (entitled 'informing future users') follow the right logic of 'capillary penetration' of information, and the Committee can only agree, but would draw attention to various reservations and comments contained in point 3 above. In particular, it recommends relying mainly on sectoral organisations and banks, and secondarily on the Member States and their official institutions, only when this turns out to be indispensable. Given that the campaigns are aimed at national populations and categories, there is no obvious need for the European institutions to be involved. Above all, account should be taken of what has already been spent overall: even without the data, one can say with certainty that no communication campaign has ever involved such high 'costs per contact' with such disappointing results.

7.3. Article 2 — 'helping citizens to become accustomed to the euro'. It is recommended that the Member States ensure, during the third quarter of 2001 at the latest, that the order of display of dual prices be inverted: first a highly visible euro price and then the corresponding price in national currency. The measure is rational, but one should not have too many illusions as to its effectiveness in every case: it will be effective if the consumer already has an account in euro; on the other hand, if he is using national currency (in cash or in his own account), he will in any case have to consult the amount given in that currency. More generally, it is far from certain that this measure will get consumers into the habit of converting amounts: only practice will tell. Shrewder consumers will probably assume this habit, but their 'weaker' counterparts must be able to expect help from suppliers.

7.3.1. In the course of the year 2001, public administrations and businesses should pay their employees' wages and salaries in euro, and pensions should also be paid in euro. This could lead some of the employees to start holding their bank accounts in euro — a decision which would in itself be encouraging in terms of creating a familiarity with the new

currency. However, the Committee draws attention to one problem: if, as is probable, only some of the employees take this decision, cooperation will be necessary between employers, employees and the banking system to ensure that the amounts to be credited in euro (for those who already have euro accounts) and those to be converted into national currency are identified at the source. Considering the dynamic of the opening of the accounts — which will certainly not all be opened at the same time — the continual updating of the files will be quite a serious administrative burden.

7.3.2. Television could do much more to familiarise the general public with the euro than any official publicity campaign, through game-shows, quizzes etc., provided that efforts are made — as a matter of urgency — to ensure that winnings or potential prizes are always expressed in euros rather than national currency. The same applies to lotteries, betting and so on. This may seem a trivial point, but the intention is perfectly serious, and the Committee is convinced that the matter merits careful consideration.

7.4. Article 3 — 'Encouraging economic operators to gain experience in using the euro'. It is proposed that at the beginning of the third quarter of 2001, the banking system should, of its own initiative, transform accounts and means of payment into euro unless the customer expressly requests otherwise. Bank statements should show every amount in euro and equivalent amounts in the national currency unit. This is intended to anticipate by at least three months the obligatory transition to the euro — a measure which some of the customers could view favourably. In addition, part of the banking sector could draw an advantage from this since it would dilute the impact of the 'big bang' at the end of the year, provided that conversion programmes already adopted allow it. However, this does not seem to be the case for all credit institutions. The Member States should consult the parties concerned and should at all events avoid making this provision a coercive one.

7.4.1. The Committee would also draw attention to the correlation between the provisions of Article 2 and Article 3: should wages continue to be paid in national currency to the end of 2001 — which is probably the case for many firms — the employee would find himself having to count in two currencies if his account was obligatorily converted into euro. The same problem, only the other way round, concerns employees receiving their wages in euro but who have national currency accounts. In principle, it would be best for wages to be paid in euros and accounts to be converted at the same time. This would not be a straightforward operation, and would have to be accomplished following consultation with the interested parties: trade unions, consumers and banks.

7.5. Article 4 — 'reducing the flow of transactions to be converted into euro'. This article is fully endorsed by the Committee: contracts and the registered capital of new firms should all be expressed in euro, above all — and indeed obligatorily — if their validity extends beyond 31 December 2001. Similar measures should be taken with regard to employment contracts between the social partners. The Committee has already given a favourable view on the suggestion to ask customers to deposit in banks in December all the cash which they do not immediately need [1].

7.5.1. An additional measure, designed to reduce the flow of operations to be converted into euro, could be the adoption of a provision which has long been adopted by certain Member States for other purposes: a ban on paying salaries and pensions in cash, instead making payments into bank or postal accounts. Apart from the benefit in terms of conversion into euro, this would diminish the incentive for robbing people and banks or post offices and would in addition combat the problem of undeclared labour. Some voices have been raised against making such a measure compulsory, although it does not seem to have caused problems in a range of countries. The Committee believes that if it is decided not to impose any obligation, then at least every possible disincentive should put in the path of paying salaries and pensions in cash.

7.6. Article 5 — 'facilitating the cash changeover to the euro'. The measures provided for in this article have been commented on in point 6 above. The Committee agrees, but draws attention to possible obstacles of a logistical nature (point 6.7), to the need to prevent money laundering (point 6.6), and to safeguarding against fraud and forgery (points 5.2 and 6.2). It is worth pointing out in this connection that replacing cash with fiduciary money (payment cards in particular) is already being advocated by the commercial sector, independently of the changeover to the euro: consumers are specifically asked to use cards each time strikes are called by cash-in-transit personnel, but reducing cash stocks is in any case necessary, even under normal conditions.

8. **Conclusions**

8.1. The Committee agrees that a further multimedia information campaign, principally via television, is necessary for the changeover from national currencies to the euro, but it recommends that this be done in good time, with as little public expenditure as possible and, above all, with a minimal contribution from Community funds: in practical terms, each country is responsible for its own communication policy.

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[1] See point 6.4 above.

8.2. Similarly, the 'political' message on the advantages of the euro and its benefits for Europe must be left up to national authorities, who alone can judge whether and how to transmit the message in the light of their citizens' feelings.

8.3. The practical problems arising from the introduction of the single currency are numerous, but should not be exaggerated, either in practice or in messages directed to the public. The general public should help by taking on board the recommendations: not keeping or changing large sums in cash, avoiding queues to obtain new cash, opening bank or postal accounts where they have not yet done so, and using payment cards whenever possible.

8.4. The bank and retail sectors will have a key role to play: banks in changing the currency in which accounts are held and transactions effected and, in logistical terms, storing and distributing the new currency; and retail outlets in taking national currency from customers, paying it into banks and, where necessary, giving change in euros. This raises issues of prior supply of coins and notes with the ensuing problems of logistics, security and calculation of interest.

8.5. The Committee intends to make no comments on this aspect, realising that it is a matter for the national authorities and is the subject of delicate negotiations. Logistical problems must be resolved by those responsible and mindful of the duration of dual circulation of new and old currency. Here, the Committee would emphasise that the logistical problems are all the greater in that the period of dual circulation will be short.

Brussels, 29 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'Wage discrimination between men and women'

(2001/C 155/12)

On 21 September 2000 the Economic and Social Committee, acting under Rule 23(3) of the Rules of Procedure, decided to draw up an opinion on 'Wage discrimination between men and women'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 March 2001. The rapporteur was Ms Florio.

At its 380th plenary session (meeting of 28 March 2001), the Economic and Social Committee adopted the following opinion by 65 votes to eight, with 14 abstentions.

1. **Introduction**

1.1. The right to equal pay has been enshrined in Community legislation since its very beginnings: Article 119 of the 1957 Treaty of Rome requires the Member States to apply the principle of 'equal pay for equal work' for men and women.

1.1.1. Later, Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women states the need for 'equal pay for the same work or for work to which equal value is attributed'.

1.1.2. Article 141 of the Amsterdam Treaty amends and replaces Article 119, and provides the Council with a legal base for adopting measures to guarantee the principle of equal treatment.

1.1.3. Other directives have also helped indirectly to consolidate this right within the European Union [1].

[1] Amongst the most important are Directive 76/207/EEC (Access to employment, vocational training and promotion, and working conditions); Directives 79/7/EEC, 86/378/EEC and 96/97/EC (on social security).

1.2. Finally, the adoption by the European Union of a Charter of Fundamental Rights is a major step towards European citizenship, and re-launches at supra-national level the principles which underpin any democratic constitution. These include the principle of equality between men and women, enshrined in Article 23 of the Charter: 'equality between men and women must be ensured in all areas, including employment, work and pay'.

1.3. The principle of equal treatment is also addressed in the United Nations system, in particular in the Universal Declaration of Human Rights (1948) [1], the Convention on the elimination of all forms of discrimination against women (1979) [2], the Beijing Declaration and Platform for Action (1995), and the final document adopted by the Special Session of the General Assembly 'Beijing +5' held in New York in June 2000.

1.3.1. There are several International Labour Organisation regulations relating to the issue, notably that contained in Convention No. 100 on Equal Pay (1951), and ratified by the 15 Member States.

1.4. Community and international legislation thus deems equal treatment when calculating pay to be a truly fundamental right.

2. **Pay situation**

2.1. Despite the actions and provisions intended to bring pay rates for female workers genuinely in line with those of their male colleagues, the gap still remains, and in some areas even seems to be growing wider. Recent studies have shown that there is an average 27 % difference between wages paid to men and women in the Member States of the European Union, and in some countries it is more than 30 % [3]. Even taking account of certain structural differences in the male/female labour markets (age, occupation and sector) which cannot be deemed discriminatory, there is still a 15 % gap.

2.2. Male/female pay differentials have grown in EU countries, as a result of a number of economic and social factors which vary from country to country. Even a more accurate analysis, with the three structural elements factored out (age, occupation, employer's economic sector) shows that the discrepancy remains. It should also be noted that the situation is worse in the higher echelons, where women's pay is on average two-thirds that of men [4].

2.3. The most recent Eurostat statistics, referring to 1995, show that the average female wage was 72 % of the male wage. The figures relate in particular to full-time employment in all production sectors, except for agriculture, education, health, and personal and administrative services.

2.4. The figures are woefully incomplete, and are difficult to compare owing to the different male/female job profiles. Almost a third of the women in full-time employment in 1995 were clerical staff, whilst only 10 % of men were engaged in similar work. 47 % of men were classed as manual workers, compared to 18 % of women. On average, female factory workers receive more equal pay than female office workers (specific job descriptions), although the position varies from sector to sector, as some industries have more female workers than others (e.g. the textiles sector compared with the mechanical engineering industry).

