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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

395th PLENARY SESSION, 11 AND 12 DECEMBER 2002

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation creating a European Enforcement Order for uncontested claims'

(COM(2002) 159 final — 2002/0090 (CNS))

(2003/C 85/01)

On 15 April 2002, the Council decided to consult the European 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 27 November 2002. The rapporteur was Mr Ravoet.

At its 395th plenary session (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 79 votes to one with two abstentions.

Gist of the conclusions

The Committee welcomes the proposed regulation, which dispenses with the need for exequatur in the case of undisputed claims. The proposed regulation follows on from existing Community instruments, in particular the Brussels I Regulation and the Service Regulation. The weak point in the proposal is that the Member States are to be free to decide whether to bring their procedural rules into line with the minimum procedural requirements governing the issuing of the European Enforcement Order. In order to create a genuine European judicial area, there must be more far-reaching harmonisation of Member States' legislation.

1. Summary of the Commission document

1.1. The Tampere European Council of 15 and 16 October 1999 endorsed the principle of mutual recognition of judgements and other decisions of judicial authorities as the cornerstone of judicial cooperation within the Union. In civil matters the European Council called for a further reduction of the intermediate measures required to enable the recognition and enforcement in one Member State of a judgement delivered in another Member State.

1.1.1. The joint programme of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters — a programme that was established by the Commission and the Council at the request of the European Council and adopted by the Council on 30 November 2000 [1] — singles out the abolition of exequatur for uncontested claims as one of the Community's priorities [1].

1.1.2. The introduction of the European Enforcement Order for uncontested claims forms the pilot project for the abolition of exequatur.

1.2. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition of judgements in civil and commercial matters (hereinafter referred to as 'Brussels I Regulation') entered into force on 1 March 2002. This regulation represents a major step forward in streamlining the procedure for obtaining a declaration of enforceability vis-à-vis the 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters (hereinafter referred to as the 'EEX Convention').

1.3. The Council now wishes to go a step further than the Brussels I Regulation in proposing a regulation creating a European Enforcement Order for uncontested claims.

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[1] OJ C 12, 15.1.2001.

1.3.1. It must be emphasised that the 'European Enforcement Order' has a twofold significance which reflects its twofold objective. In the strict sense its aim is to abolish exequatur. In the wider sense, it amounts to (the creation of) a simple procedure for obtaining a decision which can be enforced in all the Member States without exequatur. The Commission is actively pursuing both objectives for uncontested claims, albeit not in the same legislative instrument.

1.4. The present proposal seeks simply to achieve the first objective, i.e. the abolition of exequatur as a precondition for enforcement in another Member State of judicial decisions or settlements and authentic instruments that have been attained in the verifiable absence of any dispute by the debtor over the nature or extent of the debt. It is assumed that this passivity on the part of the debtor is a conscious choice based on the fact that he recognises the existence of the debt or on his deliberate disregard of the claim. For creditors, the abolition of exequatur offers the advantage of speedy and efficient enforcement abroad. In this proposal the European Enforcement Order is understood to be a comprehensive and transparent certificate which textifies that a court judgement or settlement or an authentic act fulfills all the conditions for enforcement throughout the Community without intermediate measures.

1.5. For the second, more extensive objective the Commission is preparing a Green Paper on the creation of a uniform or harmonised procedure for a European order of payment, which is likely to be published before the end of 2002.

1.6. Exequatur can only be abolished if Member States have trust in each other's legal systems. There must also be strict observance of the requirements for a fair trial in accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as Article 47 of the Charter of Fundamental Rights of the European Union. For these reasons the Commission considered that its proposal must lay down a number of minimum procedural requirements with regard to the service of documents (more specifically, the admissible methods of service and the time of service), which guarantee that the debtor is properly informed about the claim against him and can prepare his defence. Only if these minimum requirements are complied with, will it be possible to abolish the checks on the observance of the rights of the defence in the Member State where the judgement is to be enforced.

1.7. Use of the 'facilitated enforcement' provided for in the proposed regulation is optional in two respects. Firstly, Member States can decide themselves whether to bring their national legislation into line with the minimum procedural requirements in order that the largest possible number of decisions on uncontested claims can be certified as a European Enforcement Order. And secondly, creditors can choose between the classical declaration of enforceability under Brussels I Regulation and certification as a European Enforcement Order.

2. **Details of the proposal**

2.1. The subject matter is clearly defined in Chapter I (Article 1), viz. the creation of a European Enforcement Order for uncontested claims in civil and commercial matters in order to permit the free circulation of court judgements, court settlements and authentic instruments in all Member States. The scope (Article 2) is identical to that of the Brussels I Regulation.

2.1.1. Article 3 defines the following terms: judgement, claim, uncontested, authority of a final decision, ordinary appeal, authentic instrument, Member State of origin, Member State of enforcement, and court of origin.

2.2. Chapter II deals with the European Enforcement Order. If the conditions laid down in Article 5 are satisfied, a judgement delivered in a Member State by the court of origin at the request of the creditor is to be certified as a European Enforcement Order, with the result that it is recognised and enforced in the other Member States without any special procedure being required. Certification is provided by using the standard form contained in Annex I (Article 7).

2.2.1. The conditions laid down in Article 5 are as follows:

— the judgement is enforceable and has acquired the authority of a final decision in the Member State of origin;

— the judgement does not conflict with sections 3, 4 or 6 of Chapter II of the Brussels I Regulation;

— where a claim is uncontested within the meaning of Article 3(4)(b) or (c) of the proposed regulation, the court proceedings must meet the procedural requirements set out in Chapter III; and

— where the service of documents required under Chapter III of the proposed regulation has to be effected in a Member State other than the Member State of origin, such service has to conform with Article 31 (this refers to Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters [1], hereinafter referred to as the Service Regulation).

2.2.2. If a judgement as a whole does not meet these conditions, provision is made in Article 6 for the issuing of a partial European Enforcement Order.

2.2.3. The content of the European Enforcement Order certificate is dealt with in Article 7.

2.2.4. There is to be no appeal against a decision regarding an application for a European Enforcement Order Certificate (Article 8), bearing in mind the guarantees for the debtor set out in Article 15.

2.2.5. When a judgement has not yet acquired the authority of a final decision but all the other conditions in Article 5 are satisfied, a European Enforcement Order can be issued for protective measures (Article 9).

2.3. A European Enforcement Order cannot be issued unless the rights of defence were adequately guaranteed when the court judgement forming the basis for the Order was enacted. For these reasons the proposal lays down minimum procedural requirements which must be satisfied by the court proceedings in the Member State of origin. It is to be left to the Member States to judge whether it is necessary or desirable to adapt their national legislation to these minimum requirements.

2.3.1. The minimum procedural requirements concern first of all the serving of the document instituting the proceedings (or an equivalent document). This must be served on the debtor (the addressee) as soon as possible in order to give him sufficient time to defend himself if he so wishes (Articles 11-15). The debtor should also be duly informed about the claim (Article 16) and about the procedural steps necessary to contest it (Article 17) and to avoid a judgement in default of appearance at a court hearing (Article 18).

2.3.2. If the defendant has become aware of the proceedings against him, he cannot simply rely on a procedural defect at the beginning of these proceedings and on its automatic effect on enforceability abroad. Article 19 specifies how, if necessary, cure of non-compliance with minimum standards can be obtained.

2.3.3. It is feasible that in exceptional circumstances the debtor may not have obtained knowledge of the documents to be served on him without any fault on his part. If the conditions laid down in Article 20 are satisfied, the debtor is entitled to relief from the effects of the expiration of the time for ordinary appeal against the judgement by the competent court of the Member State of origin.

2.4. Chapter IV deals with the actual enforcement. The enforcement procedures are governed by the law of the Member State of enforcement (Article 21). Only a copy of the judgement, a copy of the European Enforcement Order certificate and, where necessary, a translation needs to be provided.

2.4.1. If the judgement is irreconcilable with an earlier judgement given in any Member State or a third country, the Member State of enforcement may make judicial review available to the debtor provided that strict conditions are met. Under no circumstances may the judgement or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement (Article 22).

2.4.2. Only in the exceptional circumstances described in Articles 20 and 22 is it possible to stay or limit the enforcement proceedings (Article 23).

2.4.3. The abolition of exequatur makes it easier to enforce a judgement in another Member State. This does not detract from the fact that there are still considerable differences between Member States' enforcement procedures. The proposal therefore specifies that Member States should work together to provide information about these procedures, especially via the European Judicial Network (Article 24).

2.5. Chapter V makes provision for the certification of court settlements and authentic instruments as European Enforcement Orders. Standard forms have also been drawn up for this purpose. The provision of suitable information about the direct enforceability of documents in all Member States is also obligatory (Article 26).

2.6. The domicile of both natural persons and companies or other legal persons is to be determined by analogy with the provisions in the Brussels I Regulation (Chapter VI, Articles 27-28).

2.7. Chapter VII lays down detailed provisions specifying when the proposal is to come into force (Article 29).

[1] OJ L 160, 30.6.2000.

2.8. Chapter VIII contains provisions about the relationship with other Community instruments, viz. the Brussels I Regulation and Regulation (EC) No 1348/2000, which are still applicable (Articles 30-31). The creditor is still able to opt for a declaration of enforceability under the Brussels I Regulation.

2.9. The standard forms appended to the proposal can be updated in accordance with the procedure provided for in Article 33. The proposal is due to enter into force on 1 January 2004.

3. **General comments**

3.1. The Committee endorses the aim of the proposal, which offers considerable advantages vis-à-vis the procedure for obtaining a declaration of enforceability under the Brussels I Regulation. As a result of the abolition of exequatur, the intervention of the judicial authorities in the Member State of enforcement is no longer a requirement. The legal delays caused by their intervention are thus avoided and costs are saved. Translations are not required either in most cases, as multilingual standard forms are used for the certification. The economic advantages should also not be scorned, since it is estimated that 90 % of court judgements which are enforced in a Member States other than the Member State of origin concern uncontested claims within the meaning of the proposed regulation.

3.2. Member States' trust in each other's legal systems is vital for the introduction of the European Enforcement Order. It is necessary to ensure strict respect for the fundamental principles of litigation and in particular for the right of defence. In order to achieve this, the proposal includes minimum procedural requirements.

3.2.1. Special attention is rightly paid to the serving of the relevant legal documents. One feature of judgements about uncontested claims is that the debtor expressly agrees with the claim [1] or does not take part in the court proceedings. In order to be certain in the latter case that this is a conscious choice on the part of the debtor, there need to be sufficient guarantees with regard to the serving of the documents, which must happen at such a time and in such a way as to enable the debtor to defend himself, if he so wishes. Only if the debtor has been duly notified in accordance with the minimum requirements, can his non-appearance at a court hearing be interpreted as a lack of defence against the claim.

3.2.2. The rights of defence are also safeguarded by the obligation to inform the debtor, via the document instituting the proceedings or the equivalent document, of the claim and of the procedural steps necessary to contest the claim and prevent a judgement being issued by default.

3.2.3. The proposal does not opt for the harmonisation of Member States' procedural rules. Nor are the aforementioned minimum procedural requirements to be mandatory. Each Member State can decide for itself whether to bring its legislation into line with the minimum requirements set out in the proposal. If national legislation does not comply with the minimum requirements, this simply means that the judgements issued in that Member State with regard to uncontested claims cannot be certified as European Enforcement Orders. If Member States' provisions at present do not satisfy the minimum procedural requirements, it will be up to them to achieve the objective of the proposed regulation. This aim of the draft legislative instrument — which seems modest at first sight — should not cause us to lose sight of the advantages for the inhabitants of Member States whose provisions do comply or have been made to comply. It is likely that the results which the proposed regulation achieves will drive Member States to harmonise their procedural rules.

3.3. The term 'claim' is defined rather narrowly in the proposed regulation as 'a pecuniary claim for a specific amount that has fallen due'. This implies that the amount of the claim must be fixed prior to the court proceedings, i.e. a precise estimate must be indicated in the authentic instrument on the basis of which it will be possible to apply for a European Enforcement Order certificate. In view of the numerous guarantees required for obtaining a European Enforcement Order, this raises the question of whether pecuniary claims for an undetermined amount should not be included, too. In this case, it would suffice if the document or documents on which the claim is based were to allow the precise amount to be fixed.

3.4. In keeping with a modern and constructive attitude towards procedural rules, it is not the intention in the proposal to adopt a purely formalistic approach to the strict formal requirements. In particular, Article 19 exemplifies the concern that the obtaining of a European Enforcement Order should not be thwarted by formal requirements which have been interpreted too strictly and which prompt the debtor to show bad faith. This attitude also accords with the development set in train by the transition from the EEX Convention to the Brussels I Regulation [2].

[1] In the course of the court proceedings the debtor either expressly agrees with the claim or acknowledges the existence of the debt or reaches a settlement which is approved by the court. Agreement with the claim may also not involve any proceedings, for example it may take the form of an authentic instrument.

[2] See Article 34(2) Brussels I Regulation and compare with the ruling of the Court of Justice of 12 November 1992, Minalmet versus Brandeis (case C-1233/91, European Court Reports 1992, I-5661.

3.5. The proposal takes due account of, and follows on directly from, the new Community legislative instruments that have come into being since the amending of the European Union's competences, in particular the Brussels I Regulation and the Service Regulation.

3.6. The proposed regulation does not make any provision either for the harmonisation of Member States' provisions with regard to enforcement. The mandatory execution of the European Enforcement Order will have to accord with the enforcement provisions in force in the/each Member State. For the plaintiff this is not very transparent and probably difficult to comprehend. In addition, there are appreciable differences between Member States' bankruptcy and overindebtedness provisions, and the protection offered by them to debtors. Although harmonisation of all these provisions is clearly outside the scope of the present proposal, the Committee would like to draw attention to this difficult problem.

4. **Specific comments**

4.1. A court judgement can only be certified as a European Enforcement Order if the judgement is enforceable and has acquired the authority of a final decision in the Member State of origin (Article 5(a)). The term 'ordinary appeal' is given a special Community content in the proposal (Article 3(6)), based on the wording of the ruling issued by the Court of Justice in the case Industrial Diamond Supplies versus Riva ([1]). There is a reference in this wording to national law with regard to the period laid down by law for lodging an appeal. This definition offers too little legal certainty with regard to the moment from which this period starts to run. It should therefore be amended as follows in the light of the lesson learnt from the aforementioned judgement: 'Ordinary appeal means any appeal which may result in the annulment or the amendment of the judgement which is the subject-matter of the procedure of being certified as a European Enforcement Order the lodging of which is bound, in the Member State of origin, to a period which is laid down by the law and which starts to run by virtue of the judgement itself or by virtue of the service of the judgement'.

4.1.1. In order to specify more clearly what type of appeals should be covered here, the definition given in the proposal should be more precise, in line with the definition given in the aforementioned judgement of the Court of Justice, namely that an ordinary appeal is 'any appeal which forms part of the normal course of an action and which, as such, constitutes a procedural development which any party must reasonably expect' ([2]). The inclusion in the proposed regulation of the negative definition given by the Court of Justice in the aforementioned judgement, could also avoid discussions and difficulties with regard to certification as a European Enforcement Order. Thus, the Court specified ([3]) that appeals 'which are dependent either upon events which were unforeseeable at the date of the original judgement or upon the action taken by persons who are extraneous to the case and who are not bound by the period for entering an appeal which starts to run from the date of the original judgement' cannot be considered as 'ordinary appeals'. If amplified in this way, the definition satisfies the aim of the regulation, viz. the swift enforcement of judgements, and also takes account of the ultimate fate of the judgement to be enforced.

4.2. The explanation with regard to Article 7(3) specifies that the number of copies of the European Enforcement Order certificate must correspond to the number of enforceable originals of the judgement which are supplied to the creditor in the Member State of origin. However, the proposal itself talks about 'authenticated copies' whereas 'enforceable instruments' is clearly meant. The text should expressly refer to the enforceable original of the judgement, which can be certified as a European Enforcement Order. On the one hand, various types of copies of court judgements are provided for in the legislation of different Member States and these cannot always serve as a basis for mandatory enforcement ([4]). On the other hand, the aim is rightly to supply as many copies of the European Enforcement Order certificate as there are enforceable originals of a judgement. In addition, the term 'enforceable original' should also be defined more precisely in Article 3.

4.3. In Article 11(1)(b) and (c) the phrase 'or has refused to take receipt of the document' should be added. Refusal on the part of the debtor to take receipt of a document served on him should not stand in the way of the judicial process leading to a judgement which satisfies the requirements to be certified as a European Enforcement Order ([5]). The same problem also arises in connection with Article 11(1)(d), for which a suitable solution should also be found, with due regard to the special features of the technology referred to therein and future technological developments (as a result of which, for example, an automatic acknowledgement of receipt could be generated).

([1]) Court of Justice judgement of 22 November 1977, Industrial Diamond Supplies v. Riva, case 43/77, European Court Reports 1977, I-2175, points 37 and 38.

([2]) Court of Justice judgement of 22 November 1977, Industrial Diamond Supplies v. Riva, case 43/77, European Court Reports 1977, I-2175, point 37.

([3]) Court of Justice judgement of 22 November 1977, Industrial Diamond Supplies v. Riva, case 43/77, European Court Reports 1977, I-2175, point 39.

([4]) Under Belgian law a distinction can be made between unsigned copies, certified copies and an enforceable original of a judgement. In principle only one enforceable original of a ruling or verdict is supplied to any one party (see Article 1379 of the Belgian Legal Code).

([5]) See Article 13(a), which rightly fails to mention the case provided for in Article 11(1)(b). Compare with Article 13(b)(iii): 'if the document has been served on a person other than the debtor, ...'.

4.4. For the sake of the cross-border serving of documents, the terms 'statutory legal representative' and 'authorised representative' in Article 11(2) should be defined in Article 3 in line with the explanations given in the explanatory memorandum. Neither of these terms is defined in the Service Regulation.

4.5. A number of vague terms are used in Article 12(1). If these are not defined more precisely, they could be interpreted differently, at least in the case of the cross-border serving of documents. The terms in question are: 'reasonable efforts to serve the document' (Article 12(1), introduction) and 'adults' (Article 12(1)(a)). Here, too, a uniform definition should be found. The expression 'if the mailbox is suitable for the safe keeping of mail' (Article 12(1)(d)) is also vague and could be interpreted differently. The remarks made above about Article 11(2) also apply to Article 12(2).

4.6. The draft Article 15(1) spells out what is meant by 'service in sufficient time to arrange for defence'. This period must be calculated 'starting from the date of service of the document which institutes the proceedings or of an equivalent document' (Article 15(1) in fine). Similar terms and timeframes are to be found in Article 15(2). Depending on the details of the court action, the precise time at which the document is served and the way in which these timeframes must be calculated will be governed by either the law of the Member State empowered to judge on the claim (when the document is served on the debtor in the same Member State) or the law of the Member State which is requested to do the serving (in the event of cross-border serving). The explanation given in Article 9(1) of the Service Regulation with regard to this time will prove useful in the latter case. This does nothing to detract from the fact that, in order to avoid all discussions and legal uncertainty, the proposed regulation must specify which law is to be used — in the event of cross-border serving — to calculate the 28-day timeframe (the law of the Member State where the proceedings initiating the European Enforcement Order are conducted, or the law of the Member State which is requested to do the serving).

4.7. There should be no mention of a court in Article 18. There are major differences between Member States' laws with regard to the drawing-up of summons and the intervention of the judge or the court. The proposed regulation does not seek to harmonise procedural law in the Member States and the information to be supplied under Article 18 can just as well come from another source apart from the court (e.g. the creditor himself or the bailiff acting on his behalf) [1].

4.8. The Dutch version of the draft Article 20(1)(a)(i) — 'de schuldenaar heeft buiten zijn schuld niet tijdig genoeg van de beslissing tot instelling van een gewoon rechtsmiddel kennis kunnen nemen' is an infelicitous and inaccurate rendering [2] of what the text is meant to say and which in English reads 'did not have knowledge of the judgement in sufficient time to lodge an ordinary appeal' (cf the French version 'n'a pas eu connaissance de la décision en temps utile pour exercer un recours ordinaire'). The phrase 'tot instelling van een gewoon rechtsmiddel' should be deleted.

4.9. The draft Article 20 deals with relief from the effects of the expiration of time for lodging an appeal against a judgement regarding an uncontested claim, but the conditions governing this, as set out in the introduction to Article 20(1) and in Articles 20(1)(a)(ii) and (iii) and Article 20(1)(b), seem to be contradictory. It is difficult to see how the requirement in Article 20(1)(b) ('the debtor has disclosed a prima facie defence to the action on the merits') can be satisfied if the debitor did not have knowledge of the document instituting the proceedings or equivalent document in sufficient time to defend himself (Article 20(1)(a)(ii)) or did not have knowledge of the summons in sufficient time to appear at a court hearing (Article 20(1)(a)(iii)). This applies even more so to the case mentioned in Article 3(4)(b), to which Article 20(1) refers in its introduction.

4.10. The term 'court settlement' (Article 25), which has already been used in Article 58 of the Brussels I Regulation without being defined, should for the sake of clarity be included in the definitions in Article 3 (where it is already referred to implicitly in Article 3(4)(d)).

4.11. In contrast with other recent Community instruments in the field of procedural law, this proposed regulation makes no provision for reports on its application or any proposals for amendments (cf. Article 73 of the Brussels I Regulation and Article 24 of the Service Regulation). The very fact that the draft regulation is the first step in a programme for improving the effectiveness of the measures for enforcing judgements, is a good enough reason for recommending the inclusion of such a provision.

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[1] Under Belgian law a judge or a court does not intervene before a summons is served on a defendant.

[2] See also the explanatory memorandum on Article 20: 'If the debtor did not receive the judgement in time ....'.

5. **Conclusions**

5.1. The Committee welcomes the proposed regulation:

— The introduction of a European Enforcement Order has considerable advantages vis-à-vis the existing exequatur procedure. There is no need for the judicial authorities in the Member State to intervene, and this saves time and money. As a result of the extensive guarantees with regard to the rights of defence, it is possible to abolish checks. Another simplification is that translations are unnecessary in most cases, since multilingual standard forms are used for the European Enforcement Order certificates.

— The proposed regulation makes allowance for, and accords with, the Brussels I Regulation and the Service Regulation, which are being used as the basis for creating a European judicial area.

5.2. The weak point in the proposal is the freedom which the Member States have to decide whether to adapt national procedural rules to the minimum requirements laid down in the proposed regulation. It is to be hoped that Member States will quickly realise that a European Enforcement Order can offer creditors nothing but advantages with the result that, where necessary, provisions will be adjusted swiftly and fittingly in the light of the minimum procedural requirements.

5.3. Though the proposed regulation undoubtedly represents a new step towards the creation of a European judicial area, it must be emphasised that there is still a very long way to go before this area is created. More far-reaching harmonisation of national procedural laws (including enforcement laws) is vital. The Committee is well aware of the challenges involved here, because of the impact of these rules on difficult and delicate issues such as the equal treatment of creditors, consumer protection and the provisions on crisis-ridden, bankrupt and overindebted companies.

5.4. The Committee recommends that the possibility of framing similar provisions for alternative dispute resolution (ADR) be examined. ADR is quite rightly a political priority for the EU institutions, and the publication of the Green Paper on alternative dispute resolution in civil and commercial law (Brussels, 19 April 2002 ([1])), is a clear indication of the renewed interest in such procedures.

([1]) COM(2002) 196 final.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Green Paper on alternative dispute resolution in civil and commercial law'

(COM(2002) 196 final)

(2003/C 85/02)

On 19 April 2002, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'Green Paper on alternative dispute resolution in civil and commercial law'.

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 6 November 2002. The rapporteur was Mr Malosse.

At its 395th plenary session (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 91 votes to one with two abstentions.

0. Summary of the opinion

0.1. On the overall approach: Community action should take the form of a recommendation. Nevertheless, at the end of three years, the case for switching to a directive or continuing with the recommendation should be considered after evaluating the latter's impact.

0.2. On the scope of ADR clauses: referral to the courts should be declared inadmissible as long as the actual implementation of the ADR procedure has not gone ahead. However, this provision should not apply in the case of membership contracts and, more generally, consumer contracts.

0.3. On the suspension of the period of limitation for court action: this should be allowed when the initial contract makes no provision for an ADR clause, and also in the absence of such a clause, but only from the moment the ADR mechanism has been effectively implemented by the parties.

0.4. On minimum procedural guarantees: it is necessary to retain the principles of third-party impartiality, transparency, effectiveness, fairness and confidentiality.

0.5. On the outcome of the ADR procedure: the legal nature of the agreements should be harmonised throughout the Member States and it should be stipulated that an agreement which is enforceable under any one State's legislation would ipso facto be enforceable throughout the countries of the European Union. The 'Brussels I' regulation should be amended accordingly.

0.6. On the status of those involved: initial practical training — supplemented by mandatory continuing training — should be provided for third parties; a European code of conduct should be drawn up to help third parties in their work; steps should be taken to form associations of third parties, which should be approved at European level.

0.7. On insurance for third parties: third parties should be encouraged to take out civil liability insurance, either personally or through the body (legal person) that has appointed them.

1. State of play

1.1. On 19 April 2002, the European Commission, at the request of the Ministers of Justice of the Member States, published a Green Paper in the context of Article 65 of the Treaty establishing the European Community, which states that measures in the field of judicial cooperation are to include improving and simplifying the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases. The Commission's objective is therefore to provide interested circles with better information on the existing rules and regulations and also to launch a debate on the possible need for common provisions at European level.

1.2. 'Alternative Dispute Resolution' — ADR — is defined in the Green Paper as an out-of-court dispute resolution process, excluding arbitration proper [1]. It is an amicable process which, often through the offices of a neutral and independent third party, helps the parties to come to an agreement and reach a solution that settles their dispute. ADRs generally fall into one of two categories. When they are conducted directly by the court or entrusted by the court to a third party, they are 'ADRs in the context of judicial proceedings'. However, when an out-of-court procedure is used by the parties, they are 'conventional ADRs'. ADRs have several objectives: to re-establish dialogue between parties, maintain economic relations, help provide good justice and restore social harmony.

[1] Arbitration is closer in practice to a quasi-judicial procedure than to an ADR as arbitrators' awards replace judicial decisions. Arbitration is already highly regulated in both the Members States and internationally.

1.3. The Heads of State and Government of the Fifteen have demonstrated their enthusiasm for ADRs at a number of European summits: in Vienna in December 1998, the European Council, in its conclusions, endorsed the Council and Commission action plan on establishing an area of freedom, security and justice and urged the Council to start immediately with the implementation of priority measures to that end; similarly, in Tampere, on 15 and 16 October 1999, the European Council pointed to a new way forward in the field of justice and home affairs by calling for the greater use of extrajudicial procedures. The Lisbon European Council in March 2000 called on the Commission and the Council to consider how to promote consumer confidence in electronic commerce, in particular through alternative dispute resolution systems. And lastly, in Feira in June 2000, this objective was re-affirmed when the eEurope 2002 Action Plan was approved.

1.4. In more concrete terms, a number of sectoral measures on ADRs have been taken at European Union level.

1.5. These initiatives have been largest in number in the field of consumer law. This reflects the Commission's concern to offer consumers a uniform level of protection. See, for instance, the Commission recommendations of 30 March 1998 ([1]) and 4 April 2001 ([2]).

1.6. In parallel, the Council and the Commission, at the time of adoption of the 'Brussels I' Regulation ([3]) on jurisdiction and the recognition and enforcement of decisions in civil and commercial matters, reiterated, albeit not in the regulation itself, but in a joint declaration ([4]), how important it was for work on alternative methods of dispute resolution in commercial and civil matters to continue in the Member States, thereby stressing the complementary role that these alternative methods could play in relation to conventional court proceedings, particularly in the area of electronic commerce.

1.7. The Directive of 8 June 2000 ([5]) expressly included provisions (Article 17) calling on Member States to encourage out-of-court bodies to operate in the context of consumer disputes ([6]).

1.8. Lastly, in order to facilitate consumer access to the amicable settlement of cross-border disputes, two European networks of national bodies have been set up by the European Commission. The 'FIN-Net' network was launched on 1 February 2001 in the financial services sector, while the 'EEJ-Net' network, which has existed as a pilot project since 16 October 2001, covers all fields.

1.9. Moreover, the need to take account of the human dimension of family disputes has led the Council and the Commission to take parallel initiatives in family law. In this respect, the possibility of mediation as a means of solving such disputes is clearly one of the objectives of the proposal for a Brussels II bis Regulation ([7]).

1.10. In the field of labour law, ADRs (often in the form of mediation) are a mandatory preliminary to any court case in many countries of the European Union, and, in some cases, the first stage in the court proceedings. Their usefulness in industrial disputes was stressed back in 1989 in the European Social Charter ([8]); in its Communication of 28 June 2000 entitled, Agenda for Social Policy ([9]), the Commission also stressed the importance of ADRs in the context of modernising the European social model. It subsequently instructed a high level group on industrial relations and managing change to issue concrete recommendations in this respect.

1.11. Although ADRs are therefore to be found in a number of fields, this does not mean that they are always understood in the same way, either between or within EU Member States. ADR is a general term for which very different, and in some cases imprecise, terminology is used. These differences which are certainly one of their features, could nevertheless prejudice their proper development. It is therefore desirable to provide a framework in which ADRs can flourish in complete safety, and for this purpose to pinpoint certain principles in terms of minimum procedural guarantees, third party impartiality and fairness and confidentiality.

([1]) On the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, OJ L 115, 17.4.1998.

([2]) On the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, OJ L 109, 19.4.2001.

([3]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001.

([4]) Joint Declaration of the Council and the Commission concerning Articles 15 and 73 of the Regulation in the minutes of the meeting of the Council of 22 December 2000 which adopted this Regulation.

([5]) Directive 2000/31/EC of 8 June 2000, OJ L 178, 17.7.2000.

([6]) Incidentally, for any dispute concerning electronic commerce — and not just consumer disputes — the Member States must ensure that their legislation does not hamper the use of ADR mechanisms by electronic means.

([7]) COM(2001) 505 final, OJ C, November 2001. This proposal for a regulation supplements Regulation (EC) No 1347/2000 of 29 May 2000, OJ L 160, 30.6.2000, p. 19 — called 'Brussels II' — on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility.

([8]) Article 13.

([9]) COM(2000) 379, 28.6.2000.

1.12. For this purpose action has been taken in the context of the Grotius programme [1], involving several mediation centres from Member States [2]. The MARC 2000 programme on European cooperation for the development of amicable methods of settling enterprises' civil and commercial disputes has also been implemented and has led to the formulation of a list of recommendations intended to promote a minimum level of harmonisation for ADRs in Europe.

1.13. Accordingly, the Green Paper under consideration contains twenty-one questions concerning the establishment of basic principles common to the Member States. The methods and content of these principles need to be examined.

2. **The main principles to be promoted**

2.1. *Previous ESC positions*

2.1.1. A pioneer in this respect, the ESC was quick to indicate its interest in ADRs as a complementary way of resolving disputes which calls on the responsibility of economic and social players from organised civil society (so-called 'functional subsidiarity'). Mention can be made in particular of the opinion on the Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [3], the opinion on the Initiative of the Federal Republic of Germany with a view to adopting a Council Regulation on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters [4], the opinion on the Proposal for a Council Decision establishing a European Judicial Network in civil and commercial matters [4], and the opinion on the Proposal for a European Parliament and Council Regulation concerning sales promotions in the Internal Market [5].

2.2. *Needs*

2.2.1. On the one hand, dispute settlement is increasingly faced with lengthening procedures and costs that are in some cases disproportionate to the issue at stake. Over and above these classic problems, one of the features of cross-border disputes is that they often involve complex issues relating to conflicts of law or jurisdiction. It is therefore chiefly to remedy the problems of access to justice that ADRs have been developed as they can play a fully complementary role to court proceedings. In other words, promoting these methods of out-of-court settlement seems to offer a solution to the proliferation of cross-border disputes resulting from increasing trade, in particular electronic commerce, and citizens' greater mobility.

2.2.2. On the other hand, it should be borne in mind that ADRs have been developed first and foremost as a priority for consumers and also for the world of work and industrial disputes. They are, however, just as useful in settling disagreements between enterprises: for instance trading partners are keen, even before a dispute develops, to find neutral ground where it is possible to examine and discuss their respective interests in the presence of a third party. Appropriate solutions, which it would very often not have been possible to adopt otherwise, may well enable them to continue their commercial relations.

2.2.3. At all events, ADRs must not be a way of evading national judicial systems, as the EESC has pointed out every time that it has spoken on this issue. ADRs must continue to be an option, agreed by each of the parties. This concern has to underpin all the replies given to the Green Paper's questions. ADRs have the advantage, however, of proposing an alternative procedure to the parties. The latter still retain their fundamental right to seek redress through the courts, even though we know that this generally functions in an unsatisfactory way (delays, bulky dossiers, slow procedures). Lastly, promoting ADRs also reflects the desire to support a model of civil society based on the principle of conciliation, in which civil society players and organisations occupy an important place.

2.2.4. The question of the pertinence of action at European level with regard to ADRs rests on the principles of proportionality and subsidiarity. It is necessary, on the one hand, not to set models in stone and to leave it to the local, regional or national level to develop the most appropriate methods. On the other hand, it has to be borne in mind that potential disputes are increasingly cross-border in nature in a Europe which is increasingly part and parcel of the daily life of economic players (single market, single currency) and citizens (travel, work mobility, family ties, etc.). It is therefore necessary to promote, in a measured way, an appropriate framework for the development of ADRs at European level. With this in mind, the Committee tends to favour a flexible approach, advocating a resolution in order to provide a reliable reference framework, measures to promote and exchange good practice [6] and lastly encouragement for the creation of networks of European ADR operators. The adoption of a European code of conduct seems in this respect to be an illustrative of the potential role of the European Union in offering support by disseminating good practice.

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(1) This programme helps through the provision of grants to facilitate judicial and extrajudicial cooperation by fostering mutual knowledge of legal and judicial systems.

(2) The Brussels Business Mediation Centre (BBMC, Belgium), the Centre for Effective Dispute Resolution (CEDR, United Kingdom), the Netherlands Mediation Institute (NMI, Netherlands), Unioncamere (Italy) and the Centre de médiation et d'arbitrage de Paris (CMAP), leader of the MARC 2000 programme.

(3) OJ C 117, 26.4.2000.

(4) OJ C 139, 11.5.2001.

(5) OJ C 221, 17.9.2002.

(6) A number of Member States have taken sectoral initiatives to promote ADR by establishing consultative authorities for ADR (France), financing ADR structures (Scandinavian countries), setting up vocational training programmes (Portugal) or publicising information about ADR.

3. The Green Paper's questions: initial points for discussion

3.1. *On the European Union institutions' overall approach to ADRs (questions 1-2-3-4)*

3.1.1. In general, as regards the ADR procedure itself, recourse to a regulation or a directive might well run the risk of impeding the development of ADRs, whereas a recommendation would seem better geared towards retaining the flexibility of ADRs: it would make it possible to sketch out a legal framework while advocating compliance with common principles with regard to the conduct and training of the impartial 'third party' ([1]). Nonetheless, given the lessons drawn from an appraisal of this recommendation over a period of three years, the case for a directive that provides minimum procedural guarantees should be studied. As regards the particular point of the interference between the ADR procedure and court proceedings (lack of jurisdiction of the courts in the case of ADR clauses, suspension of periods of limitation ([2]), the introduction of binding measures to cover these aspects will probably need to be envisaged when the 'Brussels I' regulation is being revised.

3.1.2. A further question asks whether the scope of ADRs should be extended to all fields. If such an option were to be adopted, it would be necessary, however, to specify that each State could exclude what it considers to be issues of public order over which national courts therefore have jurisdiction. Making ADRs generally applicable would nevertheless make it easier to pinpoint common rules of conduct and general principles.

3.1.3. The principles applied to traditional methods of dispute resolution should also be applied to online dispute resolution- which is to be encouraged, especially in consumer law. These principles should be adapted to the technical specifications relating, for example, to the security of data exchanged on the Internet.

3.1.4. ADR practices in family law, which have already proved their worth in a number of countries, must be developed as an absolute necessity. It would be helpful if the proposal for a 'Brussels II bis' regulation, which is more favourable to such practices, were to be enacted. There is also a need to set up a network of the family mediation bodies in Europe which are recognised by the competent national authorities, Ministries of Justice or national courts responsible for family matters.

3.2. *On the value and scope of ADR clauses included in contracts (questions 5-7-8)*

The parties to a contract may make provision, when signing the contract, for recourse to ADRs; the question is whether their scope needs to be made uniform in all countries.

3.2.1. In the first place, analysis shows that a mediation or conciliation clause of this type entails an obligation to produce a result, but solely as regards the actual implementation of the procedure. Such a clause should therefore oblige the parties to try to find a negotiated solution, pursuant, moreover, to the general rules governing any contract: parties that fail so to do might then be deemed contractually liable and could run the risk of being ordered to pay damages. On the other hand, once the mediation or conciliation procedure has been launched, the only obligation incumbent on the parties would be to try to reach an agreement in good faith: in no case could it be mandatory to reach a negotiated settlement of the dispute. Therefore, each of the parties should remain free to end the negotiation process and could be deemed liable only if there were evidence of bad faith.

3.2.2. Secondly, it results from the above that the existence of such a clause could merely lead to the referral to the courts being declared inadmissible as long as the actual implementation of the ADR procedure has not gone ahead. At all events this solution should not be acceptable for membership contracts, consumer contracts and employment contracts. The particular features of some matters show that ADRs clauses could be dangerous when one of the parties is in a position of weakness.

3.3. *On the suspension of court proceedings in the case of recourse to an ADR mechanism (questions 9-10)*

3.3.1. If such a rule were to be adopted by the Member States, there would need to be a differentiation between two cases: contracts comprising an ADR clause at the time of conclusion or contracts with no such clause.

3.3.1.1. In the first case, each party could invoke the ADR clause before the court, which would be enough to bring about the suspension of the court proceedings. The mediator should ensure that the mediation process does not go on unduly long without producing a result so that the suspension is as short as possible.

3.3.1.2. The answer is somewhat more problematic when there is no such clause as there are two conflicting arguments. On the one hand, the automatic suspension of the period of limitation could be used as a delaying tactic by one of the parties ([3]). On the other hand, as the concern is to promote ADRs, would it be logical to penalise parties who decide to have recourse to them in good faith? It is for this reason that it could be decided, as a 'safeguard', to use the 'actual' ([4]) implementation of an ADR as the criterion, the effect of which would be to suspend the period of limitation.

([1]) The term used in the Green Paper to denote the third party — conciliator, mediator, etc. — involved in an ADR procedure.

([2]) See points 3.2 and 3.3.

([3]) In the case of an ADR clause, however, there is less of a risk as the parties have, from the initial contract, demonstrated a genuine desire to have recourse to mediation.

([4]) It is the task of the courts to determine if this is the case. For this purpose, they could, for instance, consider the determining criterion to be the parties' first meeting with the third party.

On this basis, and in both these cases, if the parties fail to reach an agreement settling their dispute, the period of limitation would resume from the day in which the mediator announces that his role has come to an end.

3.4. *On minimum procedural guarantees (questions 11-12-13-15-16)*

3.4.1. After analysis, the principles set out in the two Commission recommendations [1] of 1998 and 2001, with regard to consumer law could provide a sound starting point.

3.4.2. More generally, for civil and commercial matters, the minimum guarantees connected with the ADR procedure — which should be included in a recommendation (see 3.1.1) — would be as follows:

— the principle of the impartiality of the third party (conciliator, mediator, etc.) with respect to the parties: the 'third party' must have no conflict of interest with the parties and must inform them of his impartiality and independence prior to the commencement of the ADR procedure;

— the principle of transparency; the parties must have access to the necessary information at all stages of the ADR procedure (general arrangements — languages, timetable — proceedings, cost, value of and agreement reached).

— the principle of effectiveness, through ease of access [2] and affordable cost for the parties;

— the principle of fairness, reflected in particular by the 'equal' treatment of each of the parties by the third party, in particular as regards information on the conduct of the procedure, the right of withdrawal at any time in order to instigate court proceedings or other out-of-court means of obtaining redress; ensuring balanced speaking time for the parties at separate interviews with the third party, etc.

— the principle of confidentiality; arguments exchanged by the parties in an ADR procedure, and any other information, should be kept confidential — unless the parties have expressly stated otherwise. This same principle of confidentiality should apply to the outcome of the ADR procedure.

3.5. *On the outcome of the ADR procedure (questions 17 and 18)*

3.5.1. Including a period of reflection before or after the signing of an ADR agreement, to allow time for further thought, is not desirable. In practice, this runs the risk of perverting the ADR procedure and the action in good faith of the parties. In any case, the principle of fairness [3] means that the third party must ensure that a balance is kept between the parties throughout the procedure.

3.5.2. The legal force of the agreements should be harmonised throughout the Member States. Such agreements are 'transactions', whatever name is given to them in the different countries, but the term 'transaction' does not, have the same meaning everywhere.

To the extent that this question goes beyond the actual scope of ADRs, a harmonisation strategy of this type should be examined in a binding and more far-reaching European text concerning contract law [4].

3.5.3. It should be stipulated here and now than an agreement which is enforceable under any one State's legislation, would ipso facto be enforceable throughout the countries of the European Union. When the 'Brussels I' regulation is revised, it should therefore also be amended on this point.

3.6. *On the status of those involved (questions 14-19-20)*

It is necessary to call on third parties with recognised qualifications and negotiating skills. Recommendations to this effect could in particular cover the following points:

3.6.1. It is necessary to provide adequate training which is sufficiently comprehensive to enable third parties to provide a useful and efficient service. This training should be supplemented by mandatory continuing training.

It would undoubtedly be useful to provide these third parties with on-the-job training so that they can learn about the various techniques and about the conduct and the outcome of ADR procedures from actual cases.

3.6.2. A European code of conduct should be drawn up to help third parties in their work. This code — which would be attached to the recommendation — would set out principles such as independence, neutrality, impartiality, confidentiality and the qualification of third parties.

3.6.3. Other paths could be envisaged, such as the formation of associations of third parties, which could be approved at European level and would operate with financial support from the European Commission.

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[1] As mentioned above.

[2] Electronic methods in particular are to be encouraged.

[3] See 3.4.2.

[4] Maybe eventually as a result of the Commission's current work on contract law.

3.7. *On insurance for 'third parties' (question 21)*

Special rules on the liability of third parties seem inadvisable as matters stand. In practice, it is common civil liability law that is applicable. There is therefore a strong case for third parties taking out civil liability insurance, either personally, or through the body (legal person) that has appointed them.

This last point, which is essential, should be included in the European code of conduct.

Brussels, 11 November 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 68/151/EEC as regards disclosure requirements in respect of certain types of companies'

(COM(2002) 279 final — 2002/0122 (COD))

(2003/C 85/03)

On 16 September 2002, the Council decided to consult the European 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 27 November 2002. The rapporteur was Mrs Sánchez Miguel.

At its 395th plenary session of 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion by 91 votes to one, with two abstentions.

1. **Introduction**

1.1. Directive 68/151/EEC was the first Community directive dealing with commercial companies. Its main aim was to create, through legal disclosure requirements, a climate favourable to the protection of the interests of members and third parties in companies whose principal feature is the limited liability of members — i.e. companies limited by share capital.

1.2. Legal disclosure requirements derive from the obligation on commercial companies to be entered on the register of companies maintained by each country for that purpose. The aim of such registers is to protect the interests of members of commercial companies, and of third parties which have contractual relations with them, by publishing information in three areas, namely the instrument of constitution, liabilities arising from the incorporation of the company and the effects of a declaration of nullity of the instrument of constitution.

1.3. In the past, businesspeople were required to disclose this type of legal information when registering with their respective guilds or associations. Commercial companies must now comply with this obligation in order to acquire legal personality. The requirements with which registered companies must comply include the minimum information to be contained in the instrument of constitution and information on persons or bodies empowered to bind the company legally or financially.

1.4. The directive came into force many years ago, and legal and economic changes in the intervening years mean that it must now be amended. The obligation to register has been extended to new types of company (Article 1), and new technologies have emerged for filing and publishing information (Article 3) making it more widely available and accessible, even beyond States' national borders.

1.5. The fourth phase of simplification [1] took place against this backdrop. The Company Law Working Group made a series of recommendations in connection with the First and Second Company Law Directives, including improved access to the information contained in the various registers, the possibility of using more than one language and a review of the kind of companies obliged to register. It also recommended that account be taken of the changes introduced by the Accounting Directives concerning compulsory publication of annual accounts in the companies register.

2. **Gist of the proposal**

2.1. The proposal to amend Directive 68/151/EEC takes account of the need to introduce new technologies for filing and publishing information and to adapt these new instruments to the requirements of the law to ensure that they comply with the principles of legality and legal certainty which derive from public registration.

2.2. Firstly, it is proposed to extend the content of the directive to cover:

— New kinds of company required to register

— Documents required to be published (accounting documents).

The first proposed change is a result of national law, namely the creation of new types of company in the countries referred to. The second proposed change is in line with the obligation imposed by other Community provisions, namely Council Directive 78/660/EEC of 20.7.1978 [2] as last amended by Directive 2001/65/EC of the European Parliament and of the Council [3]; Council Directive 83/349/EEC of 13.6.1983 [4] as last amended by Directive 2001/65/EC; Council Directive 86/635/EEC of 8.12.1986 [5] as last amended by Directive 2001/65/EC and Council Directive 91/674/EEC of 19.12.1991 [6], currently the subject of a Commission proposal for amendment.

2.3. Regarding the most important change — the introduction of new technologies for the registration and publication of information — the following proposals are worthy of note:

— Electronic filing system as from 2007

— Electronic certification of the documents registered

— Effects against third parties of documents published by electronic means

— Registration and publication in more than one language

— Requirement for companies' trading documents to show their registration details.

2.4. All of these changes affect registers only formally, with the underlying principles remaining unchanged. It is also important to bear in mind that as Directive 1999/93/EC [7] on electronic signatures is now in force, legal certainty is guaranteed in the use of electronic systems for certification of the data contained in the registers.

3. **General comments**

3.1. The EESC welcomes those changes to the current provisions which are in line with the proposals for simplification of Community law, particularly those providing legal safeguards for commercial transactions and ensuring that all the parties to such transactions have access to accurate information.

3.2. However, it should be pointed out that under no circumstances may simplification alter the general principles which are derived from the founding treaty, particularly linguistic diversity, which must be recognised not only within States, some of which have recognised regional languages, but also between all States. The Commission proposal reflects this requirement.

3.3. The proposal states that a computerised system must be in place by 2005 and that all documents registered in the ten year period prior to this date must be made available in electronic form. This proposal may create a degree of legal uncertainty in cases where key documents, such as the instrument of constitution, were registered before the deadline and are not, therefore, covered by this requirement.

3.4. To avoid such uncertainty, a distinction should be made between documents subject to compulsory registration (under Article 2) and those which may be registered on a voluntary basis, almost always statutory in nature. The time limits proposed would then apply only to the former and computerisation of the latter could be postponed.

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(1) See the Commission's report to the European Parliament and the Council on the Results of the fourth phase of SLIM, 4.2.2000 (COM(2000) 56 final).
(2) OJ L 222, 14.8.1978.
(3) OJ L 283, 27.10.2001.
(4) OJ L 193, 18.7.1983.
(5) OJ L 372, 31.12.1986.
(6) OJ L 374, 31.12.1991.
(7) OJ L 13, 19.1.2000.

3.5. The proposal relating to the effects of registered documents against third parties (Article 3(5) of the original directive) is also somewhat confused. Under the new wording of Article 3(4), it is assumed that knowledge of the documents concerned is acquired by one of two means: from the national gazettes or by electronic means. In the latter case, it would be more difficult to prove that information has been accessed, and is therefore legally binding, in the absence of a recorded access system.

3.6. The Committee agrees that the cost of copies of documents should not exceed the administrative cost. This should not, however, include the cost of computerising the information registered.

4. **Specific comments**

4.1. The aim of the proposed changes to the system governing legal disclosure by registered companies is to extend its impact across borders to cover the whole single market. To this end, the proposal deals with both the linguistic arrangements and the use of electronic systems for the registration and disclosure of documents. However, the EESC believes that in all cases it is important to preserve the legal certainty of commercial relations, based on the principles of transparency and the legality of actions.

4.2. Since the proposal is intended to apply across the board, any aspects which may have an effect contrary to that intended must be resolved. The wording of Article 3a(1), under which Member States may select one of the languages permitted by the language rules applicable in that Member State, is a case in point.

4.3. The EESC calls on the Commission to clarify the wording of this paragraph to stipulate that Member States must require the documents referred to in Article 2 to be registered in the official Community language of that State, while being able to maintain regional linguistic identity through the use of other languages in accordance with Article 3(2).

4.4. With regard to the electronic registration system, the EESC wishes to point out that there is an inconsistency in Article 3(5), since the original wording of Directive 68/151/EEC, which specifies a period of sixteen days after which documents and particulars registered may be relied on as against third parties, remains unchanged. This is a very long time span under the new disclosure system. The Member States could shorten this as the use of new technologies develops.

4.5. The EESC proposes that a new sentence be inserted into this paragraph to restrict its application to registers which do not use the electronic system for the registration and disclosure of documents. This would fulfil one of the intended aims of the proposal by ensuring that the information subject to legal disclosure may be accessed speedily and easily.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Implementation of the structured social dialogue in the pan-European transport corridors'

(2003/C 85/04)

On 2 March 2000 the European Economic and Social Committee (EESC) decided, under Rule 23(2) of its Rules of Procedure, to draw up an additional opinion on the 'Implementation of the structured social dialogue in the pan-European transport corridors'.

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 15 November 2002. The rapporteurs were Mr von Schwerin, followed by Ms Alleweldt [1].

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion with 94 votes in favour and three abstentions.

1. Purpose of the EESC initiative

1.1. Following the own-initiative opinion [2] on the implementation of the structured social dialogue in the pan-European transport corridors adopted in March 2000 on the basis of principle 10 of the Helsinki Declaration [3] — and the activities that have sprung from it — EESC decided to continue with its work and set up a permanent study group.

1.2. This decision was taken not only because of the success and impact of cooperation between the EESC and socio-economic representatives from the central and eastern European countries (CEEC), but also because of a particular difficulty that has given repeated cause for concern. Despite the fact that governments and European institutions have committed themselves to consulting socio-economic groups on the development of transport policy, there is a glaring disregard for this principle in practice in most CEEC. Problems of a lack of coordination and transparency at national level are repeated on the international stage and thus prevent socio-economic groups from playing an active role in European integration. The EU institutions and European organisations are doing too little to counter this deplorable state of affairs. The EESC would like to take this opportunity to call for more to be done in this area in future.

1.3. The aim of the permanent study group's work is to ensure that the social partners and environmental and consumer associations are involved in decision-making on future transport policy and infrastructure investment well before the final political decisions are taken. This is the main purpose of the individual activities in the corridors and transport areas.

2. Summary of the EESC's activities and conclusions

2.1. The first meeting with a public debate took place on 26 October 2002 and concluded that there were considerable shortcomings in the implementation of a genuinely integrated transport policy.

It was noted that there was a need for action in the following areas:

— promotion of regional transport network links;

— improvement of environmental audit;

— enhancement of transport safety;

— creation of a fair competitive environment;

— management of structural changes in connection with privatisation;

— provision of better infrastructure-planning instruments;

— search for requisite funding;

— increased transparency with regard to information;

— improvement of consultations and social dialogue;

— better coordination of activities at European level, especially with the Commission.

2.2. The EESC has consistently managed to establish better contacts with the government steering committees in the corridors. It has also become an established consultative partner and is involved in particular in the ongoing work in Corridors IV, X and VII and Corridor IV's railways steering committee.

2.3. Building up these contacts opens up further possibilities for active involvement in the other steering committees. Getting actively involved must however be carefully weighed up against the study group's operational capabilities and possibilities.

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(1) Four-yearly Committee renewal.

(2) OJ C 117, 26.4.2000, p. 12.

(3) In 1997, representatives of the governments and parliaments of the European countries and of the institutions of the European Union agreed in Helsinki on a joint declaration on the development of pan-European transport policy. One of the agreed principles is consultation of socio-economic groups in transport policy development (principle 10).

2.4. In response to many requests, the Commission has established a new coordination forum, made up of the steering committee chairs and representatives of the European Conference of Ministers of Transport (ECMT) and the United Nations Economic Commission for Europe (UN-ECE). The European Economic and Social Committee will also take part in this forum.

2.5. In the next two to three years, further development of the corridors is to be linked to the revision of the TEN guidelines. Plans are also afoot for a renewed, broad-based consultation of transport ministers on the course to be taken by pan-European transport policy. This would more or less amount to a follow-up to the Helsinki declaration. In this context, the EESC's work plays an important role and should be drawn on as appropriate.

2.6. The EESC's workload has expanded rapidly. The Committee has proved that, in this field, it can do much promote social dialogue with socio-economic partners in central and eastern Europe. It has thereby also established itself as a partner for the EU institutions and individual governments/ministries.

This role can be further extended, by:

— providing a commitment in the medium term, among other things by re-establishing a permanent study group on the promotion of social dialogue in the pan-European corridors;

— further improving its role in providing contacts, information and exchange of experience with players;

— further strengthening the principle of dialogue conferences and on-the-spot activities;

— ensuring committed representation of the EESC, and thus also of the interests of socio-economic groups, in the relevant forums and steering committees.

2.7. The political and economic significance of the rapid revival of Corridor X (former Yugoslavia), and the considerable interest still shown by our socio-economic partners in closer cooperation in Corridor X indicate that the next dialogue conference should be held there.

3. **Report on activities since March 2000**

3.1. *Permanent study group: first meeting and open discussion session, 26 October 2000*

3.1.1. At a time when the EESC is expanding its operations and the governments concerned are supporting and coordinating work in individual transport corridors, other players are pulling back or setting different priorities. Under the Helsinki declaration [1], the G-24 transport working group of the Commission and the OECD is supposed to be responsible for monitoring. It did not meet between January 1999 and March 2001, and the March meeting failed to resolve many issues in relation to the group's future. This has created a certain vacuum, less in the sense that operations as a whole are on the wane, but more in terms of the need for a transparent, coordinated and joint approach, as intended by the Helsinki conference and declaration, the last major political event.