2.5. Moreover, the Eurostat figures have been superseded by trends in the world of work over the last few years, and they do not take into account new sectors such as new technologies, new job profiles, atypical work, contract work, part-time, teleworking, etc.

2.6. According to the Eurostat figures, which refer to the Member States average, working women are on average younger than their male colleagues: 44 % are under thirty, compared to 32 % of men. The difference narrows down to a negative ratio after the age of thirty, when many women withdraw — either temporarily or permanently — from the labour market, essentially to have children and then to look after them. These choices impact on the return of women to the workplace, career structure and the number of women in managerial posts. This has direct implications for average pay rates, and gender-based pay differentials.

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[1] Article 23 of the Universal Declaration of Human Rights.

[2] Article 11 of the Convention on the elimination of all forms of discrimination against women.

[3] UN/ECE 1999 Women and economy in the ECE region (E/ECE/RW.2/2000/2).

[4] Employment in Europe, 1998.

2.7. Another difference is caused by the male/female wage structure. As several Commission documents have pointed out, there are various pay structure factors which can lead to gender-based pay differentials, including employment by sector, by type of career and by form of payment (levels, seniority, training, etc.). Or the difference can be due to the type of work and the hours worked — especially overtime.

2.8. This is particularly clear for those working in factories, where overtime makes up a significant proportion of the wage and men are very much in the majority; but it can also be seen in the retail sector in particular, where there is a majority of women and wages are considerably lower.

2.9. Neither does the situation improve for women in low-paid jobs [1], where some three-quarters of the workforce is made up of women. This is only partly explained by the high incidence of part-time work (43 %) which is done mostly by women. Lower wage rates play a significant role for the remaining percentage, and this is to the detriment of women in particular.

2.10. These structural factors and the lack of more specific, up-to-date statistics make it especially difficult to carry out an analysis, and consequently to implement any concrete measures to improve pay equality. One way of achieving a more accurate analysis would be to compare taxes, allowances, social security, childcare and care for dependent relatives in the Member States.

3. Vertical and horizontal discrimination

3.1. An analysis of the different wage structures shows there is a close correlation between wage systems, job and career descriptions in the different sectors, organisation of work, and vocational training and skills.

3.2. It has been shown that pay discrimination against female workers is both horizontal and vertical in nature. It is horizontal to the extent that comparable workers are often paid differently, with female workers receiving less, mainly because their tasks and skills are evaluated differently and thus also defined differently; there is vertical discrimination in the sense that women find it more difficult to get to the higher rungs of the career-ladder. It should also be noted that — in some countries in particular — welfare services relating to childcare and care for elderly relatives are frequently unable to meet the requirements of a labour market which increasingly needs to ensure that women can access it freely. From this perspective, vocational training schemes could provide another important tool for female workers.

3.3. Female-dominated sectors of the labour market, such as the public sector, caring for the elderly and infants, or in the retail sector, are the least well-paid. Moreover, male-dominated sectors feature economic benefits, bonuses and incentives which further increase pay differentials. Women must therefore be encouraged to turn to male-dominated sectors providing good pay prospects.

3.4. The trend towards a more flexible labour market is not necessarily negative as long as it does not further penalise women and men in terms of wages.

4. Pay differentials in the applicant countries of Central and Eastern Europe

4.1. The wages gap also exists in the Eastern European countries, where women earn 20-25 % less than their male counterparts. Pay differentials in these countries have been seen to increase over the last few years, largely because of widespread labour market segregation. The transition to a market economy, although a necessary and welcome development in itself, has worsened socio-economic conditions for women in some sectors. This is mostly due to the fact that they used to have access to good education and training, and to childcare facilities which were often close to the workplace. The banking sector, which used to be underpaid and female-dominated, has tended increasingly to exclude women, whilst raising wages significantly. There is still a high percentage of women in the public sector, especially in schools and the health service [2].

5. Community actions

5.1. As established by the Luxembourg European Council in 1997, all pillars of the Employment Guidelines 2000 include

[1] Workers who earn less than 60 % of the average wage in their country. The figures cover people working at least 15 hours per week (Eurostat figures 1996).

[2] UN/ECE 1999 Women and economy in the ECE region (E/ECE/RW.2/2000/2).

gender policies, and the active role of the existing equal opportunities pillar has been reinforced as a key factor in boosting employment. The guidelines for the fourth pillar explicitly call on the Member States to adopt positive measures to promote equal pay and to prevent wage differentials.

5.2. One of the objectives of the European Social Fund is to improve the labour market situation for women, by assessing career development, access to new professional opportunities and to managerial posts, and vertical and sectoral segregation which impacts decisively on income differentials.

5.3. In October 1998, the Commission presented the results of its wage structure survey, which confirmed the existence of wage differentials between men and women, and identified the causes. Once again, the figures refer to 1995 (1994 for France) and do not include Ireland, Austria or Portugal. Naturally, it is important to bear in mind the full range of employment procedures provided for under Treaty Article 128 (including the Employment Guidelines, Council Recommendations to the Member States, and the National Action Plans) which define gender equality as one of the four pillars, and in which the Member States undertake to enact concrete measures to promote equality.

5.4. In 1996, the Commission adopted its Code of Practice on the implementation of equal pay for work of equal value, with a view to eliminating any discrimination, particularly where it is a result of unfair work classification systems or skills assessments. Whilst the Code does not claim to be exhaustive or legally binding, it was intended for the social partners, public and private sector employers, and individuals [1]. The Programme relating to the Community framework strategy on gender equality (2001-2005) [2] should also be mentioned here.

5.5. The EU Court of Justice has also dealt with numerous equal pay cases. This shows both that female workers are increasingly aware of their wage rights, and that the relevant legislation needs updating to make it more transparent and consistent. The social partners should be heavily involved in adapting it to reflect the changes in the world of work [3]. It is the social partners' duty to work continually for equality and against discrimination.

6. **Recommendations**

6.1. The Committee feels it must make a contribution towards eliminating any forms of gender inequality, discrimination and exclusion in the workplace which violate the principle of equal opportunities for men and women.

6.2. Although Community legislation does, in theory, guarantee equal pay, there is still a considerable gap. Moreover, several previous Committee opinions have indeed expressed the need for equal opportunities policies to be strengthened [4].

6.3. The Committee believes that new EU and national government initiatives are needed to address transparency on male/female pay differentials. The initiatives should comply with the Amsterdam Treaty, in particular Article 141, and with Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [5], as stated at the special Ministerial Conference on 'Equal Opportunities and Employment Policy' (Helsinki, 1999).

6.4. The lack of up-to-date statistics on pay differentials is particularly worrying. The Committee therefore calls on the EU institutions and the Member States to collate reliable statistics. The statistics must be sorted according to gender, and offer a sectoral comparison at European, national and regional level. This will provide an up-to-date framework for designing ad hoc policies and any adjustment and harmonisation measures which might be required. It is equally important to promote studies and research into gender pay differentials.

6.5. Studies should also be conducted to determine which sectors are particularly male dominated, so that education and training schemes can be set up to help women enter these sectors. Moreover, female-dominated sectors also need to be identified, and measures taken to provide easier access for men both from the social standpoint, and from the legal standpoint wherever the law is not applied.

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(1) COM(96) 336 final of 17 July 1996.
(2) OJ L 17, 19.1.2001.
(3) A list of the most important Court rulings is appended to this opinion (c.f. 'References' at the end of the document).
(4) OJ C 116, 20.4.2001 and OJ C 123, 25.4.2001.
(5) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16-22.

6.6. The Committee considers that the Commission should undertake an examination of how the 1975 Directive and judgments of the European Court of Justice have been implemented in the Member States. On the basis of this examination, discussions should take place on the necessity for a revision of existing EU legislation to take account of the new labour market situation.

6.7. The Committee believes that the Commission should create a permanent Observatory within the DG for Employment and Social Affairs to look into pay issues, including those connected with equal pay for men and women, and to monitor, analyse and compare statistics relating to the different situations in the EU Member States (ETUC, UNICE, Eurostat). The Observatory's duties should include the establishment of common criteria for a nomenclature setting out the various components of pay and analysis of changes in the labour market, with particular reference to new technology sectors, atypical work, and so on. It should also be noted that the Swedish presidency has committed itself to an equal pay project for men and women.

6.8. It is important that the data collected and, in particular, examples of good practice in the Member States, should be published.

6.9. The Committee feels it is essential that the Commission should consult the social partners upstream, in order to provide greater clarity in new Community legislation and measures which are better suited to new labour market conditions.

6.10. Moreover, as provided for in the Employment Guidelines 2000, the Member States would do well to consider including in their national action plans specific actions and instruments to make it easier for women to enter the labour market. They should also take a stand on the measures needed to combat wage discrimination.

6.11. The Committee hopes the 'Code of Practice on the implementation of equal pay for work of equal value' will receive the widest possible uptake by the social partners and the relevant agencies at all levels, and that the social partners and the Commission will produce an updated evaluation of new types of employment and the organisation of the labour market in general.

6.12. With reference to the applicant countries of Central and Eastern Europe, the Committee feels that women's policies should be an integral part of the Community *acquis* they must take on board.

Brussels, 28 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

References

The following are some of the most important EU Court of Justice rulings on equal pay:

Case 80/70	Gabrielle Defrenne v the Belgian State (Defrenne I) (Art. 119)
Case 43/75	Gabrielle Defrenne v Société anonyme belge de navigation aérienne (Sabena) (Defrenne II) (Art. 119)
Case 149/77	Gabrielle Defrenne v Société anonyme belge de navigation aérienne (Sabena) (Defrenne III) (Art. 119)
Case 129/79	Macarthys Ltd v Wendy Smith (Art. 119; Directive 75/117/EEC)
Case 69/80	Susan Jane Woringham and Margaret Humphreys v Lloyds Bank Ltd (Art. 119; Directive 75/117/EEC)
Case 96/80	J.P. Jenkins v Kingsgate (Clothing Production) Ltd (Art. 119; Directive 75/117/EEC)
Case 12/81	Eileen Garland v British Rail Engineering Ltd (Art. 119; Directive 75/117/EEC)
Case 170/84	Bilka-Kaufhaus GmbH v Karin Weber von Hartz (Art. 119)
Case 157/86	Mary Murphy and others v Bord Telecom Eireann (Art. 119; Directive 75/117/EEC)
Case C-33/89	Maria Kowalska v Freie und Hansestadt Hamburg (Art. 119; Directive 75/117/EEC)
Case C-177/88	Elisabeth Johanna Pacifica Dekker v Stichtingvormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus (Directive 76/207/EEC)
Case C-184/89	H. Nimz v Freie und Hansestadt Hamburg (Art. 119; Directive 75/117/EEC)
Case C-435/93	Francina Johanna Dietz v Stichting Thuiszorg Rotterdam (Art. 119; Protocol n. 2)
Case C-249/96	Lisa Jacqueline Grant v South-West Trains Ltd (Art. 119; Directive 76/207/EEC)
Case C-243/95	Kathleen Hill, Ann Stapleton v the Revenue Commissioners, Department of Finance (Art. 119)
Case C-326/96	Levez v T.H. Jennings (Harlow Pools) Ltd (1 December 1998, not yet published)
Case C-66/96	Pedersen and others v Faellesforeningen for Danmarks Brugsforeninger and others (19 November 1998, not yet published)
Case C-281/97	Krüger v Kreiskankenhaus Ebersberg (9 September 1999; not yet published)

APPENDIX

to the Opinion of the Economic and Social Committee

Defeated amendment

During the debate, the following amendment, which received more than 25 % of the votes cast, was defeated.

Point 6.7

Replace with the following:

'Both the European Commission and the European Foundation for the Improvement of Living and Working Conditions devote considerable resources to the monitoring of equal pay developments and the implementation of equal pay legislation. These existing structures should continue to analyse developments concerning equal pay. It should also be noted that the Swedish Presidency has committed itself to an equal pay project for men and women.'

Reason

Self-evident

Result of the vote

For: 37, against: 46, abstentions: 2.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation derogating from certain provisions of Council Regulation (EC) No. 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector'

(2001/C 155/13)

On 21 February 2001 the Council decided to consult the Economic and Social Committee, under Articles 37 and 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Committee decided to appoint Mr Muñiz Guardado as rapporteur-general for its opinion.

At its 380th plenary session (meeting of 29 March 2001), the Economic and Social Committee unanimously adopted the following opinion.

1. The Committee approves the Commission proposal.

2. Under Article 16(1)(b) of Council Regulation (EC) No 2792/1999, compensation for temporary cessation of fishing activities is granted for a maximum period of six months (renewable for a further six months if the Commission approves a conversion plan) following the expiry of a fisheries agreement.

3. By way of exception, the Commission now proposes that the Community fleet affected by the fisheries agreement with Morocco should receive aid beyond the initial 12 month period. It proposes that aid should continue to be granted until 30 June 2001 and that, to this end, the FIFG contribution should be allowed to exceed the threshold laid down in Article 16(3) of the Regulation.

4. The Committee considers that the European Union should persist with the negotiations until it reaches a viable agreement with Morocco (this is the first time that signature has not been possible). At all events, the conversion and redeployment process must begin without delay, in both Community and third-country fishing areas.

The absence of a fisheries agreement affects not only ship-owners and fishermen, but also a host of related activities. It must be borne in mind that for each fisherman at sea, there are five to seven related jobs on land.

Brussels, 29 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and amending Regulations (EEC) No 1017/68, (EEC) No 2988/74, (EEC) No 4056/86 and (EEC) No 3975/87 ("Regulation implementing Articles 81 and 82 of the Treaty")'

(2001/C 155/14)

On 17 October 2000, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

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 14 March 2001. The rapporteur was Mr Bagliano.

At its 380th plenary session (meeting of 29 March 2001), the Economic and Social Committee adopted the following opinion with 83 votes in favour and one abstention.

1. Introduction

1.1. In April 1999, the Commission published a White Paper on the 'Modernisation of the rules implementing Articles 81 and 82 of the EC Treaty' [1], setting out the reasons for a radical reform. It went on to initiate a broad debate, in which all the interested parties — companies, associations, jurists, economists, lawyers, members of the judiciary and national governments — were offered an opportunity to express their views, both positive and negative, to make proposals, and to look further into the issues at stake.

1.2. *Brief summary*

1.2.1. The reform does away with the compulsory notification of restrictive agreements [prohibited under Article 81(1)], which was necessary (under paragraph 3 of the same Article) in order to secure exemption from the prohibition (paragraph 1). At present, this procedure is managed by the Commission, which has exclusive power to grant exemptions (the current system is therefore known as the 'exemption system'). The Commission is thus giving up its exclusive power to grant exemptions [under Article 81(3)], in order to give more time and resources to the most serious problems, namely large monopolies and international cartels.

1.2.2. The Commission will be decentralising the whole Article 81 system (i.e. including paragraph 3, with no compulsory notification) to the national competition authorities and courts, which may intervene only ex-post, in the event of a dispute.

1.2.3. It will be up to companies to interpret Article 81 (including paragraph 3) in order to assess the legitimacy of their agreements.

1.2.4. The Commission:

— will retain a guiding and monitoring role, not least through its notices, regulations, and decisions on specific cases, and

— will have responsibility for coordinating the national competition authorities, with the understanding that all parties (authorities and courts) will have to cooperate.

1.3. *The Committee opinion on the White Paper*

1.3.1. The Economic and Social Committee was consulted by the Commission, under Article 262 of the Treaty establishing the European Community, and adopted an opinion almost unanimously (only two abstentions) [2] on 8 December 1999. The Committee opinion defined the White Paper reform of the system for applying Articles 81 and 82 as 'courageous and ground-breaking'.

1.3.2. However, while stating that the reform was 'both justified and valid', the Committee also stressed the 'difficulties and dangers' that only a 'programme of preliminary and accompanying measures' could overcome. The opinion defined these measures as essential and necessary.

1.3.3. The opinion was welcomed for its essentially positive and constructive approach, and the ideas and suggestions it raised were referred to in numerous fora.

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[1] COM(1999) 101 final — OJ C 132, 12.5.1999.

[2] OJ C 51, 23.2.2000, p. 55.

1.3.4. The Committee's main concerns were:

— legal certainty (paragraph 2.3.6 contains a number of important practical suggestions and proposals),

— the right to a defence (2.3.5.7),

— uniformity of interpretation (2.3.5.10),

— the precedence of Community law (1.5.5),

— preservation of the unity and coherence of the system (2.3.5),

— insufficient measures to prevent forum shopping (2.3.2.8),

— and the need to involve the national authorities and courts in the debate (2.3.2 and 2.3.3).

2. **Comments**

2.1. The Regulation proposed by the Commission is a first step in the right direction as regards implementing the reform. The Committee obviously supports the Commission in this bold and innovative undertaking.

2.2. It should however be stated at the outset that although the Commission's proposal contains the basic principles underpinning the reform, it does not provide a complete legislative framework and no proper and effective global assessment can therefore be made. Certain major elements of the reform are missing. The text of the articles and the Explanatory Memorandum contain numerous references to future Commission documents (regulations, notices, guidelines etc.) on key aspects, but without providing sufficient indication of content, criteria, limits or time-scales.

2.3. As regards the Committee's concerns (see 1.3.4 above), the proposal does not take into account certain basic observations made by the Committee, in particular regarding legal certainty (points 2.3.6.3 to 2.3.6.8 of the 1999 opinion) and the need to preserve the unity of the Community competition system (see the 13 subparagraphs in point 2.3.5 of the 1999 opinion).

2.4. Moreover, the proposal

— neither contains nor makes provision for any of the accompanying measures that the Committee believes to be an essential preliminary step (see point 3 — Conclusions of the 1999 opinion);

— does not provide for the additional measures that are made necessary by the rules stipulated in the proposal itself (for instance, notices on the burden of proof and on the law applicable).

2.5. The Committee nevertheless welcomes the Commission's work to date following the wide-ranging debate on the White Paper, and in particular welcomes this initial legislative initiative.

2.6. Article 1 states the principle of the direct applicability of Articles 81 and 82 — 'no prior decision to that effect being required' — and as such defines the reform, i.e. the transition from the notification and authorisation system to the directly applicable exception system.

2.6.1. Article 3 — Relationship between Articles 81 and 82 and national competition laws — is clear and remarkably bold in its concision and brevity, and it should remove one of the main causes for concern.

2.6.2. In its opinion of December 1999 [1], the Committee highlighted the importance of this issue, which 'cannot fall solely to the discretion of the [national] courts and authorities responsible' (point 2.3.5.12). Article 83 of the Treaty of Rome — in other words, from the EU's inception — explicitly includes among the 'appropriate regulations or directives to give effect to the principles set out in Articles 81 and 82' [Article 83(1)] those designed 'to determine the relationship between national laws' and Community law [Article 83(2)(e)].

2.6.3. The Committee agrees that mandatory application of Community law (provided for under Article 3) — when the facts or practices 'may affect trade between Member States' — is the most appropriate response to concerns about the renationalisation of competition rules. Once the regulation enters into force, however, the importance of this rule will require the immediate adoption of an interpretive notice to clarify when trade is affected.

2.7. Under Article 2, the burden of proof is shared between the prosecution [infringement of Article 81(1)] and the defence [fulfilment of the conditions set out in Article 81(3)].

[1] OJ C 51, 23.2.2000, p. 55.