3.1.2. At the same time, rather than diminishing, the tasks and specific problems related to the common transport policy and economic and social coherence in Europe are on the increase. Among socio-economic stakeholders in particular, but also among political decision-makers in CEEC governments, parliaments and administrations, the Helsinki process raised expectations of broad support from and enhanced communication with the appropriate players within the EU. Such expectations now risk being dashed. The last political opportunity for consultation was the hearing on the TINA report, staged jointly by the EESC and the Commission in March 1999. Regrettably, the final report makes no mention of this hearing and the joint report on it by the Commission and the TINA secretariat was never completed. This does nothing to encourage input from CEEC socio-economic partners.

3.1.3. For this reason, the study group meeting on 26 October 2000 was combined with an open discussion session. Its purpose was to target and bring together those who have taken on key tasks and responsibilities in the overall process. These include representatives from the Commission, the European Parliament (EP), the European Conference of Ministers of Transport (ECMT), the United Nations Economic Commission for Europe (UN-ECE), the steering committees and selected CEEC socio-economic stakeholders with working ties with the EESC [2]. The discussion was designed to initiate agreement on individual activities and, as far as possible, to lay down joint priorities for future cooperation in greater detail. The aim was to make clear, tangible and practical provision for the launch of further cooperation projects.

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[1] Extract from the Helsinki declaration: 'We invite the participants to... consider the need firstly to monitor implementation of the "means" set out in Section IV of this declaration, and secondly to evaluate periodically the degree of achievement of the "objectives" described in Section II, and in this connection request the European Union, the European Conference of Ministers of Transport and the United Nations Economic Commission for Europe and partners in multilateral and regional initiatives to cooperate in the aggregation of relevant data, to review progress towards regional and sectoral goals, and to make proposals for more effective implementation on the basis of experience'.

[2] The list of participants at the meeting on 26 October 2000 is to be found in report DI 262/2002 (available in the TEN secretariat).

3.2. *Corridor IV*

3.2.1. Since June 1999, excellent ongoing working relations have been maintained with the steering committee of Corridor IV governments. The European Economic and Social Committee regularly takes part in meetings, for instance on 29 September 2000 in Vienna, on 7 and 8 June 2001 in Bratislava and on 21 and 22 June 2002 in Sofia (see footnote 2, p. 17).

3.2.2. The joint declaration signed at the February 2000 conference in Vidin, Bulgaria and Calafat, Romania, was forwarded to the office of the special coordinator of the stability pact for south-eastern Europe, Bodo Hombach, where it was received with interest. The policy decisions regarding the construction of the bridge across the Danube have now been taken and the infrastructure planning is well under way. Further talks were held in conjunction with the Corridor IV steering committee meeting on 22 May 2002. The European Economic and Social Committee reiterated its willingness to provide political, economic and social decision-makers with on-the-spot support so that the momentum generated by the development of the corridor could be of optimum benefit to the region. This issue was also addressed in talks between the rapporteur and Commissioner Verheugen, who supports the Committee's commitment.

3.2.3. Corridor IV's railways steering committee invited the EESC to attend its meeting on 10 and 11 May 2000 in Athens. Its purpose was to spell out future cooperation and draw up proposals for projects. The EESC rapporteur presented a blueprint setting out specific proposals, which met with broad approval (see footnote 2, p. 17). This blueprint was also discussed with trade union representatives at the railway section meeting of the European Transport Workers' Federation (ETF) on 20 September 2000 in Brussels. A working group of rail unions from the Corridor IVcountries was set up in July 2001, and the rapporteur attended its fourth meeting in Prague in February 2002. Consultations with the rail unions are now to be held on two issues, namely the improvement of border crossings and of general information exchange. The EESC's mediating role is expressly welcomed, as was made clear in a letter to the rapporteur.

3.2.4. The EESC's most recent work in Corridor IV mainly involved co-hosting — together with the European Intermodal Association (EIA) — a round-table discussion on the promotion of intermodal links in the corridors. This event, held in conjunction with the Danube summit in Constanza on 26 and 27 June 2002, also provided an opportunity for an initial exchange of views between representatives of Corridor IV's railways steering committee and the trade union working party. The aim is to launch a meaningful discussion leading to additional practical projects that can also be applied to other corridors. Further findings and conclusions for the future are to be found in a separate report (see footnote 2, p. 17).

3.3. *Corridor III*

3.3.1. In early September 2000, a seminar was held in Poland — at the instigation of Euronatur and with Mr Lutz Ribbe in the chair — on issues concerning the liberalisation of local public transport. The rapporteur Alexander Graf von Schwerin also attended, and made a contribution. This seminar provided the impetus for a conference at the intersection of Corridors III and VI in Katowice, Poland.

3.3.2. The Katowice conference on 19 and 20 March 2001 focused on regional integration around corridors, with reference to planning and financial problems. Some sixty representatives of economic and social interest groups took part. It became clear that regional ties and links to regional transport networks also had to be included in the work on the building of corridors. This could further environmental protection, safety, efficient financial planning and the smooth running of local public transport ([1]).

3.4. *Corridor X*

3.4.1. Initial contacts with the — at the time still 'unofficial' — Corridor X steering committee were established in June 2000 via cooperation within the Corridor IV steering committee. Official status came only with the signing of the memorandum of understanding in spring 2001. The European Economic and Social Committee took part in a steering committee meeting for the first time in Grevena, Greece, on 26 and 27 April 2002 (see footnote 5). The steering committee is backed by a technical secretariat attached to Aristotle University, Thessaloniki (AUTh), which produces extensive studies and maintains the steering committee's dedicated website.

3.4.2. This year, the steering committee will focus on the issue of border crossings and has set up a working group for this purpose, which cooperates with DG TREN and DG Taxation and with the UN-ECE. The European Economic and Social Committee has been asked to take part in the work.

3.4.3. The political and economic significance of the rapid revival of Corridor X, and the considerable interest still shown by our socio-economic partners in closer cooperation in Corridor X indicate that the next dialogue conference should be held there.

([1]) See detailed report DI 262/2002 of 11 June 2001 (available in the TEN secretariat).

3.5. *Corridor V*

3.5.1. In Corridor V, cooperation with the Slovenian rail company and rail union and the Slovenian transport ministry started well. A working meeting was held in Ljubljana in June 2001 which drew up very specific plans for a dialogue conference in October of the same year. In the event, this came to nothing because of changes in the political priorities in Slovenia and EESC budget difficulties.

4. **Future topics for work**

4.1. The permanent study group on the promotion of social dialogue in the pan-European corridors will continue working on the following issues:

— The dialogue conferences have been very successful. In which corridors should further conferences be proposed and what should the issues and targets be?

— The Committee is making of a name for itself in this field. What further improvements can be made to its PR work and public impact?

— Contacts with the CEEC socio-economic partners are in need of improvement. Trade unions are now starting to engage in wide-ranging cooperation. The other interest groups in society lack appropriate initiatives. How can the Committee improve its role as mouthpiece, forum and mediator?

— The permanent study group's work covers more than mere transport policy and is complemented by other Committee initiatives. What can be done to improve internal EESC coordination and refine interplay?

— Involvement in the steering committees only makes sense if there is scope for practical activities. In future, it is unlikely that the rapporteur and section secretariat will continue to be able to plan and arrange such activities on their own. What procedures could be developed for this work?

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on:

— **the 'Proposal for a Directive of the European Parliament and of the Council on specific stability requirements for Ro-Ro Passenger Ships', and**

— **the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 98/18/EC of 17 March 1998, on Safety Rules and Standards for Passenger Ships'**

(COM(2002) 158 final — 2002/0074 (COD) — 2002/0075 (COD)) ([1])

(2003/C 85/05)

On 14 May 2002 the Council decided to consult the European Economic and Social Committee, under Articles 80(2) of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Transport, Energy, Infrastructure and the Information Society which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 October 2002. The rapporteur was Mr Chagas.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion by 94 votes to one and one abstention.

1. Background

1.1. The Commission presented on 25 March 2002 a document concerning the safety of passenger ships in the community, including a set of initiatives: a proposal for a Directive on specific stability requirement for ro-ro passenger ships; a proposal for amending Council Directive 98/18/EC of 17 March 1998, on safety rules and standards for passenger ships and a Commission's Communication on the liability regime for maritime passengers.

1.2. Measures already in place since the 1990's include:

— 98/18/EC: Directive on safety rules and standards for passenger ships ([2]);

— 98/41/EC: Directive on the registration of passengers ([3]);

— 98/179/EC: Regulation on the safe management of ro-ro ferries ([4]);

— 1999/35/EC: Directive on mandatory safety services for ro-ro ferries and high speed craft ([5]).

1.3. The new safety package for passenger ships aims at reducing the risk of horrific maritime tragedies such as the Estonia 1994 and the Express Samina 2000.

1.4. The objective of the proposal for a Directive on specific stability requirements for ro-ro passenger ships is to apply the Stockholm Agreement (SA) stability requirements to all ro-ro passenger ships, irrespective of flag, operating on regular scheduled international voyages in the EU. Such a measure aims at laying down a uniform level of stability requirements throughout the community and increase the level of survivability of damaged ro-ro passenger ships so providing for a higher level of safety for EU citizens travelling as passengers and seafarers.

([1]) This document also includes a Communication from the Commission on the enhanced safety of passenger ships in the Community which the EESC has taken into account in its opinion in view of its importance.

([2]) Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ L 144, 15.5.1998, p. 1) — ESC Opinion: OJ C 212, 22.7.1996, p. 21.

([3]) Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35) — ESC Opinion: OJ C 206, 7.7.1997, p. 111.

([4]) Commission Regulation (EC) No 179/98 of 23 January 1998 amending Council Regulation (EC) No 3051/95 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (OJ L 19, 24.1.1998, p. 35.

([5]) Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1) — ESC Opinion: C-407, 28.12.1998, p. 106.

1.4.1. The new stability requirements shall apply to all new ro-ro passenger ships built after 1 October 2004. For a ship that was built prior to that date, the proposals establish a phasing-in period that expires on 1 October 2010. The standards of the SA are currently applied by seven Member States party to the SA, namely, Germany, Denmark, Finland, Ireland, Netherlands, Sweden and the United Kingdom. Norway is also part to the SA.

1.5. The objective of the proposal for the amendment of Directive 98/18/EC on safety rules and standards for passenger ships aims to strengthen the safety of all passenger ships operating domestically, by introducing increased stability requirements for ro-ro ships and new safety guidelines for passengers with reduced mobility. The proposal also includes some amendments to Directive 98/18/EC in order to update and improve its implementation, amongst them a harmonised procedure for Member States for notification of the location of sea areas under their jurisdiction.

1.5.1. While the new stability requirements apply to all new ro-ro passenger ships built after 1 October 2004 for ships built prior to that date, the proposal establishes the 1 October 2010 for the deadline for compliance with the SA. Ships that do not comply with the requirements on that date should be phased out when they reach the age of 30 years, in any event no later than 1 January 2015 providing they comply with SOLAS 90 standards.

1.6. The communication presents views on how the liability for damages caused to passengers should be improved. The proposals call for compulsory insurance for carriers and strict liability up to EUR 250 000 per passenger and, if the carrier is at fault, unlimited liability should apply. A decision of the Diplomatic Conference on revision of the Athens Convention is awaited. In addition the communication addresses the provision for safety and access to disabled passengers.

2. **Proposal for a Directive of the European Parliament and of the Council on specific stability requirements for Ro-Ro Passenger Ships**

2.1. *General comments*

2.1.1. The EESC recognises that it is important to have international agreement through the International Maritime Organisation (IMO). To some extent this is met by the provisions of SOLAS 90. However, in the absence of a satisfactory international safety regime, a community wide regional measure, as proposed by the Commission in accordance with the provisions of Regulation 14 of IMO SOLAS 95, is essential in order to ensure adequate safety rules and standards with respect to the carriage of passengers to and from community ports.

2.1.2. The EESC shares the concern of the Commission and the Secretary General of the IMO over the increased size of both ro-ro passenger vessels and other passenger vessels. The EESC has concern over the extrapolation of the rules of construction and the consequential operational safety of such vessels. Notwithstanding these reservations the proposals of the Commission represent a significant step in improving the safety rules and standards with respect to the carriage of passengers to and from community ports on ro-ro passenger ships.

2.1.3. Despite the limitations of the SA, the EESC generally welcomes these proposals. It is disappointing that is has taken some time for universal application of the SA to all Member States. Notwithstanding this qualification i.e. the limitation of the SA, the EESC strongly supports the Commission's proposals for the extension to all Member States so as to ensure the safety of EU citizens, travelling as passengers on ro-ro passenger ferries and seafarers.

2.1.4. The EESC recognises that these proposals will not prevent such accidents from happening but will hopefully mitigate the consequences and the subsequent tragic loss of life in the circumstances identified.

2.1.5. The cost of upgrading should not be prohibitive and, in most cases, is not necessary. Where upgrading is required this provides the opportunity for the introduction of new tonnage that is invariably linked to the application of SOLAS 90 so improving the level of safety. Furthermore uniformity of application provides for fair competition amongst operators in Member States in addition to providing an improved level of safety to all EU citizens travelling as passengers and seafarers regardless of the route of operation.

2.1.6. While taking note of the Commission's observation that wave heights in the Mediterranean are comparable to those in the Baltic Sea and wave heights in the Eastern Atlantic (the Atlantic Coast of France, Spain and Portugal) are comparable to the North Sea and Channel areas, it is not the wave height in itself that is significant, it is also the relative extent of the damage to the vessel and the ingress of water from whatever cause and the remaining freeboard that is the determinate factor in the time and survivability of such vessels. This was identified in a Joint North-West European Research Project entitled 'Safety of Passenger/Ro-Ro Vessels by Det Norske Veritas Doc. No: REP-T00-001, Date: 1997.5.7'.

2.2. *Specific Comments*

2.2.1. In relation to the dates for implementing the SA in southern Europe, the EESC agrees with the Commission proposals with respect to the phasing in schedule. This is approximately the same as that given to Member States in Northern Europe. While recognising that ferry routes connect Member States to North African countries this should not be an excuse for delayed implementation given the recognition for universal standards of safety in relation to the potential risk. The intended date of 2010 is therefore entirely appropriate.

2.2.2. Article 1 — Calls for the introduction of a uniform level of stability requirements for ro-ro passenger ships in Europe in order to improve the survivability of this type of vessel in case of collision damage and provide for a higher level of safety for passenger and crew. The EESC supports this aim and therefore the wording should be retained.

2.2.3. Article 2a — The Commission is requested to re-examine the definition of 'ro-ro passenger ship' to provide for a stricter wording meeting both the requirements of the Stockholm Agreement and the SOLAS Convention.

2.2.4. Article 5.3 — The proposals for a new Internet based procedure for notification and publication of sea areas giving more integrity and transparency to the system is to be welcomed.

2.2.5. Article 9.1 — In the event of a ro-ro passenger ship being chartered in at short notice for a particular route the requirement to notify the competent authority of the host state or states not later than three months is somewhat onerous and impractical. It is suggested this be reduced to one month. In the event of unforeseen circumstances, i.e. technical reasons, a replacement ro-ro passenger ship should be provided rapidly to ensure continuity of service and the necessary social provision. As in Article 4 of the Stockholm Agreement, provision should also be made to allow individual journeys to be exempted from the particular criteria under specific circumstances.

2.2.6. Appendix, Model Test method, paragraphs 2.1 and 2.2.5.2 (editorial) refer to the Safety at Sea Convention. This should refer to the Safety of Life at Sea and reference to (SOLAS 90) in 2.1 should refer to (SOLAS).

3. Proposal for a Directive of the European Parliament and of the Council amending Council Directive 98/18/EC of 17 March 1998, on Safety Rules and Standards for Passenger Ships

3.1. *Stability — General and Specific Comments*

3.1.1. The EESC in general welcomes the proposals to amend Council Directive 98/18/EC.

3.1.2. The EESC notes and approves the Commission's reasons for abolishing the present derogation for Greece.

3.1.3. The proposals concerning High Speed Craft (HSC) and the adoption of the new IMO HSC Code are noted. While the new Code applies to new vessels whose hulls were laid, or at a similar stage of construction, on or after 1 July 2002, the vulnerability of existing HSC must be recognised. This is particularly so in the event of bottom racking damage to both hulls where there is no double bottom protection.

3.1.4. The difficulties associated with application to existing ro-ro passenger ships of Class A, B, C and D is recognised, however, the dangers to passengers remain. The proposals, while acceptable, should be considered the minimum in the circumstances.

3.1.5. The EESC welcomes the proposals with respect specific stability requirements for new ro-ro passenger ships of Class A, B and C, the keel of which is laid or which are at a similar stage of construction on or after 1 October 2004.

3.1.6. The EESC welcomes the proposals with respect to the implementation date for specific stability requirements for existing ro-ro passenger ships of Class A, B, C and D, the keel of which is laid or which are at a similar stage of construction before 1 October 2004, of 1 October 2010. The provision for extension to 2015 is noted. This reflects a lack of urgency and an emphasis upon economic considerations above those of safety of EU citizens and seafarers.

3.1.7. Age in itself should not be the criteria for consideration in the phasing out of a ship; it should be the stability requirements and the ability of the vessel to meet the necessary safety standards. However, more rigorous inspections need to be carried out, as a ship gets older.

3.1.8. Having regard to the designation of Class 'C' and 'D', the specification makes reference to a significant wave height of 2,5 metres and 1,5 metres respectively. This occurring in not more than 10 % over a one year period for all of the year or over a specific restricted period of the year for operational exclusivity in such period, however, the risk of greater wave heights remains. In particular it must be noted that class 'C' designation refers to the significant wave height exceeding 2,5 metres in not more than 10 % over a one year period for all of the year round operation or of a specific restrictive period for year of operation exclusively and, in this regard, the percentage of the time in which it exceeds 1,5 metres may be considerably more. Such vessels may operate 15 miles from a place of refuge and 5 miles from a line of the coast where shipwrecked persons can land. These criteria have no direct bearing upon the vulnerability of such vessels since damage to such vessels and the ingress water would prevent them from reaching a place of safety or timely assistance responding to any distress. Likewise, the criteria with respect to class 'D' vessels, that may operate 6 miles from a place of refuge and no more than 3 miles from the line of the coast where shipwrecked persons can land, reinforces the argument for improved stability requirements regardless of size and operational area. In line with its wish for improved stability requirements the EESC notes with regret that the Council of Ministers has already progressed towards a compromise solution with the deletion of Article 6a (3).

3.2. *Passengers with Reduced Mobility — General and Specific Comments*

3.2.1. The EESC welcomes the proposals with respect to making passenger vessels operating on domestic services safe and accessible for People with Reduced Mobility (PRM) and welcomes the proposals as outlined. In some respects the issue of PRM has already been recognised with respect to passenger ships and ro-ro passenger ships with carriers seeking to attract an aging population with increased disposable income.

3.2.2. It is, entirely sensible within the provisions of an integrated transport system to ensure that arrangements exist for PRM with respect to ro-ro passenger ships. However, a sensible distinction needs to be made between new and existing ships. A consultation exercise as set out in Article 6b.2 should be carried out by Member States not only with organisations representing PRM but also with other organisations representing port operators, shipowners and employee representatives.

4. **Liability of Carriers of Passengers by Sea — General and Specific Comments**

4.1. The EESC acknowledges that the regime concerning the liability of carriers with respect to passengers carried by sea is long overdue for revision and updating. Present levels of compensation have been eroded by inflation. The 1990 Protocol to the Athens Convention increased the limit to 175 000 SDR (EUR 250 000), which corresponds to the limit laid down for passenger ships in the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC). However, neither of these Protocols has entered into force internationally.

4.2. The EESC notes that there is no uniformity with respect to the liability of carriers of passengers by sea either at international or European levels. It must be recognised that some Member States, as a result of public and media pressure, have amended their national legislation to ensure that adequate compensation levels exist, particularly in the event of death.

4.3. The EESC acknowledges that the Diplomatic Conference convened in London for the 'Consideration of a Draft Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974' seeks to achieve a global regime. While accepting that an international standard is the most desirable option, it is necessary to ensure that uniformity applies across all EU Member States with respect to a satisfactory level and the type of compensation. It is, therefore, entirely reasonable that an adequate passenger liability regime should be established as an integral part of community legal framework for passenger ships.

4.4. The EESC, having regard to the negotiations in the IMO, acknowledges that the proposals of the Commission are broadly in line with the same principles as those proposed in the IMO to complement the Athens Convention, namely:

— introduction of strict liability for all risks related to the operation of the ship;

— fault-based liability for risks not directly related to the operation of the ship;

— introduction of compulsory liability insurance;

— introduction of claims directly against the insurer;

— liability limited to an amount per passenger, independently of the size of the vessel.

Given the proposals in the IMO the Commission will therefore need to make sure that ferry transport does not suffer any competitive disadvantage.

4.5. The EESC recognises the difficulty in distinguishing between marine related and non-marine related claims. However, the Commission's proposals in line with the present draft text of the new Protocol to the Athens Convention considers that a distinction should be made between the two categories of claim. Damage that is caused by the operation of a ship, where the possibility for the passengers to control the events is typically limited, should be subject to a strict liability regime. A negligence based liability system may suffice for non-marine related claims such as personal injury damage incurred on board.

4.6. While most passenger ships are financially protected through entering into one of the mutual Protection and Indemnity (P&I) Clubs, it is essential to ensure that there is a compulsory element as is the case with respect to oil pollution.

4.7. The provision with respect to claimants being able to make claims directly against an insurer is to be welcomed. Due to the particular nature of shipping, it is often difficult to trace an owner or it may not be possible for a carrier to meet their financial obligations in some circumstances. This is particularly so in the case of 'one ship companies'; when such a ship is lost, all assets of the company may be lost.

4.8. Since some national routes may in some instances be longer and more hazardous than comparable international ones it is entirely sensible to ensure that the provisions of the Athens Convention with its Protocol are extended to national carriage as well as to international voyages.

4.9. While it is hoped that the outcome of the diplomatic conference adopting the Athens Protocol would go some way with respect to addressing deficiencies internationally it may fail to receive universal acclaim. For that reason and the necessity to ensure adequate compensation in the event of death and personal injury of passengers, a community-wide regime, as proposed by the Commission, is well justified in order to provide the necessary guarantees to passengers.

5. **Conclusions**

5.1. The EESC, while accepting the desirability of an international agreement through the IMO, welcomes the proposals to extend the provisions of the Stockholm Agreement to all Member States. While this is acknowledged as a significant step, the limitations of the provisions of the Stockholm Agreement are recognised.

5.2. The EESC welcomes the proposals to amend Council Directive 98/18/EC. It notes however, with regret, that the Council of Ministers has already progressed towards a compromise solution with the deletion of Article 6a (3).

5.3. The EESC having regard to the IMO Diplomatic Conference convened in London for the 'Consideration of a Draft Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974' acknowledges that the proposals of the Commission are broadly in line with the same principles. While accepting the desirability for an international agreement the EESC sees considerable benefit in uniformity across all Member States.

5.4. The EESC welcomes the proposals with respect to making passenger vessels operating on domestic services safe and accessible for People with Reduced Mobility (PRM).

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the re-use and commercial exploitation of public sector documents'

(COM(2002) 207 final — 2002/0123 (COD))

(2003/C 85/06)

On 24 July 2002 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the 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 31 October 2002. The rapporteur was Mr Levaux.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion with 98 votes for and four abstentions.

1. Introduction

1.1. The draft directive establishes a minimum set of rules governing the commercial and non-commercial exploitation of documents held by public sector bodies which are generally accessible.

1.2. It is part of the *e*Europe 2002 Action Plan An information society for all and takes account of the reactions to the Green Paper on Public sector information: a key resource for Europe, adopted on 20 January 1999.

1.3. The Committee issued opinions on these two documents, on 28 April 1999 ([1]) and 24 January 2001 ([2]) respectively. Reference will be made to these opinions which supported the Commission's approach and put forward some suggestions which the Committee would reiterate here.

2. General and specific comments

2.1. The Commission stresses that public sector information is an important raw material for new services and the development of the sectors concerned, which already constitute a major market. Facilitating access to this information is a key factor in economic growth, the creation of businesses and jobs, and as an asset in meeting the challenge of international competition.

2.2. In its opinion of 28 April 1999 on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, the Committee stated the following:

2.2.1. Access to information means 'not just passively making them [administrative archives and registers] available but a duty of active promotion designed to facilitate the citizen's access to high-quality information in a practical form' ([3]).

The Committee regrets that the Commission does not take account of the idea of 'active promotion'; it therefore reiterates its suggestions and proposals aimed at making it easier to achieve the directive's objectives, i.e.:

— high-quality information in a practical form with a guarantee of continuity;

— equal participation by all operators in relation to sources of administrative information;

— the public obligation to protect freedom of access.

([1]) See ESC opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999.

([2]) See ESC opinion on eEurope 2002 — An information society for all — draft Action Plan, OJ C 123, 25.4.2001.

([3]) See ESC opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999, point 3.1.2.

2.2.2. Public sector bodies: the public sector 'should include any body, regardless of its legal form, which has been commissioned, by decision of a public authority and under its control, to carry out a service of public benefit ...' and 'should include not only publicly-owned enterprises whose legal form is private but also private enterprises acting by virtue of administrative delegation or authorisation, in managing that aspect of public services which excludes any commercial function, and the legislative and judicial authorities' ([1]).

By limiting as it does the notion of 'public sector bodies', the Commission lessens the impact and effectiveness of the directive.

2.2.3. Right of access: the Committee considered 'it important for there to be meticulous regulation of the right of access and exception to it' ([2]) and listed the principles governing such exceptions.

The Committee considers that the scope of the exclusions defined in Article 1(2) and (3) of the directive excessively restricts the nature and quality of the accessible information.

The Committee notes that this applies particularly to documents which are part of the 'common European cultural heritage' and are often held by public museums and public and university libraries.

As soon as it is implemented or within a reasonable period the directive should include such documents within its scope. Once they become accessible their dissemination will increase knowledge of Europe's cultural heritage, making it a source of unity, pride and a sense of belonging to Europe.

At the same time their dissemination will have a beneficial impact on cultural exchanges in Europe and artistic and educational activities, not forgetting the economic knock-on effect for local tourism.

3. **Specific comments on the draft directive**

3.1. *Article 1: Subject matter and scope*

The Committee wishes to amend paragraph 2(f).

It proposes the following wording:

— 'documents held by cultural establishments (with the exception of those in receipt of public funding), such as archives, orchestras, operas, ballets and theatres, with the exception of public museums and public and university libraries which shall fall within the scope of the directive'.

3.2. *Article 4: Availability*

The Committee thinks that users will develop new services if public sector bodies provide them with information which is adapted to changes in economic trends and published on a long-term basis.

This is why it calls for:

— the second sentence of paragraph 1 ('This does not imply an obligation for public sector bodies to create documents or to adapt documents in order to comply with the request') to be deleted.

  The Committee suggests that instead the directive should encourage public sector bodies to examine requests for documents to be created or adapted and to meet such requests where they are justified by a legitimate interest (public, economic, social, cultural or educational interest, or for scientific or university research purposes).

— paragraph 2 to be amended to read as follows: 'Public sector bodies must ensure that they do not stop the production of certain types of documents when these are used commonly and regularly by other public or private bodies, or else, where necessary, they must provide alternative resources'.

3.3. *Article 5: Time and requirements in case of a negative decision*

3.3.1. Article 5(3) stipulates that in the event of a negative decision in response to a request for the re-use of public documents, the public sector bodies shall include a reference to the rightholder or licensor.

The purpose of this requirement is so that the applicant knows who to approach to obtain authorisation for use.

([1]) See ESC opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999, points 3.2.1 and 3.2.2.

([2]) See ESC opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999, point 3.3.3.

The Committee approves this requirement which facilitates access to and use of documents.

3.3.2. However, the Committee considers that the last sentence of paragraph 3 ('The public sector body concerned shall not be held liable in the event of such reference being incorrect') can only diminish the effectiveness of the measure in question.

The Committee therefore calls for paragraph 3 to be amended and proposes the following wording: 'Where a negative decision is based solely on Article 1(2)(b), the public sector body shall include a reference to the natural or legal person who is the rightholder or to the licensor from whom the public sector body has obtained the relevant material. The public sector body concerned shall not be held liable in the event of such reference being incorrect except where incorrect information was supplied deliberately with the intention of retaining documents'.

3.4. *Article 6: Charging principles*

3.4.1. The Commission outlines two models in point 4 of the explanatory memorandum:

— The 'low-cost model', in which the charges are limited to the marginal costs for reproduction and dissemination;

— The 'cost-recovery model'.

The Commission states that 'charging marginal costs for reproduction and dissemination leads by far to the highest economic impact and "welfare effects"'.

Logically, therefore, it would prefer the low-cost model, and the Committee shares this view.

3.4.2. In conclusion, however the Commission states that 'Although it incites Member States to stimulate public sector bodies to adopt the marginal cost for reproduction and dissemination approach where possible, it leaves it to the Member States and public sector bodies to define the charging policies'.

The Committee notes that Article 6 of the directive does not reflect this intention but opts for the cost-recovery model.

3.4.3. The Committee calls on the Commission to clarify its position in the explanatory memorandum and reiterates that in its abovementioned opinion on the green paper it stated that 'a distinction must be drawn between information essential to citizens, especially that which relates to the exercise of democratic rights — which could be provided free of charge or, where appropriate, at a greatly reduced price — and information for commercial purposes, the price of which, as it must be readily available, should be based on the costs of printing, updating, retrieval and transmission of data, for which invoices could be issued; or it should be a reasonable market price' ([1]).

3.4.4. The Committee notes that 'essential information' must include the following:

— constitutions, codes, laws and regulatory acts, treaties and jurisprudence emanating from the European Union;

— statistical information, reports and studies of general interest;

— legal, regulatory and political information, such as the minutes of decision-making or advisory assemblies.

Initially, 'essential information' will be information from the public authorities in the Member States. Later, within a reasonable period, the Member States will be asked to make available similar documents from their public bodies on the same terms.

In this respect the Committee notes that initiatives along these lines have already been taken in some Member States. One of the most recent was in France with Decree No 2002-1064 of 7 August 2002 on 'a public service for the dissemination of law via the internet', which was published in the Official Journal of the French Republic on 9 August 2002 and entered in force on 15 September 2002, and which stipulates that a whole series of documents containing 'essential information' is to be made available free of charge.

4. **Conclusions**

4.1. The Committee supports any initiatives which facilitate the development of an 'information society for all', the aim of *e*Europe. It therefore approves the proposed directive.

4.2. It considers, however, that in its present form the draft is short on ambition since its self-imposed limits will prevent it from attaining sufficiently quickly the objectives of a 'digital, knowledge-basedeconomy[which]is a powerful engine for growth, competitiveness and jobs, while at the same time improving citizens' quality of life'.

([1]) See ESC opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999, point 5.2.

4.3. To achieve the targets set by the directive, the Committee calls on the Commission to take more account of the proposals and suggestions presented in its opinion of 28 April 1999 [1] and in this opinion, in particular:

— amendment of the scope of the exclusions by stating explicitly that the directive applies to documents held by public museums and public and university libraries, Europe's common cultural heritage;

— liability of all public bodies or institutions where deliberately false or incomplete information is provided;

— charging principle which should lead to the general adoption of the 'low-cost method';

— making available free of charge the 'essential information' held by the public administrations of the Member States, with the ambition of extending this measure to all the public bodies of the Member States.

4.4. Finally the Committee calls on the Commission to involve the Committee in the review provided for in Article 12, when it should be possible to assess actual response times and to supplement the directive with a view to further harmonising practices and charging methods.

[1] See ESC opinion on Public sector information: a key resource for Europe — Green Paper on public sector information in the information society, OJ C 169, 16.6.1999.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the Prohibition of Organotin Compounds on Ships'

(COM(2002) 396 final — 2002/0149 (COD))

(2003/C 85/07)

On 30 July 2002 the Council decided to consult the European Economic and Social Committee under Article 80 (2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Specialised 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 31 October 2002. The rapporteur was Dr Bredima-Savopoulou.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion with 98 votes in favour and three abstentions.

1. **Background**

1.1. For many decades, organotins have been used in anti-fouling paints on ships. Tributyltin (TBT) has been used as a paint additive since the 1970s to prevent the fouling (e.g. growth of tubeworms, algae, barnacles) of ship hulls and in nets for fish farming. Their detrimental effects on the environment were first noticed in oyster farms on the Atlantic coast of France in the late 1970s. Since then, increased levels of organotins have been found world-wide in marine organisms further up the food chain, such as fish, seabirds and marine mammals. These chemicals have been shown to have hormone-disrupting properties in some species, and humans could also face health risks if they consume contaminated fish.

1.2. Environmental concerns over the potential impact of TBT-based antifouling paints in the past have led to regulatory measures in the United States and around the world. Some countries put in place more stringent TBT regulations than others (e.g. Japan has banned the use of TBT-based paints altogether).

1.3. TBT-Self Policing Copolymer (SPC) based paints are the world standard in commercial marine antifoulant coatings, representing over 70 % (by volume) of the antifouling paints used by the world fleet [1]. At present, no proven bottom-paint alternatives minimize fouling as effectively as TBT-SPC based paints; only TBT-SPC based paints are guaranteed effective for up to five years. The alternative TBT-free paints protect ship bottoms for at most three years, requiring more frequent dry-docking and re-painting and they may not offer protection equivalent to TBT-SPC based paints and have unknown environmental effects.

1.4. Although alternatives to TBT-based paints are sold on the world market, they have received insufficient examination. The toxicity of these compounds has been evaluated only on a short-term basis, not on the long-term basis that is applicable to the continuous exposure to antifouling paints.

1.5. The EU decided already in December 1989 to ban on its territory the marketing of organostannic compounds used as biocides to prevent fouling of hulls of ships of less than 25 metres in length.

1.6. In 1990 the International Maritime Organization (IMO) adopted a resolution that recommended governments to adopt measures restricting the use of TBT-based antifouling paints. In 1999 the IMO called for a global prohibition of the application of organotin compounds which act as biocides in anti-fouling systems on ships by 1 January 2003 and a complete prohibition of the presence of these organotin compounds on ships by 1 January 2008.

1.7. On 5 October 2001 the IMO adopted the Convention on the control of harmful anti-fouling systems on ships (AFS-Convention). The Convention will prohibit the use of harmful organotins in anti-fouling paints used on ships and will establish a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems.

1.8. The Convention will be open for signature since 1 February 2002. It will enter into force 12 months after 25 States representing 25 % of the world's merchant shipping tonnage have ratified it.

1.9. Resolution 1 of the International Conference on the Control of Harmful Anti-Fouling Systems on Ships recognized that the time remaining until 1 January 2003, may not be sufficient to enable entry into force of the Convention by that date. Desiring that organotin compounds will effectively cease to be applied in shipping as from January 2003, the Conference requested the IMO Member States to accept the provisions of the Convention as a matter of urgency. In parallel, the industry has been urged to refrain from the marketing, sale and application of organotin compounds by that date.

1.10. Immediately after the AFS Conference, the International Chamber of Shipping (ICS) stressed that 'whether or not the Convention enters into force by January 2003 is perhaps somewhat academic as the fixed dates of January 2003 and 1 January 2008 should be regarded as firm for any ship operating in international trade'. Despite the willingness to ratify the AFS Convention before 1 January 2003, few States will be able to do so.

2. **The Commission's proposal**

2.1. The proposed Regulation is based on the basic requirements of the AFS Convention and refrains from duplicating the implementation provisions which the Member States have to adopt under their obligations as contracting parties to the AFS Convention. Furthermore, as opposed to the AFS Convention which has been drafted as a framework convention based on the precautionary principle, the Regulation is restricted to organotin compounds only.

2.2. The objective of the proposed Regulation is to reduce or eliminate adverse effects on the marine environment and human health caused by organotin compounds, which act as biocides in anti-fouling systems used on ships. The European Commission proposes to adopt, before the end of 2002, the Regulation prohibiting the application of such organotins on ships flying the flag of an EU Member Sate as from 1 January 2003 and a general prohibition of active organotin on ships sailing to or from Community ports on 1 January 2008, irrespective of the entry into force of the Convention.

2.3. Before the entry into force of the AFS Convention the prohibition will be suspended for ships not flying the flag of a Member State. The European Commission asserts that the

[1] CEFIC 1996.

most appropriate regime for the control of implementation of the prohibition of TBT on ships is laid down in Directive 95/21/EC on Port State Control [1]. However, this Directive can only be applied with respect to third-flag ships once the AFS Convention has entered into force.

2.4. Consistent with the AFS Convention, the Regulation prescribes survey and certification requirements for ships depending on their size.

2.5. The European Commission acknowledges that in the interim period from 1 January 2003 until the date of entry into force of the AFS Convention there will be competitive disadvantages for both the EU shipowners and yards. It expects such disadvantages to be avoided through voluntary compliance of third-flag ships. Furthermore, it is proposing a procedure by which, and depending on the extent of their voluntary compliance, third-flag ships will also be covered by the Regulation.

3. **General comments**

3.1. As a matter of principle the EESC maintains the view that shipping, as a global industry should be regulated by global standards, primarily developed and agreed at international level through the IMO. The EU's role should be to encourage the development of high international standards and to ensure their effective enforcement within the EU.

3.2. The EESC recalls past intentions to extend the scope of Directive 76/769/EEC [2] and the subsequent agreement to await developments in IMO and welcomes the approach of the Commission regarding the implementation of the AFS Convention, namely:

— to recommend to Member States signature and ratification of the AFS Convention at the earliest possible opportunity;

— to amend Directive 76/769/EEC; and

— to propose the Regulation based on the AFS Convention principles.

Against this background the EESC fully supports the principle of the proposal to restrict the scope to EU-flag vessels and not to seek extraterritorial jurisdiction over third-country vessels.

3.3. However, the EESC notes with concern the potential commercial disadvantages for EU flag ships and yards during the interim period. The EESC stresses that higher priority should be given to ensure rapid ratifications of the AFS Convention by the EU Member States, Norway and Iceland and the 13 applicant countries which together represent 30 countries with not less than 30,9 % of the world tonnage, well beyond the conditions for entry into force of the AFS Convention. It is noteworthy that in the 13 applicant countries important maritime nations (Malta, Cyprus) as well as countries with considerable tonnage (Poland, Romania, Bulgaria) are included.

3.4. For States which would not be able to ratify the AFS Convention before 1 January 2003, the retroactive implementation of the '1 January 2003' requirement, laid down in the Convention and in the Regulation, might create an impediment for the ratification process according to their national legislation. Conversely, for new buildings scheduled to be delivered in 2003 and contracted to be painted with TBT paints and for ships scheduled to be dry-docked and re-painted in 2003 with TBT paints, the retroactive requirement will have considerable financial implications. In order to minimize the impact to EU shipping, the Regulation should exempt such ships, and provide for more flexible deadlines of its application.

4. **Specific comments**

4.1. *Article 3*

4.1.1. The EESC proposes to amend points (a) and (b) in Article 3 paragraph 1 by adding the words 'that enter a port or offshore terminal of a Member State'. By not imposing a general requirement for EU ships and excluding those operating outside EU waters, the impact will be lesser. A considerable percentage of the EU fleet operates in non-EU trades and would be able to take advantage of this temporary exemption.

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[1] Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ L 157, 7.7.1995, p. 1) — EESC Opinion: OJ C 393, 31.12.1994, p. 50.

[2] Commission Directive 2002/62/EC of 9 July 2002 adapting to technical progress for the ninth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (organostannic compounds) (OJ L 183, 12.7.2002, p. 58) — EESC Opinion on Council Directive 76/769/EEC: OJ C 16, 23.1.1975, p. 25.

4.1.2. The EESC proposes to include in paragraph 2 of Article 3 of the proposed Regulation, the requirement of Article 3 paragraph 2 (second sentence) of the AFS Convention, namely:

> 'However, each Member State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by them, that such ships act in a manner consistent, so far as reasonable and practicable, with this Regulation.'

4.2. *Article 5*

The EESC supports the option in Article 5 paragraph 1 of coating the hull to prevent leaching from the underlying TBT paint. This provision reflects the identical provision of the AFS Convention. Coating should be preferred to the removal of TBT paints and sandblasting due to the environmental impact of the residues of the removed TBT paint.

4.3. *Article 6*

Paragraph 3 seems to be pessimistic, contrary to the expectation for rapid entry into force of the AFS Convention, and therefore, it should be deleted. In any case, the notion is covered by Article 10.

4.4. *Article 7*

With respect to the second paragraph same comment as under Article 6.

4.5. *Article 11*

The EESC proposes to provide for entry into force in 1 January 2004, thus allowing for the smoother phasing out of the TBT paints in terms of ship compliance and market availability of new paints. The one year period will also allow for the evaluation of the State of compliance under Article 10 without undue burdening of the EU shipping.

5. **Conclusions**

5.1. The EESC shares the common desire to reduce the negative environmental impact of harmful anti-fouling paints used on ships and believes that the EU action should be consistent with the principles of the AFS Convention of IMO with due regard to legal constraints and commercial considerations.

5.2. Governments negotiating and adopting international instruments should set realistic targets and fulfil their commitments so as to avoid unwarranted implications. The Member States should urgently ratify the AFS Convention, assess the extent of compliance and the market prospects and define a realistic scope for the complementary action.

5.3. Early and total ban of TBT paints should be based on the firm belief that the new paints will not be equally or more harmful. Presently there is no evidence either way. The need for more experience justifies a conservative approach and a degree of flexibility.

5.4. A gradual application of the TBT paints phase out in the interim reconciles the environmental concerns with the need to preserve the competitiveness of the EU fleet worldwide.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a European Parliament and Council Regulation on smoke flavourings used or intended for use in or on foods'

(COM(2002) 400 final — 2002/0163 (COD))

(2003/C 85/08)

On 24 July 2002 the Council decided to consult the European Economic and Social Committee, under Article 95 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 29 October 2002. The rapporteur was Mrs Davison.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 95 votes in favour, 1 against and 6 abstentions.

1. Gist of the Commission proposal

1.1. On 15 July 2002, the European Commission adopted a proposal laying down new procedures for the safety assessment and authorisation of 'smoke flavourings'. Smoke flavourings are often used instead of fresh smoke to impart a smoky flavour to foods such as meat, fish or snacks.

1.2. The chemical composition of smoke is complex, depending among other things on the species of woods used, the method used for developing smoke, etc. Smoked foods in general give rise to health concerns.

1.3. Smoke flavourings are produced by condensing fresh smoke in water. The condensed smoke is then fractionated and purified during the production of smoke flavourings. Because of this purification process, the use of smoke flavourings is generally considered to be of less health concern than the traditional smoking process.

1.4. The Commission proposes to establish a procedure for the safety assessment and authorisation of smoke condensates (the existing multitude of smoke flavourings are based on only a limited number of commercially available smoke condensates). Smoke flavourings for the Community market are produced by few companies inside and outside the EU. Each of these companies has a very limited number of primary products. It is estimated that no more than 20 products need to be evaluated.

1.5. For an application for authorisation of a smoke condensate, the producer will need to provide detailed information on the production method as well as on the further steps in the production of derived smoke flavourings, the intended toxicological studies and validated methods for sampling and detection. The evaluation will be carried out by the European Food Safety Authority (EFSA).

1.6. The Commission will make a decision on each application based on the outcome of the evaluation. The Commission proposes to restrict the authorisations to a period of ten years after which the authorisations will need to be reviewed.

2. General comments

2.1. The Committee welcomes the Commission proposal which will ensure that a uniform and harmonised procedure for authorisation of smoke flavourings is in place in the EU. Currently, the situation is very diverse among Member States, from no legislation, to very strict requirements. Consumers, industry, and all parties involved will benefit from a transparent procedure, based on a high level of protection of public health and the protection of consumers' interests.

2.2. The Committee supports the procedure that is proposed, and in particular the designation of the EFSA as the central body for the assessment of smoke flavourings.

3. Specific comments

3.1. The Committee welcomes the establishment of a positive list of authorised products. The list will contain information such as a clear description and characterisation of the primary product, the conditions of its use in or on specific foods or food categories and the date from which the product is authorised. The Committee notes that this list, and any further updated version, will be made available to the public.

3.2. Applications for authorisation shall be accompanied by, inter alia, information necessary for the scientific evaluation of primary smoke condensates and primary tar fractions. It is the responsibility of the person who places the product on the market to provide such information. The requested information includes toxicological studies on the primary product.

3.3. The Committee is concerned that the existence of various analytical methods, and variations in the quality of these methods in detecting potential problems may undermine the stated objectives of the proposal of ensuring a harmonisation of the situation at EU level, and ensuring a high level of public health and consumer protection. It is therefore important to adopt strict criteria on sampling and testing and validate methods that will ensure the comparability and high quality of the results provided by the applicants. Such possibility is only considered in the Commission's proposal (Art. 16.2 and 16.3). The Committee believes that only applications for products assessed by using these methods should be valid.

3.4. An authorisation may be modified, suspended or revoked. This can be done at the initiative of the authorisation holder, the EFSA or a Member State. The Committee welcomes this provision and underlines its importance. Once a product is on the market, it is important to allow for some post-marketing assessment. If it appears that the use of a product is associated with adverse effects on humans or on the environment for example, and that the reasons for concern are serious and well documented, there must be a possibility to restrict or ban its use after the authorisation has been granted.

3.5. The Committee considered the opportunity to recommend that all interested parties should have the possibility to ask the Authority for a review of authorisations. The Committee recognises that this may add to the workload of the Authority, which would have to consider any request lodged by the public. Such amendment to the Commission's proposal may not be advisable, nevertheless, the Committee calls on Member States, the Commission, the Authority and authorisation holder to be open and transparent and consider with due attention any well supported request for a review of authorisations.

3.6. Authorisations granted under the proposed regulation shall be renewed every ten years. The Committee fully supports this provision. The time limit set to the authorisations ensures that a regular assessment and review of the products on the market is made.

4. **Conclusions**

4.1. While welcoming and supporting the proposal, the EESC invites the Commission to take into consideration its recommendations for the adoption of strict criteria on sampling and testing and validated analytical methods, so as to ensure the objective of harmonisation of the situation at European level.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 94/35/EC on sweeteners for use in foodstuffs'

(COM(2002) 375 final — 2002/0152 (COD))

(2003/C 85/09)

On 24 July 2002 the Council decided to consult the European Economic and Social Committee, under Article 95 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 29 October 2002. The rapporteur was Mr Donnelly.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion with 101 votes in favour and 6 abstentions.

1. Gist of the Commission proposal

1.1. The framework Directive 89/107/EEC on food additives provides for the adoption of specific directives to harmonise the use of different categories of additives in foodstuffs. Directive 94/35/EC on sweeteners for use in foodstuffs sets out a list of authorised sweeteners, the foodstuffs in which they may be used and their conditions of use.

1.2. The Directive was adopted in June 1994 and first amended in 1996. It now needs to be adapted in the light of recent technical and scientific developments.

1.3. The major amendments proposed with this Directive are the following:

1.3.1. Authorisation of two new sweeteners; sucralose and the salt of aspartame and acesulfame.

— Sucralose is a sweetener manufactured by controlled chlorination of sucrose and it is approximately 500-600 times sweeter than sugar. It is currently approved in several other countries world wide, including Canada, Australia, Japan and the USA. The manufacturer claims several specific benefits for sucralose when compared with other sweeteners currently authorised, including that its flavour profile indicates that it is very similar to sugar (with less side or after tastes often associated with intense sweeteners); it is stable during high temperature processing, such as baking, which will enable the consumers to use table-top sweeteners at home in cooking and baking. It blends well with sugars.

— The salt of aspartame and acesulfame is a salt of two already authorised sweeteners, aspartame and acesulfame K. It is manufactured from these two substances by replacing the potassium ion of acesulfame K by aspartame. The Scientific Committee on Food has assessed its safety and has concluded that its use raises no additional safety considerations. Amongst the specific benefits the manufacturer claims for this substance, is the fact that the component sweeteners cannot separate, which leads to more consistent product quality. The use of the salt is proposed for the food categories where both aspertame and acesulfame K are authorised.

1.3.2. Reduction of the maximum usable dose for cyclamates by banning or reducing its use in certain food categories.

1.3.3. Conferring on the Commission the power to decide whether a substance is a sweetener within the meaning of this Directive.

2. General comments

2.1. The Committee approves the Commission's proposal, which, among other things, concerns the authorisation of two new sweeteners. Since new sweeteners have been developed by the producers (driven by consumer demand, but also promoted by medical advice) it is only reasonable that, having viewed the Scientific Committee on Food's evaluations, the list of sweeteners be updated.

2.2. The Committee recognizes the benefits that intense sweeteners have for those consumers wishing to reduce their sugar or calorie intake and for people suffering from diabetes. Authorising two new sweeteners has the benefit of offering consumers and food industry the possibility to choose between a wider variety of sweeteners, thus reducing the intake of the single sweeteners.

2.3. The Committee stresses the importance that the use of food additives be regulated uniformly in the EU to ensure a high level of consumer choice and food safety.

3. Specific comments

3.1. The Committee welcomes the fact that the two new food additives enable the food industry to produce a wider range of calorie reduced products and that table-top sweeteners can be used by consumers at home in cooking and baking.

3.2. The Committee would like to be assured that with the proposed amendments to the use of cyclamates, the acceptable daily intake set by the Scientific Committee on Food would not be exceeded.

3.3. The Committee supports the decision to confer on the Commission the power to decide whether a substance is a sweetener within the meaning of Directive 94/35/EC, as it already happens for the other food additives.

3.4. The Committee fully endorses the Commission's close surveillance where sweeteners are concerned, and notably the choice of the positive list system on which the sweeteners directive is based [1]. However the Committee would like to reiterate a comment made in its opinion on the first modification of the sweeteners Directive [2]. That is, the Committee questions whether the choice of using the co-decision procedure not only to amend the list of sweeteners, but also the list of all foodstuffs in which these sweeteners may be used is appropriate, considering the amount of time and energies it requires.

3.5. On this regard, the Committee welcomes the fact that the Commission is currently studying the possibility of using comitology to amend the foodstuffs annexes, in the light of the forthcoming revision of Framework Directive 89/107/EEC foreseen for the end of 2002.

4. Conclusions

4.1. The EESC is satisfied that the Scientific Committee on Food has evaluated the two new substances to be used as sweeteners and has concluded that they do not raise safety concerns.

4.2. The Committee supports the Commission proposal on the use of these sweeteners so they can be authorised at community level.

4.3. The Committee would like to stress the importance of continuous monitoring of sweeteners by member states and the Commission, through the European Food Safety Authority to ensure the highest possible standard of food safety.

(1) According to the positive list principle, only those sweeteners listed in the annex to the Directive are authorised.

(2) OJ C 174, 17.6.1996.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 91/68/EEC as regards reinforcement of controls on movements of ovine and caprine animals'

(COM(2002) 504 final — 2002/0218 (CNS))

(2003/C 85/10)

On 9 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Specialised Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 November 2002. The rapporteur was Mr Fakas.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion by 97 votes to 1, with 5 abstentions.

1. Introduction

1.1. In the middle of the 1960s the Council adopted, based on a proposal of the Commission, Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine; this was subsequently updated and amended by Directive 97/12/EC in order to take account of the new requirements created by the single European market.

1.2. A corresponding, or at least equivalent, system for the transport of sheep and goats within the EEC was not adopted at that time; nor was it in the 1970s or 1980s, because of the limited movement of sheep and goats within the EU, but also because of the absence of a common regime in this sector until the beginning of the 1980s.

1.3. The lack of such legislation first became noticeable when intra-Community trade in live sheep and goats increased, mainly because of the creation of a common policy for sheep meat and goat meat in 1981, the EEC's progressive enlargement to include new countries with a sizeable number of sheep and goats — namely Greece, Spain and Portugal — but also because of the operation of the single market from 1991 onwards.

1.4. Thus the start of the 1990s saw the adoption of Directive 91/68/EEC on 'animal health conditions governing intra-Community trade in ovine and caprine animals', corresponding to the conditions laid down by Directive 64/432/EEC on bovine animals and swine, but without a precise equivalence between the two Directives.

1.5. The differences between these two Directives can be summed up as relating to approved assembly centres and their facilities, inspections, and the conditions governing movement of the animals.

1.6. The relevant provisions on sheep and goats were not comprehensively updated in the 1990s, despite the fact that the Community *acquis* was constantly extended to include animal health conditions for intra-Community trade in animals, animal welfare and the traceability to the point of origin in the event of emergencies.

1.7. Strong pressure for making the health conditions for the movement of sheep and goats equivalent to those for bovine animals and swine developed during the foot-and-mouth crisis of 2001, in which sheep and goats were of major epidemiological importance. They are susceptible to infection, may develop a carrier state as do other ruminants. and frequently display only very mild clinical signs easily overlooked and in many cases masked by similar symptoms of different etiology.

1.8. During the 2001 FMD epidemic the Commission adopted specific Decisions restricting the dispatch from infected Member States or regions thereof of live animals of susceptible species, their germinal products and products derived form such animals. In addition and as a matter of precaution the Commission also adopted right from the beginning restrictions on the movement within and between FMD-free Member States of animals of susceptible species. On 24 April 2001 Commission Decision 2001/327/EC concerning restrictions to the movement of animals of susceptible species with regard to foot-and-mouth disease was adopted, which will remain in force at least until 31 December 2002. The latter Decision includes provisions on reinforced controls on intra-Community trade in sheep and goats and the use of staging points established for animal welfare reasons.

1.9. The proposed amendment of Directive 91/68/EEC, which is in line with the provisions of Decision 2001/327/EC, arose from the need for a complete, permanent and long-term response to the problems arising from dangerous epizootic diseases during the transport of sheep and goats, and for consolidation of piecemeal legislation created during the foot-and-mouth crisis as emergency measures for dealing with it.

2. **The new legislation**

2.1. The proposal involves replacing parts of articles, and in some cases whole articles, of Directive 91/68/EEC which governs:

— the approved assembly centres and their facilities;

— inspections;

— marking, registration and identification of animals;

— time taken to transport animals in the intra-Community market;

— mode of transport;

— the minimum period for which animals should have remained on a single holding of origin, thus excluding frequent movements of animals between holdings;

— limitations on the time when new animals can be introduced into the holding of origin before dispatch for export.

2.2. The assembly centres and their installations must be approved and must correspond to those for bovine animals and swine in terms of infrastructure, hygiene, organisation and management.

2.3. The duration of transport for trade purposes may not exceed six days, except for transport by sea and allowing for the resting time spent in a staging point in accordance with Regulation (EC) No 1255/97.