2.7.1. However, to enable this principle to be applied, the Commission must provide further guidelines regarding the real content of Article 81(1) and (3), because, as the Commission itself accepts in the White Paper (points 56 and 57) there have been various interpretations (by both the Commission and the Court of Justice) of the relationship between Article 81(1) and Article 81(3).

2.8. *Commission powers*

2.8.1. In some detail (albeit quite inadequate), Article 4(2) (Chapter II — powers) grants the Commission the specific power to determine, by regulation, the 'types of agreements, decisions of associations of undertakings and concerted practices ... which must be registered'. The types of agreement, the 'procedures for such registration and the penalties applicable' are also to be determined by a specific regulation (see also Article 34(a) of the regulation).

2.8.1.1. This compulsory registration certainly constitutes a novel element, and at first sight would appear to be in contradiction with the ending of notification (which is crucial to the reform). Since the idea of the reform is to reduce, remove and simplify red tape, the potential administrative cost and burden should not be underestimated. It will obviously be necessary to avoid overlaps in those cases where Member States already have registers.

2.8.1.2. The Commission considers such registration to be 'expedient, in order to improve transparency' (10th recital), although it 'shall confer no entitlement on the (...) undertakings'. With no knowledge of the future regulation, a provision introducing an obligation (with penalties for non-compliance) without any corresponding right seems on the face of it unacceptable. Admittedly, Article 4(2) does begin with the words 'The Commission may', but even if this is strictly speaking only a potential provision, a Council regulation couched in such terms would nevertheless hand the Commission almost unlimited powers (including penalties). With no knowledge of the implementing provisions that the Commission will adopt in order to exercise this power, it is impossible and would be irresponsible to attempt a conclusive assessment.

2.8.2. The powers attributed to the Commission also include that of imposing 'any obligations necessary, including remedies of a structural nature' [Article 7(1)], in order to bring an identified infringement to an end.

2.8.2.1. Although the relevant recital (11) adds nothing in this respect, the commentary on this article in the Explanatory Memorandum that precedes the text of the regulation is quite clear: 'Structural remedies can be necessary in order to bring an infringement effectively to an end. This may in particular be the case with regard to cooperation agreements and abuses of a dominant position, where divestiture of certain assets may be necessary'.

2.8.2.2. The White Paper made no reference to such a remedy. If it is designed to address existing situations, it seems completely incompatible with the machinery and the spirit of both existing Community competition law and the planned reform, and would introduce a new policy instrument without sufficient preliminary debate or the necessary clarifications from the Commission.

2.8.2.3. In this respect, the Committee would stress that structural remedies are by their very nature extremely costly — both economically and socially — difficult to implement, and often of uncertain and limited success regarding competitiveness and overall economic efficiency. The experience acquired by the Commission and economic and social operators in the application of the merger control rules has clearly demonstrated that proper preventive procedures are the best means of solving structural competition problems. For these reasons, the White Paper (point 79) stated that it would be 'desirable to maintain the prior authorisation requirement for partial-function production joint ventures'. In its opinion of December 1999 (points 2.3.6.3 to 2.6.3.7), the Committee hoped that the prior authorisation system would be extended to other cases as well.

The Regulation makes no provisions on this matter. The Commission makes just one reference — and then only to partial-function production joint ventures — in the last sentence of the Explanatory Memorandum's brief first section, postponing the issue to be dealt with 'in the context of forthcoming reflections on the revision of that regulation' (on mergers).

2.8.2.4. Experience in implementing Community competition rules over the last forty years has shown that — aside from the application of the merger Regulation — a number of extremely important initiatives have been judged by the interested parties to be unfeasible in the absence of formal or informal authorisation from the Commission. In point 2.3.6.9 of its 1999 opinion, the Committee stated that 'in any event, it must be made clear and a guarantee given that the abolition of the prior notification system shall not in any way prevent — but rather should encourage — prior dialogue between the companies, the Commission and the national authorities, should the companies so wish. Obviously, this dialogue will not replace the 'decision' or offer legal certainty, but it could

provide an indispensable, preliminary, informal and non-binding indication for important cases, and as such could become a routine means of operating in mutual trust and openness'. The Commission itself, when commenting on Article 4 (Powers of the Commission) admits that 'in the new system (...) undertakings must, as a general rule, assess for themselves whether their behaviour complies with the law'. (fourth paragraph of comments on Article 4).

2.8.2.5. Whilst the 'general rule' will obviously remain so, the concept of the 'reasoned opinion', appears to give proper recognition to company rights, although it is only mentioned in the Explanatory Memorandum (at the end of section II) in the following terms:

> 'Finally, the Commission will remain open to discuss specific cases with the undertakings where appropriate. In particular, it will provide guidance regarding agreements, decisions or concerted practices that raise an unresolved, genuinely new question of interpretation. To that effect, the Commission will publish a notice in which it will set out the conditions under which it may issue reasoned opinions. Any such system of opinions must not, however, lead to companies being entitled to obtain an opinion, as this would reintroduce a kind of notification system.'

The end of point 3 (last indent) of the Impact Assessment Form is possibly more precise inasmuch as it makes reference to 'rare cases' that 'raise new or unresolved questions'. The Commission must at all events be ready to give an opinion not only in rare cases, but also in the event of major investments and major or irreversible structural changes.

2.8.3. Chapter III assigns a number of other powers to the Commission which, by means of decisions, thus retains a highly effective practical role:

— in bringing infringements to an end [Article 7(1)];

— in ordering interim measures [Article 8(1)];

— in cases where undertakings offer commitments 'such as to meet the Commission's objections', the Commission may make such commitments binding [Article 9(1)];

— where appropriate, the Commission may reopen proceedings by means of a decision [Article 9(3)];

— in establishing whether Article 81 (and Article 82) is inapplicable to a particular agreement (Article 10).

2.8.3.1. On the subject of Article 10, the legal certainty offered to companies would be significantly greater if the Commission were to decide that Article 81 can be inapplicable not only for reasons of public interest but also when this is in the legitimate interest of the companies concerned, particularly in the event of major investments or structural changes.

2.8.3.2. The Commission may deploy the wide-ranging practical powers provided by Article 7 'acting on a complaint or on its own initiative' [Article 7(1) and Article 10(1)], and may adopt interim measures 'in cases of urgency' [Article 8(1)]. Further hypotheses should be added, along the lines proposed in point 2.8.3.1.

2.8.4. In its opinion on the White Paper, the Committee approved the guiding and monitoring role which the Commission should also retain in a decentralised system, with a view to ensuring the uniform application of Community competition law and providing companies with legal certainty. The Committee therefore believes that further clarification is needed to give a clearer understanding of the powers of the Commission.

2.8.5. For both the adoption of decisions (Chapter III) and the conduct of investigations (Chapter V), the proposal accords the Commission more wide-ranging and stronger powers than at present, stating that:

> 'The detection of infringements of the competition rules is growing ever more difficult, and, in order to protect competition effectively, the Commission's powers of investigation need to be supplemented' (21st recital).

In particular, this concerns:

— the conduct of inquiries into sectors of the economy (Article 17);

— requests for information (Article 18);

— the taking of statements (Article 19);

— the conduct of inspections (Article 20).

Here too, the Committee thinks that the Regulation should clearly spell out the limits of these powers.

2.8.5.1. The Committee has taken due note of the 29th recital, which states that 'In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, this Regulation confines itself to the minimum required in order to achieve its objective, which is to allow the Community competition rules to be applied effectively, and

does not go beyond what is necessary for that purpose.' However, the Committee is firmly convinced that this principle should be binding not only in theory. For this reason, it calls on the Commission to give it practical application in the many executive acts it is to adopt when implementing this radical reform regulation.

2.9. *Block exemptions*

In its opinion of December 1999 the Committee 'accepts the role given by the White Paper to interpretative notices and block exemption regulations' (2.3.4.1), which the Commission reserved the right to adopt 'in order to enable it to adapt and clarify the legislative framework' (9th recital), also in the new decentralised system. These Community regulations create 'safe harbours for defined categories of agreements' [Explanatory Memorandum, first paragraph of 2.C.2(b)].

2.9.1. The Commission also states in the Explanatory Memorandum (fifth paragraph of 2.C.3): 'In the field of Community competition law, companies' task of assessing their behaviour is facilitated by block exemptions and Commission notices and guidelines clarifying the application of the rules. As a complementary element of the current reform, the Commission commits itself to an even greater effort in this area. Article 28 of the proposed Regulation confers on the Commission a general power to adopt block exemption rules. This power will ensure that it is in a position to react with sufficient speed to new developments and changing market conditions.'

2.9.2. This general power gives the Commission an instrument with which it can simplify procedures and improve transparency, as well as shape and direct Community competition policy in the new, decentralised system. The Committee supports this proposal, but stresses that this 'general power' should be subject to certain conditions.

2.10. *Cooperation with national authorities and courts*

2.10.1. Chapter IV of the Regulation is crucial to the new system because it concerns cooperation:

— between the Commission and the competition authorities of the Member States, and

— between the Commission and the courts of the Member States.

2.10.1.1. Article 11(1) provides for 'close cooperation' with the competition authorities of the Member States so as to establish a network that will form the essential infrastructure for exchanging information and providing assistance. This principle of a network, of information and consultation mechanisms, of transferring files and even cases, is certainly a move in the right direction, but it should be complemented by the principle of protecting the rights of those affected by the new, decentralised system (businesses and consumers).

2.10.1.2. The Explanatory Memorandum (comments on Article 11, first paragraph) explicitly states that:

> '... the detailed rules will be laid down in an implementing Commission regulation in accordance with Article 34 and in a notice on cooperation between competition authorities'.

This clarification goes only some of the way towards addressing the ESC's comment that while these mechanisms for cooperation between the Commission and the national authorities (vertical cooperation) are to be welcomed, nothing is said about cooperation between the national authorities themselves (horizontal cooperation), which is just as essential and requires clear and binding rules. Article 13 provides for a (partial) cooperation mechanism between the national authorities (right to suspend proceedings if the same case has been dealt with by another authority), but this is optional. Article 11 seems to be more binding than Article 13, and than Article 12.

2.10.1.3. Article 11 should determine the system of responsibilities and the assignment of cases, as provided under Article 5. Individual cases can be assigned to a national authority if the restriction on competition principally affects that particular Member State. The Commission may also decide, on the basis of specific criteria, which national authority should be responsible for assessing an agreement that has an impact on competition. It is important to ensure that powers and responsibilities are not confused within the network but are clearly determined and understood by companies. The aim is to create an instrument that can ensure — in combination with other instruments and mechanisms — the uniform application of Community competition law in a network of competition authorities.

2.10.2. Cooperation with national courts certainly raises awkward questions that are in any case difficult to regulate with binding provisions. Article 15 is virtually optional (for both national courts and the Commission), with the exception

of point 2, which provides an essentially 'binding', though not categorical, requirement that:

> 'Courts of the Member States shall send the Commission copies of any judgements applying Article 81 or Article 82 of the Treaty within one month of the date on which the judgement is delivered.'

2.10.2.1. The Commission [Article 15(3)] may also ask the national courts to transmit to it 'any documents necessary'. In addition, it may submit observations and have itself represented. However, nothing is said in this article about the rights of the businesses concerned (to be informed of their rights, raise objections, etc.).

2.10.2.2. In cases where Community competition law applies and a complaint has been brought before a court, the parties should have the right to request the opinion of a validating competition authority. The submission of observations for reasons of the public interest [Article 15(3)] is not enough. Only the right of parties to the opinion of the validating competition authorities will confirm the jurisdiction of those authorities over the markets concerned and ensure Community competition law is applied in legal proceedings. This would significantly reduce the risk of contradictory decisions by national courts.

2.10.3. Cooperation between the Commission and the competition authorities of the Member States, and cooperation between the Commission and the national courts, was addressed in two notices which appeared in 1996 and 1993.

2.10.3.1. In its opinion [1] on the more recent of these notices (1996), the Committee concluded:

> 'The notice is undoubtedly well intentioned. It has been under discussion for many years. The result, however, seems inadequate and unconvincing, its only likely benefit being to improve relations between the Commission and national authorities, and it is to be hoped that the speed of the procedure will improve rather than worsen. An efficient and workable decentralisation would require more incisive action, such as:
>
> — a revision of Regulation (EEC) No 17/62; and
>
> — harmonisation of national competition law, with the early adoption of procedural rules'.

2.10.4. Things are moving in the direction the Committee had hoped for, except however with respect to aligning national competition legislation with Community competition legislation. In its Explanatory Memorandum [second paragraph of 2.C.2(a)], the Commission recognises that although 'several national systems of competition law have been modelled on Articles 81 and 82 ... no formal harmonisation is in place, and differences remain both in law and practice' and that 'such differences lead to different treatment of agreements and practices that affect trade between Member States'. But it also believes that Article 3 'ensures in a simple and effective way that all transactions with a cross-border effect are subject to a single body of law'.

2.10.5. The importance of procedural provisions cannot be ignored, however, and the Committee cannot support the Commission's position on this matter. The last paragraph of point 3 of the Explanatory Memorandum reads:

> 'Thus, the proposal does not purport to harmonise national procedural law, except that it grants the Commission and the national competition authorities the power to make submissions on their own initiative.'

2.10.6. The Committee can only reiterate its concern that consistent application of the principles, which all parties agreed on, will be compromised owing to the wide discrepancies in practice between the Member States. Procedures (or, at least, administrative procedures) should to a certain extent reflect the unity of the principles. In this regard the Committee would also recommend that the Commission bear in mind that Article 83 of the Treaty also provides for directives to be used as an instrument 'to give effect to the principles set out in Articles 81 and 82'. A directive is a more flexible instrument because it generally offers the choice of different options and allows a suitable period of time for provisions to be implemented. It is thus an instrument which can be adopted in order to start taking practical legislative steps — albeit only prospective ones — to harmonise complex fields such as procedures.

2.11. *Advisory Committee*

2.11.1. Article 14 makes the Advisory Committee pivotal to the cooperation mechanism (Chapter IV) and strengthens its role by providing for both a written procedure and the option of discussing cases being dealt with by the national authorities. In its opinion on the White Paper, the Economic and Social Committee expressed its full approval of the Advisory Committee's strengthened role with a view to 'coordinating the decisions of the Commission and the competition authorities' (point 1.5.4.2).

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[1] CES 1510/96 of 19.12.1996, point 11, OJ C 75, 10.3.1997, p. 22.

2.11.2. However, the Committee considers that the Advisory Committee's role would still be inadequate in the regulatory framework provided by the new Council Regulation. It hopes that the Advisory Committee's opinions will be publicised more widely and promptly, and that its remit will be broadened to include notices and guidelines and perhaps also regulations, while avoiding procedural red tape or delays.

2.12. *Rights of defence*

2.12.1. Article 26(1) only partly satisfies concerns about rights of defence. Thus 'the Commission shall give the undertakings or associations of undertakings which are the subject of the proceedings the opportunity of being heard on the matters to which the Commission has taken objection', but this is limited to decisions related to finding and terminating infringements (Article 7) and interim measures (Article 8), as well as fines (Article 22) and penalty payments (Article 23). Article 26(2) also refers back to these articles, although it is worded in general terms: 'The rights of defence of the parties concerned shall be fully respected in the proceedings.'

2.12.2. The Committee believes that this principle — which in essence is a guarantee of cross examination — is a general principle and should therefore be given explicit recognition of a general nature in the regulation.

2.12.3. This guarantee should also be offered in national proceedings associated with Community proceedings. For instance, before proceedings are suspended or transferred from one authority to another, undertakings must at least be heard and they must have an opportunity to express their own views on the suspension or transfer.

2.13. *Decentralisation, coherence of legal proceedings and appeal procedures*

2.13.1. Appeals pose another basic problem, because in a decentralised system without a single appeal authority it is difficult to guarantee not only the right of defence, but also coherent and consistent application of Community competition rules across the EU. The Commission's powers under its close cooperation with national authorities and courts are definitely not great enough to reach this objective.

2.13.2. In its 1999 opinion on the White Paper (2.3.5.11), the Committee stressed that to give the best guarantees of consistent decisions and evaluations and a unified system, the instrument should be based on a Community appeal system. The Commission's powers of coordination (including that of issuing opinions) and management, and the power to refer a matter to the Court of Justice, are not sufficient to resolve these issues.

2.13.3. The Committee appreciates the complexity and difficulty of this problem in relation to both Community and national law, but it believes that, given the far-reaching nature of this reform decentralising the application of the competition rules, the issue must be addressed. What is needed is a 'legislative perspective' which, over the medium to long term, also considers further revisions of the Treaty. In the meantime, and partly by means of small steps, the Community legislator must seek and find appropriate solutions which are consistent with the spirit and purpose of the reform.

2.13.4. Naturally, any Community appeal system would have to have appropriate parameters and, in principle, concern national decisions taken at the highest level. The body responsible for appeals should be the Court of Justice, or the Court of First Instance, subject to the necessary changes to their respective remits.

2.14. The current authority of the Court of Justice to give a preliminary ruling is considerable, but not sufficient. With decentralisation, many cases which previously went before the Court of First Instance (because the decision had been taken by the Commission) may now only be contested before the national authorities (as the decision will have been taken by those authorities); it is inconceivable that problems arising, including matters of substance, could be settled solely through preliminary rulings.

2.14.1. Article 32 of the new regulation simply proposes review by the Court of Justice using the exact text of Article 17 of Regulation 17/62. Substantive review by the Court of Justice thus remains limited to 'decisions whereby the Commission has fixed a fine or periodic penalty payment'.

2.14.2. The question of establishing a European appeal level is unavoidable; it is in any case imperative to address the issue of the necessary adjustments in the Court of Justice's remit.

3. Conclusion

3.1. The Committee wholeheartedly supports the reform of the system for applying competition rules. This initial legislative instrument establishes essential machinery, and the Committee appreciates the clear and bold wording used.

3.2. However, in view of the complexity of the topic, and also in order to match the laudable commitment shown by the Commission, the Committee cannot hide the fact that it would have liked further clarifications and information, in the form of official accompanying measures, as stated in its December 1999 opinion.

3.3. The Committee will follow the Commission's future work with keen interest, particularly as regards the important additional measures announced. The Committee promises to offer the Commission its usual constructive collaboration.

Brussels, 29 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation on the Community patent'

(2001/C 155/15)

On 7 September 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

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 14 March 2001. The rapporteur was Mr Simpson.

At its 380th plenary session (meeting of 29 March 2001) the Economic and Social Committee adopted the following Opinion by 77 votes to 22 and with eight abstentions:

1. Summary and recommendations

1.1. The Committee welcomes and supports the initiative of the Commission in proposing a Regulation to facilitate the establishing of a Community patent.

1.2. The Committee endorses the proposal that the Community should become a member of the Munich Convention as a method of introducing the Community patent.

1.3. The Committee hopes that the European Patent Organisation will welcome this proposal and co-operate on its implementation and thus provide extra encouragement of innovation and research in the European Community.

1.4. The Committee agrees that there are strong and valid reasons to introduce the Community patent by way of an appropriate Regulation.

1.5. The Committee accepts that the proposal to use the procedures of the European Patent Office to register a Community patent is both logical and simpler than any proposal for a parallel system.

1.6. The Committee believes that it is a crucial feature of the proposal for a Community patent application procedure that it should co-exist readily with the existing arrangements for national and European patent application procedures.

1.7. The Committee regards the prospect of lower cost for a Community patent as a crucial requirement of the proposed system. The Commission proposal offers the prospect that the cost of a Community patent might be considerably lower than those incurred when a European patent is registered for several countries within the Community.

1.8. After consideration of other options, the Committee supports the recommendation of the Commission that the Community patent would require to be registered in full in one of the three procedural languages and that the claims should be translated into the other two.