2.4. The animals may transit through only one approved assembly centre, in the Member State of origin, but animals for slaughter may in addition also pass through one approved centre in a Member State of transit.

2.5. In the case of sheep and goats for breeding and fattening, the animals must remain for at least 30 days, or since birth if less than 30 days old, on the same holding of origin before being sent to another Member State.

2.6. No sheep and goats may be introduced into the holding of origin for at least 21 days of that mandatory residence period, nor may any biungulate animal imported from a third country be introduced into the holding during the 30 days before loading, unless the introduced animal has been completely isolated.

3. **General comments**

3.1. The EESC notes that the proposed amendment aims mainly to update and upgrade the legislation on health checks in intra-Community trade in sheep and goats, in line with the Community *acquis* created in the 1990s on animal health conditions for intra-Community trade in bovine animals and swine. This updating is regarded as necessary, since the Directive which is to be amended does not refer to Directive 92/102/EEC on the identification and registration, of animals, despite the fact that it has been in force and applied since 1992; nor does it refer to Directive 91/628/EEC and Regulation (EC) No 1255/97, which are regarded as conditions on welfare during the transport of animals in intra-Community trade.

3.2. The EESC takes the view that, apart from the formal matter of adapting the relevant legislation to the constantly developing Community *acquis*, control of the movement of sheep and goats within the EU should be enhanced and harmonised on a uniform basis, in the light of experience and lessons drawn from the foot-and-mouth disease outbreak of 2001. It recalls that, at that time, pressures developed in intra-Community trade in sheep and goats, because they were thought to be principal carriers of the disease.

3.3. Similarly, the planned enlargement to include certain CEECs necessitates a review of the system of health conditions for animals in intra-Community trade.

3.4. At all events, the EESC notes that the amendments aim to prevent the spread of foot-and-mouth disease and other infectious disease through checks on the movement and handling of animals susceptible to such diseases. For that reason it would be useful to make it clear that the amendment does not create measures to deal with a risk in the context of the legislation on food safety, since foot-and-mouth disease is not a threat to public health.

4. **Specific comments**

4.1. In the proposed amendment, in line with existing definitions in other Directives, assembly centres mean any site or place, including holdings and markets, where animals from different holdings of origin are grouped to form consignments and which must be approved for intra-Community trade and be under veterinary supervision.

4.2. It is natural for the upgraded provisions contained in the amendment on facilities to require the creation in the existing assembly centres of infrastructure and organisational arrangements which take some time to complete, both in importing and in exporting countries.

4.3. Transposing the Directive into Member States' national law and ensuring the availability of the necessary veterinarians, databases and administrative infrastructure presuppose lengthy preparation, going beyond the deadline laid down for compliance with the Directive (31 December 2002).

4.4. For the above reasons the EESC proposes to the Commission to consider an appropriate transitional period for the transpositions of the Directive into national legislation of Member States and adaptation to the new system laid down for sheep and goats. This transitional period should take due account of the fact that Commission Decision 2001/327/EC is in force since 24 April 2001 and in its current version since March 2002. It should also take into account that trade from one holding to another holding or slaughterhouse is not impaired by lack of approved assembly centres.

4.5. The above adaptation measures are regarded by the EESC as being of exceptional importance, as in its view the top priority is the condition of uniform application of the new system in all the Member States, whether they are traditionally importing or exporting countries, so as to avoid creating technical barriers to intra-Community trade in this sector.

4.6. It is obvious that this would mean having the same level of infrastructure and services in all the countries of the EU, and equivalent arrangements for transporting animals either at the transit points or at specific centres of origin and destination.

4.7. The EESC also points out that although monitoring at such a level of detail the movement of animals at holding level before their marketing may be useful, it is difficult to apply, and there are risks of irregularities.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on 'Proposal for a Directive of the European Parliament and of the Council amending Directive 95/2/EC as regards the conditions of use for a food additive E-425 konjac'

(COM(2002) 451 — 2002/0201 (COD))

(2003/C 85/11)

On 17 September 2002 the Council decided to consult the European Economic and Social Committee, under Article 95 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 13 November 2002. The rapporteur was Mr Donnelly.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 97 votes to zero, with six abstentions.

1. Introduction

1.1. The Miscellaneous Additives Directive (95/2/EC) applies to food additives other than colours, sweeteners and flour-treatment agents. Only additives which satisfy the requirements laid down by the Scientific Committee for Food may be used in foodstuffs. The main condition of use is the need to protect the consumer.

1.2. Directive 95/2/EC authorises in its Annex IV the use of the food additive E-425 konjac in foodstuffs under certain conditions.

1.3. Several Member States and third countries have taken measures to temporarily prohibit the placing on the market of jelly mini-cups containing E-425 konjac because they constitute a serious risk to human health. Warning through labelling is not a sufficient requirement to protect human health, especially of children.

1.4. Article 53(1) of Regulation (EC) No 178/2002 allows the Commission to suspend the placing on the market or use of a food that is likely to constitute a serious risk to human health, when such risk cannot be contained satisfactorily by means of measures taken by the Member States concerned.

1.5. By Decision 2002/247/EC of 27 March 2002, the Commission has suspended the placing on the market and import of jelly confectionery containing food additive E-425 konjac.

1.6. By the 2002 Proposal [1] on the conditions of use for a food additive E-425 konjac, the Commission intends to amend Directive 95/2/EC on food additives in order to withdraw the authorisation to use E-425 konjac in jelly mini-cups and the use of E-425 konjac in any other jelly confectionery. Jelly mini-cups constitute a risk to human health as well as a possible life-threatening risk. In the present case, warning through labelling is considered as not sufficient to protect human health, especially with regard to children.

2. General comments

2.1. The use of E-425 konjac in jelly confectionery is a serious cause of health risk. It is life threatening in the case of jelly mini-cups, and number of deaths have been reported in third countries, due to the ingestion of such products, in particular among infants, children and elderly.

2.2. The Committee therefore believes that the measure proposed by the Commission is appropriate and responds adequately to the Community objective of ensuring a high level of health protection.

2.3. The Committee agrees with the Commission that labelling is not an adequate response to the problem. Infants and children may not be able to read labels.

2.4. Some third countries have addressed the problem in issuing product recalls. Such emergency measure was adopted by the Commission in March 2002. The Commission now proposes to adopt a permanent measure. The Committee supports the Commission's view.

2.5. Product recalls are an appropriate temporary response to a situation of emergency, or as a precautionary measure, but are not an adequate measure in the longer term. The production and marketing of a product which is not just a potential risk for health, but is life threatening and has been the direct cause of many deaths, must be banned in the Community, and should not just be suspended.

[1] COM(2002) 451, 5.8.2002.

2.6. Finally, the Committee has always been concerned by the compliance of EU regulations with international trading standards. In this case, the Committee feels that the withdrawal of the use of E-425 konjac in jelly mini-cups and any other jelly confectionery does not represent an obstacle to trade. The proposed measure only aims at banning the use of E-425 konjac in products where it represents a life threatening risk by the proposed measure.

Brussels, 11 December 2002.

3. **Conclusion**

3.1. The Committee welcomes and fully supports the Commission's proposal to amend Annex IV of Directive 95/2/EC aimed at withdrawing the use of E-425 konjac in jelly mini-cups and any other jelly confectionery.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on 'Proposal for a Council Directive amending Directive 88/407/EEC laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species'

(COM(2002) 527 final — 2002/0229 (CNS))

(2003/C 85/12)

On 9 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 37 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 13 November 2002. The rapporteur was Leif E. Nielsen.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion by 103 votes in favour and two abstentions.

1. **Gist of the Commission proposal**

1.1. Council Directive 88/407/EEC lays down a series of detailed animal health requirements applicable to trade in, and imports of, semen of domestic animals of the bovine species.

The purpose of the Commission's proposed amendment is:

— to permit the storage of bovine semen at semen storage centres on premises other than the artificial insemination (AI) centre where semen was collected;

— to amend, in the light of the new scientific data available and the new provisions laid down by the Office International des Epizooties (OIE), the animal health conditions applicable to entry of bulls into AI centres, in particular concerning infectious bovine rhinothracheitis (IBR/IPV) and bovine viral diarrhoea (BVD/MD);

— to simplify the Community procedure for the approval of AI centres in third countries. These lists of approved AI centres are frequently modified on formal grounds on the basis of the information sent by the competent authorities of third countries (address, name, new establishment etc);

— to allow the Commission to amend, following the comitology procedure, the annexes to Directive 88/407/

EEC as they cover technical points relating to approval of centres and conditions of admission of bulls into centres.

2. General comments

2.1. In the EU, bovine semen and embryos have, up to now, been produced and sold in association with approved semen collection centres under the auspices of cooperatives and organisations closely tied to local farming. Although semen and embryos from other Member States and non-EU countries may be distributed freely through this marketing chain, it is possible, by means of selection, to meet a series of specific requirements in the breeding programmes (e.g. as regards health or the prevention of unwanted genetic features, or the adjustments required to take account of regional or local conditions). At the same time, sales of bovine semen are the economic mainstay of AI associations' breeding work. The existing arrangements with approved semen collection centres ensure an appropriate reliability and product guarantee in the event of problems or damage; this would no longer be possible if the system were changed as radically as proposed.

2.2. Facilitating the establishment of semen storage centres separate from semen collection centres [1] is designed to liberalise the market and thus promote a more international 'insemination industry' that distributes bovine semen and embryos through local stores. This involves a serious risk of undermining the system in place to date and of increasing centralisation in the selection, production and distribution of breeding material. It may result in a gradual change in breeding aims and a lack of versatility in the breeding material, with greater streamlining of productive livestock. Consequently, future stock breeding may become more one-sided and there may also be an impact on efforts to promote sustainable development and multifunctional agriculture in the EU. The restriction of genetic diversity can be seen also from the example of the Holstein-Friesian breed, for which the world stock of breeding animals might already total fewer than 40. The Commission proposal could encourage a further reduction in diversity.

2.3. Though, under the proposal, the same animal health requirements apply to semen storage centres as they currently do to the storage of bovine semen in association with semen collection centres, the distribution from storage centres to the herd is subject to national animal heath requirements alone. Liberalised distribution from local semen storage centres to the herd with no supervision, monitoring or expert back-up from the A1 associations, may increase the risk of spreading infectious diseases and genetic defects.

2.4. The spread of infectious animal diseases in the EU can have serious consequences. The recent foot-and-mouth epidemic in the UK clearly demonstrated the disease's potential social and economic impact. The same goes for a series of other infectious bovine diseases such as tuberculosis, brucellosis, IBR, BVD etc. The greatest possible vigilance must therefore be exercised in relation to all risk factors, including, not least, contact with the individual herds.

2.5. The single market — which involves, in principle, the free movement of livestock over longer distances, larger herds and a greater concentration of domestic animals in certain regions — also increases the risk of spreading infectious diseases and aggravating the social and economic impact of any possible outbreaks.

2.6. The collection, storage, importation, distribution and use of semen and embryos thus constitute a serious risk of infection, warranting the strictest monitoring. One dose of semen from a single ejaculation may, for instance, be used for up to 2 000 inseminations and any potential infection can be spread to a corresponding number of herds in several Member States.

2.7. The above comments will apply all the more after enlargement, not least in respect of breeding trends and the potential dominance of 'insemination industry interests' in the new Member States. Further, a precedent may be set for future parallel sets of rules, for instance in the pig sector. For these reasons, more thorough consideration must be given to the proposal's potential impact.

3. Specific comments

3.1. Under the proposed rules, a semen storage centre may import and export semen and embryos. It is vital therefore to lay down clear procedures for the local official veterinarian to check compliance with the rules. The current provisions on the marketing of semen give a sufficient guarantee of the necessary certainty of high standards both for the veterinarian concerned and for the breeder; this could not be fully guaranteed by semen storage centres in individual cases.

3.2. Registration of bovine semen producers is essential in order to ensure traceability in the marketing chains from collection to use in the herds. It must be an absolute requirement that trade may only be conducted 'one way', i.e. from the producer to the store and from the store to the livestock holding, with no possibility of return.

[1] The existing rules provide only for the establishment of 'satellite stores' associated with a semen collection centre.

3.3. Reliable monitoring arrangements must be in place for semen and embryo imports from collection or storage centres outside the EU, and traceability must be guaranteed in case of the risk of any outbreak of infectious animal diseases. Among other things, it is vital to ensure the registration and monitoring of third-country collection centres which export bovine semen to storage centres in the EU so that the veterinary authorities in the Member State concerned can immediately take the requisite precautions in case of any subsequent concerns about disease.

3.4. To streamline the admission of bulls into approved semen collection centres, the following additions are proposed:

— Where the tests mentioned in Annex B, chapter I, points 1(d) and (e) are carried out in the quarantine or isolation facility of the semen collection centre, the quarantine period must be deemed to start from the date the samples are collected for the tests under (d), not the date on which the results are received, which may be up to two weeks later. The interval between the tests mentioned under points (d) and (e) will thus be twenty-one days, in line with the international OIE standard.

— The tests for campylobacter and trichomonas, which require a bacteriological as opposed to a serological diagnosis, should be carried out after seven days' quarantine, and not twenty-one as proposed. This will enable infected animals to be identified at an early stage and, in case of infection, will make it possible to carry out all the tests within the quarantine period.

3.5. Under Article 3 of the proposal, trade in and imports of semen certified according to the rules formerly in force are to be accepted for a period of six months after the directive enters into force. The wording used here is unclear in certain language versions, and it also raises important questions about existing stocks which, under current practice, are normally used over a longer period.

4. **Conclusion**

4.1. Despite the fact that, for several years, proposed amendments have been on hold pending an OIE standard on issues such as IBR vaccination, the Committee feels that the proposed amendment for semen storage centres cannot be accepted in its present form. The Committee does, however, endorse the other three proposed amendments.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directives 66/401/EEC on the marketing of fodder plant seed, 66/402/EEC on the marketing of cereal seed, 68/193/EEC on the marketing of material for the vegetative propagation of the vine, 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed, 92/34/EEC on the marketing of propagating and planting material of fruit plants, 98/56/EC on the marketing of propagating material of ornamental plants, 2002/54/EC on the marketing of beet seed, 2002/55/EC on the marketing of vegetable seed, 2002/56/EC on the marketing of seed potatoes and 2002/57/EC on the marketing of seed of oil and fibre plants as regards Community comparative tests and trials'

(COM(2002) 523 final — 2002/0232 (CNS))

(2003/C 85/13)

On 9 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 37 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 14 November 2002. The rapporteur was Mr Bedoni.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion with 92 votes in favour and 4 abstentions.

1. Gist of the Commission proposal

1.1. For the past 25 years, Community comparative tests and trials have been carried out for agricultural crops such as cereals, potatoes, fodder and oil and fibre plants on the basis of the relevant legislation.

1.2. In recent years, this process has taken on greater dimensions as new legislation on the marketing of propagating material for fruit, vegetables and ornamental plants has laid down, inter alia, detailed rules for Community comparative tests and trials.

1.3. This *a posteriori* control system for seed and propagating material marketed in the Community is recognised by Member States as a very important tool for the harmonisation of marketing.

1.4. The above tests and trials are funded by a Community financial contribution. The aim of the Commission proposal, in the interests of transparency, is to establish a clear legal basis for this financial contribution and to make provisions for Community financial measures for carrying out Community comparative tests and trials, which involve compulsory Community budget expenditure.

2. General comments

2.1. Comparative tests and trials for a posteriori control of seed samples and propagating material, to check that they meet standards, are extremely important in the European Union context. Satisfactory results in the cultivation of cereals, potatoes, fodder, oil and fibre plants, etc. depend to a large extent on the quality and health of the materials used.

2.2. Furthermore, these tests and trials effectively harmonise control methods for seed and propagating material, which is extremely important both to secure their free movement within the Community and to provide European buyers with the certainty that the seed and propagating material they are buying is healthy and of a high quality.

3. Specific comments

3.1. The Committee fully supports the Commission's intention to establish a clear legal basis for the Community's financial contribution to the abovementioned comparative tests and trials.

3.2. The Committee especially welcomes the objective of greater transparency and certainty and would stress the fact that the Member States themselves view the *a posteriori* control system to be a highly important tool for the harmonisation of marketing procedures.

4. **Conclusion**

4.1. The Committee welcomes the Commission's proposal to amend the ten directives concerned with a view to establishing a clear legal basis for the Community's financial contribution to comparative tests and trials on seed and propagating material.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council setting standards of quality and safety for the donation, procurement, testing, processing, storage, and distribution of human tissues and cells'

(COM(2002) 319 final — 2002/0128 (COD))

(2003/C 85/14)

On 2 July 2002, the Council decided to consult the European Economic and Social Committee, under Article 152 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 25 November 2002. The rapporteur was Mr Bedossa.

At its 395th plenary session (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 97 votes to one with seven abstentions.

1. **Background**

1.1. Each year in Europe, thousands of patients (over 500 000) receive human tissue and cell grafts.

These include both 'traditional' grafts, whose therapeutic benefits have been recognised for decades (corneas, bone, skin, arteries, heart valves, haematopoietic cells), and rapidly developing biotechnological methods.

1.2. Despite the various recommendations of the World Health Organisation and the Council of Europe, and the publication of rules for good practice by various European academic groups, the regulatory situation in Europe is far from uniform, and it is high time it was clarified. Where health authorities have not arranged for controls, it is basically up to the users of materials of human origin to choose, depending on the product concerned, the organisations responsible for retrieving, processing and supplying it. The user has no control over them and has to rely on the results of the grafts and feedback from peers. There is no organised monitoring system. Safety levels are improving in countries where regulations are in place, but consequently rules differ from one country to another.

1.3. On the eve of enlargement, and in the context of globalisation, it is time to put this state of affairs in order.

1.4. *The need for a European approach*

1.4.1. The ever-increasing volume of products in circulation

Trade in the EU and with third countries, in both traditional graft materials and the products of biotechnology, is flourishing. The share of imported graft materials can, for instance, be as high as 25 %, as is the case for corneas in France.

1.4.1.1. The diversity of national standards makes it more difficult to carry out proper checks on imported products that may enter the EU through a Member State where rules are lacking and then begin to circulate within the EU without all of the appropriate safety guarantees. Harmonised standards would, however, would make for safer and more controllable trade.

1.4.2. — The diversity of national regulations makes it more difficult for producers and tissue banks to export outside the Member States of the European Union. The industry will inevitably demand harmonisation on a par with that which applies to medicines and medical devices, such as in vitro diagnostic devices.

If the EU does not rationalise in this area, it will suffer from the growing contrast with other developed countries.

1.4.3. Products requiring a high level of safety and giving rise to major ethical considerations

As with any activity involving products of human origin, these techniques carry a risk of specific complications, linked in particular to the transmission of infectious diseases. They also raise certain ethical questions relating to the origin of grafts and, in particular, donor consent, anonymity, and the free nature of the donation.

1.4.4. On the subject of safety the following comments should be made:

— The incidence of reported cases cannot be ignored. Although the risk is residual for other diseases, it is comparable to the level that has led to the recall or withdrawal of blood derivatives.

— As the new biotechnologies take off, trade grows but so do the serial risks. Barriers are increasing as a result of Member State regulations.

— Following the blood contamination case and Creutzfeldt-Jakob disease, the public has become more aware and much more demanding, in particular owing to heightened media interest in health issues.

2. **Regulatory structure**

2.1. The European Economic and Social Committee (EESC) welcomes the Commission's move, outlined in the introduction to the Explanatory Memorandum, to introduce specific Community legislation — stringent yet flexible — to cover all the areas concerned. The main aim is to secure a high level of health protection, in terms of quality and safety, as provided for in Treaty Article 152, not least given the very wide-ranging ethical issues involved.

2.2. The EESC notes with concern the following aspects defined by the European Group on Ethics in Science and New Technologies (EGE), which stressed the urgent need to regulate the conditions under which human tissues circulate within the European market:

— the ethical imperative to protect health;

— respect for the integrity of the human body;

— the prior, informed and free consent of the living donor;

— protection of identity through guaranteed anonymity.

In addition, more should be done to promote the donation of organs, tissues and cells.

2.3. Donation must be free as it is an act of solidarity, promoting shared aims and increasing the availability of substances of human origin.

2.4. The EESC notes that currently there is a major divergence between Member States, and even more so among the applicant countries, on the issues surrounding donor protection, procedures for obtaining tissues, the activities of tissue banks, the suitability of donors, and the importation of human substances, etc.

2.5. Since the Porto conference in 2000 and, above all, the conference of experts held in Malaga in March 2002, it would seem that these experts are at last in agreement on the need for this directive: i.e. a Community directive to set 'high standards of safety and quality for the procurement, testing, processing, storage, and distribution of human tissues and cells'.

The scope may broaden as the demarcation lines for these measures have still to be defined in detail.

3. **Rules applicable to the field as a whole**

3.1. *General, common, compulsory and organic rules*

3.1.1. Safety rules are defined on the basis of existing rules for good practice. These include compulsory criteria for the ethical and biological selection of donors.

3.1.2. Traceability is a must, while donor anonymity is maintained for labelling and accompanying documents, reflecting recommendations for blood donation safety.

3.1.3. Where national rules on ethical matters apply, they may refer to:

— the Bioethics Convention of the Council of Europe (surgical residues and living donors);

— Council of Europe Resolution (78)29 on the harmonisation of legislation of member States relating to removal, grafting and transplantation of human substances;

— Opinion No 16 of 7 May 2002 of the European Group on Ethics in Science and New Technologies on the patenting of human cells.

3.2. *Establishment of a system for the authorisation and inspection of organisations that store and process (their legal status being public)*

— The system will be the Member States' responsibility.

— Authorisation for these bodies must be granted on the basis of a common frame of reference established at Community level and in line with Community rules. It is up to each Member State to ensure this happens.

— An inspection system for all establishments is essential.

— European databases will monitor the introduction of products in the Member States.

— Member States will be responsible for monitoring, with centralisation at Community level.

3.2.1. Penalties

There should be a system of penalties to impose on organisations that do not comply with the standards; these could extend to closing down an establishment on grounds of public health.

4. **General comments**

The EESC welcomes the precise and detailed way in which the Commission has defined the scope of the directive.

Such demarcation lines are necessary as the definitions are precise and it is important not to step outside the sphere of public health. This directive concerns applications to the human body only.

Donation, procurement and testing are specified as it is essential to secure a high level of quality and safety in these areas.

The EESC therefore welcomes the fact that:

— blood, blood products and human organs are excluded from this directive;

— a different strategy will apply for the transplantation of human organs;

— organs, tissue and cells for xenotransplantation are not covered by this text as much more research is required;

— specific measures will apply for tissue and grafts for autologous purposes, as the rules on quality and safety are different;

— in the case of stem cells and embryonic or foetal cells and tissue, the ethical questions are vast and as yet there is no consensus or harmonisation of decisions; if, however, a particular application of these cells is accepted in a Member State, the relevant provisions of this directive will apply.

4.1. *Scope*

The EESC is more than aware that this directive is important and necessary.

As the scope is extremely vast and difficult to grasp, clearer definitions are needed, to lessen confusion between homologous (allogeneic) and autologous origins, and mention should be made of certain special measures or exceptions.

Certain types of product should be included, others should be the subject of special measures.

Reproductive cells should not fall within the scope of this directive owing to the highly specific qualification procedures that apply to them in the context of medically assisted reproduction. Provision should possibly be made for a specific directive to cover this area.

4.2. *Processing, preservation, storage and distribution of tissue and cells for use in human transplantation*

4.2.1. The EESC welcomes at least two provisions:

When tissue and cells for human transplantation have to undergo preparation or differentiation, additional quality measures must apply.

When tissue or cells have to undergo highly technical modifications, such as 'tissue engineering processes', this will be covered by further specific legislation.

4.3. *Obligation of Member State authorities*

4.3.1. The EESC warmly welcomes the highly detailed description of the obligations of Member State authorities.

4.3.2. The proposal does not interfere with decisions made by the Member States concerning the use or non-use of any particular type of cell or tissue; if, however, any particular use of such cells is authorised in a Member State, this proposal will require the application of all provisions necessary to protect public health and guarantee respect for fundamental rights.

— Every Member State maintains responsibility for the organisation and supply of health services and medical care.

— The directive respects all existing national organisations, procurement centres and/or tissue banks.

— The establishment of high quality and safety standards will reassure the public in the Member States, smoothing the path for donations from other Member States.

— The inspection and accreditation of national structures is a means of securing high safety and quality standards. The same is true for the training levels of the staff concerned.

— Traceability of all tissue and cells from the donor to the recipient is essential, as is the monitoring of reactions and events.

— Lastly, the ever-growing volume of imports of tissue and cells from third countries should only be carried out by accredited tissue banks, supervised by the competent authority, to ensure that standards are at least equivalent to those in force in the European Union.

4.4. *Quality, safety and ethical issues in donor evaluation*

— Quality and safety standards in donor selection and evaluation must be high in order to protect the health of recipients.

— There must be a high level of protection for the rights and health of donors and recipients. Exchange and allocation activities should not give rise to financial gain; they should be voluntary and unpaid in accordance with the texts of the Council of Europe and of the EGE.

— The procurement of human cells and tissue must be conducted with respect for the Charter of Fundamental Rights and the principles of the Convention on Human Rights and Biomedicine.

— The EESC welcomes the importance attributed to tissue banks, which must ensure quality and safety throughout the process.

5. **Special considerations**

5.1. The objectives of the directive are clear, in particular the need for a strong, clear and transparent regulatory framework at European level to cover all the parties concerned, and, on the eve of enlargement, for general rules to be valid throughout the European Union.

5.2. The legal basis is clear-cut (Articles 152 and in particular (4)(a)).

5.3. While the principles of subsidiarity and proportionality are certainly upheld, the directive implements a common approach that requires effective cooperation and coordination, in view of its transnational dimension.

5.4. This proposal provides the regulatory and administrative framework for the current, spectacular growth in movements of tissue and cells of human origin.

5.5. The proposal puts the European Union at the cutting edge of the debate on this subject within the World Health Organisation.

6. **Specific EESC recommendations**

6.1. The word 'donation' is too narrow for the scope of the directive, which targets both autologous and allogeneic uses. The Committee proposes that it be replaced by the term 'retrieval', to refer to operations conducted with a view to grafting the elements retrieved, and 'collection' to refer to the collection of surgical residues for reuse for therapeutic purposes.

These terms would replace 'procurement' which should then be eliminated from the rest of the directive. The terminology in the current blood directive must also be brought into line.

In addition, the second paragraph of Article 2(1) should be reworded to make it clear that 'testing' relates to the retrieval and collection rather than the product.

6.2. In the French version, the term '*conservation*' is preferable to the more restrictive term '*stockage*'.

6.3. Article 1 should be reworded as follows: 'This Directive lays down standards of quality and safety of human tissues and cells for use on humans, (instead of "used for application to the human body") in order to ensure a high level of protection of human health' as this covers all uses on humans (external and internal).

6.4. Article 2 contains a serious inaccuracy when referring to 'industrially manufactured products': it would be preferable if the provisions of this directive were to apply to all products other than medicines, such as tissues and cells incorporated within medical devices.

It should also be noted in relation to this article that medicines are already excluded from the directive from the processing until the distribution stage; there is no need to mention that autologous cells destined for manufacturing are excluded from the scope of the directive as far as processing, storage or distribution is concerned.

6.5. The current wording of the list of definitions in Article 3 could raise a number of issues, as experts and consultants may wish to make amendments in order to bring it into line with their understanding of the field. The EESC would make the following comments in this respect:

6.5.1. 'Tissue': it would be better to use the definition given by Council of Europe Recommendation No R (94) 1 on human tissue banks, namely: 'all constituent parts of the human body, including surgical residues but excluding organs, blood and blood products as well as reproductive tissue (...). Hair, nails (...) and body waste products are also excluded'.

6.5.2. The EESC proposes restricting the concept of the donor to living or deceased individuals for the time being, as the use of foetal or embryonic elements of human origin is liable to generate ethical debates or controversies in individual EU Member States, which would be difficult to manage in the Union context.

6.5.3. The EESC is in favour of excluding organs from this directive, as these cannot be stored. Organs are subject to different specific procedures, made necessary by transplantation.

6.5.4. The EESC believes that 'transportation' should be removed from the definition of 'distribution', as it is distinct from distribution as an activity and is mentioned specifically in Article 23.

6.5.5. The EESC proposes replacing the term 'transplantation' with the usual terms 'graft' (used in particular for tissue grafts) and 'administration' (used for certain cell therapies). 'Patient' should replace 'recipient', as the notion of recipient seems to limit the definition to allografts.

6.5.6. More precision is needed in the definition of 'delayed autologous use', by analogy with the definition used in the blood directive, which is more meaningful ('transfusion in which the donor and the recipient are the same person and in which pre-deposited blood and blood components are used').

6.5.6.1. Special measures must be taken for:

— autologous cells;

— autologous tissues for differentiated use;

— surgical residues and placentas;

— tissues and cells for cosmetic surgery.

6.5.7. The EESC believes it is important to define the two notions of 'traceability' and 'biomonitoring' in detail, as Articles 10 and 11 make specific reference to them.

— 'Traceability': refers to all the information and measures that enables the rapid tracking and pinpointing of each of the stages from donor selection to the therapeutic use of tissues and cells including retrieval or collection, testing, processing, storage and distribution. Traceability enables a link to be made between the donor and the patient(s)/recipient(s). It is based on the anonymous coding of individuals.

— 'Biomonitoring': uses traceability data and includes all formal procedures for the supervision of undesirable events and reactions experienced by donors, recipients/patients, and for the epidemiological monitoring of donors.

7. **General proposals**

7.1. The title: the definition is incomplete.

7.1.1. — 'procurement' should be replaced by:

— retrieval: surgery carried out by a specialised team (from the hospital or tissue bank) on site or at another site;

— collection: a surgical act in the case of surgical residues (femur heads, explanted hearts) or placentas, and a medical act in the case of stem cells;

— procurement: administrative and health procedure to obtain tissue or cells from another licensed body (tissue bank, sterilisation/inactivation laboratory without the status of a tissue bank, hospital cell therapy units);

another possibility would be to keep 'procurement' throughout the directive, but alter its definition in Article 3e, using the three concepts above.

7.1.2. — In the French version, *'stockage'*..., should be replaced by *'conservation'* (in English 'storage') which defines the whole process of preservation (active, technical stage in preparation) and storage (static stage, maintaining tissues or cells in a given state).

7.1.3. — Of human origin, should be added at the end of the title, to cover the subject more completely.

7.1.4. The title would then be:

'Directive of the European Parliament and of the Council setting standards of quality and safety for the donation, retrieval, collection, procurement, testing, processing, storage and distribution of tissues and cells of human origin.'

7.2. The directive's seven chapters describe more or less comprehensively the authorisation system to which specialised establishments, i.e. tissue banks, will be subject. Consent will therefore be given to authorised teams.

It would however be wise to include an appendix containing an approved list of authorised products per speciality, with simple formalities and reviewed frequently to take account of the rapid progress of knowledge in the sector.

7.3. Incorporation within the directive of compulsory 'procedural authorisation for the preparation of a given type of product (tissue/cell)', describing procedures and practices, by product type, for all stages, from retrieval to distribution.

7.3.1. This could be included under Article 20 which deals with 'standard operating procedures'.

7.3.2. This authorisation, which could be granted by the supervisory authorities responsible (designated under Article 4.1), would guarantee the safety and quality of transplants.

7.4. The EESC takes the view that a specific directive should be drafted to cover cases of tissues and cells that fall outside the scope of the present directive, where more in-depth research and high-tech development is required, for instance for use in treatments the aim of which is not to re-establish a function — as is the case with the grafting of tissues and cells — but which require growth and 'exceptional' differentiations.

7.5. *Agreements between tissue banks and healthcare establishments that supply and/or use tissues (the same for cell therapy units and healthcare establishments)*

7.5.1. This type of document does not appear under Article 24 (Relationship of tissue banks with third parties) or Article 25 (Access to human tissues and cells).

7.5.2. These agreements, common practice in most of the countries, govern relations between the supplier of transplants (tissue banks) and the user surgeon/care establishment, on the one hand, and the retrieving surgeon/retrieving healthcare establishment and tissue bank, on the other, in the form of a contract listing commitments relating to quality, quantity, responsibility, contact and transport techniques, invoicing and disputes.

7.5.3. This practice should probably be introduced under Article 25 (Access to human tissues and cells), at European level.

7.6. *Clinical trials*

While retaining clinical trials involving the use of tissues or cells for therapeutic use within the scope of the directive, special provisions must be made to take account of their specific characteristics (authorisation for retrieval and processing, and applications in the context of the clinical trial) and existing regulations on biomedical research. By definition, a clinical trial will not necessarily use procedures that have prior product authorisation.

7.7. *European health certificate*

7.7.1. There should be a 'European health certificate' for all tissue and cell products covered by the directive, prepared by the Member State banks.

7.7.2. This certificate would set out the results of and techniques used in the compulsory tests for the biological evaluation of these products, thus facilitating trade between countries.

7.7.3. The EESC thinks it would be useful to form a central data bank containing all the available information on authorised centres, on the products present and/or made in the tissue banks or in the other authorised centres, on health certificates and on biomonitoring.

7.8. *Confusion between tissue banks and units dealing with cells*

Clarification is needed throughout the directive for the following terms, to differentiate them from the definition of tissue banks:

— Tissue and cell bank,

— Cell bank,

— Cell therapy unit,

— Tissue centre,

— Third party units — provision of technically advanced services.

7.9. The EESC thinks that the impact assessment carried out is inadequate and hopes not only for more thoroughness in this area, but also for the inclusion of a regular report on such matters, which could also be useful in view of the areas of application that are currently excluded and on which the Commission will issue further proposals for directives in the future.

8. **Conclusion**

8.1. This specific directive is urgent, and the measures chosen are necessary and coherent, as reflected by the regulatory approach taken. Moreover, this trade in tissues and cells is based on fundamental principles: the anonymity of the donor, the voluntary nature of the donation, the solidarity implied, the fact that no price tag can be attached to these human body parts.

8.2. The EESC would make the same comment as the Commission: in view of extremely rapid scientific developments in these areas, provision must be made for the text to be updated regularly, to take account of proven scientific progress, while upholding the principle of coherence.

8.3. It would make sense to incorporate within the Directive a compulsory 'procedural authorisation' for the preparation of a given type of product (tissue/cell), describing procedures and/or practices, by product type, for all stages, from retrieval to distribution. This authorisation would provide a guarantee of the safety and quality of transplants.

8.4. *Give a clear definition of the responsibility of each of the players*

Responsibility for the transfer of a product (tissue/cells) usually lies with the tissue bank. Responsibility for the health and safety of a product can, however, fall into three areas:

— health establishment, site of retrieval or collection: selection of potential donor, technical and health conditions, traceability and biomonitoring;

— tissue bank or cell therapy unit: preparation process, microbiological tests (transmissible diseases, bacteria, etc.), biological and functional validation, traceability and biomonitoring;

— transplant surgeon: risk/benefit analysis in the light of the health profile of the product and the vital urgency for the patient, traceability.

8.5. Provision should be made for a Europe-wide agreement between healthcare establishments that supply and/or use tissues (likewise for cell therapy units and healthcare establishments).

8.6. The appendices are an integral part of the Directive, but there is a risk that their regular updating could be hindered for administrative reasons. For this reason, the EESC believes that Article 29 should mention the regular modification of these appendices to take account of scientific progress, and make it obligatory to update.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents'

(COM(2002) 564 final)

(2003/C 85/15)

On 14 October 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 November 2002. The rapporteur, working without study group, was Mr Pariza Castaños.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion by 103 votes to one with ten abstentions.

1. Summary of the Commission proposal

1.1. Return policy is presented by the Commission as an integral part of immigration and asylum policy. The Commission notes that, on the one hand, legal immigration channels must be consolidated and protection given to those needing it and, on the other, illegal residents must be returned (preferably voluntarily, but by force if necessary), since 'A credible threat of forced return and its subsequent enforcement send a clear message to illegal residents in the Member States and to potential illegal migrants outside the EU that illegal entry and residence do not lead to the stable form of residence they hope to achieve' [1] Hence a return policy is a necessary adjunct to a comprehensive immigration and asylum policy.

1.2. The Commission's communication also responds to the call of the Seville European Council of 21 and 22 June 2002 for the approval by the end of the year of the basic components of an expulsion and repatriation policy.

1.3. Before establishing the bases of a return policy, the Commission had already opened a broad debate on the issue.

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[1] Point 1.22 (2nd para.) of the communication.

To this end it presented a green paper [1] and initiated a debate which culminated on 16 July 2002 in a conference attended by organisations and institutions from all the Member States and applicant countries. The EESC also participated in this conference.

1.4. The present communication addresses only the return of irregular residents (or illegal residents, in the terminology used in the communication). A further communication will deal with the return of legal residents who wish to return to their country of origin and how their return could benefit the development of that country.

1.5. The aspect examined by the communication in greatest depth is cooperation between the Member States to streamline the repatriation of illegal residents. To this end it calls for short-term measures in the field of operational cooperation and for medium-term legislative measures to establish some common standards for the mutual recognition of Member States' repatriation decisions.

1.6. Short-term operational cooperation between the Member States includes the following:

— new statistical methods, among which the Commission singles out the publication of a comprehensive annual report on asylum and immigration statistics;

— direct networking between Member State authorities responsible for managing returns;

— exchange of experience and best practice, for which a handbook of best practices will be drawn up;

— joint training of officials responsible for managing returns: seminars, regular meeting, etc.;

— better identification of illegal residents who do not present or hold any documents. For this, it is proposed to set up a database with photo and scanned travel documents of all persons applying for visas in any Member State consulate;

— assistance between Member State authorities for the transit of returnees where it is necessary to use the airports of other Member States or transit through their territory, whether the return be forced or voluntary;

— facilitate the work of immigration liaison officers (ILOs) in countries of origin or transit;

— use joint charter flights to reduce the cost of repatriating illegal residents;

— create an adequate framework for coordination based on (i) greater use of the ICONet and (ii) setting up a technical support facility.

1.7. The common minimum standards to be established in the medium term to enhance cooperation between the Member States include the following:

— the expulsion of persons against whom an expulsion order has been issued in one Member State and who have been apprehended in another state. This objective raises the need for a binding legal framework so that this second state can execute the expulsion order issued by the first;

— minimum standards which have to be respected in the removal procedures. For instance, how to proceed when the person to be expelled is suffering from a physical or mental illness, is a minor or a pregnant woman, or the expulsion will mean breaking up a family. Also when the physical resistance of the person to be expelled has to be overcome, etc. It is important to reach agreement on these minimum standards so that Member States can cooperate with the expulsion orders issued by others;

— minimum criteria for distinguishing between mandatory reasons for expulsion, such as a serious threat to public order or national security, and other less serious reasons, since the mutual recognition of expulsion decisions will operate differently according to the seriousness of the reason. Minimum safeguards for the judicial review of expulsion decisions will also be necessary;

— an agreed approach to situations where the legal residence of a person comes to an end and they have to be regarded as an illegal resident;

[1] See EESC opinion on the green paper.

— minimum standards for detention conditions for persons awaiting expulsion. Identification of persons who should not be detained, such as unaccompanied children, the elderly, pregnant women, people with serious disabilities, etc.;

— standards for establishing proof of return, especially in the case of voluntary return.

1.8. The communication advances the idea of 'integrated return programmes' aimed at encouraging voluntary return and successful reintegration of returnees in their country of origin. The communication refers to the development of projects which involve advice to returnees, assistance with travel, assistance with training and employment, assistance with housing, etc. The Commission states that incentives to encourage potential returnees to go back voluntarily should be assessed and that sufficient financial assistance should be available to put this into practice. The Commission calls for consideration to be given to the possibility of a Community financial instrument.

1.9. The effectiveness of a return policy, particularly in the case of forced return, is totally dependent on cooperation with countries of origin and transit. These countries have to readmit their own citizens, or persons transiting their territory, where they have been apprehended in an illegal situation in a Member State. The communication views cooperation with these countries from the following angles:

— administrative cooperation, aimed at strengthening certain institutions in the countries of origin and developing measures for the reintegration of returnees;

— readmission agreements are difficult to achieve unless they contain specific benefits for the countries of origin which conclude them; hence the Commission affirms the need to define such incentives;

— cooperation with transit countries to persuade them to admit persons who cannot return directly to their country of origin.

1.10. The Commission concludes its communication by asking the Council to endorse the Return Action Programme by the end of the year.

2. **General comments**

2.1. The communication has been published in the wake of the debate around the green paper on this issue. The EESC welcomes the participatory approach adopted for drawing up these policies. The Commission and the Council should make appropriate use of the various proposals. The EESC notes with satisfaction that the communication has taken account of several of the proposals contained in its opinion.

2.2. In its opinion on the green paper, the EESC has already given its views on most of the issues raised by the Commission. It is not necessary to repeat them here. The present opinion should be seen as supplementing its predecessor.

2.3. It must always be borne in mind that a person 'without papers' is not a person without rights and that an illegal immigrant is not a criminal, although their situation may not be legal. Express support is given to the emphasis placed in point 1.2.3 of the communication on the need to observe human rights standards, even in the case of persons 'without papers'. This includes in particular standards with regard to social and economic rights.

2.4. This communication, as already pointed out here, refers almost exclusively to the return of illegal residents. The EESC realises that it is necessary to build on what was laid down at the Seville Council, but would wish, once again, to draw attention to the need to speed up the legislative work so that the EU has a common policy for economic immigrants providing legal and transparent channels for immigration; the same applies to common legislation on asylum.

2.5. The EESC would remind the Commission that various of its opinions have pointed to the need to take action on regularisation. Forced return, as the Commission states, is a necessary adjunct to immigration policy. The EESC considers that expulsion and obligatory repatriation are extreme measures.

2.6. The Commission announces a forthcoming communication on immigration and development in which it will analyse the way in which the return of residents to their countries of origin can be beneficial to the development of these countries. The EESC welcomes the announcement of this communication, but would reiterate the need to ensure that the forced return of illegal residents is also of benefit to the development of countries of origin. This idea is broached in point 2.4 on integrated return programmes, but in too general terms.

2.7. In its opinion on the green paper, the EESC states that voluntary return should be given priority and forced return used only as a last resort. The Commission's communication also advocates favouring voluntary return, but this idea is not adequately reflected in the actual proposals. The most extensive section, and that which contains the most specific measures, is that on cooperation between Member States in the organisation of forced returns.

2.8. Another reason why the need for voluntary return must be highlighted is that (humanitarian) non-governmental organisations will only become involved in return activities if return is voluntary. The involvement of these organisations is highly desirable and sometimes a precondition for the success of return programmes. Accordingly, this matter should not be dealt with solely between states.

2.9. It is essential that any return policy be based on respect for human rights and fundamental liberties. In its opinion on the green paper the EESC already warned that Articles 3, 5, 6, 8 and 13 of the European Convention on Human Rights and Articles 3, 4, 19, 24 and 47 of the Charter of Fundamental Rights contain specific provisions which are applicable to a return policy for illegal residents.

2.10. Voluntary return is addressed mainly in the section on integrated return programmes, but this section is much less specific. The EESC would therefore call on the Commission to flesh out its proposals for the organisation of voluntary return, in parallel to its proposals on forced return. The EESC would support a Community financial instrument for the development of return programmes.

2.11. It is necessary to ensure in all cases that forced return procedures are carried out under effective judicial protection. All persons against whom an expulsion order is issued should have full access to judicial appeal, and the appeal should have suspensive effect. The latter is essential given the nature of the act of expulsion: if a judicial ruling goes in favour of the person concerned, but is issued after they have already been expelled, in most cases the outcome will not benefit them, infringing their right to effective judicial protection.

3. **Specific comments**

3.1. Without a common policy and legislation to channel immigration legally and a common policy and legislation on asylum, the application of some of the proposals put forward in this communication is putting the cart before the horse. The Commission realises this, but the Seville Council has decided thus.

3.2. This is the case with the mutual recognition of return decisions, aimed at ensuring that expulsion orders issued by one Member State are executed by another (where the illegal immigrant is apprehended in a different state from the one which ordered their expulsion) without the need for a new expulsion decision [1]. The EESC considers that it would be premature to apply this measure without unified standards and criteria on the interpretation of the Geneva Convention and on persons with a right to subsidiary protection. The Commission recognises this in the communication [2]. The EESC would like to see a balance between the measures to reduce illegal immigration and the measures needed to ensure immigration takes place through legal channels.

3.3. The right to family unity should clearly prevail over expulsion on grounds of illegal residence. On this basis, the EESC would reiterate what it said in its opinion on the green paper: there should be no expulsion when it would involve family separation.

3.4. Regarding the coercive measures to be used when someone physically opposes expulsion, the communication states that such measures have their limits and that the physical integrity of the returnee is of the utmost importance [3]. The EESC affirms that there should be no discussion on whether the physical integrity of the returnee is of greater or lesser importance; quite simply there must be nothing in the expulsion procedure which threatens this physical integrity. Unfortunately there have been many people whose only crime was to come to Europe looking for work and a decent future, but who have died during the expulsion proceedings because of the brutal conduct of some officials.

3.5. The communication analyses the limits that should be set to the detention of persons awaiting expulsion, taking up several of the proposals that the EESC put forward in its opinion on the green paper as well as suggestions made by various organisations at the conference organised by the Commission on 16 July 2002. The EESC welcomes this, but would reiterate one point raised in that opinion. The communication states that returnees in detention should as far as possible be separated from convicts [4]. In the EESC's view, there should be a strict prohibition on returnees being held in jails, since illegal immigrants awaiting expulsion are not criminals.

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[1] Point 2.31 (1st para.) of the communication.
[2] Point 2.31 (2nd para.) of the communication.
[3] Point 2.32 (4th para.) of the communication.
[4] Point 2.35 (7th para.) of the communication.

3.6. The communication quite rightly stresses that the principle of proportionality must apply to the detention of persons awaiting expulsion. As a matter of principle, the detention of such persons should not be used to coerce or exert pressure on them (e.g. with a view to obtaining identity papers).

3.7. The EESC has already expressed its views on these matters in its opinion on the green paper. It should be noted that detention pending expulsion should not exceed 30 days.

3.8. To avoid serious problems for the persons concerned, it is crucial that the EU establish, on a temporary basis, a list of countries to which people may not be deported on account of the risk to their lives, the lack of freedom, war or humanitarian crisis.

3.9. The Commission concludes its communication by asking the Council to endorse the Return Action Programme by the end of the year, in accordance with the mandate given by the Seville European Council. The EESC would like the Council and the Commission to reflect on the contradiction and lack of balance between the delay in common legislation for legal immigration and the adoption of such harsh measures against illegal immigration as expulsion and obligatory repatriation.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on 'Economic governance in the EU'

(2003/C 85/16)

On 18 July 2002 the European Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'Economic governance in the EU'.

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 26 November 2002. The rapporteur was initially Ms Konitzer, followed by Ms Florio.

At its 395th plenary session (meeting of 12 December 2002), the Economic and Social Committee adopted the following opinion by 69 vote to 13, with 16 abstentions.

1. **Preliminary remarks**

1.1. The Single European Act (1986) and the Treaties of Maastricht (1992) and Amsterdam (1997) have considerably expanded EC/EU activities. That said, the European Union remains suigeneris, without a government responsible for state action in the classical sense. Drawing on the treaties and a range of different agreements between the Community institutions and the Member States, and with the involvement of various bodies, organisations and also enterprises, a form of governance has emerged that is specific to the Community.

1.2. 'At European level, the [European Economic and Social] Committee is the institutional forum for consulting, representing, informing and expressing the views of organised civil society, thereby allowing the representatives of Member States' economic, social and civic organisations to be an integral part of the policy-forming and decision-making process at Community level. ([1])' The Committee is therefore, quite naturally, involved in the debate about how to improve governance in the European Union, both in the context of the constitutional Convention and with a view to the future

([1]) Resolution addressed to the European Convention.

intergovernmental conference and Community enlargement (cf. the EESC resolution addressed to the European Convention — CES 1069/2002).

1.3. Economic governance in the Community — which should not be confused with economic government — is also an issue on which the European Economic and Social Committee considers it necessary to set out its own views. The success of economic governance in the Community is vital to achieving the Union's objectives. The Committee is a Community body with particular expertise in economic and social issues, which, given its membership, can also act as an intermediary among the various interest groups. As such, it considers it appropriate to issue the present opinion and thus to provide some input into the difficult question of how economic governance in the Community can be improved.

1.4. This opinion takes up the option that the Committee gave itself in its resolution of 19 September 2002, namely to flesh out the overall thinking on economic policy formulated therein. The main points are as follows:

1.4.1. Economic policy should be coordinated in such a way as to make the most of the Union's potential for growth and employment.

1.4.2. The Commission's right of proposal and mandatory EESC consultation in the procedure for drawing up the economic policy guidelines should be reinstated.

1.4.3. Full employment should be mentioned explicitly in the constitutional Treaty as one of the objectives of the Union and this Treaty should state more clearly that economic and monetary policy must contribute to the attainment of the objective of growth and full employment.

1.4.4. The Union must adopt the instruments necessary to implement the Lisbon strategy. This also includes the coordinated use of macroeconomic and structural policy and comprehensive dialogue among the macroeconomic policy players.

1.4.5. The constitutional Treaty should contain a reference to the provision of services of general interest. It should also provide an improved legal basis for coordination arrangements and the involvement of the social partners and other relevant civil society players. Decision-making processes at Union level must reflect the principles of solidarity, transparency, coherence, subsidiarity, proportionality and openness.

2. **Origins of the debate**

2.1. The debate on how to organise economic governance in the context of European integration is as old as the 1957 Treaties of Rome. The Treaty establishing the European Economic Community (EEC) provides for common policies in areas such as customs, external trade, transport, agriculture and competition, but regards overall economic policy merely as 'a matter of common concern'. Member States coordinate their economic policy within the Council (Article 145) on a proposal (Art. 103) or recommendation (Art. 105) from the Commission.

2.2. It was not long before these few Treaty provisions were supplemented by informal agreements, European Council conclusions and Council of Ministers resolutions, and by secondary legislation — i.e. regulations, decisions and directives of the Council of Ministers based either on the existing Treaty, or in some cases [1] involving an amendment to the Treaty itself (Article 236, EEC Treaty).

2.2.1. Under the Treaty, secondary legislation was enacted on a proposal (in some cases also on a recommendation) from the Commission, usually after obtaining the opinion of the European Parliament (or, under Article 252 [ex. 189c] of the EC Treaty, with the Parliament's active involvement). In many cases, the European Economic and Social Committee (EESC) was also consulted.

2.2.2. Landmark developments in the field of economic governance in the EU include the following Council decisions providing for or setting up advisory committees:

— 18.3.1958: Statutes of the Monetary Committee [2];

— 9.3.1960: Short-term Economic Policy Committee [3];

— 15.4.1964: Medium-term Economic Policy Committee [4];

— 8.5.1964: Budgetary Policy Committee [5].

2.3. *The Werner plan*

2.3.1. A major new boost came in the wake of the 1969 Franco-German exchange rate changes, with the emergence of the plan to establish a European economic and monetary union (EEMU) (Brandt, Pompidou, the Hague European Council

[1] In particular the 1986 Single Act establishing the single market and the 1993 Maastricht Treaty launching European economic and monetary union.
[2] OJ 17, 6.10.1958, p. 390.
[3] OJ 31, 9.5.1960, p. 764.
[4] OJ 64, 22.4.1964, p. 1031.
[5] OJ 77, 21.5.1964, p. 1205.

conclusions of 1 and 2 December 1969). On 8 and 9 July 1970, the Council endorsed the findings of the Werner report on the establishment of a European economic and monetary union. Among other things, it was noted that economic and monetary union means that the most important economic policy decisions are taken at Community level, that, consequently, the requisite powers are transferred from the national level to the Community, and that to complete EMU, a single currency might be introduced, thereby making the process irrevocable.

2.3.2. This approach, as set out in the Werner plan, led to a strengthening of economic policy coordination mechanisms:

— establishment of an Economic Policy Committee through the merger of the Short-term Economic Policy Committee, the Medium-term Economic Policy Committee and the Budgetary Policy Committee (Council decision 74/122/EEC, 18.2.1974);

— Council Directive of 18 February 1974 on stability, growth and full employment in the Community (74/121/EEC);

— Council convergence decision of 18 February 1974 (74/120/EEC).

2.3.3. As part of this framework, the Council, acting by a qualified majority on a proposal from the Commission and having consulted the European Parliament and the European Economic and Social Committee, adopted medium- and short-term economic policy guidelines. Quantitative (and confidential) 'guidelines' were also laid down for Member States' national budgets.

2.3.4. The success of this relatively strict coordination mechanism was, however, seriously undermined by the international and intra-Community currency upheavals of the 1970s, that had been triggered by the collapse of the Bretton Woods monetary system and the first oil shock. The situation was compounded by a lack of progress in monetary policy cooperation and very disparate approaches to economic policy in various Member States. Ultimately, as a result of all these factors, the first attempt to establish an EEMU was not a success. This failure was followed by a long period of high inflation, inadequate growth and increasing underemployment.

2.4. *The European monetary system*

2.4.1. It was not until the establishment of the European monetary system (EMS) — pursuant to the Bremen European Council conclusions of 6 and 7 July 1978 (Helmut Schmidt, Valéry Giscard d'Estaing), the resolution of the Brussels European Council of 5 December 1978 and the agreement between Member States' central banks of 13 March 1979 — that, relatively informally, progress began to be made in monetary policy cooperation within in the Community.

2.4.2. The frequent EMS exchange rate realignments throughout the 1980s highlighted the differences that continued to exist in monetary and economic policy. However, these realignments also triggered closer coordination of Member States' approaches to economic policy and precipitated a deeper understanding of the need for a common, formalised monetary policy. Another critical step forward came with the 1987 Single European Act, which laid the foundations for the single market and also, for the first time, enshrined the goal of EEMU in the Treaty.

2.5. *The Maastricht Treaty*

2.5.1. After the experiences, setbacks and advances outlined above, the political events of 1988/1990 (including the prospect of German unification) made it possible to again address the plan to establish a genuine European monetary union with a centralised monetary policy, a European central bank and a single currency. The key stages in this process were the Hanover (June 1988) and Strasbourg (December 1989) European Councils (Helmut Kohl, François Mitterrand), the Delors committee report (June 1989) and finally the Maastricht Treaty which was signed on 7 February 1992.