1.8.1. The Committee considers that the Commission should accept arrangements that an application for a Community patent could be presented in the language of the applicant and should be translated into one of the three procedural languages without additional cost to the applicant.

1.9. The Committee recommends that when a patent is unknowingly infringed, because it is not available directly in the language of the infringer, this should only be acceptable as a defence when the infringer shows that he could not reasonably and easily have had this information. Decisions on these issues would fall within the competence of the Community Intellectual Property Court.

1.10. For the effective operation of a Community patent, the legal mechanisms at each stage should be clearly defined and widely understood. The Committee expects further consultation on these issues to test their acceptability to those who have the main professional interest in their functioning.

1.11. The Committee considers that, if a Community patent is to operate effectively and efficiently, a Community-wide form of legal jurisdiction should be established and would support the proposal to establish a Community Intellectual Property Court on the lines proposed by the Commission with the proviso that the functions of First Instance are carried out in existing national tribunals operating in the capacity of a Community Court of First Instance (in the country where the defendant is domiciled or where the breach has taken place).

1.12. The Committee believes that the Commission should make proposals, at this stage, to ensure that a Community Intellectual Property Court would be accessible and affordable to smaller businesses. It would be unacceptable if the Community Court was in reality, because of cost, access and 'right of audience', effectively not available to SMEs or small research organisations.

1.13. When the Commission publishes proposals for the functioning of the Community Court, the Committee expects that they will be designed to ensure that judgements are applied uniformly across the Community and avoid the potential inconsistencies of the present nationally based European Patent procedures.

2. **Introduction**

2.1. The merits and value of a patent procedure which facilitates the uniform application and enforcement of patent rights across the whole of the European Union are not in doubt. A mechanism to offer enforceable rights in the whole territory of the Community is a logical and necessary part of the creation of a genuine Single Market. As later sections of this Opinion will demonstrate, the Committee regards the successful conclusion of an agreement on the early introduction of a unitary Community patent as both necessary and urgent.

2.2. The Committee endorses the main thrust of the proposal from the Commission and commends the preparation of a timetable for its expeditious implementation, if possible before mid-2002.

2.3. It is already possible to be covered throughout the European Union by a centrally issued European patent, albeit one which is converted into a set of national patents in each Member State. However, a new industrial property right, applied without borders across the European Union is a necessary method of helping to ensure the free movement of goods that are protected by patents across national borders.

2.4. A unitary Community patent is a useful step in the creation of a genuine Single Market. For businesses, this will encourage innovation and research and development, enhance access to markets, and give increased legal certainty. The expectation is that, over time, this will encourage the filing of a larger number of patents and reduce the deficit in filing numbers between the USA and Europe.

2.5. The earliest discussion of the merits of a patent with Community-wide application (a Community patent) can be found in the 1960's. Several initiatives have been taken at various dates but none have produced a proposal which has been formally approved and implemented within the Community.

2.6. More recently, the urgent need to create a Community patent was formally restated by the European Commission [1] and endorsed by the European Council [2]. Reflecting the political thrust of the Lisbon European Council, these statements of intent now need to be implemented as quickly as possible. A successful conclusion is even more significant because of the rapid evolution of the capacity and use of new forms of information technology.

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[1] COM(1999) 42 final, 5 February 1999.

[2] European Council conclusions, Lisbon, 23 March 2000.

2.7. The Committee considered the role of a Community patent in an Opinion [1] adopted in February 1998. The rapporteur was Mr Bernabei. That Opinion responded to a Green Paper by the Commission on the merits of a Community patent and the way in which the existing patent system in Europe was functioning [2].

2.8. In May 2000, the Committee commented on 'the need for the procedures required to establish and operate a European patent system (to) be made simpler, shorter and cheaper' in an Opinion on the creation of a European research area. The rapporteur was Professor Wolf [3].

2.9. More recently, in September 2000, the Committee asked the Commission to start work on creating a Community patent as part of an industrial and intellectual property policy reflecting the need to enhance Community research. The rapporteur was Mr Bernabei [4].

2.10. As part of the preparatory work in the drafting of this Opinion, members of the Study Group visited the offices of the European Patent Organisation in Munich and had the benefit of listening to the advice of the senior staff, lead by the Chairman of the Patent Office, Mr Kober, and staff representatives. This facilitated a wide-ranging discussion in a Round Table conference of experts to which were also invited representatives from the countries that may join the Community when the current enlargement negotiations are completed.

3. **The Commission proposal: the background**

3.1. The proposal for a Council Regulation on the Community patent has evolved, inter alia, from the responses to the earlier Green Paper. It was foreshadowed in the Commission Communication [5] published in early 1999.

3.2. The European patent [6] was introduced in 1973 as a product of the Munich Convention which established the European Patent Organisation. The European Patent Convention (EPC) regulates the procedure for the granting of patents. The European Patent Organisation incorporates an Administrative Council appointed by the Member States which have signed the Munich Convention.

3.2.1. The European Patent Organisation is an inter-governmental organisation which is not one of the institutions of the European Union and whilst all Member States of the Union have signed the Convention, it also has members from countries which are not members of the Union [7].

3.2.2. A patent registered with the European Patent Organisation can have effect in any or all the countries specified in the application, provided that it is (if the applicant so requires) fully translated into the official language of each country after it has been granted. Hence, a European patent may apply in up to 20 different countries.

3.2.3. European patents are enforceable but only under the national law of each country. Consequently, although described as European, they have the status in each country equivalent to a national patent. The legal proceedings under the patent may call for legal action in each country involved. Separate actions also involve the risk of inconsistent legal decisions in different jurisdictions.

3.2.4. The European patent application system was a considerable improvement on the earlier national systems but is unsatisfactory since registering a patent in only a small number of countries is nonetheless still expensive.

3.3. Following the compromise that lead to the Munich Convention in 1973, the Member States of the European Union considered, in 1975, in a second round of negotiations, a further proposal for a Community patent.

3.3.1. In principle, there was agreement on the creation of a Community patent through what became the Luxembourg Convention. Over the years which followed, the Luxembourg Convention was amended by including, inter alia, a Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents. However, it never entered into force, since it was only ratified by seven (of the then 12) Member States.

3.3.2. The failure of all the EU countries to ratify the Luxembourg Convention is attributed to the lack of agreement on the cost and complications of the translations required by the different states as well as the complexity of the judicial system which would have been used.

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(1) OJ C 129, 27.4.1998, p. 8.
(2) 'Promoting innovation through patents', COM(1997) 314, 24 June 1997.
(3) 'Towards a European research area'OJ C 204, 18.7.2000, p. 70.
(4) 'Follow-up, evaluation and optimisation of the economic and social impact of RTD'OJ C 367, 20.12.2000, p. 61.
(5) op. cit, February 1999.
(6) Throughout this document care must be taken not to confuse the different concepts of a European patent (as presently defined) and a Community patent (which is the object of the Commission proposal).
(7) In early 2001, this includes Switzerland, Monaco, Liechtenstein, Cyprus and Turkey.

3.3.3. With this history, the Commission has prepared the present proposal for a new Regulation.

4. The Commission proposal: a summary

4.1. The Commission proposal contains two crucial elements. The first is an extension of the working methods of the European Patent Organisation to create a Community patent. The second is a proposal to introduce a mechanism to ensure an acceptable form of legal enforcement for the Community patent within the institutional framework of the European Community. The Committee suggests that these two elements should be considered together in reaching a conclusion on the Commission proposal. There are other consequential proposals to clarify the administrative arrangements.

4.2. A Community patent will be introduced by allowing the European Community, as a single entity, to become a member of the Munich Convention (which created the European Patent Organisation). The Community would have the status equivalent to that of a member joining an international convention so that any applicant, whether based in the Community or not, could obtain a patent which would apply to the whole territory of the Community. Registration, examination of applications and the granting of patents would be handled by the European Patent Office.

4.3. When the procedures to register and grant a Community patent are agreed, there will be three patent instruments available. Patent users may, according to their own interests, register either with their national authorities, or seek a European Patent, or consider registering a Community Patent.

5. General comments

5.1. For the proposal for a Council Regulation on a Community Patent to be accepted there is a number of related questions to be determined. These include the need to obtain co-operation from the European Patent Organisation.

5.2. The Committee endorses the proposal that the Community should become a member of the European Patent Convention as a method of introducing a Community patent.

5.2.1. The Committee notes that the European Patent Office welcomes this proposal and will co-operate actively on implementation in order to make for easier access to a patent covering the entire European Community.

5.2.2. This will call for some amendments to the Munich Convention which would need to be agreed by another diplomatic conference on the Munich Convention [1].

5.2.3. The Committee notes that the Commission has obtained a negotiating mandate from the Council of Ministers of the European Community to revise the Munich Convention. These negotiations not only have to ensure the mechanisms to create a Community patent but also that arrangements are made so that, over time, any further changes are accommodated in a symbiotic fashion and so that consistency between the Regulation and the Munich Convention is maintained.

5.2.4. The Committee notes that the introduction of the Community patent will have far-reaching effects on the national patent offices, especially with regard to their role and functions and even their financial resources. The Community patent as such is not dependent on the involvement of national patent offices. Nevertheless, national patent offices have an important role to play in the development of the patent system in Europe. Therefore, it is important to address the question of the future of the national patent offices in order to identify what measures are appropriate to ensure that they can continue to play their part in support of innovation in the Community.

6. Specific comments on the proposal

6.1. The concept of a Community patent registered through membership of the European Patent Convention raises a number of related and operational questions.

6.1.1. The more important are:

1. the method of introducing this decision to Community law;

2. the inter-action with the European Patent Organisation;

3. the relationship with existing patent systems and the national patent offices;

4. the cost of a Community patent;

5. information and language requirements;

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[1] A diplomatic conference on the reform of the European Patent Organisation was held in Munich in November 2000. However, this conference did not deal with the Community Patent.