2.5.2. The Maastricht Treaty, which entered into force on 1 November 1993, and the political will in most EU Member States to join European monetary union, facilitated progress in nominal convergence (the Maastricht criteria) — not least in the area of price stability. As a result, monetary union was completed on 1 January 1999, initially among eleven countries, and the euro entered into circulation — by that time in twelve countries — on 1 January 2002. When framing the Maastricht Treaty, however, the relatively strict coordination mechanisms adopted under the Werner plan (cf. for example the Council decisions of 18 February 1974) were dropped. That said, Articles 101 to 104 of the consolidated Treaty do relate to budgetary policy, and, together with the stability and growth pact (secondary legislation), are designed to ensure that national budgetary policies do not compromise the stability-oriented monetary policy (Article 105) within the monetary union. However, these provisions do not, as yet, indicate how (sound) budgetary policy can and/or should be used as a tool of overall economic policy.

2.5.3. In the context of general economic development, the overall economic policy coordination mechanisms under the Maastricht Treaty fall considerably short of earlier procedures. In spite of monetary union and in contrast to the Werner plan and the Council conclusions of 8 and 9 July 1970, responsibility for overall economic policy basically remains at national level. Representation of matters of common concern is extremely weak, and the Commission has no right to make proposals in either framing or monitoring implementation of

the broad economic policy guidelines (Article 99). Although provision is made for majority Council decision-making, the European Parliament is merely informed of Council decisions. In contrast to the convergence decision of 18 February 1974 (74/120/EEC), there is no provision for consulting the European Economic and Social Committee. Nor are the social partners officially consulted in the drawing-up of the broad economic policy guidelines (see also point 2.1 The philosophy behind the Maastricht Treaty from the EESC opinion on the Coordination of economic policies in the long term [pages 3-4] ([1])).

2.5.4. While, under the Werner plan, the single currency was to some extent conceived as the crowning achievement of economic and monetary union, the current set-up involves a customs union, a single market and a monetary union. Yet the overall economic policy coordination mechanisms are markedly less strict than they were during the first and projected second phase of the Werner plan.

3. Future economic governance in the EU: why must it be improved and how can this be done?

3.1. Thanks to European monetary union, the 2001/2002 economic slowdown and the international crises of the past two years (including the impact of 11 September 2001) did not result in currency upheavals and fundamentally divergent approaches to economic policy in Europe as had been the case in the 1970s, 1980s and early 1990s. That is a major success.

3.2. That said, the past few years have seen further and considerably more forceful calls for enhanced economic policy coordination.

Point 7 of the Barcelona European Council conclusions also notes this need for (1) better Eurozone statistics, (2) enhanced analysis of the macroeconomic policy mix (monetary policy, budgetary policies, wage trends) and (3) improved coordination mechanisms. The European Economic and Social Committee has already set out its views on these matters (see point 1.4 of its opinion on the Coordination of economic policies in the long term ([1])) and called for the timely submission of comprehensive Commission proposals.

3.3. The need to improve economic governance in the EU and the EEMU is abundantly clear from the following points:

3.3.1. The success in achieving price stability and monetary union contrasts with the Community's chronically inadequate record on growth and employment.

3.3.2. The Maastricht Treaty's relative reticence on the subject of economic policy has been subsequently mitigated in various, not always transparent ways. These involve not only the inclusion of an employment title in the Treaty (Articles 125-130) but also, for instance, the various more or less formal and transparent 'processes' that have been launched (Luxembourg, Cardiff and Cologne). They also include an opaque mix of consultations and arrangements for non-mandatory opinions, a beefed-up role for the committees at the expense of the Commission's role as the body representing the Community interest, and the establishment at Council level of an informal 'Eurogroup' to address the development of the policy mix and the coordination of economic policy in the EEMU, yet without any decision-making powers under the Treaty (see point 2.2 of the EESC opinion on the Coordination of economic policies in the long term ([1])). All these initiatives clearly demonstrate the need for transparent, coherent, efficient and Treaty-mandated rules.

3.3.3. In particular, it is becoming ever more apparent that the currency union, which involves a centralised European monetary policy, both necessitates and facilitates a new macroeconomic approach (cf. also point 7 of the Barcelona European Council conclusions). A central feature of this is the policy mix of monetary and budgetary policy and wage trends, while respecting the autonomy of the players involved and at the same time taking account of the Community interest. This is vital for growth and employment prospects (importance of macroeconomic dialogue).

3.3.4. Economic policy need not be overly centralised to ensure that, in its other areas as well, due account is taken of the Community interest. However, it may be worthwhile reconsidering the appropriate division of powers in the field of economic policy between the various levels in the Member States (local authorities, regions, constituent states and central or federal government) and the representation of the Community interest. [This is a difficult technical issue. With a view to the Convention and, later, the intergovernmental conference, a high-level group of experts — along the lines of the 1970 Werner group and the 1988/89 Delors group — should therefore in the very near future be tasked to draw up specific proposals.]

3.3.5. Economic governance is a field in which the European Community also needs to be equipped to meet the challenges of the 21st century. Points to note in this regard include the following:

a) Over the next ten to fifteen years, improved economic governance should make a substantial contribution to securing a return to full employment (cf. the Lisbon objectives) and thus to placing the maintenance and development of the European social model, including the key components of social services of general interest, on

([1]) OJ C 221, 17.9.2002, p. 67.

([2]) OJ C 221, 17.9.2002, p. 67.

a sound economic footing. To do that, it is necessary to make more effective and more transparent arrangements for the harmonised application of macroeconomic policy and macroeconomic structural policies, and for more in-depth dialogue among macroeconomic policy players. That is the only way to achieve the Lisbon objectives.

b) A return to full employment under these conditions and, of course, in line with sustainable development would not only mean the creation of some 30-35 million new jobs over the next ten to fifteen years — a figure almost equalling the present number of people in work in Germany. It would also increase the Community's annual gross domestic product — over and above productivity growth — by an amount almost equivalent to German GDP — and around twice the GDP currently generated by the candidate countries for accession (excluding Turkey). This might also be termed internal Community enlargement. Such a development is also necessary to enable the EU countries to deal more effectively with the demographic problems that will present themselves later in the 21st century.

c) In the course of the upcoming enlargement, it is vital that the Community remain capable of effective economic policy action. In addition, however, enlargement should also be accompanied by a deepening both of the single market and of economic policy. Moreover, geographical enlargement will further boost the Community's GDP and its future potential for employment and growth (see the example of Ireland). However, it is vital to bear in mind the risks involved in enlargement, to maintain the Community's economic and social cohesion during the transition period and to ensure that the monetary union also remains capable of effective economic policy action. It must be remembered that, probably for some time after enlargement, the Community will have considerably more members than the monetary union.

d) Achieving these goals will further significantly strengthen the Community's economic and political clout on the world stage. To fully realise its potential in this regard, the Community must be able to speak to the outside world with one voice — including (but not only) on economic affairs.

e) The Committee considers that the discussion on economic governance must lead to a new model base on coordinated economic and social development; in particular it must take account of the diverse and different needs and situations of businesses and incorporate the principles advanced in the European Charter for Small Enterprises.

3.4. *A positive outlook*

3.4.1. The points outlined above opens up a perspective within which the Community can achieve its goals of freedom and peace, prosperity and social balance — both sustainably and through the voluntary, joint exercise of sovereignty. The Community's economic, social and also political model could thus become a paradigm for a world in which it is possible to draw on the benefits of an international division of labour without the social downside, and in which any present or future threats of hegemony can be transformed into peaceful partnerships.

3.4.2. This prospect — a European dream — does not mean that specific regional and national characteristics and responsibilities have to be sacrificed on the altar of EU supremacy. The balanced solution is the full, two-way application of the subsidiarity principle to European governance, and thus also to economic governance in the EU. In other words, powers best exercised at lower levels should remain there. By the same token, those powers that can best (or perhaps even can only) be exercised at a higher level ought, therefore, to be assigned there. This means, however, that the higher level concerned must be equipped with the requisite democratic legitimacy. The issues involved here present major challenges both for the European Convention and the subsequent intergovernmental conference.

3.5. The assignment of powers to the various levels and players involved in economic governance should also be reflected in transparent consultation and coordination procedures. These include, for instance, mutual information so as to learn from best practice, the mandatory consultation of the groups and institutions concerned (e.g. the European Economic and Social Committee), the open coordination method, organised dialogue among autonomous players (chaired by the party representing the Community interest, e.g. macroeconomic dialogue) and the transparent application of the Community method (Commission proposal, majority Council decision-making with the involvement of the European Parliament). They also extend to clearly centralised decision-making (e.g. monetary policy).

4. **Specific proposals**

4.1. A number of more or less specific and wide-ranging proposals have been put forward for improving economic governance in the EU, not least the following Commission proposals:

— Communication from the Commission of 7 February 2001 on strengthening economic policy coordination within the euro area [1], dealing with the situation in the run-up to changes to the Treaty;

[1] COM(2001) 82 final.

— Commission Communication — A project for the EU — [1], setting out some key proposals for Treaty amendments.

On 19 July 2002, the Commission also set up a group of experts on economic governance in an enlarged EU. Other proposals come from the consultative committees, the European Central Bank, the Ecofin Council and the European Parliament (draft of 27 June 2002, provisional: 2002/2062(INI)).

4.2. The European Economic and Social Committee has also issued a number of relevant opinions, setting out initial proposals (notably its opinion on the Contribution of the European Economic and Social Committee in respect of the broad economic policy guidelines for the Member States and the Community for 2002 [2] of 20 March 2002 and the opinion on the Coordination of economic policies in the long term [3] of 29 May 2002).

4.3. The Committee's proposals in the present opinion [4] are based on the following considerations:

— Some improvements may even be made without amending the Treaty, but there has to be transparency and genuine democratic legitimacy.

— However, in a number of cases, a Treaty amendment seems unavoidable.

— The Council (and the Parliament) — acting on a proposal from the Commission and having obtained the opinion of the European Economic and Social Committee (and also the Parliament in the absence of the co-decision procedure) — should make greater use of secondary legislation. The Treaty basis for this must be expanded (e.g. Article 99(5)).

4.4. The Committee would make the following proposals in the run-up to any changes to the Treaty:

4.4.1. The Commission should not only submit a survey of the existing formal and informal procedures, 'processes' and consultations involved in the formulation and coordination of economic policy at Community level [5], but should also conduct a critical analysis with a view to simplification and greater efficiency.

4.4.2. The Commission Communication of 7 February 2001 on strengthening economic policy coordination within the euro area contains ideas for improving coordination without amending the Treaty. These ideas should again be addressed and re-examined in the light of possible Convention proceedings and a likely Treaty revision. The proposals are designed to improve eurozone economic policy coordination, including, for instance, taking better account of the policy mix of monetary and budgetary policy and wage trends in the eurozone, drawing up a range of rules for economic policy so as to boost the credibility and predictability of the economic strategy in the eurozone, enhancing dialogue among those responsible for economic policy, and providing the Commission and the other Member States with prior information about national economic policy measures that may have an impact on the eurozone.

4.4.3. With a view to the Convention proceedings and above all the future intergovernmental conference, serious consideration should be given to the idea of establishing a high-level group of experts on economic governance in the EU along the lines of the 1970 Werner group and the 1989 Delors group. Indeed, without the expert counsel and authority of the Werner group, and especially the Delors group, the EEMU would not have been set up. That said, no optimum solution has yet been found for the organisation of economic governance within the EU and especially within the EEMU, or for an appropriate division of powers between the various levels in the Member States (local authorities, regions, constituent states and central or federal government) and the representation of the Community interest. The Convention and the subsequent intergovernmental conference could only benefit from highly expert and authoritative advice on this thorny issue that is nonetheless of key importance for the Community interest.

4.4.4. Efforts should be stepped up to promote a broad and informed public debate, including on ongoing Community economic policy issues. To a certain extent, this can be achieved through mandatory opinions of the European Economic and Social Committee and the social partners on the key Community economic policy documents. The Commission should be required to comment publicly on these opinions. Moreover in its opinion on the Coordination of economic policies in the long term [6] the European Economic and Social Committee proposed setting up an independent, European expert body to assess the Community's economic development and policy, which would perform a consultative role, stimulating analysis and public discussion through constructive criticism and proposals. The aim of this proposal is not the continual establishment of new bodies. Rather, it is intended to help prevent the various Community institutions setting up

[1] COM(2002) 247 final.
[2] OJ C 125, 27.5.2002, p. 56.
[3] OJ C 221, 17.9.2002, p. 67.
[4] The following list of proposals is derived from point 4 of the EESC opinion of 29 May 2002 on the Coordination of economic policies in the long term.
[5] Cf. number 45 in the Euro Papers series: Coordination of economic policies in the EU: a presentation of key features of the main procedures.
[6] OJ C 221, 17.9.2002, point 4(ii).

competing councils of experts. The important thing is to promote informed and independent public discussion of economic policy issues in the Community and the monetary union. Such a council of experts could be established via secondary legislation once the legal basis under Article 99(5) has been amended accordingly.

4.5. As regards Treaty amendments [1], the Committee would make the following proposals:

4.5.1. The aim of full employment should be mentioned explicitly in Article 2. It should also be stated more clearly that economic policy must make a substantial contribution to achieving the objective of employment and growth (Articles 3, 4 and 98). Social services of general interest should also be included in the list of objectives set out in Article 2, with appropriate adjustments to Articles 3, 4 and 16. Articles 2, 3, 4 and 16 of the consolidated version of the Treaty establishing the European Community could then be amended as follows:

Article 2

The Community shall have as its task, by ..., to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, the attainment of a high employment rate commensurate with the goal of full employment, taking account of appropriate job quality and the dignity of work, a high level of social protection and of social services of general interest, equality between men and women ... among Member States.

Article 3

1) For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

In the following points listed from a) to u), a new point, h)(i) should be inserted as follows:

'h)(i) the development of Community guidelines for general economic policies and, in the stability-oriented framework of the monetary union, without prejudice to the provisions of Articles 101 to 105 and respecting the autonomy of the various players concerned, in particular the promotion of an improved policy mix of monetary policy, budgetary policies and wage trends in order to better safeguard the Community interest and contribute to the achievement of the objectives in the fields of growth, competitiveness and employment set out in Article 2;'

Article 4

1) no change except that the term 'open market economy' should be replaced by 'open and social market economy'.

2) ... the introduction of a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 (same wording as in Article 105), in accordance with the principle of an open and social market economy with free competition.

3) ... a sustainable balance of payments, so that the growth and employment objectives referred to in Article 2 can be pursued sustainably and on a sound basis.

Article 16

This article is not very clear. If it is to remain unchanged, the following could be added at the end: ... enable them to fulfil their missions. This shall also broadly apply to public and private bodies and undertakings serving general social interests.

4.5.2. The subsidiarity principle should be framed more symmetrically: Article 5 could be worded as follows:

Article 5

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. The principle shall thereby apply that powers best exercised at local, regional or national level should also remain at these levels. Powers that can be exercised more effectively, or exclusively, at Community level should be transferred to that level, with due regard for the rules of democratic legitimacy and control.

In areas which... (this section remains unchanged).

4.5.3. On tax policy issues, the Committee would refer to its most recent opinions on Tax policy in the European Union — priorities for the years ahead [2] and Direct company taxation [3]. On the question of unanimity, the procedure for strengthening co-operation as defined in the Treaty of Nice could be used, which would enable a group of Member States to move forward as pathfinders in accordance with Community rules. With regard to Article 93, the introduction of a time limit could also be considered to resolve the unanimity issue.

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[1] Amendments relate to the consolidated version of the Treaty establishing the European Community, OJ C 340, 10.11.1997, pp. 173-308.

[2] OJ C 48, 21.2.2002, p. 73, (ECO/072).

[3] OJ C 241, 7.10.2002, p. 75.

Article 93

Amending this article raises fundamental issues. Consideration should be given to the possibility of adding the following sentence:... within the time-limit laid down in Article 14. Where no unanimous decision is reached despite the fact that the Commission and the Parliament, acting by a majority, have established the existence of a serious impairment to competition or to the functioning of the internal market, or harmful tax competition, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, may, three years after the existence of such a situation has been established, adopt such measures as may be necessary.

4.5.4. Article 98 should recognise that the Community also pursues an economic policy. It might be worded as follows:

Article 98

Member States and the Community shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2, and in the context of the broad guidelines referred to in Article 99(2). The Member States and the Community shall act in accordance with the principle of an open and social market economy with free competition...

4.5.5. Article 99 should be extensively reworded, taking account of the following points:

a) The Commission should explicitly represent the Community interest in economic policy coordination; on matters of economic policy, it should also conduct the external representation both of the Community and of the monetary union.

b) The role of the European Parliament and the European Economic and Social Committee should be explicitly defined.

c) The procedure for drawing up the broad economic policy guidelines should be established along similar lines to that used for the employment guidelines (Article 128) including the Commission's right to make proposals.

d) Mention should be made of the role of the Statistical Office of the European Communities in monitoring implementation of the broad economic policy guidelines, and of the various coordination procedures.

e) A Euro-Ecofin Council should be formally set up for a transitional period; explicit mention should be made of the importance of the policy mix of budgetary policy, wage trends and monetary policy for achieving the growth and employment objectives referred to in Article 2, and macroeconomic dialogue should be formalised.

f) In cases of inconsistency with the broad economic policy guidelines, the Commission should be able to issue an early warning and the Council to publish a formal recommendation; if need be, scope should also be provided to update the broad economic policy guidelines.

g) Secondary legislation in the field of economic policy coordination should have an appropriate legal basis so that it can be used, among other things, to address new economic policy developments and to make detailed provisions for the coordination procedures, in a transparent way, and without the need each time either to amend the Treaty or to establish informal and opaque procedures and 'processes'.

Taking account of these considerations, Article 99 should be amended as follows:

Article 99

99(1) Member States shall regard their economic policies as a matter of common concern. Economic policies shall be coordinated in the Council, with the Commission representing the economic policy interests of the Community as a whole and of the monetary union (cf. Article 213). On matters of economic policy, the Commission shall conduct the external representation of the Community as a whole and of the monetary union. The Parliament, where the Treaty does not provide for the procedure referred to in Article 252, and the Economic and Social Committee shall be consulted on all key matters of economic policy.

99(2) The European Council shall each year consider the economic situation and the orientation of economic policy in the Community and adopt conclusions thereon, on the basis of an annual economic report by the Commission and taking account of the opinion of the Council. (same procedure as in Article 128)

In its annual economic report, the Commission shall also give an opinion on the annual report of the independent European council of experts which shall be set up pursuant to Article 99(5) to assess macroeconomic development in the Community.

99(2)(i) On the basis of the conclusions of the European Council, the Council shall, on a proposal from the Commission and having consulted the Parliament and the Economic and Social Committee, adopt a recommendation setting out the broad guidelines of the economic policies of the Community and of the Member States. This recommendation shall cover all the key areas of economic policy at least every three years. The Council shall inform the Parliament of its recommendation.

99(3) First paragraph unchanged, except for the final clause: ... and, on a proposal from the Commission, carry out an overall assessment at least once a year.

Second paragraph: add the following sentence at the end: The Statistical Office of the European Communities shall compile the statistics required for this surveillance. Detailed provisions for this shall be adopted pursuant to Article 99(5).

99(3a) In line with the coordination requirements in the individual sectors of economic policy and the need in each case to take account of the Community interest, various coordination procedures may be adopted pursuant to Article 99(5), bearing in mind the need for transparency.

99(3b) For as long as not all the Member States of the Community take part in the monetary union, the economic policy issues relating to the monetary union shall be addressed in a special Council configuration (Euro-Ecofin) in which the Member States of the monetary union are represented. On the basis of reports from the Commission and the ECB, which shall also take account of external economic developments, the Euro-Ecofin shall discuss on a regular basis and without prejudice to the provisions of Articles 101 to 105, respecting the autonomy of the various players concerned and taking account of the principles set out in Article 4(3), how the policy mix of monetary policy, budgetary policies and wage trends can be improved with a view to achieving the objectives in the fields of growth, competitiveness and employment set out in Article 2. Any recommendations and other decisions shall be adopted by the Euro-Ecofin Council acting by a qualified majority of its members on a proposal from the Commission. The Parliament and the Economic and Social Committee shall be consulted on fundamental issues. Detailed working provisions for the Euro-Ecofin Council shall be adopted pursuant to Article 99(5).

99(3c) A macroeconomic dialogue shall be conducted at least twice a year between the Council, the Commission, the ECB and the European social partners (cf. Articles 138 and 139). One representative each from the Parliament and the Economic and Social Committee shall take part in these meetings as observers. On the basis of reports from the Commission and, if appropriate, the ECB, this dialogue shall address the economic situation, the economic outlook and the economic policy issues affecting the Community interest as a whole;without prejudice to the provisions of Articles 101 to 105, respecting the autonomy of the various players concerned and taking account of the principles set out in Article 4(3), this shall also include improving the policy mix of monetary policy, budgetary policies and wage trends with a view to achieving the objectives in the fields of growth, competitiveness and employment set out in Article 2.

This dialogue shall not result in any binding ex-ante coordination of budgetary, wage and monetary policy, but the individual players and groups of players in the field of macroeconomic policy shall, with complete respect for their autonomy, exchange information about their assessment of the situation and their intended actions.

The Commission shall represent the Community interest within this dialogue. The social partners may, if they wish, submit to this dialogue joint statements of position: in that case, the Commission shall support this dialogue between the social partners pursuant to Article 138(1).

The macroeconomic dialogue shall be chaired at a technical level by the appropriate Commission departments and, at a political level, by the president of the Council.

Further details shall be adopted pursuant to Article 99(5).

99(4) New first paragraph: Where the Commission establishes that there is a risk of inconsistencies between a Member State's economic policies and the broad guidelines referred to in Article 99(2) or that these policies risk jeopardising the proper functioning of economic and monetary union, the Commission shall issue an early warning to the Member State concerned and to the Council. Where it is established, under the procedure referred to in the first paragraph of Article 99(3), that this risk has become a reality or is highly likely to become a reality, the Council, acting by a qualified majority on a proposal from the Commission, shall make the necessary recommendations to the Member State concerned. These recommendations shall be public.

99(4) New second paragraph: Where it is established, under the procedure referred to in the first paragraph of Article 99(3), that certain general parts of the broad guidelines referred to in Article 99(2) must be reformulated because of overall and/or international economic developments, the Council, acting by a qualified majority on a proposal from the Commission, shall adapt the recommendation as required. This recommendation shall be public.

99(4) The former second paragraph becomes the new third paragraph and remains unchanged, except for the deletion of the final phrase:... if the Council has made its recommendations public.

99(5) New wording: Acting on a proposal from the Commission the Council shall, in accordance with the procedure referred to in Article 252, adopt detailed rules for the coordination procedures referred to in the present Article 99.

4.5.6. There should be a thorough revision of Treaty Article 114 under which the former Monetary Committee is replaced by the Economic and Financial Committee which is then accorded a status comparable to that of a committee of Permanent Representatives of the Member States (Article 207) in the field of economic policy. This article does not, however, regulate relations with the Economic Policy Committee

(Council decision 74/122/EEC, 18.2.1974) and the Employment Committee (Article 130). In order to ensure the requisite transparency [and thus prevent the emergence of an opaque, uncontrolled focus of power], the Treaty should limit itself here to providing a simple framework and, for the detailed provisions, should refer to secondary legislation which, as in Article 99(5), could be adopted under the procedure referred to in Article 252.

Brussels, 12 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on:

— **the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 1210/90 as regards the budgetary and financial rules applicable to the European Environment Agency and the European Environment Information and Observation Network and access to the Agency's documents',**

— **the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the budgetary and financial rules applicable to the European Food Safety Agency and access to the Agency's documents',**

— **the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of the European Parliament and of the Council concerning common rules in the field of civil aviation and creation of a European Aviation Safety Agency', and**

— **the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 of the European Parliament and of the Council setting up a European Maritime Safety Agency'**

(COM(2002) 406 final — 2002/0169 (COD) — 2002/0179 (COD) — 2002/0181 (COD) — 2002/0182 (COD))

(2003/C 85/17)

On 23 September 2002 the Council decided to consult the Economic and Social Committee, under Article 157 of the Treaty establishing the European Community, on the above-mentioned proposals.

At its 395th plenary session of 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee appointed Mr Chagas as rapporteur-general and adopted the following opinion by 54 votes for with one abstention.

1. The new Financial Regulation applicable to the general budget of the EC [1] will enter into force on 1 January 2003. It presents a new approach concerning the budgetary and financial status of the decentralised Community agencies.

2. The entry into force of this regulation requires amendments to the legal acts establishing the agencies, which include:

— the European Environment Agency (Copenhagen) [2];

[1] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1) — EESC opinion: OJ C 260, 17.9.2001, p. 42).

[2] Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network (OJ L 120, 11.5.1990, p. 1) — EESC opinion: OJ C 56, 7.3.1990, p. 20.

— the European Food Safety Authority [1];

— the European Aviation Safety Agency [2];

— the European Maritime Safety Agency [3].

3. Amending the legal acts establishing these agencies involves consulting the European Economic and Social Committee.

4. The European Economic and Social Committee welcomes the Commission's proposals.

[1] Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 June 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1) — EESC opinion: OJ C 155, 29.5.2001, p. 32.

[2] Regulation (EC) No 1592/2002 of the European Parliament and of the Council on establishing common rules in the field of civil aviation and creating a European Aviation Safety Agency (OJ L 240, 7.9.2002, p. 1) — EESC opinion: OJ C 221, 7.8.2001, p. 38.

[3] Regulation (EC) No 1406/2002 of the European Parliament and of the Council establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1) — EESC opinion: OJ C 221, 7.8.2002, p. 54.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Economic and social consequences of enlargement in the candidate countries'

(2003/C 85/18)

On 16 and 17 January 2002, the European Economic and Social Committee decided, under Rule 23 of its Rules of Procedure, to draw up an opinion on the 'Economic and social consequences of enlargement in the candidate countries'.

The Section for External Relations, which was responsible for drawing up the Committee's work on the subject, adopted its opinion on 7 November 2002. The rapporteur was Mr Dimitriadis and the co-rapporteur was Mrs Belabed.

At its 395th plenary session (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 98 votes to 2 with 3 abstentions.

Summary

The present opinion clearly demonstrates the special interest taken by the EESC in the completion of the accession negotiations for the candidate countries in the current enlargement exercise, even if certain important parameters remain to be decided. The enlargement presents the EU with its most demanding test since it was set up, but at the same time poses the great challenge of achieving the Lisbon Council's objective of making the EU the most competitive economy in the world.

The EESC supports enlargement in every way and shares the view of the Danish Presidency that the timetable for enlargement must be respected, taking account of the progress achieved by each candidate state individually.

The EESC offers various kinds of support to the enlargement process, and in particular in the development of cooperation with and support for the socio-occupational organisations, the social partners and specialised NGOs in the candidate countries, so that (a) they can operate productively at national level, (b) they organise more effectively by acquiring the

necessary know-how, (c) they can take part in problem-solving at local level, (d) they can take an active part in European activities. The EESC endorses this idea and will make every effort to achieve it, even after accession, which in itself is not the solution to all the candidate countries' socio-economic problems. The EESC is committed to promoting enlargement as a horizontal theme running through all its work, in accordance with the aims of the 2002 action programme for enlargement.

1. **Introduction**

1.1. The enlargement procedure constitutes a dynamic progress towards the unification of Europe, strengthening peace, security and prosperity throughout the continent. In the course of the last decade, under particularly unfavourable conditions, the countries which are candidates for accession have achieved particularly striking economic and administrative progress on the road to membership of the EU. Nonetheless, continued efforts are needed in order to maintain this progress, particularly in the next few years, which are regarded as critical on the one hand for the successful conclusion of their accession negotiations, and on the other for tackling the problems of adjustment which will arise from the full, substantive implementation of the Community *acquis*.

The vision of creating a united Europe with a large single market of more than 500 million European citizens, including those from the candidate countries, could become a reality, provided that (a) the economic and social changes in those countries proceed rapidly and without setbacks of any kind ([1]), and (b) that the socio-economic conditions allow it, i.e. if the citizens of the candidate countries accept the new situation and feel secure in a united Europe.

1.2. The candidate countries face a double challenge: while still endeavouring to reform their whole political, economic and social system, it is necessary at the same time for them to adjust immediately to the Community *acquis*. These are two parallel, often overlapping, but still distinct processes imposed by a whole series of commitments and obligations to international actors which often point in different political and economic directions on the basis of their respective strategies and social models. Accession to the EU is therefore very much influenced by the transition and vice versa. In addition to the economic and social effects of enlargement in the candidate countries, the EU will experience a considerable impact from the systems established in the candidate countries, once these countries join the EU. It seems that the current Member States are not yet aware of the full extent of this impact.

1.3. At the Conference on Enlargement held on 16 November 2000 (in Brussels) under the aegis of the EESC, representatives of various social groups discussed the actual situation and the impact of the candidate countries' accession to the EU. The Conference 'signalled to the Council and the other EU institutions, as well as to the governments of the candidate countries, the need to properly anchor the forthcoming accessions of new members in the civil society... The Conference expressed its conviction that a sustainable and prosperous enlargement of, and accession to, the European Union, relies much on these actors' successful involvement in the preparatory efforts.'

1.4. In the course of the meetings on enlargement held at the EESC from 5 to 7 November 2001 ([2]), Mr Günter Verheugen, the Commissioner responsible for enlargement, called on the EESC to concentrate its attention on the economic and social effects which enlargement would have on the candidate countries.

1.5. In addition, the members of the Joint Consultative Committees (JCCs) set up with the candidate countries were called upon ([3]) to help ensure the success of enlargement, both for the EU and for the candidate countries. Their meetings deal with the most important issues affecting the enlargement countries and there is unrestricted dialogue covering some of the main questions relating to agricultural payments and quotas, regional policy, bureaucracy in public administration, the absence of social dialogue, the free movement of people, the causes of the delays observed in EU funding, the economic contribution of SMEs, the limited research in the scientific field, vocational training, low competitiveness and, finally, the lack of public information on enlargement in the candidate countries.

1.5.1. The criteria for assessing the progress of each country, as defined by the Copenhagen Summit in 1993, still remain in force. Apart from Turkey, the candidate countries continue to meet the political criteria laid down in Copenhagen. In most of the enlargement countries, a good deal of progress has been made in deepening and consolidating democracy, in respect for the rule of law, in protecting human rights and in strengthening democratic structures.

([1]) See also the EESC opinions: The employment and social situation in the central and eastern European candidate states (OJ C 193, 10.7.2001) EU enlargement: the challenge faced by candidate countries of fulfilling the economic criteria for accession (OJ C 193, 10.7.2001).

([2]) Summary Report on the European EESC Enlargement Meetings 5-7 November 2001.

([3]) EESC Enlargement Week Conference 'Towards a partnership for economic growth and social rights', 14 to 17 November 2000.

1.6. Every effort, however, will need to be focused on the capacity of the candidate countries to fully adopt the Community *acquis* and particularly to transpose it into national legislation. It is noteworthy that, while a good many laws were adopted to complete the Community *acquis*, these have not been accompanied by the necessary supporting measures and, above all, we do not know what the effects will be when they are fully implemented in practice. In general the candidate countries have clear objectives to achieve with a view to accession; this is particularly helpful to them in defining their priorities and in speeding up specific reform procedures.

The opinion gives priority to examining the following themes:

2. **Present economic situation — Restructuring**

2.1. *Economic data — Statistics*

2.1.1. On average, the increase in the real GDP of ten of the candidate countries almost reached 5 % in 2001. In the first half of 2001, there was a slowdown in the increase in the GDP of the candidate countries. The per capita GDP as a percentage of the Community average (measured in purchasing power standards, PPS) reached 39 % in 2000, as against 38 % in 1999 for the ten central and eastern European countries. The total GDP of the candidate countries amounts to only 5 % of the EU's GDP [1]. The large rises in the price of oil caused inflation to rise from 10 % to 15 % in 2000. Despite the good growth figures, unemployment rose from almost 11 % to 12,5 % in 2000, and to 18 % in 2001 (even reaching 25-31 % in some regions). The rise in unemployment reflects the negative effect of structural changes on the labour force, distortions in the labour market and the lack of correlation between vocational capacities and the jobs on offer.

2.1.2. The collapse of the 'command economy' system in 1989 and the transition to a market economy have given rise to a new conception of economic, social and entrepreneurial processes in the candidate countries, with a parallel shift of their economic orientation from east to west. In most cases, there was intense public reaction to the drastic change in socio-economic conditions, because of (a) the increased political and socio-economic cost of transition, (b) the inefficiency of public authorities and (c) the collapse of internal economic mechanisms and processes.

2.1.3. Economic restructuring has generated new jobs in new sectors, while simultaneously eliminating a large number of jobs from the traditional branches of industry, thus leaving high unemployment, inadequate infrastructure and gloomy prospects for large geographical areas. This, in combination with financing problems, is the greatest development challenge in those regions. Efforts must centre on bringing all the parties involved together to develop a strategy for these regions and to create the right conditions for investment and job creation. In addition to skill-development measures, there is a need for an effective labour market policy, improved infrastructure, and a balanced policy for social benefits, wages and salaries, so as to foster the right climate both for investors and for workers so that new job vacancies can be offered and filled.

2.1.4. The trade of the candidate countries has undergone significant restructuring in recent years, with the EU now the main trading partner for most of them. Moreover, as expected, the increase in imports of goods and services has created a deficit in the trade balances of the majority of these countries.

2.1.5. The new competition conditions which will be created by accession will most probably lead to significant realignments in key sectors of these countries' economies (agriculture, processing etc.). Particular importance will need to be given to preparation for all the complex factors involved in the new competition conditions arising from enlargement, and the probable effects of these on apparently 'healthy' sectors.

2.2. *Industry — Services — Trade*

2.2.1. Foreign direct investment has contributed significantly to balancing the external debts of all the candidate countries. It has also been an important source of new jobs, preventing a serious employment crisis both in large firms and in SMEs. The bulk of this foreign direct investment comes from privatisations, mainly of public industrial firms, yielding the majority of inward capital flows. One fifth of foreign direct investment in the commercial sector goes to labour-intensive branches, such as textiles, clothing, electrical machinery and motor-vehicle manufacturing. Foreign direct investment also remains the principal means of replacing obsolete heavy equipment, and introducing and teaching new technologies and forms of management as well as modern sales promotion

[1] Eurostat — Statistical Yearbook 2002.

tools. Despite the substantial changes which have taken place, heavy industry remains a vital economic and social factor in many regions; if it is not supported significantly it will give rise to further social problems.

2.2.2. Privatisations have been a key tool in the transition process. They had and still have varying results depending on country, sector, size of companies, selected method and the legislative and institutional environment. In many cases, although privatisation has considerably boosted individual companies' productivity, this has been at the expense of a rise in unemployment and growing income disparities.

2.2.3. Privatisation has spread from industry to other sectors such as the public utilities, transport and energy, in tandem with efforts to achieve the overall restructuring of these sectors. Banking sector privatisation programmes have been completed in most of the candidate countries, but governments continue to intervene in some state banks in operational matters or in framing credit policies. Special attention should focus on the lack of privatisation procedures in other financial and economic sectors in the candidate countries. It is, however, worth stressing that privatisations in the finance and credit system, and particularly in the banking sector, have not been and are not always a solution to all economic and social problems.

2.2.4. Transport in candidate countries faces a tremendous challenge in transforming and implementing *acquis* into legislation. Specific measures should be streamlined in administrative and organisational support for the candidate countries in order to implement in practice transport legislation [1].

2.2.5. The lack of up-to-date financial instruments acts as a deterrent to investment in the growing private sector. In most cases, further progress is needed prior to accession, in order to boost the efficient transposition of instruments for establishing monetary policy. It should be emphasised that the existence of controls to verify that the banking sector is operating in compliance with the law does not mean that similar regulatory machinery exists in other sectors, where intermediary service companies could be developed, offering development and efficiency. It should be emphasised that the regulatory machinery is not absolutely strict and secure in financial terms, while it often creates considerable delays and hindrances to entrepreneurial activity. Similarly, the absence of firms providing mutual guarantees for credits to SMEs significantly increases the investment risk.

2.2.6. Unjustifiable delays in implementing the necessary land ownership reform remain the major cause of the lack of development in the housing, construction and property markets, with a direct and negative impact on the labour market, SME growth, new enterprises and financial intermediaries. This particular problem is also hindering the entry of domestic and foreign investors in both these and a wide range of other sectors, especially when compounded by the legal loopholes affecting property rights.

2.2.7. Horizontal infrastructures need to be put in place or reinforced in the internal market sector, particularly those which facilitate a good business environment and entrepreneurship. Examples of areas where there is considerable room for improvement include: market supervision, standardisation, certification and industrial and intellectual property rights.

2.2.8. Competition in the broad sense has only been fostered as an economic, social and entrepreneurial principle over the last decade in the candidate countries. The progress made so far must be maintained and stepped up by creating institutional bodies to monitor the competitive framework and individual competition policies, as in the EU 15.

2.2.9. The lack of the necessary culture for producing innovation and the unclear definition of the research and development contribution to sectors of the economy call for special attention on the part of the candidate countries.

2.3. *Small and medium-sized enterprises*

2.3.1. The EESC takes the view that SMEs are the most important source of growth for the CEECs because of their flexibility and adaptability, and that they can make an important contribution to reducing unemployment. Enterprises, and especially SMEs, have an important role to play in the enlargement process. The EESC has already pointed out that 'Enterprises have an essential contribution to make to the creation of new jobs and the generation of income, which are prerequisites for further economic and social development'. Thus it is particularly important to encourage the authorities in the candidate countries to speed up the machinery for informing firms affected by the Community *acquis* and boosting the entrepreneurial spirit in SMEs.

2.3.2. The SME sector has shown itself capable of growth and flexibility, despite its relative lack of experience and the

[1] See EESC Opinion on Transport/Enlargement, September 2002.

absence of specific financial resources, and it contributes very substantially to GDP and employment in all the countries concerned. SMEs in the high technology/informatics, specialised production and services sectors, in particular, tend to have similar characteristics and results in terms of employment to larger companies benefiting from direct foreign investment.

2.3.3. In other sectors, however, SMEs operate in an economic environment where the 'parallel economy' has a considerable influence on their chances of surviving and maintaining their place in the market. The impact of the parallel economy on labour relations leads to: (a) precarious forms of employment; (b) payments at the level of the minimum wage or even lower; (c) in some cases, additional 'cash-in-hand' payments; (d) limited-duration contracts or complete absence of contracts, ignoring labour agreements and the rules on working hours.

2.3.4. The EESC calls upon the Commission to give more attention to improving conditions for SMEs in the candidate countries, further encouraging the entrepreneurial spirit and proposing measures for support and training, always accompanied by the fullest information on the European Union's policies on SMEs.

2.4. *Public services*

2.4.1. The public-interest services sector (public utility bodies) deserves special attention. As experience in Western countries has shown, the total liberalisation of this sector, in competition with private enterprises, can lead to problems of supply and/or safety. In some candidate countries, the rise in energy prices has left households unable to pay for their electricity consumption, so that their supply is cut off. This has often led to serious social unrest. A common problem in the privatisation process is the failure to set up a statutory legal framework in sectors which provide such services (transport, energy, telecommunications). This can lead to the creation of monopolies.

2.4.2. The European Parliament has highlighted the crucial role of investment in developing and enhancing the social fabric of the countries of central and eastern Europe [1]. This represents an important factor in forestalling the unfavourable social effects the implementation process is likely to produce.

2.4.3. The public services urgently need to be modernised in most of the candidate countries, particularly in terms of serving the citizen in his dealings with public authorities. Special emphasis will also need to be placed on introducing IT management solutions in the public sector.

2.5. *Agriculture*

2.5.1. The process of bringing CEEC agriculture into the CAP is a difficult and lengthy one. The starting points situations differ very considerably. There are fundamental differences as regards agricultural structures. Major differences also occur in the way in which structural problems and the issue of competitiveness are being tackled. In most of the candidate states agriculture accounts for a very much higher percentage of overall employment and GDP than is the case in the existing EU Member States. The percentage of the total working population employed in agriculture varies from 5,1 % in the Czech Republic to 42,8 % in Romania (the average figure for the EU Member States is 4,3 %). There are similar major differences as regards agriculture's contribution to GDP, which varies from 2,9 % in Slovenia to 15,8 % in Bulgaria (the average figure for the EU Member States is below 2 %).

2.5.2. As the figures make clear, there is a very considerable difference between the economic importance of agriculture and the social importance of this sector. A relatively large number of workers makes a relatively small contribution to the economy. Particularly in the case of rural areas in the large candidate states, such as Poland and Romania, special note needs to be taken and particular consideration paid to the high level of importance of agriculture to local labour markets, bearing in mind, in particular, the above average level of unemployment in rural areas and the difficulty in creating new jobs in these very areas.

2.5.3. Restructuring in certain branches of industry and the unemployment which has been generated in urban areas have led many people in the candidate countries to return to the countryside [2].

2.5.4. The percentage of declared employment accounted in agriculture in the 13 countries has remained close to 1999 levels, falling slowly in most of them but with a slight increase in employment in the farm sector in certain cases, such as Poland and Romania.

[1] European Parliament Resolution of 17 April 1996 on the White Paper on Preparing the associated countries of Central and Eastern Europe for integration into the internal market of the Union (OJ C 141, 13.5.1996).

[2] DIW-Wochenbericht 1-2/02: Grundlinien der Wirtschaftsentwicklung 2002/2003, DIW, Berlin, 2002; Eurostat: Regional unemployment rates in the Central European Candidate Countries 2000.

2.5.5. The impact of the CAP budget on rural areas and on the overall economy will vary greatly depending on how funds are applied. If decoupling were to apply it could have implications for employment in rural areas. This of course will have social implications, which will require alternative sources of employment needing education and training.

2.5.6. Because of the way in which it is structured, labour-intensive agriculture in the candidate countries is often not competitive. There is clearly considerable pressure for change within agriculture in these countries. Higher productivity is needed, but this could have severe social and environmental consequences.

2.5.7. For the EESC, it is important to reiterate firmly that the development of agriculture and rural areas in the candidate countries must respect the principles of sustainability and that past mistakes must not be repeated.

2.5.8. The preparatory programmes will play an important role right up to the time of accession. The EESC is in favour of decentralising the implementation procedure for the ISPA and especially the Sapard programmes, which ought to be up and running in all the candidate countries as soon as possible. However, it is particularly regrettable that the Sapard programme is being implemented in some countries only after considerable delay — and then in some cases not even in the planned form. This hinders the necessary adaptation process and the reorientation of agriculture towards sustainable production.

2.5.9. At its meeting of 25 October 2002, the European Council decided to phase in direct payments to farmers in the candidate states, in line with the proposal made by the Commission. The EESC believes that this represents an important step towards ensuring that the negotiations on the difficult agriculture chapter are concluded successfully and on time. The EESC hopes that, when judging this decision, the candidate states also take account of the other aid measures, particularly those designed to improve agricultural structures and develop rural areas.

2.5.10. The Committee supports efforts to develop the CAP further, in such a way that European agriculture can not only better match the expectations of society, but also cope well with the new challenges arising from enlargement.

2.5.11. In putting forward its proposals, the European Commission has clearly indicated that it wishes to make greater use of the CAP instruments set out under the second pillar of Agenda 2000, these instruments promote, in particular, rural development and agri-environmental programmes. The EESC has already pointed out in a variety of opinions that, in principle, it regards this policy as the right policy to follow; this observation applies also, and in particular, in the case of the candidate states.

3. **Current social situation**

3.1. *Employment*

3.1.1. In spite of rising overall unemployment, significant labour market differences exist between urban and rural areas. The restructuring of most branches of industry and the growth of the service sector, particularly in urban centres, have accentuated the employment disparities between urban centres and the regions ([1]), leaving large numbers of workers, especially in rural areas, without the right qualifications to match the needs of the new economy, which is increasingly service-oriented. In addition to the measures referred to above for regional development and for attracting investors, a balance must be struck between the jobs on offer, the qualifications required and the salaries offered, in order to use and develop human potential in the candidate countries in line with the Lisbon strategy objectives.

3.1.2. The blueprint of reforms as part of the process of social transformation in the CEECs is based on the assumption that there will be high rates of economic growth, especially through development of a vibrant private sector in the economy. Foreign direct investment (FDI) inflows and SME development have had to serve as the main 'shock absorbers' for the inevitable shedding of manpower and falling living standards. Despite the dramatic changes in the structure and operation of the economies in the region, results have fallen far short of expectations. In most of the cases, employment problems remain a key determinant for success in the accession process.

3.1.3. Experience gained to date from the 'transition' to the free market indicates that high economic growth rates have not been matched by the creation of more or better jobs as an automatic consequence of efforts to restructure and modernise. In some cases (Poland) the highest growth rates have been accompanied by persistent and often growing unemployment problem.

([1]) OJ C 51, 23.2.2000.

3.1.4. Significant segments of the 'pools of cheap labour' have been tapped by the rapid development of the 'parallel economy' and proliferation of cases of 'parallel' practices in legitimate companies. The cumulative effect of the freedoms brought by the reforms and intended as a foil to poverty and a mainstay of social order has helped to fuel the spread of corruption and has had a severely detrimental impact on budget revenues and the financial resources of social funds. No less significant is the impact on the efficient operation of market institutions and mechanisms and the distortion of fair competition in the emerging commodity and labour markets.

3.1.5. Large foreign companies have created the prospect of stable, better-paid and better-quality new jobs for one section of the labour market. They are among the limited group of firms which invest in health and safety at the workplace. However, the number of new jobs can only limit and not reverse the exodus of manpower.

3.1.6. Given the limitations of the economic environment in which SMEs operate, such as light industry, foodstuffs, construction, wood processing and furniture manufacturing, they have a low capacity to absorb unemployment.

3.1.7. Foreign companies' policies naturally attract the most highly skilled labour, which may lead to structural tensions in local labour markets. Territorial FDI concentrations tend to preserve or deepen regional disparities between labour markets both across the CEEC region (80 % in Poland, Hungary and Czech Republic) and within each country. The integration of foreign companies in the local economic systems is still insufficient and the spill-over effects (through new subsidiaries or subcontracting) have so far had limited input in employment creation.

3.1.8. The process of accession and harmonisation of standards, norms and practices involving tighter rules, better control and increased competition could exert pressure to 'clean up' and operate transparently from now on, but this process could be accompanied by a serious negative impact on the employment situation if measures are not provided in time to alleviate this by supporting 'healthy' companies.

3.1.9. In conclusion, the overall employment situation and its prospects necessitate an approach to employment and labour market policies reaching well beyond just 'active measures' and incorporating policy packages on taxation, investment, education, etc. to provide real opportunities for stable and quality job creation.

3.1.10. Talks with the social partners in the joint consultative committees have raised the issues of professional training and the brain drain, among others. The EESC has undertaken to conduct an in-depth study of these issues and make appropriate proposals [1].

3.2. *Wages and salaries*

3.2.1. As wages and salaries still remain relatively low, unemployment is rising and fiscal problems do not permit high transfer payments, the candidate countries face growing inequality and persistent poverty. In the candidate countries in the 1990s, the wage gap widened and the number of people living below the poverty line rose [2].

3.2.2. The diversity of economic factors and forms of working spells a much more complex relationship between wages and total income than there often appears to be. Wage income in many cases constitutes less than half of the total income of households (as aggregate national indicator). Also quite important is the distribution of wages by size in the different countries. In some countries (Bulgaria) there is a tendency towards polarisation with a concentration of wages in the low skill/low pay branches of industries, with the next peak around the average wage and a low peak in the very high pay levels (MNCs, big state companies and utilities) with the private sector lagging behind the public sector.

3.2.3. One of the results of restrictive incomes policies in different forms in the individual countries is that it is often possible to observe the emergence of a new category in these societies — the 'working poor', fertile ground for the parallel economy.

3.3. *Social security systems*

3.3.1. As the EU has only a limited *acquis* in the area of social policy, changes to the social security systems of the candidate countries have been influenced considerably by other international organisations, e.g. the IMF and the World Bank, which have a broader jurisdiction for strategic aid to

[1] Summary Report — European EESC Enlargement Meetings 5 and 7 November 2001.

[2] Presentation by a Commission representative at the study group meeting on 28.5.2002.

these countries. Their influence has geared the changes towards a social model with private elements, with accountability and risk-taking centred more specifically on the individual.

3.3.2. While warmly supporting the European social model, which is based on the principles of social and territorial cohesion, the EU has limited competence or presence to influence the changes and planning of these systems. As a result, in many cases, including the field of social security, the way in which the social model has been planned cannot in the EESC's view serve as a model for Europe ([1]). The EESC proposes that greater attention be given to these questions through the open method of coordination, laid down by the Lisbon Council, in which the candidate countries have already been included by the Barcelona Council; thus they have the opportunity to plan and develop their social security systems according to their own needs and the principles of the European social model.

3.4. *The role of social dialogue and civil society*

3.4.1. The arrangements for social dialogue in the central and eastern European countries (CEECs) feature similar combinations of central tripartite agreements at national level and bipartite collective bargaining concentrated mainly in private companies and in some cases employers' groups. The example of Slovenia is a clear-cut exception as a leading role is played by sectoral bargaining and the established works council system.

3.4.2. The tripartite approach has been introduced mainly with the 'transfer' of a model from abroad, which is also based on the need to preserve social order in the critical stages of the transition process, while the old political system is dismantled and the foundations laid for the development of a market economy — the roller coaster of liberalisation and the initial restructuring of the economy. As the new political and market systems have stabilised, the importance of social dialogue is not so immediately obvious, and interest in it, especially on the part of governments, has diminished significantly.

3.4.3. The accession negotiations have given new impetus to the development of arrangements for social dialogue. They have accelerated the introduction of works councils in the workplace and improved the prospects of CEEC representatives taking part in the European Works Councils of the corresponding multinational companies. However, more efforts are needed to ensure that the harmonisation process leads to effective integration in everyday practice.

3.4.4. In the light of the growing pressure and trend for labour relations to be individualised, the development of labour legislation as the legal basis for labour relations will need to be closely monitored in order to ensure that it proceeds according to the principles of the European social model, of which the social dialogue constitutes an important pillar.

3.4.5. Development is still hampered by:

— a limited understanding of the meaning of national sovereignty in decision making by the executive and legislative powers and their frequent reluctance to inform the social partners in practice and to consult them on matters in their areas of expertise;

— problems with the representation of the social partners, the lack of the necessary institutional framework, and the fragmented representation of interests by the social partners, complicating joint decision-making within the social dialogue structures; there are signs that certain trade associations will join forces, but the problem remains for employers' organisations in a number of cases;

— identity and clearly-defined roles of social dialogue in the new circumstances.

3.4.6. There are still three areas presenting serious challenges for the future development of social dialogue in line with EU standards and practices:

— the development of substantive rules for bargaining at general and sectoral level;

— full acceptance and effective operation of works councils in the workplace;

— the development of social dialogue structures, mechanisms and procedures for SMEs.

4. **Equal opportunities**

4.1. Legislation in the individual candidate states is largely consistent with the key requirements of EU law relating to the equal treatment of women and men. Unfortunately, practice often differs. As in the Union, the main problems arise above all because economic difficulties affect women and men in different ways ([2]). In addition, publicity on the importance of equal opportunities for men and women remains at a low level.

([1]) Employment, economic reform and social cohesion — Towards a Europe of innovation and knowledge — OJ C 117, 26.4.2000.

([2]) Agenda 2000, Vol. II: The challenge of enlargement (impact study), p. 46 (COM(97) 2000).

4.2. Equal opportunities, however, relate not only to the relationship between men and women, but also to the avoidance of any kind of discrimination based on 'racial or ethnic origin, religion or belief, disability, age or sexual orientation' (Article 13, EC Treaty). With regard to the situation of minorities in particular, there are still considerable problems to be addressed in the candidate states.

4.3. Forceful measures will need to be put forward to deal with the continuing problems relating to conditions and terms of detention in certain candidate countries, the exploitation of women and children, equality of the sexes and prevention of discrimination.

4.4. In particular, the socio-economic gap between the Roma people and the majority appears to be widening. Special measures will need to be taken with a view to facilitating their access to social services and infrastructures ([1]).

4.5. The ethnic dimension of economic and social problems must be addressed systematically. Business opportunities, living and working conditions, schooling, access to public services, etc., differ greatly for ethnic minorities. Minorities tend to remain closed in on themselves for a variety of reasons, some cultural and relating to economic motives, others systemic problems arising from the fact that a number of EU policy measures do not work, as they were designed for the West ([2]).

5. **Consumer rights**

5.1. The EESC supports the efforts of bodies representing civil society, and more specifically consumers' associations, as they enter the fray in the candidate countries and make a start on the difficult tasks facing them. They deserve support and encouragement. The EESC calls on the Consumer Protection Directorate-General to use all possible means to bolster the consumer movement in the enlargement countries and provide the necessary know-how.

5.2. The EESC is closely following legislative and administrative developments in the field of consumer protection, particularly with regard to food safety in the candidate countries, where efforts have begun in a fairly difficult environment and with very substantial shortcomings in protection measures.

6. **Environmental issues**

6.1. Protection of the environment had in the past a very low priority in the candidate countries, with the result that, for example, heavy industry has caused considerable environmental damage, which is in many cases irreversible. In recent years very positive changes have taken place; many types of efforts have been made, above all in technical protection of the environment. However, a great deal remains to be done in order to meet the EU environment standards, to complete the mainstreaming of environmental protection in other policy fields, and to ensure sustainable development. The Committee regrets that, in the debate on environmental matters in the candidate countries, the social and economic aspect has hardly been mentioned. The opportunities of future job creation offered by environmental protection, but also the social questions which can be linked with increased environmental expenditure, should be given greater attention. The EESC calls upon the Commission to promote this hitherto all too brief process, at the same time further to assist the efforts now underway by transferring funds and know-how, and to press strongly for the necessary reforms where the need to protect and conserve the environment has not yet been understood.

6.2. Special attention will have to be paid to protection of the environment and ecosystems — including the protection of the still relatively rich biodiversity — in relation to the other accession questions. The development of environmental infrastructure and use of effective control mechanisms to implement effective regulations will play an important role here in all the candidate countries.

6.3. The EESC urges all EU institutions to review even more closely the environmental impact of their pre-accession programmes and investment aid.

7. **Safety**

7.1. Public safety remains a key issue in the enlargement process. Safety in general covers various areas such as food safety, nuclear safety, road safety, etc. The social implications need to be examined more carefully when implementing safety measures. For instance, unemployment in the Koslodui region is still at 21 %.