6. implications of the language rules for enforcement processes;

7. appropriate legal institutions to enforce the Community patent.

6.2. To achieve an acceptable framework for the creation of a Community Patent, the Committee acknowledges that the questions related to cost, languages and legal processes are interlinked. The proposals which follow in later paragraphs represent a compromise to reflect the competing pressures in devising an acceptable and practical outcome.

6.2.1. The legal basis for a Community patent

6.2.1.1. The Commission has proposed that the introduction of a Community patent should be by means of a Regulation, under Article 308 of the Treaty. This procedure has already been used in relation to the fully implemented Community Trade Mark and for the proposal for Community Designs [1].

6.2.1.1.1. The reason for the proposal that a Regulation should be used to introduce the legal instrument is that the procedures must be standardised across the Community and Member States should not be left with discretion, as would be implicit in the use of a Directive. If a Community patent is to have the necessary impact in terms of its acceptance, its application and its administration, then a clear single binding framework is needed.

6.2.1.1.2. The Committee agrees that the introduction of the Community patent by way of a Regulation is both appropriate and necessary and this proposal has the strong support of the Committee.

6.2.2. The inter-action with the European Patent Organisation

6.2.2.1. The Community Regulation will necessarily need to conform with the requirements of the Munich Convention so that the Community can accede as a member of the Convention.

6.2.2.2. An advantage of the accession of the Community to the Munich Convention is that the Community Regulation does not need to develop a separate set of substantive rules on specific mechanisms for the registration of a Community patent. For example, the conditions of patentability will be those established under the Convention. The rules of the Convention, already tried and tested, will apply. So also will the case law under the Munich Convention that has evolved within the European Patent Organisation.

6.2.2.3. The Commission does, however, propose that the Community patent should be governed with some departures from (or additions to) the existing rules of the Convention. In particular, these variations relate to the cost of the grant of the patent, the need for and scale of translations, and the issue of jurisdiction. These are commented on in the following sections.

6.2.2.4. The Committee agrees that this forms the basis of an effective and efficient relationship with the European Patent Organisation.

6.2.3. Relationship with existing patent systems

6.2.3.1. The Commission has proposed that the Community patent system should co-exist with the other systems (e.g. the national patent system and the European patent system).

6.2.3.2. At this stage in the evolution of the Community there do not seem to be any convincing arguments that this co-existence of patent systems will make for undue difficulties. Co-existence cannot, however, mean complete flexibility of choice between the European patent system and the Community patent system once an initial application has been filed in both the Munich Convention countries and with the Community.

6.2.3.3. Where the party applying for a European patent designates only some — i.e. not all — Community countries, an extension to convert to a Community patent would not be an option. This position is based on the generally accepted principle of Patent Law of protecting third party rights that the territories to be protected must be stated at the time of application and cannot be increased thereafter. This does pose a question about the applicability of any Community patent to countries which become members of the Community at a later date.

6.2.3.4. If the Community patent attracts significant support, as would be expected, then at some later date the Commission may wish to consider a submission to the European Patent Organisation to rationalise the European patent or make it a variant, or extension, of the Community patent applicable to countries outside the Community. Nevertheless, it should continue to be possible for applicants to seek registration in a selection of countries from those participating in the European patent system rather than applying for a Community patent.

[1] COM(2000) 412 at point 2.2.

6.2.3.5. The Committee believes that it is a crucial feature of the proposal for a Community patent application procedure that it should co-exist readily with the existing arrangements for national and European patent application procedures.

6.2.4. The cost of a Community patent

6.2.4.1. The challenge for the Community patent is to find an acceptable compromise which reduces translation cost, simplifies and reduces the fee charges, including the renewal fees, and as a result will also reduce the fees paid to agents for a patent with Community coverage, which provides the requisite information and is acceptable in all the Member States.

6.2.4.2. The Commission has included in its proposal for a Council Regulation an illustrative calculation of the comparative cost of registering a European patent which applies to each of the countries of the European Community and must be registered in the language of the applicant and also translated into up to eight national languages [1]. Cost will differ widely depending on the nature of the application and the necessary amount of translation. Nevertheless, there is little doubt that a European patent system, which requires the granted European Patent to be translated in the language of each country concerned, incurring renewal fees in each country and fees to agents, is significantly more expensive than a single mono-lingual application and patent, i.e. in countries such as the USA or Japan [2].

6.2.4.3. The interests of the applicant contrast with those of the general public and other potential users who are obliged to respect an industrial property right with EC-wide validity. National Patent Offices also need financial resources to fulfil their remit and these come from fees.

6.2.4.4. The implication of the Commission recommendations is that for a Community patent:

a. initial examination and filing fees would be those charged by the European Patent Office;

b. maintenance fees would be set by the Community Regulation and paid to the European Patent Office and should be lower than the sum of the national renewal fees of each of the EU Member States;

c. translation cost would be lower because of the removal of the obligation to provide a translation into all the EC languages. It is acknowledged that this would lead to the available information on existing property rights being less available in individual countries. To compensate for this, particular provisions are envisaged (see below) where a breach of patent case occurs.

6.2.4.5. The expectation is that a Community Patent would be less costly than a European Patent which was registered in several countries. Fee charges (which are a major part of total cost) would be lower and translation cost should be lower.

6.2.4.6. The Committee regards the prospect of lower cost for a Community patent as a crucial requirement of the proposed system. The Commission proposal means that the cost of a Community patent could be considerably lower than those incurred when a European patent is registered for several countries within the Community.

6.2.5. Information and language requirements

6.2.5.1. A major cost saving proposal to help the users of the patent system is linked to a significant policy decision on the language arrangements for Community patents with particular regard to the extent to which reducing the number of translations is acceptable.

6.2.5.2. The proposed Regulation suggests that, once a Community patent has been granted in one of the three procedural languages of the European Patent Office (French, German and English) and published in that language, it should be accompanied by a translation only of the claims of the patent (and, compulsorily, only the claims) in the other two procedural languages. The Community patent will then be valid in that form in all Community countries without any other translations.

6.2.5.2.1. The Committee would point out that natural and legal persons resident or established in the territory of a Member State whose official language is other than English, French or German can submit patent applications in the official language(s) of their country. They must however submit a translation in one of the abovementioned official procedural languages within a given period of time.

6.2.5.3. A complete translation — as currently required under the European patent system — could become relevant in any later legal proceedings where an allegation of infringement was made. Then, a complete translation of the description and the claims into the language of the Member State where the suspected infringer is domiciled might be required to gain full legal benefits.

6.2.5.4. The Committee has considered various options related to two aspects of this part of the proposal for

[1] COM(2000) 412 at point 2.4.3.1, Table 1.
[2] COM(2000) 412 at point 2.4.3.2, Table 2.

a Community patent. First, the language requirements on registration and second, the suggested presumption when the language question is linked to a claim of 'unknowing infringement'.

6.2.5.5. The Commission has proposed a radical change from the language requirements of a European patent. If a Community patent is to prove particularly cost-effective, this is a necessary consideration. The advice of the European Patent Office is that this is a crucial factor.

6.2.5.6. A range of possible alternatives, in addition to the Commission proposal (see point 6.2.5.2) was considered by the Committee.

6.2.5.6.1. One was a proposal that would ask for a translation of the claims (and only the claims) into all the official languages of the Community. The problem lies in the number of languages that would be required. If the European Union is to enlarge to over 20 Member States, the cost become more formidable, but would still be more modest than a complete translation of the Community patent.

6.2.5.6.2. Another possibility is that the application should be prepared in the language of the applicant and the claims translated into English (but not, as a requirement, into French and German), as English is the main working language used in the European Patent Office [1]. In this connection, consideration was also given to a requirement for a translation of the complete patent into English.

6.2.6. Implications of the language rules for enforcement processes

6.2.6.1. As a consequence of the proposal on the official languages of the Community patent, the Commission is faced with a further difficult question in terms of the enforcement of Community patents. Should the obligation to observe the Community patent apply without any exceptions across the Community? This would be consistent with the usual presumption that 'ignorance' is no excuse. Alternatively, if the claims or full patent are not published in the language of the relevant country, is a defence of unknowingly infringing the patent acceptable, whatever the size of the organisations? The objective of securing legal certainty points to the need for adequate information on the claims at least being available in full translated form.

6.2.6.2. The Commission has proposed that 'a suspected infringer who has been unable to consult the text of the patent in the official language of the Member State in which he is domiciled, is presumed, until proven otherwise, not to have knowingly infringed the patent' [2].

6.2.6.3. This presumption then has consequences for the claims for damages on behalf of the patent holder but not on liability for infringement.

6.2.6.4. One alternative is that the Community should place an obligation on businesses, and their agents, to undertake a search of Community patents. However, unlike other legal processes where there is a duty 'to know', such an obligation for knowledge of existing patents is not considered a practical suggestion. It would place an extra burden, on all potential users, in contrast to the existing European patents.

6.2.6.5. If a defence of 'unknowing infringement' is to be acceptable, the wording used by the Commission may need to be made more restrictive. The proposal as presently drafted, might encourage wilful neglect of what should be a duty of due diligence and care. In addition, Article 6 confers some right to a licence of the patent on those who wrongfully but unwittingly register a patent that is later found to be invalid.

6.2.6.6. The Commission further suggests that, if the presumption applies, the proprietor of the patent would not be able to obtain damages for 'the period prior to the translation of the patent being notified to the infringer'. However, the investments made and then lost by the party which unknowingly infringed the patent may greatly exceed the level of damages.

6.2.6.7. Would the Commission be prepared to add a condition that an 'unknowing infringement' would only be acceptable if the infringer could not reasonably have known of the patent and could not easily have gained that knowledge without undue difficulty?

6.2.6.8. After consideration of other options, the Committee supports the recommendation of the Commission that the Community patent should be required to be registered in full in one of the three procedural languages and that the claims should be translated into the other two, despite the fact that this may make questions of legal enforcement more complex.

[1] OJ C 204, 18.7.2000, see footnote 5, rapporteur Professor Wolf, the ESC suggested the use of English as a common second language (point 7.9) for the European patent system.

[2] COM(2000) 412 at point 2.4.4.

6.2.6.8.1. If this method is chosen the Committee considers that the Commission should accept arrangements to ensure that an application for a Community patent could be presented in the national language of the applicant, and should be translated into one of the three procedural languages without cost to the applicant.

6.2.6.9. The Committee recommends that when a patent is unknowingly infringed, because it is not available directly in the language of the infringer, this should only be acceptable as a defence when the infringer shows that he could not reasonably and easily have had this information. Decisions on these issues would fall within the competence of the Community Intellectual Property Court (as discussed in the following section).

6.2.6.10. The language question not only affects legal certainty but also the accessibility of information on the technical content of the Community patent. The Commission should consider what steps might be taken to ensure wider dissemination of information.

6.2.6.11. The Committee considers that if the legal institutions are to be fully effective both the Register of Community patents and the Community Patent Bulletin must be considered as necessary publicity instruments with regard not only to knowledge of patents granted but also to users.

6.2.7. Appropriate legal institutions to enforce the Community patent

6.2.7.1. The Commission proposes the establishment of a Community Intellectual Property Court for legal action on the questions of validity and infringement. The Court would comprise two Instances, one of First Instance, the other of Appeal. This would offer a centralized judicial system specialising, inter alia, in patent matters. Only with a centralised system, the Commission argues, will there be an assurance of Community-wide application of the law and the development of consistent jurisdiction.

6.2.7.2. In other respects, the Community patent would fall within the remit of national courts (e.g. law of unfair competition, inventor's compensation, employee invention law).

6.2.7.3. These proposals differ dramatically from those outlined in the Luxembourg Convention which envisaged a mixture of competencies for purely national courts and rules to delineate the involvement of the European Court. The responses to the earlier consultation have persuaded the Commission that the concepts in the Luxembourg Convention risked becoming impracticable. The new proposal is more radical but clearer in its remit and operations.

6.2.7.4. Because this is a particularly specialized area of law, because there is a need for cases to be handled within a short time-scale, and because of the existing demands on the European Court of First Instance and the Court of Justice, the proposal is to establish a system which, in some institutional respects, parallels those of the European Court. In support of this suggestion, the Commission quotes the ruling by the Court of Justice that Community intellectual property rights cannot be created by harmonising national legislation [1].

6.2.7.5. National courts may need to refer to the Community Court when a case raises wider issues of the validity of a patent. However, national courts will be competent to request preliminary rulings on the intellectual property of a Community patent.

6.2.7.6. The Community Intellectual Property Court would consider cases of infringement and cases claiming invalidity. It would also consider cases arising during the period of 'temporary protection', i.e. between the time of filing and the actual granting of a patent. The Community Court would not have a remit to consider issues falling to national courts such as the right to a patent, transfer of a patent, or contractual licences.

6.2.7.7. Whilst the Committee acknowledges and accepts the need for a Community Intellectual Property Court, because of the language problems and the need to bring the legal process closer to the interested parties, the Committee recommends that the Court of First Instance should, where appropriate, hear cases in the national language of the country in which the case is heard.

6.2.7.8. The summit at Nice, December 2000, has introduced in the EC Treaty a declaration on Article 229 a TEC which allows the creation of the necessary legal institutions.

6.2.7.9. The relationship of the Community Intellectual Property Court, the Court of First Instance and the European Court of Justice raises some difficult issues in determining competence of the various institutions and the relationships with the Commission and national authorities.

6.2.7.10. In the filing and registration of a Community patent, the proposal is to accept the existing, or amended, procedures of the European Patent Office and its administrative appeal mechanism. There would be no further appeal from the

[1] Opinion 1/94 of the CJ, 15 November 1994.

European Patent Office on these issues to any other agency. When a Community patent is registered, disputes about validity and/or infringement would be within the remit of the Community Intellectual Property Court. For administrative actions by the Commission, under the proposed Regulation, the normal reference to challenge the Commission competence or actions would be to the Court of First Instance.

6.2.7.11. For the effective operation of a Community patent it is important that the legal mechanisms at each stage should be clearly defined and widely understood. The Committee expects further consultation on these issues to test their acceptability to those who have the main professional interest in their functioning.

6.2.7.12. The Committee considers that, if a Community patent is to operate effectively and efficiently, a Community-wide form of legal jurisdiction should be established and would support the proposal to establish a Community Intellectual Property Court on the lines proposed by the Commission with the proviso that the functions of First Instance are carried out in national specialist tribunals operating in the capacity of a Community Court of First Instance (in the country where the defendant is domiciled or where the breach has taken place) using rules of procedure devised by, and common to all aspects of, the Community Intellectual Property Court.

6.2.7.13. The Committee believes that the Commission should make proposals, at this stage, to ensure that a Community Intellectual Property Court would be accessible and affordable to smaller businesses. It would be unacceptable if the Community Court was, in reality, because of cost, access and 'right of audience', effectively not available to SMEs or small research organisations.

6.2.7.14. The operational proposals for the Community Intellectual Property Court will presumably be outlined in a further consultative process. The arrangements should allow proceedings in the Court of First Instance to be conducted in more than one location. The Court should have regard to the merits of offering a degree of proximity to users, particularly SMEs. Also, the arrangements should make provision for intermediary, or professional and business organisations, to be permitted to represent their members.

6.2.7.15. The Commission has suggested (point 2.4.5.4 of the Draft) that there should be no provision for references to the Court of Justice for preliminary interpretation of difficult issues. This seems to be undesirably restrictive when a new parallel legal framework is being introduced.

6.2.7.16. When the Commission publishes proposals for the functioning of the Community Court, the Committee expects that they will be designed to ensure that judgements are applied uniformly across the Community and avoid the potential inconsistencies of the present national patent procedures which are part of the framework for European patents.

Brussels, 29 March 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

The following Members, present or represented, voted for the Opinion:

Mr/Mrs/Miss: PAULO ANDRADE, EDOARDO BAGLIANO, JEAN-PAUL BASTIAN, GIANNINO BERNABEI, LUCIAN BOUIS, UMBERTO BURANI, CLAUDE CAMBUS, GIACOMINA CASSINA, EDUARDO CHAGAS, CAMPBELL CHRISTIE, ALFREDO CORREIA, GÉRARD DANTIN, JOHN DONNELLY, ROY DONOVAN, ERNST EHNMARK, SOSCHA ZU EULENBURG, DAVID EVANS, C. FAKAS, DAVID FEICKERT, RAINER FRANZ, GÖKE FRERICHS, LUCIA FUSCO, P. GERAADS, FILIP HAMRO-DROTZ, RENATE HORNUNG-DRAUS, A.M. HUNTJENS, SEPPO I. KALLIO, TUULIKKI KANNISTO, SØREN KARGAARD, DETHMER H. KIELMAN, ENRICO KIRSCHEN, JONANNES KLEEMANN, JOHANN KÖLTRINGER, URSULA KONITZER, JORMA U. KONTIO, CHRISTOFOROS KORYFIDIS, BERND KRÖGER, ARTHUR LADRILLE, GORAN LAGERHOLM, PHILIPPE LEVAUX, MALCOLM LEVITT, STURE ERIK LINDMARK, GEORGES LINSSEN, JOHN LITTLE, ANDERS LUNDSTRÖM, BERNARD MALABIRADE, HENRI MALOSSE, TED MATHGEN, HELEN MCGRATH, VITOR MELÍCIAS, DARIO MENGOZZI, LEIF NIELSEN, STAFFAN NILSSON, YIANNIS PAPAMICHAÏL, ROBERT PELLETIER, INGER PERSSON, ANTONELLO PEZZINI, JEAN-CLAUDE QUENTIN, GUIDO RAVOET, GIACOMO REGALDO, AINA MARGARETA REGNELL, MARTTI OLAVI REUNA, JEAN-CLAUDE SABIN, FRANZ SCHOSER, VICTOR HUGO SEQUEIRA, JOHN SIMPSON, ULLA SIRKEINEN, MÁRIO DAVID SOARES, KLAUS STÖLLNBERGER, RUDOLF STRASSER, PAUL VERHAEGHE, BRUNO VEVER, GIANNI VINAY, HEINZ VOGLER, KENNETH WALKER, CLIVE WILKINSON, GUSTAV ZÖHRER.

The following Members, present or represented, voted against the Opinion:

Mr/Mrs/Miss: MANUEL ATAÍDE FERREIRA, RAMON BAEZA SANJUAN, PEDRO BARATO TRIGUERO, JOSÉ BENTO GONÇALVES, MARJOLIJN BULK, MIGUEL CABRA DE LUNA, JOSÉ MARIA ESPUNY MOYANO, JOSÉ IGNACIO GAFO FERNÁNDEZ, GABRIEL GARCÍA ALONSO, LAURA GONZALEZ DE TXABARRI, JOSÉ DE LAS HERAS CABAÑAS, BERNARDO HERNÁNDEZ BATALLER, JOHANNES JASCHICK, KOMMER DE KNEGT, MARGARITA LOPEZ ALMENDARIZ, JUAN MENDOZA CASTRO, FERNANDO MORALEDA QUILEZ, JESÚS MUÑIZ GUARDADO, LUIS MIGUEL PARIZA CASTAÑOS, JOSÉ RODRÍGUEZ GARCÍA CARO, SERGIO SANTILLÁN CABEZA, JOSÉ MARIA ZUFIAUR NARVAIZA.

The following Members, present or represented, abstained:

Mr/Mrs/Miss: LISBETH BAASTRUP SØRENSEN, ANN DAVISON, MANFRED DIMPER, AN LE NOUAIL, DANIEL RETUREAU, CARLOS RIBEIRO, JOHN SVENNINGSEN, ALMA WILLIAMS.