8. **Conclusions and recommendations**

8.1. The EESC would reaffirm its view that EU enlargement presents an historic opportunity to unite Europe and its citizens under the same roof, securing stability and prosperity for the European continent.

([1]) EU-BULGARIA JCC Working Document on Social Policy Issues in Bulgaria.

([2]) e.g. funds for minorities to preserve their identity.

8.2. The EESC expresses its serious concern at the rise in Euro-scepticism and the fluctuations in public opinion in the Member States and the candidate countries.

8.3. The EESC notes that the improved organisation of public administration, reduced bureaucracy, the crackdown on crime and the creation of flexible and modern mechanisms for legal, administrative and judicial protection will contribute to an increased sense of security among the public in the candidate countries and to further growth in foreign investment and increased confidence on the part of foreign investors in these countries, which have an ongoing need for direct foreign investment and support from international credit organisations.

8.4. The EESC calls for greater transparency in the implementation of the European programmes and initiatives concerning the candidate countries. The lack of know-how and of transparency could very easily result in resources being wasted.

8.5. The EESC is doing everything it can to support the efforts of the Commission and those of the candidate countries to successfully push through agricultural reforms, which will be crucial to these countries' integration into the EU.

8.6. The EESC warmly supports the efforts to set up and articulate organisations and bodies representing civil society organisations and NGOs, basic elements in democratic development.

8.7. The ESC believes that a key point in the enlargement process is the free movement of workers, which is also a particularly sensitive matter.

8.7.1. In its common position, the EU has already agreed on transitional provisions with nearly all the candidate countries. The EESC welcomes this fact and expresses the hope that during the transitional periods every effort will be made to move forward, by bringing in the necessary preparatory measures and ensuring that the EU will provide an efficient common labour market for all its future Member States.

8.8. The EESC would emphasise the fact that economic and social convergence remains the most important factor today. As the EU falls short of full economic, political and social integration, the greater diversification which is likely to arise from the successful accession of certain countries will put a strain on the efforts at economic and social convergence made by the current partners, unless the necessary mechanisms and procedures are provided for.

8.9. The EESC urges the Commission to cooperate with governmental bodies in the candidate countries to provide fuller information for citizens on the enlargement of the EU and its institutional set-up, through publicity campaigns, putting special emphasis on introducing relevant branches of learning into the educational and vocational training systems in these countries. The EESC welcomes additional efforts by the candidate countries to strengthen communication with the citizens on progress in the EU accession procedure.

8.10. Entrepreneurship is the most important source of growth for the candidate countries. Enterprises and especially SMEs have an important role to play in the enlargement process. Enterprises have an essential contribution to make to the generation of income and creation of new jobs, which are prerequisites for further economic and social development. Thus it is essential to really encourage the authorities in the candidate countries to speed up the information to firms affected by the Community acquis and to foster entrepreneurship.

8.11. A number of different European as well as international organisations are active in the candidate countries. These institutions and organisations represent different models of society and policy, and their recommendations should be coordinated in order to ensure that the future Member States advance towards the European social model, which is based on the idea of promoting social and territorial cohesion and combating poverty and social exclusion, as the basic principle of economic policy.

8.12. During the enlargement conference in November 2000, it was suggested in this context that the Committee take a co-ordinating role between the different institutions involved — a role which matches its capabilities and which it shows every sign of fulfilling successfully.

8.13. The EESC supports the communication strategy launched in May 2000 by the European Commission with the aim of providing appropriate information on the enlargement procedure. Similarly, it warmly supports the participation of EU bodies, together with elected representatives, political leaders and governments, the economic and social partners and representatives of civil society in general, both from the Member States and from the candidate countries, in the developing dialogue.

8.14. The EESC attaches importance to the role of countries outside the EU which border on those preparing for accession. Specific plans need to be drawn up in this area, given that new opportunities and challenges will arise after enlargement, such as free trade areas, illegal migration, customs checks and trafficking in human beings and drugs. The enlarged Union will need to develop further its relations with the emerging markets of neighbouring countries and develop a common approach, particularly with the Western Balkans, the Commonwealth of Independent States and the countries of the Mediterranean Basin and North Africa.

8.15. The EESC supports the strengthening of an independent and unimpeachable judicial authority in the candidate countries, which constitutes a guarantee for the proper operation of the administrative and political system. The fight against corruption needs to be speeded up, and tangible results are required to ensure transparency in the business environment, with corresponding progress in legislation on bankruptcy.

8.16. In the first half of 2001, the Ecofin Council agreed to begin cooperating more closely with the candidate state finance ministers and central bank governors by meeting twice a year and through regular reports to the Ecofin Council on the economic situation in those countries. The Committee welcomes this development and suggests that it should be extended to other Councils in order to promote dialogue with the enlargement countries, especially in the light of the objectives set at the Lisbon summit.

8.17. The candidate countries should remain within the exchange rate mechanism (ERM2) for at least two years. The EESC would repeat its recommendation that the new Member States should enter ERM2 immediately on joining the EU so that their exchange-rate policies are conducted within a more stable Community environment.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on the Mid-term review of the Common Agricultural Policy'

(COM(2002) 394 final)

(2003/C 85/19)

On 6 December 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

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 14 November. The rapporteur was Mr Kienle.

At its 395th plenary session, held on 11 and 12 December 2002 (meeting of 11 December), the European Economic and Social Committee (EESC) adopted the following opinion by 82 votes to 3 with 10 abstentions.

1. Preliminary observations

1.1. The importance of the debate on the further development of the EU's Common Agricultural Policy (CAP) goes far beyond the economic and social concerns of the agricultural sector. Food safety, security of food supplies and consumer protection also enter into the debate. As by far the main user of land, agriculture has a considerable role to play in terms of both environmental protection and nature conservation and it is important for the development of attractive rural areas offering a good quality of life.

1.2. Agricultural enterprises have to satisfy and strike a balance between economic, environmental and social requirements, with due regard to the principle of sustainability and a European agricultural model that is geared to the promotion of a competitive, multifunctional agricultural sector. If agriculture is not economically successful, many of the social goals which it has been set will be impossible to fulfil.

1.3. There is no doubting the fact that in recent years agriculture and agricultural policy have come under the critical gaze of society on an unprecedented scale. Attention has been focused on food scandals and the conclusions to be drawn from these scandals. The need for better EU food legislation and overall quality assurance schemes has taken on a completely new significance both for farmers and the whole of the food chain. Farmers, the food industry, consumers and politicians have recently started to offer a constructive response to these challenges.

1.4. The EESC has carried out a detailed, up-to-date and proactive examination of the CAP and the operation of Agenda 2000 in a number of documents, in particular its own-initiative opinion on the Future of the CAP (20/21 March 2002) and its own-initiative opinion on a policy to consolidate the European agricultural model (20/21 October 2000). Close cooperation with the European Parliament's Committee on Agriculture and Rural Development has proved to be particularly valuable in this context. In addressing these issues, the EESC was seeking, not least, to exploit the heightened interest in these matters on the part of many individuals and organisations in order to provide the European model for a multifunctional agricultural sector with long-term political guarantees. The opinion set out below on the Communication from the Commission on the mid-term review of the CAP thus represents a continuation of the EESC's earlier approach to this issue.

1.5. The agreement reached at the Brussels Summit on 24 and 25 October 2002, which clears the way for the historic eastward enlargement of the European Union, and already clearly defines the CAP's financial framework for agricultural market regimes and direct payments in the period up to 2013, in no way alters the EESC's determination to examine in detail the observations and proposals put forward by the Commission in its Communications.

2. Key aspects of the Commission's Communication of 10 July 2002

2.1. The Communication refers to the mandate given by the Berlin European Council to the Commission to submit a mid-term review of Agenda 2000. The objectives are essentially the same as those set at the Berlin and Göteborg European Councils, viz.: a competitive agricultural sector; environmentally-friendly production methods and quality products; a fair standard of living and income-stability for farmers; preservation of cultural landscapes; simplification of agricultural policy and a socially-acceptable justification of support for the services provided by farmers. The Commission rejects the notion of abolishing support or renationalising the CAP; it likewise rejects the notion that EU agriculture should limit itself to a passive role.

2.1.1. The Commission's idea is that, following consultation of the EU institutions and interested parties, legislative proposals are to be submitted by the end of 2002/beginning of 2003.

2.2. The proposals provide for a further reduction in price-support for some agricultural market regimes. In particular, cereals and rice will be affected. The Commission takes the view that in such cases intervention is to form only a lower safety net which is rarely triggered. In return, compensatory payments are to be granted or increased. The Commission is also seeking to abolish the monthly increments for the cereal intervention price without any form of compensation. The abolition of intervention for rye is a further proposal. In the case of durum wheat and dried fodder, the current aid linked to production is to be reduced or replaced by income-support measures for farmers. For nuts, the Commission proposes introducing a permanent support system comprising a flat-rate payment which may be topped up by the Member States up to a given ceiling. In the dairy sector the Commission merely presents four different options for the future. Although the Commission makes no direct proposals in respect of oilseeds and beef, the impact which a possible decoupling and modulation would have on these products — and also on milk — is of the utmost importance.

2.3. The Commission proposes revamping the previous system of compensatory payments in respect of prices by introducing 'decoupling'. Payments for field crops, livestock premiums and, from 2005, compensatory payments for milk will be affected in particular. It is proposed that compensatory payments be decoupled from the current basis of calculation (e.g. per head of livestock or per hectare of cultivated land) and that they be paid directly to farmers in the form of an income-support payment (general 'farm income payment'). Under the Commission's proposal, the size of the farm income payment will be geared to the level of EU compensatory payments made hitherto to a farm (historical basis). In future, however, new criteria are to be applied to all direct payments. These payments will thus be redefined and, to a certain extent, 'recoupled' (see point 2.5 below).

2.4. The Commission is seeking to convert as many of the existing compensatory payments as possible into a general farm income payment, to cover field crops, legumes, starch potatoes, beef, milk (from 2005) and sheep. The Commission is proposing extensive changes to the organisation of the markets for rice, durum wheat and dried fodder. Current production quotas and planting rights are to be maintained. The Commission's guiding principle is that farmers should be given greater room for manoeuvre when deciding which crops to grow. In the case of set-aside, however, the rules are to be further tightened; the Commission proposes introducing compulsory long-term set-aside (10 years).

2.4.1. If farmers transfer, sell or lease out land, a proportionate amount of the farm income payment is transferred to the new farmer (equivalent to 'per hectare-payments'). The Commission wants to ensure that, as a matter of principle, the decoupling of compensatory payments from production is not used to bring about a redistribution of payments between farms, types of products, regions or Member States; the aim is to ensure that present payments to farmers are, in principle, safeguarded. The Member States are, however, to be given the possibility of basing the calculation of the farm income payment in part on regional or national average values.

2.5. In future all direct payments are to be conditional on compliance with environmental, animal welfare, food safety and land-management standards (cross compliance). The direct payments are therefore linked to the observance of criteria in respect of 'good farming practice'. The Commission intends to put forward concrete proposals with a view to defining an EU framework for these standards.

2.6. The Commission also proposes that a system of farm auditing, relating to the observance of environmental, animal welfare, food safety and management standards, be introduced on a mandatory basis in the case of farms receiving more than EUR 5 000 per year in direct payments (farm audits). It is proposed that a compulsory, 10-year, environmental set-aside scheme be introduced for arable land in place of the existing rotational set-aside scheme. In view of the fact that the production of energy crops on set-aside land is to be stopped, the Commission proposes the introduction of a 'carbon credit'; this scheme, designed to promote climate protection, would involve the payment of per hectare aid in respect of land used for the production of energy crops.

2.7. The current system of voluntary modulation is at present only applied in the UK. It has been discontinued in France and abolished in Portugal, but Germany plans to introduce it from 2003. The Commission proposes that a system of 'dynamic' modulation be made compulsory in all EU Member States from 2004. With this aim in view, the Commission proposes that direct payments to farmers be reduced progressively by 3 % per year. The maximum rate of 20 % would thus be reached in 2010.

2.7.1. The Commission further proposes the introduction of 'franchises' totalling EUR 5 000 in respect of the first two full-time employees and EUR 3 000 in respect of any subsequent full-time employees; according to the Commission, this would mean that three-quarters of all farms in the EU would be exempt from the reductions in direct payments. The Commission also proposes that the direct payments paid to individual farms be capped at EUR 300 000. This, together with the proposed franchise per employee, would have an impact on large farms; it is therefore essential to make a detailed assessment of the effects which these proposals would have on farms, jobs and regions.

2.7.2. According to the Commission, introduction of the system of modulation will not, in principle, result in Member States having to provide extra national funding for co-financing measures up to 2006, particularly since the rate of Community co-financing for agri-environmental measures (and the proposed animal welfare measures) is to be increased by 10 percentage points.

2.8. Under the Commission's proposals, savings brought about as a result of modulation are to be credited to the EU budget and subsequently redistributed to the Member States for use in rural development programmes (second pillar). Redistribution is to be based on criteria such as productive agricultural land, agricultural employment and prosperity. This may result in some shifts in the pattern of distribution between Member States. Savings made above the capped limit of EUR 300 000 per farm plus the franchise may, however, be kept by the Member States to fund second pillar measures.

2.8.1. New aid measures, in particular the promotion of food quality, are to be introduced under the second pillar. Farmers participating in voluntary quality assurance and certification schemes are to receive aid. Promotion activities by producer groups and environmental quality programmes are to be supported accordingly.

2.8.2. The Commission would also like to provide assistance to farmers to enable them to observe new standards laid down in the fields of the environment, food safety, animal welfare and farm management in connection with a new EU-wide definition of 'good farming practice'. Aid is to be payable in the form of a degressive annual compensatory payment for a maximum period of five years. Farmers taking part in the farm audit scheme are also to receive support.

2.8.3. Finally, the Commission proposes to introduce animal welfare payments modelled on the agri-environment measures. In the case of both agri-environment measures and animal welfare measures, it is proposed to increase the rate of Community co-financing from the previous level of 50 % (75 % in Objective 1 areas) to 60 % (85 % in Objective 1 areas).

GENERAL COMMENTS

3. The role of the mid-term review in the context of Agenda 2000

3.1. As pointed out in the introduction, many of the issues now being considered in Commission communications and proposals on the mid-term CAP review have already been addressed by the EESC in its own-initiative Opinion on the Future of the CAP [1]. The EESC was clear in its assessment of the scope of the Agenda 2000 decisions and the mandate of the mid-term review, pointing out that 'the decisions taken under Agenda 2000 ... cover the period to the end of 2006. The mid-term review in 2002 and 2003 can make only minor adjustments to the existing regulations. A dependable framework is thus in place for the agricultural sector until the end of 2006'.

3.2. The EESC continues to take the view that, at the present time, neither the review mandate laid down at the Berlin European Summit nor the expected market trends in respect of most products provide grounds for an extensive reform of the CAP. Also worth recalling are various remarks made in the past by the Commissioner for Agriculture to the effect that the mid-term review was a 'review', not a 'reform'.

3.3. Under the decisions taken at the Berlin European Council in March 1999 on Agenda 2000, there is to be a review of cereals, oilseeds, milk and, if appropriate, beef in 2000-2003. This review will focus on market trends and the trend in EU expenditure on agriculture. Agenda 2000 did not make provision for any changes in EU agricultural funding under the mid-term review. An appraisal of the rural development programmes is to be made in 2003.

3.3.1. The Agriculture Council has also called for reviews to be carried out with regard to sugar, hops, olives, tobacco and the provisions governing small producers.

3.4. The Göteborg European Summit in June 2001 obliged the CAP to pursue the goal of sustainable development. Increased emphasis is to be placed on 'encouraging healthy, high-quality products, environmentally sustainable production methods, including organic production, renewable raw materials and the protection of biodiversity'. The Göteborg European Council did not, however, issue any specific mandates for the mid-term review of Agenda 2000.

3.5. The EESC thinks that the reactions from political parties, associations and the media to the communication on the mid-term review — irrespective of whether they endorse or reject the document or have mixed feelings — are reflected in the remark from the Schuman Institute that the reforms constitute the biggest change in the CAP's 45-year history. The proposals set out in the mid-term review thus go far beyond Agenda 2000. The EESC interprets this as meaning that the proposals will provide an impetus, in particular, for reforms after 2007.

[1] OJ C 125, 27.5.2002, pp. 87-99.

3.6. In the EESC's view, it is thus necessary for a thorough and open debate to be held, before the legislative proposals are formulated, in order to assess both the priority attached by EU farmers to having a stable and reliable CAP and the extent to which such a far-reaching reform of agricultural policy needs to be introduced — earlier than anticipated — at the present time. The EESC believes that there is an urgent need for the discussions and reform proposals to take account also of the possible impact on the agri-food industry and cooperatives. Such a debate is also necessary because Agenda 2000 not only defines the framework for action for EU farmers, but also provides the basis for the forthcoming enlargement of the Community and the WTO negotiations.

3.7. The EESC does, however, firmly believe that it will not be possible to hold a full debate until the Commission has presented comprehensive appraisals of the impact of its proposals. There is a problem, in the EESC's view, if the Commission has been pressing ahead with its work on the legislative texts before the opinions of the European Parliament, the European Economic and Social Committee and the Committee of the Regions are ready.

4. **The proposals put forward in the mid-term review**

4.1. The EESC generally endorses the objectives set out by the Commission. It approves, in particular, the goal of enshrining in the CAP as a whole, the concept of a multifunctionality. It is, however, important, above all, to examine whether, and to what extent, the measures proposed by the Commission will really help to achieve these objectives and will lead towards a multifunctional, competitive agricultural sector. Such an examination is all the more important in view of the fact that the changes to the agricultural policy instruments put forward in the mid-term review would lead to far-reaching changes in agriculture in the EU.

4.1.1. The EESC would point out that when it drew up its own-initiative opinion on the Future of the CAP it engaged in a close dialogue with the Commission and the European Parliament. In this opinion the EESC raised a number of questions which are of considerable importance for the debate on the mid-term review but which regrettably have not been adequately answered so far. For this reason the EESC is all the more convinced of the continuing need for thorough analyses and studies.

4.1.2. The EESC also regrets that the Commission has not taken advantage of the Mid-term Review to analyse the problem of increasing ageing in European farming. In this context attention is drawn to the joint declaration of 6 December 2001 by the EP, EESC and CoR which highlighted the 'need to make young farmers a priority in any future planning [and] to take effective and urgent measures to promote and support young farmers in the context of the Mid-term Review ... without delay'. The EESC hopes that when legislative proposals are presented they will include concrete measures to this effect.

4.2. The Commission's particular goal in the marketing sector of reducing the role of intervention — particularly in the case of cereals — to the level of a safety net has already been achieved as a result of the price cuts under Agenda 2000. The public storage of cereals has been dramatically reduced in recent years. The EESC therefore doubts whether the trend in world-market prices can be used to justify the proposed further 5 % reduction in the intervention price for cereals, particularly as the Commission itself bases its forecasts on stable world markets. The EESC expresses its concern over the fact that the proposed reduction will weaken and undermine Community preference.

4.2.1. The EESC believes that, rather than simply abolishing intervention for rye, as proposed by the Commission, it is absolutely necessary to lay down transitional and follow-up provisions. For example, new possible applications for rye could be exploited, such as its increased use in animal feed.

4.2.2. As regards durum wheat, the EESC fears that the Commission's proposals will not achieve its goal of improving quality but will rather lead to a major shift in production away from lower-yield regions. The EESC therefore recommends that the current premium paid to producers of durum wheat in traditional areas be tied more closely to stricter quality criteria.

4.2.3. The EESC shares the Commission's view that a new support instrument is needed for nut producers, although it regards the proposed compensatory payment as insufficient to enable them to compete with third country imports.

4.2.4. The EESC also highlights the lack of proposals for boosting the production of protein crops, of which there is a shortfall in the EU, in order to bring it more into line with demand. In an own-initiative opinion which has been well received, the EESC has urged that a new impetus be given to a plan for plant protein crops in the Community [1]. As a result of the US Government's recent massive increase in price-support for soya bean production (the 'anti-cyclical payment'), there is a risk that EU protein and oilseed production will be placed even more on the defensive.

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[1] OJ C 80, 3.4.2002, pp. 26-34.

4.3. The EESC has repeatedly expressed its support for the strengthening of rural development under the second pillar of the CAP. The measures concerned here include, in particular, investment promotion measures for individual farms and groups of farms, agri-environmental measures and compensatory payments for areas suffering from natural disadvantages. In its communication, the Commission points out that rural development currently uses up 16 % of total EAGGF (Guidance and Guarantee Sections) expenditure on agricultural policy — a figure which appears to the Commission to be still too low. For any appraisal, however, to be balanced, however, it is necessary also to include national funding under co-financing schemes and national measures not linked to EU aid. There is no doubting the fact that first pillar measures are of considerable importance to farm incomes, even though, in this area too, there are considerable differences between individual farms and individual regions.

4.3.1. The EESC notes, with concern, that, in addition to the shortage of funding under the second pillar, the extremely uneven distribution of funding between regions is also becoming a problem. This has already led to distortions in competition between farmers in different Member States and regions. If the second pillar of the CAP is further extended (under the modulation scheme), steps must be taken to ensure that the EU Member States provide a minimum level of national co-funding. Failure to ensure that this happens would mean that the claim that the second pillar is part of a common European agricultural policy would no longer hold water.

4.3.2. The EESC fails to understand why in the particularly needy Objective 1 areas of all places only limited flexibility is apparently to continue to be applied to the use of modulation money. Up to now, most rural development measures in these areas were funded under the Guidance Section of the EAGGF. The Commission should indicate ways of considerably simplifying and resolving this funding issue.

4.3.3. The EESC underlines the need for future rural development policy to take account of (a) all economic activities in the agricultural sector and in the service and commercial sectors, which create many jobs and (b) the essential requirements of the environment and spatial development. With these aims in view, it is necessary, on the one hand, to strengthen the second pillar of the CAP and, on the other hand, to develop the European Structural Funds and the European Social Fund more strongly in the direction of establishing an integrated policy for promoting rural areas, embracing the full spectrum of economic and social activities and public and private services.

4.4. The Commission wishes to redistribute to the Member States on the basis of objective criteria (agricultural area, number of farm employees, levels of prosperity) the revenue accruing from dynamic modulation, i.e. the proceeds from the reductions in direct payments, which will ultimately amount to a 20 % reduction. It is not yet clear what concrete form these criteria will take and what the financial impact will be. The same applies to shifts in the pattern of distribution between regions and the current EU Member States.

4.4.1. The EESC would point out that cuts in direct payments and the shifting of funding to second pillar measures will place farm incomes under considerable pressure and make it necessary for farms to adjust. The modulation proposals should be examined in the light of the decisions taken at the Brussels Summit on 24 and 25 October 2002. As there is no meaningful link between, on the one hand, the proposed franchises and ceilings applicable to farms — in their present form — and, on the other hand, effects related to farm size, such as economies of scale and labour productivity, alternative solutions should be worked out.

4.5. It is still difficult to get a clear picture of the economic impact and the impact on agricultural structures of a complete decoupling of compensatory payments from production. Decoupling can undoubtedly provide farmers with greater freedom of decision as regards crop-planning, and this is to be welcomed. However, the proposed restrictions on the use of set-aside would clearly restrict this freedom of decision once again. Furthermore, under the Commission's proposals, a number of premiums are to be retained for specific products (e.g. per-hectare premiums for rice, durum wheat and renewable raw materials). Beef cattle and suckler cows are to be treated in similar fashion.

4.5.1. The EESC fears that decoupling will also have a far-reaching impact on supply-side management policy (e.g. production quotas and ceilings for premiums). The EESC has recently pointed out that quantity provisions may have an important role to play in safeguarding sustainable farming, particularly in disadvantaged areas and grassland areas. It is therefore all the more regrettable that here, too, the Commission has so far failed to submit any projections.

4.5.2. No clear picture has been presented of the impact of the decoupling of payments on crop-production. It might well happen in future that areas where variable costs exceeded income from marketing could be taken out of production. Such a development would undoubtedly conflict with the aim of maintaining a comprehensive system of land-cultivation. In the field of stockbreeding too, it may well be asked whether, following complete decoupling of payments, there would still be an adequate economic incentive to fatten bulls or keep suckling cows. Regrettably, the Commission gives no indication in its proposals of how it wishes to tackle these issues.

4.5.3. The EESC draws attention to the fact that the impact of the decoupling of payments on the sale and leasing of farmland is difficult to foresee. 41 % of farmed land in the EU is leased — although there are considerable differences from region to region. The question arises as to whether, in the case of leased land, there is likely to be increased spin-off benefits for lessors. The splitting of direct payments to farms into payments in respect of parts of the land may produce extremely widely differing payments per hectare, depending

on farm structure. This could have undesirable side effects on the determination of individual land purchase prices and rents, even resulting in land being left fallow. It is also likely that decoupling will hinder the transfer of farms to young farmers.

4.5.4. The EESC also points out that the introduction of the Commission's proposed farm income payment could lead to distortions in competition if farmers use the direct payments to enable them to turn to other products not covered by price-support.

4.5.5. In the EESC's view, the wide range in payments per hectare of farmland arising as a result of the proposed decoupling of direct payments will prompt a critical debate both within farming circles and in society as a whole, with demands being made for these payments to be redistributed or levelled out. In any event, the EESC cannot readily go along with the Commission's expectation that a decoupling of direct payments may ultimately secure or increase public acceptance of these payments. In the EESC's view, a detailed appraisal is needed to determine whether the issues raised will not lead to the system of direct payments being called into question more by the public. Serious consideration should be given to those who voice the fear that the proposals to change the system of support will mark the beginning of the end as regards direct payments and hence CAP funding.

4.5.6. The EESC believes that complete decoupling, and amalgamating the direct payments in a single farm income payment can neither meet the requirements of a multifunctional agricultural sector (European agricultural model) nor satisfy the need for lasting safeguards in respect of direct payments. The EESC therefore proposes that detailed consideration be given to other possibilities for developing direct payments, as already proposed in its own-initiative opinion on the future of the CAP. Such an appraisal should also embrace a system of aid comprising a general basic payment (e.g. an area-related payment) backed up by product-dedicated payments. This would take special account of the requirements of a competitive and environmentally-friendly agricultural sector.

4.5.7. The EESC notes that the Commission's proposal to introduce compulsory ten-year set-aside, in place of rotational set-aside, will in practice run into major difficulties and be met by a lack of understanding. The proposal should therefore undergo detailed reexamination.

4.6. The EESC has already pointed out (see point 2.3 above) that the Commission's decoupling proposals do in fact amount to a new definition or a form of 'recoupling' as direct payments will in future be conditional on compliance with particular land management, environmental, animal welfare and food safety criteria (cross-compliance). The EESC will be unable to make a real appraisal of the situation until such time as the Commission has presented its views in greater detail on the scope of the cross-compliance provisions and the attendant monitoring procedures.

4.6.1. Whilst the EESC does, on the one hand, recognise the need for proper proof of employment of EAGGF funding, it does, on the other hand, believe that it is absolutely essential to avoid imposing a further major extension of bureaucratic monitoring procedures on farmers and the authorities in the Member States.

4.6.2. The EESC draws attention to the fact that up to now, farmers have been eligible for environmental aid (agri-environmental programmes) only if the standards of good farming practice are met. The Commission's proposals for the establishment of cross-compliance conditions will exacerbate the existing problems of definition with regard to the remuneration of farmers for measures to help the environment. The EESC calls for clear and unambiguous environmental criteria which are applied uniformly throughout the EU. The EESC draws attention, in particular, to the need to find solutions in respect of EU standards which go beyond international standards (once markets are opened up). This will be an ongoing requirement as long as there is a discrepancy between the environmental standards applied in the EU and the standards to be met in the case of imported food products. The EESC takes the view that restricting the period of payment (e.g. in the case of animal welfare measures) to five years is inadequate on competition grounds.

4.7. Whilst the proposed EU-wide farm audit is a very far-reaching proposal, far too little specific detail has been provided so far for a serious appraisal. The EESC would, however, urge even now that such auditing systems are made available on a voluntary basis and are based on or use existing documentation as far as possible, thereby enabling them to be of benefit to farmers in farm management. In the light of the experience gained with agri-environmental programmes, in particular, the EESC strongly advocates the development of a comprehensive system of incentives, rather than the introduction of monitoring and auditing systems.

5. **Further political efforts to reform the CAP**

5.1. Whenever consideration is given to reforming the CAP, there is, in the EESC's view, an urgent need to pay careful attention to the scope for adapting farms to meet changes in agricultural policy and the limits imposed on this process. In many regions of the EU the continuing exodus of young people from farming is being noted with considerable concern. The question of the viability of farms in disadvantaged locations — and particularly grassland farms, too — is furthermore of cardinal importance in the context of agriculture's multifunctionality. It is impossible to ignore the fact that farm incomes in these areas are significantly lower, despite the granting of compensatory allowances in disadvantaged areas. Instruments for assisting these areas should therefore be further developed, and the regions' own interest in safeguarding jobs in farming and creating alternative employment

should be given a stimulus. The EESC believes that these views are echoed in the declaration issued on the occasion of the European Council of 24 and 25 October 2002, particularly with reference to the conclusions of the 1997 Luxembourg Summit, which highlighted the need to maintain a multifunctional agricultural sector throughout the EU.

5.2. Agenda 2000 limited the funding available under the EU agriculture budget. In recent years expenditure has fallen well short of the agricultural guideline and the ceiling laid down in the financial decisions taken at the Berlin European Council. Considerable unused funds have been paid back to national budgets from the EU agriculture budget, on a regular basis. It is a known fact that the Member States carefully monitor any steps which are taken to reform the CAP to see how their positions as net contributors or beneficiaries could be affected. The EESC underlines its conviction that the maintenance of the European agricultural model (multifunctional agriculture) and its extension to the new Member States can only be achieved if adequate, reliable funding is available. All reform measures must therefore be scrutinised to determine whether they can be funded under the new financial framework.

5.3. There are a number of external factors which have an influence on the further reform of the CAP; one factor which has a special influence is the ongoing WTO negotiations. The EESC recommends that the Commission maintains its stance of linking the standard trade issues (reduction of export support and internal support and improved market access) with 'non-trade issues', such as preventive action to protect consumers and international environmental and animal-welfare standards, and that the Commission continues to press for the development of the requisite international bodies. The EESC is concerned that the mid-term review proposals could give the impression that the EU has already given up the concept of the 'blue box'. The Commission should certainly not make any rash concessions.

5.3.1. There is no indication in its communications on the mid-term review that the Commission has acted on its announcement that it would examine the new US Farm Bill and its impact on world agricultural markets. This is all the more regrettable given the fact that US agricultural policy regarded the 1996-2002 Farm Bill, which focused on extensive decoupling and liberalisation, as the wrong approach and the new Farm Bill once again focused more on market and price support.

5.4. The Commission's report on the mid-term review contains only minor proposals for improving the international competitive position of EU agriculture. Above all, the decoupling of direct payments, described by the Commission as being green box compatible, will not improve the competitiveness of EU agricultural products on international markets. In the EESC's view, it is therefore essential to carry out a more thorough analysis and projection of the Commission's proposals with a view to safeguarding the position of EU agriculture on the world market.

5.5. In public circles it is often said that a far-reaching reform of the agricultural sector is unavoidable because of the eastward enlargement of the EU (and, in particular, because of the additional funding which would be required for direct payments). The Commission has hitherto opposed this line of thinking and argued that EU enlargement and internal reform of the CAP have to be addressed separately. If the Commission changes tack on this matter, it is, in the EESC's view, absolutely vital to involve the candidate states in the consultations on the mid-term review. An interim reform which excluded the states which will be joining the EU in just two years time would be bound to call into question their acceptance of such a reform and to exacerbate the accession process.

5.6. The implementation by the Member States of at least some of the measures proposed by the Commission, and in particular the decoupling of direct payments, will, in the view of the EESC, be very costly and time-consuming. The Commission's communications do not indicate specific timetables for implementing the various measures. This would, however, appear to be of particular importance for the further discussion of the mid-term review proposals. The EESC believes that it will not be possible to amend the system of direct payments without taking account of the market organisations for beef and milk. Follow-up measures to Agenda 2000 (i.e. an 'Agenda 2007') should be extremely carefully prepared and discussed in view of their great complexity and far-reaching consequences.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a European Parliament and Council Regulation concerning monitoring of forests and environmental interactions in the Community (Forest Focus)'

(COM(2002) 404 final — 2002/0164 (COD))

(2003/C 85/20)

On 26 July 2002 the Council decided to consult the European Economic and Social Committee, under Article 175 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 13 November 2002. The rapporteur was Mr Kallio.

At its 395th plenary session on 11 and 12 December 2002 (meeting of 12 December), the Economic and Social Committee adopted the following opinion by 98 votes to one, with eight abstentions.

1. Content of the regulation

1.1. The purpose of the Commission's proposal for a European Parliament and Council Regulation is the establishment of a new Community scheme on monitoring of forests and environmental interactions to protect the Community's forests.

1.2. The scheme builds on the achievements of two previous Council Regulations on monitoring the impacts of atmospheric pollution [(EEC) No 3528/86] and forest fires [(EEC) No 2158/92] on forest ecosystems [1]. The Commission proposes broadening the scope of the regulation so that in future the monitoring activities covered by the regulation will also address forest biodiversity, soils, climate change and carbon sequestration.

1.3. The Commission justifies the new regulation on the grounds that the proposed monitoring elements are all related to key priorities in the 6th Environmental Action Programme and the Sustainable Development Strategy. EU strategies need better information to identify the nature of risks and uncertainties, so as to provide a basis for solutions and further policy decisions. The Commission proposes Article 175 of the Treaty establishing the European Community as the legal basis for the regulation.

1.4. The scheme will run for six years, from the beginning of 2003 until the end of 2008. An amount of EUR 13 million will be allocated annually for monitoring the effects of air pollution and forest fires on forests, developing new monitoring activities and improving the scheme.

1.5. Under the proposed regulation, co-financing will be provided up to 50 % of the eligible costs arising from monitoring activity and database platforms and for studies, experiments and demonstration projects carried out under Member States' national programmes. The Commission will finance its own activities, such as coordination and evaluation work, studies, experiments and demonstration projects.

2. The existing framework

2.1. *The content of sustainable forestry and national powers*

2.1.1. According to the EU forestry strategy [2]'... the overall objective should ... be to strengthen sustainable forest development and management as stated in the "Forest Principles" adopted by the United Nations Conference on Environment and Development and as defined in the resolution adopted at the pan-European Ministerial Conferences on the Protection of Forests' that is '... the stewardship and use of forests and forest lands in such a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national and global levels, and that does not cause damage to other ecosystems'. '... This approach should be defined in and implemented through national or subnational forest programmes or equivalent instruments applied by the Member States and, in accordance with the principle of subsidiarity, through action taken by the European Community where there is an added value to be gained therefrom'.

[1] EESC opinion, OJ C 80, 3.4.2002, p. 45.

[2] COM(98) 649 final of 18.11.1998 (not published in the OJEC); Committee opinion, OJ C 51, 23.2.2000, pp. 97-104.

2.1.2. The starting point of the forestry strategy is the subsidiarity principle. This means that responsibility for forestry policy and the sustainable use, management and protection of forests lies with Member States. It is important that Member States have as much autonomy as possible with regard to sustainable forestry as this makes it possible to treat forests as an integrated whole, encompassing social and economic aspects as well as ecological considerations. By respecting national powers in this area, differences in the social importance of forestry in individual Member States and local and regional variations in forest ecosystems and species can be better taken into account. For its part, the Community plays a harmonising and coordinating role where needed and within the scope of its competences, as in the case of environmental policy, rural development or protection of biodiversity, for example.

2.2. *Existing monitoring activities*

2.2.1. Data on biological diversity and carbon sequestration in biomass are already collected and reported within the framework of several international agreements and international and national inventories. These include the FAO's (Food and Agriculture Organisation of the United Nations) Forest Resources Assessment Programme (FRA), the pan-European Ministerial Conferences on the Protection of Forests in Europe (MCPFE), international agreements such as the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) and national forest inventories.

2.2.2. The FAO started to monitor the state of the world's forests through assessments of forest resources as long ago as 1946 and publishes reports on them every few years. In addition to data on forest resources, the assessments contain data on the carbon cycle, the health of the forest ecosystem, biodiversity, forest products and protection impacts. The country reports also contain data on the socio-economic functions of forests.

2.2.3. In the context of the pan-European Ministerial Conferences (MCPFE), six pan-European criteria have been established as points of reference for monitoring the implementation of sustainable forestry. Each criterion is defined in terms of qualitative and quantitative indicators. On the basis of these, European countries have developed national systems for monitoring sustainable forestry. Many stakeholders have utilised the pan-European criteria and indicators in their own definitions of sustainable forestry and in monitoring.

2.2.4. At its sixth meeting held in The Hague in spring 2002, the Conference of the Parties to the Convention on Biological Diversity adopted the Expanded Work Programme for Forest Biological Diversity. The expanded work programme stresses that the conservation and management of forest biological diversity is an element of the implementation of national forest policy and that national authorities are responsible for monitoring implementation. According to a study [1], the implementation and monitoring of programmes on biological diversity have been accorded high or medium priority in virtually all countries. Nearly all the countries which took part in the study already have a biodiversity or equivalent programme. National priorities and regional and national needs and specific features must be taken into account in implementing the work programme. The implementation of action programmes is to be monitored at national level and countries will submit reports to the Conferences of the Parties.

2.2.5. The parties to the Convention on Climate Change (UNFCCC) are required to carry out national greenhouse gas inventories in which each country estimates, lists, reports and regularly updates anthropogenic emissions of greenhouse gases by sources and removals by sinks. Climate policy measures related to forestry [Land-use, land-use change and forestry (LULUCF)] are bound up with both countries' climate strategies and national forest programmes.

2.2.6. National forest resource inventories are used to gather data on forest resources, the condition of forests, soil and flora. In recent years the scope of forest resource inventories has been broadened to include monitoring of biodiversity and the collection of data on carbon stored in trees and the soil. The data collected include e.g. actual data on biodiversity or data on factors contributing to biodiversity, such as understorey vegetation, the range of species and the nutrient quality of soil. In the above-mentioned study, Fischer notes that countries obtain the data they need for monitoring their biodiversity programmes mainly from national forest inventories.

2.3. *Standing Forestry Committee*

2.3.1. The task of the Standing Forestry Committee, which was set up by Council Decision (89/367/EEC) of 29 May 1989, is to promote cooperation between the Commission and the Member States in the field of forestry and to support forestry policy measures taken in the framework of the Community policies relating to the regulation on rural development.

[1] Fischer, R., Overview on national biodiversity monitoring activities within some EU/ICP Forest countries, Draft 7 October 2002.

The aim of the Committee is to enhance the exchange of information on the state and development of forestry in Member States and, in particular, to inform the Commission on how Community policies affect the forest sector. The Committee is composed of representatives from the Members States and chaired by a representative of the Commission.

3. **Comments**

3.1. Forests play an important role in climate regulation, in combating pollution, erosion, flooding or avalanches and landslides and for regulating water resources. They also provide a rich biological environment. They are a key asset, both in environmental and economic terms, because, if well managed, they provide sustainable renewable resources. The forms of forest ownership are varied, but the functions of the forest environment are useful enough to society to warrant protection, and the exploitation of resources must be carefully regulated to promote rural development and the general interest. It is up to the relevant authorities to take appropriate technical and regulatory measures to achieve this, whether it be to prevent forest fires, soil acidification ([1]) or the depletion of biodiversity, and any other threats to this specific environment which, over thousands of years, has been increasingly affected by human activity as new tools and techniques have been used to exploit it.

3.2. The Committee feels it is important to develop resources for studying and monitoring the forest environment according to the specific situation in each Member State, and to coordinate the information collected so it can be used more rationally to benefit the Community strategy ([2]). It welcomes the Commission's proposals, subject to the following comments and proposals.

3.3. It is important to develop and continue the present programmes based on the regulations on protecting forests against atmospheric pollution and forest fires in operation for over ten years. It is vital for the comparability of the data collected to keep the main structural elements of the programmes unchanged.

3.4. Developing the monitoring of forest biodiversity, carbon sequestration, soils and the effects of climate change involves tasks which are different from the continuation and development of present schemes, but which are complementary, refer to the same environment and potentially build on the resources and methods already in place. There is no doubt that air pollution ([3]) and soil acidification are the most serious environmental problems facing forests in the Community and the candidate countries, and that, also in order to comply with international commitments on climate, greenhouse gases and biodiversity, such matters should be addressed jointly at national level and with harmonisation and coordination between the Member States at Community level. This requires appropriate monitoring activities, the need for which should be assessed and an estimate made of the final cost and the availability of all funding so as to ensure maximum cost-benefit efficiency.

3.5. The monitoring costs mentioned in the financial framework do not seem realistic, especially when it is not known how monitoring will be implemented. The methods and resources to be applied and the cost of acquiring reliable data that are suitable for policy decision-making should be evaluated very carefully.

3.6. One study ([4]) estimates that effective monitoring of biodiversity in the EU area would require some 150 000 — 1,5 million observation plots whereas the present network for monitoring the effects of atmospheric pollution comprises about 7 000 observation plots. With so much scientific uncertainty, it would be useful to define actual needs more precisely, while also considering the possibility of using new observation technologies such as satellites or automatic observation and reading posts and computerisation, in order to collect usable and reliable information and to draw up statistics to support the Community forestry strategy.

3.7. The new Member States will probably join the Union as early as the beginning of 2004, in which case the Community's total forest area will increase by about 30 million hectares ([5]). The estimates given do not indicate how much the establishment and maintenance of monitoring schemes in the new Member States will cost. Broadening the scope of monitoring activities to include monitoring of biodiversity, carbon sequestration, soils and the effects of climate change

([1]) EESC opinion on the Communication on the Strategy for soil protection, opinion on Forest protection/Atmospheric pollution, OJ C 51, 23.2.2000, pp. 24-26.

([2]) COM(98) 649 final of 18.11.1998 (not published in the OJEC); Committee opinion, OJ C 51, 23.2.2000, pp. 97-104, point 2.1.2 (EU forestry strategy).

([3]) EESC opinion on National emission ceilings for atmospheric pollutants/ozone, OJ C 29, 23.2.2000, pp. 11-17.

([4]) Prof. Tomppo, E., Assessing the Biodiversity of Forests at National and Continental Level, 10 September 2002.

([5]) Committee opinion, OJ C 149, 21.6.2002, pp. 51-59.

will probably entail a substantial increase in costs. The analysis of the implementation of the regulation should also include an assessment of the capacity of new Member States to carry out more intensive monitoring and of the structural and institutional changes that might be required in these countries to enable effective monitoring.

3.8. It must be borne in mind that Member States have tomonitor the state of biodiversity nationally, partly in accordance with their obligations under the Convention on Biodiversity and in the context of the pan-European Ministerial Conferences. In addition, other international organisations and bodies collect monitoring data on the health of forests, biodiversity and the carbon cycle. Accordingly, the Community authorities will have to make every effort to use all the available data already collected by the Member States and international bodies in order to avoid any duplication and thus to contain the costs of extending the existing schemes and securing consistent procedures. Particular attention will have to be paid in this regard to the implementing arrangements.

3.9. For greenhouse gas emissions and sinks, it is also necessary to avoid any duplication of existing monitoring activities and reporting under Community legislation and other agreements. As regards carbon, it would be better to draw on the guidelines on forest issues to be drawn up by the Intergovernmental Panel on Climate Change (IPCC) and the reports that Member States will be required to provide under the Kyoto Protocol. It would be helpful if these reports were drawn up with full and proper care and accuracy. As regards monitoring soils, reference should be made to the appropriate Commission proposal for legislation.

3.10. Countries have invested heavily in the development and maintenance of national inventories. Cost-effective monitoring is dependent on national schemes and their enhancement. Supporting national monitoring activities will make it possible to maintain continuity in time series and take account of country-specific features without wasting resources on the duplication of schemes while still making the changes required to harmonise national monitoring more effectively with the arrangements in place in the other Member States and to meet additional information needs. The Community's role could be (i) to improve the comparability of data in cooperation with the Member States and, if need be, the appropriate international bodies and forums, (ii) to consolidate the data bearing in mind other sources, (iii) to promote open cooperation and the quest for best practice and (iv) to frame strategic policy proposals or proposals for legislation where necessary.

3.11. The Commission cites Article 175 of the Treaty establishing the European Community as the sole legal basis for the regulation. This article has served as the basis for environment regulations in the past. The resolution on a forest strategy for the European Union adopted by the EU Council of Ministers in 1998 reaffirms the importance for forestry policy of the subsidiarity principle, according to which the Member States have the primary responsibility and obligation for the sustainable management and use of forests and the protection of forests. Similarly, the Community's Sixth Environment Action Programme requires that strategies and measures relating to forests are implemented and developed in line with the EU's forest strategy and the subsidiarity principle, under which powers are assigned to the most appropriate levels in the Member States and the Community, and which is exercised jointly with the proportionality principle.

3.12. Sustainable forestry comprises all aspects of sustainability. Ecological sustainability should be treated in the analysis as an element of sustainability alongside social and economic sustainability. The forest-based and related industries represent one of the most important industrial sectors in the EU and total employment in the forestry and forest-based industries will be about 5 million in the EU after enlargement, roughly a quarter more than at present. The primary responsibility and obligation for the management, use and protection of forests rest with individual countries and are discharged in accordance with the principle of sustainable development. This is a key element of national forest programmes and strategies. Each country is also responsible for ensuring that operators in the sector possess the necessary professional skills for the pursuit of sustainable forestry. Other economic or recreational activities such as the collection of medicinal plants or green tourism may be developed in a forest environment whose traditional features, in particular flora and fauna diversity, must be preserved in a balanced way. In the future, Member States should retain these responsibilities in matters related to the management, use and protection of forests, bearing in mind society's new expectations in terms of sustainable use and environmental protection.

3.13. Action programmes for forests and other natural resources, their associated monitoring schemes and decisions taken on the basis of monitoring activities should pay due regard to the fact that the social importance of forestry and forest-based economic activities varies between countries. It is important that Community legislation take account of developing the operating conditions of forest-based economic activities in Member States.

3.14. The development of information systems is a laudable aim. In developing information systems, attention needs to be paid to improving the availability of information and systems should be expanded to include e.g. exchange of information and experience on best practice. At the same time, however, where information is exchanged and published, the regulation must guarantee adequate protection of personal data, for example to forest owners with regard to their forest property. The proposed regulation should make explicit reference to the Community's 1995 data protection directive.

3.15. The regulation mentions ICP Forests (International Co-operative Programme on Assessment and Monitoring of Air Pollution Effects on Forests), the Scientific Co-ordination Body and the European Environmental Agency as implementing bodies, in addition to the Commission, the Member States and the Standing Forestry Committee. The division of labour between these organisations should be clarified so as to avoid duplication of work and an exponential increase in Member States' reporting obligations under the regulation.

3.16. The Standing Forestry Committee should be given a central role in the implementation and development of the regulation and should act as a regulatory committee in the enforcement of the regulation. In addition, the Standing Forestry Committee should also act as forum for exchange of information and discussion with the general public and stakeholders.

Brussels, 12 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Commission Communication on the reform of the Common Fisheries Policy ("Roadmap")'

(COM(2002) 181 final)

(2003/C 85/21)

On 28 May 2002, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The specialised Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 November 2002. The rapporteur was Mr Kallio and the co-rapporteur Mr Chagas.

At its 395th plenary session of 11 and 12 December 2002 (meeting of 12 December) the European Economic and Social Committee adopted unanimously the following opinion.

1. **Introduction**

1.1. Declining fish stocks and overcapacity in the fishing fleet, coupled with poor economic profitability and loss of jobs, are generating considerable pressure for the reform of the Community's Common Fisheries Policy (CFP).

1.2. To take stock of the situation and stimulate debate, the Commission published a Green Paper on the Future of the Common Fisheries Policy in March 2001. The EESC issued an opinion on the Green Paper in October 2001 [1].

1.3. For the implementation of the reforms, in May 2002 the Commission published a Communication to the Council on the reform of the Common Fisheries Policy ('Roadmap') [2]

[1] OJ C 36, 8.2.2002.
[2] COM(2002) 181 final.

and a set of complementary documents [1]. In the present Opinion the EESC will comment mainly on the Roadmap, taking into consideration also the complementary documents on 'eradication of illegal, unreported and unregulated fishing', 'conservation and sustainable exploitation of fisheries resources', 'integration of environmental protection requirements', 'structural assistance', and 'emergency reserve measure for scrapping fishing vessels'.

1.4. As regards conservation of fish stocks and fisheries management, the Commission proposes applying a more long-term approach to fisheries management by means of multiannual framework programmes. Monitoring of fishing effort will be introduced in the framework programmes alongside monitoring of catches. The Commission advocates stronger technical measures to reduce the problem of unwanted catches. Industrial fishing should target species for which there is no market for human consumption. An impact evaluation of industrial fishing on marine eco-systems will be carried out, developing a set of indicators in cooperation with the relevant bodies, including the European Environment Agency. Steps should be taken to develop fisheries management in the Mediterranean Sea. More needs to be done to incorporate environmental concerns into fisheries management and the content of scientific advice on fisheries management should be improved.

1.5. The Commission proposes new rules on the granting of aid to the fishing fleet and measures to limit fleet capacity. The possibility of granting aid for the introduction of new capacity, the export of fishing vessels or the establishment of joint enterprises with third countries is to be removed. To limit capacity in the future, the Commission proposes the fixing of new fleet reference levels, based on the final objectives of MAGP IV. Reduction of capacity will be monitored regularly and countries failing to comply with their reference values will face legal proceedings.

1.6. The Commission proposes the continuation of the current regime of 6-to-12 mile zones. Fishing possibilities will continue to be allocated in accordance with the relative stability principle. It further proposes to identify which access arrangements (such as the Shetland Box) correspond to genuine conservation needs and to remove those that do not.

1.7. A new regulatory framework for control and enforcement is proposed. As part of this framework, the responsibilities of the various parties will be clearly defined. Stricter rules are proposed for compensation and sanctions. The Commission and the Member States will draw up an action plan for cooperation in enforcement. A joint fisheries inspectorate structure will be established at Community level. In addition, the Commission proposes extending the coverage of vessel monitoring by satellite as a key element of the implementing measures.

1.8. In the field of international fisheries, the main aim is to stop the use of flag-of-convenience vessels and illegal, unreported and unregulated fisheries (IUU). Efforts will also be made to improve and strengthen cooperation and fishing agreements with developing countries.

1.9. The aim of the aquaculture strategy is to assure the availability of healthy products, promote an environmentally sound industry and create employment, particularly in fishing-dependent areas. On 19 September 2002 the Commission adopted a Communication for a sustainable development of European aquaculture [2] which has been generally welcomed by the sector.

1.10. The Commission admits that the reform of the CFP will have major socio-economic effects but is unable to quantify them. However it indicates a figure of 28 000 fishermen as possibly being affected by the proposed measures. The Commission intends to conduct bilateral consultations with Member States to assess the socio-economic consequences of the reform. On the basis of these consultations, an action plan will be formulated to counter these consequences. Structural Funds will be reprogrammed to match needs.

1.11. The Commission will organise workshops during 2002 on the economic dimension of fisheries management. Among the subjects to be discussed will be a system of tradable fishing rights and payment for the right to fish and/or recovery of fisheries management costs from the fishing sector.

1.12. Under the heading 'Effective and participatory decision-making', the Commission proposes the establishment of Regional Advisory Councils for fisheries management (RACs). The purpose of the RACs is to ensure greater stakeholder involvement in fisheries management. One of their tasks would be to contribute to the development of a European code of responsible fisheries practices to be drawn up in the

[1] COM(2002) 180 final, COM(2002) 185 final, COM(2002) 186 final, COM(2002) 187 final and COM(2002) 190 final.

[2] COM(2002) 511 final.

framework of the Advisory Committee for Fisheries and Aquaculture. The Commission also proposes the simplification of the rules governing the CFP and greater transparency in Member States' compliance with CFP rules.

1.13. The Commission proposes that the conservation and fleet policy aspects of the CFP be the subject of a further review in 2008.

2. **General comments**

2.1. The EESC agreed with the diagnosis of the situation in the EU fishing sector reflected in the 2001 Commission's Green Paper and in particular relating to the existing overcapacity in the EU fleet. In fact it must be clear that no sustainable fisheries will be possible if the fleet capacity, but especially, the fishing effort are kept at their current levels. The EESC considers, however, that the approach to the problem cannot be solely economic or ecological. In its Opinion on the Green Paper [1] it underlined that for the regions concerned the importance of fisheries extends far beyond their contribution to GDP. Fisheries cannot be seen as just another sector which the EU has to restructure. In the large majority it is composed of small-scale fishermen whose activities are, in general, respectful of the environment. Fishing constitutes the hub around which a whole series of communities and activities revolve, playing a significant role in terms of social cohesion and regional management, and this is particularly true in the outermost regions and regions which are at present highly dependent on fishing.

2.1.1. In fact, the Commission underlines the low profitability of the sector and concludes that the solution is in drastically reducing the number of vessels and fishers and in making the vessels more effective and profitable. Taking into consideration recent experiences of modernisation of fishing fleets that had, as a consequence, a drastic reduction of employment, not always accompanied by an equivalent reduction in capacity, consideration should be given to the need to meet an adequate balance between profitability and efficiency of fishing vessels on the one hand, and sustainable employment on the other. It must also be recalled that, according to figures from the Commission, in the period 1990 to 1998, 66 000 jobs have been eliminated, representing 22 % of the work force. The EESC is of the opinion that an in-depth evaluation should be made of the social consequences of the measures contained in the different proposals adopted by the Commission. Necessary support measures should be simultaneously adopted.

2.2. *Conservation of resources and management of fisheries*

2.2.1. The EESC endorses the Commission's general aims for conservation of resources and management of fisheries. As regards an immediate and significant reduction in fishing effort, it should, however, be pointed out that the need for reduction varies considerably between fishing grounds, fleet segments and fleet capacity already achieved by each Member State in the framework of MAGP IV.

2.2.2. In addition, it must be noted that the creation of a comprehensive scheme for monitoring fishing effort alongside the quota system would be very cumbersome to administer. Therefore the EESC proposes that the development of arrangements for monitoring fishing effort should focus primarily on the most overexploited fish stocks.

2.3. *A new multi-annual framework programme for conservation of resources and management of fisheries*

2.3.1. The Commission's proposal for a multi-annual framework programme for conservation of stocks and management of resources is in line with the EESC's opinion on the Green Paper. A multi-annual programme will stabilise the fishing environment and enable fishermen and the processing industry to make longer-term plans for the development of their activities. The EESC considers it important that the programme will, in addition, take into account the particular needs of the EU's outermost regions and of regions which are at present highly dependent on fishing.

2.3.2. The EESC would highlight the importance of high-quality scientific advice for the drawing up of multiannual framework programmes. Raising the standard of advice will make it possible to narrow the gap that currently exists between advice and political decision-making. In this context the EESC encourages greater cooperation between the scientific community and the fisheries sector for the evaluation of the scientific data in a clearer and more vigorous way. This cooperation should be established especially in the Regional Advisory Councils where all the stakeholders are represented.

2.3.3. Despite the fact that the Council has not always decided in accordance with the scientific advice and in the best interest of preservation of marine resources, the EESC has reservations in relation to the Commission's proposal to exclude the Council of the yearly decision-making process on TACs and Quotas once the multi-annual programme has been adopted.

[1] COM(2002) 511 final, point 2.1.2.

2.4. *Strengthening of technical measures*

2.4.1. The EESC supports the introduction of more selective fishing gear on Community vessels. Owing to the high cost of making changes to fishing gear, the Committee would stress the need for sufficiently long transition periods in implementing such changes. In addition, the Committee puts forward the possibility of using Community structural assistance to part-fund the acquisition of new types of fishing gear or more selective gear, which might help to speed up changes.

2.4.2. The discard ban trials are in line with earlier EESC recommendations. Discards are due to many different reasons and a ban is not always justified. The trials will have maximum effect if they are coupled with measures aimed at reducing the share of unwanted species in the total catch. Such measures include an increase in the selectivity of fishing gear, temporal and local fishing restrictions and the use of economic incentives to encourage voluntary changes in fishing practices.

2.4.3. Technical measures must be based on extensive scientific evidence. In order to increase the effectiveness of the measures, representatives of the fishing industry must be involved from the beginning in planning new technical regulations and voluntary measures. These might include the gradual elimination of certain types of bottom trawling within the 12 miles zone.

2.5. *Industrial fishing*

2.5.1. The EESC supports the targeting of industrial fishing primarily at species for which there is no market for human consumption. The impact of industrial fishing on the food chains of other species must be established. In the future, it will be possible to manage industrial fishing of different stocks within the framework of regional multiannual management plans.

2.6. *Fisheriesmanagement in the Mediterranean*

2.6.1. The EESC supports all efforts to increase cooperation between the countries surrounding the Mediterranean aimed at securing fish stocks and fishermen's livelihoods. Pending a deeper analysis of the document, it welcomes the recently adopted Communication on this matter and is of the view that it may represent an improvement in the way fisheries are presently managed in this area [1].

2.7. *Incorporating environmental concerns into fisheries management*

2.7.1. Environmental concerns have to be taken into account in all the EU's common policies, including fisheries policy. However, in addressing environmental concerns, the CFP's economic and social objectives must also be taken into consideration.

2.7.2. Clear indicators are needed for monitoring the effects of environmental protection and targeting measures. Given the poor state of the environment, there is good reason to move quickly on this matter. The EESC welcomes the Commission's proposal for the speedy establishment of a preliminary set of indicators. The further development of indicators and the monitoring system is a subject which needs to be addressed by the international scientific community in the years ahead, for example by the European Environmental Agency and the International Council for the Exploration of the Sea.

2.7.3. In considering proposals for the protection of sharks, whales and marine birds, the Commission should also be mindful of the conditions necessary for the continuation of fishing activity. Here cooperation with fishermen's organisations is essential in order to minimise the harmful effects on fisheries. In fact, fishing activities must find their balance with environmental sustainability, but the same applies for other human activities, particularly in the coastal areas. These, together with environmental and climatic changes, can also have a significant impact on marine environment. As for the costs arising from protection of the aquatic environment, the EESC, in line with its earlier opinions, would stress the importance of applying the polluter-pays principle, as a means to minimize the negative impact of these different activities. The EESC will comment more in depth on this subject in considering the strategy to protect and conserve the marine environment that has recently been presented in a Communication from the Commission [2].

2.7.4. The introduction of an ecosystem-based approach requires the collection of environmental data on a far more extensive scale than at present and the integration of data from different sources. Therefore the EESC welcomes the Commission's proposal to include marine ecosystems as a separate field of research in the Community's 6th Framework Programme for research.

2.8. *An Action Plan for the improvement of scientific advice for fisheries management*

2.8.1. Scientific advice on the actual state of fish stocks is the most important element of fisheries management. The EESC therefore considers it very important to improve such advice. Advice is a based on analyses of nationally collected data. At present, there are such large deficiencies in national source data on several fish species that analysis is more or less guesswork. Improvement in source data, their analysis and the level of scientific advice is a long-term goal, which also concerns fishing by non-EU countries in international waters.

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[1] Communication laying down a Community Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the Common Fisheries Policy (COM(2002) 535 final).

[2] COM(2002) 539 final.

The EESC encourages better cooperation between the scientific community and the fisheries sector.

2.8.2. Obtaining reliable fishing data requires an intensification of national and international monitoring of fishing, comparison of catch data from different sources and sanctions in cases where it is found that data have been concealed.

2.8.3. The ESCE underlines the need to strengthen research in this field, encouraging better cooperation and exchange of information at European level and allocating appropriate resources in the framework of the VI RTD Programme.

2.9. *The impact of fish stock preservation policy on the fishing fleet*

2.9.1. In its Opinion on the Green Paper on the future of the Common Fisheries Policy [1] the EESC agreed with the Commission's analysis regarding excess capacity of the Community fleet. The Committee called on the Member States and the Commission to have the political courage to grasp the attendant challenges and embark on the necessary measures, which must be balanced, decided in a dialogue with the sector and 'in particular ... must provide the support needed to cushion any socio-economic consequences'.

2.9.2. The EESC also repeated the view frequently stated in previous opinions that: 'Fishing cannot be treated solely from an economic viewpoint because ... for the regions concerned, the importance of fisheries and all ancillary activities, both upstream and downstream, extends far beyond their contribution to GDP. Fishing constitutes a hub around which a whole series of communities revolve, and these play a key role in maintaining social balance and ensuring regional management; this role is difficult to quantify in economic terms'.

2.9.3. Likewise, the EESC emphasised: '... fleet reduction measures should not lose sight of the need to continue to renew and modernise the Community's fleet. There should be a firm commitment to achieving high-quality conditions for processing the raw material, improving the quality of life on board, and enhancing safety for crews'. This is a crucial aspect of redefining the CFP, which needs to be ecologically, economically and socially sustainable. At the same time account must be taken of the fact that fishing is one of the most dangerous professions in Europe and the world, involving the highest number of industrial accidents.

2.9.4. In its proposal for new rules on granting aid to fishing vessels, the Commission has adopted an approach about which the EESC has certain reservations. In particular the Committee is sceptical about the withdrawal of public aid for the modernisation of fishing vessels, which would come into effect as early as 1 January 2003.

2.9.5. Although the fishing fleet in certain Member States is technically quite well developed and very efficient, in other Member States vessels are out of date, small and low in catching capacity. The latter use traditional methods of fishing which are generally more selective than others, and these require considerable manpower. When reducing the Community fishing effort these differences must be taken into account, especially the fact that measures have social implications the impact of which on the communities concerned cannot be measured in monetary terms.

2.9.6. In previous programmes for reducing the fleet, the Member States have each taken a different approach to the issue: some have exceeded the target set for fleet reduction, while others have increased fishing capacity. Figures provided by the European Commission and the Eurostat annual review for 2001 speak for themselves: in the period 1991-2002 the Community catch fell by only about 2 % (6.3 million tonnes) and in some Member States the catch has even increased.

2.9.7. Although subsidies cannot be a permanent solution for the sector, the EESC believes there are still reasons (workers' safety, working and living condition, quality, etc.) to continue granting public aid for modernising fishing vessels. The current restrictions can still be maintained, in particular the ban on increasing fleet capacity. The same point is made in the above-mentioned Opinion on the Green Paper: '... whilst the review of FIFG aid must not overlook the need to modernise the Community fleet, an integrated and coherent policy can only call for the ending of construction and modernisation aid for those fleet segments or Member States which have incontrovertibly failed to meet the targets set in the MAGPs'.

[1] OJ C 36, 8.2.2002.

2.9.8. The Advisory Committee for Fisheries and Aquaculture and the Sectoral Dialogue Committee for Maritime Fisheries also expressed this view in their opinions on the Green Paper.

2.9.9. The discontinuation of aid to fishing vessels is also likely to accelerate concentration of the Community fishing fleet, which would be harmful to small-scale fishing. This would have serious social implications upstream and downstream, not just for fishing but also for production, and for communities and industries dependent on fishing.

2.9.10. However, the EESC welcomes the fact that the Commission intends to approve the granting of aid to activities related to safety, more selective fishing techniques and improving product quality.

2.9.11. The EESC takes the view that small-scale fishing vessels (under 12 meters) should be left out of the scope of the capacity-reduction plans of the reform.

2.10. *Access to waters and resources*

2.10.1. The EESC supports the preservation of the current 6-to-12 mile fishing zones under national jurisdiction. As regards fishing beyond the 6-to-12 mile zones, the Commission should conduct negotiations with all Member States as soon possible. The EESC also endorses the continued allocation of fishing opportunities in accordance with the current relative stability principle. However, the EESC considers that care must be taken to respect the content of the Treaties with regard to the principles of equal access and distribution of fishing rights.

2.11. *Control and enforcement*

2.11.1. In line with earlier opinions, the EESC would stress the importance of control in connection with the reform of fisheries policy. The responsibilities of the Commission and Member States for control and enforcement must be clearly defined. Sanctions for infringements and practical arrangements for their enforcement must be made uniform across Member States. The EESC considers the best solution would be if the power to decide on control procedures under the CFP remained in the hands of the Council.

2.11.2. The EESC supports the extension of the satellite vessel monitoring system to apply to smaller vessels than at present. In view of the high cost of the equipment, the EESC proposes that the Commission contribute towards the cost of the equipment and installation. To ensure that the equipment is used effectively, the Commission must see to it that appropriate training is provided when the equipment is deployed.

2.12. *International fisheries*

2.12.1. The EESC endorses the Commission's proposed aim to strengthen international cooperation and ensure sustainable and responsible fisheries outside Community waters. Eliminating the use of flag-of-convenience vessels for fishing is one of the priority measures to be taken to achieve the goal of elimination of illegal, uncontrolled and unregulated fishing. The EESC considers that the joint enterprises are one possible instrument for reorientating the fisheries fleet and for cooperation with third countries under the Cooperation and Development Policy. To this end greater coordination is needed in the EU between the CFP and the EU's Development Cooperation Policy, establishing strict criteria for ensuring coherence with the sustainable development strategy.

2.12.2. From the standpoint of fishermen's employment and EU food supplies, there will continue to be a need for fishing agreements with third countries. Sustainable fisheries require that catches are controlled and based on fish stocks that are subject to monitoring. The EESC requests that scientific advice, as proposed by the Commission, be obtained for the fish stocks covered by the agreements before fishing starts. Moreover, third countries' own fishing activities must not be put at risk as a result of fishing agreements. The EESC considers that the Commission should have a more active role, with adequate resources, within the regional fisheries organisations at international level, with a view to a better defence of Community fisheries' policies. Fisheries agreements have an important job creation impact.

2.12.3. The EESC further notes that the EU social partners in the fishing sector, ETF and Europêche, have agreed on a social clause being included in all fisheries agreements with third countries, aiming at ensuring that nationals from those countries working on board vessels benefiting from the agreement enjoy the same working conditions as those of the EU crews on board. It strongly urges the Commission to include this clause into all existing and future agreements.

2.13. *Aquaculture*

2.13.1. The EESC feels that the Commission's proposals approach the Common Fisheries Policy with a strong bias towards fishing, paying scant regard to the economically

important aquaculture sector. The EESC hopes that the separate proposal on aquaculture recently presented will remedy this shortcoming ([1]).

2.13.2. There has been a steady increase in imports of aquaculture products into the EU and a large proportion of the aquaculture products processed in the EU is already based on imported fish. In order to prevent self-sufficiency from declining further in the future, the EESC considers it important to maintain the level of aquaculture production in the Community at at least its current level.

2.14. *The social dimension of the Common Fisheries Policy*

2.14.1. The EESC draws attention to fact that the reform of the CFP will have important social implications for coastal regions dependent upon fisheries. It should be noted that for every professional fisherman who loses his job there are several land-based workers who are made unemployed as a result of the knock-on effect. The EESC thinks it is important that the Commission proposes to conduct bilateral consultations as a basis for formulating action plans to assess and counter the socio-economic consequences of the reform of the CFP. The EESC takes note of the recent adoption by the European Commission of an Action Plan ([2]) to counter the social, economic and regional consequences of the restructuring of the EU fishing industry and will comment on this in a future opinion.

2.14.2. The EESC would stress that there are several ways of dealing with the loss in employment in fishing and fish processing. The solutions depend on such factors as local employment opportunities, the age structure of fishermen and available forms of support. Here, the Commission can collect extensive data from Member States on the various employment schemes already applied and the experience gained with them. Serious consideration should be given to the joint position to be adopted before the end of 2002 by the European social partners on this matter.

2.14.3. When cutting fleet capacity and offering incentives to fishermen to take up other professions, attention also needs to be paid to the livelihood of the remaining fishermen and the continuation of industry. There must also be scope for modernising the industry and for the entry of young fishermen. In particular, a higher commitment of the Member States to the ratification of the STCW-F Convention and the Protocol to the Torremolinos Convention is desirable.

2.15. *Economic management of fisheries in the Union*

2.15.1. The EESC does not believe that abolition of the system of national fishing quotas is a realistic goal in the short term. Instead, there should be a discussion on how the level of fishing can be adjusted to meet quotas and how to allocate quotas so as to benefit fishermen in the best possible way. Discussion of the economic dimension of fisheries management should also cover social aspects and environmental concerns.

2.15.2. In its Opinion on the Green Paper (point 2.2.7) the EESC expressed its disagreement with the system of individual transferable quotas (ITQ), underlining the risk that 'the institutionalisation of such a system would concentrate fishing rights in large businesses, spelling the end of small-scale fisheries and small and medium-sized enterprises' causing a deterioration in the employment position of fishermen overall. As the Commission is organising workshops on this subject, experience gained in this area should be evaluated considering costs and benefits and impacts on employment in view of issuing proper recommendations. Payment for the right to fish should also be addressed by the workshops.

2.16. *Effective and participatory decision-making*

2.16.1. The EESC supports the establishment of Regional Advisory Councils for fisheries management (RACs). There is a danger however that the RACs will become regional debating societies, without any practical influence. The EESC takes the view that the RACs must have a clearly defined role identifying all matters affecting fishing in the region providing this will not lead to undermining the maintenance of an EU-based common policy. Third countries which have a significant impact on fisheries in the region concerned should be given an opportunity to participate as external members in RAC meetings and express their opinions.

2.16.2. The EESC agrees that the RACs must play a major role in the implementation of a European code of responsible fisheries practices. It is important here to take regional aspects into account owing to large local differences in fishing practices. The EESC considers that regional advisory councils should be established within the framework of the EU Advisory Committee for Fisheries and Aquaculture and its working groups.

([1]) Communication on 'A strategy for the sustainable development of European Aquaculture' (COM(2002) 511 final).
([2]) COM(2002) 600 final.

2.17. *Eradication of illegal, unreported and unregulated fisheries*

2.17.1. The EESC supports the measures for improving the flow of information between the Community and third countries and strengthening cooperation with a view to curbing unlawful fishing and fishing by vessels flying flags of convenience.

2.17.2. The EESC feels that, given the lack of resources in developing countries for controlling fishing activities, the European Community should assist the developing countries in the control of fishing that takes place in their waters. Assistance should be provided as proposed by the Commission on terms to be determined on a case-by-case basis. This assistance could be part of the fisheries agreements to be concluded with developing countries.

3. **Conclusions**

3.1. The EESC wishes to highlight particularly the following points with regard to the reform of the CFP and the Commission's documents on the subject:

— The introduction of multiannual framework programmes in fisheries management could benefit the entire fisheries industry and provide operators in the sector with a clearer picture of the future.

— High-quality scientific advice will take on increasing importance in all areas of decision-making related to fisheries management; better coordination at European level is recommended so as to strengthen the research effort in this field ensuring better cooperation with the fisheries sector.

— Greater consideration must be given to environmental concerns in decision-making than at present. However, in addressing environmental issues, the economic and social objectives of the CFP must also be taken into account.

— The EESC proposes that the polluter-pays principle be applied in determining who is to bear the costs of environmental management, taking into consideration all human activities having an impact on the quality of marine environment and water.

— Public aid should continue to be granted for the renewal and modernisation of the fishing fleet. Aid could be tied to the requirement that, at the same time, steps are taken to reduce fleet capacity.

— The 6-to-12 mile zones and the relative stability principle remain an effective basis for regulating fishing in the future.

— International cooperation and better control are essential for achieving the objectives of the CFP.

— Special attention needs to be paid to the socio-economic implications of the CFP reforms for the entire coastal community. The CFP reforms must not be allowed to destroy the livelihoods of the remaining fishermen or prevent the entry of young people into the sector.

— The Regional Advisory Councils for fisheries management are to be welcomed, but they need to be given a clearly defined role and concrete tasks within the framework of the Advisory Committee for Fisheries and Aquaculture and its working groups.

Brussels, 12 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on Productivity: the key to Competitiveness of European Economies and Enterprises'

(COM(2002) 262 final)

(2003/C 85/22)

On 24 May 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

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 27 November 2002. The rapporteurs were Mr Morgan and then Mrs Sirkeinen. The co-rapporteur was Mr Ehnmark.

At its 395th plenary session (meeting of 11 December 2002) the Committee adopted the following opinion by 71 votes to one with seven abstentions.

1. **Summary**

1.1. The Commission Communication [1], in a review of developments outlined in the Lisbon strategy, shows that productivity growth in the EU has been slow and is slowing down in relation to that in the US. The EESC recognises that the prospects for the EU to become the world's most competitive region must include reaching productivity gains comparable with the US over a number of years. The Communication is welcome since it sets the productivity objective in a wider perspective and relates it to the particular challenge of sustainable development.

1.2. Measuring and explaining productivity and related issues is an imprecise science with many uncertainties. In particular, productivity is influenced by numerous factors, where the relation to productivity growth can be complex. Many important factors are acknowledged in the Lisbon strategy but the EESC wishes to widen the scope of the debate to some other important issues affecting productivity.

1.3. The EESC has formulated some key actions for productivity growth in the EU. The Committee emphasises that these actions must be developed with a view to optimal productivity gains, but also taking into account all three pillars of sustainable development as well as the social and cultural heritage of Europe. The actions discussed fall under five broad headings:

— R&D and innovation,

— introducing new technologies, in particular ICT (Information and Communication Technologies),

— human resource development,

— management and working place organisation, and

— market issues.

1.4. Productivity, and increased productivity is mainly a result of decisions and developments in individual companies. This activity should by all means, and at all levels — individual, company, local, national, EU — be spurred and encouraged. Healthy competition in the market place is, in particular, a necessary framework for good productivity growth.

1.5. The EESC directs some recommendations to EU decisionmakers and the social partners. The most important step towards better productivity growth in the EU is to fully implement the Lisbon strategy. Other recommendations are:

— to the Commission to develop the analysis outlined in the communication and review productivity developments in the annual follow-up of Lisbon;

— to the Commission to urgently analyse the effects of enlargement on EU productivity and put in place methods for spreading good practice information on productivity;

— to Member States to develop the Luxembourg process for active labour market policies;

— to the social partners at relevant levels to develop policies and consider arrangements to stimulate productivity as well as to follow up arrangements for education and training;

[1] COM(2002) 262 final.

— to EU institutions that efforts towards simplification of legislation are essential for better productivity.

1.6. Given the importance of productivity for competitiveness, economic growth, employment and sustainable development in general, the EESC will direct special attention to it in its future work, including arranging a conference to assess the advancement of the Lisbon strategy, including productivity, every second year.

2. The role of productivity in the perspective of the Lisbon strategy

2.1. The Lisbon strategy has set a very ambitious objective for the economic, industrial, social and environmental development of the European Union. The key words about the Union becoming the most competitive area in the world have caught the imagination. However, already after two years, it is very obvious that the process is not advancing as well as was hoped. In a number of areas, the actions necessary to reach the Lisbon target are far from being sufficiently advanced and implemented.

2.2. The Lisbon objectives are expressed in relative terms compared to the competitiveness of other countries in the world. This means that developments in other countries will influence the assessment of the actions that have to be taken in order to make the Union the most competitive area in the world by the year 2010.

2.3. Being competitive includes, in particular, being productive, but competitiveness and productivity are different issues. While productivity is clearly defined, competitiveness is wider and open to interpretation. Competitiveness can be seen as a combination of competitive prices, achieved by growing productivity, and competitive non-cost characteristics. Growth in productivity comes from more output from a given input of labour, capital and other resources. Economic growth depends, as stated by the Commission, on the accumulation of human and physical capital, the growth of the active labour force and on the efficiency with which they are used.

2.4. The issue of productivity has become increasingly focused during the 1990's, in view of the surprisingly strong productivity development in the United States. Over a decade, the US economy seems to have managed to increase the rate of growth in productivity while productivity growth in the European Union has decreased after 1995 from an already lower growth rate. Recent statistics, released in November 2002, indicate that productivity per hour in the US has continued to grow even during the present economic slowdown. This underscores the fact that the EU has to achieve corresponding growth rates, and when possible superior growth levels, if the Union is to become 'the world's most competitive region' at the end of this decade. This is indeed a big challenge.

2.5. Moreover, the problem of the Union is not only weak productivity growth at present, but an insufficient amount of hours worked. In view of the problematic demographic development in the EU, there is an even more pressing need for strong productivity growth in order to secure economic growth and sustained social welfare.

2.6. On the other hand, the issue of productivity cannot, and should not, be seen only in terms of its contribution to overall economic growth and competitiveness. The European Commission now has presented a Communication on productivity and is strongly arguing that productivity gains must be seen in a wider context. They contribute essentially to the development of a European society with high economic growth, sustained welfare for all, a high level of social inclusion, and high levels of environmental protection.

2.7. The Commission deserves compliments for its ambition to direct attention to the key question of productivity while setting productivity in a wider context. The fact that the communication is lacking more precise recommendations does not dilute this appreciation.

2.8. The Lisbon strategy did not particularly discuss the issues of productivity; they were embedded in the overall context of competitiveness. But the strategy includes most factors determining productivity growth and strategic actions on them.

2.9. Implementing the Lisbon strategy in full is a prerequisite for a sufficient and sustained raise in productivity, economic growth and more and better employment.

3. Measuring productivity — an art with many uncertainties

3.1. A number of scientific studies have been made on how to measure productivity. Productivity is measured as economic output against different input factors — labour, capital and other resources. The US is clearly performing better on labour

and capital productivity. On the other hand, as to the essential indicator of sustainable development, ecoproductivity or resource productivity, the EU may outperform the US.

3.2. Productivity growth can be measured per worker — as the European Commission does — or per hour, which the US' statistics does. The results vary considerably depending on the method chosen. The US has an even greater lead over the EU economies in GDP per person employed because of much higher levels of annual hours worked per person in work (TUC statistical survey for period 1997-2002). Measuring productivity only against one input factor, usually labour, at the level of a single economic sector or a company gives very limited information and must be correctly interpreted. In any case it is crucial to have reliable data available.

3.3. Moreover, the measurement of GDP does not take account of any deterioration of natural resources or pollution, except when costs have accrued from the repair of damage. Some countries, like Finland, include in their National Accounts use of natural resources in volume terms. There are no internationally agreed methods available to measure this in value terms.

3.4. In particular there are problems in measuring the productivity of services, both public and private. The Commission rightly refers to this. This problem is of great importance because of the big and growing share of services in the economies. In addition to this, much more attention should be directed to the question of efficiency of the public sector as a whole.

3.5. The usual methods of measuring productivity do not give clear answers to the influence of different underlying factors on productivity growth. These factors are numerous and their relation to productivity growth can be complicated and cannot be explained in simple manners even if widely studied.

3.6. In the US, studies on productivity have especially focused on the factors behind the very rapid gains during the second half of the 1990's. A couple of significant features seem to be generally acknowledged. One of them, perhaps the single most important, is the massive introduction of ICT technologies, and the coupled massive training of the workforce in ICT applications. Some observers have indicated that more than one fourth of the US productivity gains can be explained by the ICT factor [1].

3.7. Other key factors are the introduction of other advanced technologies in a more general sense, the availability of venture capital, the strong support for entrepreneurship and innovations, good management techniques, and — also in general — human resource development.

4. **Key productivity factors in the EU perspective**

4.1. Productivity is influenced by numerous factors of varying importance. In this Opinion only some, seen as the most important, can be discussed.

4.2. Productivity increases rely on practical decisions and acts in enterprises and other workplaces. Nothing can substitute these. Public policies can increase the potential and create a supportive framework for productivity growth. Such policies and decisions fall under different mandates — partly that of the Union, partly of Member States or regions, and sometimes the social partners. Many are included in the Lisbon strategy. National budget restrictions may influence the potential of national policies in support of productivity growth, like R&D financing.

4.3. The Commission Communication on productivity focuses on a limited number of factors, particularly ICT, innovation and entrepreneurship, human resource development, and to some extent R&D. This approach is logical but means that the discussion can easily be too narrow.

4.4. Issues such as level of investments, workplace organisation, participation policies, the creation of innovation-stimulating working milieus, new forms for university-enterprise cooperation, new forms for making available risk capital should be part of a wider approach towards productivity growth in the European Union.

4.5. The EESC recommends that initiatives to shape policies towards better productivity growth in the EU include factors such as those mentioned above.

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[1] Economic report of the US President, January 2001.

5. **Increasing productivity in the EU**

5.1. The following is an attempt to formulate some key policies to contribute to productivity growth. These policies must be developed with a view to optimal productivity gains, but also taking into account all three pillars in the policies for sustainable development as well as the economic and social heritage of the EU area. On the other hand productivity growth also contributes, directly and indirectly, to the achievement of sustainable development.

5.2. The actions fall under five broad headings: R&D and innovation; introducing new technologies, in particular ICT; human resource development; management and workplace organisation; and market issues. These areas are strongly interconnected.

5.3. *R&D and innovation*

5.3.1. Establish long-term R&D policies in cooperation with enterprises and the public sector, together with support for the development of basic applications. The knowledge of researchers can be used when formulating efficient policies and activities for better productivity.

5.3.2. Good results can be obtained by linking research closely to practical needs. One example is the Finnish productivity programme with 13 projects developed in collaboration by business, the public sector and researchers. The projects include developing practical instruments for productivity developments projects, like methods for analysis, indicators, teaching materials and wage models.

5.3.3. Shape an innovation-friendly climate in the workplace: there exists an important potential for every-day innovation in working life, based on continuing improvements and active participation by the employees. Innovations of working life itself are needed.

5.3.4. Centres of excellence are not easy to create, but when successful they attract skilled people and high-tech entrepreneurs forming a virtuous circle of innovation and productivity. The EU should moreover consider incentive programmes for attracting highly skilled workers from other countries, for instance in the form of exchange programmes.

5.3.5. The Commission has taken note of the Council decision to recommend a big increase in resources for R&D, particularly in the private sector. The EESC welcomes the decision and wants to underline the responsibility of Member State governments to take their part of this important long-term commitment and not dilute it even in times of stringent national budgets. The EESC, moreover, would like to stress that the framework programme for R&D must be closely connected to the development of competitive new technologies.

5.3.6. Present policies for the training of new researchers seem completely inadequate in relation to the needs that will occur in view of the total Lisbon strategy. New initiatives are necessary for safeguarding the supply of researchers in both public and private sector.

5.4. *Introducing new technologies*

5.4.1. Stimulate the introduction of advanced technologies in production, in both private and public sectors. According to the Commission and several other sources, new technologies, in particular ICT technologies, offer a big potential for enhanced productivity in all sectors. It is important to further study this question in depth.

5.4.2. The introduction of new technologies usually requires the adaptation of skills and work re-organisation. Sometimes jobs are reduced while new ones are created elsewhere in the economy. Acceptance of these changes by the employees and willingness to adjust, need to be addressed by long-term policies, including inter alia worker involvement, safety nets, in-house training, active labour market policies, etc.

5.4.3. Implement fully the e-Europe initiative including actions for more broadband, E-Government, telecommunications infrastructure and security.

5.4.4. Small and medium-sized enterprises often find it difficult to finance the introduction of new technologies. Proper advice should be organised and, when necessary, support in order to facilitate the use of innovative financing methods.

5.5. *Human resources development*

5.5.1. Human resources development is one of the fundamental factors in any policy for productivity, and includes a number of actions:

5.5.2. Education and training in ICT technologies

— Provide wide opportunities for life-long education and training — inter alia explore the possibility of using tax incentives, such as tax deductions on savings for future training.

— Provide compensatory education for adults that have inadequate initial education and training.

— Support more active participation of universities/colleges and technical institutes in advanced further training of employees.

5.5.3. Establish entrepreneur-oriented training opportunities for students in higher education and in upper secondary education.

5.6. *Management and working place organisation*

5.6.1. The crucial challenge for management of companies and other organisations on their way towards better productivity is how to ensure the adaptability of the organisation and in the workplace.

5.6.2. Stimulate productivity gains in the workplaces by various available methods, including understandings and agreements on productivity between employer and employees.

5.6.3. Study workplace effects of an increasing focus on productivity, and develop where necessary tools for handling negative effects.

5.6.4. Tripartite agreements can play an important role, particularly in the field of education and research. Governments will have to be active in creating support systems, for instance with regard to tax and other incentives.

5.6.5. Develop qualified training opportunities in management of productivity policies in particular for managers of SMEs.

5.7. *Market issues*

5.7.1. Establish well-functioning labour markets, without obstacles for the mobility of the employees. One crucial question here is better arrangements for the recognition of professional qualifications across the EU.

5.7.2. A flexible labour market is seen by many, based on the US and other experiences, as an important element of better productivity growth. Others stress that security of employment is not only in line with the European social model but also enhances productivity by supporting accumulation of knowledge in the enterprises.

5.7.3. Public support on a national as well as EU level should be acceptable where market forces do not provide sufficient incentives. R&D-work and risk financing are such cases. Efficient forms of providing risk finance for start-ups and small and medium-sized enterprises are needed. Public funding could preferably be channelled together with or through private finance sources with the necessary knowledge and expertise.

5.7.4. Healthy competition in the marketplace is a necessary framework for good productivity growth. A heavy responsibility is set on the shoulders of the Commission to promote and maintain effective competition policies across the EU.

5.7.5. Encourage networking between enterprises. Experiences from many regions, for example northern Italy, show how specialisation and networking can give considerable productive strength.

5.7.6. Possibilities to increase productivity in the services sector, both private and public, should be studied and relevant policies developed. It is vital, in accordance with the Lisbon strategy, to finalise the internal market for services. Introducing elements of competition in the provision of public services would increase their productivity growth, while equal access, high quality, availability and affordability of services must be safeguarded.

6. **Policy recommendations to the Union**

6.1. Outlining key factors for strengthening productivity in the EU is not difficult. A number of these factors are already included in the Lisbon strategy. The real problem is to generate synergy effects and a sustained high productivity growth. Enterprises and their employees play the key roles. They can be supported by public policies. The EESC directs the following recommendations to the official decision makers in the EU and the social partners at relevant levels.

6.2. The EESC underlines that the most important step towards better productivity growth in the EU is to fully implement the Lisbon Strategy.

6.3. The EESC recommends that the European Commission, on the basis of the present communication and the comments that this will initiate, should develop further its methodology for analysing, benchmarking and reporting on productivity developments in order to stimulate actions for productivity growth. The scope should also be widened to include analysis of public sector efficiency.

6.4. The EESC proposes that the Commission initiates or supports further study of the different factors and mechanisms underlying productivity growth. In particular the issues of eco-productivity and the role of ICT as well as other qualitative aspects of productivity need further examination. In addition, the problem of including costs of deterioration of natural resources and pollution into National Accounts and GDP calls for research and methodology development.

6.5. The EESC recommends that the issues of productivity, as well as sustainable development, are made an integral part of the annual follow-up of the total Lisbon strategy.

6.6. The EESC has set out clear and detailed messages on simplification of EU legislation. Strengthened efforts towards simplification as well as good governance in general are essential for better productivity in all of the economy.

6.7. The EESC asks the Commission urgently to analyse the effects of enlargement on future EU-wide productivity growth. Productivity developments in the candidate countries are a challenge but also seem to offer big potential gains. At accession the productivity level of the EU will fall, but the growth potential will increase considerably. A critical point is the timing of the possible inclusion of the new member states into the EMU.

6.8. The EESC proposes that the Commission develops an efficient method of collecting and spreading information on good/best policy practices for better productivity growth.

6.9. The EESC sees it as important to develop further the Luxembourg process for active labour market policies.

6.10. The EESC recognises that the social partners at local and national levels have an important role to play in planning, implementing and generally supporting policies for increased productivity.

6.11. The EESC recommends that the social partners consider various forms of understandings or agreements in order to stimulate productivity. The EESC has taken note of the work programme agreed on within the social dialogue, and welcomes the opportunity this will give the social partners also to highlight issues concerning productivity growth and its implications for the European societies.

6.12. The EESC emphasises the importance of follow-up in concrete terms of the common opinion between the social partners on European level concerning life-long learning for employees.

6.13. The EESC itself will:

— direct particular attention to the developments concerning productivity when giving its Opinion on the Lisbon Strategy follow-up at the spring Summit,

— arrange every second year a Conference on the Lisbon strategy and

— when necessary, prepare own-initiative Opinions on productivity.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on 'The impact of the enlargement of the European Union on the single market'

(2003/C 85/23)

On 17 January 2002 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an additional, opinion on 'The impact of the enlargement of the European Union on 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 6 November 2002. The rapporteur was Mrs Belabed.

At its 395th plenary session (meeting of 12th December 2002), the European Economic and Social Committee adopted the following opinion by 77 votes to 12, with 7 abstentions.

Summary

A. The enlargement of the European Union is an issue of major political, social and economic importance to the future of the EU. It provides a unique opportunity of ensuring lasting peace and stability in Europe.

B. Although the process of transformation has required large sections of the population to make considerable sacrifices and has led to major economic and social upheavals, the negotiations on the enlargement process are now in the final stages.

C. The EESC shares the view of the Danish presidency that the timetable for EU enlargement should be respected, bearing in mind the progress which has been achieved in the individual states concerned.

D. The enlarged single market will bring many economic advantages and will strengthen the competitiveness of the EU in the global market, provided that the Union manages to exploit its existing potential rather than allowing it to go unused. One of the key elements concerned here is the utilisation of the existing workforce.

E. A factor of decisive importance to public acceptance of EU enlargement will be the way in which the benefits of enlargement are distributed throughout the population.

F. There is a need to continue to press ahead with and support efforts to develop the capacity of the systems of administration and judiciaries in order to ensure that EU legal provisions do not simply exist on paper but are also applied and complied with in practice.

G. The adoption of the existing body of EU laws and economic integration are bringing about economic and social upheavals; a number of measures are being taken to overcome these problems, including the proposal by both sides of transitional provisions. Whilst these measures are facilitating a more readily acceptable form of integration, they are also at the same time bringing about a division of the single market; transitional provisions should therefore be used sparingly.

H. Effective support for the restructuring process and the removal of economic and social discrepancies between the existing Member States and the future Member States — also after their accession — are key prerequisites for a coherent economic and social development of the new EU as a whole, in line with the Lisbon objectives. Efforts need to be made in all areas of EU policy in order to remove, as quickly as possible, the differences between the existing regions of the EU and the new EU regions.

I. Special measures need to be taken in respect of border regions. It is essential to develop cross-border policies and cooperation if the potential available to border regions is to be utilised and also in order to protect these regions against detrimental development.

J. A large number of specific programmes have been introduced in order to prepare the candidate states for EU accession; the candidate states are also participating in some of the programmes and measures for the EU-15. These measures are providing the support for the accession measures. Some of the former programmes do, however, involve such a high degree of bureaucracy that it is scarcely possible for the candidate states to make use of them. It would be advisable to review these programmes with a view to simplifying them.

K. The EESC is lending its support to the enlargement process by organising hearings of the Single Market Observatory (SMO) in the candidate states and by cooperating with the social partners in these states. The EESC has also set up the PRISM (Progress Report on Initiatives in the Single Market) database, an information tool which documents measures of importance to the development of the single market. The EESC has put forward a number of proposals for developing the single market, including the proposal that single market coordination centres be set up in the candidate states.

1. Introduction

1.1. The enlargement of the Community is a matter of major importance for the future of the European Union since it provides a unique opportunity of ensuring lasting peace and stability in Europe and it offers an historic opportunity to unite the European states on the basis of common democratic values. In addition to the long-term safeguarding of peace and political stability in Europe — which is clearly the number one consideration — the process of EU enlargement also brings with it a large number of economic and social opportunities and challenges.

1.2. The transformation process will require considerable sacrifices to be made by large sections of the population of the candidate states and will, in many cases, involve major economic and social upheavals. The accession negotiations with the ten candidate states (Slovenia, Hungary, Slovakia, the Czech Republic, Poland, Lithuania, Estonia, Latvia, Cyprus and Malta) have already made progress and are now close to achieving a final outcome. The situation in Cyprus and Malta has to be looked at in a rather different historical light since these two states did not have to undergo a change of system. Bulgaria and Romania have to complete a longer catching-up process and have set themselves a later date for EU accession. The EESC has already adopted an opinion covering the geographical and political situation of Kaliningrad.

1.3. According to the estimates made by the European Commission, all of the above-mentioned states, with the exception of Bulgaria and Romania, will shortly be in a position to withstand the competitive pressure in the single market of the EU. These eight states have a viable market economy. Considerable efforts have also been made in the fields of administration and justice in order to ensure that the necessary general conditions are in place to enable the economies of these states to integrate into an extensive single market. In this context we should not overlook the fact that the very prospect of joining the EU speeds up the process of transformation. Unnecessary prevarication and the attendant disappointments for the candidate states therefore need to be resolutely opposed.

1.4. The EESC shares the view of the Danish presidency [1] that the timetable for EU enlargement should be observed. The individual states have, however, made varying levels of progress. Those candidate states which meet the criteria set out at Copenhagen could, following the conclusion of the negotiations, become members of the EU at the scheduled time.

1.5. The tremendous mass of legal provisions, requirements and rules generated by the economic integration of the candidate states with the existing EU Member States makes higher demands on the candidate states than occurred in the case of the earlier accessions to the EU. Unlike what happened in the case of the earlier enlargements, these new requirements have a bearing on:

i) the size (as regards population and surface areas of the candidate states),

ii) the development of the EU itself and the deeper level of integration which has taken place since the earlier accessions, and

iii) the relatively weak economic power (above all as measured by per capita GDP) of the candidate states.

1.6. The enlarged EU will differ markedly from the existing EU-15. Enlargement to EU-27 will bring a 34 % increase in the surface area of the EU and a 28 % increase in its population. GDP, however, will increase by only 5 %. This will mean a consequent drop in per capita GDP of 18 % in statistical terms. The differences in income levels between states, regions and individuals will increase tremendously. It will take between 10 and 30 years to achieve real convergence in levels of GDP between the existing Member States and the candidate states. Economic convergence alone (both nominal and real) will, moreover, not be sufficient in itself; it will have to be backed up by ongoing convergence in the social field [2].

1.7. The EESC maintains its belief that the enlarged single market will bring many economic benefits [3]. Adjustments made by both sides will bring about an integrated single market. The fields of trade and marketing, in particular, will be strengthened by the increased number of producers, suppliers and consumers. Completely new opportunities present themselves for (cross-border) cooperation and other forms of collaboration. The recruitment of suppliers, the achievement of benefits linked to scale, closer links to customers, etc. The simplified administrative procedures and improvements in service brought about by the modernisation of public authorities have also triggered incentives for growth and produced improved access to law (in particular company law, taxation law and administrative law). The establishment of an appeals system and a trusteeship system together with the development of a network of independent tax consultants and economic advisers will also help to ensure that the economies of the candidate states are successfully brought into line with the single market.

1.8. The enlargement of the EU will make it possible to trigger a dynamic process of economic growth and to strengthen the competitiveness of the EU in the global economy. It is very likely that the overall benefits of the enlargement process will easily outweigh its costs. If public approval is to be secured, however, the way in which both the benefits and costs of enlargement are distributed is also of decisive importance. The impact of enlargement may differ tremendously as

[1] As expressed by the Danish Minister for Employment at the EESC plenary session on 18.7.2002.

[2] High-level Group on industrial relations and change in the EU. Draft Interim Report, 16 November 2001.

[3] See 'The impact of the enlargement of the European Union on the Single Market (SMO)' opinion of the EESC, OJ C 329, 17.11.1999.

regards the various sectors of the economy, the various regions and also as regards timing. The EESC welcomes the efforts made by the Commission to inform people more clearly of the opportunities linked to enlargement. At the same time, it is, however, of decisive importance to the success of enlargement that the attendant risks and challenges be addressed openly. This is the only way to help cope with these issues.

2. **The existing body of EU law ('acquis')**

2.1. As part of the enlargement process, the candidate states have to incorporate into their own national law the existing body of EU law and consequently also apply and enforce the requisite provisions. This represents a major challenge for the candidate states. A number of candidate states have expressed reservations over this issue in the negotiations, not least because of the high cost to be met.

2.2. The existence of modern state administrations and modern states based on the rule of law, backed up by appropriate service orientation, is clearly extremely beneficial, both in respect of the transposition and implementation of the existing body of EU law. The EESC therefore agrees with the Commission that it is of the utmost importance to strengthen the administrative capacities and the judiciaries in the candidate states in the run up to their accession to the EU, in order to ensure that EU legal provisions do not exist merely on paper but are also implemented and observed in practice.

2.3. With this aim in view it is essential to establish the necessary administrative and legal structures and capacities and to introduce appropriate measures in the field of qualifications and remunerations. Appropriate information bodies and initial assistance bodies should also be set up to enable people to find out about and make use of the existing legal provisions, standards, complaints procedures and possibilities of bringing legal action. The EESC welcomes the action plans and programmes which have been introduced to strengthen the administrative and judicial capacities of the candidate states.

2.4. In this context, the question of the increase in the number of official languages in the future EU has scarcely been discussed. The EESC draws attention to the fact that this increase will place an additional burden on the EU in terms of funding and human resources, for which provision will have to be made. The EESC urges the Council to set out its views on this issue.

2.5. In view of technical, economic or political reservations, both sides have asked for transitional periods to be introduced in sensitive areas of EU legislation prior to the complete adoption of the existing body of EU legislation. The EESC is confident that the candidate states will be able to overcome the other challenges arising in the course of the accession process, just as they have managed to carry out the earlier transformation of their economies. The EESC would, at the same time, express its understanding over the fact that in many fields the switchover to the single market rules will require a certain amount of time, which will extend beyond the date of accession.

2.6. This being the case, the practice of granting transitional periods provides a helpful alternative which benefits both the present and the future member states. As they have the effect of restricting the single market, however, such transitional measures should be confined to what is required to implement an adjustment process which is socially and economically acceptable; they should also continue to be of the shortest possible duration. In the period of application of the transitional measures, targeted measures should be taken or supported to ensure that the necessary adjustments can be carried out. Sensitive areas of the single market in this respect include:

2.6.1. Free movement of capital: transitional periods have been granted in the case of all candidate states with regard to the purchase of agricultural land by foreigners. Agreement was also reached on the granting of a five-year transitional period in respect of the purchase of second residences. Transitional periods are important in both of these areas as they are sensitive issues for many of the candidate states and in all probability prices will rise anyway in these fields in the candidate states after a certain delay.

2.6.2. Free movement of workers: views differ very considerably on this issue. The EESC has already noted that measures in respect of timing and area and sectoral provisions have already been introduced to address the expected movements of the migrants and the EESC has further highlighted the need for regional and sectoral distinctions to be introduced in respect of the transitional measures for limiting the free movement of workers and freedom to provide services and for these measures to be regularly reviewed and administered in a flexible way [1]. In its common position the EU has taken account of the fact that free movement of workers is a highly sensitive issue and it has already reached agreement on transitional provisions with almost all of the candidate states. The EESC welcomes this and expresses its hope that in the course of these transitional periods every effort will be made to press ahead with the introduction of the necessary preparatory measures in order to ensure that the EU provides an effective common labour market for all future EU Member States.

2.6.3. Mutual recognition of vocational qualifications and the removal of discrimination and restrictions with regard to access to careers: these fields continue to pose a challenge. The coordination of social security systems, together with coordination and cooperation in the field of income tax, are also key issues in this context.

2.6.4. Frontier checks on individuals: these checks will be retained for a certain period following accession. If they are to secure the removal of the internal borders the candidate states will have to fulfil all the prerequisites for the entry into force of the existing Schengen provisions. These prerequisites include, in particular, the introduction of an operational national section of the Schengen Information System (SIS). Full implementation of the Schengen provisions by the date of accession to the EU will, in all probability, not yet be possible

[1] See 'Freedom of movement for workers in the single market', opinion of the EESC, OJ C 155, 29.5.2001.

for technical and operational reasons. Bearing in mind the timetable for the introduction of the second generation Schengen Information System (SIS II) which, on current estimates is not likely to be operational before the end of 2005 at the earliest, it will probably not be possible for a decision to be taken before this time on the removal of checks at the internal borders. Time will also be required to carry out the Schengen evaluation process. The continued application of border controls is however necessary in view of the transitional provisions relating to tobacco tax (see point 3.3.2.5 below).

2.6.5. Free movement of goods

2.6.5.1. Turning to the field of agriculture and the issues in this sector which are of relevance to the internal market, a series of transitional periods have been requested by the candidate states in respect of the EU's planned health and veterinary provisions; some of these requests have been accepted on a temporary basis. Almost all of the candidate states have requested transitional periods representing, on average, three years with effect from their date of accession, in order to enable them to convert their food-processing plants. If the transitional periods are accepted, the marketing of products produced by these plants in the transitional period will, however, have to be confined to the respective candidate states. Such products should not be marketed throughout the EU at this time.

2.6.5.2. Although it is at present not possible to carry out a detailed survey, since this chapter is, in part, still being negotiated on a bilateral basis, the transitional periods granted in respect of processed and unprocessed agricultural products could well jeopardise the free movement of goods. It will be necessary to carry out checks on goods at or beyond national frontiers in order to monitor compliance with these provisions. There is a risk that these transitional provisions and the border inspections made necessary because of these provisions will trigger delays at the borders between the old and the new member states. Whilst recognising the need for border inspections, the EESC nonetheless points out that considerable delays may also entail corresponding economic costs.

2.6.5.3. In this context the EESC calls for all the necessary measures to be taken in order to comply with the high standards of food safety in the EU. The following issues have yet to be resolved: assurances that adequate checks are carried out at the external borders; compliance with the EU's strict health-protection provisions with regard to BSE; safeguarding the quality of drinking water; bringing food processing plants into line with EU standards; and observance of the EU's animal welfare provisions. It will only be possible to set up inspection posts to carry out veterinary and other checks at the external borders of the EU on condition that the requisite buildings, equipment and personnel are available.

2.6.5.4. Certification systems: in this field the EESC supports the proposal put forward by the European Commission ([1]) that the candidate states should become active, full members of CEN and CENELEC by December 2003 at the latest. The aim is to introduce a uniform system for certification in order to simplify procedures and avoid the additional expenditure caused by the use of different systems; such additional costs would represent an insuperable burden, particularly for SMEs.

2.6.6. Freedom to provide services: the majority of the candidate states have been promised transitional periods in respect of financial services, relating to: restrictions applying in the case of small cooperative banks; low minimum capital-cover requirements in the case of cooperative banks, pensions funds, etc. The deadline for removing restrictions on the movement of capital between EU Member States and third countries was set at 31 December 1999. Prior to this target date, all restrictions on the movement of capital between the new member states and third countries were the subject of long-term derogations.

2.7. In order to ensure that the future single internal market operates effectively, it will be necessary to step up frontier checks. Uniform standards will have to be applied throughout the EU when carrying out these checks. With this aim in view, measures will need to be taken in the following fields: training; remuneration; application of the common rules; and monitoring compliance with these rules.

2.8. Implementation of the existing body of EU law in the enlarged Union represents a historic challenge. Even in the EU-15 and ten years after the completion of the single market, major sections of the provisions have yet to be implemented. Against this background, further development in accordance with the objectives of the Lisbon process, of single market law which has already been harmonised or standardised will constitute a special challenge. It is of critical importance to the future of the EU and the Union's objective of improving living and working conditions, that Community law and policies are adjusted to bring them into line with new developments, thereby ensuring the ongoing modernisation of the existing body of EU law. We must ensure this process does not grind to a halt.

2.9. The EESC shares the Commission's view that the administrative capacities of the new Member States will have to be regularly adjusted — even after the states concerned have joined the EU — to keep pace with the changing requirements of Community law. In order to enable the benefits of the transition from a closed system to a system based on a social market economy to be fully utilised, ongoing improvements will have to be made to the legal framework in respect of competition law, consumer protection law, labour law, social law, etc. The establishment of an adequate administrative capacity is therefore not a process which comes to an end once the candidate states have actually joined the EU. The EESC welcomes the Commission's plan to provide a special transitional facility to assist the new Member States also after they have joined the EU ([2]).

([1]) European Commission: 2002 Review of the internal market strategy (COM(2002) 171 final).

([2]) See COM(2002) 700 final — Towards the enlarged Union — Strategy paper and report of the European Commission on the progress towards accession by each of the candidate countries.

2.10. Further development of the existing body of EU law is also influenced by the nature of the decision-making process. The current rather complicated form of decision-making which is based on, above all, the new provisions for weighted voting in the Council drawn up at the Nice Council in 2000, should be analysed to determine the scope for improving transparency and efficiency. Many surveys have shown that public dissatisfaction with the EU is very often attributed to the lack of transparency in the decision-making process. There is a danger that the problem of political processes which are perceived as opaque will be aggravated when EU membership is extended to comprise 27 Member States. Further improvements in this field would be beneficial with a view to promoting a citizen's Europe.

2.11. Modernisation of the existing body of EU law is being promoted above all by the alignment of economic and social criteria in the Member States and the candidate states. The sooner economic and social discrepancies are removed, the more readily it will be possible to achieve uniform further development and progress in the EU. All EU policies, including the Structural Funds [1] have to make their contribution towards removing, as quickly as possible, existing discrepancies between the old and the new regions of the EU and facilitating coherent economic and social development in the new EU as a whole, in line with the goals set out at the Lisbon European Summit of making the EU, in the next decade, into the most competitive and dynamic knowledge-based economy in the world, whilst taking account of the Union's fundamental principles of ensuring social and territorial cohesion. This is the way to create the conditions necessary for the development of the EU in economic terms, in terms of the single market and in the fields of social policy, consumer protection and environmental conservation, which are now backing up the policy on the single market [2].

3. **The development of selected areas, opportunities and challenges**

3.1. The core objectives of the single market policy such as: the achievement of a proper level of harmonisation; mutual recognition of legal provisions; the application, observance and implementation of EU law; problem-solving and the establishment of standards, are now backed up by social policy, consumer protection and environmental conservation measures. The interaction of the euro and EU-enlargement are also giving a new impetus to integration [2]. A number of fields relating to the way in which the benefits of EU enlargement are distributed and therefore of importance to the success of the single market are addressed in the paragraphs below. The enlarged single market must bring tangible benefits to the public, both in their capacity as consumers and in their role of employees or entrepreneurs.

3.2. *Structural change and economic development*

3.2.1. In the course of the transformation process, the economies of the candidate states are undergoing considerable upheaval. In addition to the change-over from a controlled economy to a market economy, the structure of the economy measured by the relative importance of the agriculture, industry and service sectors, has to be modernised. Many old heavy industries and mono-industries, particularly in the coal and steel sectors, have shown themselves to be uncompetitive in the course of the transformation process. This is the case, in particular, with the steel industry in Poland, the Czech Republic, Slovakia and Hungary. In many cases the steel industry is concentrated in individual regions; this has had tremendous economic and social consequences in the course of the restructuring process, and these consequences, too, have been felt most strongly in these same regions.

3.2.2. Some enterprises in the existing EU Member States are also being exposed to a higher level of pressure of competition as a result of the enlargement of the single market. The single market, which is one of the key objectives of the EU, is facing a considerable challenge as a result of these developments. All available instruments will have to be used in order to cap the economic potential and to bolster economic growth. The EU must not leave this potential unused; it needs this potential if it intends to exploit the advantages of the single market and to become the most competitive economic area.

3.2.3. Economic policy measures and a targeted macro-economic policy (insofar as such a policy is possible at EU level) therefore need to be directed towards helping to exploit the economic potential of the EU — some of which has remained untapped — and thereby also taking advantage of the opportunities presented by the forthcoming enlargement of the single market. The economic policy measures involved here cover a range of fields, namely business-promotion, the promotion of entrepreneurship, support for SMEs, competition policy, technology policy, particularly in the field of information and communication technology (ICT), measures to promote a dynamic labour-market policy, employment policy and structural policy.

3.2.4. It is particularly important that specific measures be taken to prepare workers who have lost their jobs as a result of restructuring to take up new careers. Active participation in EU programmes, particularly re-training programmes, programmes for providing qualifications and life-long learning programmes, are vital pre-requisites for tackling the problem of structural change and achieving the objectives set out at the Lisbon European Council. The adoption of this course of action would also help to minimise the social impact of restructuring.

3.2.5. Border regions are facing particular challenges. The EESC therefore welcomes the EU measures for assisting border regions which are designed to underpin structural change in

(1) See 'Strategy for economic and social cohesion in the EU', opinion of the EESC, OJ C 241, 7.10.2002.

(2) European Commission: 2002 Review of the internal market strategy (COM(2002) 171 final).

these areas through the development of infrastructure, targeted skills-training measures for workers and measures to help SMEs ([1]). Neighbouring regions and the social partners have also already taken measures to promote cross-border cooperation. These measures should be extended and supported.

3.2.6. The introduction of cross-border policies for developing border regions and exploiting experience gained in EU-15 would appear to be a particularly positive step in this context. The experience concerned includes, for example, cooperation between regions, along the lines of that adopted in the Saar-Lor Lux Region in which permanent structures for regional cooperation and development have been set up, with the involvement of all the relevant players. A cross-border economic and social committee has also been set up in this region.

3.2.7. Agriculture

3.2.7.1. One of the most sensitive areas in connection with enlargement is that of agriculture. In some candidate states agriculture accounts for a far higher percentage of aggregate economic activity than is the case in EU-15. There are also tremendous discrepancies between the agricultural sectors of the EU and the candidate states, e.g. in connection with quality standards in the dairy industry, an issue which has implications in the fields of goods transport and food quality.

3.2.7.2. There are considerable differences of opinion over the procedures proposed by the European Commission with regard to the application of the Common Agricultural Policy (CAP) in the candidate states. Against this background, the reform proposals put forward by the Commission in July 2002 are of significant importance to future developments. The proposed changes to the CAP, which involve a switch from aid geared to levels of production towards an ecological approach involving the promotion of quality, and consequently smaller structures, the provision of guaranteed income payments for farmers and, above all, the move towards providing support for structural change and rural development are all steps in the right direction.

3.3. *Modernisation of markets and improved general conditions for enterprises*

3.3.1. Privatisation and liberalisation

3.3.1.1. Privatisations were an important tool in the transformation process. In cases where privatisations resulted in foreign enterprises investing in key economic sectors in the candidate states, thereby bringing both capital and expertise into these states, these measures helped to bring about rapid economic development. The success of these privatised enterprises, in particular the increase in their productivity, was, however, in many cases achieved at the cost of making workers redundant and increasing the level of unemployment, a situation which now has to be tackled using macro-economic resources and financial support from public funds.

3.3.1.2. In many cases privatisations were carried out very quickly and without having the requisite general legal and institutional conditions in place ([2]). These measures have had undesirable side effects, particularly in the field of services of general interest and related infrastructure. Services of general interest do not simply represent a key factor in bringing about an increase in the quality of life of the general public; they are also a critical factor in the location of investments and hence also of decisive importance to the development and competitiveness of whole regions. Investors prefer regions which offer a balanced supply of services of general interest.

3.3.1.3. Infrastructures are a decisive factor both with regard to the catching-up process and with regard to ensuring cohesion in the enlarged EU; this observation applies in particular in the case of peripheral areas which suffer from infrastructure weaknesses in the candidate states. The regions, cities and municipalities of eastern and central Europe face a most severe dilemma in reconciling, on the one hand, obligations in respect of the public economic interest and, on the other hand, the requirements attendant upon new forms of competition. They also have to contend with budgetary shortages, with the result that there is a trend, in many cases, to outsource services and deregulate these sectors.

3.3.1.4. This development coincides with political endeavours in the EU to open up services of general interest to competition and to deregulate traditional areas of infrastructure, such as transport, energy, telecommunications, watersupply, waste disposal and environmental services, in order to bring about the single market and to improve the benefits for consumers. There is, in this context, frequently a tendency to overlook the fact that there are certain features of services of general interest which render them unsuitable as services to be provided solely on the basis of market criteria. There is rather a need to spell out clear general conditions (public interest commitments and principles governing the operation of these services) in order to ensure that such services are provided in the requisite quantity, quality and the requisite continuity.

3.3.1.5. With this aim in view, the EESC 'is in favour of achieving a balance between the general interest and competition' ([3]). As private suppliers are primarily interested in securing an appropriate return on their investment, rather than in bringing about the development of regions, the requisite conditions for the development of regions need to be set out in the form of general conditions or rules, in order to enable all suppliers, be they public or private suppliers, to operate under the same conditions within this framework.

([1]) See 'Freedom of movement for workers in the single market', opinion of the EESC, OJ C 155, 29.5.2001.

([2]) See John Nellis: 'Time to rethink Privatisation in Transition Economies', World Bank, 1999 and Joseph Stieglitz: 'Die Schatten der Globalisierung'

([3]) See 'Services of general interest', opinion of the EESC, OJ C 241, 7.10.2002.

3.3.1.6. The whole of the general interest services sector in the EU is undergoing a constant process of adjustment and modernisation. With a view to maintaining security of supply in this field and safeguarding the public interest, Member States have set up regulatory authorities which, acting under accompanying legislation, are to back up the drive to achieve liberalisation, remove monopolies and denationalise services. Liberalisation has far-reaching consequences with regard to benefits for the consumer, the availability of price and services and accounting procedures.

3.3.1.7. The candidate states have yet to carry out some of these liberalisation measures. Because of outdated generating facilities and pricing systems geared to energy-intensive industrial users of energy, the candidate states continue to be at a disadvantage when it comes to establishing regulatory bodies and adjusting their markets to bring them into line with the international energy market. These states have therefore asked for transitional periods. The progressive opening up of the previously protected markets of the applicant states will only bring the desired positive results if these states manage to utilise the transitional periods in order to develop national regulatory authorities. These authorities must be given sufficient legislative, technical and financial support to enable them to accept equal responsibility for defending the interests of consumers, owners and staff.

3.3.2. Taxation

3.3.2.1. Taxation systems in the EU have not yet been brought into line with developments such as globalisation, economic integration in the single market and the monetary union. EU enlargement will also make new demands on the tax systems, the first priority being the adoption of existing EU Directives.

3.3.2.2. As is also the case in other fields, transitional provisions relating to taxation systems may help to cushion obvious negative economic and social consequences for society in the candidate states. They may likewise help to bring about a 'soft' integration of the candidate states into the single market. Extremely limited use should, however, be made of these transitional and exceptional rules so as to avoid exacerbating the danger of tax competition within the EU, which would be damaging to public budgets, and to preclude distortions in competition.

3.3.2.3. The EESC draws attention to the fact that an erosion of the tax base in both the candidate states and the existing EU Member States would not be expedient, particularly in the course of the enlargement process. It would jeopardise the scope for action on the part of the states, which is a factor of considerable importance, particularly in the context of such a comprehensive reform process. This situation could also have a damaging effect on political acceptance of EU enlargement within the current Member States.

3.3.2.4. In this context, the EESC advocates that tax systems be developed in such a way as to overcome the existing obstacles to the single market and prevent tax competition, particularly in the field of corporation tax, whilst, at the same time, providing funding required to cope with the tasks and challenges facing the enlarged EU and to address the issue of economic and social cohesion. These efforts could also be continued in the course of the enlargement process. Exceptional rules, such as the tax treatment of multinationals customarily applied in some states, could endanger these efforts; such exceptional rules are also not compatible with existing EU law and should therefore be rejected.

3.3.2.5. A further matter of concern is the exceptional provisions or generous transitional provisions in the field of VAT and excise duty; in these two fields, the combination of the geographical proximity of the countries concerned and/or the fact that the goods in question can be readily transported mean that a low level of taxation, compounded by low price levels, could lead to distortions in competition and also increase the risk of smuggling and black-market operations. By way of example, transitional provisions were agreed with all of the candidate states in respect of tobacco taxes. The EESC welcomes the associated conditions to be introduced by the candidate states with regard to checks on the tobacco sector and the possibility for the existing EU Member States to introduce quantitative restrictions. Whilst the border controls which are necessary in this context in respect of passenger traffic may have a detrimental effect on the free movement of persons, these checks are essential in order to prevent smuggling.

3.3.2.6. The Commission's endeavours to prevent the establishment of special economic zones in the candidate states should be supported. In this context, the EESC highlights the example of Latvia, which has declared its readiness to seek to comply with the existing body of EU law. Such steps will also have to be taken in other states. The Commission will monitor these efforts. The Commission's activities with a view to preventing the establishment of special economic zones are highly conducive to the development of an enlarged single market as this approach represents the only way to counter the risk of distortions in competition. Rather than setting up special economic zones, candidate states should promote regional development by introducing appropriate measures in the regional policy and structural policy fields.

3.3.3. Small and medium-sized enterprises

3.3.3.1. In the future single market it is likely that large enterprises having a higher turnover will gain competitive advantages. Export-orientated enterprises which, against the background of the opening-up of the eastern European states, have already learnt how to gear their operations to export market conditions, have an advantage over enterprises which have hitherto confined their operations to their national markets.

3.3.3.2. The establishment of a SME structure in the candidate states was a fundamental prerequisite for improving the employment situation and attenuating the harmful consequences of plant closures and the necessary re-structuring of the oversized former main industries. As a result of the key role played by SMEs, the inevitable labour-force reductions have been offset, a fall in living standards has been prevented and efforts to avoid social tensions have been bolstered.

3.3.3.3. The difficult conditions under which SMEs operate have, however, resulted in the widespread occurrence of aspects of the black economy and precarious working conditions in some SMEs. In order to bring conditions in this sector up to the level of those applying in the EU with regard to the business activities of SMEs and working conditions for SME workforces, there is a need to strengthen the social partners — both those representing employers and those representing workers — and to introduce support measures and aid programmes. A number of measures are required: financial support; measures in the field of training and continuing training; and the establishment and simplification of administrative structures.

3.3.3.4. There is no adequate social dialogue either at plant level or at supra-plant level; industrial relations have been placed on a wholly individual level. Trade unions, women's organisations and church organisations have drawn attention to a number of problems, including the fact that commercial employees, in particular, are experiencing a deterioration in their working conditions (some employees, for example, have to work up to 16 hours per day without having Sundays or public holidays off), with the attendant adverse effects on their family lives. The EESC expresses its concern over this development and calls for measures to be introduced to implement an effective social dialogue.

3.3.3.5. With particular reference to SMEs, in its opinions from 2000 and 2002 [1] on the European Charter for Small Enterprises the Committee has highlighted the major role they play in the economic and social development of the applicant countries, notably in the spheres of education and job creation. Steps should be taken to implement in the applicant countries the specific support measures advocated in the ten recommendations of the European Charter for Small Enterprises, which was signed by the applicant countries in their turn (Maribor, April 2002) and, for this purpose, to encourage cooperation between small business organisations in the applicant countries and the present Member States.

3.3.4. In the field of transport policy,road traffic in the EU is a sensitive topic — especially from the citizens' point of view. A single internal market inevitably means increased traffic volume. The challenges facing EU transport policy are all the greater for a number of reasons. It has to pursue the goal of establishing, for the necessary volume of transport, suitable basic conditions which are also environmentally and socially compatible and which ensure that there is a reasonable co-existence between the different modes of transport (rail, road, water ...). On the other hand, it has to introduce appropriate transport policy measures and suitable economic incentives to prevent unnecessary transport, whilst enabling the essential volume of transport to be carried out in the most cost-saving way possible and with the least possible damage to the environment. Furthermore, distortions and undesirable developments may be brought about in this sector because of the considerable differences in (labour) laws and economic conditions. Cooperation with the candidate states with regard to these issues should therefore be stepped up, even before accession.

3.3.5. In the field of competition policy the topic for discussion is above all the steel industry in Poland, the Czech Republic, Slovakia and Hungary. Steel production in central and eastern Europe is judged to be of only limited competitiveness. High state subsidies give grounds for concern with regard to competition policy, as does disregard for environmental measures, which impact upon prices. The candidate states argue that withdrawing subsidies would cause an enormous social problem, and that the steel is exported mainly to Russia. The EESC recognises this argument, but would point out that, for that very reason, restructuring of the steel industry is necessary right up to the moment of accession to the EU. It is important to act now, in order to avoid having to introduce transitional periods in this area — because of the problems unresolved by the time of accession — and to prevent the distortions of competition that would result.

3.3.6. In the medium term the future EU member states will also have to address the issue of their participation in economic and monetary union (EMU). Experience gained in the former East Germany indicates that the prerequisites for a successful adoption of the euro need to be thoroughly examined and that there should be no precipitate participation. As a first step, the future member states could join the exchange rate mechanism, under which the value of their currencies would be allowed to fluctuate by approximately 15 %. In this context, the EESC would also draw attention to its opinion on the impact of enlargement on EMU.

3.4. In fact — and even if they do not immediately recognise themselves under this title, as defined by the Committee in its 2000 opinion [2] — the social economy organisations (cooperatives, mutual societies, associations, foundations, NGOs) have played a very important role in filling the gaps left by the public authorities in assistance to marginalised groups in society. But above all they have acted and continue to act as a catalyst for public participation and

[1] EESC opinions on the charter, OJ C 204, 18.7.2000, and OJ C 48, 21.2.2002.

[2] EESC opinion on the social economy, OJ C 117, 26.4.2000.

democratisation — not always to the same degree but always making a substantial contribution — in all the applicant states. The Committee thinks that it would be extremely harmful if, bearing in mind their present fragile structure and the fragmentation and isolation of their diverse forms, the organisations and enterprises of the social economy in the candidate countries were to wither or die. This would result in enormous social, political, financial and cultural costs which would have to be borne not only by these countries but also by the current Member States. The Committee therefore calls for the launch of a 'development fund for the social economy' in the present and future member states aimed at consolidating this important force for social, economic and democratic cohesion in an enlarged Union.

3.5. *Enhancing people's quality of life*

3.5.1. Social policy and employment

3.5.1.1. Enlargement will only prove successful if it receives the support of the public in both the present EU Member States and the candidate states. A key prerequisite for success is that enlargement should also represent a 'social' project. Social policy has now become one of the policies which back up the single market; in this context it is essential that the candidate states set themselves the goal of introducing the European social model, with its principles of social and territorial cohesion, as a key feature of the transformation process. The expected achievement of economic growth in the candidate states must also be utilised to consolidate their social security systems.

3.5.1.2. The goal of full employment, as set out in the Community decisions taken at the Lisbon European Council, must also be rigorously pursued in all policy areas throughout the enlarged Union. In this connection the Committee is pleased that the candidate countries already take part in the appropriate EU programmes and action plans (including the combating of poverty).

3.5.1.3. In chapter 13, relating to social policy and employment, a number of candidate states have requested transitional periods in respect of the field of health and safety at the work place. The EESC basically understands the need for transitional arrangements but would point out that it advocates a restrictive use of such arrangements, since they may give rise to distortions in competition in the single market and would undermine the quality of the European social model. On the other hand, the EESC acknowledges that many SMEs would simply be unable to afford to bring their operations into line with the existing body of EU law. Once these states join the EU, it is likely to be necessary for SMEs, in particular, to invest heavily in order to meet the requirements attendant upon compiling with the existing body of EU legislation.

3.5.1.4. In addition to introducing rules in respect of migrant workers and equal treatment, the EU has also managed to establish minimum standards in a number of key individual fields. To quote an example, a large number of labour law directives have been adopted covering areas ranging from health protection, working hours, annual leave, protective measures to safeguard working mothers and parental leave to technical measures to protect workers. Areas in which laws have been harmonised will clearly need to be revised and brought into line with new conditions, on an ongoing basis. It will, however, also be even more necessary in future to introduce EU provisions in additional areas, such as protection against unfair dismissal and a number of individual aspects of collective labour law. If the quality of the European social model is to be sustained, this model will have to be subject to constant development; this applies also — and indeed in particular — to the enlarged Union.

3.5.2. Social dialogue

3.5.2.1. The involvement of the social partners and civil society in all issues affecting them is a further key element of the European social model. With this aim in view, the EESC welcomes the fact that the Commission is consulting the social partners and representatives of civil society in the candidate states on a large number of issues and calls on the governments of the candidate states to follow this example. Many governments in the candidate states still have problems with involving the social partners and civil society organisations adequately in the enlargement process.

3.5.2.2. It is at the same time a matter of concern that both employers' organisations and bodies representing workers are frequently established on a relatively insecure footing in the candidate states and the bilateral social dialogue, i.e. collective negotiations and agreements between employers' and employees' organisations, is not yet sufficiently developed. It is vital to strengthen these institutions if we are to secure a social dialogue which operates smoothly and to implement the Community acquis, especially in the social sector.

3.5.2.3. Stepping up the support provided by organisations in the existing Member States could help to bring about an effective social dialogue, as could the establishment of economic and social committees. Strengthening of the social dialogue at EU level would also be a desirable measure, especially in the form of regular participation of the applicant countries' social partners from 2003 onwards in the structures of the European Social Dialogue Committee, as provided for by the European social partners in their work programme for 2003-2005, presented at the Social Dialogue Summit held in Genval on 28 November 2002. In this connection it will be important to ensure that the organisations representing SMEs and small businesses are given their due place in these structures.

3.5.3. Social security systems

3.5.3.1. In the candidate states, the process of adopting the existing body of EU law is overlapped by the process of transforming the whole economic and social system, a process which is supported by the World Bank and the IMF. These latter bodies act on the bases of the US social model and at the same time have a much more comprehensive remit than the EU, whose legislation is not strongly developed in many fields. The EU, whose Member States exhibit distinctive, if different, social systems, attaches great value to the 'European social model' and its principles of social and regional cohesion. However, the EU is playing hardly any role in the above-mentioned reforms because of a lack of legitimacy deriving from treaties or laws (there is very little EU legislation covering this field). As a result, in many areas, including the social security field, the way has been paved for a social model that, in the EESC's view, cannot serve as a model for Europe [1]. The EESC recommends that more attention be paid to these questions within the framework of the open coordination process developed at Lisbon, in which the candidate states have also been included since Barcelona.

3.5.3.2. The limited legal competence of the EU means that all the internal market effects — such as the impact on the capital market or effects on worker mobility — deriving from the organisation of social systems (e.g. pension schemes) are very clearly expedited at EU level without the associated underlying issues relating to the organisation of social systems being subject to systematic and comprehensive debate.

3.5.4. Services of general interest

3.5.4.1. At European level, liberalisation and deregulation have been justified and implemented not only in the traditional infrastructure areas such as transport, energy, telecommunications, water supply, waste disposal and environmental services, but also in the area of social services as well as in health and education or financial services, particularly with the completion of the internal market.

3.5.4.2. The candidate states still have to undergo some of these stages of liberalisation and have requested transitional periods. The EESC would point out that the steps towards opening up these states' hitherto protected markets will only have the positive results hoped for if equal account is taken of the interests of consumers, owners and employees and the specific features of the services involved.

3.5.4.3. These services show features which make their adaptation to exclusively market criteria unsuitable. It must therefore be specified in which sectors and to what extent competition and internal market rules are to actually apply to services of general interest. Care must be taken here to see that the services involved have a very considerable impact on people's quality of life and social security. It is therefore important to know whether, to what extent and in what capacity people have access to such services.

3.5.4.4. In addition, it is essential to prevent the emergence of new monopolies/oligopolies as well as out-and-out competitive dumping. Instead Europe needs fair rules and non-discriminatory treatment of public-sector, public-service and municipal corporations.

3.5.5. Environmental issues

3.5.5.1. Large areas of environmental law are regulated for the whole Community, either through the establishment of general environmental requirements or environmental quality standards (ground level concentration limits), production-related measures (emission limits) or through general procedural rules. Community law does, in principle, provide for a large measure of flexibility in environmental policy, which is, in the final analysis, designed to take account of the goals of the economic and social development of the Community and the balanced development of its regions. Although this allows considerable scope for granting exemptions to individual Member States in specific plans for directives, it should not be forgotten that such possibilities could all too easily be over-used in the enlarged union.

3.5.5.2. In view of the environmental damage which is often found in the candidate states and still has to be overcome, extensive demands have been made for transitional periods in order to bring in the existing *acquis*. The EESC would point out here that an intact environment represents one of the most precious assets for preserving and developing the quality of life, and every effort must be made to repair environmental damage, remove risks to the environment, such as those posed by nuclear power stations, and prevent such damage and risks from occurring in the future. Large-scale exemptions and transitional measures would not only lead to distortions of competition but would also have a detrimental impact on the future development of the environment and would pose difficulties for a continuous development of Community environmental law according to the principle of sustainability.

3.5.6. In the field of consumer protection too, considerable improvements have been achieved for Europe's consumers over the past few decades. In addition to central regulations in the areas of consumer safety and consumer health, major progress has been made above all in protecting consumers' economic interests. A key marker here was the Product

[1] See 'Employment, Economic Reform and Social Cohesion — Towards a Europe of Innovation and Knowledge'; opinion of the EESC, OJ C 117, 26.4.2000.

Liability Directive [1]. Its need of amendment was well-known and its scope was expanded to include agricultural products, not least as a result of the BSE crisis. Care should be taken to see that such improvements in consumer protection can still be decided in an enlarged EU. Appropriate pressure by consumers can also help ensure that development continues.

3.6. *Preparations for accession*

3.6.1. In addition to the inclusion of the candidate states in EU programmes, which has already begun, there are also specific programmes for preparing these states for accession. Particularly worthy of mention here is the twinning programme to prepare administrative authorities for their future tasks. The demand for this programme will continue even after accession, in accordance with the need mentioned above for the further development and adaptation of the administrative authorities even after accession.

3.6.2. It is unfortunate in this context that the implementation of the programmes is often so complicated that potential applicants are scared off or cannot work out how to take part. Thus the Sapard programme for the conversion of agriculture has not yet received any applications in a number of candidate states, even though agriculture is undoubtedly one of the sectors where there is most need for action. The EESC would refer here to its proposals on the continuation and reform of structural policy and the Structural Funds [2].

3.6.3. The EESC has already made a number of proposals in its first opinion on this topic [3] in order not only to advance the candidate states to the internal market, but also to give them the possibility of preparing themselves for future internal market developments. It would particularly refer to the proposal to set up single market coordination centres and contact points for businesses and the general public.

3.6.4. The EESC itself regularly carries out hearings in the candidate states, to which the relevant economic and social groups are invited. In addition, with the PRISM database it has created a tool containing essential initiatives of relevance to the single market, which is available as a source of information on the EESC website.

(1) Directive 85/374/EEC, as amended by the Directive 1999/34/EC, OJ L 283, 6.11.1999.

(2) See 'The EU's economic and social cohesion strategy', opinion of the EESC, OJ C 241, 7.10.2002; 'The future of cohesion policy', opinion of the EESC, OJ C 241, 7.10.2002.

(3) See 'The impact of the enlargement of the European Union on the single market', opinion of the EESC, OJ C 329, 17.11.1999.

Brussels, 12 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

396th PLENARY SESSION, 22 AND 23 JANUARY 2003

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: Towards a thematic strategy on the sustainable use of pesticides'

(COM(2002) 349 final)

(2003/C 85/24)

On 1 July 2002 the Commission decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the above-mentioned communication.

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 7 January 2003. The rapporteur was Staffan Nilsson.

At its 396th plenary session on 22 and 23 January 2003 (meeting of 23 January), the European Economic and Social Committee adopted the following opinion by 74 votes in favour, with two dissenting votes and 11 abstentions.

1. Summary

1.1. The EESC supports the Commission's effort to draw up a thematic strategy on pesticides along the lines set out in the present communication. The strategy should include measures already to be found in existing directives, along with supplementary measures, to be implemented in an organic and coherent way so as to avoid overlaps that could lead to confusion over roles or to excessive cost increases for economic operators. The Committee also feels that mention should be made of crop protection, which can be secured through the use of pesticides, the risks and benefits of which must be assessed on a sound scientific basis.

1.2. The new measures to be proposed in the future strategy should include common EU criteria, guidelines and other parameters regarding what measures should be taken; although the practical details of the action programme must be determined at national level. The EESC prefers this approach as it enables general criteria to be tailored to local circumstances and to the nature of the problems faced.

1.3. An important part of the measures to reduce environmental and health risks consists of training of, and advice to, farmers, farm workers, seasonal workers and other users. The EESC thinks that the Commission should consider the possibility of part-funding measures through a fair levy on pesticides. In order to avoid distortion of competition, the Commission should seek to ensure that corresponding levies are also introduced in non-EU countries.

1.4. It is right to focus attention primarilyon reducing pesticide-related risks, which may also involve reducing the quantities of chemicals used, particularly when tailored to national, regional and local requirements.

1.5. The revision of Directive 91/414/EEC is welcomed, and aspects such as the substitution principle and regional tests are regarded as positive.

2. Introduction

In agriculture pesticides are very often a necessary expedient to protect crops against attacks by harmful insects, fungi and plant diseases which would otherwise destroy or damage the harvest. However, the use of chemical pesticides in agricultural production is still questioned by many consumers. Strong opposition exists within environmental organisations, accompanied by calls for a rapid and sizeable reduction in their use. At the same time the manufacturing industry constitutes an important force for a continued research and development drive to find better and safer pesticides (both chemical and biological). High priority must therefore be given to the Commission's and Member States' work in this field.

3. Summary of the Commission communication

3.1. In the sixth environment action programme, it is stated that a thematic strategy will be drawn up on the sustainable use of pesticides. The European Commission has now issued a communication which constitutes one stage in taking this strategy forward. In tandem, interest groups were invited to take part in a conference on 4 November 2002 to discuss the strategy. In addition, the Commission's internet site contains all the relevant documentation and statements; the public can also express their views there.

3.2. The strategy aims to reduce the impact of pesticides on the environment and human health, while ensuring adequate plant protection; it has the following objectives:

— to minimise the hazards and risks to health and environment from the use of pesticides;

— to improve controls on the use and distribution of pesticides;

— to reduce the levels of harmful active substances, in particular by replacing the most dangerous by safer (including non-chemical) alternatives;

— to encourage the use of low-input or pesticide-free crop farming;

— to establish a transparent system for reporting and monitoring progress, including the development of appropriate indicators.

3.3. The Commission states that the communication concentrates on the use of plant protection products (PPPs), with particular emphasis on agriculture. Even if the environment action programme uses the term 'pesticides', it is clear that it is primarily a matter of PPPs. Pesticides is a generic term for all products used in agriculture, and to some extent for non-agricultural purposes (railway embankments, parks and as consumer products). The bulk of them are chemical compounds but pesticides can have both chemical and biological components.

3.4. The communication contains an analysis of legal provisions in force in the European Union. It emphasises the links with other EU policy areas and initiatives, and account is also taken of enlargement and the Union's international commitments. Moreover, examples are given of effective measures already taken by some Member States, and several possible measures are proposed which could become part of the thematic strategy.

3.5. In 2003, once the wide-ranging consultation process has been completed, the Commission will frame a thematic strategy encompassing all the proposed measures and initiatives and present it for approval to Council and Parliament at the beginning of 2004.

4. **General comments**

4.1. The EESC welcomes the Commission's move to draw up a strategy for sustainable use of pesticides. When the chemical preparations applied are alien to the environment and can be harmful, it is expedient to focus action on risk reduction. Ultimately the overriding long-term objective should be to make farming less dependent on chemical pesticides. Efforts should concentrate on developing various biological alternatives, the plants' inherent resistance and farming methods which could minimise pesticide use. At the same time, agriculture today needs to be able to use pesticides to stop various forms of harmful organisms. The Commission communication therefore constitutes an important step towards sustainable use.

4.2. Environment and health are naturally influenced by a large number of activities and by substances other than pesticides. The strategy should therefore place pesticide-related risks in the context of risks stemming from other day to day activities.

4.3. The Committee supports the Commission's work with a view to the presentation of a thematic strategy in 2004, and hopes for a clearer and more detailed description of the benefits and dangers associated with pesticides. In the EESC's view, the proposals presented by the Commission are rightly founded on environmental and health concerns, and can realistically be implemented on a timescale yet to be decided.

4.4. The EESC does not consider that this strategy should complement existing legislation such as Directive 91/414/EEC, but that the strategy should operate as an umbrella framework and include existing legislation, probably also proposing new legislation. It is important for the Commission to clarify the role of the future strategy, taking care to avoid overlaps between legislation at different levels, both European and local, at the risk of causing confusion and increasing costs.

4.5. Although the Commission deals in one section with the advantages of using pesticides, it does not describe the benefits that directly result from the possibility of curbing damage to farm crops, viz. that food production can be maintained at a sufficiently high level (in terms of quantity, quality and variety of crops), in order to guarantee the supply of food. A future strategy should also spell out how food prices are influenced by access to chemical pesticide use. Had it not been for these benefits, the use of pesticides could have been phased out within a foreseeable period.

4.6. The EESC advocates a more detailed description of the threats involved than that given by the Commission — i.e. the true reason for use of pesticides. Understanding why pesticides are used presupposes a sound knowledge of the problems with which agriculture has to contend as regards weeds, fungi and insects. The EESC wishes the future strategy to include a description of the threats involved, the scale of damage currently inflicted by weeds, fungi and insects, the potential damage if currently known alternative methods were used, and the impact of absence of pesticides on food supply and prices in Europe.

4.7. In the drive to reduce pesticide-related risks, clashes of aims can arise between different types of environmental measure. For example, the impact of mechanical methods on the climate can be set against the risks involved in the use of pesticides. A pesticide strategy needs to address these clashes of aims.

4.8. Even if the communication focuses on reducing risks involved in the use of pesticides, it is important for the strategy also to seek to reduce the scale of use. For agriculture, pesticides are a valuable input. Reduction in use can be achieved through more effective utilisation, adapting use to requirements, improved methods and other measures relating to use. The Commission should also have a use-reducing strategy for non-agricultural areas that use pesticides (private, public etc.). Reduced use may lead to risk reduction.

4.9. The food trade and industry has its own schemes and regulations which make demands on pesticide use in agriculture. A number of supermarket chains, food producers and farming cooperatives require farmers to comply with certain delivery conditions with a view to boosting their brand names; this has spin-off effects for pesticide use. Consumers' choices and hence the specific requirements made by commerce and the food industry, have a decisive impact on farm production methods. Further, consumers often prefer foodstuffs of unblemished appearance, which in turn acts as an additional incentive to protect crops from harmful organisms. However, market-driven development — in which increased product marking can be a promotion ploy — can encourage reduced use and sustainable development of pesticides, as compared with legislation-driven development.

5. **Specific comments**

5.1. Chapter VI lists the possible components of the Commission's future thematic strategy for pesticides. The various proposals are commented on in detail below; the points indicated in brackets refer to the relevant parts of the communication.

5.2. (1a) The EESC supports the drawing up of national plans and wishes to place special emphasis on the participation of farmers and their organisations, farmworkers and the chemical industry. However, it is important for this to build on common EU criteria, guidelines and other parameters for the measures to be taken to avoid distorting competition in the internal market. Many of the remaining measures in the proposed strategy ought to be incorporated into these national plans, which should be assessed at regular intervals.

5.3. (1b) On the introduction of special precautionary measures in particularly sensitive areas, e.g. water protection areas and areas defined according to Natura 2000, it is important for local conditions to be taken into account. The EESC is in favour of laying down common rules and minimum levels, but the details of how to achieve the necessary protection will depend on local conditions. It is reasonable and essential for individual rights that it should be possible to award compensation for changes in the value of land and crops when the existing land use is affected. To the extent that these areas need extra protection, this ought to be made clear in the Habitat Directive (92/43/EEC) or in the framework directive on water (2000/60/EC) and related subordinate directives which deal with the whole range of threats.

5.4. (1c,d) The EESC takes the view that it is important to keep the public constantly updated on pesticide-related risks and what can be done to reduce the risks. One aspect which the Commission fails to highlight is how it will be possible to measure not only pesticide residues in water but also the products of their decomposition. A future thematic strategy should sketch out what can be changed or complemented in daily work procedures. The Commission's intention to cooperate in the development of suitable indicators can also make this possible.

5.5. (2a,b,c) It is important not to build up the reporting system and administration with the associated costs unless there is a clear benefit to be gained from them. The information to be provided by users should be of such a kind that they feel it is worthwhile in production terms to collect the information.

5.6. (2d) As regards the collection of packaging containing pesticide residues, it is important in drawing up the rules to make it possible to cooperate in the collection of other dangerous waste, e.g. batteries, waste oil and fluorescent lamp tubes. There are many good examples of campaigns organised in various Member States (e.g. Germany and Belgium) to collect used pesticides and packaging. It is important to raise awareness of contamination connected with the filling and cleaning of equipment and with the handling of packaging.

5.7. (2e,f) The EESC supports the proposed measures to introduce technical inspection of spraying equipment and to require the training and qualification of all pesticide users (farmers, farm workers, seasonal workers, etc.). Several surveys in different Member States indicate that training, and providing advice to, users can significantly curb risks. Training should also be given to increase knowledge and understanding of existing legislation. Training, qualification and technical inspection of equipment should be made compulsory.

5.7.1. (2) On points 2a-f, the Commission intends to return with proposals for suitable mandatory requirements within two years of the strategy being adopted. It also proposes to link compliance with the proposed requirements to the CAP ('cross-compliance'). Hence aid beneficiaries will not receive aid if they fail to observe certain rules, in this instance rules relating to pesticide use. In its opinion on the mid-term review of the CAP the EESC has stated that it is necessary to get a clearer idea of how these rules are framed before a position can be taken on the 'cross-compliance' rules. Further, it must be deemed reasonable that the same mistake can trigger both criminal proceedings and withdrawal of aid.

5.8. (3) The process of assessing active substances with a view to including them in Annex 1 to Directive 91/414/EEC must continue to have priority and further delays are unacceptable. To include a substitution principle in this Directive, as proposed by the Commission, is a reasonable suggestion with a view to constantly reducing the environmental and health risks associated with the use of pesticides. The EESC assumes that the Commission proposal will allow reasonable periods of time for the phasing out of substances under the substitution principle, in order to reassure the manufacturers and give them an incentive to develop new, less harmful substances.

5.8.1. It is also important for the amended version of Directive 91/414/EEC to assess how the testing of various preparations can be made more effective. For example, this could be done through regional testing, without encroaching on individual Member States' right of decision. A regional testing procedure would mean that certain products with a narrow field of application, which at present are perhaps withdrawn from the market for economic reasons, could still have access to it. In the EESC's view, preparations with the highest environmental and health risks are the ones which should disappear from the market, not necessarily those with few users.

5.9. (4a) To promote in various ways farm practices which reduce dependence on pesticides is a welcome and very important measure. We also need to be open to the idea of supporting a whole range of practices which in their different ways reduce both utilisation and risks. In its own-initiative opinion on The future of the CAP [1], the EESC pointed to a number of possible ways of taking better account of environmental aspects in agricultural policy. The 'second pillar' of the CAP gives Member States the opportunity to compensate farmers who succeed in reducing the risks involved in their use of chemical plant protection products. The action programme can also be funded under the Social Fund or through a harmonised levy on pesticides.

5.10. (4b) In the development of good farming practice it is important to respect the existing rules on the handling of pesticides. To devise a system of rules which the users, for technical or knowhow-related reasons, do not manage to comply with will result in criminalizing users and scarcely be conducive to a continuous drive for improvement, which presupposes their commitment.

5.11. (4c) An environmental charge levied on pesticides can be justified, partly to reduce their use and partly for collective funding of certain activities. Since many of the measures proposed by the Commission require funding, it is reasonable for the users of pesticides to meet part of the costs. It would therefore be conceivable to levy a very limited charge for every kilo of active substance used, with a view to financing some of the proposed measures, such as information and training. Even a modest harmonised levy would provide significant funds for the national risk-reduction plans. However, a limited charge would also further push up the cost of production in the EU. To avoid a distortion of competition, the Commission should seek to ensure that corresponding charges are also introduced in other countries. The Committee

[1] OJ C 125, 27.5.2002, p. 87-99.

thinks it important for the EU to have a global perspective in drawing up rules which aim to bring about environmental improvements. When corresponding measures are also introduced in other countries, measures to improve the environment can be taken while maintaining the competitiveness of European agriculture.

5.12. (4d) The Commission indicates that the Member States' rates of VAT on pesticides vary from 3 % to 25 %. The EESC considers that one prerequisite for an effective internal market with a level playing field is the harmonisation of VAT rates as well as levies on pesticides.

5.13. (5) It is necessary to have a suitable system for showing the results of measures taken, in order to be able to assess them and make improvements. It is therefore important that the indicators show the impact of the drive for improvement. To measure the change in residues in foodstuffs or in the blood of users, it is technically possible to carry out chemical analyses. As regards the monitoring of reduction of risks to the ecosystem and to water, the Committee supports the Commission's proposal to find indicators which do not focus on quantity used, but focus on the properties of the preparations concerned and of how they are handled in use.

5.14. (6) The measures proposed for the candidate countries are reasonable, and suitable funding methods need to be found for them. In addition, we must all be aware of the fact that modernisation of the candidate countries' agriculture is likely to lead to increased use of pesticides. The EESC takes the view that the Commission should prioritise monitoring of the evolution of the situation in the candidate countries. Systems should be developed for collection and rendering substances harmless.

5.15. (7) The EU should not allow a higher level of residues in imported products than in goods produced within the Community. This is not just a question of ensuring fair competition; major public health aspects are the primary concern. The EESC therefore supports the work the Commission is doing in this direction.

Brussels, 23 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the Economic and Social Committee

The following proposals for amendments, which secured at least one-quarter of the votes cast, were defeated during the Committee's discussions:

Point 4.5

Amend the second part of the first sentence of this point to read as follows:

'... food production can be maintained at a sufficiently high level (in terms of quantity and quality ~~and variety of crops~~), in order to guarantee the supply of food.'

Reason

The scope for using pesticides has made a major contribution to the genetic impoverishment of species and varieties.

Result of the vote

For: 27, against: 44, abstentions: 11.

Point 5.2

Amend the first sentence to read as follows:

'... the participation of farmers and their organisations, farmworkers, environmental conservation associations, consumer protection associations and the chemical industry.'

Reason

It is essential to have wide-ranging participation of the social players in the organisations concerned when drawing up national plans.

Result of the vote

For: 25, against: 55, abstentions: 3.

Point 5.9

Insert the following new sentence after the second sentence of this point:

'... reduce both utilisation and risk. By means of a redistribution of financial aid, the "first pillar" of the CAP must also be geared towards paving the way towards stepping up the reduction in the use of pesticides in agriculture in general. In its own-initiative opinion ...'

Reason

The way in which financial aid is distributed under the first pillar of the CAP has a decisive influence on the type of cultivation and crops selected by farmers. This pattern of distribution of aid therefore determines, to a decisive degree, whether or not pesticides are required at a later stage and how much is used.

Result of the vote

For: 26, against: 53, abstentions: 5.

Opinion of the European Economic and Social Committee on the 'XXXIst Report on Competition Policy 2001'

(SEC(2002) 462 final)

(2003/C 85/25)

On 29 April 2002, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'XXXIst Report on Competition Policy 2001'.

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 19 December 2002. The rapporteur was Mr Barros Vale.

At its 396th plenary session of 22 and 23 January 2003 (meeting of 22 January), the European Economic and Social Committee adopted the following opinion by 120 votes in favour, nine votes against and five abstentions.

1. **Introduction**

1.1. The report opens with a reaffirmation of the importance of enforcing competition rules as one of the central elements in the economic functioning of the single market and as one of the Commission's key tasks. Emphasis is placed on the essential role of competition policy in establishing an ever more balanced and equitable framework which becomes more forceful the more the economy becomes globalised.

1.2. Referring to the main topics to be addressed, the introduction sketches out the broad content of the report, covering antitrust rules, EU enlargement, state aid and the prominence which all these measures should be given as instruments of benefit to European citizens.

2. **General background**

2.1. The final phase of introducing the euro and the unprecedented enlargement of the EU create a need to modernise the rules on antitrust, mergers and state aid, which, if not met, will mean that the Commission's action is out of step with this rapidly evolving economic environment.

2.1.1. In this respect, ensuring a level playing field in the new markets where competition is not yet fully established will continue to be a priority activity for the Commission.

2.2. With the globalisation of markets, there are now worldwide concentrations, making it necessary to intensify international cooperation between various bodies, namely through the International Competition Network.

2.3. The adoption of the state aid scoreboard and the opening to the public of an online state aid register are evidence of significant improvements in this field in 2001.

2.4. The present report covers the broad areas in which the Commission plays an active role in the field of competition policy. These are identified as constituting major obstacles to free competition. However, there is no mention of mechanisms to address other distorting factors which, looked at on a Europe-wide scale, have considerable significance.

2.5. Similarly, there does not seem to be any cooperation between the various Commission DGs to forge a concerted policy to promote free competition which goes beyond the components explicitly mentioned in the report and referred to in points 3.2.1, 3.2.2, 3.2.3 and 3.2.4 of this opinion. The EESC feels it would be useful to have some indication of whether or not procedures of this kind are in place to address issues which are very relevant to ensuring effective free competition.

3. **Main topics of the report**

3.1. In general terms, the report may be described as very comprehensive, not only in the large amount of information it contains, but also the many real-life cases which are described, the questions raised throughout and the solutions proposed, documenting as it does the Commission's intense activity in this area in 2001. The total number of new proceedings for that year was 1036, slightly less than the 2000 figure, which was 1211. Meanwhile, the number of cases settled rose to 1204, with a noteworthy reduction in the backlog.

3.2. The XXXIst Report on Competition Policy 2001 retains the same thematic structure and presentation as the 2000 report, divided as it is into five broad chapters covering the main topics. There follows a brief summary of these topics:

3.2.1. Antitrust — Articles 81 and 82; state monopolies and monopoly rights — Articles 31 and 86

3.2.1.1. The modernisation of the legislative framework of competition, particularly the rules implementing Articles 81 and 82, is still on the Commission's work agenda. A proposal for a regulation introducing a new system for implementing Articles 81 and 82 was adopted in September 2000.

3.2.1.2. In a wide-ranging debate on the subject in May 2001, the Council highlighted the functioning of the network of competition authorities in the interests of ensuring that these rules are implemented consistently in all Member States.

3.2.1.3. Another important point was the approval in 2001 of new draft rules aimed at facilitating the detection and eradication of cartels, especially those involved in price-fixing. As part of the fight against cartels, the Commission Notice on immunity from fines and reduction of fines in cartel cases was revised after five years [1].

3.2.1.4. Secret cartel agreements continue to be among the most serious restrictions of competition, but 2001 was a record year for cartel decisions, as shown in the significant increase in the number of cases dealt with.

3.2.1.5. In December the Commission adopted a report evaluating the functioning of the technology transfer block exemption regulation (TTBE). The report finds that the TTBE uses criteria relating more to the form of the agreement than to the actual effects on the market. The regulation is also felt to be too prescriptive and its scope is in need of review.

3.2.1.6. In December the Commission adopted a notice on agreements of minor importance ('de minimis') which do not appreciably restrict competition under Article 81(1), defining more clearly and comprehensively when agreements between companies are not prohibited by the Treaty.

3.2.1.7. In May 2001 a decision was adopted on the terms of reference of hearing officers in certain competition proceedings, aimed at reinforcing the independence and authority of the hearing officer (who will now be attached to the Member of the Commission with special responsibility for competition).

3.2.1.8. The sector-by-sector evolution of competition is described in detail in the present report, focusing in particular on the energy sector (specifically the liberalisation of electricity and gas), postal services, telecommunications, transport (air, sea and rail), the media, motor vehicle distribution, financial services (implementing competition policy is intended to make Europe's financial markets more competitive and efficient), the information society and the Internet, sport and pharmaceuticals.

3.2.2. Merger control

3.2.2.1. There was a slight decline in merger operations in 2001 (after seven years of rapid growth), which by no means signalled a decline in the Commission's activities in this field. In fact, even though the number of notifications decreased, the Commission took 339 final decisions, including five prohibition decisions (the highest number of prohibitions to date in one year [2].

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[1] EESC Opinion: OJ C 48, 21.2.2002.

[2] Two of these decisions have since been annulled by the Court of Justice.

3.2.2.2. The remedies found in 2001 were not restricted to directly restoring effective competition conditions by creating the conditions for the emergence of new competitors. The Commission showed itself to be open to other divestment remedies, as well as to more complicated commitments than straightforward divestment.

3.2.2.3. At the same time, significant progress was made in 2001 in relation to remedies decided upon in 2000, with considerable progress seen in the implementation of remedies by enterprises involved in authorised operations.

3.2.2.4. The fundamental objective of controlling mergers continues to be to protect consumers from the implications of monopoly power or of a dominant position (higher prices, lower quality and less innovation).

3.2.2.5. The definition of the relevant geographic market is a central element in competition analysis. In 2001 the Commission analysed market definitions adopted in its merger decisions over the last five years. The Commission has also carried out detailed research into product markets, reaching the conclusion that neither product market definition nor geographic market definition result in a static analysis of simple market share addition, but form the starting point for an analysis of the market dynamics prevailing in a specific industry.

3.2.2.6. The most important development on the subject of mergers was the publication in December of the Green Paper on the Review of the Merger Regulation [1], which looks at the new challenges posed by global mergers, the introduction of the euro and EU enlargement to 25 or more Member States.

The Green Paper proposes substantive, procedural and jurisdictional amendments:

3.2.2.6.1. With regard to competition, the Commission proposes to introduce automatic Community competence over cases subject to multiple filing requirements in three or more Member States. This would remove the turnover thresholds.

3.2.2.6.2. The Green Paper also proposes simplifying the requirements for referrals by facilitating proper work-sharing between the Commission and the Member States.

3.2.2.6.3. Business practices have evolved, which provides grounds for updating the concept of a concentration. The Green Paper points out the difficulties perceived in this area, but does propose some amendments to the current provisions, specifically with regard to multiple transactions. It also opens a debate on the virtues of the dominance test in effect in the current Regulation as a means of assessing mergers, but does not arrive at any conclusions.

3.2.2.6.4. Various measures are proposed for procedural simplification, particularly with regard to cases where there are no competitive concerns and certain venture capital transactions.

3.2.2.6.5. Lastly, it is worth noting that that Commission has built up cooperation with third countries in the field of competition, culminating in the creation of the International Competition Network. 2001 also saw a new development in the referral of merger analysis to national authorities.

3.2.3. State aid

3.2.3.1. The need to achieve further reductions in overall aid levels and to redirect aid towards horizontal objectives of Community interest was underlined by the Stockholm European Council of March 2001.

3.2.3.2. Among advances in transparency are a new state aid register which is accessible to the public and the publication of the state aid scoreboard.

3.2.3.3. A process of simplifying state aid procedures has also begun, especially for clear-cut cases.

3.2.3.4. In October 2001 a draft regulation was adopted which provides for exempting from notification state aid aimed at creating new jobs.

3.2.3.5. The Commission adopted a Communication on state aid and risk capital designed to promote the provision of risk capital in different Member States, which illustrates how these rules are geared to market developments.

3.2.3.6. The monitoring of state aid in the form of taxation remains one of the Commission's priorities. Tax schemes conferring advantages on certain types of activity (financial services, off-shore activities) continue to warrant special attention. This form of state aid should also be given particular attention in the context of EU enlargement.

[1] The EESC has already issued a favourable opinion on this subject (OJ C 241, 27.10.2002).

3.2.3.7. One aspect which is dealt with in this section of the report is the concept of aid. It lays down the principle of disallowing all those cases where aid granted by a Member States distorts or threatens to distort competition by conferring an advantage on certain undertakings or types of production.

3.2.3.8. The issue of granting direct EU aid to enterprises is not addressed. Such aid should come under the heading of public aid, thus warranting appropriate examination by the Commission in future.

3.2.4. Services of general interest

3.2.4.1. The importance of services of general economic interest continues to be highlighted, especially in view of the role they play in promoting social and territorial cohesion in the EU, that is, as an essential component of the European social model.

3.2.4.2. The Laeken European Council of December 2001 recommended increased legal certainty in the application of competition rules to services of general interest. It is also suggested that there should be better coordination between methods of funding services of general economic interest and the monitoring of state aid, as well as a regular assessment of such services.

3.2.4.3. In the interests of greater transparency, the Commission undertakes to devote a specific section of its annual competition report to services of general interest.

3.2.4.4. Following the guidelines set by the Lisbon European Council of March 2000, the Commission continued in 2001 to promote market opening in areas such as gas, electricity, postal services and transport by making legislative proposals and by monitoring the implementation of existing EU legislation on competition.

3.2.4.5. The preparation and negotiation of the accession processes for new EU Member States, bilateral cooperation (especially with the USA, Canada and other OECD countries) and multilateral cooperation were the broad areas covered by the Commission in 2001 in terms of general economic interests.

3.2.4.6. The Commission has drawn up regular reports on the progress made by each candidate country.

3.2.5. Outlook for the future

3.2.5.1. There is a proposal for a new regulation implementing Articles 81 and 82 EC [1].

3.2.5.2. There is a proposal to adopt an updated and revised notice on enforcement activities.

3.2.5.3. It is proposed to continue the consultation work started with publication of the Green Paper on the Review of the Merger Regulation [2].

3.2.5.4. There is a proposal to speed up and simplify the handling of the simplest state aid cases, as well as making rules and procedures more transparent.

3.2.5.5. In the international sphere, the Commission intends to continue to pursue its dual policy of enhancing bilateral cooperation with its foreign counterparts (USA and Canada, Japan) and exploring possibilities for expanding multilateral cooperation.

4. **Conclusions/Recommendations**

4.1. With a view to the forthcoming enlargement, the Committee feels it is vital that the Commission focus greater attention on the candidate countries so as to ensure that the same rules are applied, with the same effectiveness, throughout the EU.

4.2. In the context of the forthcoming enlargement, the Committee is anxious to know whether the CEECs will in fact be able to comply with all the provisions of the acquis communautaire on competition, bearing in mind the practice and history of state aid to particular enterprises.

4.3. The EESC feels that there is an urgent need to introduce a new, more efficient and decentralised system which is less bureaucratic. This will necessarily involve national authorities taking greater responsibility for competition without undermining the Commission's powers of investigation and monitoring in the process, so as to enhance the internal market and guarantee a level playing field for enterprises.

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[1] EESC Opinion, OJ C 155, 29.5.2001.

[2] The EESC has already issued a favourable opinion on this subject (OJ C 241, 27.10.2002).

4.3.1. With regard to consistency in implementing these measures, it is worth highlighting the fact that notifications are not compulsory and that agreements are always assumed to be legal whenever they are below the threshold of established market shares.

4.4. Given that the detection of secret cartels is one of the key elements of competition policy, the Committee agrees that it is vital to increase and extend the Commission's powers of investigation.

4.5. The EESC endorses the Commission proposal for automatic Community competence, as referred to in point 3.2.2.6.1 of this opinion, as this will enable the Commission to take direct action in such situations, thereby strengthening the level playing field in European merger control.

4.6. With the globalisation of markets happening at an ever faster rate, the EESC feels that there is a greater need for cooperation between the relevant bodies in the various countries and/or economic blocs responsible for controlling competition. This cooperation must be developed further, either within the WTO or on other, less formal levels, bearing in mind the need to obviate tension and to seek compromise between different conceptions/values found in the various regional markets.

4.7. The EESC agrees that it would be a positive step if the block exemption regulation for technology transfer agreements (RITT) were to stop working as a 'straitjacket', as it is described in the report, instead serving to encourage more efficient and balanced transactions.

4.8. The Committee feels that the more economics-based approach of the notice on agreements of minor importance ('de minimis') is a positive development, as is the reduction of the administrative formalities, which will benefit smaller enterprises in particular.

4.9. The Committee feels it is important to establish mechanisms to make competition more intense, especially in highly regulated markets where competition is not very intense and where customers are highly dependent given the small number of suppliers.

4.10. In the EESC's view, it would be very interesting if the Commission report gave a clear account of how the candidate countries have been prepared for competition, with particular regard to their legal systems.

4.11. The Commission report does not mention the question of limitations imposed on competition by professional associations. Bearing in mind the implications this can have, the Committee feels that it merits attention and, if necessary, intervention by the Commission.

4.12. On the subject of sport, and football in particular, based on Box 5 of the Commission report, the Committee would draw attention to the fact that the penalties mentioned may act as an obstacle to the free movement of labour, thereby distorting competition. The Commission should examine all agreements that might jeopardise the free movement of workers.

4.13. The Committee feels that it must be a concern of the Commission to publicise the laws on competition widely, as well as information on how to report infringements, so that the general public, who are one of the most important allies in the fight against anti-competitive conduct, are aware of this issue and know how to go about reporting such cases.

4.14. In the EESC's view, it is important that the rules and parameters for analysis of the relevant geographic markets are transparent and clear.

4.15. The Committee suggests that, for ease of reading, the case studies should come at the end of the report, thereby making it possible to get a rapid grasp of the content.

4.16. Although not the direct responsibility of DG Competition, there are questions which have not been addressed under the general headings of the Commission report and which, in the EESC's view, should be considered in the analysis of competition. Specifically, these include competition between SMEs and big companies, between outlying and/or disadvantaged regions and geographically more advantaged regions, between rich and poor countries, and between the European legal framework and accounting regulations and those of North America, in particular, and the impact of these accounting regulations on the ability to raise capital on stock markets.

4.17. In the EESC's view, faced with globalised markets, the revision of the EU merger regulation cannot be neglected bearing in mind the ever more globalised environment in which commercial relations are conducted, nor can cooperation with international authorities, which can assist the Commission in implementing preventive measures to uphold competition.

4.18. In the view of the EESC, it follows from point 3.2.2.6.3 of this opinion that a better and clearer definition of concepts would certainly help to ensure more consistent and effective implementation of the merger control arrangements.

4.19. For the EESC, it is extremely important that, in response to the questions raised in the Green Paper, the review of the merger regulation is carried out in an open manner, with all interested parties (enterprises and Member States) being invited to submit constructive comments.

4.20. The Committee feels that the involvement of national authorities in mergers will bring advantages as they tend to be far more qualified in terms of their knowledge of the industries and markets concerned. Nevertheless, it should be very clear that the Commission holds sway.

4.21. The enhancement of this kind of cooperation will certainly reduce the risk of discrepancies and inconsistencies in the decisions adopted.

4.22. Another important matter in the EESC's view is the distortion of competition that can be caused by the merger and purchase of banks which, by reducing the number of competitors, can have adverse consequences for consumers, especially in the area of credit access.

4.23. In the same way, large-scale distributors can cause distortions of competition through their negotiating power, which can enable them to hold in check both their suppliers and their smaller-scale direct competitors. The EESC feels that the Commission should also focus on this issue when considering the abuse of dominant positions.

4.24. With regard to state aid, the EESC feels that there are grounds for greater efforts in the practical implementation of the rules already adopted on risk capital and credit aid for SMEs, as well as for proceeding with the policy reviews concerning aid for employment, for research and development and for large regional investment projects.

4.25. In the EESC's view, it is essential to exercise effective control over state aids to ensure that funds are used efficiently, thus helping to create a strong economic framework, specifically by creating sustainable employment opportunities for European citizens.

4.26. On the subject of the state aid scoreboard, the Committee believes it would be appropriate to carry out ex-ante and ex-post assessments of aid arrangements.

4.26.1. Although a public state aid register exists, it is difficult to access, either because much of the information is unavailable in more than one language, or because of the way the information is structured. The Committee suggests that the page containing this information be updated to make it clearer and more transparent, and that a search engine be added.

4.27. The Committee feels that efforts to simplify, modernise and clarify the Community rules on state aid should continue.

4.27.1. The Commission resources freed up in this process should be focused on the most serious cases of distortion of competition.

4.28. The Committee believes that actually laying down Community guidelines for state aid granted to undertakings entrusted with the provision of services of general economic interest, as proposed for 2002, would increase legal certainty.

4.29. Finally, the EESC would like to express its appreciation of the Commission's hard work, while nevertheless drawing attention to the need to substantiate any decision thoroughly and rigorously.

5. The mergers section of the competition DG has recently suffered a major setback with the Court of Justice deciding to overturn certain decisions in this field, especially in two well-known cases, Schneider-Legrand and Tetra-Laval.

5.1. The Court's rulings were based on its finding that the quality of technical information underpinning the Commission's decisions was clearly insufficient.

5.2. The Commission's reaction to these legal rulings has been to defend its position, but nevertheless to admit that there are some weaknesses in the system and that there is a need to take on a chief economist to take responsibility for coordinating this area.

5.3. The EESC conducted a survey of the human, financial

and technical economic information resources available to the Competition DG, which revealed the following:

— Staff

  — with an economics degree: 71

  — with a law degree: 141

  — with another degree (maths, engineering, philosophy etc.): 59

  — with other qualifications: 187

— annual budget (2002): EUR 1 414 417 (not including staff)

— outside studies commissioned: 31, involving a sum of EUR 939 475.

5.4. The EESC also established that:

— The Competition DG is also an important centre of revenue for the Commission, specifically in view of the funds generated by fines, which amounted to some EUR 2 000 million in 2001. However, there has not been a matching input of resources into supporting the DG's decisions with sufficient detail.

— The Competition DG relies very sparingly on the help of outside specialist bodies either to collect and process technical economic data to back up its decisions, or to support its positions when they are contested in the courts.

— The Competition DG does not make full use of the technical economic data which national competition authorities hold or could hold (at the Commission's request).

— The large-scale mergers which the Commission is expected to pronounce upon involve major economic interests and very large sums, which means that the parties involved are able to afford powerful resources in support of their case (economic studies, international consultancy firms) and highly competent specialist lawyers. The Commission does not seem to have the same level of resources to support its position.

— Companies which, under current regulations, require the authorisation of the Commission to carry out any kind of merger or acquisition are not charged for the public service involved, unlike what happens in the courts, where legal costs are charged whenever a case is heard.

5.5. In the EESC's view, the reshaping/restructuring of the Competition DG's services, which the Commissioner responsible admits is necessary, should be preceded by a series of studies including: the deployment of its human and budgetary resources, the need to increase these and the ways of doing so; guaranteeing independence in the performance of its functions; the quality and detail of the technical economic and legal information used both as a basis for the Commission's decisions and to defend its positions in court and, finally, a study of the compatibility of the statutory deadlines with the quality and detail of the information collected and processed, which is crucial in taking decisions.

Brussels, 22 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was defeated in the course of the discussion of the text of the opinion:

Point 4.12

Delete the point.

Reason

The draft paper sweepingly describes all rules imposed by professional associations as limitations. For the European Economic and Social Committee to take a confrontational stand against these decisions is neither expedient nor objectively necessary, particularly as both the European Parliament (Committee on Legal Affairs and the Internal Market) and the European Court of Justice have, in various resolutions and decisions, addressed the rules governing the liberal professions and found them to be, in principle, both permissible and useful.

Furthermore, the draft fails to address other, broader considerations in favour of establishing and maintaining the rules governing the liberal professions, such as the special position of trust and commitment to the public interest of these professions. In any case, a debate on a matter as complex as this would go beyond the paper's scope and shift its focus completely.

Result of the vote

For: 31, against: 80, abstentions: 12.

Opinion of the European Economic and Social Committee on the 'Commission staff working paper — Promoting language learning and linguistic diversity'

(SEC(2002) 1234)

(2003/C 85/26)

On 25 November 2002 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on 'Promoting Language Learning and Linguistic Diversity'.

At its 396th plenary session of 22 and 23 January 2003 (meeting of 23 January) the European Economic and Social Committee appointed Ms Heinisch rapporteur-general and adopted the following opinion by 105 votes to 4 with 4 abstentions.

1. **Introduction**

1.1. The need for European Union and Member State action to improve language learning was recognised by the Heads of the State and Government who in Barcelona in March 2002 called for further action to improve the mastery of basic skills, in particular by teaching at least two foreign languages from a very early age. This conviction was also behind the Education Council's invitation to Member States on 14 February 2002 to take concrete steps to promote linguistic diversity and language learning, and its invitation to the Commission to draw up proposals in these fields by early 2003.

1.2. Article 22 of the Charter of Fundamental Rights of the European Union of 7 December 2000 states that the Union shall respect cultural, religious and linguistic diversity.

1.3. In 2001 Europe celebrated the European Year of Languages, which was a resounding success and stimulated many thousands of activities involving hundreds of thousands of citizens across Europe in the task of promoting language learning and linguistic diversity. It generated widespread enthusiasm for language learning and increased the motivation of many to get personally involved in learning about other languages and cultures.

2. **General comments**

2.1. The European Commission's 2003 work programme (late October 2002) is intended to consolidate the Lisbon process, by:

— developing proven procedures in the field of lifelong learning and e-learning (e.g. common work programme on general and vocational education systems, the information society for all);

— adopting a new action programme on e-learning;

— submitting an action plan to promote a multilingual Europe.

With its action plan to promote language learning, the European Commission is reacting to the experience of the European Year of Languages and that derived from the evaluation of its results.

The EESC considers it positive and forward-looking that the Commission does not regard the European years (of lifelong learning and languages) as isolated activities but has rather evaluated their results and incorporated them into the education programmes. The EESC supports this approach.

2.2. Moreover, it is inevitable that, in view of the forthcoming *accession* of 12 new Member States, the EU should focus its attention on languages.

The EESC therefore welcomes the promotion of language learning throughout the EU. Languages must not be allowed to become frontiers or barriers to global integration and communication. Articles 149 and 150 of the EC Treaty are the basis of education policy in the EU. The responsibility of the Member States for curricula and the shaping of education systems is not affected.

2.3. The EU must react to the coming challenge in a multilingual way. Only in this way can the cultural identity of peoples, regional diversity and thus the cultural richness of Europe be maintained. And at the same time this will do justice to the principle of subsidiarity.

'A man who speaks two languages is worth two men' (King Charles V 1338-1380).

2.4. It is the job of the EESC to promote and facilitate worker mobility, and to ensure that reciprocal understanding and solidarity are no longer hindered by language barriers, whilst however maintaining Europe's linguistic and cultural diversity. All Europe's languages have the same cultural value.

3. **Conclusions**

3.1. The EESC supports the Commission in promoting language learning and cultural diversity with due regard to subsidiarity in the education field. The EESC stresses the need to ensure that basic knowledge of the mother tongue is fully consolidated (results of the Pisa study) before embarking on foreign language learning.

3.2. The EESC calls for intensive cooperation between the Member States in order to develop learning networks and ensure a continuous exchange of proven methods, didactic approaches, learning materials and initial and further teacher training.

3.3. The EESC calls for linguistic diversity to be strengthened by means of targeted measures in all Community programmes (regional employment and social policy, research and development, information society etc.), e.g.:

— More subtitling of films through the Media programme;

— More translation of literary works into other languages through the Culture 2000 programme.

3.4. The EESC sees the Socrates and Leonardo da Vinci programmes, however, as the main vehicles for promoting language learning. Special projects should be established in this area

— for better quality language teaching;

— for the promotion of new learning materials;

— for comparing extra-curricular learning programmes;

— for easier access for all to language learning opportunities;

— for lifelong language learning;

— for promoting regional and minority languages.

Here the EESC sees an opportunity for support through an interaction between education and research.

3.5. The EESC calls for appropriate projects to promote pre-school language learning.

3.5.1. New approaches to language learning through music should be incorporated into the European projects. (e.g. Switzerland/France)

'Anyone who wishes to bring different people together must first find a common language'. This common language is undoubtedly music. 'Music has transfer effects on speech development both in the mother tongue and in the learning of foreign languages' (Donata Elschenbroich, Weltwissen der Siebenjährigen).

3.5.2. It is important that parents should be offered the same language-learning opportunities as their children. This is an important step in efforts to achieve integration. Language acquisition begins in the family.

The EESC sees the promotion of language learning during the earliest stages of childhood as a way of curbing violence and xenophobia among very young children (pre-school groups may include children from up to 20 different countries) — preventive approach.

3.5.3. The EESC calls for cross-border cooperation in the pre-school area between parents, educators/teachers. The process of sensitising children to language learning must begin very early and the foundations of lifelong learning must be laid at the pre-school stage.

3.6. The EESC calls for an assessment of training plans for foreign language learning from pre-school to tertiary level and proposes that all aspiring teachers be required to spend part of their study period abroad.

3.7. The EESC also proposes that all schoolchildren be encouraged to spend a period abroad in the course of their school careers.

3.8. The EESC calls for improved approaches to language teaching rather than for more class time for the teaching of a single language and would like to see greater involvement of native speakers.

3.9. With regard to adult lifelong learning, the EESC calls for special further education programmes for parents and senior citizens which take account of different learning situations. The competition entitled European label for innovative projects in language teaching and learning should be retained.

3.10. The EESC calls for freedom of choice in deciding on the two foreign languages to be taught in addition to the mother tongue.

3.10.1. The EESC supports the Franco-German Learn your neighbour's language programme.

3.10.2. The EESC is aware that most parents choose English as their children's first foreign language.

The EESC sees English as a *lingua franca*, while being aware of the limits of any *lingua franca* (it does not permit any real understanding of other cultures). Circumstances dictate that English will probably in time become the language spoken by a majority of Europeans.

3.10.3. The EESC sees a need to think about the choice of official and working languages and to encourage young people to take up the relevant professions (interpreter, translator etc).

3.11. The EESC is aware of shortcomings in the arrangements for implementing various programme areas, with regard to user-friendliness, transparency, timely availability of documents and forms, and calls for implementing arrangements to remain in force for a longer period.

3.12. The EESC calls for greater transparency in coordination between the Commission and national authorities

3.13. The EESC calls on the Commission to support the dissemination of suitable high-quality learning materials via European networks.

3.14. The EESC sees it as its task to inform the organisations and associations represented at the Committee on the need for promotion of languages, and to call on them to assume responsibility for supporting all their citizens in their language learning and to ensure that this opportunity is made available to them across the board through learning networks.

The coordination of learning opportunities must be monitored (communicative/integrated approach).

The EESC therefore feels that it should be involved by the Commission in the implementation of the programmes, and that it should be responsible for organising hearings and the dissemination of information and for raising the awareness of the partners at European level. The EESC can act as a forum for the exchange of opinions and their dissemination. This is more likely to yield results than large-scale consultation structures (the proposed timetable to 31 January 2003 is too short) and it is in line with the procedures of the Commission and the EESC.

The EESC is a bridge between Europe and civil society. Its members directly represent the interests of the EU's disparate civil society organisations. In this capacity the Committee defends the right to European citizenship, and language learning is an important part of this.

Brussels, 23 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on an information and communication strategy for the European Union'

(COM(2002) 350 final)

(2003/C 85/27)

On 2 July 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The European Economic and Social Committee decided to appoint Mr Ehnmark as rapporteur-general to draw up this opinion.

At its 396th plenary session of 22 and 23 January 2003 (meeting of 23 January) the European Economic and Social Committee adopted the following opinion by 32 votes to one vote against and one abstention.

1. Summary of the opinion

1.1. The European Union enters a crucial period of change. Its citizens do not feel well informed about the activities of the EU and about the changes taking place or being debated. In order to ameliorate the situation, the European Commission has presented a proposal for a new and reinvigorated information and communication policy, identifying four priority information topics, and aiming for better coordination in the information work between the EU level and the national level.

1.2. The European Economic and Social Committee (EESC) welcomes the proposal. It is a good platform for further development of the information and communication work. It is important that the information activities will cover EU activities as well as highlighting the values and visions behind the development of the Union. However, the EESC has three main points of consideration:

— The strategy does not give attention to the role that the social partners and organized civil society can play in the total information and communication work on EU activities.

— The proposed four information topics are well chosen, but environment and sustainable development is missing from the list — although EU citizens obviously regard environment issues as an area where the EU should have a special responsibility.

— The strategy should more clearly also target the education sector and the youth groups.

1.3. Finally, the EESC emphasises that every-day issues should be paid attention to, as they concretise on individual level what the EU is doing. The EESC will itself further develop its information and communication work.

2. Overcoming barriers of ignorance

2.1. For the future of the European Union, it is of paramount importance that its citizens have a good knowledge and understanding of the visions that has been shaping the development of the Union, and of the objectives and work of the EU institutions. Particularly in the present period of enlargement and debate on the future of the Union, it is essential to overcome the barriers of ignorance that exist in broad parts of the populations. Only by way of strong support from well informed citizens will the Union be able to meet the challenges ahead.

2.2. Repeated surveys have indicated that the barriers of ignorance are still considerable. To take but one example: according to the Eurobarometer, 83 % of the public of the EU felt poorly or not at all informed about enlargement as late as during Spring, 2002. Other studies give a similar picture. Although there are considerable differences between Member States, the overall impression is that the Union enters a vital transition period with inadequately informed citizens.

2.3. Building knowledge about the Union is a long-term work. Shaping understanding probably even more so. The Union and the visions behind it will need time to settle in the minds.

2.4. The European Commission has presented an ambitious information and communication strategy, with implementation step by step during 2003. In essence, it is a platform for a rolling effort for promoting public knowledge and understanding concerning the Union and its institutions and their work.

2.5. The European Economic and Social Committee welcomes the proposal. It constitutes an important step forward as to information to the citizens on EU activities. It targets the key issues in Union debate and development, and it aims for reaching out to major groups in society.

2.6. The EESC emphasises that information for the public on EU and EU activities should be objective and targeted to specific situations and specific audiences. The strategy proposal, however, does not reflect on possible distinctions between general information on EU activities, information on legislation decided at EU level and implemented at national level, or information on issues where EU institutions invite to debate and dialogue as part of the preparations for future legislation. Information on citizens' rights and duties is different from more general information on activities. The communication approaches must be flexible and related to the specific situations In the further development of the strategy, these issues should be more taken into account.

2.7. The agreement recently on public participation in the further development of EU work in the environmental field is an very good example of how dialogue and consultation can be integrated in the work of EU institutions. This should be further developed as a particular aspect of how public participation in EU work can add to knowledge, understanding and support.

2.8. Ultimately, overcoming barriers of ignorance is very much a matter of opening channels for participation and dialogue. Involving citizens in the debates and consultations is an efficient method to create readiness and interest for receiving information. The recent debates on governance have emphasised the need for more openness and participation. An active information and communication strategy is an essential tool in that effort.

3. **A platform for rolling development**

3.1. The EESC can agree with the general outline of the information and communication strategy. It is important that the strategy underlines the need for information on the values and visions behind the development of the Union. It is essential that the information and communication activities are placed in a wider perspective, in order to avoid fragmentation. To inform about the structures, and to structure the information — that has been a communication lesson learnt in many circumstances.

3.2. The strategy is based on a close cooperation developed between the EU level and the national level. The strategy foresees a degree of joint planning of information efforts between the EU and the national level.

3.3. A successful information and communication strategy necessitates a multi-dimensional approach. In particular, it is vital to achieve support from other institutions and organizations with capacity to reach out to citizens. Multiple actors and the adaption of two- or three-step strategies increase the chances for reaching out with messages.

3.4. The strategy focuses on cooperation between EU institutions and governments in Member States, and more in passing notes the need for cooperation also with other institutions than governments in Member States. The EESC would have appreciated if this aspect had been given more attention in the proposed strategy. As the objective is to increase knowledge and understanding among citizens in general (and not only opinion-makers), it will be fundamentally important to reach out via multiple actors (organisations, networks, institutions at both local and regional and national level). In fact, the success of the total information effort will probably very much depend on the involvement of multiple actors at national and local level.

3.5. Particularly, the EESC would have appreciated an analysis of how the social partners and organized civil society can take on an active role in promoting knowledge and understanding for EU activities. Opinion multipliers have a capacity of reaching out to the grass-root levels that few other actors can. In the implementation of the information and communication strategy, organized civil society should be invited to take active part.

3.6. The EESC welcomes the strong commitment made as to the importance of the European Parliament, acting in cooperation with the national parliaments.

3.7. Among the key topics for the information strategy one or two years ahead, enlargement is put as number one. It is, however, worth noticing that the information and communication strategy does not mention the need for specific and targeted efforts in the new Member States, and in the three candidate countries.

3.8. A systematic evaluation and follow-up will be necessary. A special effort should be made in order to involve university departments and researchers in the evaluation.

4. **Priority information topics**

4.1. The main information topics the Commission proposes to develop focus on the EU's policy priorities for the years ahead. In total the Commission proposes four priority information topics:

— enlargement;

— the future of the European Union;

— the area of freedom, security and justice;

— the role of the European Union in the world.

4.2. The EESC gives its strong support to the choice of these four priority information topics. They are all in the forefront of present EU debate in the Member States, and they closely interrelate. They also reflect the experience that too many topics create obscurity rather than clarity. The last of the four should, among other aspects, also take into account the global impact of the shaping of the European Union, and of its priorities and actions. Sustainable development can be mentioned as just one example.

4.3. However, with that in mind, the EESC must express some surprise that the important environment sector is not distinctly included in the priority list. A number of polls have indicated that EU citizens regard environment issues as an area where EU should take a particular responsibility. This grassroots support is a strong argument for adding environment to the priority topics.

4.4. Environment issues are also part of the wider policy of sustainable development. Repeated European Councils have emphasised the importance of shaping policies, and public support, for sustainable development. The EESC would find it logic that issues concerning sustainable development are included in the implementation of the strategy. In view of the rolling development of priority topics for the information and communication work, sustainable development should be considered as an overall priority topic for 2004 onwards.

4.5. Environment and sustainable development are issues that are closely related to every-day life of the EU citizens. Food safety, consumer protection and citizens' rights are other everyday issues. Even if such issues are tackled in more specific information efforts by various Directorates-General of the Commission, or by other EU institutions, they should also be integrated in the total information and communication effort. Every-day issues provide the concretisation at individual level of EU activities. The value of them should not be underestimated.

5. **Targeting the information**

5.1. The strategy proposal emphasises quite correctly that the information must be targeted to specific audiences and specific situations. The EESC can only agree. However, to what extent it is actually possible to target the information is a matter of both resources and organization.

5.2. One key aspect is that the information will have to be profiled not only according to audiences but also to audiences in individual Member States. There is, to take but one example, some obvious differences when addressing social partner audiences in various Member States. The frames of reference vary, the way of expressing yourselves varies, the channels and actors vary: hence the need for adaptation to audiences in individual Member States.

5.3. One solution to the need for more targeted information is a build-up of cooperation between the EU institutions, institutions at national level, and organized civil society, including the social partners. Organized civil society has not only a capacity to reach out, but also to identify specific approaches to their audiences. Organized civil society, by way of its structures, reaches out to both opinion-makers and the public at large.

5.4. The strategy points out that youth groups, and the education sector, should be targeted. The EESC agrees. However, it would have been valuable with some more elaboration on these issues. The EESC proposes that a specific part of the information and communication strategy be outlined with the objective of providing schools with relevant and inspiring information on European Union activities. The school sector in its entirety must be regarded as one of the core audiences for the whole strategy. If this part of the strategy fails, there will indeed be problems ahead (cf. the EESC opinion on The European Dimension of Education [1]).

5.5. The EESC would also like to see a more elaborated plan for cooperation with youth organizations in Member States. This would give possibilities for reaching out to wider youth groups than is possible via mass media or other more general communication activities.

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[1] OJ C 139, 11.5.2001, p. 85.

5.6. One further important audience that merits special attention are the retired citizens, of which many are active in various organizations. The retired citizens represent a valuable information and communication potential, as lecturers and writers, and can with their experiences add a longer perspective to the information efforts.

6. **Organization aspects**

6.1. The EESC strongly supports the establishment of a coordinating forum between the EU institutions for the implementation of the information and communication strategy. This is essential in order to achieve synergy effects, and to make good use of the resources available.

6.2. Each EU institution develops its own information and communication strategy, within the overall framework that is established by the Commission strategy and the coordinating forum. The existence of new efforts for joint planning between the EU institutions does of course not mean that each institution would not continue with the development of its own planning.

6.3. The strategy proposal suggests various forms for coordination between the EU level and the national (mainly government) level. The Commission is considering the possibility of drawing up a memorandum of understanding with each Member State. The aim of the memorandum would be 'to put a political seal on the mutual contractual undertaking between the European Union and the Member States to work together to improve the dissemination of general information on European matters'.

6.4. It is possible that there will be a future need for such formalization of the cooperation concerning the dissemination of general information on EU activities. The EESC would, however, expect that the institutions involved would find it relevant to cooperate without a formalization, which in itself could be interpreted as a step too far in the coordination of information and communication activities.

6.5. The EESC would moreover like to emphasise the importance of closely cooperating networks between information and communication staff in EU institutions and relevant institutions at national level. It should be observed that some Member States are already reviewing there own organizational solutions at national level in the field of information on EU activities. The further development of the overall information and communication strategy should take account of the approaches and solutions chosen at national levels.

7. **The role of the EESC**

7.1. By way of its members and the organizations they represent, the EESC has a unique network of contacts reaching out to all parts of society. Over the years, the EESC has developed its capacity to function as a bridge between the EU institutions and the public at large in the Member States. Particularly, the EESC has sought to develop its capacity for organizing and conducting wide-ranging forum and hearings in topical issues of specific importance.

7.2. Recently, the EESC has organized major events, in the form of hearings and debates, in issues such as human rights at the workplace, sustainable development strategies for the EU, and agricultural policies in the EU.

7.3. The EESC has developed its own information and communication strategy, outlined by the Communication group established within the EESC a few years ago.

7.4. The EESC has an observer place in the inter-institutional information and communication group. The EESC finds it natural that the EESC be involved in the work of the group as full member.

7.5. The EESC intends to develop further its capacity for being an active bridge-builder and information actor in all parts of EU work where the EESC itself is involved. The stakes ahead are high. The citizens of the Union have a right to be informed, and to be consulted, on the issues of importance for the future.

Brussels, 23 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 92/81/EEC and Directive 92/82/EEC to introduce special tax arrangements for diesel fuel used for commercial purposes and to align the excise duties on petrol and diesel fuel'

(COM(2002) 410 final — 2002/0191 (CNS))

(2003/C 85/28)

On 4 September 2002 the Council, decided to consult the European 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 26 November 2002. The rapporteur was Mr Levaux.

At its 396th plenary session, held on 22 and 23 January 2003, (meeting of 23 January), the European Economic and Social Committee adopted the following opinion by 67 votes to 29, with six abstentions.

1. Introduction

1.1. The aims of the proposal for a Directive are to 'uncouple the tax arrangements for fuel used for commercial purposes from those for fuels used for private purposes' and 'in the long term, arrive at a point where taxes on commercial diesel fuel are harmonised upwards, which would reduce distortion of competition between operators'.

1.2. With a view to achieving these aims, the Commission proposes to amend the two Directives on which the Community system for taxing mineral oils has been based since 1992, namely:

— Directive 92/81/EEC on the harmonisation of the structures of excise duties on mineral oils, and

— Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils.

These two directives, which have already been amended by Directive 94/74/EEC, lay down a minimum tax rate for each type of mineral oil, depending on whether it is used as a fuel for industrial or commercial purposes or for heating.

1.3. The Commission notes that the minimum rates of the excise duty have not been reassessed since 1992 and that the actual rates of excise duty applied differ very considerably from one Member State to another. In the case of diesel fuel, the rates of excise duty range from EUR 245 to EUR 750 per 1 000 litres.

1.3.1. The Commission therefore proposes on the one hand, a major, progressive increase in the rate of excise duty on commercial diesel fuel by establishing a central rate of duty set at EUR 350 per 1 000 litres, compared with the current minimum rate of excise duty of EUR 245 per 1 000 litres.

— A fluctuation band, set at plus or minus EUR 100, around the central rate in order to take account of current disparities between the rates set by the Member States.

— Annual indexation of the central rate on the basis of the harmonised consumer price index (for EU-15) for the previous year. The maximum correction is to be 2.5 %.

— An annual progressive reduction of the fluctuation band, culminating in the establishment of a harmonised Community rate by 2010.

1.3.2. On the other hand, an increase in the minimum rate of excise duty applied to non-commercial fuels, with a view to bringing the rate on diesel fuel into line with the rate on petrol.

1.4. In the Explanatory Memorandum and the recitals preceding the proposal for a Directive, the Commission highlights a number of points, including:

— the need to reduce distortions of competition in the fields of road haulage and road passenger transport;

— the need to protect the environment;

— the modest cost of the proposed measures, bearing in mind their economic, budgetary and environmental impact on industry, the general public, the candidate states and legal certainty.

2. General comments

2.1. The EESC has always encouraged policies aimed at promoting the opening-up of markets and balanced free competition. It therefore encourages all measures designed to reduce or remove distortions of competition which confer unjustified advantages on some operators. This is the aim of the proposal, and the EESC therefore supports the Commission's objectives, subject to the comments set out below.

2.2. The EESC notes that, although the proposal takes account of the situation in the candidate states, it makes no mention of the competition from non-EU states, such as Russia, Ukraine and Turkey.

2.2.1. The EESC proposes that the Commission introduce arrangements similar to those adopted by Switzerland [1] by bringing in a levy, payable at the frontiers of the enlarged EU, on heavy goods vehicles (HGVs) from non-EU states wishing to use the road networks of the EU.

2.3. The EESC would however point out that disparities in rates of excise duty are not the only source of distortion of competition in the context of road transport. Differences between Member States continue to exist as regards wage levels and sometimes as regards effective working hours and driving hours, as the checks continue to be inadequate.

2.3.1. As the Commission points out, excise duties represent only part of the taxes levied on fuels. With a view to eradicating the effects of a multifarious taxation system, the Commission points out that 'the White Paper on European transport policy for 2010: proposes introducing a graduated tax on transport infrastructure use and making the tax system more consistent by bringing in a single tax on commercial road transport fuel by 2003'.

2.3.2. In the EESC's view there is an urgent need to introduce a coherent taxation system covering all taxes and excise duties levied on commercial fuel. The present proposal for harmonising excise duties should form part of the above-mentioned plan for a single system of taxation.

2.4. As the income from these excise duties is allocated to both states and regions, harmonisation can only be in an upward direction. The EESC does, however, deplore the fact that the failure to increase the Community minimum rate since 1992 has exacerbated the divergencies between states, as is now evident. This has led the Commission to propose a central rate for diesel fuel of EUR 350 (which represents a 42 % increase over the current minimum Community rate of EUR 245). The EESC understands the need for this increase. It will provide most states and regions with additional tax income which should be earmarked for funding work on transferring traffic from the roads to other greener modes, as pinpointed in the White Paper.

2.5. The Commission suggests that, by raising the cost of transport, the proposed increase in excise duties should help to reduce traffic. In this context, the EESC wishes to point out that goods and passenger transport responds to needs which are reflected in the growing demand for transport generated by trade (see the White Paper on European transport policy for 2010). This trade is, moreover, seen as a sign of a healthy economy, and it is bound to increase as EU enlargement grows nearer. Against this background, the increase in excise duties is not likely to reduce the demand for transport but rather to generate additional resources which will enable transport's negative impact on the environment to be reduced, provided that the funding is earmarked for this purpose.

2.6. As it has long made clear on many occasions in its opinions, the EESC is in favour of transferring long-distance road freight to other modes of transport which are more economical in their consumption of polluting fuels, such as rail transport, inland waterway transport and the 'motorways of the sea'.

2.6.1. The EESC wishes to take advantage of this opportunity to point out that implementation of the White Paper on European transport policy for 2010 should be speeded up.

2.7. The EESC, drawing on the Commission's desire to apply the 'polluter pays' principle, proposes that, if this principle is to be effective, the additional funding generated by the charges levied on 'polluters' be used to 'pay' for new infrastructure which would make it possible, in the medium term, to eliminate the bottlenecks that generate pollution.

2.8. The EESC therefore asks the Commission to take advantage of the proposed upward harmonisation of taxes and excise duties to adopt an innovatory approach to solving the infrastructure funding headache (see the White Paper on European transport policy for 2010 — Part Two, chapter II) by setting up a 'European infrastructure fund' into which income would be paid continually (e.g. one cent per litre of fuel or EUR 10 per tonne of fuel). Irrespective of the income from the per-kilometre charges for using transport infrastructure, to be provided under a forthcoming framework directive, the above-mentioned income would be used to provide the proposed European infrastructure fund with an annual allocation. The income would be collected by the Member States and paid annually into the EU budget. The fund would provide aid in the form of either grants or interest-rate subsidies, to the priority projects identified by the White Paper on transport, due to be updated in 2004.

2.9. All the income from charges on commercial diesel, including the income earmarked for the proposed fund, would come from the Member States which would transfer surplus revenue accruing in the future from taxes and excise duties. The surplus would comprise the annual difference between the rates of taxes and excise duties actually charged in the various Member States and the rates set out in the table in point 3.2 of the proposal's explanatory memorandum.

[1] See the White Paper on European transport policy for 2010: time to decide (COM(2001) 370 final, Chapter II on the headache of funding (section C)).

(in EUR/1 000 litres, as at February 2002)

	B	DK	D	GR	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Eurosuper	507	548	624	296	396	574	401	542	372	627	414	479	560	510	742
Diesel fuel	290 (*)	370 (*)	440 (*)	245	294	376	302 (*)	403	253 (*)	345 (*)	282	272	305 (*)	337 (*)	742 (*)

(*) Diesel fuel with a sulphur content of less than 50 ppm.

2.9.1. By way of an example, using as a basis of assessment an overall consumption figure of approximately 300 million tonnes of diesel fuel and petrol per year for passenger and goods transport (Source: Eurostat), a levy of EUR 10 per tonne for the proposed European infrastructure fund would generate an annual income of EUR 3 billion or EUR 90 billion over a period of 30 years.

2.10. The management of the European infrastructure fund could be entrusted to the European Investment Bank, which would subsidise with the aid of this fund the priority projects designated by the Commission and approved by the European Parliament and the Council; the aid would take the form of either interest rate subsidies in respect of loans or financial guarantees to project developers.

3. **Specific comments**

3.1. The EESC endorses all of the proposal's recitals, which make out a detailed case in favour of the proposed measure; it does, however, suggest that the proposed transitional period, due to expire in 2010, in respect of the central rate of excise duty be reduced by one or two years.

3.2. In the light of its proposal to follow the example of Switzerland by adopting a new approach to solving the intractable problem of funding transport infrastructure, the EESC suggests that a further paragraph be added to the recitals, worded as follows:

'If the priority projects provided for in the White Paper on European transport policy for 2010 are to be implemented, major sources of funding must be available to draw upon. With this aim in view and taking advantage of the increase in the rates of taxes and excise duties up to 2010, each Member State shall set aside EUR 10 per tonne of fuel from these charges, i.e. one cent per litre on all fuel consumed by goods and passenger transport.

This permanent income shall be paid into a special infrastructure fund created within the budget of the European Union.

The sums collected each year shall be used solely to fund the priority projects proposed by the European Commission in its revision of the White Paper, scheduled for 2004. Depending on the nature of the project and subject to certain criteria (relating to sustainable development, economic viability, the provision of funding by the Member States concerned, etc.), the fund shall provide an additional subsidy and, if necessary, an interest rebate in respect of loans, which should then be taken out with the European Investment Bank, responsible for the fund management.'

3.3. Article 1 of the proposed Directive: the EESC approves this article.

3.4. Article 2 of the proposed Directive: the EESC approves this article, subject to the introduction of a proposed new Article 5, as requested below.

3.5. The EESC asks the Commission to introduce a new Article 3 defining the 'European infrastructure fund' and how it is to operate and be implemented, in line with the remarks made above.

3.6. The present Article 3, which would then become Article 4, is also approved.

3.7. The EESC calls for the introduction of the new Article 5, setting out measures for monitoring implementation of the proposal for a Directive, covering, inter alia:

— implementation of the arrangements for harmonising rates of excise duty over a ten-year period, with a mid-term review after five years, which would include a special examination of the situation in the new Member States, following enlargement of the EU on 1 January 2004, and the application of the principle of indexing the central Community rate, as provided for in Article 2 of the proposal for a Directive;

— monitoring of the establishment of the European infrastructure fund and the use of receipts from taxes and excise duties for implementing the priority projects.

The EESC asks to be involved in these two monitoring provisions.

3.8. The present Article 4, which would then become Article 6, is approved.

3.9. The present Article 5 which would then become Article 7, is also approved.

4. Conclusions

4.1. The EESC approves all the provisions of the proposal for a Directive but calls for the addition of its own proposals, as detailed above; these take the form of four measures:

— a reduction of one or two years in the transitional period, with the aim of achieving a central Community rate of excise duty by 2008 or 2009;

— the introduction, for the benefit of the EU budget, of a system of charges — similar to the system applied in Switzerland — which would be levied on non-EU HGVs entering the EU;

— the establishment of the European infrastructure fund financed by (a) a European tax of one cent per litre on fuel (generating approximately EUR 10 per tonne of fuel or EUR 3 billion per year) and (b) the charges levied on non-EU HGVs entering the EU;

— entrusting the management of the EUR 3 billion per year and the income from charges levied on non-EU HGVs to the European Investment Bank in order to enable it to subsidise and grant interest rebates on loans for the priority transport infrastructure projects agreed on by the European Parliament and the Council in 2004.

Brussels, 23 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the Economic and Social Committee

The following amendments were put jointly to the vote and rejected in the course of the discussions (Rule 54(3) of the Rules of Procedure):

Point 2.1

Replace last phrase of last sentence (from 'objectives' onwards) as follows:

'... but does not consider that the time has yet come to take a stand on the Commission's concrete proposals for harmonisation of taxes on diesel fuel. There are also several major practical matters and issues of principle which are not dealt with in sufficient detail in the Commission's proposal.'

Reason

To be given orally.

Point 2.1.1

Add the following new paragraph:

'The Committee considers that it is not possible at this juncture to take a stand on the Commission's proposals, for the following reasons:

— a decision on the proposal for a directive on tax arrangements for diesel fuel cannot be taken until the Commission's forthcoming framework directive on infrastructure charging is known and has been analysed;

— the Commission has not shown how the proposed system of uncoupling the taxes for diesel fuel used for commercial purposes from those on non-commercial purposes could work in practice;

— the Commission has underestimated the important matters of principle which are raised in the proposal to change from a minimum rate to a central/harmonised rate.'

Reason

To be given orally.

Result of the vote

For: 40, against: 58, abstentions: 5.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the inspection and verification of good laboratory practice (GLP) (codified version)'

(COM(2002) 529 final — 2002/0233 (COD))

(2003/C 85/29)

On 28 November 2002, the Council decided to consult the European 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 was responsible for the Committee's work on the subject. The Committee appointed Mr Bedossa as rapporteur-general.

At its 396th plenary session (meeting of 23 January 2003), the European Economic and Social Committee adopted the following opinion by a unanimous vote.

Introduction

EU legislation clearly needs to be reviewed on a regular basis.

With this aim in view, the draft directive's objectives are clear and simple. They are geared, above all, to securing tangible results.

The formal review of the draft directive with a view to codification, even the inspection and verification of good laboratory practice (GLP). The document, which focuses not only on the future but also on existing law, is designed to simplify and improve the methods employed.

Specific comments

The EESC endorses the initiative behind the draft directive for the following reasons:

— Whilst the main concern should of course be to remove obsolete provisions, simplification of legislation must also bring benefits by enhancing the clarity and transparency of EU law.

— Regular updating and codification ensures legal certainty at any given moment in respect of the law on a given issue.

— Simplification is important in the context of the single market: failure to harmonise legislative instruments, constitutes a major obstacle which may trigger a large number of disputes in respect of GLP.

— Simplification is being introduced at the right time, namely on the eve of EU enlargement.

— Although the draft directive dealing with GLP is purely a formal provision, it is nonetheless necessary as legislation in this field is essential.

— Finally, the draft directive is a step in the right direction as it speeds up the simplification and codification of existing provisions, whilst enabling the legislation to be reviewed.

The consolidated presentation is also excellent.

Brussels, 23 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances (text with EEA relevance) (codified version)'

(COM(2002) 530 final — 2002/0231 (COD))

(2003/C 85/30)

On 28 November 2002 the Council decided to consult the European 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 was responsible for preparing the Committee's work on the subject and appointed Mr Bedossa as rapporteur-general.

At its 396th plenary session (meeting of 23 January 2003), the European Economic and Social Committee adopted the following opinion unanimously.

1. Introduction

1.1. If Community law is to be clear and transparent, rules which have been frequently amended, at times in an unsystematic manner, must be codified.

1.2. The revision process must be based on existing law, but must also look to the future. It must be geared towards simplification and improving methods.

2. Principles

2.1. This directive seeks to harmonise, unify and streamline provisions in this area to produce a single codified version of legal instruments based on the principle of coherence, clarity and correct interpretation of Community law.

2.2. The codification process must make existing law demonstrably simpler, less ambiguous and more transparent.

2.3. This proposal thus seeks to bring together legislation adopted over more than 15 years, making only those formal changes required by the simplification process.

2.4. The codified, unified and simplified text was prepared by the Office of Official Publications of the European Communities using a data processing system. The end result is a genuine consolidation of the legal instruments in force in this area which is more reader-friendly and accessible.

3. Scope

3.1. While the purpose of efforts to agree and systematically implement good laboratory practice is to achieve high-quality test results, the aim of making such practice compulsory is to ensure that test results are acceptable in all European Union Member States, to produce savings in time and resources and avoid both technical barriers — at times artificial — and unnecessary duplicative testing. The sectors in question, which include public health and the environment, are highly sensitive as far as public opinion is concerned.

— good laboratory practice applies to items contained in pharmaceutical, cosmetic and veterinary products, pesticides and all kinds of food additives and industrial chemical products,

— it also applies to research conducted in the laboratory, in greenhouses and in the field,

— properly codified good laboratory practice is required in response to public opinion, which is well-informed, highly demanding and very much alive to these issues.

4. General comments

4.1. The European Economic and Social Committee fully endorses the move to reaffirm the principles which govern respect for the implementation of good laboratory practice.

— Good laboratory practice is a general requirement which applies to all laboratories in the European Union which carry out these tests, particularly and/or especially those designed to assess human, animal and/or environmental safety.

4.2. The Committee endorses the Commission's view that there is a need for inspections and monitoring of compliance with good laboratory practice. Such measures are also recommended by the Organisation for Economic Cooperation and Development (OECD).

The Committee notes, however, that the OECD's scope is wider, which could lead to ambiguities.

4.3. The Committee welcomes the fact that specific provision is made for adjustment of the principles of good laboratory practice.

4.4. The Committee notes the safeguard clauses which a Member State may apply if it believes that the principles of good laboratory practice and monitoring are inadequate and decides to temporarily ban the product, informing the Commission and Member States of its decision.

4.5. The Committee hopes that the directive will come into force as soon as possible.

5. Specific remarks on the OECD principles of good laboratory practice

5.1. The description of good laboratory practice in Annex 1 is detailed and condensed. The terminology used defines specifically:

— good laboratory practice,

— the organisation of a test facility,

— safety problems which can and/or must be resolved,

— the test itself: reference item, batch or vehicle.

5.2. Good laboratory practice itself:

— the competence and level of responsibility of all those involved in the tests,

— the guidelines for the proper conduct of tests, particularly those on quality assurance, which have a decisive role in the conduct of tests,

— the presence of independent persons responsible for quality assurance,

— the intervention of external assessors throughout the process,

— the quality of documentation, which must be precise, detailed, transparent and publicly displayed,

— the rules governing test facilities, which must be respected, in particular those concerning the waste disposal procedure and storage and retention of records and materials,

— the test systems used, particularly biological test systems, the traceability, identification and use of which must be the subject of particular attention,

— standardisation of the entire operating procedure to enable the test to be interpreted horizontally, which must include compliance with quality assurance requirements,

— tests must be carried out according to a plan, the details of which (identification, date, methods and specific points) must be set out in a clear, comprehensible statement,

— although the registration and documentation may remain confidential, the conduct of the test, and in particular the report on the results must be set out in a publication which complies with certain rules (publicity, method, precision, presentation of results, summary), to provide for the possibility of a critical study which may result in a positive and/or contradictory dialogue.

6. Specific comments

6.1. The European Economic and Social Committee welcomes this process. The proposed directive is a positive and necessary step.

6.2. The Commission:

— is legislating because it is essential in this area,

— has chosen the appropriate instrument and is taking steps to speed up the legislative process,

— is calling for rapid transposition and effective implementation,

— is speeding up simplification and codification of existing legislation.

6.3. While the Committee welcomes the above moves, it questions whether the mechanisms designed to put them into practice are efficient enough.

6.4. The final aim of the proposal is not deregulation but better regulation: its effectiveness will depend on its quality, accessibility, necessity, relevance, objective, simplicity, stability and transparency.

6.5. The Committee believes that the rules set out in this directive are also mutually compatible, effective and cost-effective.

Brussels, 23 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC, 83/349/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies and insurance undertakings'

(COM(2002) 259 final — 2002/0112 (COD))

(2003/C 85/31)

On 19 July 2002, the Council decided to consult the European Economic and Social Committee, under Article 44(1) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption was responsible for the Committee's work on the subject. The Committee appointed Mr Ravoet as rapporteur-general.

At its 396th plenary session (meeting of 22 January 2003), the European Economic and Social Committee adopted the following opinion, with 72 votes in favour and one vote against.

1. **Introduction**

1.1. In its communication of 13 June 2000 entitled 'The EU's Financial Reporting Strategy: The Way Forward' the Commission proposes that all EU listed companies should be required to prepare their consolidated accounts in accordance with International Accounting Standards (IAS) from 2005 at the latest. The aim of this measure is to enhance overall market efficiency, thereby reducing the cost of capital for companies. The communication is in keeping with the Financial Services Action Plan, which the Lisbon European Council of 23 and 24 March 2000 required to be completed before 2005. The communication allows the Member States the option of extending the application of IAS to unlisted financial institutions and insurance companies in order to enhance comparability throughout the sector and ensure efficient and effective supervision.

1.2. The Commission communication is split into two parts: the introduction of IAS in the EU and the alignment of the existing EU Accounting Directives on IAS.

1.3. To implement the first part, the Regulation of the European Parliament and of the Council on the application of International Accounting Standards was adopted on 19 July 2002. This regulation sets out the mechanism for recognising IAS in the EU.

1.4. The regulation lays down that from 1 January 2005 all listed companies should prepare their consolidated financial statements in accordance with IAS approved for use in the EU. Member States are allowed the option of permitting or requiring the application of adopted IAS by the above companies, or by other companies, in the preparation of their

annual accounts. In its opinion of 17 September 2001, the EESC underlined the need to take account of the social information which has to be made available to employees ([1]).

1.5. To implement the second part, the existing EU Accounting Directives will be aligned on IAS. It is this alignment which is the subject of this opinion. Attention is drawn to the fact that originally these adjustments did not apply to Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions. Following discussions in the Council, however, the current proposal will also apply to the directive. The following directives are now to be amended:

— the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies;

— the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts;

— Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions; and the

— Council Directive of 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings.

1.6. According to the Commission, the Accounting Directives will play an important role in the mechanism for adopting IAS under the proposed IAS Regulation. In addition, the intention is that they will continue to be the basis of accounting legislation for entities which do not prepare their annual or consolidated accounts in accordance with adopted IAS further to the IAS Regulation. They also deal with important matters which are outside the scope of the IAS Regulation (e.g. the requirement to obtain an audit and to prepare an annual report) and will continue to govern these areas.

1.7. In a certain number of areas the provisions of the Accounting Directives, which have remained largely unchanged for more than 20 years, are inconsistent with IAS. The Commission wants to remove these inconsistencies with the present proposal. The proposal will remove all inconsistencies between Directives 78/660/EEC, 83/349/EEC, 86/635/EEC (added) and 91/674/EEC and IAS in existence at 1 May 2002.

([1]) EESC opinion, OJ C 260, 17.9.2001.

2. Summary of the contents of the proposal for a directive

2.1. *Fourth Directive on the annual accounts of certain types of companies*

2.1.1. Member States will have the power to permit or require additional statements, e.g. a cash flow statement, to be provided in annual accounts.

2.1.2. Member States will have the power, in accordance with IAS, to permit or require the disclosure of amounts in items in the profit and loss account and the balance sheet to reflect the substance of the reported transaction or arrangement, rather than its legal form. Such permission or obligation may be limited.

2.1.3. Member States will have the power to permit companies to draw up a balance sheet in accordance with the requirements of IAS. At the same time it is anticipated that there will be a future reform of the presentation of the income and expenditure account.

2.1.4. The recording of provisions is subject to stricter rules under IAS than under the Fourth Directive. The present proposal for a directive defines the reporting of provisions consistent with IAS for companies applying IAS, but provides for a status quo for the annual accounts of unlisted companies.

2.1.5. A revaluation of intangible fixed assets is scheduled in accordance with IAS 38.

2.1.6. Member States will have the power to extend use of the 'fair value' concept, which has already been introduced into the annual accounts directives by Directive 2001/65/EC, to other asset categories (possibly only in consolidated financial statements) and include changes to this value in the income and expenditure account.

2.1.7. The underlying requirement to draw up an annual report that gives a fair review of the development of the company's business and of its position is to be extended. Attention now is to be paid to the company's performance and to the biggest risks and uncertainties facing it. An analysis of the relevant environmental, social and other aspects is to be provided alongside the financial information if this is necessary in order to have a good understanding of the company's development, performance or position.

2.1.8. In cases where extracts from the annual report have been published, it is now laid down in the proposed directive that, in addition to disclosure of a declaration with or without qualification, or a declaration without a judgment, it must also be disclosed whether the auditors have drawn attention in their report to any matter without qualifying the audit report. At the same time the proposed directive seeks to bring about further harmonisation in these audit reports.

2.1.9. Changes are to be made further to the introduction of the euro.

2.1.10. Listed companies may no longer apply for exemption from certain obligations.

2.2. *Seventh Directive on consolidated accounts*

2.2.1. Under IAS, an undertaking is a subsidiary undertaking if it is controlled by a parent, irrespective of the existence of an interest in the capital of the undertaking. The current requirement in the directive for a participating interest to exist is to be scrapped, which will bring the directive into line with IAS requirements.

Also to be scrapped are the rules providing for the exclusion of an undertaking from the consolidated accounts of the parent if its activities are incompatible with those of the parent such that inclusion would fail to meet the requirement to give a true and fair view of the undertakings included therein taken as a whole. It is now felt that this is never the case.

2.2.2. Provisions similar to those in points 2.1.1, 2.1.7, 2.1.8 and 2.1.10 are provided for in the proposals for revising the Seventh Directive. Where both an annual report and a consolidated annual report are required, provision is also made for the two reports to be combined.

2.3. *Directive on the annual accounts and consolidated accounts of banks and other financial institutions*

2.3.1. Most of the changes proposed to Directive 86/635/EEC are consequential to those to the Fourth Directive described above.

2.3.2. Member States may also permit or require credit institutions or certain types of credit institutions to draw up their balance sheet depending on the type of the balance sheet items and their relative liquidity.

2.3.3. As a derogation from the Fourth Directive, Member States may permit or require credit institutions or certain types of credit institutions to draw up a performance report instead of an income and expenditure report if the information to be set out therein is equivalent.

2.3.4. As a consequence of the abolition of the exclusion of an undertaking from the consolidated accounts if its activities are incompatible with those of its parent (point 2.2.1), the obligation for a parent credit institution to include in its consolidated accounts subsidiaries that are not credit institutions and whose activities are a direct continuation of banking activities is also to be abolished. In any case such an exception will become superfluous through the amendment to Directive 83/849/EEC.

2.4. *Directive on the annual accounts and consolidated accounts of insurance undertakings*

2.4.1. Most of the changes proposed to Directive 91/674/EEC are consequential to those to the Fourth Directive described above.

2.4.2. Further amendments are scheduled in connection with the use of fair value in the case of certain specific items further to IAS 39.

3. **General assessment**

3.1. The EESC welcomes the alignment of the Accounting Directives on IAS. The EESC does, however, draw attention to the fact that IAS are constantly evolving. The proposed directive will remove all inconsistencies with IAS that existed on 1 May 2002. But since then a whole lot of major changes to IAS have been undergoing development. If such adjustments create new conflicts with the EU Accounting Directives, these conflicts should in the EESC's view, be resolved as quickly as possible.

3.2. Current EU texts relating to accounting and prudential aspects of banking supervision continue to refer to subconsolidations (consolidations to be carried out also by subsidiary enterprises). The EESC draws attention to the failure to take advantage of the opportunity to abolish these subconsolidations bearing in mind that this form of consolidation is a relic of the earlier national accounting laws. When we have standard European accounting laws (in respect of consolidation), such subconsolidations would appear to be superfluous, particularly as regards the prudential supervision of banks. The EESC therefore proposes that the European Commission initiate talks with the Banking Advisory Committee to examine whether the prudential supervision of banks can be organised without requiring credit institutions to carry out subconsolidation. Once a European group or conglomeration of enterprises opts to apply IAS rules (either on a voluntary basis or under the provisions of the IAS regulation), such a body must be given the opportunity to draw up only one annual set of consolidated accounts. In order to clarify the situation, the EESC proposes that the European Commission provide an explanation of the relation between the field of application of the IAS regulation and that of the modernising directive.

3.3. With the introduction of a specific statute for a European Company, the EU took a major step towards harmonising the legal framework within which European firms operate. The relevant regulation is to come into force on 8 October 2004. The national accounting laws should, in the EESC's view, also be adapted by then in order to get the European Company off on the right foot. Obviously, such a European Company should be able to apply IAS without still being subject to national accounting laws.

3.4. The evolution of IAS is apparent, among other things, from the IAS Board's recent treatment of the issue of the consolidation of special purpose vehicles (SPVs). For the banking sector it is important that, even though they need to be included in consolidated accounts, securitisation vehicles should not give rise to capital weighting in the prudential sphere. The same consideration applies in the case of the insurance sector.

3.5. The use of fair value within the banking sector in accordance with IAS is not readily compatible with the rules of risk management as laid down by the Basle Committee. The text of the proposed directive could, in the EESC's view, impose an obligation on the European Commission to work within the IASB to ensure that the IAS take more account of the Basle standards.

3.6. The EESC believes that, in the prudential area, further fine-tuning is also necessary between the rules set out in the Capital Adequacy Directive in respect of investment services and the IAS.

3.7. Attention should also be paid to the fact that there are no IAS covering insurance contracts. It is highly probable that such a standard will not be adopted by the IASB before 2004. Until such time as a comprehensive IAS covering insurance contracts is ready to be applied, the EESC takes the view that insurance companies should be given the opportunity to make good this omission by having recourse to 'best practice'.

3.8. In the area of taxation, serious problems also arise. The introduction of IAS at consolidated level is in fact an artificial approach. For banks it is almost impossible to draw up consolidated annual accounts in accordance with IAS without first drawing up IAS-compatible ordinary annual accounts. The same applies to insurance companies. Unlike industrial firms, the impact of IAS-39 on banks and insurance companies as regards the valuation of financial instruments is in fact very great. To avoid complex conversions, these institutions should thus draw up ordinary annual accounts in accordance with IAS. The EESC concludes that this leads to duplication with regard to the ordinary annual accounts.

3.9. In some European countries, the link between the ordinary annual accounts and taxation does, however, make it impossible for the moment to find a solution immediately. Nevertheless it is particularly important that listed companies should no longer be obliged to use two accounting standards. The EESC therefore believes that the proposed directive should contain an article creating a link with tax harmonisation within the EU. The EESC does, however, take the view that until such time as tax harmonisation is achieved in the EU, the options for the Member States set out in the modernisation directive should be retained in order to facilitate tax-neutral implementation.

3.10. In Europe there seems to be a trend developing towards tax consolidation. In the EESC's view, the European Commission should carry out further investigations to determine whether the IAS provides a good basis for establishing companies' tax obligations.

3.11. Some Member States have already announced that they will be drawing up new national rules described as being 'convergent' with IAS; such standards will thus not be completely identical with IAS. The EESC draws attention to the fact that such measures run counter to the trend towards establishing international accounting standards. Furthermore, such measures require enterprises operating at international level to carry out expensive implementing procedures. An enterprise operating in five Member States will not just have to implement a single given standard once; it will be required to carry out five different implementing procedures, not to mention the attendant analyses of the differences between the various procedures.

3.12. Although the demand for complete conformity between new national accounting rules and IAS is in line with the desire to establish uniform accounting standards for all enterprises in the EU, such an approach will, in practice, give rise to problems until such time as uniform provisions have been introduced in all legal areas, such as taxation in general and withholding tax on dividends in particular. The EESC therefore calls upon the European Commission to work towards further standardisation in these fields. Until such time as this goal has been achieved, the modernisation directive should give Member States the opportunity to make their own national provisions for implementing this directive, particularly with regard to SMEs, which find it particularly difficult to implement the IAS.

3.13. The EESC also takes the view that it is essential to take account of the importance of social and environmental considerations and believes that information on these aspects should be included in the annual accounts.

3.14. Finally, the EESC highlights the importance of scrupulously applying audit rules, such as those laid down by the International Auditing and Assurance Standards Board (IAASB).

4. **Conclusion**

4.1. The EESC welcomes the proposals set out in this modernising directive for aligning the EU accounting directives on IAS. The proposed alignment will make it easier for investors to compare the annual accounts of companies in the EU. This, in turn, will help to increase the efficiency of the market, thereby cutting companies' cost of capital. This conclusion is in line with the conclusions reached by the EESC in its earlier work on this subject ([1]).

([1]) See the Committee's Opinion on the application of international accounting standards — OJ C 260, 17.9.2001.

4.2. There needs to be an awareness of the fact that European accounting law should clearly evolve further in the direction of more standardisation. Otherwise, there is, in the EESC's view, a real risk that the measure will result in a heavier reporting burden being placed on the companies concerned.

4.3. The EESC believes that the tax implications of the introduction of IAS also require further investigation. The EESC thus takes the view that further tax harmonisation in the EU is desirable in this context too.

Brussels, 22 January 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH