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### Information and Notices

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## II

(Preparatory Acts)

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 404TH PLENARY SESSION, 10 AND 11 DECEMBER 2003

## Resolution of the European Economic and Social Committee on 'the Lisbon Strategy'

(2004/C 112/01)

In a letter from Vice-President Loyola de Palacio the Commission invited the European Economic and Social Committee in accordance with Article 262 of the Treaty establishing the European Community to draw up an exploratory opinion on the overall impact of the Lisbon Strategy to date tied in with the long term outlook and offering a qualitative assessment of progress made in implementing the strategy.

In considering its position the Committee organised a major conference to collect together the views of organised civil society in Europe on progress to date and what needs to be done in future (Appendix I).

At its 404<sup>th</sup> plenary session held on 10 and 11 December 2003 (meeting of 10 December), the European Economic and Social Committee adopted the following Resolution by 116 votes to 37, with 7 abstentions.

## 1. Resolution

1.1 The Committee would stress that the Lisbon Strategy will not achieve its objectives of international competitiveness, economic, social and environmental progress and sustainable development without a comprehensive review of the method, the institutional and political arrangements and the cooperation instruments tasked with their delivery.

1.1.1 The EESC particularly recognises that the Lisbon strategy is more complex, more multi-dimensional and more diffuse in its implications than any previous specific ambition in terms of achieving results for the European Union.

1.2 In order to address this, the Committee proposes a more dynamic approach, which, at institutional level, would take the form of reinforced coordination to secure renewed economic growth in Europe, based on adequate regard for economic, social and environmental concerns, with a constant interplay between these factors, i.e. on sustainable development and a competitive European system.

1.3 The Committee suggests:

- a macroeconomic policy conducive to such a strategy, through greater coordination between the Member States and the Community institutions;

- more effective dialogue between the EU institutions, the Member States, economic circles and the social partners;

- better division of responsibility in implementing the reforms between, on the one hand, the European, national and regional level and, on the other, the public, private and associative sector.

1.4 This reinforced coordination, which does not require the Treaties to be amended, presupposes cooperation and emulation between Member States on the Lisbon Strategy objectives, a responsible innovative commitment to macroeconomic policies, and a cooperative approach to individual implementation policies for the structural reforms.

1.5 In addition to the need to comply with the Stability Pact, which is based on the reliability of the Member States in defending the single currency, an integrated European economic growth policy remains a priority. This will require a means of applying the Stability and Growth Pact for the eurozone, to encourage better implementation of the Lisbon Strategy. Moreover, tax policies will have to be brought closer in line to secure the competitiveness an open economy needs, whilst ensuring social sustainability.

1.6 The first concern of this integrated economic policy must be to create the conditions for a major relaunch of economic activity in Europe. The Committee supports the objective – already the subject of several recent proposals – to create a European growth initiative to encourage trans-European investment, particularly in infrastructure (energy, transport and ICT), research and training, to improve labour market performance, and also social protection systems, within a framework of sustainable development.

1.7 The Committee would reiterate the need to speed up the completion of the single market, in tandem with enlargement. This particularly applies to public procurement, various types of services, and legislative and administrative simplification. The aim is to develop a genuinely independent growth capability which Europe currently lacks, by making full use of the potential of this extensive and technologically advanced integrated economic area.

## 2. The role of civil society

2.1 The Committee would stress that dialogue with and amongst the social partners at European and national level is crucial to delivering the reforms, particularly those designed to improve education and training, labour market performance, and also social protection systems, whilst ensuring they are sustainable.

2.2 From the outset, the Lisbon European Council mandate for the implementation of the multi-annual strategy emphasised the priority role that fell to private sector initiatives and a new partnership between the State and civil society. Civil society organisations should participate fully in the open method of coordination set out in this strategy.

2.3 With preparations under way for the new treaty on European integration, which will follow enlargement in 2004, the Committee has strongly supported the European Convention's insertion of a reference to the role of participatory democracy, facilitated by civil society players, to complement but not replace representative democracy.

2.4 The vertical view of subsidiarity (distinguishing between European, national, regional and local competences) should be complemented by a horizontal or functional view (distinguishing between issues that are mainly the preserve of government authorities and others that concern the direct, and at times autonomous, involvement of civil society, namely the private sector, the social partners, socio-occupational groups and non-profit associations).

2.5 To succeed, the Lisbon strategy must not only secure the genuine commitment of the European institutions and Member States, but must also:

- be properly understood and accepted by the public, which means raising its profile and improving its credibility;
- involve the socio-occupational players in participatory democracy.

## 3. Committee recommendations

### 3.1 at European level:

- improving the European institutions' consultation of socio-occupational interest groups and the social partners, in order to develop a permanent European dialogue on the Lisbon strategy's various joint guidelines and action plans, and ensuring better consideration and reconciliation of the imperatives of economic competitiveness, social progress, and sustainable development;
- actively involving the social partners in the implementation of the multiannual social dialogue programme they agreed, with a view to their drawing up European agreements in fields relevant to the Lisbon strategy;
- highlighting this socio-occupational dialogue and the contribution of the European social partners in the European Commission's annual report to the Spring summit;

### 3.2 at national, regional and local level:

- developing socio-occupational consultation and dialogue in parallel with the launch of a public information campaign and a debate on the whys and wherefores of the reforms set in motion under the Lisbon strategy;
- securing a dialogue and the contractual involvement of the social partners in their areas of responsibility, in line with the various cultures and economic and social backdrops, to produce national action plans;
- highlighting the contributions of civil society, and in particular those of the social partners, in the Member States' annual reports to the Spring summit; this would facilitate wider dissemination of best practice in these areas;
- establishing a real dialogue at regional and local levels. This is the best way of ensuring effective participation by economic and social actors in order to make the most of local potential in terms of human resources, entrepreneurial spirit, cultural heritage and natural resources.

3.2.1 Governments and other official agencies can contribute to enhanced competitiveness by stepping up those policies and services that help to enhance the performance of businesses and other organisations.

3.2.2 The EESC endorses the need for more focused efforts, including the use of fiscal incentives, with the following objectives:

- enhancing the supply of young people with 'knowledge industry' skills;
- promoting retraining opportunities to the new skills for all adults;
- expanding the R&D capacity of institutes of higher education and research departments of business organisations;
- incentives to reduce the risk and enhance the gains from innovation;
- incentives to minimise waste and encourage recycling;
- incentives to reduce gaseous emissions or other pollutants;

Brussels, 10 December 2003.

### 3.3 *regarding the EESC's role*

For its part, the Committee intends to keep a watching brief on progress in the implementation of the Lisbon strategy, in particular by:

- helping to develop public dialogue, directly involving civil society representatives in the evaluation process;
- holding close consultations on implementation of the strategy with the national economic and social councils and similar organisations. At their meeting in Madrid on 28 November 2003, the Presidents of the Economic and Social Councils of the Member States and of the EESC decided to initiate joint discussions in order to make a joint contribution to the 2005 European Spring Council under the Luxembourg Presidency;
- promoting the dissemination of European and national initiatives from the socio-occupational domain and the social partners that have contributed to the successful implementation of the Lisbon strategy;
- on this basis, continuing to submit an evaluation report every year for the Spring summit on progress in the implementation of the Lisbon strategy.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH



## 407TH PLENARY SESSION, 31 MARCH AND 1 APRIL 2004

**Opinion of the European Economic and Social Committee on the 'communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Updating and simplifying the Community acquis'**

(COM(2003) 71 final)

(2004/C 112/02)

On 11 February 2003, 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 Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 10 March 2004. The rapporteur was Mr Rétureau.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 88 votes to one, with one abstention.

**1. Communication and six-monthly report by the Commission and Parliament Report**

1.1 At its meeting of 13 November 2003 the SMO heard the Parliament rapporteur, Mr Medina Ortega <sup>(1)</sup>, and Commission representatives on the Communication on the framework action 'Updating and simplifying the Community acquis' <sup>(2)</sup>, on which the Commission presented its first six-monthly interim report this year [COM(2003) 623 final].

1.2 According to this report, the key actions aimed at reducing the volume of legislation and making it simpler, more accessible and more meaningful are well underway. Measures undertaken or planned account for 4 % of the current volume of the acquis.

1.3 The Communication and the framework action aim to simplify and update the acquis in the following ways:

- consolidation, i.e. incorporating the original instrument and all subsequent amendments in a single text, with a view to making it easy to read and up to date; consolidation will thereafter be systematic whenever new regulations or legislative texts are adopted; consolidation does not create a new legal instrument, but is a technical task to be carried out by the Office for Official Publications of the European Communities (OPOCE);
- re-writing legal texts to enhance consistency and comprehensibility without altering the legal situation;
- codification, i.e. uniting scattered texts in a single text and updating them; codification does create a new legal instrument, replacing previous texts, and must follow the same

legislative process as those texts which have been incorporated;

- removal of obsolete legislation;
- a more reliable and user-friendly organisation and presentation of Community law;
- in the long term, simplifying legislation and policies to replace them with more appropriate and proportionate instruments;
- possible use of alternative methods of regulation.

1.4 The rate at which work is progressing varies according to the area of simplification concerned and not all of the Commission's directorates have been involved as yet. Substantial problems in terms of methodology, personnel and budget have delayed the implementation of Phase I (February – September 2003). The Commission hopes that Phase II (October 2003 – March 2004) will advance more quickly and help make up for lost time, so that the programme as a whole will be on schedule by the start of Phase III (April 2004 – December 2004).

**2. Comments: Simplification? If only it were that simple ...**

2.1 A distinction must be made between:

- legislative and regulatory simplification; updating;
- the simplification of administrative documents and procedures and their alignment within the single market.

<sup>(1)</sup> FINAL report A5-0443/2002 of 6/12/2002, and second FINAL report A5-0235/2003 of 17/6/2003 of the EP Committee for Legal Affairs and the Internal Market on the Commission Communications on simplifying and improving Community legislation. These reports clarify in particular the Parliament's requests for Constitution-building on legislative and enforcement powers and monitoring powers.

<sup>(2)</sup> SEC(2003) 165 and attached working document: methodology, procedures and priorities, and detailed information on definitions and scheduled work.

This framework action is not concerned only with simplifying the Community acquis. The simplification of procedures and documents is, however, just as important for economic players.

The Committee refers to its previous opinions on this subject <sup>(1)</sup>.

### 3. Legislative and regulatory simplification, updating legal texts

3.1 The Committee welcomes the inter-institutional agreement (IIA) <sup>(2)</sup> between the Parliament, the Council and the Commission with regard to simplification procedures that respect their specific powers and responsibilities; it is probable that changes will be made to the co-decision procedure in a future treaty, which should expand the Parliament's role in drawing up Community legislation and monitoring its implementation.

3.1.1 The IIA is intended to improve the coordination of the legislative process between the Parliament and the Council, on the basis of an indicative timetable for the various stages leading to the final adoption of each legislative proposal; the Commission and the Council should participate regularly, at the highest level, in the discussions of the relevant parliamentary committees.

3.1.2 During discussion on a substantive amendment, the agreement considers the possibility of carrying out an impact study before the amendment is adopted (although this could cause procedural complications and delays).

3.1.3 With regard to alternative methods of regulation, that is, co-regulation between private partners or private self-regulation, the agreement stipulates that these mechanisms will not be applicable where 'fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States.' The mechanisms must also 'ensure swift and flexible regulation which does not affect the principles of competition or the unity of the internal market.' The alternative regulation is therefore subject to a number of restrictions.

3.1.4 It should be noted that the rules agreed between European social partners (Articles 138 and 139 of the EC Treaty) should not come into the general category of co-regulation; this category covers voluntary initiatives between private partners, not implying that the Institutions have adopted any particular stance. Collective European negotiation is a specific method of regulation governed by the original law.

<sup>(1)</sup> OJ C 14 of 16.01.2001. Simplification I, rapporteur Mr Vever.  
OJ C 48 of 21.02.2002. Simplification II, rapporteur Mr Walker.  
OJ C 125 of 27.05.2002. Simplification III, rapporteur Mr Walker.  
OJ C 133 of 06.06.2003. Simplification IV, rapporteur Mr Simpson.

<sup>(2)</sup> Inter-institutional agreement 'Better Lawmaking' between the Parliament, the Council and the Commission, OJ C 321 of 31/12/2003; improving the quality of drafting in legislation was examined in the Inter-institutional agreement of 22/12/1998.

3.1.4.1 The Commission will examine the voluntary regulation initiatives to ensure that they comply with the Treaty and will notify the Parliament of this and of the representativeness of the parties concerned. This seems slightly contradictory, and it is difficult to see what the consequences might be if the Parliament considered that the information received was not satisfactory. The Parliament's only possible step would be to ask the Commission to take a legislative initiative replacing the self-regulation. In future, the Parliament would like a formal call back procedure to be enshrined in the new Constitutional Treaty, for Community legislation to replace self-regulation initiatives.

3.1.5 Finally, the IIA covers the serious problem of transposing Community directives into national law; the institutions have undertaken to allow a time limit for transposition that is as short as possible and that does not exceed two years (the Treaty does not mention transposition periods). The Committee welcomes this undertaking, but questions its practical implementation (to be carried out by the Council) if the Treaty does not lay down that the transposition time limit stipulated in a directive must be respected, and that failure to do so will automatically result in an infringement procedure when the deadline has been passed.

3.1.6 The Committee would have liked to have had the opportunity to give its opinion while the interinstitutional agreement was still being drafted, in so far as it was concerned and had in the past given opinions on these issues; it could have brought to the discussion the suggestions of organised civil society, to which the acquis is principally addressed and which is directly concerned by simplification, transposition and alternative methods of regulation.

3.2 With regard to the number and nature of texts listed in the Commission's scoreboard, it must be pointed out that delays accumulated during Phase I will overflow into Phase II; it may therefore be optimistic to think that the objective can be met by 2005. Moreover, a large majority of the texts listed were produced by the Commission under the committee procedure <sup>(3)</sup>, exercising delegated regulatory powers (although this concept is not included in the current text of the EU Treaty, which refers to powers of implementation delegated by the Council).

3.3 The rule of *nemo censitur* (ignorance of the law is no defence) has become a real legal fiction owing to the huge number and complexity of directives and regulations, and this despite welcome codification initiatives that allow for a more consistent approach in certain areas of European law. Nonetheless, diversity in transposing directives at national level can lead to annoying discrepancies and different procedures. Member States and national legislators therefore have the important responsibility of transposing Community directives logically, accessibly and clearly, respecting both the letter and the aims of the legislation: convergence and harmonisation of national law.

<sup>(3)</sup> The committee procedure is based on Article 202 of the EU Treaty; the Parliament demands that it be completely revised, to prevent the executive going astray



3.4 Legislation produced under the committee procedure often seems to be picky and lacking transparency. The Parliament hopes that in future the committee procedure will focus on implementing and adapting legislation (strict powers of enforcement) rather than on existing law *per se*; it feels that substantive changes to regulations should follow normal legislative procedure. The EESC would then be consulted on such changes.

3.5 The Committee has always backed initiatives to simplify, *a posteriori*, the Community *acquis*. However, it also believes that legislation should be simple and clear from the very beginning and in particular that, before producing a legislative or regulatory proposal, the Commission should consult all the interested parties - through questionnaires, *ad hoc* meetings or other methods - and the EESC itself, to ensure that all the issues are given due consideration from the start.

3.5.1 These consultations may also help produce assessments which are as realistic as possible of the impact and consequences, financial and otherwise, of a proposal. It may, although not solely, be a question of consultation on green papers or on other preparatory working documents of the Commission accompanied by a questionnaire. The Committee is prepared to contribute to the consultative process as representative of the social and economic interests of the whole of civil society and to organise hearings with the organisations representing all these interests to make its own contribution to the continuous improvement and simplification of legislation.

3.5.2 The Committee is in favour of cost-benefit analyses as well as evaluating legislative projects from the point of view of proportionality and subsidiarity.

3.5.3 However, as regards health-safety or the environment, analysing the cost-benefit implications in purely monetary terms is a rather complex and difficult exercise which in some cases could prove incomplete, when the legislation's aim is to prevent disease or protect human lives.

3.5.4 The impact in terms of cost for those to whom the legislation is addressed, particularly businesses, must also be evaluated. There is no doubt that Community legislation or transposing a directive into domestic law can be expensive for businesses or individuals, especially if it lacks legal precision, or if the presentation of the draft does not provide a clear and precise explanation of the exact scope and the aims of the proposal<sup>(1)</sup>. If the courts are needed to interpret the legislation or regulation, the end result will be disproportionate expense for those to whom the law is addressed.

<sup>(1)</sup> For example, the presentation of the draft directive on computer-implemented inventions gave rise to total confusion as to the exact nature, scope and objectives of the draft submitted by the Commission.

3.5.5 Therefore, the preliminary phase of consultation must be primarily directed at those bodies which are truly representative of the interests of those to whom the law is principally addressed, including professionals and qualified experts; but it must also consult the European Economic and Social Committee or the Committee of the Regions.

3.6 The EESC also very much hopes to be regularly involved in *ex post* impact assessments of Community legislation, and in the review of the periodic reports required by the legislation, so that it may express the views of those who use and practise the law on the effectiveness of these rules; indeed, the law is weakened if it is not useful, effective and correctly applied or if it must be interpreted by the courts before being applied.

3.7 Follow-up, which can be difficult, consists of assessing the real impact of legislation - whether direct (regulations) or indirect (transposition of directives) - at national, regional and local level.

3.8 The EESC has suggested setting up an independent European body to follow-up and promote regulatory and administrative simplification, and a provision of this nature should be considered as soon as possible. At all events, simplification should be extended as far as possible to all areas of the *acquis*, and this is far from being achieved. This is all the more urgent because simplification will support and accelerate the effective implementation of the *acquis* in the new Member States, and should spur on those who are lagging behind to clear their backlog.

3.8.1 Environmental and safety legislation in relation to business activities might be a particularly promising area for simplification. In the long run, the issue could be recast more consistently and accessibly in a European Environment code. The Committee notes that some private publishers periodically produce unofficial European codes which bring together and give glosses on certain subjects, such as a European social code or a business code, illustrated and explained by case-law and legal commentators. These initiatives prove the usefulness of codifying or reformulating the *acquis* for users and professionals in Community law.

3.9 Simplification is directly linked to the principle of good governance<sup>(2)</sup>; it brings to the fore the issues of proportionality and subsidiarity which have to be resolved first. Depending on the legal texts in question, a procedure for assessing each specific stage (conception, drafting, adoption and publication) and for monitoring implementation should be introduced. This procedure can only enhance the legal certainty of those to whom the law is addressed and their respect for it.

<sup>(2)</sup> See the 2001 white paper on governance, and the better legislation action plan drawn up by a Council working group (Mandelkern Group on better legislation).

3.10 It is clear that the users of Community law, which today accounts for a significant proportion if not most of the legal texts applicable in the Member States, are calling for wording that is less complex, devoid of ambiguity and easier to transpose and implement. The proliferation of legislation has an adverse effect on businesses, in particular smaller enterprises that lack their own legal services, and consumers, who seek certainty regarding their rights and the remedies open to them.

3.11 Single market regulation must be able to adapt to change while at the same time offering social and economic players sufficient legal certainty and security. Such regulation must be warranted and appropriate, and must not create unnecessary difficulties or obstacles. However, simplification must not be confused with deregulation<sup>(1)</sup>. Codification is a form of simplification that concerns the consistency and comprehensibility of applicable law, but does not make substantive changes. Simplification and periodic evaluation of the effectiveness of the *acquis* could also, where appropriate, lead to a reformulation of the law, through amendments or a draft replacement if necessary.

3.12 EU harmonisation and Community texts have already simplified the single market, preventing a proliferation of national texts and thereby making it easier for all European players to know the law.

3.13 Information and its channels are important in acquiring knowledge about applicable law and changes to it, and should therefore be targeted (limitations of simply publishing in official journals, the importance of possible conduits or alternative means). The websites of the Community institutions provide information for the public from the preliminary stages onwards, and the legislation pages of the Parliament's website give clear information about how dossiers are progressing. Finally, Community brochures for the general public also play a useful role, as do press releases, which are generally well written, although sometimes badly explained to readers by journalists.

3.13.1 A number of professional organisations and associations (e.g. national Bars) publish relevant texts for their members, as well as explanations and advice.

3.13.2 Information is also often distributed by Member States or teachers. University textbooks, legal commentators and student exchanges all contribute to the training of lawyers and future European legislators.

<sup>(1)</sup> This was argued clearly in the above mentioned Committee opinions.

3.13.3 The Committee suggests to the Commission that a review should be carried out of how those to whom legislation is addressed and Community law professionals are best informed in practice, so as to determine whether the current means of conveying information are used effectively and whether or not they are sufficient, with a view to developing a better strategy for communication and training on Community law.

#### 4. Administrative procedures and documents

4.1 It should be emphasised that many regulations lay down the procedures to follow and provide specimens of the documents to be used. The Committee encourages this method which simplifies administrative formalities in the single market and reduces transaction costs.

4.2 As regards administrative documents and procedures currently in use, harmonisation is becoming a serious problem for operators, when each country has different requirements. There is much scope for harmonisation here. This will genuinely simplify trade and must be exploited to the full.

4.3 However, if the role of the committee procedure is also to implement legislation, it should contribute towards simplifying and harmonising administrative documents and procedures, by taking into consideration the opinions of legal professionals and users.

4.4 The use of information and communication technologies (ICT) in e-administration is also an instrument for good governance which must be rapidly promoted. Its application in the area of customs, as envisaged by the Commission, would be a good way of simplifying procedures and documents (e.g. one-stop-shop, standard documents to avoid delays at Community borders). This clearly calls for consultations with the interested parties, industries, customs personnel and carriers in order to avoid pointless formalities, ensure the legal security of operations and carry out proper checks. Such checks must not hinder freedom of movement and must respect business confidentiality, providing there is no evidence of fraud or strong suspicions of fraud.

4.5 While the Committee is very much in favour of developing e-administration, providing it is accompanied by procedural and administrative simplification, it wishes to reiterate the fundamental principles that govern how it works. Strict rules governing confidentiality, the length of time that authorities can keep certain documents, and the anonymisation of data for statistical or communication purposes must be respected.

## 5. Co-regulation and self-regulation <sup>(1)</sup>

5.1 Until now, the possibilities have not been properly explored for less detailed and less finicky regulation, offering scope for co-regulation and self-regulation. The role of those to whom legislation is addressed must be developed, as this will make for easier and more widespread implementation. The EESC's data base PRISM (Progress Report on Initiatives in the Single Market) provides specific examples of what could be called 'contractual regulation' and 'unilateral regulation' respectively, which also require appropriate monitoring and assessment procedures (e.g. labels, certificates, private or public independent checks). Mutual recognition, consumer relations, etc. open the way for effective private regulation.

5.2 With regard to Community social and labour law, collective bargaining on working and employment conditions and social dialogue allow European employers' and employees' organisations to have a say in labour relations and Community social law.

5.2.1 Negotiated texts must, however, be the subject of a Commission initiative and Council decision if they are to become legislation. The Parliament is not really consulted in this procedure, since any amendments it might make are not taken into consideration.

5.2.2 However, if the methods of self-regulation did not give acceptable or adequate results, or if necessary, the legislator could always, under existing procedures or new procedures from the new Treaty, such as the call back procedure, transform self-regulation or co-regulation into legislation. The Committee feels however that prudence should be exercised in this matter, particularly as regards collective contracts between European social partners, whose wishes and provisions should in principle be respected.

5.3 Therefore, while public regulation (legislation) may replace private regulation (contractual and unilateral regulation, non-governmental monitoring bodies, out-of-court dispute settlement ...), such legislative intervention must respond to solid political reasons or clear public requirements. In a democratic political framework, private regulation must generally further develop or apply public regulation, even replacing it in some areas, including unwritten rules originating in common law or rules of procedure which the legislator and public

authority wish, explicitly or implicitly, to ensure are respected, e.g. the ethical codes of certain professions.

5.4 When quasi-judicial provisions are laid down in private rules, an appeal against a duly motivated decision by the private body (e.g. disciplinary board, admission board for a professional body) must always be admissible before a public court or, if necessary, an arbitration body agreed by the parties.

## 6. Final considerations

6.1 The EESC will follow the Commission's six-monthly interim reports with considerable attention. It supports the initiative and the framework action to simplify the Community acquis, and hopes that this simplification will spread rapidly to other areas of the acquis to facilitate and promote its practical application, both in existing and new member countries.

6.2 Through its consultative opinions, the EESC wishes to have a greater role in drawing up Community law, which presupposes that it plays a part in proceedings at a much earlier stage than is usually the case at the moment. It also wishes to participate actively in impact and follow-up assessments and in actions to promote simplification, in order to contribute to the greater accessibility and effectiveness of Community law in the enlarged Europe. These requests of course follow the principles of democracy and good governance, as well as those of bringing citizens closer to the institutions and legislation of the European Union.

6.3 Finally, the Committee welcomes the inter-institutional agreement on Better Lawmaking, adopted by the European Parliament, the Council and the Commission on 16 December 2003, which lays out the conditions for better simplification of Community legislation and in particular defines and frames, while encouraging, use of self-regulation and co-regulation by socio-occupational players. This agreement corresponds to the Committee's wishes in this area expressed in September 2000, when it adopted its own code of conduct and invited the institutions to follow its example. The Committee will contribute to the correct functioning of the agreement and will continue to promote the use of self-regulation and co-regulation, which are the subject of an information report being prepared by the Committee.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> This section deliberately does not go into detail, because Mr Vever is preparing a specific opinion on this topic.

**Opinion of the European Economic and Social Committee on 'the White Paper — Space: a new European frontier for an expanding Union. An action plan for implementing the European Space policy'**

(COM(2003) 673 *final*)

(2004/C 112/03)

On 12 November 2003, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the White Paper — Space: a new European frontier for an expanding Union. An action plan for implementing the European Space policy.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2004. The rapporteur was Mr Buffetaut.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 97 votes to none with two abstentions:

## 1. Introduction

1.1 The White Paper submitted to the EESC is a logical follow-up to the Green Paper on European Space Policy, on which the Committee adopted an opinion in June 2003.

1.2 On that occasion the Committee essentially asked the question: does Europe have a strong political and ongoing commitment to the space sector, together with the necessary financial resources and an adequate institutional architecture?

1.3 The Committee concluded that: 'Europe's position in the space sector will depend on the strength of its political commitment and the clarity of its budget decisions. The introduction of a shared and/or parallel competence for the space sector in the future European constitutional treaty would provide the European Union with the political, legislative and financial means to define and implement a strong space policy, which will have to, *inter alia*:

- guarantee autonomous access to space for Europe;
- contribute to Europe's strategic autonomy;
- develop a programme of scientific excellence;
- promote applications benefiting EU citizens and sectoral policies;
- coordinate a dual research programme in space technologies in order to ensure our independence in civil, commercial, security and defence activities'.

1.4 It is in the light of this clear position that the Committee should assess the White Paper which has been referred to it for an opinion.

## 2. Gist of the document

2.1 The Commission sets out the dangers facing Europe in the space sector:

- decline in its capacities as key space player, if its growth does not keep pace with the global evolution of the space sector;

- decline of its leading space companies because of weak commercial markets and lack of public investment in new programmes.

2.2 Against this background and noting that 'standing still is not an option', the Commission proposes a series of initiatives to prevent the weakening of Europe's position in the space sector.

2.3 The document is organised into the following sections:

- policy challenges;
- space initiatives to support key EU policies;
- challenges to be met in order to secure and build upon Europe's scientific and technological capabilities in the space field;
- issues relating to governance and resources.

2.4 In each section, the challenges are identified and proposals made for responding to them.

### a) Policy challenges

The Commission stresses that space is a horizontal policy which is especially relevant for supporting Europe's economic prospects, including the Lisbon objectives, agriculture policy goals, levels of employment, its management of the environment and its foreign and security policies.

### b) Support for key EU policies

A number of major initiatives are listed, together with recommended actions. These initiatives cover the following areas: implementation of the GALILEO programme and Global Monitoring for the Environment and Security (GMES); bridging the digital divide; the contribution of space to European security and defence policy; and developing international partnerships,



c) *Maintaining scientific and technological capabilities*

This refers to the elements which are essential if Europe is to remain a space power: guaranteed independent access to space; optimisation and coordination of R&D resources; human space flight and space exploration; a suitably large and rejuvenated scientific population; strengthening Europe's position in space science; promoting an innovative and competitive European space industry.

d) *Governance and resources*

The aim is to better identify and share tasks and responsibilities between the European Union, ESA, Member States, national agencies and industry in order to maximise efficiency and harness the benefits of space activities for Europe and its citizens. But this will only be possible if extra resources are made available for the space sector.

2.5 The conclusion of the White Paper is that Europe must progressively increase its space budget as part of a long-term vision aimed at creating more effective European space policies and more opportunities for a revitalised space industry to expand Europe's share of the market in space-based services.

2.6 In the resources assessment in Annex 2, the Commission presents three scenarios for increased expenditure on space, corresponding to three degrees of political will.

### 3. General comments

3.1 The White Paper is, above all, a policy document the primary objective of which is to define a space policy for Europe. In this respect, it represents an important step forward in a field where Europe has been very active and scored major successes, but without ever having really made a coherent expression of political will. In addition, the White Paper outlines areas for specific action in the main sectors, where mastery of space-based resources involves strategic, economic and industrial challenges. The way that the document is structured according to the various challenges to be met is interesting in that it highlights the scale and urgency of the commitments that need to be made if Europe wishes to retain its position as a major space power, its scientific and technological strength, its community of scientists and engineers, its cutting-edge industry and a competitive market presence.

3.2 The initiatives, measures and proposals put forward by the Commission seem to be consistent with the ideas aired in the consultations on the Green Paper. As such, the White Paper represents a solid platform for the implementation of a European space project that is embedded in a political vision of the future. But clearly the crucial factor here is the real political and financial will of the Member States and the Union to support and develop an independent European space sector.

3.3 Finally, with the failure of the Intergovernmental Conference a problem has arisen regarding a solid legal basis for the European Union in the space field in that Article 13(3) of the Treaty will remain unchanged until the draft treaty establishing a constitution for Europe has been ratified. The European Economic and Social Committee therefore recommends that the framework agreement signed between ESA and the Commission be used to the full in a pro-active way because action in the space field cannot wait for the ratification of the future treaty at some indefinite point in time. The adverse repercussions that this would have for Europe's strategic autonomy, space industry and its partners, and research teams and capacities could open up an unbridgeable gap between Europe and its competitors in this field.

3.3.1 In fact, Member States have reached unanimous agreement on providing the EU with shared competence in space policy, an agreement which no-one has called into question.

3.3.2 Consequently, the EESC stresses the need to consider ways and means of supporting this clearly stated political will, pending the creation of a solid legal basis.

Firstly, the ESA-EU Space Council provided for in the framework agreement between the Commission and ESA must be set up immediately. Secondly, consideration could be given to appointing a high official for Space (along the lines of the high official for the CFSP), or to including space policy in the portfolio of the President of the European Commission, without ruling out the possibility of creating the post of Commissioner for Space in the future. All three options imply a strong endorsement of the importance of space policy.

### 4. Specific comments

#### 4.1 *Space contributions to policy challenges*

4.1.1 Space technologies are a tool for fundamental research, on account of both the complexity of the technologies applied and the fields of research involved, which include not only astrophysics and planetology but also seismology, oceanography, meteorology, epidemiology, etc. The EESC regrets that the White Paper does not make specific mention of their key role and hopes that this aspect will be given some kind of legitimacy by European space policy, even if ESA's mandatory programme responds to this need mainly as regards the sciences of the universe.

4.1.2 Moreover, it must be emphasised that in the field of observation and knowledge of the planet there is close interdependence between operational activities (such as those conducted by Eumetsat) and pure research.



4.1.3 Finally, it is essential to stress the duality of space technology at the research and development stage; the difference between civil and military usage emerges mainly during the practical application of research findings. Upstream research and development activity should therefore bring together all civil and military stakeholders in a concerted effort to optimise the use of facilities and reduce costs.

#### 4.2 *Space actions in support of the enlarged Union*

##### 4.2.1 Navigation

The EESC fully endorses the idea that the GALILEO programme is the symbol of the European Union's recognition of the political, strategic and economic challenges of space. It believes that everything must be done to bring this project, which is essential for Europe's autonomy and independence, to a successful conclusion.

##### 4.2.2 Global monitoring for the environment and security (GMES)

4.2.2.1 Priority must be given to the interoperability of space systems as they can have different origins.

4.2.2.2 The EESC feels that two specific aspects are not given enough emphasis and are not sufficiently understood:

- no provision is made for the continuity of orbital observation in some fields, particularly radar observation;
- and in particular, the existence of European operational activity in the field of meteorology, climatology and oceanography is largely ignored. Significantly, Eumetsat is only mentioned as one of the 'stakeholders' and the fact that certain space activities are organised at European level seems to have been forgotten or ignored.

4.2.2.3 The EESC considers this to be a shortcoming of the document as EU space policy must be built on what already exists, not by duplicating what the space agencies do but by complementing their activities and structuring demand.

4.2.2.4 The Committee therefore recommends that the Commission adopt a constructive attitude towards Eumetsat, which is a key European partner, along the lines of that adopted with regard to ESA. Equally, the Committee believes that better use should be made of the Madrid-based Torrejón satellite centre for gathering satellite information by creating a true space database, along the lines of that under development in the United States.

#### 4.3 *Bridging the 'digital divide'*

4.3.1 The EESC feels that this section is regrettably weak, in terms of both form and content. It stands in stark contrast to

the rest of the document. It is surprising – to say the least – to note that, in the box entitled 'The Way Forward', satellite communications are only mentioned in passing in parentheses when it is asserted that full use should be made of the potential offered by all available broadband technologies to bridge the digital divide.

4.3.2 The Committee fears that, as far as this issue is concerned, the text is based on a number of misinterpretations or misjudgements.

4.3.3 In the first place, the concept of technological neutrality cannot mean that all technologies are equivalent as regards solving a given problem. Clearly, choices have to be made on the basis of a cost-benefit analysis along the lines of that drawn up by the Commission (working document SEC(2003) 895). It is important in this context that use of the Structural Funds is not at variance with these principles and that local authorities have a clear idea of the complementarity of terrestrial and space systems in terms of geographic data and population density

4.3.4 While there can be no question of promoting space-based solutions to the detriment of more effective terrestrial solutions, there can be no denying that the former are particularly appropriate for regions with a low population density or which are geographically remote or access to which is difficult. Space-based solutions and terrestrial solutions are complementary and offer different areas of excellence.

4.3.5 What the text overlooks is the fact that the role of space-based solutions in resolving the problem of the 'digital divide' must derive from the intrinsic complementarity of terrestrial and space-based solutions.

4.3.6 The crucial factor for the development of space-based solutions is equal access to the advantages of broadband telecommunications regardless of where an activity is located.

4.3.7 To be specific, today in many countries 80 % of the population but only 20 % of the territory is covered or in the process of being covered by terrestrial solutions. This situation can only change for the better by exploiting the complementarity of space and terrestrial technologies.

4.3.8 The sheer size of the urban market favours terrestrial solutions and the importance of terrestrial operators can only accentuate the imbalance between urban and rural regions. This raises the following question: is it acceptable that the information society is evolving in a direction which favours urban concentration at the expense of rural depopulation? Clearly, this cannot be the socio-political choice of the European Union or of Member States.

4.3.9 In stating that the market is characterised by 'intense competition between operators and technologies', the White Paper confuses two very different elements: commercial competition between operators and the balance between technologies, which ultimately depends on their respective qualities.

4.3.10 Therefore the EESC feels that the European institutions should make a more accurate assessment of the specific role of space-based solutions so as not to lose the initiative in this key area of space policy. Consequently, it would be useful to promote pilot operations based on joint initiatives between ESA and the Commission in order to demonstrate the cost-benefit advantages of satellite-based solutions in comparison with the investment that would be necessary to bring about equivalent fixed network solutions in areas where there is no coverage. Similarly, the pooling of public contracts should be encouraged so as to enable satellite-based solutions with Europe-wide coverage to benefit from economies of scale, leading to lower costs, both in terms of terminals and service provision. This would also help pave the way for the emergence of a European standard, enabling the various companies involved to establish a global presence.

4.3.11 The role of space policy is not to promote space policy at any price but to see to it that space-based solutions are not overlooked to the detriment of the interests of certain users and certain regions and the people who live in them.

*4.4 Space as a contribution to the CFSP and the ESDP, the development of international partnerships, strategic independence and common assets for common actions*

4.4.1 The EESC does not have any major comments to make on these sections but it would strongly emphasise that, insofar as space is considered by our main partners to be an important power issue (in 2004, NASA Administrator, Sean O'Keefe, will present a new road map which, significantly, deals with the subject of renewed US space domination), international cooperation must be based on an approach which realistically reflects European interests.

4.4.2 The Committee would therefore reiterate that, insofar as free access to space is essential for Europe's autonomy and it cannot be achieved through a commercial approach, public funds must be allocated to maintaining freedom of access, which is of major strategic importance.

4.4.3 As concerns the ESDP, the Committee recalls that the presidency report on European Security and Defence Policy, approved by the Thessaloniki European Council of 19 and 20 June 2003, recognised the importance of space applications and activities in this area. Here the Committee would highlight the dual nature of space sciences and technologies, which is not sufficiently exploited in Europe.

4.4.4 As regards space flights, careful attention needs to be paid to a possible revision of US space policy in this area.

4.4.5 The EESC considers it desirable to maintain this type of activity for reasons which have to do with both humankind's deeply rooted desire for adventure and discovery and the need for symbols that can stimulate and maintain public interest. Consequently, realistic programmes should be devised which respond intelligently to European interests but which at the same time are based on global cooperation.

4.4.6 In this context, the idea of a lunar station certainly needs to be given serious consideration, with the greatest regard for Europe's interests.

*4.5 Strengthen European excellence in space science*

4.5.1 The Committee would recall that ESA, national agencies, scientific institutes and industry have succeeded in elevating Europe to a level of scientific excellence which is recognised worldwide. Moreover, as the Commission points out, this has been done subject to strict budget constraints that have required efficiency and competitiveness, which deserves to be applauded.

4.5.2 This is all the more reason to support the White Paper proposal to progressively increase ESA and Member State funding for space research, not only to promote research as such but also to avoid the break-up of our research capacities and to offer attractive career opportunities to young scientists; otherwise there is a real risk that the 'brain drain' will accelerate, particularly to the United States.

4.5.3 The Committee considers that just as much emphasis should be put on the earth sciences in space research as on the sciences of the universe. What sets the earth sciences apart from the sciences of the universe is the fact that they are intrinsically bound up with practical applications (meteorology, surveillance, environmental management, etc.). A distinction therefore needs to be drawn between these two branches of science, without favouring one at the expense of the other.

*4.6 Establish a new approach to the governance of space activities*

4.6.1 At this stage, the White Paper can only provide some pointers to the way forward, including how to organise space responsibilities within the Commission.

4.6.2 Despite the failure of the Intergovernmental Conference, no-one has called into question the agreement to provide the European Union with shared competence in the space field. However, the absence of a clearly established legal base for EU action in the space sector will inevitably give rise to a certain caution.

4.6.3 Nevertheless, as regards internal organisation within the Commission, it seems to the Committee that there are two pitfalls that must be avoided:

- on the one hand, spreading space responsibilities too widely would prevent the Commission from working and acting in a coherent fashion;
- on the other hand, excessive centralisation would sever policy from the various directorates involved and be to the detriment of demand-driven policy.

4.6.4 The EESC believes that a single, dedicated body of modest size, attached to a high level of the Commission, for the example the presidency, would offer an appropriate response.

4.6.5 Of course, the Commission will have to have resources of its own, augmenting those which Member States devote to ESA and national agencies. If there is a genuine desire to develop EU space activity, the 'game' cannot be played without staking some money.

#### 4.7 *Annex 2: resources assessment*

4.7.1 The White Paper presents three scenarios:

- scenario A is the 'ambitious' scenario, which would require a firm political commitment and a high level of economic growth, allowing a sustained budgetary effort;
- scenario B is the 'political' scenario, denoting a readiness for a new departure for space in the European Union;
- scenario C is the 'linear' scenario, which would not guarantee full independence as regards technology and access to space.

4.7.2 Space activity is of major strategic importance for the European Union. Its scientific, technological, economic and human implications are considerable. It is therefore an integral part of the Lisbon strategy and there is a need to ensure that the means are made available for achieving the stated objectives in this area. Under these circumstances, it is clear that the EESC can only reject the possibility of scenario C. It regards scenario B as the minimum working hypothesis, whilst hoping that it will be possible to move closer to scenario A.

4.7.2.1 In fact, some wonder whether it might not be possible, in the light of the requirements of the Stability Pact, to insulate strategic investment spending, such as that on space, from budgetary considerations so that the future is not compromised by budgetary restrictions, which all too often are targeted at investment spending rather than current expenditure.

4.7.3 It is equally clear that nothing should be put in the way of enhanced cooperation in the space sector, although it has to be recognised that the Nice Treaty provides little scope for such cooperation.

## 5. **Conclusions**

5.1 The European Economic and Social Committee considers the White Paper to be a high-quality document which has the great merit of being an expression of political will which is formulated in a strong and coherent manner.

5.2 Nevertheless, the Committee deplores the weakness of the section on the 'digital divide' and broadband technologies. It therefore urges the Commission to review and expand this section by considering the complementarity between space-based and terrestrial solutions.

5.3 The Committee would again stress the key strategic importance of space activities for the European Union. It calls for the Union's policy approach, particularly as regards international cooperation, to be underpinned by a realistic vision that is free of all trace of naivety, especially in view of the dual nature (civil/military) of the technologies which space activities are based on.

5.4 The Committee emphasises that the space sector, which has been restructured and taken the necessary steps to improve competitiveness in order to be able to compete internationally, employs directly some 30,000 people, many of them highly skilled, and that it is essential to maintain and enrich this vast human potential, which is the source of European excellence in this field. In particular, it would point out that greater attention should be paid to training, both initial and continuing, in a sector based on high technologies which are evolving along with progress in scientific research.

5.5 Despite the failure of the Intergovernmental Conference, the Committee recommends that the European Union, building on the framework agreement between the Commission and ESA, press ahead resolutely with its efforts to shape and stimulate demand and with space initiatives, without duplicating the programmes of Member States, their national agencies or ESA and without standing in the way of enhanced cooperation or strong partnerships between certain Member States. The Committee recommends the incorporation of space policy within the remit of a high-level EU body or official.

5.6 The Committee urges that the budgetary resources granted for space policy be equivalent, at a minimum, to the level of funding envisaged in scenario B of Annex 2 and to avoid any chance that investment by the EU might result in a corresponding decline in investment by Member States.

5.7 Space policy, because of the human, scientific and strategic challenges it involves, touches at the very heart of the human adventure. As a result, Europe is again on the road to a date with history, in a geopolitical context where other leading continental powers are key protagonists. We do not have the right to miss this encounter.

Brussels, 31 March 2004.

*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 European Economic and Social Committee and the Committee of the Regions — A coherent Framework for Aerospace — a Response to the STAR 21 Report'**

(COM(2003) 600 final)

(2004/C 112/04)

On 13 October 2003, in accordance with Article 262 of the Treaty establishing the European Community, the Commission decided to consult the European Economic and Social Committee on the above-mentioned communication.

The Section for the Single Market, Production and Consumption, responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2004. The rapporteur was Mr Buffetaut.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee unanimously adopted the following opinion by 100 votes to none:

**1. Introduction**

1.1 This Commission document is above all a reaction, and in fact a rehash of the conclusions of the Aerospace Advisory Group's Strategic Aerospace Review for the 21st Century (STAR 21).

1.2 The Commission links this reflection to the conclusions of the European Councils of Cologne, Lisbon, Barcelona and Thessalonica.

1.3 It points out that the aerospace industry is a key sector in achieving the strategic and economic goals that the European Union has set itself. The sector is very high-tech and highly-skilled, and operates in both the civil and military field.

1.4 So, what is the situation of the sector in the EU?

1.4.1 The aerospace industry is a cyclical and fluctuating activity. In the civil field the market depends on the purchase programmes of airlines, which can be affected by external events such as terrorist actions, which may seriously disturb activity.

1.4.1.1 In the military field, it is determined by budget choices and the purchasing policies of states, which are themselves determined by geo-strategic data.

1.4.1.2 Today, the manufacture of large civil aircraft underpinned by the competitiveness of Airbus is and will remain the key factor in the development of the aerospace industry.

1.4.1.3 The defence sector is more uncertain. The number of new programmes is limited. However, the European aerospace industry remains strong and has a strong presence on the helicopter market.

1.4.1.4 The sector has been affected by the uncertainty of the European market and the complex and cumbersome nature of military decision-making, and so European companies are turning to the much larger and more stable US defence market, despite the protectionist rules of the USA and without sufficient guarantees of any technological benefits.

1.4.1.5 The space sector is going through a difficult phase. Mainly civil, it has suffered greatly from the fall in demand for telecommunications and is now facing strong competition in the launcher market, which is protected in the USA and is facing the entry of new actors on the world scene. The plans of the USA and NASA are geared to current requirements; this provides an opportunity to bring about an upturn in Europe.

1.4.1.6 Aerospace is a dual sector, whose skills and techniques can have civil and military applications. One of its weaknesses is the inadequacy and fragmentation of the defence market.

**1.4.2 Findings of the STAR 21 report**

1.4.2.1 The report stresses the importance of:

- better access to non-EU markets and honest and correct application of trade agreements;
- greater employee mobility in the sector;
- better coordination of research and development efforts;
- the leading role that the EU should play in regulating civil aviation;
- better cooperation between the ESA and the EU and the launching of the GALILEO programme.



1.4.2.2 Finally, the report stresses the need to re-examine conditions on the defence market.

#### 1.4.3 *The Commission's approach and proposals*

1.4.3.1 The Commission identifies the questions that it considers essential, sector-by-sector.

#### 1.4.4 *Defence*

1.4.4.1 The Commission deplores the fragmentation of the market, which is due to the fact that defence lies at the very heart of states' sovereignty and to the particular features of the sector (confidentiality, security of supplies, political criteria in purchase decisions...). It stresses that Europe spends less on defence than the USA, and that market fragmentation makes it impossible to get the most out of investments.

1.4.4.2 For the future, it recommends that this fragmentation of demand be combated, since it is impossible to achieve profitable production levels with programmes that are specific to only one state.

It proposes that military requirements be harmonised and feels that the setting-up of a 'European Armaments, Research and Military Capabilities Agency,' as part of a European security and defence policy, would help create a sufficiently important and coherent market to maintain and develop our aerospace industry and enter into a credible dialogue with the USA.

1.4.4.3 The Commission also feels that the initiatives taken by the defence ministers of France, Germany, Italy, Sweden, Spain and the United Kingdom could usefully be extended to the whole of the EU.

#### 1.4.5 *Space*

1.4.5.1 The Commission points out that there is no European or multinational structure responsible for security and defence-related space programmes, a lack which is cruelly felt when there is a sharp and sustained downturn in the civil commercial market. This situation is largely due to the provisions of the ESA Treaty, which strictly applies the Convention on Space prohibiting the use of space for military purposes. The result is that, unlike the USA, Europe does not consolidate its civil and commercial space activity with space activity in the field of defence that is institutionally supported and therefore not subject to commercial risks. This is all the more regrettable since space technologies are of a dual nature, and can therefore have both civil and military applications.

1.4.5.2 For the future, it calls for the introduction of an overall European policy and for more effective coordination, so that the European space sector does not lose its current capabilities and technological excellence.

#### 1.4.6 *Research*

1.4.6.1 Aerospace research clearly needs to be better coordinated. Some interesting civil initiatives have been taken (Advisory Council for Aeronautical Research in Europe), but the situation is not satisfactory as regards defence.

1.4.6.2 For the future, the Commission thinks it essential to ensure the long-term stability of the structures for funding research. It also wants to develop an overall plan for research and development and plan research programmes.

#### 1.4.7 *European regulation of civil aviation*

1.4.7.1 The Commission wants the European Aviation Safety Agency to become operational as quickly as possible and transatlantic negotiations to be conducted, in particular on certifications.

1.4.7.2 It wants air safety issues to be handled at European level and the EU to play an active part in the relevant international organisations.

1.4.7.3 It also calls for the creation of a civil-military interface to improve the use of airspace.

#### 1.4.8 *Market access*

1.4.8.1 The Commission mainly considers issues related to the commercial difficulties with the USA over defence equipment, due in particular to US protective rules and export controls.

## 2. **General comments**

2.1 STAR 21 and the Commission make a number of objective remarks that merit support. The aerospace industries clearly belong to a hi-tech sector whose advanced skills and technologies may have a valuable impact on other sectors. In this respect, they have a major role to play in enabling the EU to achieve the Lisbon goal: 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.'



2.2 Market fragmentation in the defence aerospace industry is due to the very nature of the sector and its sovereign activity of defence, i.e. possibly war. So, it is logical that states have wanted to ensure security of supplies and the secrecy of technologies by using national companies, often with close links to the state. The secrecy of technologies is currently ensured by means of various bilateral and multilateral agreements.

2.3 This vision clashes with the logic of an alliance and the fact that the huge investments of the defence industries can no longer be guaranteed a return from the national markets which are their main support, especially at a time of budget restrictions. Moreover, international competition is particularly keen from US firms, which are supported by a vast and stable national market.

2.4 The Commission's proposals to overcome market fragmentation are interesting, but too much trust seems to be placed in such structures as a European armaments agency. In the field of defence, which by its very nature is a question of national sovereignty, nothing is possible without a stated political will and this can only be stated as part of a European world policy that is clear and shared by all, which is not the case. Moreover, in a hi-tech activity that calls for skills and know-how of very high level, it is advisable to make sure that the cooperation planned does indeed generate technological added value and does not lead to skill dilution.

2.5 The EESC would point out that a recent defence agreement signed between France, Germany and the UK should lead to operational aspects in 2005. This could open up some interesting perspectives for industry, as the British, French and German markets combined would achieve the critical mass necessary for our military aircraft industry.

2.6 The latest developments regarding space (framework agreement with the ESA, provisions of the draft treaty instituting a constitution for the European Union which are not at issue in the IRC's failure) are along the lines wished by the Commission and the EESC. The basic question is whether the budget appropriations are sufficient for the EU and Member States to have the means to achieve their space ambitions. This is the main issue of the White Paper, which is a quality document despite a glaring weakness regarding broadband telecommunications.

2.7 The Commission proposals on the European regulation of civil aviation appear justified both at a practical level and in terms of safety and consistency. Moreover, this could only strengthen our position in the transatlantic negotiations.

### 3. Specific comments

#### 3.1 *Defence aerospace industry*

3.1.1 The EESC notes the difference between what the European civil aircraft industry has been able to achieve with Airbus and the relative weakness of the military aircraft industry due to the fragmentary nature of the market. It feels that this is due to the lack of an overall political plan for Europe's defence. This situation only reinforces the dominance of the USA, which has been able to use its defence agreements with various countries for the benefit of its own industries, thus making the world market almost a captive one. The aerospace industry is a concentration of the strategic technologies that determine future economic growth. It therefore fits in perfectly with the Lisbon strategy, which aims to make the EU 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'. In addition, the technological independence of European companies in the defence-related sectors is one of the preconditions for the Em's independence.

3.1.2 The EESC points out that as regards military aviation (as with space activities), the USA uses various instruments or legal concepts that in fact amount to protectionist practices. It therefore asks the Commission, which is in charge of the Em's commercial policy, to take action against these practices, particularly in the WTO, to restore our trade balance in this area.

3.1.3 It notes the defence agreement between France, Germany and the UK which is a sign of change in the approach to Europe's defence. While it is not desirable to have an EU where everyone does their own thing, neither would it be advisable to stand in the way of initiatives which may provide a lead for others.

#### 3.2 *Space*

3.2.1 The EESC feels that the proposals in the White Paper more than fulfil STAR 21's recommendations. It again stresses the major strategic importance of space activities for the EU and asks that the Em's political approach to cooperation and international relations be based on a realistic vision of its interests.

3.2.2 It recalls that this sector employs 30,000 highly skilled people and that it is imperative to maintain and enrich this formidable human potential.

3.2.3 Owing to the IRC's failure, and pending a European treaty giving the EU competence in space matters, it recommends that the Commission develop to the maximum the potential of the framework agreement concluded with the ESA.

3.2.4 Finally, it asks that the budget authorised for space policy correspond at least to scenario B 'political act' in the appendix to the White Paper.

### 3.3 *European regulation of civil aviation*

3.3.1 The EESC totally supports the call for the rapid creation of a European Aviation Safety Agency and the wish to achieve, as soon as possible, mutual acceptance of certifications granted by regulatory authorities on both sides of the Atlantic.

3.3.2 It also wants effective promotion of European air safety standards, as a factor in the competitiveness of the European aerospace industry, and therefore the active participation of the EU in international organisations with competence in such matters.

## 4. **Conclusions**

4.1 The European Economic and Social Committee considers that the Commission Communication on the STAR 21 report

rightly draws attention to the weaknesses of military aerospace activity in Europe. However, it feels that the Commission probably attaches too much importance to the institutional side of things, and that the main thing is that a real political desire for autonomous Community defence should emerge in Europe. Only that will enable our industries to be given a solid base.

4.2 In the field of space, the EESC notes that the White Paper drawn up by the Commission fully answers the requests made by STAR 21. It considers that the Commission/ESA framework agreement and the political guidelines defined by the White Paper should enable Europe's ambitions in space to be revived.

4.3 The EESC would point out that the European aerospace industry provides jobs for millions of Europeans and requires highly skilled staff able to master the most advanced current technologies. It is therefore clear that if the aim of making Europe 'the most competitive and dynamic knowledge-based economy in the world' is not to remain only an empty and hollow formula, it is up to the Member States to take appropriate action by defining genuine and ambitious European policies as regards armament and space activities, coordinated and synthesised at EU level so that our continent can regain its rightful position in the new world order.

Brussels, 31 March 2004.

*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 relating to the use of frontal protection systems on motor vehicles and amending Council Directive 70/156/EEC'**

(COM(2003) 586 final – 2003/0226 (COD))

(2004/C 112/05)

On 22 October 2003, 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, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2004. The rapporteur was Mr Ranocchiari.

At its 407<sup>th</sup> plenary session (meeting of 31 March), the European Economic and Social Committee adopted the following opinion.

## 1. Introduction

collisions at this speed, i.e. in heavy urban traffic, where almost half of accidents occur.

1.1 In order to achieve the objective of enhanced road safety, which is a priority for the Community institutions and national authorities alike, measures will have to be introduced progressively in all areas of car manufacturing that can reduce the number of accidents and their effects.

1.2 The proposal rightly focuses on protecting the weakest and most vulnerable road users in the case of a collision with a motor vehicle. As stated in the European Road Safety Action Programme, presented recently by the Commission, 'safer car fronts for pedestrians and cyclists are a priority for EU action.'

1.3 Road accident statistics indicate that a significant proportion of casualties involve pedestrians and cyclists who are injured as a result of contact with a moving vehicle, notably with the frontal structures of passenger cars. The most recent data from CARE <sup>(1)</sup> provide the following figures for deaths relating to the most vulnerable categories: pedestrians 4,571; cyclists 1,444. Unfortunately, no details of the circumstances of the collision are provided.

1.3.1 It should be remembered that there are two types of injury in this type of collision: those from the 'primary' impact of the pedestrian or cyclist with the front of the vehicle, and those from the 'secondary' impact with the road surface onto which the pedestrian is often hurled. In any case, it should be noted that there is no hope of protecting pedestrians if the primary impact occurs at a speed of over 40 km/h. It is, however, possible to reduce levels of injury in primary

1.3.2 The proposal to amend Directive 70/156/EEC <sup>(2)</sup>, which provides the basis for type-approval of vehicles and their trailers in so far as it regulates and harmonises procedures, springs from the commitment made in 2001 by the European, Japanese and Korean car manufacturing associations (the ACEA, JAMA and KAMA respectively) not to install rigid (usually steel) bull bars as original equipment on new vehicles or to sell them as an after market item through their commercial networks. It should be remembered, however, that they were originally designed to improve vehicle safety for professional users (farmers, forestry workers, etc.) in 'hostile' areas and/or where animals are present.

1.4 The proposal has also become necessary for three reasons:

- to harmonise construction provisions, and consequently type-approval provisions, both for finished vehicles with a frontal protection system (or rigid bull bars), and for the system itself as a 'separate technical unit';
- to act on the call made by the Council on 26 November 2001 for a ban on the use of rigid bull bars on all new M1 and N1 type vehicles;
- to respond to the European Parliament request of 13 June 2002 for the Commission to propose legislation to ban the marketing of rigid bull bars, including as after market items.

<sup>(1)</sup> Community database on road accidents: collates and processes Member State data on road accidents.

<sup>(2)</sup> OJ L 42 of 23.2.1970

1.5 The proposal aims to establish the technical and construction provisions for frontal protection systems (bull bars) on M1 and N1 type vehicles, i.e. passenger cars and light vans not exceeding a total permissible mass of 3.5 tonnes, and as such is one of the special directives provided for under the type-approval procedure established by Directive 70/156/EEC.

1.6 The proposal also ties in with Directive 2003/102/EC of 17 November 2003 <sup>(1)</sup> relating to the protection of pedestrians and other vulnerable road users in the event of a collision with a motor vehicle. The proposal has become particularly necessary since the latter directive does not contain any specific provisions on frontal protection systems (bull bars).

1.7 The Committee has already commented on the above directive in its opinion of 16 July 2003 <sup>(2)</sup>, where it endorsed and supported the Commission's work in the area of pedestrian protection, but pointed out that this should be part of the bigger Community drive to promote road safety, with the accent on the need for a comprehensive prevention policy.

1.8 Moreover, the Committee has recently commented on other legislative proposals on road safety (e.g. on restraint systems and safety belts, and on extending the requirement to fit speed limitation devices to almost all vehicles) <sup>(3)</sup>, and on the European Road Safety Action Programme. It reiterated the importance of developing in parallel the three crucial elements for safety: vehicles, infrastructure and user-behaviour.

## 2. General comments

2.1 The Committee welcomes this new initiative from the Commission, which will help to round off the regulatory framework designed to improve road safety, thereby filling a gap in the legislation.

2.2 Whilst the Committee accepts that the initiative is necessary, it feels obliged to express some considerable reservation with regard to the approach adopted by the Commission in drawing up the proposed directive.

2.2.1 Given the accepted dangers posed by rigid frontal protection systems, and the subsequent agreement by car manufacturers not to produce or market them, the Commission has opted for a technical, type-approval solution, insofar as it does not define rigid and non-rigid, but lays down technical/

type-approval specifications, compliance with which defines – in practice – safe frontal protection system, i.e. non-rigid.

2.2.2 On the other hand, the current wording of the proposal creates unexpected and probably unsolvable complications for manufacturers, by requiring bull bars to pass different tests from those required for the basic vehicle in the initial implementation phase of Directive 2003/102/EC.

2.3 One should not forget all the work carried out thus far in the field of pedestrian safety. This work, starting with the agreement with car-maker associations and followed by the above Directive 2003/102/EC, has made it possible to identify some of the mainstays of state-of-the-art technology in this area and, logically, the proposal should build on these.

2.3.1 Directive 2003/102/EC (Annex I, p1) establishes the 'frontal surface' (including frontal protection systems) crash tests for vehicle type-approval. However, under the present proposal the Commission anticipates the adoption of certain technical provisions (Art. 4) specific to bull bar crash tests. These do not correspond to the provisions for the initial phase of the above directive, which was adopted only recently. The Committee fails to see the need for this review:

- in terms of pedestrian safety, bull bars should be considered on a par with other frontal devices (bumpers, bonnet, lights, etc.);

- tests must be carried out with bull bars fitted to the vehicle or model thereof in order to ensure that each bull bar has in fact been fitted to the vehicle for which it is being tested (either as an integral part or fitted later, following the fitting instructions). This is because the safety of a frontal protection system depends on the way it is fitted to the vehicle and on the space between the system and the body-work;

- hence the need to use the crash tests currently in force, which apply to the whole frontal area of the vehicle. Otherwise one would have to conclude that the Commission is not following up on a recently approved directive.

2.4 The Committee therefore believes that the provisions of the proposal must be aligned with those of Directive 2003/102/EC, as detailed below.

<sup>(1)</sup> OJ L 321 of 6.12.2003

<sup>(2)</sup> Rapporteur: Mr Levaux, OJ C 234 of 30.9.2003

<sup>(3)</sup> OJ C 80 of 30.3.2004

2.5 Failing this, it would appear reasonable to surmise that bull bar manufacturers will be forced out of business, as they are unable to set up immediately the technical units needed to pass the stringent tests required under the present proposal.

### 3. Specific comments

In the light of the above comments, the Committee calls on the Commission:

3.1 to monitor the Member States so that checks are always carried out to ensure that the frontal protection system is mounted on the vehicle for which it was granted type-approval, in order to avoid any possible sources of danger.

3.2 to reconsider Article 3 of the proposal – The Committee calls for the date (1 July 2005) to be changed to 1 October 2005. As pointed out above, the proposal should be closely aligned with Directive 2003/102/EC.

3.3 to reconsider Article 4(1) and Annex I, part 3 of the proposal (test provisions) – the Committee would point out that it is neither necessary nor appropriate to establish detailed technical provisions or timescales that differ from those provided for in the initial implementation phase of Directive 2003/102/EC. Since it is not the frontal protection system itself that must be tested, but the front of the vehicle (incorporating such a system or some other device), it would be inappropriate to have different test arrangements. For example, under the proposal an ‘upper legform’ test is mandatory for vehicle type-approval, whereas under the provisions of Directive 2003/102/EC, this type of test is only carried out for monitoring and data collection purposes.

### 4. Conclusions

4.1 The Committee hopes that the proposed directive, amended as suggested by the Committee above, will be

adopted as soon as possible. The suggestions are intended to refocus the directive on making possible improvements to vehicle frontal protection systems, something which has already been provided for and approved with the recent Directive on the protection of pedestrians.

4.2 The Committee is concerned that – failing the adoption of the suggested changes – the result could be a ‘prohibitory’ type of legislation, with bull bars no longer being produced and perhaps the emergence of a market that is difficult to control.

4.3 More generally, the Committee hopes that the Commission will adopt a strategy that clearly defines regulatory priorities and avoids any inconsistency in the declared objectives. In this context, the Committee would point out that the various options should always be selected on the basis of a full-scale impact assessment of the new regulations, in order to take proper account, alongside other factors, of the cost to manufacturers, and consequently of the international competitiveness of European industry.

4.4 The Committee would also highlight the need to overhaul the complex legal framework relating to motor vehicles. For passenger car type-approval alone, there are currently 170 directives taking up some 3,500 pages of the Official Journal.

4.5 The Committee would also stress the need for the technical aspects of all safety solutions to be assessed thoroughly, by means of broad consultation involving the industry and all stakeholders, in order to identify the most advanced, reliable, effective and cost-efficient solutions.

4.6 Finally, the Committee, in accordance with the comments made in point 1.8 above and with a view to improving road safety, calls for ever greater focus to be placed on education and awareness campaigns for pedestrians and cyclists.

Brussels, 31 March 2004.

*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 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure'**

(COM(2003) 659 final – 2003/0263 (COD))

(2004/C 112/06)

On 18 November 2003, 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, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2004. The rapporteur was Mrs Fusco.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the present opinion by 95 votes with two abstentions.

## 1. Gist of the Commission proposal

## 1.2 Essential elements

### 1.1 Context and objectives

1.1.1 In 1999, the Commission adopted an Action Plan for Financial Services <sup>(1)</sup> that identified a series of actions required to construct a single European financial market. At its meeting in Lisbon in March 2000, the European Council called for the implementation of this Action Plan by 2005.

1.1.2 On 17 July 2000, the Council set up a Committee of Wise Men on the Regulation of European Securities Markets. The Committee's final report published in February 2001 recommended regulating these markets on four levels in order to make Community legislation more flexible, effective and transparent.

1.1.3 In the light of these developments, the Commission adopted Decisions 2001/527/EC <sup>(2)</sup> and 2001/528/EC <sup>(3)</sup> setting up, respectively, the Committee of European Securities Regulators (CESR) and the European Securities Committee (ESC).

1.1.4 On 3 December 2002, the Council called on the Commission to implement arrangements for the remaining financial services sectors based upon the Final Report of the Committee of Wise Men.

1.1.5 The proposal therefore extends the 'comitology' approach of the aforementioned decisions to the banking, insurance and occupational pensions, and investment fund sectors.

1.2.1 The proposal establishes a new 'comitology' system by both setting up new committees and abolishing existing ones, thereby shaping a new regulatory framework for financial services in the European Union.

1.2.2 As regards credit institutions, the European Banking Committee – established under the Commission Decision of 5 November 2003 <sup>(4)</sup> – will therefore take over most of the functions of the Banking Advisory Committee, which will cease to exist <sup>(5)</sup>. That is to say, essentially it will play an advisory role at the request of the Commission concerning legislative acts adopted in co-decision by the Council and the Parliament, and a regulatory 'comitology' role.

1.2.3 Meanwhile, the Committee of European Banking Supervisors (CEBS), established under the Commission Decision of 5 November 2003 <sup>(6)</sup>, will enhance supervisory cooperation and contribute to the convergence of Member States' supervisory practices and the consistent application of Community legislation. It will also advise the Commission, at the latter's request, on issues relating to banking legislation.

<sup>(4)</sup> OJ L 3, 7.1.2004. Regarding its composition, the Committee will be chaired by the Commission with each Member State sending a high-level representative. The Chairperson of the Committee of European Banking Supervisors and a European Central Bank representative will participate as observers.

<sup>(5)</sup> Articles 57-59 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, OJ L 126, 26.5.2000.

<sup>(6)</sup> OJ L 3, 7.1.2004. The Committee will be composed of high-level representatives from the national public authorities competent for the supervision of credit institutions, national central banks, the European Central Bank and the Commission. The Committee will elect a chairperson from among the representatives of the competent supervisory authorities.

<sup>(1)</sup> COM(1999) 232 final.

<sup>(2)</sup> OJ L 191, 13.7.2001.

<sup>(3)</sup> OJ L 19, 13.7.2001.

1.2.4 As regards insurance and occupational pensions, the Insurance Committee established under Council Directive 91/675/EEC of 19 December 1991 <sup>(1)</sup> will become the European Insurance and Occupational Pensions Committee <sup>(2)</sup>, essentially playing an advisory role at the request of the Commission and a regulatory 'comitology' role.

1.2.5 The establishment of the Committee of European Insurance and Occupational Pensions Supervisors <sup>(3)</sup>, meanwhile, will contribute to the convergence of the supervisory practices of the competent national authorities, improve the exchange of confidential information on specific supervised institutions, and facilitate the provision of technical advice to the Commission, in particular on draft implementing measures that the Commission may wish to propose.

1.2.6 Finally, as regards the securities market - and to ensure compliance with, among other relevant legislation, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 <sup>(4)</sup> - the functions of the Contact Committee on undertakings for collective investment in transferable securities (UCITS) <sup>(5)</sup> are transferred as follows: its 'comitology' role and role of advising the European Commission, at the latter's request, on legislation being drafted are transferred to the European Securities Committee <sup>(6)</sup>, while its role of advising the Commission on the preparation of draft implementing measures for relevant legislation in this area and promoting enhanced co-operation and networking among EU securities regulators are transferred to the Committee of European Securities Regulators <sup>(7)</sup>.

## 2. General comments

2.1 The urgent need to respond quickly and effectively to technological change and financial market developments in the global economy calls for the reform of the European Union's legislative and 'comitology' structure currently regulating this area.

<sup>(1)</sup> OJ L 374, 31.12.1991.

<sup>(2)</sup> Commission Decision of 5 November 2003. OJ L 3, 7.1.2004. The Committee will be composed of high-level representatives from the Member States and chaired by a Commission representative.

<sup>(3)</sup> Commission Decision of 5 November 2003. OJ L 3, 7.1.2004. The Committee will be composed of high-level representatives from the national public authorities competent in the field of supervision of insurance, reinsurance and occupational pensions. The Commission will have one high-level representative, but the Committee will be chaired by a representative from the Member States.

<sup>(4)</sup> OJ L 96, 12.4.2003.

<sup>(5)</sup> Established under Council Directive 85/611/EEC of 20 December 1985. OJ L 375, 31.12.1985. This Committee initially played an advisory role, assisting the Commission in the implementation of the Directive, facilitating consultation between the Member States and advising the Commission on amendments that should be made to the aforementioned Directive. In the event of technical amendments, the Committee acted as a 'comitology' committee. Directive 2001/108/EC (OJ L 41, 13.2.2002) strengthened this 'comitology' role with regard to the technical regulation of investments of UCITS.

<sup>(6)</sup> Established under Commission Decision 2001/528/EC (OJ L 191, 13.7.2001) amended by Commission Decision of 5 November 2003 (OJ L 3, 7.12.2004).

<sup>(7)</sup> Established under Commission Decision 2001/527/EC (OJ L 191, 13.7.2001) amended by Commission Decision of 5 November 2003 (OJ L 3, 7.1.2004).

2.2 The EESC therefore welcomes the proposed directive, which aims to harmonise the European financial regulatory framework by adapting the current regulatory approach in accordance with the principles of subsidiarity, proportionality and adequate resources.

## 3. Specific comments

3.1 The proposed directive extends the structure and role of advisory and regulatory committees, already applied in the securities sector, to the sectors of banking, insurance and occupational pensions and UCITS.

3.2 In accordance with the aforementioned objectives and content of the proposal, four main elements can be identified: (i) the establishment and composition of new committees; (ii) the different consultative role assigned to them; (iii) the regulatory or 'comitology' role given to each of the new committees; and (iv) the supervisory and follow-up role vis-à-vis implementation of relevant Community legislation in this area.

3.3 According to the Commission, the establishment of four new committees - i.e. the European Banking Committee, the Committee of European Banking Supervisors, the European Insurance and Occupational Pensions Committee and the Committee of European Insurance and Occupational Pensions Supervisors - to replace the three existing committees - i.e. the Banking Advisory Committee, the Insurance Committee and the UCITS Contact Committee - avoids the risk of complexity and duplication due to overlap between existing committees.

3.4 In quantitative terms alone, the number of new committees is nonetheless twice the number of existing committees, giving rise to a long list of committees which becomes even longer if we include the Financial Services Committee, established a few months before the committees listed above and the role of which would seem to overlap a priori with theirs <sup>(8)</sup>. Unless this situation is justified by the reasons of legislative techniques outlined above, it would in principle seem to run counter to the demands for transparency and simplification via a drastic reduction in the huge number of existing EU committees <sup>(9)</sup>.

<sup>(8)</sup> See point 2 of the Council Decision of 18 February 2003, OJ L 67, 12.3.2003.

<sup>(9)</sup> See the answer given by Commissioner Schreyer on behalf of the Commission to written question E-1070/01 by M. Ferber (OJ C 318 E, 13.11.2001) and the Poos report on reform of the Council (A5-0308/2001 final) adopted by European Parliament Resolution of 25.10.2001, in particular recital M and point 13 of the Resolution.

3.5 On the other hand, as regards the composition of the four new committees, the EESC welcomes the fact that the European Banking Committee will be composed of only one high-level representative per Member State – as opposed to the national delegations to the Banking Advisory Committee which are currently allowed up to three members – and that it will be chaired by the Commission – as opposed to the latter which is chaired by a representative from a Member State. Though the proposed Directive does not explicitly refer to this, it can be deduced from the executive summary.

3.6 However, no provision is made for representatives from the securities markets to participate in the committees responsible for regulating them. Given that all European stock exchanges are private entities operating under the supervision of public regulators, at least one national representative from the securities market should be allowed to participate as an observer.

3.7 As regards the advisory role of the new committees, the proposal suggests simultaneously reassigning and splitting the tasks currently carried out by the existing committees in the sectors of banking, insurance and collective investment in transferable securities.

3.8 According to point 1.2 above, the European Banking Committee, the European Insurance and Occupational Pensions Committee and the European Securities Committee will together play a key advisory role during the drafting and implementation of relevant legislation in this area.

3.9 In other words, they will play an advisory role at Level 1 of the EU's current four-level regulatory approach to securities legislation.

3.10 The Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators, meanwhile, will play an advisory role with regard to the consistent and timely implementation of relevant legislation in this area – including implementing technical measures – and enhanced cooperation among regulators in the Member States. In other words, they will play an advisory role at Level 3 of the aforementioned regulatory approach.

3.11 No new advisory roles are therefore created in addition to those that already exist. Whatever the likely impact of the entry into force of the new advisory system, the initial assessment is positive, providing that it improves the technical quality of the legislation in question and that doubling the number of committees does not adversely affect the flexibility and transparency of any advisory procedures initiated by the Commission.

3.12 Thirdly, the European Banking Committee, the European Insurance and Occupational Pensions Committee and the European Securities Committee will each play an exclusive regulatory or 'comitology' role in their respective areas of competence. No new committee procedures are created here, nor are the committees assigned any new roles in addition to those already played by the existing committees.

3.13 However, we wish to make a number of comments on this subject given that a 'comitology' system has until now been almost non-existent in the finance sector<sup>(1)</sup>. On the one hand, with regard to the decision-making procedure, financial 'comitology' is governed by the provisions of Article 5 of Council Decision 1999/468/EC of 28 June 1999<sup>(2)</sup>, i.e. in accordance with the regulatory procedure. This procedure establishes a right of revision which can be exercised only by the Council<sup>(3)</sup> and a right of examination which can be exercised by the European Parliament<sup>(4)</sup>, which gives the two institutions similar but not equal weight in cases where they consider that their prerogatives have been infringed through a regulatory procedure based on a Community legal act adopted under the co-decision procedure<sup>(5)</sup>.

3.14 This situation needs to be treated with a degree of caution with regard to the proposal which concerns us here, as in effect the European Parliament, in its Resolution of 5 February 2002 on the implementation of financial services legislation<sup>(6)</sup>, accepted the four-level regulation recommended in the report of the Committee of Wise Men, referred to above, provided that the Parliament received equal treatment in Level 2 ('comitology' procedures), as guaranteed to the Council in accordance with the Resolution of the Stockholm European Council<sup>(7)</sup>. The European Economic and Social Committee urges the competent institutions to resolve the conflict over supervision of implementing powers as a matter of urgency.

<sup>(1)</sup> Thus, since 'comitology' functions were assigned to them in 1989 (Article 9 of Council Directive 89/647/EEC on the solvency ratio), the Banking Advisory Committee has acted in this capacity on only four occasions, and the Insurance Committee and the UCITS Contact Committee have never done so.

<sup>(2)</sup> OJ L 184, 17.7.1999.

<sup>(3)</sup> To date less than 0.25 % of legal acts following this procedure have been referred by the Commission to the Council. See point 1.4 of Report COM(2003) 530 final, OJ C 223 E, 19.9.2003.

<sup>(4)</sup> To date the European Parliament has never exercised this prerogative. See Report COM(2003) 530 final, *ibid*.

<sup>(5)</sup> A discrepancy to be corrected by a joint Parliament-Council scrutiny procedure, as provided for in proposal COM(2002) 719 final of 11.12.2002. For the scope of this proposal see C.J. Moreira González, *Änderungen des normativen Rahmens der Komitologie*, *Zeitschrift für Europarechtliche Studien* 4, 2003, pp. 561-588, and 584 et seq.

<sup>(6)</sup> Resolution A5-0011/2002.

<sup>(7)</sup> Equally, in its Resolution B5-0578/2002, the European Parliament questioned the urgency of restructuring the architecture of the committees in the financial area, making its approval of the proposal conditional on an unequivocal commitment by the Council to correct the legislative discrepancy with regard to the supervision of the exercise by the Commission of its implementing powers.

3.15 On the other hand, echoing the previous comment, there is a worrying inconsistency in the proposal, in that the proposal is difficult to reconcile with some of the provisions of the proposed amendment to the Treaties establishing the European Community currently under negotiation. Thus, Article I-35 of the draft Treaty establishing a Constitution for Europe <sup>(1)</sup> would require revision of the regulatory procedure, assigning to the European Parliament and the Council of Ministers equally the power to reject the power delegated to the Commission.

3.16 In its turn, Annex 8 to the document of the Naples ministerial conclave on the 2003 IGC <sup>(2)</sup>, amends point 6 of Article III-77 of the draft Treaty, creating a twofold conflict with the proposal under consideration. First because, by providing that a European law could grant the European Central Bank the power of prudential supervision of credit institutions and other financial institutions, with the exception of insurance undertakings, it would undermine the consultative and 'comitology' functions of the European Banking

Committee, as well as the consultative functions of the Committee of European Banking Supervisors <sup>(3)</sup>.

3.17 Secondly because it would spark off a new conflict with the European Parliament, by providing that the Council would effect such a transfer of powers by unanimity, after consulting the Parliament, whereas Article 105(6) of the EC Treaty, as currently in force, allows the Council to do this only after receiving the assent of the Parliament. Although Commission proposals do not have to take account of draft legislation which has not entered into force, the above comments stem from the fact that the Committee is bound to look ahead when exercising its consultative functions.

3.18 Finally, the power to supervise and monitor the application of Community law in this area would enable the committees to reinforce the current mechanism under which the Commission detects obstacles and deploys the appropriate means for eliminating them in the legal systems of the Member States <sup>(4)</sup>.

Brussels, 31 March 2004.

*The President  
of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> Brussels, 18 July 2003, CONV 850/03.

<sup>(2)</sup> Brussels, 25 November 2003, CIG 52/03 ADD1, p. 12.

<sup>(3)</sup> Although majority opinion in the Member States is in favour (see M. G. Dassel, D. Isaac: 'Financial services in the Era of the Euro and E-Commerce: Does home country control work?'- General Report, in F.I.D.E., XX Congress, BICL, London, 2003, pp 433-446, esp. points 38-56. ECOFIN, meeting in Oviedo on 12-13.4.2002, expressed reservations with regard to this possibility, particularly in the light of the manifest opposition of the German and British delegations.

<sup>(4)</sup> See, respectively, the 18th Report on monitoring the application of Community law, COM(2003) 309 final, and the 19th Report, COM(2002) 324 final.



**Opinion of the European Economic and Social Committee on the 'proposal for a Directive of the European Parliament and of the Council on establishing a framework for the setting of Eco-design requirements for Energy-Using Products and amending Council Directive 92/42/EEC'**

(COM(2003) 453 final -2003/0172 (COD))

(2004/C 112/07)

On 5 September 2003, 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 March 2004. The rapporteur was Mr Pezzini.

At its 407th plenary session (meeting of 31 March, 2004) the European Economic and Social Committee adopted the following opinion unanimously.

## 1. Introduction

1.1 'Eco-design' means the systematic incorporation of environmental considerations into the design of products with the aim of reducing their negative environmental impact throughout the whole of their life cycle. The aim is to develop a coherent framework for eco-design, while maintaining competitive standards of pricing, performance and quality, in order to improve sustainability and competitiveness within the European single market and worldwide.

1.2 Integration of environmental aspects into product characteristics from the design stage is linked to the development of the Community's Integrated Product Policy (IPP) – particularly for the integration of the concept of 'life cycle' – on which the Committee has already commented<sup>(1)</sup> in connection with the Sixth Environment Action Programme<sup>(2)</sup>. It also ties in with the three dimensions (economic, social and environmental) of sustainability of energy-using products emphasised at the Cardiff and Helsinki European Councils.

1.3 Within the context of harmonisation of technical standards<sup>(3)</sup>, of a new approach and of preventive information<sup>(4)</sup>, the new framework should take into consideration the directives already in existence regarding energy efficiency requirements for various types of product.

1.4 These directives, whose existence is highlighted by the Commission, concern Community standards on oil and gas fired hot water boilers<sup>(5)</sup>; domestic fridges and freezers<sup>(6)</sup>; noise emissions and labelling regarding the energy consumption of domestic appliances<sup>(7)</sup>; office equipment<sup>(8)</sup>;

ballasts for fluorescent lighting<sup>(9)</sup>; and gas appliances<sup>(10)</sup>. The directive on the energy efficiency of buildings should not be forgotten.<sup>(11)</sup>

1.4.1 The Commission states that those directives are 'considered as implementing measures of the [proposed new] framework Directive regarding energy consumption during use', noting that 'a consolidation and simplification of Community legislation is thereby achieved.'

1.5 In considering the entire life cycle of energy-using products, the Commission proposal will ensure that these products – as well as being subject to waste management regulations (WEEE)<sup>(12)</sup> and to standards on the use of hazardous substances<sup>(13)</sup> – will also be subject to further requirements and checks. The proposal aims to 'further promote the design of products to facilitate reuse and recycling by allowing for the systematic introduction of those aspects in the early stages of the design process ...'. Furthermore, as the environmental performance of all or part of the design of a product will be subject to compulsory minimum standards, 'it will be possible to address energy consumption throughout the life cycle of the product and not only during its use phase, as is currently the case'.

1.6 Complementary measures such as the voluntary labelling provided for by the Ecolabel scheme<sup>(14)</sup>, the provisions on integrated pollution prevention and control (IPPC)<sup>(15)</sup> and those on voluntary participation in the Community eco-management and audit scheme (EMAS)<sup>(16)</sup> will also be able to interact with the regulations on energy-using products, as will those on energy labelling of electrical appliances, which draw consumers' attention to the benefits of more sustainable consumption.

<sup>(1)</sup> Opinion OJ C 260 of 17.9.2001

<sup>(2)</sup> Decision 1600/2002/EC – OJ C 242 of 10.9.2002

<sup>(3)</sup> Decision 93/465/EEC in OJ L 220 of 30. 8.1993

<sup>(4)</sup> Directives 98/34/98 EC and 98/48/EC in OJ L 217 of 5.8.1998

<sup>(5)</sup> Directive 92/42 EEC in OJ L 167 of 22.6.1992

<sup>(6)</sup> Directive 96/57/EC in OJ L 236 of 18.9.1996

<sup>(7)</sup> Directive 92/75

<sup>(8)</sup> Regulation (EC) 2422/2001 in OJ L 332 of 12.12.2001

<sup>(9)</sup> Directive 2000/55/EC in OJ L 279 of 1.11.2000

<sup>(10)</sup> Directive 90/396/EEC in OJ L 196 of 26/7/1990 (amended by Directive 93/68/EEC)

<sup>(11)</sup> Directive 2002/91/EC in OJ L 1 of 4.1.2003

<sup>(12)</sup> Directive 2002/96/EC in OJ L 37 of 13.02.03

<sup>(13)</sup> Directive 2002/95/EC in OJ L 37 of 13.02.03

<sup>(14)</sup> Regulation (EC) 1980/2000 in OJ L 237 of 21.09.00

<sup>(15)</sup> Directive 96/61/EC in OJ L 257 of 10.10.1996

<sup>(16)</sup> Regulation (EC) 761/2001 in OJ L of 19.3.2001



1.7 In the Committee's view, the proposal for a 'framework' simplifying and consolidating Community legislation should allow the Union to pursue a sustainable and globally competitive development path while also upholding the principles of corporate social responsibility and of freedom of informed choice for the citizen/consumer.

## 2. The Commission proposal

2.1 The purpose of the Commission proposal is to establish a coherent framework for integrating environmental characteristics into the design and development of energy-using products (EuPs) within the European single market <sup>(1)</sup>. The aim of the proposal is to be a framework directive that – by providing 'the right framework for addressing emerging environmental issues swiftly' – will allow eco-design requirements to be taken into consideration in a coherent and comprehensive fashion in order to:

- ensure the free movement of energy-using products within the EU;
- improve the overall environmental performance of such products;
- contribute to the security of energy supply;
- strengthen the competitiveness of the European economy;
- preserve the interests of industry and consumers.

2.2 This new framework, according to the Commission, should not be limited to aspects of energy efficiency, but should extend to all aspects of environmental impact, especially as regards emissions (solid, gas, sound, electromagnetic, etc.) and be based on Article 95 of the EC Treaty, this being the best article for elimination of barriers to trade and distortions of competition within the internal market.

2.3 The scope of the proposed framework directive would, however, be very large as it would, in principle, apply to all products that use energy in order to fulfil the purpose for which they were designed. Motor vehicles are explicitly excluded, given that these are already subject to a large number of both regulatory measures (on design) and voluntary ones (voluntary agreements on emissions). In its proposal, the Commission also lists criteria for selecting products that could be subject to future implementing measures.

2.4 The directive will also apply to components and sub-assemblies of EuPs which are marketed as spare parts destined for end users, and whose environmental performance can be assessed independently.

<sup>(1)</sup> The Committee welcomes the legal reference to Article 95, free movement of goods.

2.5 The proposal includes provisions on declarations of conformity, CE marking, assessment and presumption of conformity of products, the procedures for adopting and publishing harmonised technical standards, restrictions of placing on the market, the exchange of information and cooperation between Member States, and rules on penalties applied by them.

2.6 The Commission considers that although – in the absence of implementing measures – the proposed framework directive will not directly create legal obligations for manufacturers, importers or distributors, it should nevertheless help to integrate the concept of 'life cycle' into product design, thereby applying one of the guiding principles of the Union's Integrated Product Policy (IPP).

2.7 Finally, the proposal encourages initiatives or voluntary agreements that have achieved wide-ranging and well-deserved success in a number of sectors likely to be affected by the implementation of the directive. Accordingly, in cases where market mechanisms or existing legislation are already having a positive effect, no further implementing measures should be required.

## 3. The situation at European and international level

3.1 There are a number of obstacles to the implementation of eco-design, which have been noted at international level thanks to the survey carried out among the Fortune 500 list of the world's largest companies <sup>(2)</sup>. This revealed that cost was classified at a considerably higher level than other factors, which leads one to think that increasing the amount of information on the environment and its protection is critically important.

3.2 Moreover, the existence (or absence) of information sources was felt – not least by the largest American, Japanese and European businesses – to be a highly relevant factor. Similarly, the vast majority of respondents (79 %) considered that education and training on eco-design, both inside and outside the company, were important for promoting a real culture in this area.

3.3 However, there did not seem to be a clear perception of the models of eco-design. The few who did know about it linked it to the Environmental Management System. On the one hand, respondents cited a lack of expert personnel ('environmentally literate product designers') and of suitable qualifications; on the other, there did not appear to be any great differences between the analyses of the preceding five years, nor any significant changes in eco-design activities.

<sup>(2)</sup> ESTO Report 2000 – Joint Research Centre of the European Commission

3.4 As regards international standards, the ISO 14000 family was mentioned as the first result from the Uruguay Round and the 1992 Rio Earth Summit. On the subject of the ISO, the United States seems to favour the adoption of guidelines for eco-design rather than binding standards, to which they have recently reiterated their opposition.

3.5 As far as Europe is concerned, the studies carried out by the Community <sup>(1)</sup> seem to show a highly diverse situation:

- on the one hand, we have a group of Nordic countries that already have significant, well-developed experience over a wide range of relevant sectors;
- on the other we have another group, mostly of Mediterranean countries, which until recently seem only to have developed limited support structures for eco-design;
- then there is a third group of countries, which have developed financial and information support structures for industry in general, with the support of sectoral organisations and regional development agencies;
- finally, there are the accession countries, which already need help in overcoming the difficulties inherent in fully complying with the standards set out in the environment chapter of the *acquis communautaire* in its present form.

3.6 With regard to European SMEs <sup>(2)</sup>, the following points emerge:

- even in those countries that have the most experience and have developed the best practices, the proportion of SMEs designing eco-friendly products is very limited;
- SMEs tend to stop their eco-design activities once external support has ceased;
- SMEs are faced with a very high number of individual initiatives aimed at integrated environmental protection. These commitments, which take up a lot of time for small businesspeople, impede the much-needed concentration of efforts. The most effective way of further improving best practice in supporting eco-design is to develop sector-specific methods and approaches.

#### 4. Comments

4.1 The Committee has always welcomed the European Union's commitment to including an environmental dimension of energy efficiency in policies for businesses and their production processes, as an integral part of the competitiveness strategy which, among other things, is central to the decisions taken in Lisbon in 2000. Promoting a more intelligent use of energy by addressing this aspect from the product

design stage is an objective that the Committee can fully support.

4.2 Furthermore, in an opinion adopted by a large majority <sup>(3)</sup>, the Committee reiterated its previously expressed <sup>(4)</sup> concern regarding '...[the] underplaying [of] the fact that the adoption of such vitally important measures as Life-Cycle Analysis (LCAs) and eco-design necessitates major financial, managerial and legislative efforts'. This opinion also highlighted 'the need for stronger action in promoting policies to support research and innovation tailored to SMEs, particularly focusing on disseminating information and on framing innovative processes to develop greener products.'

4.3 The Committee therefore welcomes the Commission's general aims of ensuring coherence and transparency in Community legislation on the subject and avoiding fragmentation of the internal market as established by Article 95 of the EC Treaty. However, the Committee has a number of reservations about the current proposal, in terms of the context in which it would have to operate, in terms of the choice of legal instrument (enabling act), and finally, in terms of the articulation of the proposal itself.

4.4 A wide range of Community directives (vertical or otherwise) will be affected by the proposal, which has the ambitious aim of establishing a consistent framework for them. In the Committee's view, it might be helpful to consolidate these as a first step. Directives on minimum efficiency requirements already exist. A more integrated environmental assessment could provide better guidance to businesses and avoid subjecting them to a system of requirements and guidelines that could lead to over-regulation.

4.5 The Committee therefore considers it appropriate to bring in a consolidated and simplified version of the Community regulations that already apply to product manufacturers. This should also include systems for supporting the development of an eco-design culture, both on the demand side and on the supply and design side, with measures supporting databases of good practices, dissemination of information, and training measures tailored to the various audiences and the various technical levels involved.

4.6 In the Committee's opinion, it would be appropriate to promote both guidelines on eco-design and the creation of permanent platforms for dialogue and mandatory consultation between the Commission, businesses, consumers, manufacturers and civil society. To this end, suitable promotional instruments could be added into the Community's current multi-annual 'Intelligent Energy' programme, into the mid-term review of the Union's Sixth RTD Framework Programme, and into the review of measures planned under the structural and cohesion policies.

<sup>(1)</sup> IPTS Report 2000 'Eco-design: Strategies for dissemination to SMEs/15 countries studies' (Part 2).

<sup>(2)</sup> See IPTS Report 2000 – Part 1.

<sup>(3)</sup> EESC opinion OJ C 80 of 30.3.2004 on Integrated Product Policy - COM (2003) 302

<sup>(4)</sup> EESC Opinion in OJ C 260 of 17.9.2001 and EESC Opinion in OJ C 296 of 29.9.1997

4.7 Given the current state of the art, the Committee thinks that it would be useful to promote voluntary sectoral agreements and other instruments that involve economic and social operators, in order to promote a culture of change. It is important, in the Committee's opinion, to promote corporate social responsibility and informed consumer choice.

4.8 It would also be useful to carry out an in-depth evaluation of the extent to which the Commission's proposals comply with the requirements of proportionality, subsidiarity and cutting red tape, and of the consequences that these could have in terms of reducing or increasing costs and improving or worsening the technical and economic performance of products, with a view to developing appropriate and coherent policies and fiscal and financial support measures.

4.9 The Committee has concerns regarding the content of the proposal in that, as stated by the Commission itself, it 'has a wider scope than any related existing Community legislation ... in terms of products to be covered'. Putting the proposed framework into practice would require implementing measures based on set environmental impact criteria, not to mention a defined series of environmental performance indicators, in order to create ecological profiles for a very large number of products. Furthermore, responsibility for this would be conferred on the Commission itself, with input solely from the comitology procedures.

4.10 The Committee also feels that the use of fictitious reference models for sectors of products could be a cause for concern. To this end, the concept of the 'state of the art' would be used – not to refer to the latest scientific achievements, but rather to 'a good average level of technical performance', reflecting a 'reasonable balance' between industrial feasibility and current standards and practices. The Committee believes that it would be appropriate to maintain a similar balance with regard to costs and benefits in order to ensure value for money for all types of consumer, commensurate with their own choices and possibilities.

4.11 When setting the specific requirements for eco-design, the proposal suggests that precise measurement methods would be established, based on the standardised use of the product, its performance and features that provide extra utility or comfort for the user. The Committee believes that a further criterion should be added: technical and economic analysis of the feasibility of the design solutions. Given that the necessary indicators would need to be fixed and pre-determined, there is a risk of fossilising progress and technical and marketing innovations, and of hamstringing competition in the technological performance of new products.

4.12 As well as the effects of the above-mentioned measures on businesses that produce the relevant products, it would also

be useful to consider making them fully applicable to all products, whether they are made in the EU or in third countries, and to extend this to components of the product. In the Committee's view, checks on external trade made by the Union's customs services, and those within the internal market, could prove costly, slow and ineffective when faced with accelerating global trends.

4.13 The Committee considers it essential to ensure equal treatment between products manufactured in the EU and imported ones, and to put in place suitable control mechanisms in order to prevent the regulations from impacting differently on different manufacturers.

4.14 The Committee also believes that due consideration must be given to the progress made internationally by the ISO standards and guidelines on the integration of environmental considerations into the design of energy-consuming products.

4.15 The Committee would like to heavily underscore the current situation faced by SMEs, which is made worse by the significant disparities between Member States and by the fact that sectors with high concentrations of SMEs tend to take longer to reach a consensus on the adoption of voluntary measures.

4.16 In the Committee's opinion, the guiding principles – both in general and for SMEs in particular – should be those of proportionality and of real relevance, as well as prior verification of the feasibility of the measures accompanied by sufficient financial support and/or tax incentives. This is essential in order to encourage and sustain the competitive implementation of eco-design information and fast, easy access to databases, training of technicians and businesses, dissemination of innovation and the technological marketing of innovative products.

4.17 Finally, the Committee underscores the absolute necessity of ensuring the right balance between minimum standards of environmental protection, safeguarding the development of businesses and jobs, and the freedom of consumers to make informed choices.

## 5. Conclusions

5.1 The Committee has always been in favour of putting an environmental dimension of energy efficiency into policies aimed at businesses and their products, and considers this to be an integral part of the European competitiveness strategy. The Committee stresses the need to develop a true eco-design culture that draws on the social and environmental responsibility of businesses and consumers and promotes active and responsible behaviour.

5.2 The Committee also favours the creation of a framework that is consistent with the legislation in this area, avoids market fragmentation and ensures transparency of treatment for all businesses and users.

5.3 The Committee therefore recommends that this consolidated framework should be provided as a matter of priority in order to give better guidance to businesses, especially SMEs.

5.4 Eco-design requirements for new products should be kept at reasonable and acceptable levels in order to ensure the development of new designs and the freedom of the consumer to choose between the different technical solutions on offer.

5.5 The Committee believes that as a very wide range of Community regulations will be affected by the new directive, the initiative needs to go hand in hand with the simplification of the legislation and with a strengthening of competitiveness of the single market in an enlarged Europe.

5.6 The Committee strongly recommends that the existing legislation on energy saving and efficiency and the different environmental impact aspects of products should be consolidated and simplified as a first step<sup>(1)</sup>. The main thing is to arrive at a simplified, user-friendly overview of the Community regulations that currently cover the design of energy-consuming products.

5.7 The Committee advocates the adoption, as soon as possible, of guidelines on eco-design and on the creation of permanent dialogue platforms for the different sectors and for sensitive products, bringing together the Commission, businesses, consumers, manufacturers, and civil society. The aim is to assess developments and promote initiatives that consistently and coherently support Community and national programmes and instruments with eco-friendly objectives, in order to improve awareness and develop a real eco-design culture on the part of both producers and consumers.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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<sup>(1)</sup> See COM(2003) 71, and SEC(2003) 165 of 11 February 2003

**Opinion of the European Economic and Social Committee on the 'communication from the Commission to the Council and the European Parliament on Information and Communications Technologies for safe and intelligent vehicles'**

(COM(2003) 542 *final*)

(2004/C 112/08)

On 14 October 2003 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 Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 March 2004. The rapporteur was Mr Ranocchiari.

At its 407<sup>th</sup> plenary session (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion unanimously.

## 1. Background

1.1 Demand for transport has been growing steadily in Europe for many years. The increase has been particularly great in the case of road transport, for both passengers and goods.

1.2 This increase is already resulting in traffic congestion, environmental damage and, above all, accidents that cause fatalities, injuries and material damage. These problems could worsen in the near future.

1.3 The motor industry is working constantly to improve the active and passive safety of its products. Vehicles are now four times safer than in 1970 and the number of deaths in the EU-15 has fallen by 50 % since then, while traffic volumes have tripled.

1.4 Despite this, the societal cost of road transport is still too high. The 1,300,000 accidents per year in Europe cause 40,000 fatalities and 1,700,000 injuries, at an estimated cost of EUR 160 billion, or 2 % of the Union's GDP. At a personal level, even one fatality is too high a price to pay.

1.5 Mindful of the seriousness of the problem, the Commission has launched a number of major road safety initiatives, including the adoption of the European road safety action programme.

1.6 Even before the programme was drawn up, information and communications technologies (ICT) – already widely used in vehicles – were identified as important instruments for improving road safety. With the development of more powerful

processors, communications technologies, sensors and actuators, increasingly sophisticated active safety systems can be devised. Although these cannot eliminate accidents completely, they can reduce their number and lessen their impact.

1.7 These considerations led the Commission to set up an eSafety working group in 2002, bringing together around forty experts from the motor vehicle sector and other interested parties. The group was mandated to propose a strategy for speeding up research, development, deployment and use of ICT-based intelligent safety systems for improving road safety.

1.8 In November 2002 the working group published its final report containing 28 recommendations addressed to the Commission, the Member States, road traffic and safety authorities, the motor industry, service providers, consumer associations, insurance companies and other stakeholders. The recommendations are designed to improve safety by means of integrated systems which use advanced ICT for providing new, intelligent solutions that address the involvement of and interaction between driver, vehicle and road environment.

1.9 The working group's report was subsequently discussed and endorsed at the second meeting of the high-level group on eSafety, which set up an eSafety Forum<sup>(1)</sup> and called on the Commission to put forward policy proposals.

1.10 The communication that has now been referred to the Committee forms the Commission's response to the wishes of the high-level groups on eSafety and road safety, which have also been echoed by the Member States.

<sup>(1)</sup> The Forum is chaired by the Commission's DG INFSO and brings together all stakeholders (around 150 members in all). It currently has seven working groups, headed by the motor industry.



## 2. Summary of the Commission's proposals

2.1 The communication refers to and endorses the final report of the eSafety working group and proposes eleven actions falling into three main categories:

2.1.1 development of intelligent vehicle safety systems

2.1.2 adaptation of regulatory and standardisation provisions

2.1.3 removing the societal and business obstacles.

### 2.2 Promoting intelligent vehicle safety systems

- The Commission will continue to chair and support the eSafety Forum, which provides a joint platform for all road safety stakeholders.
- The Commission will take steps to promote further research and technological development, not least by helping to finance some leading-edge projects.
- As regards interaction between driver and machine, the Commission will assess the effects of the introduction of nomadic devices<sup>(1)</sup> in vehicles and, at a later stage, the workload which the introduction of new vehicle control and information systems creates for the driver.
- The Commission will propose an integrated strategy for pan-European emergency services (e-Call), building on the provisions of the E-112 legislation<sup>(2)</sup>.
- The Commission will assess progress on the provision of real-time traffic and travel information (RTTI) in Europe.

### 2.3 Adaptation of regulatory and standardisation provisions

- The Commission will propose measures to authorise and regulate the use of the 24 GHz spectrum for ultra wide band (UWB) short-range radar (SRR).
- The Commission will review existing EC vehicle type-approval legislation and devise measures for facilitating and regulating the use of the new systems.
- The Commission will ask standardisation organisations (ISO, CEN and ETSI) to draw up a standardisation programme for the new systems, encompassing standard software and hardware architecture, communication protocols and driver-machine interfaces.

<sup>(1)</sup> Devices which drivers carry with them and can interact with the vehicle, such as mobile phones or PDAs (a type of electronic notepad), and which can be used as a remote control for some vehicle functions.

<sup>(2)</sup> Directive 2002/21/EC establishing a common regulatory framework for electronic communications networks and services (OJ L 108 of 24.4.2002).

### 2.4 Removing societal and business obstacles

- The Commission will assess the socio-economic benefits obtainable through the introduction of intelligent safety systems.
- The Commission will promote and fund a study to devise a methodology for risk/benefit assessment of the new systems.
- The Commission will promote the drafting of Industry and Public Sector Road Maps for the development and deployment of the new systems.

### 2.5 Other actions

- The Commission will promote and fund a study to devise a methodology for assessing the potential impact of the introduction of combined intelligent vehicle safety systems involving sensor fusion<sup>(3)</sup>.
- The Commission will promote and fund a study of assessment procedures for vehicles equipped with the new systems.
- The industry will define, produce, maintain and certify a European digital map database with road safety attributes.

## 3. General comments

3.1 The Commission's communication makes a clear and exemplary commitment to the development and adoption of intelligent road safety systems, at a time when traditional passive safety systems may have reached their limits.

3.2 The general guidelines are clearly set out in the communication. The priorities are less clear (with the exception of e-Call, which is rightly highlighted). Above all, no timeframe is given for the action plan; at present there is only a work schedule for 2004. The Committee hopes that the drafting of the roadmap – one of the anticipated results of the eSafety Forum – will prove crucial for establishing the plan's priorities and timeframe.

3.3 It is important that the motor industry, which has already been involved in the working group and the eSafety Forum, should continue to provide technical guidance for the development of these initiatives, in particular by contributing to the drafting of the roadmap.

<sup>(3)</sup> This is a technique for integrating data supplied by sensors that use several different technologies, so as to overcome the inherent limits of each one. For example, a dual technology (radar + infrared) anti-theft sensor is only activated when both components register an intrusion, thereby eliminating false alarms caused by the intrinsic limits of one of the two technologies.

3.4 The motor industry will undoubtedly need guidelines for the market introduction of intelligent safety systems. However, each company must have the possibility of offering their own distinctive innovative solutions, with appropriate timeframes, without overlooking the vital need for the new systems to be interoperable and reliable.

3.5 In order to ensure that the new intelligent safety systems are deployed to best effect, steps will have to be taken to 'educate' users. To this end, it would be helpful for representatives of driving schools to take part in the eSafety Forum. Special attention should be paid to professional carriers, who could 'pilot' the introduction of the new systems and who will in any case represent a large number of users.

3.6 From a purely technical viewpoint, some safety systems such as ESP (an electronic system to improve the vehicle's stability in critical situations) could already be adopted on a large scale fairly rapidly. Other systems which are inherently more complex and more complicated to use will require careful analysis with a view to optimising the driver's workload (i.e. providing the best possible compromise between fatigue and risk of distraction).

3.7 The communication deals sensibly with the question of the shared responsibility of the various parties (Commission, Member States, road and safety authorities, the motor industry, service and system suppliers). However, responsibilities need to be defined and regulated in detail to cater for the eventuality of safety devices failing to operate satisfactorily. As the systems and functions are completely new, there is much work to be done. Nonetheless, as regards the question of responsibilities, it must be acknowledged that the Commission has already funded three research projects: Response, Response 2 and Prevent.

3.8 The Committee also notes that the communication puts a strong emphasis on the need for safer vehicles. The need to improve road infrastructure (newer and safer roads; elimination of traffic congestion) must on no account be overlooked. Moreover, many of the new vehicle safety systems will require special 'intelligent' infrastructure (e.g. telecommunications networks able to receive, decode and handle automatic emergency calls). The Commission should focus attention on these aspects and their impact.

3.9 In the context of intelligent infrastructure, the Community's Galileo programme is undoubtedly crucial, providing as it will a series of navigation and positioning services that will facilitate the development of a wide range of innovative eSafety applications.

3.10 The adoption of intelligent safety systems is likely to significantly increase vehicle purchase and running costs. Additional safety systems are possible when the consumer is willing to pay for them. The consumer must be shown that the extra cost is offset by a reduction in the risk of accidents and in their consequences. For this reason too, the Commission's plan for the eSafety Forum to collate and analyse data on the causes of road accidents is vitally important. More particularly, the CARE system<sup>(1)</sup> will have to be reorganised in order to include accident causes and an analysis thereof, supplemented where possible by data from motor manufacturers.

3.11 A practical illustration of the problem of increased costs is already provided by the e-Call service. Many car firms have offered the e-Call system as an optional feature, but demand for it has been low because few drivers want to pay for a service that they hope they will never need to use. The e-Call system, selected by the Commission as one of its priority actions, could act as a litmus test for the whole programme. Widespread adoption of the system is vital in order to reduce its running costs and thus the prices paid by users, exploiting economies of scale and competition between the different suppliers and avoiding monopoly positions.

3.12 Costs could also be pushed up by the need for workshops to be equipped with special apparatus for diagnosis, repair and inspections. However, it should be noted that this could also have a positive impact, as it will extend the skills of motor mechanics and could create new job opportunities.

3.13 One means of alleviating the problem could be to offer incentives in the form of tax rebates and/or reductions in insurance premiums. At all events, a consultation process involving all the various parties will be essential.

3.14 However it is very difficult, if not illusory, to imagine that private interests or sense of responsibility (whether on the part of manufacturers or users) will suffice to secure the generalised adoption of intelligent safety systems. As an alternative or adjunct to voluntary adoption, the case should be considered for introducing a legal obligation in the form of binding rules. These would make the phasing-in of intelligent safety systems mandatory within a given timeframe.

<sup>(1)</sup> Community Road Accident Database: gathers and processes data on road accidents supplied by the Member States.

3.15 In any event, the costs of safety functions will impact on the client and the taxpayer. It is therefore particularly important that the costs/benefits calculations should be objective and reliable.

#### 4. Summary and conclusions

4.1 The communication is a policy document which does not yet contain specific or binding measures. The Commission may draw up and put forward such measures in due course, so the Committee feels it is worth highlighting some points which it thinks should be borne in mind during the further development of the programme.

4.2 The communication makes a clear and exemplary commitment to the development and adoption of intelligent road safety systems. Interested parties should therefore welcome it, not least because it also stresses that road safety is the shared responsibility of all the various stakeholders.

4.3 However, the intentions voiced in it should be implemented according to an action plan which should be defined forthwith. Greater emphasis must also be placed on the need to work on road infrastructure (newer and safer roads; elimination of traffic congestion) and new 'intelligent' infrastructure.

4.4 Responsibilities need to be defined and regulated precisely to cater for the eventuality of safety devices failing to operate satisfactorily.

4.5 Each company must have the possibility of offering their own distinctive innovative solutions, with appropriate time-frames.

4.6 The adoption of intelligent safety systems is likely to significantly increase vehicle purchasing and running costs. These increased costs could have a major impact on ranges at the lower end of the market, making it more difficult for the less well-off to afford them. The early adoption of awareness-raising measures and incentives will be crucial here. In the medium term and for certain safety systems, consideration could be given to the introduction of a legal obligation.

4.7 Lastly, the Member States will play a key role in the success of the programme. The dialogue which has already been launched with the Commission, the industry and other stakeholders must continue, with involvement of the individual states throughout the whole process from the outset, on the basis of clear policy guidelines. Without technical and economic input from the Member States, the programme would not be able to succeed.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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**Opinion of the European Economic and Social Committee on the 'proposal for a Directive of the European Parliament and of the Council on driving licences (Recasting)'**

(COM(2003) 621 *final* - 2003/0252 (COD))

(2004/C 112/09)

On 13 January 2004, the Council decided to consult the European Economic and Social Committee, under Article 71 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 2 March 2004. The rapporteur was Mr Simons.

At its 407<sup>th</sup> plenary session (meeting of 31 March 2004) the European Economic and Social Committee adopted the following opinion with 99 votes in favour and one abstention.

## 1. Introduction

1.1 Mobility is a key issue for very many Europeans of all ages. The vast majority of Europeans over the age of 18 hold a driving licence, giving them access to motorised mobility. In Europe in particular, with its increasingly ageing population, holding a driving licence is often vital for maintaining contact with the outside world, and even for meeting basic needs. Any proposal for a European directive on driving licences thus affects all Europeans. The importance of such a proposal cannot therefore be underestimated.

1.2 In submitting legislation on driving licences in the EEA, the European Commission is seeking to enhance the free movement of Community citizens, reduce the possibility of fraud and help improve road safety. The Commission had these objectives in mind in earlier driving licence legislation and they will continue to underpin future laws in this field.

1.3 Over the past few years, Community citizens have faced more rather than less legal uncertainty in spite of all the measures that have been taken over that period.<sup>(1)</sup> The European Commission considers it essential that the legal uncertainty for citizens, which hinders their free movement, be removed. This objective falls within the framework of the much wider objectives set by the European Council in the Lisbon agenda, namely achieving 100 % functioning of the internal market, including in the field of competition. The proposed directive seeks to remove the last obstacles relating to driving licences, and the Commission views this as the end of a process of gradual harmonisation.

1.4 In addition to moves by the Commission to secure the full mutual recognition of driving licences so as to foster the free movement of Community citizens, the directive also proposes a number of specific legal changes designed to promote road safety. These measures include the introduction of new vehicle categories for driving licences, the introduction of tiered access to these categories so that drivers first acquire experience with smaller vehicles, harmonisation of the periodicity of the checks on drivers' medical fitness, special consideration for disabled driver access to motorised transport, and minimum training requirements for examiners.

1.5 The third key point in the proposal relates to reducing the possibilities of fraud in driving licences. The aim is to make driving licences less susceptible to fraud by eliminating the possibility of issuing paper models through the mandatory introduction of a plastic card, and by limiting the licence's administrative validity.

## 2. General comments

2.1 The Committee endorses the European Commission's objectives in submitting this proposal (improving road safety, reducing the possibilities of fraud and enhancing the free movement of Community citizens). The proposal ties in with the Commission's European Road Safety Action Programme: Halving the number of road accident victims in the European Union by 2010: A shared responsibility<sup>(2)</sup> and the earlier White Paper European transport policy for 2010: Time to decide<sup>(3)</sup>.

<sup>(1)</sup> Commission interpretative communication on Community driver licensing, OJ C 77, 28.3.2002, p. 5.

<sup>(2)</sup> COM (2003) 311 final

<sup>(3)</sup> COM(2001) 370 final – Committee opinion, OJ C 241, 7.10.2002, p. 168

2.2 The Committee is particularly pleased that the proposal stresses the human aspect of transport and that it puts forward practical measures for dealing with the human side of road safety. In its opinion on the European Road Safety Action Programme: Halving the number of road accident victims in the European Union by 2010: A shared responsibility<sup>(1)</sup> the Committee noted the importance of the human element of road safety, and it is thus very pleased that the Commission proposal focuses on that aspect in particular.

2.3 The Committee considers that many of the proposed measures have far-reaching implications for Member State citizens (the limited administrative validity of driving licences), for driving licence applicants and holders in certain categories (medical checks, progressive access to certain categories, higher minimum ages) and for driving schools (new categories, changed vehicle requirements in categories C1 and D1). These implications will not always be welcomed by the individuals concerned and, in a number of cases, there will be increased administrative pressure and higher costs. The Committee would ask that consideration be given to the impact of this directive and draws the Commission's attention to the need for a sufficiently long transitional period for implementing the measures under it. Such an approach is warranted *inter alia* because, in a number of Member States, the changes required under Directive 91/439/EEC<sup>(2)</sup> have not long been in place. This does not mean that the Committee does not broadly endorse the measures proposed under this directive, but it is critical of some points.

### 3. Specific comments

3.1 The Committee endorses limiting the administrative validity of driving licences. It agrees with the reasoning that this both enhances the free movement of Community citizens and reduces the possibility of fraud with the driving licence document. The European Commission does not consider it necessary to limit the validity of driving licences that are already in circulation. It argues that, under the subsidiarity principle, the Member States are authorised to recall older models that no longer comply with fraud prevention requirements. The Committee would question this partial exemption as it means that some Member States will have an actual transitional period of more than fifty years. The Committee thus proposes firming up Article 3(2) to provide greater security with regard to the exchange of older driving licence models that do not meet the fraud prevention requirements. This could be achieved by replacing the words 'They shall inform the Commission thereof' in Article 3(2) by 'The Commission must

give its approval'. This recommendation is prompted, among other things, by the fact that, in some countries, driving licences may also be used as identity documents. Anti-fraud protection is thus of crucial importance.

3.2 The Committee welcomes the Commission proposal to replace paper driving licence models with a plastic card, possibly with a built-in chip. The Committee feels that this makes for greater uniformity between the Member States and significantly reduces the possibility of fraud. At the same time, the Committee also recommends that even more be done to protect the document against fraud, and calls for optimum security features both in and on the document similar to the security requirements for passports.

3.3 The Committee also endorses the proposed harmonisation of medical checks for holders of Group 2 licences. Both the periodicity and the content of these medical checks need to be harmonised at Community level to prevent distortions of competition between the Member States. That said, the Committee is not happy about applying the same requirements for medical checks both to the 'big' categories C and D (lorries and buses) and the 'small' categories C1 and D1. The Committee feels that less frequent medical checks would be appropriate for categories C1 and D1. The Committee also feels that this requirement should likewise apply to other professional drivers who, by virtue of their vehicle definition, hold Group 1 licences. Taxi drivers are a case in point.

3.4 The present Commission proposal no longer allows Member States to issue driving licences with limited validity for medical reasons. Member States had that power under previous legislation, and the Committee feels they should retain it.

3.5 The Committee fully endorses the proposed vehicle re-categorisation for driving licences. The introduction of a driving licence category AM and the mandatory introduction of the light motorcycle category A1 at the age of sixteen will resolve many of the difficulties surrounding these light two-wheelers. In particular, the Committee feels that there will be a direct improvement in road safety by giving sixteen-year-old drivers in the Member States an alternative to the accident-prone moped that involves more thorough training and both theoretical and practical tests. An added distinction is also being made between categories A2 and A, with a mandatory second driving test and higher age limits. These are promising developments for a vehicle type with a disproportionately high accident rate.

<sup>(1)</sup> OJ C 80 of 30.3.2004

<sup>(2)</sup> OJ L 237, 24.8.1991



3.6 The Committee fully supports the new definition of vehicle categories C1 and D1, with the maximum permitted weight now fixed at 6,000 kg as opposed to the original figure of 7,500 kg. The Committee welcomes this move, particularly as it better reflects the vehicles' technical characteristics. The Committee also endorses the equivalence between C1 and D1 vehicles. This equivalence is not detrimental to road safety as the vehicles in these two categories have the same technical specifications and are, for instance, equipped with the same type of brake fittings. The 6,000 kg upper limit also marks the transition to a different technical specification, with, for instance, a different type of brake fitting. Thus, drivers trained to operate category C1 vehicles are just as well equipped to operate category D1 vehicles as well. This equivalence also offers drivers of these vehicles greater freedom and enhanced possibilities.

3.7 The Committee feels that the mandatory introduction of the 'small' categories C1 and D1, which were still optional under the Directive on driving licences (91/439/EEC), will also enhance road safety, especially in urban areas. The Committee expects increasing use to be made of these vehicle categories in urban areas to deliver goods and transport people. This means that 'large' vehicles will no longer need to enter town centres, benefiting urban dwellers in terms of both road safety and pollution emissions. The Committee does feel, however, that, for this effect to kick in, these categories must be made more attractive, for instance by requiring less frequent medical examinations for categories C1 and D1.

3.8 The Committee welcomes the clarification of the definition of vehicle category B+E. The revised definition clarifies this category by stipulating, among other things, that a B+E licence is required to drive trailers with a maximum authorised mass exceeding 750 kg. The Committee very much welcomes the clarification this brings both for the public and for enforcement.

3.9 On the other hand, the definition of vehicle categories B+E and C1+E could be made clearer. The Committee feels that the definition of vehicle category C1+E raises particular difficulties as the maximum authorised mass of the trailer is contingent on the maximum authorised mass of the tractor vehicle. This means that, under this category of driving licence, only extremely light trailers are allowed, while much heavier trailers may be used with driving licence category B+E. For instance, under the present and proposed new definition, it is not in practice possible in view of the weight distribution to drive a combination of a tractor vehicle and semi-trailer in category C1+E, while the same option is open under category B+E. Indeed, this very possibility – driving a combination of a tractor vehicle and semi-trailer under driving licence category

B+E – is deemed undesirable by the Committee. This combination, which the Committee feels is used only for professional transportation, would be better suited to category C1+E, but that is not possible under the proposed definition.

3.10 For that reason, the Committee would ask that further consideration be given to the definitions of trailer classes. One option that would secure clarity for both the public and enforcement agents and would also improve road safety would be to define trailer classes independently of the weight of the tractor vehicle, and to include not only a lower weight limit, but an upper limit as well.

3.11 The Committee would also point out that the requirement placed on caravan owners under the Commission's proposed definition of vehicle category B+E may be too high. Under the current definition of vehicle category B, most caravans may be driven with a vehicle category B licence. Under the Commission proposal, this right no longer applies to new drivers and all caravans are to come under licence category B+E, with drivers required to sit an examination. The Committee would point out the potential implications of this proposal for industry, and suggests that, for road safety reasons, a one-day training course be made mandatory for certain kinds of trailer, including a large percentage of caravans. A code on the driving licence could indicate that the holder has attended such a course. The Committee proposes using code 96 for that purpose.

3.12 The Committee notes that many category B drivers (vans) are professional transporters and that the proposed directive introduces no additional measures to combat the high accident rate<sup>(1)</sup> within this category. This means that, at the moment, this group of drivers is not subject to rules about driving hours, rest periods and aptitude, and that the vehicles need not be fitted with speed limiters. The Committee is particularly concerned about white vans with a maximum authorised mass not exceeding 3,500 kg and the danger posed by this sector on EU roads. The Committee would like to see the Commission tackle this sector. Of the several possible options, the Committee feels the soundest would be to require drivers of all vehicles with a maximum authorised mass not exceeding 3,500 kg and a payload of more than 1,000 kg to obtain a C1 licence. They are thus automatically classed and treated as professional drivers. Such a definition would make drivers of these vehicles subject to the provisions of Directive 2003/59/EC and require them to gain an initial qualification and undergo periodic training. The Committee feels that it would be a positive step to make Group 1 professional drivers (such as van, taxi and ambulance drivers) subject to the same medical testing requirements as Group 2 professional drivers (lorry and bus drivers).

<sup>(1)</sup> For the situation in the Netherlands, see inter alia the following reports: C. Schoon, Ontwikkelingen in parkomvang en onveiligheid bestelauto's. Een verkenning binnen het thema Voertuigveiligheid van het SWOV-jaarprogramma 2000-2001 - report reference R-2001-33; and A.A. Kampen, Onveiligheid van Bestel- en Vrachtauto's binnen de bebouwde kom - report reference R 97-53 SWOV (Netherlands Institute for Road Safety Research). These reports indicate that delivery vans are the only vehicle category to show a steady rise in the number of fatal accidents. Taking 1984 as a base year (= 100), the figure for 2002 had risen to 138, while, for all other categories, it had fallen to below 85.

3.13 In the light of the above comments, the Committee would propose the following new definitions for driving licence categories B, B+E, C1 and C1+E:

Driving licence category	Maximum authorised mass of the tractor vehicle	Maximum payload of the tractor vehicle	Maximum authorised mass of the trailers
B	< 3,500 kg	< 1,000 kg	< 750 kg
B+ training + code inserted in licence	< 3,500 kg	< 1,000 kg	> 750 kg; < 1,400 kg; maximum trailer length 7.0 metres
B+E	< 3,500 kg	< 1,000 kg	> 750 kg; < 3,500 kg; combination < 7,000 kg; maximum trailer length 7.0 metres
C1	< 3,500 kg	> 1,000 kg	< 750 kg
C1	> 3,500 kg; < 6,000 kg	n.a.	< 750 kg
C1+E	> 3,500 kg; < 6,000 kg	n.a.	> 750 kg; combination < 12.000 kg

3.14 The Committee is somewhat concerned that Member States are to have the option of lowering the minimum age for obtaining a driving licence, as provided for under Article 7(2). No distinction is made, either in the explanatory memorandum or in the article itself, between Member States' differing practices on this front. Lower age limits apply in three distinct cases:

- a) to the licence itself, as in Ireland and the UK, for instance;
- b) during training, as in France and Sweden, for instance; and
- c) during training, where the licences issued are initially valid only nationally, as, for instance, in Austria and some German Länder.

3.15 The Committee rejects the equivalence between vehicle categories B and A1 as laid down in Directive 91/439/EC, which the Commission does not intend to change. Although the Committee feels that this provision does give car drivers more freedom and more options, it is not conducive to road safety. Studies from countries that have equivalence of this kind show that it has an adverse impact on accident figures for this category of two-wheeler. The Committee thus believes that separate training and examination are needed for each type of vehicle. The Committee could approve equivalence between the

B driving licence and the AM moped category. The AM category examination consists of a theoretical test only, covering broadly the same knowledge as that required for a B licence.

3.16 The Committee welcomes the Commission's proposal to harmonise minimum training standards for driving examiners. Genuine harmonisation between the EU Member States can only be realised if driving licence applicants have to meet the same requirements. It is only natural, therefore, that the parties assessing whether applicants meet those requirements should also operate in a harmonised way.

#### 4. Summary and conclusions

4.1 The Committee very much welcomes the Proposal for a Directive of the European Parliament and of the Council on driving licences, although it is critical of a number of points relating to the practical application of some of the measures.

4.2 The Committee is particularly pleased that the proposed directive focuses on improving road safety by introducing a number of changes to the system that are designed to factor in the human element of transport, without playing down the directive's other objectives (free movement of citizens and reducing susceptibility to fraud).

4.3 The Committee asks that consideration be given to the expected reaction to the proposed measures in some Member States and among certain target groups. Much of the resistance could be prevented by having a sufficiently long transitional phase, which would not, however, mean having to delay the measures indefinitely. Given the proposed new measures for vehicle categories C, C1, D, D1 and their respective trailer categories, and in the light of Directive 2003/59/EC recently adopted by the Commission and Council on the aptitude of professional drivers, the synchronised introduction of some parts of this directive would be helpful for many Member States.

4.4 The Committee asks that attention to be drawn to the high accident rate among professional drivers in licence category B. The Committee would very much appreciate a European Commission proposal for drivers in this group.

4.5 The Committee recommends a rethink of the definition of trailer classes B+E and C1+E. In the current proposal, the Committee notes a lack of clarity in the suggested definition, the problem of weight distribution in licence category C1+E and the disparity between licence categories B+E and C1+E.

4.6 The Committee welcomes the equivalence between licence categories C1 and D1. However, it is not happy about the expected impact of equivalence between licence categories B and A1. The Committee is aware that such equivalence is already in place in a number of Member States but is concerned about the impact of such a step.

4.7 The Committee feels that Member States should retain the authority to issue driving licences with limited validity for medical reasons.

Brussels, 31 March 2004.

*The President  
of the European Economic and Social Committee*  
Roger BRIESCH

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**Opinion of the European Economic and Social Committee on the 'proposal for a Council Directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (codified version)'**

(COM(2004) 35 final – 2004/0004 (CNS))

(2004/C 112/10)

On 10 March 2004 the Council decided to consult the European Economic and Social Committee, under Article 100 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 2 March 2004. The rapporteur was Mr Wilkinson.

At its 407th plenary session, held on 31 March and 1 April 2004, (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion by 98 votes to 1 with 2 abstentions.

1. Because the clarity and transparency of Community law are important, the Council, the European Parliament and the Commission have stressed the need to codify frequently amended legislative texts under an agreed and rapid procedure. In this process no changes of substance may be made <sup>(1)</sup>.

2. The Committee approves and encourages the work to simplify the *acquis communautaire*, and especially the procedures for consolidating and codifying existing legislation. This work contributes to good democratic governance by making it easier to understand the *acquis communautaire* and apply it properly.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social*  
*Committee*  
Roger BRIESCH

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<sup>(1)</sup> For the opinion of the EESC on the substance of this subject see OJ C 133/4 of 6.6.2003.

**Opinion of the European Economic and Social Committee on the 'proposal for a Directive of the European Parliament and of the Council on the protection of groundwater against pollution'**

(COM(2003) 550 final - 2003/0210 (COD))

(2004/C 112/11)

On 3 October 2003 the Council decided to consult the European Economic and Social Committee, under Article 175(1) 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 4 March 2004. The rapporteur was Ms Sánchez Miguel.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion by 97 votes and one abstention.

## 1. Introduction

1.1 With the entry into force of the Water Framework Directive (WFD) <sup>(1)</sup> the rules for implementing its legislative content must be adjusted, so that its main objective – to protect the European aquatic environment – can be fully achieved. A number of provisions <sup>(2)</sup> have already been put forward for this purpose, fleshing out the practical aspects of water protection, in particular the directive establishing the list of priority substances in the field of water policy <sup>(3)</sup>, which is of great importance for dealing with pollution of groundwater.

1.2 At present, protection of groundwater is basically governed by Directive 80/68/EEC <sup>(4)</sup> determining the dangerous substances which pollute such waters, and by Article 17 of the WFD, constituting the fundamental legislation for preventing and controlling pollution of this aspect of the environment.

1.3 The importance of groundwater has been made abundantly clear, not only as a vital source of domestic supply and for a range of human activities, but also as a corrective factor for surface water. Groundwater protection should therefore be looked at again, since in addition to direct pollution, groundwater is affected by diffuse pollution as a result of various processes (leaching, filtration of pollutants, etc.) over a period of years, and this is increasingly causing declining quality and deterioration of aquifers.

1.4 Protection of groundwater must be one of the main aims of European legislation, in order to deal with and prevent existing and future pollution. Contamination of groundwater is difficult and expensive to put right. The impact on abstraction of drinking water is significant; consequently boosting protection is a basic objective of all protection standards – not only of water, but also of human health and public quality of life.

1.5 When the WFD came into effect, its Article 17 became the basic rule imposing protection of this type of water from pollution, as part of the general framework of regulation of Community waters. It should however be pointed out that since this is an area affected by other Community policies such as the CAP, industrial policy, health policy, etc., legislation on specific aspects of protection also apply. Examples include the directives on drinking water <sup>(5)</sup>, nitrates <sup>(6)</sup>, plant protection products <sup>(7)</sup> and biocidal products <sup>(8)</sup>.

## 2. Content of the proposal

2.1 The present proposal for a directive was prompted by the requirement set out in Article 17 for specific measures to be adopted to prevent and control groundwater pollution in order to ensure good groundwater chemical status. The measures are to be adopted within two years following the entry into force of the WFD (i.e. 2006). It should however be pointed out that the standards contained in the present draft directive fall within the scope of the WFD, and consequently it is not necessary to repeat the provisions contained in the WFD, particularly with regard to environmental objectives, coordinated administration of river basins authorities which are to hold the groundwater registers, identification of waters for abstraction of drinking water and safeguard zones for them, public information and consultation requirements, etc.

<sup>(1)</sup> OJ L 327 of 22.12.2000, pp. 1-72.

<sup>(2)</sup> European Parliament and Council Decision establishing the list of priority substances in the field of water policy, COM(2000) 47 final; Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee on Pricing policies for enhancing the sustainability of water resources, COM(2000) 477 final.

<sup>(3)</sup> COM(2003) 847 final. Codified version 7.1.2004, on the aquatic environment of the Community. It does not include groundwater.

<sup>(4)</sup> OJ L 20 of 26.1.1980, p. 43.

<sup>(5)</sup> Amended directive 98/83/EC (OJ L 330 of 5.12.1998, p. 32).

<sup>(6)</sup> Directive 91/676/EEC (OJ L 375 of 31.12.1991, p. 1).

<sup>(7)</sup> Amended directive 98/47/EC (OJ L 191 of 7.7.1998, p. 50).

<sup>(8)</sup> Directive 98/8/EC (OJ L 123 of 24.4.1998, p. 1).



2.2 The overall purpose of the proposal is to introduce specific measures to prevent and control groundwater pollution, through the application of the following criteria:

- assessment of the good chemical status of groundwater;
- identification of significant and sustained upward trends in the concentration of pollutants and definition of starting points for trend reversals.

2.3 The conditions are laid down under which the Member States must set the threshold values for each pollutant listed in Annex III, so that they can be used as references for the review of groundwater status as provided for in the WFD.

2.4 A requirement is introduced to the effect that the Member States must establish measures in addition to those contained in the WFD to prevent and limit indirect discharges into groundwater which affect good groundwater chemical status.

2.5 The annexes lay down quality standards, procedures for the assessment of chemical status and threshold values for groundwater pollutants. The content of Annex IV is of particular importance, concerning the identification and reversal of significant and sustained upward trends to be carried out by the Member States.

### 3. General comments

3.1 The EESC views the proposal for a directive, based on consultation and discussion with the parties concerned, as positive and in particular welcomes the fact that it entails the establishment of a new methodology for analysing the status of groundwater in the EU compared to Directive 80/68/EEC. In this way, the criterion of integrating water policy as a whole into river basin plans, which requires an inventory of all groundwater bodies, can be brought into line with the geographical aspects of the measures adopted.

3.2 However, the list of pollutants affecting groundwater quality may be considered restrictive. Although there is a large proportion of nitrates and plant health products, other processes should be considered, such as filtration from petrol storage installations, leaching from industrial sites and, most of all, the effects of over-exploitation of aquifers in coastal regions, especially in the Mediterranean basin, triggering the progressive salination of such areas.

3.3 The integration of all Community standards relating to groundwater, pesticides, biocides etc. is also to be welcomed, since it enables horizontal application of all policies having an impact on water quality. This horizontal approach should also embrace further legislative measures extending quality criteria.

3.4 In this connection, implementation of the European standards relating to lists of established pollutants <sup>(1)</sup> (although they refer to surface water) and thresholds should perhaps be included in the content of Annex I of the present draft directive. This outcome would be more beneficial for the quality of groundwater, since a greater number of substances which can produce diffuse pollution would be covered.

3.5 The EESC welcomes the inclusion of statistics on significant and sustained upward trends of concentrations of pollutants, as stipulated in Annex IV, since this reflects the mandate set out in Annex V of the WFD which enables the Member States to identify trends over harmonised periods of time so as to take account not only of river basin plans, but also of the climate and soil conditions of each European region.

3.6 However, in order to ensure greater accuracy and to avoid misinterpretations of statistics, the Commission should introduce more specific criteria concerning the parameters, indicators, conversion functions, etc., making it possible to compare the effects of this directive.

3.7 The procedure for notification of the list of pollutants for which threshold values have been determined, which the Member States must provide by 22 June 2006, is of key importance in terms of the information which must figure in river basin plans for bodies of groundwater.

3.8 The system for informing and consulting interested parties <sup>(2)</sup>, farmers, NGOs and trade unions is of great importance in this context, as is the possibility of steps to ensure it is used properly. The system for approving river basin plans should therefore be strengthened by means of a public system for the information and participation of all those involved. It would be advisable for the Commission to draw up reports to check on the satisfactory conduct of such consultations.

<sup>(1)</sup> European Parliament and Council Decision establishing the list of priority substances in the field of water policy. 13 March 2000. Committee opinion in OJ C 268 of 19.9.2000.

<sup>(2)</sup> Article 14 of the WFD establishes a broad public information and consultation system for the preparation of river basin management plans, which may be reinforced by the Aarhus Convention, in the Proposal for a Regulation and Directive. EESC rapporteur: Ms Sánchez Miguel.

3.9 The EESC believes that follow-up to Article 5 and Annex II.2 of the WFD, governing the characteristics of the geographical area, environmental impact etc. is needed. It is also necessary to assess the impact of human activity so that all sources affecting groundwater bodies are taken into account in river basin plans. Similarly, implementation of the WFD's other annexes must be ensured, since otherwise paragraphs 4 and 5 of Article 17 are applicable, allowing the Member States to establish the criteria for reversing the groundwater quality trend.

3.10 Clarification is required on the conditions under which indirect discharges, e.g. including diffuse pollution, may be authorised through the programme of basic measures set out in Article 11(3) of the WFD. The key problem in the event of indirect discharges is the absence or limited usefulness of the authorisations; moreover, they give rise to a considerable proportion of diffuse pollution.

3.11 Environmental policy concerning the necessary research into new water technologies<sup>(1)</sup> should be tied in with the 6th Research Programme, so that academic and company research departments can be involved in enhancing systems for improving and restoring the European aquatic environment.

3.12 Lastly, regarding the cost-benefit analysis which will accompany the new provisions, it should be pointed out that such an analysis has been carried out for all waters through the assessment of the river basin monitoring and clean-up costs. Nevertheless, the proposal provides specific, clearer measures which will apply a more uniform approach in determining the state of groundwater. As a result, it will be possible to avoid funds being allocated for comparison of bodies of groundwater using different parameters, which would generate avoidable costs. The harmonised criteria will prevent such avoidable costs being incurred<sup>(2)</sup>.

#### 4. Specific comments

4.1 The Committee considers the draft directive on groundwater to be particularly significant, since uniform data on the quality of bodies of groundwater in the EU are presently lacking. Although under the WFD currently in force, all river basin plans are obliged to include an inventory of all bodies of

water, including groundwater, it should be borne in mind that some Member States have not even transposed the WFD. The system of river basin pilot projects applied by the Environment DG (some 50 of which are currently under way) could be extended to groundwater bodies, in such a way as to prompt the Member States to work more efficiently and swiftly to survey and assess such waters and take the appropriate action.

4.2 The general characterisation of groundwater bodies required by the WFD in order to assess their environmental quality should include, among other data, diffuse sources of pollution. The draft directive mentions among such sources 'indirect discharges' after percolation from the ground or subsoil, excluding all other sources of pollution which may affect good water chemical status.

4.2.1 The first point which must be highlighted is the existence of other current Community legislation using different quality standards to those contained in the present proposal, such as the drinking water directive, and the nitrates<sup>(3)</sup> and pesticides<sup>(4)</sup> directives.

4.2.1.1 In line with the quality parameters set out in other directives on water quality concerning their main use (domestic consumption or agriculture), and using the scientific and technical information derived from the planning required under the WFD (uses of water in river basins, establishment of values for determining good chemical status), it is possible to determine threshold values for a larger number of substances than the few contained in the present proposal.

4.2.1.2 The appropriate authorities also have other rigorously tested sources of information resulting from the application of other instruments, such as IPPC Directive 96/61/EEC<sup>(5)</sup> which sets threshold values for some 26 water pollutants.

4.2.2 Secondly, concerning the lists of pollutants set out in Annex I and the substances in Annex III to the proposal, it would be advisable – even given their minimum content – to extend the list to cover the content of Annex VIII of the WFD, since it is referred to in Article 6 of the proposal.

4.2.3 In the light of the above, the Commission must harmonise all the groundwater quality parameters from 2007.

<sup>(1)</sup> Committee opinion on an action plan for environmental technology, OJ C 32 of 5.2.2004.

<sup>(2)</sup> Annex III of the proposal lays down threshold values facilitating harmonisation of substances, albeit on a minimum basis. Moreover, the information to be provided by the Member States on bodies of groundwater at risk from pollution will facilitate appropriate action, thereby reducing the restoration costs.

<sup>(3)</sup> Directive 91/676/EEC (OJ L 375 of 31.12.1991).

<sup>(4)</sup> Directive 91/414/EEC (OJ L 230 of 19.8.1991).

<sup>(5)</sup> Proposal for an amendment to the IPPC Directive, COM(2003) 354 final, EESC opinion OJ C 80 of 30.3.2004.

4.3 Lastly, the permission which may be granted for indirect discharges under Article 6 of the proposal must be modelled on the provisions set out in Article 11(3)(j) of the WFD which prohibits direct discharges of pollutants into groundwater, with no room for deviation from them by the granting authorities, as stipulated in Article 6.

4.4 The EESC reiterates the importance of informing and involving the parties concerned in the application of the provisions regarding water and urges that the new provisions<sup>(1)</sup> implementing the Aarhus Convention be taken into account. The Convention facilitates information, participation and access to legal redress concerning environmental policy not only in the Member States but also in the Community institutions.

Brussels, 31 March 2004

4.5 Lastly, the Commission should be reminded that cooperation and coordination between all the Community institutions, especially the Commission DGs, is essential if the environmental objectives put forward in the 6th programme are to be achieved. They must avoid any repetition, differences and, most of all, duplication in the use of public funds.

4.5.1 In this regard, the Committee considers it a priority to compile and process the all existing scientific, technical and social information which is currently scattered among numerous academic and administrative bodies, institutions etc., as this would be of enormous help to the Commission in implementing the various directives concerned with the management of the EU's water resources.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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<sup>(1)</sup> See Commission Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies (COM(2003) 622 final) and Commission Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters (COM(2003) 624 final).

**Opinion of the European Economic and Social Committee on the 'proposal for a Regulation of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods'**

(COM(2003) 671 *final* - 2003/0262 (COD))

(2004/C 112/12)

On 24 November 2003 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 4 March 2004. The rapporteur was Ms Heinisch.

At its 407<sup>th</sup> plenary session on 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 95 votes with 3 abstentions.

## **1. Introduction**

1.1 Because different national provisions obtain in the individual Member States, the market in foods to which vitamins, minerals or other substances have been added varies considerably and thus presents an obstacle to the free movement of goods. Uniform European legislation is therefore very welcome, also for the purpose of protecting consumers.

1.2 Although it must be assumed that a balanced diet can provide all essential vitamins, minerals and other substances, for various reasons such a diet is not consumed by all sectors of the population in the European Union <sup>(1)</sup>.

1.3 In this context, fortifying foods with vitamins, minerals or other substances can be seen as one of many measures for improving the delivery of essential nutrients to the general public, without being a substitute for a balanced and varied diet.

1.4 However, further steps are certainly needed to improve people's nutrition, such as information campaigns or health education for schools. Attention must be paid above all to particular target groups, such as the elderly, who suffer from deficiencies of certain nutrients more than others. It is also necessary to consider the importance of food supplements.

1.4.1 In this connection the EESC urges that appropriate strategies be developed to ensure that people's intake of folic acid is adequate. This could be achieved through mandatory fortification of certain foods with folic acid throughout the EU or through national information campaigns.

1.5 It should not become the norm for foods to be fortified with vitamins, minerals or other substances. Non-fortified foods should not be discriminated against. Nor should consumers be given the impression that foods fortified with vitamins, minerals or other substances can generally be considered superior to non-fortified foods.

## **2. Gist of the Commission proposal**

2.1 The Proposal for a Regulation on the addition of vitamins and minerals and of certain other substances to foods is intended to harmonise provisions in the EU Member States for the marketing of foods to which vitamins, minerals and certain other substances have been added by choice.

2.2 The proposal is not meant to harmonise legal provisions governing the obligatory addition of vitamins and minerals. Some Member States already have provisions governing such mandatory fortification of certain food groups in order to correct known regional nutritional deficits. Since those provisions are very much geared to regional situations, their harmonisation would not be appropriate.

2.3 Only vitamins and minerals or combinations thereof that are listed in Annexes I and II of the regulation may be added to foods. They may be added only for the purpose of enriching the food, making it nutritionally equivalent to a reference food or restoring substances that have been lost as part of the proper manufacturing process or during normal storage or handling.

<sup>(1)</sup> See the Status report on the European Commission's work in the field of nutrition in Europe, October 2002 [http://europa.eu.int/comm/health/ph\\_determinants/life\\_style/nutrition/documents/nutrition\\_report\\_en.pdf](http://europa.eu.int/comm/health/ph_determinants/life_style/nutrition/documents/nutrition_report_en.pdf) and Eurodiet - Nutrition & Diet for Healthy Lifestyles in Europe, 1998 [http://europa.eu.int/comm/health/ph\\_determinants/life\\_style/nutrition/report01\\_en.pdf](http://europa.eu.int/comm/health/ph_determinants/life_style/nutrition/report01_en.pdf)

2.4 Fresh non-processed produce (including fruit, vegetables and meat) and beverages containing more than 1.2 % by volume of alcohol may not normally be fortified with vitamins or minerals, and this restriction may be extended to other foods or food groups in future.

2.5 Special labelling provisions are to be introduced for foods to which vitamins and minerals have been added.

2.6 The addition of substances other than vitamins and minerals also falls within the scope of the present proposal for a regulation.

2.7 It will be possible either to prohibit or to limit the addition of substances to foods by including them in Annex III of the regulation. However, substances may also be placed under observation if there are doubts as to their safety.

2.8 To facilitate monitoring, Member States have the possibility of introducing a notification system for fortified foods, whereby a model of the product label must be submitted to the competent authority.

### 3. General comments

3.1 The EESC welcomes the European Commission's proposal to harmonise the legal provisions relating to the addition of vitamins and minerals and of certain other substances to foods. The proposal is very well-rounded, both with respect to the free circulation of goods and to consumer protection.

3.2 The EESC notes that the principle of providing nutrient profiles contained in the Commission's preliminary proposal is not contained in the present proposal. However, since it can be assumed that substances are added to food only if claims can also be made for them, the EESC agrees with the Commission's position in the explanatory memorandum that the present proposal need not make explicit provision for the establishment of nutrient profiles, since these are already provided for in the Commission's proposal on nutrition and health claims.

3.3 However, the EESC would emphasise that consistency must be ensured between this proposal and the planned provisions in the proposal for a regulation on nutrition and health claims.

3.4 The EESC expressly welcomes the ban on adding vitamins and minerals to beverages containing more than 1.2 % by volume of alcohol and the ban on adding vitamins and minerals to fresh and non-transformed produce. The addictive potential of alcohol is uncontested, and its consumption should not therefore be encouraged by adding vitamins minerals.

3.5 The EESC notes that in the absence of harmonised implementing rules, national arrangements may be maintained. This includes setting maximum levels for vitamins and minerals that may be added to a food. However, the EESC would like this provision to be formulated more precisely, e.g. by using the wording in Article 11 of Directive 2002/46/EC on food supplements <sup>(1)</sup>.

### 4. Specific comments

4.1 Article 8: The EESC notes that it is not easy to indicate the recommended daily intake in portions for foods, in contrast to food supplements, because the understanding of portion sizes varies widely between the EU Member States. It is nevertheless necessary to prevent overdoses of vitamins or minerals, and the EESC recommends that appropriate measures be taken to achieve this.

4.1.1 The consumer should also be informed about the importance of a balanced diet, and specifically that consumption of foods to which vitamins, minerals or other substances have been added can be seen only as part of a balanced diet and not as a substitute. Information to this effect should be printed on the label.

4.1.2 Similar provisions are contained in Directive 2002/46/EC on food supplements <sup>(2)</sup> <sup>(3)</sup>.

4.2 Article 8(3): The EESC considers that the labelling of a food to which vitamins or minerals have been added should always mention this fact and, therefore suggests replacing voluntary labelling with mandatory labelling. It should be possible for every consumer to distinguish between fortified and non-fortified foods readily and at a glance.

4.3 Chapter III: The EESC believes that the special provisions for labelling, presentation and advertising (Article 8) should also apply to substances other than vitamins and minerals, especially the mandatory indication of which substances have been added to the food and in which amounts.

### 5. Conclusion

5.1 The Committee considers the proposal in general to be well-balanced and cohesive.

5.2 An obligation to indicate on the labelling that nutrients have been added to the food would meet the consumer's right to information.

<sup>(1)</sup> OJ L 183, 12.7.2002, p. 51

<sup>(2)</sup> OJ L 183, 12.7.2002, p. 51

<sup>(3)</sup> OJ C 14 of 16.01.2001



5.3 Appropriate measures should also be taken to prevent excessive intake of vitamins, minerals or other substances. It is also important in this connection to mention the value of a balanced diet.

5.4 The special labelling requirements, which in the present proposal apply only to food fortified with vitamins and minerals, should be extended to include foods to which substances other than vitamins and minerals are added.

Brussels, 31 March 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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**Opinion of the European Economic and Social Committee on the 'proposal for a Directive of the European Parliament and of the Council on waste (codified version)'**

(COM(2003) 731 final – 2003/0283 COD)

(2004/C 112/13)

On 9 December 2003, the Council decided to consult the European Economic and Social Committee, under Articles 175 and 251 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 this subject, adopted its opinion on 4 March 2004. The rapporteur was Mr Donnelly.

At its 407th plenary session of 31 March and 1 April 2004 (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion by 101 votes in favour, with one abstention.

**1. Introduction**

1.1 The purpose of this proposal is to undertake a codification of Council Directive 75/442/EEC of 15 July 1975 on waste. The new Directive will supersede the various acts incorporated in it; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

1.2 The Committee regards it as very useful to have all the texts integrated into one Directive. In the context of a People's

Europe, the Committee, like the Commission, attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to ordinary citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

It has been ensured that this compilation of provisions contains no changes of substance and serves only the purpose of presenting Community law in a clear and transparent way. The Committee expresses its total support for this objective and, in the light of these guarantees, welcomes the proposal.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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**Opinion of the European Economic and Social Committee on the 'proposal for a Council Regulation establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture'**

(COM(2003) 817 final -2003/0321 (CNS))

(2004/C 112/14)

On 13 January 2004 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 4 March 2004. The rapporteur was Mr Voss.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 92 votes to three, with three abstentions.

## 1. Introduction

1.1 In 1994 Council Regulation (EC) No. 1467/94 on the conservation, characterisation, collection and utilisation of genetic resources in agriculture launched a five-year action programme that expired on 31 December 1999. This action programme was the Commission's response to various European Parliament resolutions dating back to the 1980s which had pointed to the problem of genetic erosion and proposed Community initiatives to counter this trend.

1.2 Under this action programme 21 projects were financed, most of which focused on the characterisation of available ex situ genetic resources; gene banks, research institutes and users were the main participants in the projects. Sometimes NGOs were also involved under the aegis of scientific institutions.

1.3 The action programme was evaluated, as planned in the regulation, by a group of independent experts. Their report gave the programme a generally positive assessment, called for the actions to be maintained and strengthened, and contained inter alia the following proposals:

- a better balance between 'plant' and 'animal' projects;
- including the concept of in situ/on farm conservation;
- meeting the needs of the ecoregions (bio-geographical regions);
- more active participation by NGOs;
- increased coordination between the Member States and the Commission with regard to negotiations and actions at FAO level;
- gearing the projects to broader Member State participation in certain project categories.

1.4 In March 2001 the Commission submitted a proposal for a new Community programme which was, however, subsequently withdrawn, as both the European Parliament and the Council were against the financing of national measures under the EAGGF Guarantee Section. The Commission was to play a more active role in coordinating and implementing the new programme.

1.5 The current proposal for a regulation provides for a three-year Community action programme. Preference will be given to projects involving the use of genetic resources for the following purposes:

- diversification of production in agriculture,
- improved product quality,
- sustainable management and use of natural and agricultural resources,
- improved quality of the environment and the countryside,
- identification of products for new uses and markets.

1.6 The implementation of the Community programme will focus mainly on targeted actions, but will also involve concerted and accompanying actions.

## 2. General comments

2.1 In its Opinion<sup>(1)</sup> of 24 April 2002 on Commission proposal COM(2001) 617 final, which was subsequently withdrawn, the Committee welcomed the proposal, stressing that 'the loss of genetic resources in agriculture has been far from halted, so that further efforts are needed (a) to characterise, compile an inventory of and conserve the gene potential and (b) to maintain the utilisation of genetic diversity by farms'.

<sup>(1)</sup> OJ C 149, 21.6.2002, pp. 11-13

2.2 The EESC notes that the conservation of genetic resources will become even more important with the accession of ten new Member States. The expected change in farming practices in these countries could damage the exceptional diversity of genetic resources used in agriculture in these regions.

2.3 Our knowledge of the genetic potential of species which are in some cases at high risk or in danger of extinction is still fragmentary. The potential use of multiple and in some cases still unknown qualities is the basis for diversity in agriculture and farming practices tailored to the area.

2.4 There are shortcomings in the recording of gene potential in the databases and in the networking of these databases. The EESC points out that clear rules are needed on the use and economic exploitation of the data collected in the framework of this programme.

2.5 The Committee welcomes the proposal for a regulation's focus on the in-situ conservation and on-farm management of these genetic resources. In this way the regulation is in step with the FAO's 1996 Global Plan of Action (GPA) <sup>(1)</sup>. Here too strong stress on measures of this kind is called for.

2.6 The Committee also welcomes the close attention which the programme pays to the work of NGOs.

2.7 In its Opinion of 25 April 2002 the Committee stated that 'in parallel with this scientific approach there is the no less important need to ensure that the diversity of genetic resources continues to be used in farming by promoting environmentally sound practices such as diversity in crop rotation under the second pillar of the CAP'. Comparable measures should be carried out to maintain the use of rare farm animal breeds. Protecting through consumption can be an important part of a new, consciously diverse European food culture.

2.8 The EESC therefore emphasises that the opportunities offered by the second pillar of the CAP for the conservation and use of genetic resources should be more clearly pinpointed and exploited.

### 3. Specific comments

3.1 The proposed three-year Community programme 2004-2006 will be financed with a total of 1110 m. from Heading 3 of the budget (internal policies). The Committee is glad that the Commission will be assuming the necessary active role in implementing the programme. The Committee regards the financial framework as limited compared with the proposal of 22 November 2001 (1110 m. annually for five years) and expects funding to be stepped up in 2005.

3.2 The EESC considers that in the longer term the Commission should support and coordinate the necessary activities in the current and future Member States. This would involve not only state-funded programmes and projects but also the

numerous NGO networks which play an important part in the maintenance and improved use of genetic diversity in the framework of sustainable farming practices.

3.3 With this regulation the European Community would be complying with some of its commitments under the relevant UN conventions (the FAO's GPA and the Convention on Biological Diversity (Rio 1992)). The Committee feels that before the programme expires the Commission should submit a proposal for a successor programme. The Commission should continue to provide the necessary human resources for the implementation of the programme.

3.4 The Committee points out that this Community programme takes on particular importance in the light of the Community's negotiations in the WTO on the protection of regional labels of origin and state aid which does not distort competition. It makes a contribution to achieving a multifunctional European agriculture.

3.5 The EESC recognises the particular importance of the implementing regulation for the amended Directives 2002/53-57 and 66/401 on the marketing of seed, which the Commission has announced but not yet submitted. These directives have an impact on access to conservation species and non-commercial species. On the initiative of the Parliament special arrangements for the labelling and marketing of seed were introduced which did not fulfil the relevant certified species criteria. They cannot at present be marketed; there is therefore a danger that they will not be (re)produced and thus conserved. The implementing regulation for these directives has been in preparation since November 2002.

3.6 The EESC considers that the trade category regulations should be checked to ensure that they do not impede the market access of rare plant and animal products.

3.7 It should be ensured that the NGOs are sufficiently involved in the Committee on the conservation, characterisation, collection and utilisation of genetic resources in agriculture provided for in Article 15 of the proposal for a regulation.

3.8 Farmers should also be specifically mentioned in Article 9(2) of the draft regulation.

3.9 The EESC calls on the Commission to draw up two reports on the effects of the CAP answering the following questions:

- a. How can regional development support be arranged so as to ensure that the cultivation of rare plant species and the husbandry of rare animal species is better integrated as part of a multifunctional agriculture and a comprehensive programme for the conservation and utilisation of genetic resources?

<sup>(1)</sup> Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture (GPA)

- b. What impact do CAP measures have in terms of genetic diversity, and what impact can be expected from decoupling and cross-compliance?

3.10 Even though a work programme has not been submitted for the regulation, the Committee welcomes the detailed objectives set out in the draft.

Brussels, 31 March 2004

#### 4. Summary

4.1 In its proposal for a regulation the Commission already to a large extent takes account of the proposals of the Member States, the Parliament and the EESC on the withdrawn proposal of 22 November 2001. The EESC welcomes the new proposal for a regulation and expects the programme to be rapidly adopted, implemented, evaluated and continued.

*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 the implementation of Directive 96/71/EC in the Member States'**

(COM(2003) 458 final)

(2004/C 112/15)

On 25 July 2004 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 3 March 2004. The rapporteur was Ms Le Nouail Marlière.

At its 407th plenary session of 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 93 votes to one with five abstentions.

#### 1. Introduction

##### Background

##### 1.1 The directive

1.1.1 The directive on the posting of workers<sup>(1)</sup> was adopted in 1996 by the Council and the European Parliament.

1.1.2 The directive seeks to strike a balance between extending the opportunities for businesses to provide services in other Member States and social protection of workers. For this reason, it defines a series of employment conditions which posted workers are to be guaranteed in the territory of the host country, regardless of which legal system governs posted workers' employment contracts. The directive defines a posted worker as a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works (Article 2(1)).

<sup>(1)</sup> Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services, OJ L 18 of 21.1.1997.

1.1.3 Regulation 1408/71, which deals with the coordination of social security in the EU in connection with the free movement of workers and services, introduced postings as one of the circumstances in which social insurance coverage could continue in the State of residence when working in another Member State for a maximum period of 12 months<sup>(2)</sup>, or 18 months under certain conditions.

1.1.4 Directive 96/71/EC is concerned with the practical coordination of employment conditions for posted workers. Article 3 is the core of the text, stipulating the conditions applicable to posted workers. These are laid down:

— by employment conditions established in law, regulation or administrative provision;

— by fulfilling the criteria set out in the directive;

<sup>(2)</sup> Regulation 1408/71.

- by specific employment conditions such as those referred to in Article 3(1), listed in collective agreements which have been declared universally applicable, insofar as they concern the activities referred to in the annex of the directive. This concerns activities in the construction sector;
- by specific provisions leaving the Member States to apply the directive as they see fit, for example with regard to very short-term postings, the one-month exception concerning minimum rates of pay and the extension of the directive's scope to include collective agreements in sectors other than construction;
- a provision of the directive establishing its minimal character, i.e. that workers may receive more favourable conditions of employment (Article 3(7)).

1.1.5 Together with transposition into national legislation, administrative cooperation (Article 4) is also considered an important means for implementing the provisions of the directive, not only for exchange of information, but also for measures necessary to prevent infringement of the rules set out in the directive. Directly preventing infringements contributes to social protection and the free movement of services.

## 1.2 *The opinion of the Committee*

1.2.1 In 1991, the ESC issued an opinion on the Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services (COM(91) 230 final – SYN 346, and ESC opinion CES 1512/91).

## 1.3 *Why a Communication from the Commission?*

1.3.1 The directive was to be transposed by the Member States by the end of 1999.

1.3.2 Article 8 of the directive stipulated that the Commission should review its operation by 16 December 2001, in order to see if it was necessary to propose any amendments to the Council. When the deadline expired, the Commission began to monitor the implementation of the directive in Member State legislation. The conclusions of the report were transposed into the Commission's communication on implementation of the directive. The communication is an evaluation of the transposition, in legislative terms, of applicable national rights. It introduces the content and objectives of the directive under evaluation, and describes the legislative measures taken in the Member States, dividing them into three groups: those which have reproduced the terms of the directive, without indicating to which provisions of their national legislation the matters covered by the directive correspond; those which have sought to identify the applicable national provisions and have inserted references to these national provisions; and lastly, those Member States which have not adopted any specific transposition legislation concerning the national provisions applicable to posted workers.

1.3.3 The legal study cites the provisions of conventions, the implementation of cooperation on information (Article 4), monitoring measures and penalties in the event of non-compliance with the directive (Articles 5 and 6).

1.3.4 In chapter 4 of the communication, the Commission assesses the situation regarding the transposition of the directive in the Member States, the method of transposition, and the nature of the standards and collective agreements applicable.

1.3.5 Chapter 4 also mentions the practical and administrative difficulties in application encountered by the Member States, with three short paragraphs being given over to difficulties encountered by service provider undertakings and posted workers.

1.3.6 It concludes that since none of the Member States has encountered any particular legal difficulties in transposing the directive, implementation may pose some difficulties, but these should disappear over time.

1.3.7 The Commission then concludes that it would therefore be premature to consider amending the directive. Finally, it proposes that a group of government experts of variable composition should be charged with examining ways of facilitating access to information on the provisions applicable to posted workers and of monitoring compliance with provisions in order to resolve the difficulties identified (countries failing to transpose specific provisions, public policy provisions, information seeking, compliance with national transposition provisions, and implementing penalties).

## 2. **General comments**

### 2.1 *On the Commission's lines of analysis*

2.1.1 The Committee considers the communication to be useful, but insufficient. It calls upon the Commission to flesh out its analysis, especially regarding the unfair competition and social dumping which could result from bogus postings. The Committee urges the Commission to conduct sector-based consultations with those to whom transposition is effectively addressed, particularly in the construction sector where the social partners have not yet been consulted, since they have mentioned problems concerning the definitions of posted workers and the grey area comprising 'self-employed' workers. This fuller analysis could focus on the practical implementation of Article 3 of the directive in terms of real respect for the fundamental rights of workers contained in it. In this connection, the Committee wonders if the national consultations carried out in the first exercise effectively shed light on practical difficulties in application and the real state of transposition of the implementing provisions. In any case, the Committee considers that more detailed work needs to be carried out on the most advantageous provisions, in order to provide a more accurate comparison of good practices and better inform all workers and businesses concerned.



2.1.2 The definitions used in the different national laws regarding posted workers are of significance in terms of the principles of the directive. Specific questions, which are important if the evaluation is to be complete, must be raised. How do the Member States recognise posted workers, and do they apply the directive accordingly? What type of measures have the Member States or the social partners taken to ensure compliance with the directive? A number of aspects are of particular importance in this regard:

- clarification between the legislation and collective agreements applicable in all the sectors in question;
- the position of posted workers within the national legislative framework and the applicable definition;
- the principle of application of minimum Community standards;
- the principle of equal treatment, in the light of the new Treaty Article 13 and ensuing directives;
- compliance with provisions on minimum wages;
- provisions concerning social security and those concerning employment conditions;
- the situation regarding posted workers who are third-country nationals;
- the enforcement of a number of judgments, such as the *Arblade-Leloup* case concerning minimum rates of pay<sup>(1)</sup>, and the *Guiot*<sup>(2)</sup> and *ULAK*<sup>(3)</sup> cases, and in particular before transposition of the directive in the Member States except for Ireland and the United Kingdom.

2.2 In view of the communication's shortcomings, the Committee calls on the Commission to submit a new report so that the following can be verified:

- if real transparency of rights is applied;
- if the positive rights of workers are guaranteed;
- if workers' mobility is promoted or hindered by application of the provisions arising from transposition in the Member States of the directive, given the risks of protectionist restrictions on the labour market;

<sup>(1)</sup> Cases 369/96 and 376/96, CJEC, 23 November 1999.

<sup>(2)</sup> Case 272/94, CJEC, 28 March 1996.

<sup>(3)</sup> Cases C49/98, C50/98, C53/98.

— if distortions of competition in connection with free movement of services are prevented;

— if small businesses enjoy proper and adequate access to the information they need in order to implement the transposed directive.

2.2.1 Several Member States have universally applicable collective agreements in the construction sector. The main question is how the provisions of such collective agreements are used to implement the directive. The interpretation of the employment conditions defined in Article 3 is of special importance in this regard. What are the minimum rates of pay, minimum paid holidays and rest periods under the terms of these collective agreements? Collective agreements may vary considerably between Member States in these areas. One example would be the use, in some Member States, of 'social funds' for paid holidays. Membership of such funds may ensure more advantageous conditions for posted workers. The question is to find out how such advantageous conditions may be measured and taken into account.

2.2.2 Not all the Member States have extended application of collectively agreed labour conditions to posted workers in other sectors mentioned in the annex to the directive, although Article 3(10)(2) explicitly provides for this possibility.

2.2.2.1 The Committee urges the Commission to gather all available information from the Member States and the new accession countries concerning the number of posted workers and the various sectors most affected, bearing in mind the differing systems of industrial relations.

2.2.3 On a number of occasions over recent years, the European Commission has been obliged to acknowledge that the expectations of the mid-1980s regarding mobility have not been borne out, or only to a minor extent. Less than 2 % of the European working population works in a country other than the country of origin. The figures for annual mobility are even lower. EU estimates refer to 600,000 active workers outside their own countries, not all of whom have the status of posted workers and are therefore not covered by the directive. This mobility seems to be restricted to executives and highly-skilled workers on the one hand, and construction workers on the other. The existence of pay-related and social dumping in some EU countries and in some occupational sectors is connected with the fact that in these high-risk sectors, even a relatively small number of workers offering their services on the labour market at significantly lower rates of pay can upset the existing pay structure and trigger a down spiral of pay and prices.

2.3 *On the direct prevention of a weakening of social protection and on free movement of services*

- The communication does not at present justify concluding from the difficulties encountered that the directive should be simplified or revised. In this regard, national experience (social partners in the construction sector, administrators, work inspectors etc.) on posted workers constitutes a valuable source of information and is therefore of great importance.

3. **Specific comments and proposals**

3.1 In its new analysis, the Commission should first of all consider the impact of enlargement on the implementation of the directive in both existing EU Member States and the accession countries, taking account of the transitional accession periods. The analysis should also evaluate the regional and cross-border or sectoral dimensions, especially the construction sector.

- It should ensure that the economic and social partners are actively involved, especially at national and European level. In the Committee's view, an assessment should be made of

whether the directive has enabled the rights of posted workers (social protection, pensions, etc.) to be more clearly defined, and distortions of competition for local businesses to be avoided.

3.2 The Committee also suggests the following:

- a more detailed analysis regarding the economic and social partners;
- an evaluation of workers' and businesses' information mechanisms with a view to their improvement;
- promotion of local, regional or cross-border networks of information centres;
- an inventory of best information-sharing practices for both employers and employees, for example between Finland and Estonia, based in Tallinn, on the rights of posted workers in Finland;
- a legal study to ensure that the Member States' framework of legislation and information on applicable collective agreements is sufficiently clear, accessible and up-to-date in the context of enlargement.

Brussels, 31 March 2004.

*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 Regulation amending Regulation (EEC) No. 337/75 establishing a European Centre for the Development of Vocational Training (Cedefop)'**

(COM(2003) 854 final – 2003/0334 (CNS))

(2004/C 112/16)

On 16 February 2004 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 Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 March 2004. The rapporteur was Mr Greif.

At its 407th plenary session (meeting of 31 March 2004) the European Economic and Social Committee adopted the following opinion by 99 votes to one, with six abstentions:

### 1. Gist of the Commission proposal

1.1 On 8 January 2004, the European Commission submitted a proposal for the amendment of Regulation (EEC) No. 337/75 establishing a European Centre for the Development of Vocational Training (Cedefop). This text <sup>(1)</sup> proposes changing the rules governing the centre. It also sets out the reasons for these changes and provides background information.

1.2 The regulation is being amended to take account of upcoming EU enlargement and to adapt the centre's operating and working practices to meet future requirements. This applies in particular to the roles played by the centre's main constituent bodies – the Management Board (to be known in future as the Governing Board), the Bureau and the director.

1.3 In its justification for the proposed amendments, the Commission refers to:

- agency practices in recent years;
- the findings of an external evaluation of the centre's internal efficiency and external effectiveness, including the working methods of its constituent bodies, taking particular account of enlargement; <sup>(2)</sup>
- the action plan adopted by the agency's Management Board as a follow-up to this evaluation and relating largely to its future operating arrangements (particularly size, composition, working methods and cost-effectiveness);
- a joint opinion from the boards of Cedefop, Eurofound and EU-OSHA <sup>(3)</sup> – the three Community agencies that have a tripartite administrative structure (governments, employers, employees); this opinion, a response to the evaluation report, addresses the agencies' functioning and governance;

<sup>(1)</sup> COM(2003) 854 final – 2003/0334 (CNS)

<sup>(2)</sup> The full report of this external evaluation of Cedefop, the Commission's response to it and the action plan adopted by the Management Board in the wake of the evaluation may be accessed at: [http://europa.eu.int/comm/education/programmes/evaluation/evaluation\\_en.html](http://europa.eu.int/comm/education/programmes/evaluation/evaluation_en.html)

<sup>(3)</sup> Cedefop – the European Agency for the Development of Vocational Training (Thessaloniki); Eurofound – the European Foundation for the Improvement of Living and Working Conditions (Dublin); and EU-OSHA – the European Agency for Health and Safety at Work (Bilbao)

- the European Parliament's request to the Commission to put forward appropriate proposals for the rationalisation of Community agency boards in the light of enlargement. <sup>(4)</sup>

1.4 This Commission text is a response to the European Parliament's request. Its main proposals for Cedefop are as follows:

- to rationalise the Management Board's working methods by shifting away from administrative duties and moving more towards strategic tasks (including decisions on medium-term priorities, the annual work programme and the budget);
- to stem the enlargement-related cost increases that would accrue if the rules remained unchanged, largely as a result of the rise in the number of board members from 48 to 78 (including a proposal to cut the number of board meetings to one a year);
- to maintain a feature that is generally considered, not least by the external evaluator, to be a key factor in the centre's success – namely tripartite representation of all Member States on the Management Board (governments, employers and employees) – while at the same time formalising the rules on the role and activities of the groups represented on the Management Board (governments, employers and employees).

1.5 Other main changes proposed by the Commission to the agency's rules include:

- formalising the procedure for adopting medium-term priorities;
- more detailed provisions for the management and governance of the centre, particularly as regards the director's role and remit;

<sup>(4)</sup> See point 28 of EP paper A5-0079/2003, in connection with the European Parliament discharge procedure

- changes in the executive remit of the Management Board and the Bureau, and in the tripartite membership of these bodies, and their relations with the centre's director;
- formalisation of the group structure and specification of group activities, among other things, by bringing in a coordinator for each of the three groups on the Management Board (representatives of governments, employers and employees);
- introduction of a target for the balanced representation of men and women in the agency bodies;
- establishment of a specific remit for cooperation with the European Training Foundation (ETF) in Turin.

## 2. General comments

2.1 A common feature of Cedefop, the Dublin-based European Foundation for the Improvement of Living and Working Conditions and the European Agency for Health and Safety at Work in Bilbao is that the social partners play a major role in their administration and to date make up almost two-thirds of board members. This reflects the key importance of national social partners in most Member States in the fields of social policy, worker protection and vocational training. Naturally, therefore, they must play a major part in sound, responsible policy-making in these areas at European level as well.

2.2 Cedefop is the first of these three Community agencies with a tripartite administrative structure to be subject to the changes called for the European Parliament. The other two agencies (Eurofound and EU-OSHA) are to be similarly revamped shortly. The changes proposed to the functioning and governance of the Thessaloniki centre will thus also be a point of reference for the other two Community agencies.

2.3 In Committee's view, that makes it all the more important to examine the proposals carefully, particularly in relation to maintaining social partners' scope to become involved in, and exert an influence on, the centre's operation, management and administration – a practice with a proven track record. Any change to the role and composition of these Community agencies' main bodies may impact on the scope for involvement and participation of the groups represented on the management Board.

2.4 The Committee thus feels that EU enlargement must not be used as an opportunity to weaken social partners' role within the agencies on grounds of cost-effectiveness or a desire to streamline operations. On the contrary, the rules must be framed in such a way that the specific involvement of the social partners – which must be retained – can be tailored to meet new future requirements.

2.5 The Committee agrees with the Commission therefore that, in all the proposals to revise the composition of the

centre and the guidelines for its governance and management, it is vital to fully maintain the tripartite management structure and, thus, the involvement, on equal terms, of the social partners from all Member States. That is a key factor in the success of the centre's work, and it is the only way to ensure that all the relevant stakeholders remain on board and that the centre's work continues to take account of the wide variety of schemes and concepts in the field of vocational training.

2.6 However important it is to safeguard management bodies' ability to operate effectively, and however understandable the need to contain the costs of the projected impact of EU enlargement on the composition of the Management Board, the Committee feels it is vital to ensure that, in terms of the interests represented on the centre's management bodies, the revised rules do not make Cedefop any less representative or any less able to exert influence, and do not have an adverse impact on the breadth and depth of policy-forming or on continuity of stakeholder involvement.

2.7 With these premises in mind, the Committee welcomes most of the changes proposed by the Commission, subject to a number of specific comments and reservations about some of the points as detailed below. It hopes these will be taken on board in the ongoing work of revising the Cedefop regulation.

## 3. Specific comments

3.1 Formalising good practice: Many of the Commission's proposed amendments seek to enshrine the centre's current, successful practices. This applies in particular to the work of the Bureau of the Management Board, arrangements for bringing in the social partners at national and European level, cooperation with other Community bodies and coordination of the activities of the groups represented on the centre's management bodies. The Committee is pleased that these good – and hitherto largely informal – practices are now being placed on a formalised footing. It hopes that that will make the centre more transparent, more effective and more accountable, and that it will safeguard and strengthen its tripartite structure.

3.2 Role of the European social partners: The Committee is also pleased that the proposed new regulation gives the European social partners an important role in Cedefop management through the explicit introduction of group coordinators and their right to attend meetings of the Management Board and Bureau.<sup>(1)</sup> The European Trade Union Confederation (ETUC) and the Union of Industrial and Employers' Confederations of Europe (UNICE) are key players in this connection. To underscore this important role, the Committee proposes amending Article 4(5) of the draft regulation so that coordinators also enjoy voting rights on the Management Board and the Bureau, and, as a logical follow-on, are also involved in the appointment of the centre's managers (director, deputy director).

<sup>(1)</sup> Article 4(5) of the proposal amending Regulation (EEC) No. 337/75

3.3 Cooperation with institutes and authorities: Against the backdrop of the Lisbon strategy, and bearing in mind the importance of initial and further training and lifelong learning, the Committee also welcomes the proposal to formalise cooperation between Cedefop and the European Training Foundation in Turin. <sup>(1)</sup> The Committee hopes that that will not simply mean closer cooperation between two vocational training agencies, each with its own distinctive remit, but that a boost will also be given to cooperation and enhanced coordination with other European institutes and authorities involved in initial and further training, such as the Commission's EURY-DICE service for general and higher education.

3.4 Fewer meetings of the Management Board: The Commission's key proposal for reconciling the need to increase the number of seats on the Management Board in the wake of enlargement with the need for cost neutrality is to cut the number of routine board meetings from two to just one per year. <sup>(2)</sup> One reason given by the Commission for this proposal is the Management Board's new, more strategic role, which, among other things, involves transferring administrative tasks from it to the Bureau and the directors.

The Committee signals its misgivings about such a move as it feels that scheduling just one routine board meeting a year from now on could negatively impact the breadth of dialogue between board members. It is also clear that, by cutting the number of meetings, most board members – who will not have a seat on the future eight-strong Bureau – may find it difficult to continually swap information and stay in touch with each other between the annual meetings.

To dispel these misgivings and guarantee the requisite breadth and depth of opinion-forming, the Committee proposes two courses of action:

- to add the words 'at least' in the first sentence of Article 4(6) of the proposal amending Regulation (EEC) No. 337/75 so that it reads: 'The chairman shall convene the Governing Board at least once a year';
- to insert a provision into Article 4(10) making it possible to convene meetings of an enlarged Bureau of the Governing Board as and when required.

3.5 Safeguarding continuity of stakeholder involvement: To enable all board members to continue their involvement in the centre's work, the Committee feels that additional measures are needed to offset stakeholders' diminished physical presence (as

a result of less frequent meetings) and the reduced flow of information, and at the same time to secure the requisite breadth and depth of opinion-forming. It is particularly important in this regard to ensure internal coordination within the groups (governments, employees, employers) and to provide the group coordinators, who play a key role on this front, both with adequate scope for action (e.g. the facility to convene separate group meetings and the right to request meetings of an enlarged Bureau) and with the requisite resources.

3.6 Composition of the Bureau: The Committee feels that the Commission's beefed-up role in the future eight-member Bureau of the Management Board is significant. (The Bureau is to comprise two representatives from each of the Cedefop groups and two representatives from the Commission. <sup>(3)</sup>) The Committee would have expected the Commission to set out its reasons for such a change in the balance of interests represented on this management body. The Committee considers effective tripartite representation on the Bureau, too, to be essential for the centre's functioning. It hopes therefore that the Commission's beefed-up role in the Cedefop executive will boost expert input and does not expect any change in the balance of voting as a result.

In this connection, the Committee recalls the proposal set out in the Cedefop Management Board's 2001 action plan to establish an enlarged Bureau made up of a small number of permanent members and a number of rotating members in order to strike a balance between efficiency and the need for broad opinion-forming among board members. The Committee suggests resurrecting that proposal and introducing an explicit provision into Article 4(10) of the draft regulation – in addition to the suggested facility to call additional meetings – allowing the chairman to convene enlarged Bureau meetings at the request of Bureau members.

3.7 Role of the director and position of a deputy director: Broadly speaking, the revised regulation tasks the director to be the centre's legal representative, to be responsible for the centre's management and to implement the decisions of the Management Board and the Bureau. <sup>(4)</sup> The Committee has its reservations as to whether, given the aim of boosting internal efficiency, this very brief definition of the director's role and responsibilities provides the clear, razor-sharp division of tasks between director, Management Board and Bureau that Cedefop needs for its future work.

<sup>(1)</sup> Article 3(2) of the proposal amending Regulation (EEC) No. 337/75

<sup>(2)</sup> Article 4(6) of the proposal amending Regulation (EEC) No. 337/75

<sup>(3)</sup> Article 4(8) of the proposal amending Regulation (EEC) No. 337/75

<sup>(4)</sup> Article 7(1) of the proposal amending Regulation (EEC) No. 337/75



On the subject of the director's role, the Committee also feels that, in the course of reviewing the Cedefop regulation, serious consideration should be given to reintroducing the post of deputy director into the rules. That would re-establish an arrangement that had worked well for more than two decades until the rules were changed when Cedefop headquarters moved from Berlin to Thessaloniki in 1995. This arrangement was also instrumental in securing the ready involvement of the social partners in key staff decisions. Moreover, it would bring Cedefop back into line with the good practice and rules of the Dublin-based Eurofound – a move firmly backed by the Committee. The Committee therefore proposes that Article 6 of the regulation be amended in line with the relevant provisions of the Eurofound regulation <sup>(1)</sup>.

In addition, the Committee feels that the regulation should explicitly state that the director's employment contracts must also be signed by the chair of the Management Board. That must also apply to the resuscitated post of deputy director. Otherwise, the deputy director's appointment would ultimately be contingent on the director's say – something that is hardly consistent with the normal practice of taking account of the full breadth of interests on the Governing Board.

3.8 Adoption of medium-term priorities: In Article 8(1) of the proposed regulation, the Commission lays down who is to be responsible for determining the centre's strategic direction. This involves the adoption, by the Management Board, of medium-term priorities and the annual work programmes on the basis of a draft submitted by the director. That too enshrines a practice which has existed *de facto* since the

mid-1990s. The Committee welcomes the shift to a more strategic role for the Management which this move represents. It again expresses its misgivings, however, about whether the broad spectrum of opinion and sound decision-making required if the Management Body is to play this role, will be obtainable now that its meetings are being cut to one a year. One solution might be to include provision for enlarged Bureau meetings, as already called for in points 3.4 and 3.6 above.

Although it fully understands the need to 'take into account the priority needs indicated by the Community institutions', <sup>(2)</sup> the Committee would nonetheless point out that Cedefop's work must continue not only to benefit Community bodies and Member State governments in policy consultations, but also in the first instance, to be of use to stakeholders involved in vocational training at national level, particularly the social partners in the Member States.

3.9 Equal opportunities: Finally, the Committee is pleased that the target of securing a balanced representation of men and women in the centre's constituent bodies has been explicitly included in the rules. <sup>(3)</sup> This is a practical step towards implementing Article 3 of the Treaty establishing the European Communities. The Committee feels that Member State governments and social partner organisations are thereby called upon to take gender into account when making appointments. The Committee expects that such considerations will also be reflected in the staffing policy of the centre itself, particularly in staff decisions at managerial level.

Brussels, 31 March 2004.

*The President  
of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> Cf. Article 8 of Regulation (EEC) No. 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the Improvement of Living and Working Conditions: '1. The director and deputy director of the Foundation shall be appointed by the Commission from a list of candidates submitted by the Administrative Board. 2. The director and the deputy director shall be chosen on the grounds of their competence and their independence shall be beyond doubt. 3. The director and the deputy director shall be appointed for a maximum period of five years. Their term of office shall be renewable.'

<sup>(2)</sup> Article 8(1) of the proposal amending Regulation (EEC) No. 337/75

<sup>(3)</sup> Article 4(2) of the proposal amending Regulation (EEC) No. 337/75

**Opinion of the European Economic and Social Committee on 'the social dimension of culture'**

(2004/C 112/17)

On 20 November 2003 the European Parliament decided to consult the European Economic and Social Committee, under the last paragraph of Article 262 of the Treaty establishing the European Community, on the social dimension of culture.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 March 2004. The rapporteur was Mr Le Scornet.

At its 407<sup>th</sup> plenary session (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 98 votes to zero, with four abstentions.

**1. Introduction**

1.1 The European Parliament and the European Economic and Social Committee have decided to make the question of the social dimension of culture a common theme, as they consider that culture and social development are closely interrelated and that this relationship will be increasingly important for European integration policy.

1.2 In a 1999 opinion <sup>(1)</sup> the Committee stated that: 'If we take the very broad definition of culture as a code of values that apply to the members of a society, then culture also shapes the areas in which civil society operates'. The Committee considers that culture – understood as a process and a common form of thinking and acting – assigns key functions to education and the participation of society. The draft European Constitution is after all based on common values, objectives, fundamental rights and a new understanding of democratic action. These components together make up the foundation of a European concept of culture. The European concept of culture also embraces strong social elements such as solidarity, social cohesion, measures to combat marginalisation and discrimination, as well as social integration. On the basis of this approach, the Committee asked the European Convention that in future it be consulted on culture. All of this confers a special responsibility in this field on the European Parliament, as the democratic representative body of the people of Europe and the European Economic and Social Committee, as the institutional representative of civil society organisations.

1.3 The European Parliament has rightly insisted on the obligation to establish a common cultural basis and a European civil area <sup>(2)</sup>. This is all the more urgent since the predominance of the national dimension of culture tends to re-emerge whenever complexity increases, and since enlargement, as well as increasing complexity, brings into the Union people with very different national histories, traditions and cultures in the European context.

<sup>(1)</sup> EESC opinion of 23.9.1999 on The role and contribution of civil society organisations in the building of Europe – OJ C 329 of 17.11.1999

<sup>(2)</sup> Ruffolo Report – EP A5 – 0281/2001

1.4 Owing to time pressure, the Committee initially concentrates in this opinion on three key areas.

**2. What kind of European society do we want? Towards a new 'culture' of interactions between economic, social and environmental practices:**

2.1 In this context the social dimension of culture is a decisive factor for building a European identity both within the Union and externally. The attraction of Europe is not confined to the scale and strength of the largest internal market in the world, the level of GDP or the strength of the euro. Just as attractive are the originality and relevance of a social and cultural model which, on the strength of a shared heritage of values, has learned and continues to learn to cope peacefully with its cultural diversity and its social and political contradictions.

2.2 The current changes in society, like the effects of globalisation, the ageing of the population, the growing importance of information technology, the principle of gender equality which is gradually becoming established and other radical socio-economic changes pose enormous challenges for policy in cultural, social and symbolic terms. Our societies can no longer afford not to recognise and involve all their actors and all their environments. As the European Year of the Disabled showed, and the EESC's opinions and initiatives on the subject have argued, they will be judged on the place and role they give to the most disadvantaged and marginalised members of society.

2.3 Should not the traditional paradigms of hierarchical command and 'assisted dependence' (cf. the various forms of welfare state) give way now to a paradigm involving the active participation of each person, i.e. 'empowerment' of all the economic, social, family and cultural actors?

2.4 Is not this active participation the sine qua non condition for a fulfilled, creative economic and social life? Must it not therefore be also an ethical and economic imperative? Respect and fulfilment for oneself and others, the primacy of the principle of cooperation, are the shared characteristics of contemporary European humanism and of the global competitiveness of this integrated area.

2.5 Economic, social and environmental practices are constantly creating culture. The identification and assessment of changes to the main cultural paradigms which occur in these practices would make it possible to give an operational value to the concept of 'social dimension of culture'.

2.6 Ultimately this means that the relations between, and responsibilities of, state, market and civil society will have to be jointly rethought and redefined.

### 3. The effects of changes in the world of work on the structure of society and cultural values

3.1 This opinion cannot seriously attempt to explore the considerable changes in progress in these areas. It merely seeks to show that such an exploration would certainly help to provide a better explanation of the concept of 'knowledge society' which is a key, dynamic aspect of European culture as defined by the Lisbon Process.

3.2 The universal tendency to intellectualise all the aspects of work, including the 'work' of consumption, and the increased role within them of relational, stylistic and creative criteria, have crystallised remarkably in Europe. This phenomenon is undoubtedly at the heart of the differentials of competitiveness, attractiveness, mutual respect and entrepreneurship which Europe maintains and can develop in relation to the other geo-cultural regions of the planet.

3.3 Moreover, in a society undergoing such profound change, the professions concerned with integration and mediation are in the forefront. The immense stresses experienced by these professions go beyond the material and objective difficulties encountered in this type of work. They question all the points of reference for action based on the joint function of solidarity and social control in our society. It is necessary to decipher the transformation of symbolic area which constituted the scope and vocational identity of these professions.

3.4 In such a society, one can no longer separate or prioritise the social dimension of culture and the cultural approach to the social sphere. That is why the economic, the social and the political can no longer be dissociated from artistic and scientific work and activity. There need be no exploitation, and the importance of artistic and scientific creation itself is considerably strengthened. This makes it necessary, in particular, to start considering the new forms taken by the cultural economy

(solidarity-based economy, funding sources based on mutual benefit organisations).

### 4. A new culture of democracy

4.1 Social and cultural policies are not just sectoral policies but a 'culture' of political interaction as a whole. Cultural democracy, understood as 'cultural security', 'cultural reliability' and 'social and cultural governance' needs to be promoted. It is necessary now to initiate an open debate on the creation of cultural rights/freedoms/responsibilities.

4.2 The main paradigms of cultural and social democracy need to be rethought and developed:

- the educational paradigm (particularly by developing the supply of education and of continuing education throughout life)
- the paradigm of making the most of resources (by emphasising creative and communicational interpretations of culture and of the social sphere)
- the paradigm of mediation (with the creation of new 'cultural standards', particularly derived from situations of social exclusion: this would be a bonus in terms of good sense and humanity).

4.3 The wide range of issues involved in the task of devising a true social and cultural democracy deserves to be thoroughly discussed with the social movements, the cultural networks and the social partners – not just between institutions. To that end, one of the major challenges to be met is undoubtedly that of establishing a cooperation ethic among all the partners concerned.

### 5. Recommendations

This first, and inevitably rough-and-ready, reflection on the social dimension of culture leads the EESC to make a number of proposals:

#### 5.1 *The cultural role of the European Economic and Social Committee*

5.1.1 As a number of national economic and social councils or equivalent institutions have already done, the EESC wishes to affirm its cultural role more clearly than it has done up to now – all the more so since, as it stated in an earlier opinion, 'the development of civil society is a cultural process' <sup>(1)</sup>. That is why the EESC intends to initiate an active dialogue on this subject with the national ESCs and all the EU institutions (Parliament, Council, Commission and Committee of the Regions), and to be a forum for debates with civil society organisations on cultural development in a pluralist, dynamic and innovative sense – a true forum in the service of sustainable development and of the creative cultural industries <sup>(2)</sup>.

<sup>(1)</sup> EESC opinion of 23.9.1999 on The role and contribution of civil society organisations in the building of Europe – (Rapporteur: Ms Anne-Marie Sigmund) OJ C 329 of 17.11.1999

<sup>(2)</sup> EESC opinion of 28.1.2004 on the cultural industries in Europe (CESE 102/2004) (Rapporteur: Mr Rodriguez Garcia-Caro)

## 5.2 *The gradual creation of a European observatory of cultural cooperation*

5.2.1 The EESC proposes to continue consideration, with the Commission and the European Parliament, of the European Parliament's proposal to set up a European observatory of cultural cooperation <sup>(1)</sup>.

5.2.2 The EESC is not unaware of the limited conclusions of the feasibility study on this parliamentary proposal carried out at the Commission's request. While it fully agrees with these conclusions, the Committee still does not regard them as sufficient, in that they aim simply to support the networks and bodies which are active at present and review their funding, create a web gateway and develop the collection of cultural statistics <sup>(2)</sup>.

5.2.3 That is why the EESC proposes that an own-initiative opinion could rigorously define the objectives of a European observatory of cultural cooperation, which the EESC, like the EP, wishes to see set up. It could also check that this would indeed be an inter-institutional and cross-frontier 'network', with regional and national hubs, and achieving an effect of synergy to make the most of all current players – public, social-economy and private – and all experiments (including those in the past which may be half forgotten). It should not be yet another central institution. This dynamic cooperation would encourage a non-defensive development of the concept of subsidiarity in terms of European cultural policy. It would encourage Europeans' capacity to involve themselves directly in the creation of this common cultural area, and thus to recognise themselves in it. In this context, the EESC could offer to act as a secretariat and centre for collection and use of an authentic bank of data and knowledge, just as it could play the role of a motor by proposing specific action plans.

5.2.4 From this viewpoint, account must be taken of the considerable work of identification carried out by the Bilbao European Agency and the Dublin Foundation. They detect and develop 'best practice' and observe the cultural changes relating to working conditions, jobs, welfare and social cohesion. They reveal the assets which are 'already there' and which could contribute to this European cultural observatory within a broad vision of culture.

5.2.5 There are also many networks based on the premise of culture as a social link, particularly in populations which are marginalised or in the process of being marginalised (working-class districts, declining industrial regions, abandoned rural areas). (The study carried out for the Commission has already

identified 65 such networks.) The EESC, which has organised hearings where some of these expressed their views, agrees with them on the need to bring them out of their isolation, and to provide them with the resources to continue and develop, which are still lacking. That is why, as well as a laboratory role making it possible to disseminate tried and tested knowledge and know-how and transfer it from one field to another, the observatory of cultural cooperation should have an evaluation role.

5.2.6 This task entails, first and foremost, ensuring that sufficient account is taken of the cultural dimension in Community policies and, more specifically, that it should become a means of giving greater substance to the Culture 2000 and MEDIA Plus programmes when they are renewed, so that they reflect the radically new situation arising from enlargement and encompass new areas of activity. Such an observatory could possibly draw up its own annual report.

## 5.3 *Continuous linkage and appropriate joint projects between the European Parliament and the European Economic and Social Committee in the cultural sphere*

5.3.1 In the cultural field, it should be possible to establish and publicise close cooperation between the two institutions which represent the European peoples in their very different ways, and to develop joint procedures and events.

5.3.2 An annual joint meeting devoted to affirming a 'Europe of culture' could help to assess the developments which will lead the Union from a community of rights to a community of values – to set an annual objective of promoting at least one truly shared cultural value.

5.3.3 Continuing the already rich experience of the annual European capitals of culture, the first joint meeting of the two institutions could set itself the objective of establishing an open competition for proposals leading every two, three or four years (why not with the frequency of the Olympics) to an initiative involving each European country. Each of these countries would itself open up European culture to the world by involving in the European initiative at least one partner from a different cultural region.

5.3.4 In addition, the two institutions could help to set up a European 'task force' to encourage cultural and artistic exchange in areas of conflict – both for conflict prevention and as an element of post-conflict reconstruction.

Brussels, 31 March 2004

*The President  
of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> Ruffolo Report – EP A5 – 0281/2001

<sup>(2)</sup> A feasibility study concerning the creation of a European observatory of Cultural Co-operation (cf. Final Report to the European Commission – 18 August 2003) [http://europa.eu.int/comm/culture/eac/sources\\_info/pdf-word/final\\_report\\_aout\\_2003.pdf](http://europa.eu.int/comm/culture/eac/sources_info/pdf-word/final_report_aout_2003.pdf)



**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: Review and update of VAT strategy priorities'**

(COM(2003) 614 *final*)

(2004/C 112/18)

On 20 October 2003 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 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 11 March 2004. The rapporteur was Mr Pezzini.

At its 407th plenary session (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion by 101 votes to 0 with 1 abstention.

## **1. Introduction**

1.1 At the time of adoption of the first and second Community Directives on value added tax, the Community had undertaken, among other things, to take steps to set up a joint system in the context of intra-Community trade which would provide in the medium term for abolition of taxes on imports as well as de-taxation of exports. This commitment was based on the declared intention to create a system which would be capable of functioning both within the single market and in each individual Member State.

1.2 The Commission drew up the proposals for setting up such a system in 1987, as part of the initiatives to prepare for the completion of the single market planned for 1993.

1.2.1 The system envisaged in particular the setting up of a harmonised structure based on two categories of rates, the approximation - within a predetermined range - of the rates applying in the individual Member States, and a compensation mechanism for reallocating tax revenues among the various financial administrations.

1.3 Once it realised that it was impossible to adopt the Commission's proposals before January 1993, the Council decided as early as 1989 to apply a transitional system which would make it possible on the one hand to abolish all forms of frontier controls and on the other to ensure that the tax was levied in the Member State of destination of the goods and/or service.

1.3.1 At the same time the Council reaffirmed its wish to set up a definitive system based on the principle of taxing goods and services in the Member State of origin, stipulating 31 December 1996 as the time limit for achieving that objective.

1.4 In accordance with the wishes expressed by the Council, the Commission therefore drew up a structured action programme to achieve a system based on modernisation and uniform application of the existing system, as well as on the introduction of gradual changes intended to encourage the process of transition towards a definitive common system of value added tax.

1.5 Nonetheless, given the continuing differences of view within the individual states on the desirability of setting in train a genuine process of reforming the VAT system, the results achieved remained modest. Indeed, to guarantee the neutrality of the tax with regard to the normal process of competition between firms, it would have been necessary to achieve, as the Commission repeatedly proposed, a certain degree of harmonisation both of rates and of taxation mechanisms.

1.6 In June 2000 the Commission presented a communication to the Council and the European Parliament in which it set out the initiatives to be taken to define a sustainable strategy for perfecting the common system of value added tax. The guiding principles of this programme were in particular the simplification and modernisation of the system of rules, the adoption of measures designed to ensure more uniform application of the existing provisions, and greater cooperation between the tax administrations of the Member States.

1.7 The transitional system, albeit modified in various ways, is still in force and there is no likelihood of its replacement in the immediate future, although according to a widely held view it has significant imperfections which are such as to prejudice the proper functioning of the single market. Three years having passed since the launching of the programme in 2000, the Commission, in a communication to the Council, the European Parliament and the Economic and Social Committee, is now proposing a review and update of VAT strategy priorities, not least in the light of initiatives taken in the meantime.

## **2. General comments**

2.1 Over the years the Committee has several times had occasion to confirm its unconditional support for establishing a definitive common system of value added tax, and has repeatedly called on the Member States to adopt the appropriate strategies to that end. Similarly, it has repeatedly expressed dissatisfaction with the many imperfections of the present provisional system, and has called for the necessary modernisation measures to be adopted.



2.2 As early as 1988 the Committee pointed out the anachronistic nature of a system in which transactions between parties operating within the same market, albeit residing in different Member States, were defined as imports and exports – terms which could at most be suitable for transactions with trading partners operating outside that market.

2.3 Moreover, the opinion is widely held that the current system is in general inadequate, and in the final analysis even hinders the operation of the single market.

2.3.1 Although it is of course desirable to move on quickly to a definitive system, the Committee is nonetheless aware that at the present stage, in which the Council expresses the demands of the national governments rather than Community interests, the only feasible objective is an action programme based on modernisation of the existing system and the adoption of measures to assist the transition to a definitive VAT system.

2.4 The Committee appreciates the fact that the Commission does not question the idea of a definitive system, and it shares its cautious attitude of confining itself to pursuing at present a strategy of gradual modernisation of the existing system. In that context it is pleased with the results finally achieved in terms of simplification and more uniform application of the system.

2.5 The Committee particularly welcomes the adoption of the initiatives taken by the Commission to implement the action programme launched in 2000.

2.5.1 In particular, it is pleased with the adoption of Directive 2000/65/EC, which abolished the institution of tax representation with effect from 1 January 2003 <sup>(1)</sup>, Directive 2002/38/EC on services provided electronically <sup>(2)</sup>, Directive 2003/92/EC on the rules on the place of supply of electricity and gas <sup>(3)</sup>, Directive 2001/44/EC on mutual assistance on recovering credits <sup>(4)</sup>, and the adoption of Regulation (EC) 1798/2003 on administrative cooperation in the field of VAT <sup>(5)</sup>. It would also wish to point out that in the context of initiatives intended to encourage closer cooperation among the tax authorities of the Member States in fighting tax fraud, the adoption of the Fiscalis programme is of particular importance.

2.6 While appreciating the work carried out by the Commission, the EESC would point out that at times the Commission's work has seemed, because of continuing positions in the Council which seek to preserve national interests, to show a certain lack of coherence and lack of clarity in setting priorities.

2.7 The Committee feels that the proposed strategy should give top priority to the adoption of measures designed to guarantee the uniform application at Community level of the common system of VAT. The EESC has already expressed the view elsewhere that it would be desirable to transform the VAT committee into a regulatory committee with the task of assisting the Commission in adopting measures to implement existing provisions, along the lines set out in the draft directive of 1997 and in the Commission's Communication of June 2000 on the strategy to improve the operation of the VAT system in the internal market <sup>(6)</sup>.

### 3. Initiatives in the process of being adopted

#### 3.1 Simplification of the system

3.1.1 The Committee shares the view that simplification of the tax obligations imposed on operators by the current system should constitute a priority of the Commission's strategy, not least to meet consumers' requirements.

3.1.2 In this context the Committee hopes that work can resume as soon as possible on a draft directive providing for the cross-frontier deduction of tax already paid, in place of the system provided for by the 8th VAT Directive. It also welcomes in particular the suggestion made by the Council presidency to use to this end a system of information exchange and redistribution of the tax among Member States similar to that envisaged by the directive on electronic trade.

3.1.3 Moreover, the Committee appreciates the Commission's initiative of launching a public consultation on the simplification and harmonisation of tax obligations with regard to VAT. In this context it hopes that measures will be adopted to differentiate the system for meeting obligations according to the size of the commercial operators involved. From the 1990s onwards the Commission has collated a number of good practices adopted by the Member States to streamline the way micro-enterprises and small enterprises meet the obligations placed on them by the VAT rules <sup>(7)</sup>. Moderating the legal obligations would also have the effect of containing the problem of undeclared work.

<sup>(6)</sup> EESC opinions: OJ C 19 of 21.1.1998, page 56, and OJ C 32 of 5.2.2004, page 120

<sup>(7)</sup> See the EESC's own-initiative opinion on the European Charter for Small and Medium-sized Enterprises (OJ C 204 of 18.7.2000, p. 57, points 1.6 – 12), the EESC opinion on the Proposal for a Council decision on a multi-annual programme for enterprises and entrepreneurship (2001/2005) (OJ C 116 of 20.4.2001) and the EESC opinion on The role of micro and small enterprises in Europe's economic life and productive fabric (OJ C 220 of 16.9.2003, p. 50, point 3.5).

<sup>(1)</sup> EESC opinion: OJ C 409 of 30.12.1998, page 10

<sup>(2)</sup> EESC opinion: OJ C 116 of 20.4.2001, page 59

<sup>(3)</sup> EESC opinion: OJ C 133 of 6.6.2003, page 58

<sup>(4)</sup> EESC opinion: OJ C 101 of 12.4.1999, page 26

<sup>(5)</sup> EESC opinion: OJ C 80 of 3.4.2002, page 76

3.1.4 The EESC appreciates and supports the work being done by the Commission to encourage the creation of a 'one-stop shop' system whereby firms registered in more than one Member State can meet their EU-level VAT obligations in the country where they are established <sup>(1)</sup>.

### 3.2 Harmonisation and modernisation of the system

3.2.1 The EESC shares the view that it would be desirable to adopt measures to prevent the occurrence of double taxation. On this point it endorses the Commission's approach of setting up instruments to solve individual cases of double taxation on the model of those provided for in the international conventions applicable to direct taxation.

3.2.2 In the context of the initiatives to be taken to ensure a higher level of harmonisation of the common system, the recasting of the 6th Community Directive on VAT appears to be particularly important. Having been subjected to numerous changes, it has become in the course of time a complex set of rules which is not easy to consult. Moreover, technological progress, new commercial practices and privatisation and liberalisation processes which have affected large sections of the EU economy necessitate a review of those specific provisions of this directive which no longer correspond to the reality of economic transactions.

3.2.3 Moreover, the Committee agrees with the Commission on the need for an early rationalisation of the current system of derogations by eliminating those which distort competition and generalising those which are more effective.

## 4. Guidelines for the future

### 4.1 Revision of the rules on the place where services are taxed

4.1.1 The Commission has launched a public consultation to assess the need for amendment of the rules on the place where services are taxed. The consultation is based on a document drawn up by the Commission's Directorate-General for Taxation and the Customs Union, which assesses the desirability of changing from the principle of taxation in the country of origin to that of taxation in the country of destination, or regarding as the place of taxation of services no longer the place where the service provider resides but the place where the beneficiary of the service resides <sup>(2)</sup>.

<sup>(1)</sup> Cf. point 3.1.2 of COM(2003) 614 of 20.10.2003.

<sup>(2)</sup> The summary report on the results of the consultation carried out by DG TAXUD (VAT – place of taxation for the provision of services (TAXUD/C3/2357)) which inspired the document COM(2003) 822 final, expressed the view that the overwhelming majority of the 57 organisations interviewed are in favour of the approach indicated above.

4.1.2 The rule of taxation in the place of residence of the service provider has worked up until now; however, the proliferation of cross-border services is likely to create complex administrative situations and distortions of competition, giving rise to cases of double taxation or non-taxation of international services. The problem has been brought to light particularly by services linked to e-commerce.

4.1.3 The amendment therefore provides that, in the same way as for voluntary bankruptcy, for the provision of services the person liable for VAT would be the beneficiary (where a VAT-taxable dealer is concerned) and not the provider. The amendment would make it possible, among other things, to reduce the administrative load on operators, because the service provider would no longer be obliged, as at present, to register at the border when he carries out taxable operations in a state different to his state of residence. Moreover, to the extent that the changes are harmonised with rules applicable in third countries which have their own taxes on consumption, the result would be to reduce the risks of double taxation or non-taxation of international services.

4.1.4 The Committee agrees there is a need for revision of the rules on the place of taxation of services along the lines set out above, but thinks it desirable to extend the review to all services intended for final consumers. It also agrees with the Commission that in this context it would be desirable to extend to services the system of information exchange used by the tax authorities of the Member States (VIES system).

### 4.2 Combating tax fraud

4.2.1 The Committee agrees that combating VAT fraud should constitute one of the priorities for Commission action. Indeed, as well as having a significant financial impact, fraud involves distortions of competition which benefit the less honest operators.

4.2.2 The Committee is aware that the present system is highly vulnerable to fraud. Cases of fraud are encouraged by the possibility of combining operations to which VAT is applicable with operations for which actual payment of VAT is not required. Nonetheless, the Committee takes the view that fraud should be combated not so much by introducing amendments to the current system, but in the context of the existing rules. The results of a strategy based on introducing substantial modifications to the current system would be uncertain, while the direct and indirect administrative costs of such a strategy would be enormous.

4.2.3 Thus the EESC suggests making the best use of existing instruments for administrative cooperation between states, as well as providing further instruments. In this context, moreover, considerable progress has already been made: Regulation 1798/2003 lays down particularly effective rules on this which should facilitate contacts among the national administrations; while adoption of the Fiscalis programme will, for its part, make possible closer cooperation between states in combating tax fraud, through the use of advanced electronic systems for the exchange of information. Finally, the Committee takes the view that an important contribution to combating the most excessive forms of tax evasion could be made by developing specific strategies at national level. In this context it particularly welcomes the initiative which has emerged in the SCAC to draw up a guide to some of the practices adopted by individual national administrations in combating tax fraud.

## 5. Conclusions

5.1 The Committee reiterates the view that the many serious limitations of the current system can be eliminated only by introducing a new definitive system. Nonetheless, it is aware that at present such an objective cannot be achieved in the short term. It therefore appreciates the Commission's realism in pursuing a strategy of gradual improvement of the existing system.

5.1.1 The EESC urges the Member States and the Council to abandon their current positions in favour of policies with a real chance of encouraging the development of the internal market to the benefit of firms but above all of consumers. It points out that, given the single currency, Europe can no longer tolerate

the deficiencies of the current transitional system for value added tax. In particular, it hopes that in the context of the institutional reform set in train by the European Convention the Commission will be given suitable powers to implement European legislation, and that the unanimity rule will be abandoned for types of taxation which affect competition on the internal market. Any discussions on revising the rules for taking decisions on taxation in the EU should also include VAT matters.

5.2 However, given the current climate of reluctance to adopt a common VAT system of a definitive nature, and given the need for modernisation of the transitional system, the EESC agrees that the central elements of the improvement should be simplification, modernisation of current rules, more uniform application of those rules and greater administrative cooperation among the tax authorities of the Member States.

5.2.1 The Committee also shares the Commission's view that modernisation and simplification on the one hand, and cooperation and fraud prevention on the other, are part of a single package and must therefore proceed in parallel.

The EESC therefore appreciates the initiatives taken by the Commission, as well as the other initiatives currently under consideration to implement the 2000 strategy. The Committee endorses in particular the revision of the rules on the place of taxation of services along the lines set out in the communication in question, and takes the view that fraud should be combated in the framework of current law. Finally, it hopes that the work on the draft directive to change the status of the VAT committee can be resumed as soon as possible.

Brussels, 31 March 2004

*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 administrative cooperation in the field of excise duties' and the 'proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums and Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products'**

(COM(2003) 797 final - 2003/0309 (COD), 2003/0310 (COD))

(2004/C 112/19)

On 13 January 2004 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 proposals.

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 11 March 2004. The rapporteur was Mr Pezzini.

At its 407<sup>th</sup> plenary session (meeting of 31 March 2004) the European Economic and Social Committee adopted the following opinion by 105 votes to one with one abstention.

## 1. Introduction

various administrations and between them and the Commission.

1.1 In 1992<sup>(1)</sup> the scope of Directive 77/799/EEC was extended also to excise duties in order to ensure that national laws were applied and that fraud was effectively combated. This extension was a response to the alarming proportions reached by cases of fraud and to their consequences, entailing substantial losses of revenue for the Member States and jeopardising the principle of equal treatment of economic operators and the operation of the single market.

1.2.3 On the specific point regarding more rapid and efficient exchange of information, the ad hoc group's main recommendation was to set up a system for computerisation of the movements<sup>(2)</sup> and of the monitoring of all products subject to excise duty (and hence not just tobacco and alcohol) as a cornerstone of strengthening the mechanisms for mutual assistance and administrative cooperation in the sector.

### 1.2 The current system cannot keep up with developments in trade

1.2.1 The current legal system has turned out to be too rigid and inadequate to the needs of the internal market in the excise sector, particularly in view of the accentuated internationalisation of trade and the growth in extra-national movements of people and goods.

1.2.4 Excessively centralised and static cooperation has meant insufficient contacts between the local offices or between the national anti-fraud offices, and has ultimately constituted an obstacle to rapid and precise action as well as to greater flexibility in monitoring.

1.2.2 As early as 1997, given the continuous rise in cases of fraud regarding the circulation of products subject to excise duties, an ad hoc group was set up by the European Commission with the task of analysing the situation relating to tobacco and alcohol and of proposing solutions. In its final report<sup>(2)</sup> this group pointed out the lack of coordination among the

1.2.5 Moreover, the monitoring has turned out to be inefficient because of the lack of precise rules to regulate certain aspects of the cooperation itself, such as the use of ad hoc exchanges, the presence of foreign officials at the time of the checks, the possibility of organising multilateral checks, or the use which can be made of the information provided by a Member State.

<sup>(1)</sup> OJ L 76 of 23.3.1992.

<sup>(2)</sup> Report approved by the ECOFIN Council on 19.5.1998.

<sup>(3)</sup> See the EESC opinion on IDABC (e-Government services): CESE 1610/2003 of 15.12.2003.

### 1.3 *Need for updating*

1.3.1 The social, economic and political context has changed radically from the conditions which gave rise to the drawing-up, the adoption and the extension of the directive on excise duties. Similarly, the size of the internal market and the volume of trade between Member States have changed. The exponential growth in intra-Community transactions and better knowledge of the various national tax systems have led to a growth in cases of fraud, exploiting loopholes in European rules, significant differences in taxation between Member States and, in general, the inefficiencies of the monitoring systems in force <sup>(1)</sup>. In this context there is a clear need to modernise, strengthen, simplify and make more efficient the instrument for administrative cooperation and exchange of information between Member States on excise duties.

1.3.2 The special features of monitoring in the excise sector make it necessary to eliminate from the scope of Directive 77/799/EEC and Directive 92/12/EEC the specific provisions on the subject and to incorporate them together, strengthened and simplified, in a new text, on the lines of what has already been done with regard to VAT monitoring <sup>(2)</sup>.

## 2. **Commission proposals**

2.1 To strengthen administrative cooperation in the excise sector, the Commission proposes a more precise legal framework in the form of a regulation, and thus of an instrument which is directly applicable in every Member State, with clear and binding provisions. In particular, it provides for more effective and more rapid procedures in exchanges between the administrations of the Member States and between them and the Commission, in order to achieve greater efficiency in combating fraud.

2.2 Chapter I of the new regulation concentrates on general provisions and procedures. The EESC fully endorses the types of procedure suggested by the Commission, because these would achieve decentralisation of cooperation and make it possible to reduce the many bureaucratic and regulatory barriers which too often hinder the fight against fraud.

2.2.1 The results of these changes should be more rapid exchanges, better motivated officials and more effective use of

technical resources, particularly as regards e-Government. The EESC also takes note of the limits currently placed on the requested cooperation in cases where it might interfere with criminal proceedings. These limits jeopardise or indeed sometimes prevent the identification and punishment of those responsible for frauds in the territory of the requesting administration. The EESC hopes that these limits can be overcome and suggests working with a view to coordination of national criminal proceedings, preferably by setting up an anti-fraud police body at European level with greater powers than the present one.

2.3 Chapter II (divided into five sections) regulates cooperation on request, and redefines the rights and obligations of Member States. It maps out a single legal framework which would be more binding than the previous rules.

2.3.1 With reference to Section 1 governing the procedure for requesting information, the EESC takes the view that the addressee authority is still allowed too much discretion in its response to the request for information.

2.3.2 Section 2 lays down the time limit for providing information in response to such a request, while Section 3 governs the presence of officials from the tax authorities of other Member States in the administrative offices and at administrative enquiries. Such officials can take action within limits, and only subject to previous agreements between the two national authorities concerned.

2.3.3 With regard to Section 3, the EESC would point out how, here too, the legislation of the addressee authority, particularly in criminal matters, could in effect vitiate cooperation, even if the latter is assisted with specific funding <sup>(3)</sup>.

2.3.4 Section 4 regulates the use of simultaneous controls, listing precisely the rights and obligations of the parties concerned and the procedures to be followed.

2.3.5 Here, too, the EESC feels that too much discretion is left to the addressee authority in taking action on simultaneous controls.

2.3.6 Section 5 regulates the procedure for requesting administrative notification.

<sup>(1)</sup> See the EESC opinion on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation.

<sup>(2)</sup> Council Regulation (EC) No. 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No. 218/92 (OJ L 264 of 15.10.2003, p. 1).

<sup>(3)</sup> Decision No. 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003-2007), OJ L 341 of 17.12.2002, page 1.



2.3.7 The EESC endorses Section 5 and in particular the obligation to use only the single form for the notification procedure.

2.4 Chapter III lays down the rules for exchange of information without prior request.

2.4.1 The Commission proposal establishes a flexible, effective framework for increasing exchanges between national authorities. However, it is confined to specifying the situations in which such exchanges should take place, while leaving other important aspects to the regulatory committee procedure <sup>(1)</sup>.

2.5 Chapter IV deals with the principles governing the storage and exchange of information specific to intra-Community transactions.

2.5.1 The EESC endorses the setting up and/or updating of computerised cooperation systems. The use of modern information and communication technology is a decisive step towards achieving greater and more efficient control.

2.6 Chapter V governs relations between the national authorities and the Commission. The latter has no operational role, but only tasks of coordination and stimulus as the guarantor of the proper functioning of administrative cooperation.

2.6.1 The EESC acknowledges the fundamental importance and the completeness of the means provided by the regulation to oblige national authorities to provide precise information to the Commission.

2.7 Chapter VI deals with relations with non-EU countries, providing a legal basis for communicating information from a non-EU country to any Member State under a bilateral agreement.

2.7.1 The EESC underlines the importance of extending information exchange to non-EU countries.

2.8 Chapter VII lays down the conditions governing the exchange of information.

2.8.1 It is emphasised that some of the limits laid down in Chapter VII are due to national practices or laws which unfortunately reduce the efficiency of the system, to the extent that in some cases the Member States avoid making use of the

<sup>(1)</sup> Articles 5, 7 and 8 of the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC).

provisions on mutual assistance, if it is a matter of suspected fraud.

2.9 Chapter VIII concerns the final provisions, among which it is stressed in particular that to implement the present regulation the regulatory committee procedure mentioned above must be used.

2.9.1 The EESC has no special comment to make on this part, except that the proposed five-year frequency for the presentation of the report on the way the regulation is applied seems to be more suitable than the present two-year frequency.

#### 2.10 *Proposal to amend Directives 77/799/EEC and 92/12/EEC*

2.10.1 The parts concerning excise duties – which would be updated and covered by the proposed regulation – would now be completely excluded from the scope of Directive 77/799/EEC. The same applies to the articles on excise duties in Directive 92/12/EEC, which would now be incorporated, as amended, in the same proposed regulation.

### 3. Conclusions

3.1 The EESC appreciates the new rules on cooperation between Member States proposed by the Commission, and agrees with the need to update and strengthen the system of information exchange between Member States in order to combat fraud relating to excise duties. It also notes that the growth in the size and operation of the internal market, together with the increase in taxable persons operating in more than one Member State, calls for greater efforts at cooperation between national administrations.

3.1.1 This is extremely topical when one considers that the EESC has repeatedly stressed the need to strengthen and improve cooperation between the Member States, bearing in mind their inability to make use of existing cooperation mechanisms <sup>(2)</sup> for preventing fraud.

3.2 The Committee, while it acknowledges the specific characteristics of each sector, emphasises that an effective system of checks and mutual assistance between the competent authorities of the Member States cannot operate without greater, more constant coordination between the existing monitoring systems for direct taxation, indirect taxation and excise duties.

<sup>(2)</sup> EESC opinion: OJ C 80 of 3.4.2002, page 76.

3.3 The Committee reiterates its view <sup>(1)</sup> that the existing differences between the Member States in administrative procedures jeopardise the effectiveness of checks, lengthen the time taken for them and represent a significant obstacle to the operation of the internal market.

3.3.1 In the light of the above, absolute priority should be given to any measure intended to introduce more common rules covering every Community citizen.

3.3.2 In this context the 1998 report to the European Court of Auditors <sup>(2)</sup> pointed out that the fight against fraud lacked a precise strategy. Indeed, it noted a contradiction between the existence of a single market for fraud and the absence of a single market for applying the law. In terms of VAT alone, the Court estimated the extent of fraud <sup>(3)</sup> at EUR 70 billion, corresponding to 21 % of the total revenue of the Member States.

3.4 Once again the benefits which would flow from more effective operation of the single market, and in the case in point from procedures likely to detect and combat fraud and tax evasion, are being limited by the wish to safeguard national interests. As already pointed out by the EESC <sup>(4)</sup>, administrative cooperation and prevention of fraud must go hand in hand with modernisation and simplification of tax systems. This is all the more true in an enlarged Union, in which harmonisation takes on even greater importance. There is no doubt that many fraudulent practices are directly related to the differences — sometimes significant — which exist between excise rates applied in the different Member States.

3.5 It would be desirable to combine supranational legal instruments such as that of the European company with suitable taxation instruments and related procedures for monitoring and information exchange. In other words, one could envisage a 'European' exchange and monitoring system,

uncoupled from the current national procedures and to be applied gradually.

3.6 The Committee takes this opportunity to criticise the limitations arising from the unanimity principle, which at present governs most Community decisions on tax law, and reiterates the need to replace it with the qualified majority principle when it is a matter of taxes which influence the operation of the internal market or cause distortions of competition.

3.7 It is curious that reference is often made in general to the constitutional principles of fairness in taxation, in relation to the potential distortions of the European internal market, while in practice differences and privileges arising from national laws and procedures, and which affect other Member States, are accepted.

3.8 Taking account of national procedures in force and of the political reluctance to change these structures radically, the EESC accepts the proposed amendments as a point of convergence and as a further step, albeit insufficient, towards modernising cooperation between Member States. For example, it welcomes giving equal legal force to information exchanged electronically and information exchanged on paper. It also calls on the relevant authorities of the Member States to react in good time to cooperation requests from other administrations, without subordinating such practices to purely national enquiries. In this context it points out that the technology of monitoring and exchange instruments must be adapted to the most highly developed forms of fraud and evasion, which themselves make use of the most modern technology.

3.9 The EESC suggests that it is advisable to give the European Commission greater operational and investigative powers, for example through the OLAF which could take on broader supranational powers of monitoring, investigation and action.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> EESC Opinion on the Proposal for a Council Directive amending Directive 77/388/EEC — OJ C 19 of 21.1.1998, page 56.

<sup>(2)</sup> OJ C 349 of 17.11.1998, page 15.

<sup>(3)</sup> Ibidem.

<sup>(4)</sup> EESC Opinion on the Proposal for a Council Regulation amending Council Regulation (EEC) No. 218/92 — OJ C 116 of 20.4.2001, page 59.

## Opinion of the European Economic and Social Committee on 'Croatia's Application for EU membership'

(2004/C 112/20)

On 15 July 2003, the European Economic and Social Committee decided to draw up an own-initiative opinion under Rule 29 of its Rules of Procedure on Croatia's application for EU membership.

The Section for External Relations, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 9 March 2004. The rapporteur was Mr Rudolf Strasser.

At its 407<sup>th</sup> plenary session, held on 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee adopted the following opinion, with 98 votes in favour and three abstentions:

### 1. Introduction

1.1 In its relations with the Western Balkan states, the EU gears its policy towards strengthening democracy in these states and promoting reconciliation and cooperation. Since 1991 the EU has been providing financial aid, under various programmes, which, in the case of Croatia, has amounted to a total of c. EUR 500 m. for the period up to and including 2002. In 1999 the EU proposed the establishment of a Stabilisation and Association Process in respect of the Western Balkan states.

1.2 At the Zagreb Summit on 24 November 2000, the European Union held out to the Balkan States the prospect of EU membership and an appropriate programme of support measures. This prospect was conditional upon the Balkan States fulfilling the 'Copenhagen Criteria' and meeting the obligations set out under the Treaty on European Union. The Western Balkan states declared their readiness to accept the obligations imposed by the EU and to use the Stabilisation and Association Process (SAP) and, in particular, the Stability and Association Agreements (SAA), following their signature, as instruments for preparing the ground for EU accession.

1.3 On 21 February 2003 the Croatian government lodged its application for membership of the EU. The Council of Ministers decided to call upon the European Commission to proceed in accordance with Article 49 of the Treaty establishing the European Community and to submit its views on this application to the Council.

### 2. General background

2.1 Croatia declared its independence from Yugoslavia on 25 June 1991. The ensuing war with Serbia ended only in 1995 with the signing of the Dayton Peace Agreement. The fighting resulted not only in severe losses amongst the civil population and harmful social consequences but also caused major damage to large parts of the country and led to a huge fall in GNP.

2.2 Between 1990 and 1993 real GDP slumped by 36 %<sup>(1)</sup>. Industrial production, above all, suffered as a result of the war. Not only has Croatia had to tackle its conversion from a socialist planned economy to an effective market economy, but it

has also had to carry out extensive restructuring in many areas of its economy as a consequence of severing its links with Yugoslavia and, above all, as a result of the war.

2.3 Croatia has a total surface area of 56,542 km<sup>2</sup> and a population of some 4.5 million. According to Croatia's 2001 population census, 7.47 % of the population belongs to an ethnic minority. Serbs form the largest ethnic minority (4.5 % of the population); the other ethnic minorities are Bosnians, Italians, Hungarians, Albanians, Slovenians, Roma, etc.

2.4 In the period extending from the end of the war with Serbia up to the death of the Croatian President, Mr Tudjman (in 1999) or up to the parliamentary elections in January 2000, the prevailing influence was exercised by the nationalistic HDZ Party. The formation of a coalition government (centre-left coalition) and the election of Stjepan Mesic as President of Croatia in 2000 provided the political basis for the necessary reforms. Following the parliament elections in Croatia on 23 November 2003, the HDZ, which now no longer includes extreme nationalist forces amongst its membership, topped the poll and was entrusted with the formation of a government. The EESC welcomes the fact that the new Croatian government is also expressly adhering to an integrationalist and reformist course and is resolutely pursuing the goal of EU membership, which is supported by a clear majority of the Croatian population.

2.5 The macro-economic indicators have improved considerably, particularly in the period since 2000. There has been strong economic growth (2001: +4.1 %; 2002 + 5.2 % and, up to the third quarter of 2003: +3.5 %). The rate of inflation was brought down from 7.4 % in 2000 to 2.3 % in 2002; by December 2003 the figure had reached 2.2 %. The main reasons for this trend are: a high level of domestic demand, exchange rate stability, trade liberalisation measures, moderate wage increases, increased production and more competition<sup>(2)</sup>. The rate of unemployment, on the other hand, has remained very high (approximately 15 %). In 2003 the balance of trade deficit rose to a new record high of \$7.125 billion and there has also been a further increase in the level of government debt.

<sup>(1)</sup> World Bank Report No. 25435 HR.

<sup>(2)</sup> It should be noted that Croatia's per capital GDP is only about one third of the corresponding figure for Slovenia.

2.6 Although the unemployment figure has once again fallen slightly, the high level of unemployment of c. 15 %<sup>(1)</sup> represents one of the major social and political problems facing Croatia. In the EESC's view, an issue which prompts particular criticism is the fact that the level of unemployment is as high as 40 % in individual regions of Croatia. In this context, it should be borne in mind that Croatia has an unemployment rate of barely 50 %, which is very low when measured against the EU figure of over 60 %. In this context, the EESC draws attention to the fact that Croatia has a large shadow economy. Curbing the level of the shadow economy, inter alia, by introducing general conditions which are business-friendly, will be one of the key challenges facing the Croatian government.

2.7 Croatia's aggregate public debt has been criticised by the European Commission, the IMF and the World Bank. Despite Croatia's very high tax ratio (latest figure: 48.4 %), the country's level of external debt, expressed as a percentage of GDP, jumped from 44.8 % in 1998 to 74.3 % in 2003<sup>(2)</sup>. One of the main reasons for this sharp increase was also the considerable post-war need for investment in infrastructure and public installations. The EESC does, however, regard the high level of private debt, brought about by a marked expansion of consumption, as representing a further problem.

2.8 A World Bank study<sup>(3)</sup> has criticised the fact that in Croatia expenditure on public administration, which amounted to 11.2 % of GDP, was substantially higher than in the acceding states, where the average figure was 7.2 %. Similar observations may be made in the case of transfer payments.

### 3. Democracy and the rule of law

3.1 In its annual report for 2003 on the Stabilisation and Association Process, the European Commission points out that:

- the democratic institutions are working well; the political dialogue between the government and the opposition is, however, often arduous because internal problems frequently eclipse the international agenda;
- the parliament is exercising its powers without hindrance and the opposition is able to play its role to the full in the work of the parliament;
- it has been possible to speed up legislative work.

The EESC welcomes the progress made in the above field as this is a key prerequisite for Croatia's participation in the process of European integration. It is in Croatia's interest to tackle, as soon as possible, the outstanding shortcomings standing in the way of the achievement of a fully viable democracy and hampering the rule of law.

<sup>(1)</sup> Figure based on the ILO method of calculation. The corresponding figure issued by the Croatian National Statistical Office is, however, 22.5 %.

<sup>(2)</sup> European Economy, Occasional Papers, No. 5, January 2004.

<sup>(3)</sup> World Bank Report No. 25434-HR.

3.2 In its annual report<sup>(4)</sup>, the Commission draws attention to the fields in which considerable efforts have still to be made. In its appraisal of the situation in the fields of the administration of justice, enforcement of the law and the rule of law, the Commission criticises the following aspects:

- the way in which the judiciary operates (the Commission highlights problems such as procedural delays which are jeopardising the rule of law, a shortage of qualified staff, and a backlog of documents);
- the way in which constitutional rules are observed in the execution of sentences;
- shortcomings in the measures to combat corruption;
- the unsatisfactory way in which asylum applications are dealt with;
- lack of certainty as regards the dispensation of justice.

3.3 At the end of 2002, the Croatian government presented a Green Paper on the reform on the judiciary. Some initial important steps along the road to reform have been taken by setting up a Judicial Academy and by handing over tasks to notaries and judicial officers. The EESC hopes that further essential reform measures will be rigorously implemented.

3.4 The shortage of qualified staff and the lack of adequate technical equipment still constitute a major problem at the present time. In the EESC's view, the delays in court proceedings and the consequent backlog of documents is resulting in a lack of legal certainty and consequently also impeding the necessary reforms.

3.5 Croatia is similar to a number of the acceding states in that it has a long tradition of maintaining a land register. As the register has not been updated for several decades, it is frequently very difficult to establish real ownership of property. This represents an impediment to the necessary privatisations. The EESC believes that the setting-up of a modern, effective land register is a vital requirement, above all also in the context of preparing for possible accession to the EU. One important step forward has been the establishment of a valuer's office.

3.6 The level of cooperation between Croatia and the International War Crimes Tribunal for the Former Yugoslavia also poses a very serious political problem. As a result of the inadequate level of cooperation up to now, EU Member States have not been prepared to ratify the Stability and Association Agreement. The EESC takes the view that it would be very disadvantageous for Croatia if Commission recommendations on this politically very sensitive issue were in reality not acted upon. The EESC hopes that the Croatian government will give the necessary support to applications for extradition from the Tribunal in The Hague.

<sup>(4)</sup> COM(2003) 139 final of 26.3.2003.



3.7 The question of the return of refugees and expelled persons is a matter of major political importance to Croatia and undoubtedly represents an intractable problem, which involves some 250,000. Problems arise in connection with the rebuilding of property which has been destroyed, the reassignment of ownership of property, the lack of accommodation and shortage of job opportunities. Under the Dayton Peace Agreement, Croatia entered into a series of commitments with regard to the return of refugees. The EESC recognises that the necessary fulfilment of these commitments imposes a considerable burden on Croatia but expects that this problem will be resolved as soon as possible.

3.8 In December 2002 the Croatian parliament adopted a constitutional act to safeguard the rights of minorities. This act is designed to provide minorities with appropriate representation not only in elected bodies but also in the administration of justice and other parts of the State administrative apparatus. The EESC points out that, as is the case in other legal areas, what is of decisive importance is, in the final analysis, how the laws are implemented and administered. The EESC assumes that in future, in the case of elections, for example, the remaining discrimination against the Roma will be removed. The EESC welcomes the efforts made recently in this field.

3.9 In its own-initiative opinion on promoting the involvement of civil society organisations in South-East Europe <sup>(1)</sup>, the EESC stated that: 'Independent, free and strong media are among the most important prerequisites for a healthy and stable democracy, with a public well-informed enough to play an active and important role in the governance of their country'.

3.10 The EESC recognises the efforts which Croatia has made up to now in order to make the media more independent and to enable them to have greater freedom. The EESC welcomes the fact that Croatia has a broad spectrum of independent print media which is able to reflect the diversity of opinion in the country and the diversity of its cultural and linguistic minorities. The EESC hopes that when the reform, which has been decided upon, of the state radio and telecommunications entity is implemented, steps will be taken fully to safeguard the independence of these key media and also to comply with the need to ensure the diversity of opinion and population diversity.

#### 4. Market economy and structural reforms

4.1 In its annual report, the Commission highlights the fact that the switch to a market economy has already made further progress in Croatia than is the case in other Western Balkan states. The Commission does, however, point out that the privatisation process started to falter in 2002. The World Bank, for its part, notes in its report that the privatisation process is not yet by any means completed and that progress made with

economic reconstruction is also unsatisfactory. In the course of 2003, the Croatian Privatisation Fund (HFP) did indeed carry out further privatisations in a number of areas, such as the banking sector, but not to the requisite extent. It is, in the EESC's view, important that the new government presses ahead - prudently - with the requisite privatisation process, particularly in the following sectors: industry, tourism and agriculture. Use should also be made of the possibilities provided by public-private partnerships.

4.1.1 The EESC takes the view that it is also necessary for account to be taken, when carrying out privatisations, of the interests of the employees directly concerned. In order to avoid damaging social consequences as far as possible, supporting labour-market measures, e.g. in the form of measures to promote retraining, should be introduced. In this context, the EESC draws attention to the fact that recommendations of the World Bank and the IMF focusing on liberalisation, privatisation and deregulation must also take account of the social dimension.

4.2 In the context of government debt, too, the Croatian State has been widely criticised for continuing to pay significant levels of aid to loss-making state-owned enterprises. Between 1996 and 2000 the number of employees in state-owned enterprises fell by 27 %, whereas the corresponding figure for privatised enterprises was 14 %. Employment in private-sector enterprises, on the other hand, increased by 50 % <sup>(2)</sup>. In the view of the Croatian social partners, the fact that too few new manufacturing enterprises, in particular SMEs, are being established, also poses an employment problem. In the EESC's view, improvements in training and further training and investments in technical equipment for educational establishments should be seen as an important first step towards tackling the employment issue.

4.3 Industry in Croatia currently accounts for just over 23 % of GDP and provides employment for c. 300,000 persons (i.e. about 25 % of the total labour force) <sup>(3)</sup>. Many enterprises are loss-making and some are heavily in debt. As a result of a shortage of capital, many enterprises continue to employ obsolete technology, as a result of which their products are not always sufficiently competitive in comparison with production at international level. With a view to making the Croatian economy more competitive, the EESC underscores the need for the country to devote more resources to R & D (2001: 1.09 % of GNP) <sup>(4)</sup> and also to provide incentives for the establishment of new enterprises, in particular SMEs, whilst removing administrative obstacles which stand in the way of this requirement.

4.4 Croatia has an efficient pharmaceutical and chemical industry. The situation in the textile industry is difficult. Heavy industry in Croatia, in particular ship-building, continues to be essentially in the hands of state-run enterprises and is heavily in deficit.

<sup>(2)</sup> World Bank Report, p. 87 et seq.

<sup>(3)</sup> Croatian National Statistical Office.

<sup>(4)</sup> See the replies to the questionnaire drawn up by the European Commission.

<sup>(1)</sup> REX 123 – OJ No. C 208 of 3.9.2003, page 82.



4.5 Tourism is of particular importance to the Croatian economy as it accounts for over 20 % of GDP and provides almost 6 % of the total number of jobs. Tourism also brings in about one third of the country's total foreign exchange revenue. The EESC highlights the problem that a very high percentage of the tourist enterprises continue to be state-owned. In the field of tourism, in particular, forging ahead with privatisation could result in more effective use being made of the available potential. It would also be desirable to open the market to foreign investment in this sector.

4.6 Following the resolution of the banking crisis in 1998, a number of state-owned banks were sold off to foreign investors, thereby bringing greater security and stability to the banking sector. Productivity and the range of services provided were considerably improved. This is, in the EESC's view, a key prerequisite for the successful introduction of the necessary structural measures in the Croatian economy. The EESC highlights the fact that the necessary investment is being hampered by the cost of loans, which continues to be excessively high.

4.7 The State administration is called upon to provide support for the implementation of the vitally necessary structural reforms and the improvement of Croatia's economic competitiveness. The EESC is of the opinion that the public administration, as currently structured in Croatia, is not efficient enough to enable it to do full justice to the tasks and requirements which have been set. The EESC assumes that the various supporting programmes, such as SIGMA (<sup>1</sup>), will make a helpful contribution towards implementing the necessary reforms. It is of crucial importance that the planned decentralisation leads to the optimal allocation of tasks between central bodies and local authorities.

4.8 Croatia has a comparatively well developed social security system. A reform of the pension system was carried out in 2001 with a view to reducing the burden on the state budget, on the one hand, and stimulating economic development, on the other hand. This reform was endorsed by the majority of the Croatian population. Reform of the labour market, with the view, *inter alia*, of achieving greater flexibility, should go hand-in-hand with the introduction of corresponding social protection measures and measures to promote safety underpinned by an effective system of jurisdiction in labour matters.

4.9 Much also needs to be done in the field of agriculture. Agriculture in Croatia consists predominantly of smallholdings with an average size of 5 ha. In its report, the World Bank noted that 30 % of agricultural land continues to be owned by the state and that, in the case of 40 % of agricultural land, ownership has not been resolved and would take a further 15 years to resolve. The agricultural sector in Croatia is currently uncompetitive. Agriculture, which employs approximately 8 % of the labour force in Croatia, accounts for a relatively high percentage of the country's GDP (9 %). One of the conse-

quences of Croatia's low level of competitiveness is that the relatively efficient Croatian food industry has to import raw materials.

4.10 Three-quarters of the agricultural land in Croatia is managed by the many small farms, the remainder continues to be managed by a small number of large agrarian combines. A lot of productive agricultural land can still only be used to a limited extent because of war damage (e.g. the laying of land-mines). Whilst the small privately-owned farms had already attained the 1990 level of production once again by 1998, the large agrarian combines, which remain in state ownership, are unable to cope with the new economic conditions.

4.11 Ongoing uncertainty over the ownership of agriculture holdings in many cases greatly impedes the necessary structural reforms in the agricultural sector in Croatia. The same problems arise in connection with the procurement of loans for modernising farms. Because of the high risks involved, banks are not keen to make funding available for investments in agriculture.

4.12 A new support programme for agriculture came into effect in 2003. The EESC hopes that the attendant reforms will, on the one hand, make agriculture in Croatia more competitive and, on the other hand, facilitate moves to draw nearer to the EU. In the EESC's view, it is essential, in the course of the modernisation of the agricultural sector in Croatia, not only to make the necessary improvements to training and advisory services but also to establish without delay an effective, politically independent, system of representation of interests.

## **5. Implementation of the Stabilisation and Association Agreement (SAA) and use of support programmes**

5.1 Implementation of the SAA has a decisive role to play in preparing Croatia for EU membership. The ratification process by the Community and the Member States has not yet been completed. An Interim Agreement has been introduced in the meantime as a transitional measure (see point 3.6).

5.2 In October 2001 the Croatian government adopted an action plan for implementing the Agreement. A series of measures have already been put into effect. The aim is for Croatia to be ready for EU membership by the end of 2006. In order to enable these ambitious goals to be achieved, a 'coordinator for European integration issues' was appointed in all the various government authorities.

5.3 In December 2002 a government programme was adopted for 2003 in respect of Croatia's integration into the EU. The programme's priorities were as follows:

- economic adjustment;
- alignment of Croatian law on EU law;

(<sup>1</sup>) Support for Improvement in Governance and Management in Central and Eastern European countries (established as a joint venture between the OECD and the EU).

- making the administration more efficient;
- a strategy for informing the public in Croatia; and
- the adjustment of legal provisions to comply with the obligations under the SAA.

According to information received from the Croatian authorities, more than 109 legislative measures in the above fields were introduced by the end of 2003. In January 2004 the second integration programme for conforming with the existing body of EU law was adopted. The requisite implementing regulations are being adopted in 2004. The EESC recognises the efforts made by Croatia but is aware that there are difficulties in the way of implementing measures in a number of fields (e.g. harmonisation measures to come into line with EUROSTAT criteria) brought about by the lack of administrative capacity.

5.4 The CARDS support programmes for Croatia have a vital role to play in the implementation of the SAA. These programmes will undoubtedly make a key contribution to the processes of modernisation and democratisation and towards the successful implementation of the necessary environmental measures. The EESC assumes that, if the European Commission endorses Croatia's application for EU membership, the support programmes set up for the acceding states (ISPA, SAPARD, Phare, TAIEX, etc.) will also be made available to Croatia.

5.5 If the Croatian economy is to successfully cope with the conditions applying in the EU's internal market, it is essential that the necessary reforms, liberalisation measures and adjustments to comply with EU law receive the support of civil society. Key prerequisites in this context are that the Croatian population is kept adequately informed of the importance and the impact of Croatia's integration into the EU and that representative civil society organisations are involved in the political decision-making processes.

## 6. Regional problems

6.1 There are, in some cases, very considerable disparities in levels of economic development and prosperity between individual urban conurbations and rural areas in Croatia. Furthermore, a considerable number of both smaller and larger areas were particularly badly affected by the war, which has very greatly hampered their economic development (this was particularly the case with regard to, for example, the regions of Slavonia and Lika-Senj).

6.2 In February 2002 a fund was set up to provide assistance to disadvantaged areas with the aim of supporting, above all, areas which suffered particularly badly from the effects of the war, areas affected by depopulation and areas suffering from other disadvantages, such as individual islands and upland areas.

6.3 In its Annual Report for 2003, the European Commission criticised, on the one hand, the fact that no decision had yet been taken on the criteria for allocating funding and, on the other hand, the lack of clear provisions defining the responsibilities for the processing of applications for funding. The EESC urges that rapid solutions be found to the outstanding

issues. This is, in the EESC's view, a key prerequisite which has to be met before appropriate use can be made of the various EU programmes, such as INTERREG.

## 7. Environmental issues

7.1 In its report, the World Bank describes the situation as regards the natural environment in Croatia as 'good', when compared with the situation in other central European states. Major investments are, however, still required in the fields of the supply of drinking water and the disposal of sewage and refuse, in order to comply with EU standards.

7.2 Because of the importance of coastal areas as regards tourism and in the light of international obligations to keep the Mediterranean clean, sewage purification in these areas is almost on a par with the level in the EU. In the other areas, however, major investments still have to be made in the fields of sewage collection and purification. A similar situation applies in the case of the collection and disposal of refuse, in particular hazardous waste. The EESC notes that, in its efforts to improve its legal provisions in this field, Croatia is broadly following EU directives and has already made progress accordingly.

7.3 Air quality in Croatia has improved over the last decade; this can be attributed in part to the declining level of industrial production linked to the effects of the war and economic difficulties. In urban areas poor air quality continues to be a major problem. Once the expected economic upturn gets under way, measures will have to be taken to cut emissions in both the transport sector and the energy-generating sector.

7.4 The relatively large area covered by protected zones (approximately 10 %) matches the high level of bio-diversity and the large number of ecosystems and unique landscapes. Some of these features have been placed under the protection of UNESCO. In spite of the abovementioned protective measures, pressure on bio-diversity is increasing. The existing protective measures and conservation areas are unable to meet the demands placed upon them.

7.5 The EESC highlights the fact that, in line with the situation in the majority of the acceding states, there is a considerable need for investment in Croatia in order to comply with the EU environmental standards. It is, in the EESC's view, essential that adequate support be provided to Croatia to back up its efforts to improve the situation.

## 8. International cooperation and relations with neighbouring states

8.1 A key prerequisite for Croatia's successful participation in the process of European integration is that it should fulfil the obligations which it entered into under the Dayton and Paris Peace Agreements and the obligations attendant upon its membership (since 1996) of the Council of Europe. The EESC notes that the Croatian government has expressly committed itself to meeting these obligations but that the necessary rigour is, however, still lacking in some fields.

8.2 If the inhabitants of adjacent countries are to live peacefully side by side, good relations between neighbouring countries are an essential requirement. The EESC notes that economic cooperation between Croatia and its direct neighbours has been more positive than political relations between Croatia and individual, neighbouring countries. There is, in the EESC's view, *inter alia*, an urgent need to find a rapid solution to the unresolved issue of the maritime border between Slovenia and Croatia. This problem is being further exacerbated by the decision of the Croatian parliament to unilaterally extend its maritime rights by establishing a 'Protected Ecological and Fishing Zone' (PEFZ) <sup>(1)</sup> in the Adriatic. In this context, the EESC highlights the need to comply with the obligations under international maritime law.

8.3 Croatia's accession to the WTO in 2000 represented an important step on the road towards the internalisation of the Croatian economy.

8.4 The Interim Agreement (signed on 29 October 2001) under the SAA came into force at the beginning of 2002. This agreement introduced extensive trade concessions. Croatia has been a member of the Central European Free Trade Agreement (CEFTA) since 1 March 2003. Croatia has a total of 35 free trade partners (including the EU Member States). 90 % of Croatia's external trade is at present already subject to preferential treatment and, after the transitional period provided for under the SAA, more than two-thirds of Croatia's foreign trade will be exempt from customs duty. In 2003 the value of goods exported by Croatia was US\$5.65 billion, whilst in the same year, it imported goods worth US\$12.77 billion; it therefore had a balance of trade deficit of US\$7.12 billion.

## 9. Organised civil society

9.1 Organised civil society has an important role to play both in Croatia's conversion to a market economy and in its EU accession process. There are more than 20,000 NGOs in Croatia. The Freedom of Assembly and Freedom of Association Act came into force on 1 January 2002. This law introduced more liberal provisions in respect of freedom of association and the supervision of the activities of NGOs.

9.2 In its opinion on civil society in South-East Europe, the EESC highlighted the following requirements as key prerequisites for ensuring stability and prosperity, namely the need:

- for civil society organisations to become strong and for participatory democracy to become part of the culture of the countries concerned;
- for civil society organisations to be autonomous bodies within a participatory democracy; there is, however, still little overall understanding of the need for this measure;
- to improve the social dialogue;
- for a broadly-based civil dialogue to take place, with a view, *inter alia*, to promoting greater awareness of the environment.

In its opinion, the EESC expressly welcomed the statement made by the Croatian authorities to the effect that the development of civil society was a matter of top priority for the government.

<sup>(1)</sup> This footnote is not applicable to the English version.

9.3 The former Croatian government drew up a draft bill, providing for the establishment of a 'forum', which would enable civil society organisations (NGOs) to discuss issues and draw up opinions on matters of interest to these organisations. The aim of the proposed forum is to underpin the civil dialogue. On 16 October 2003 the 'National Foundation for the Promotion of Civil Society' was established. This body fulfils the roles of the proposed forum. The representatives of NGOs are able to exert due influence in the governing body of the Foundation. This measure, together with the financial support provided for the work of NGOs, are seen as positive developments by the EESC. The EESC also welcomes the fact that NGOs are able to participate in the work of the working parties established by the Economic and Social Council; it hopes that this collaboration can be further extended.

9.4 Croatia set up its second Economic and Social Council in 1999. This is a tripartite body which has a total of 15 members. Alongside representatives of the government, employers' organisations and trade unions are also represented. Institutional representatives of the employers' side are drawn from a single association (the Union of Croatian Employers); the institutional representatives of workers are drawn from five trade union associations (one delegate per association). In line with the principle of rotation, a new chairman of the Council is appointed at regular intervals. The work of the Council is carried out in seven committees; the Council takes its decisions at plenary sessions, which are generally held every three months. The administrative tasks are carried out by an office specially set up for the purpose by the government.

9.5 As is similarly the case in various EU Member States which have their own Economic and Social Council, the Croatian Economic and Social Council has, *inter alia*, the task of addressing fundamental issues relating to economic and social policy, labour market policy, the budget and privatisation.

9.6 The Croatian Economic and Social Council undoubtedly has an important role to play in the social dialogue. The EESC regards the existence of an effective Economic and Social Council as a key prerequisite for the proper implementation of the reform measures due to be carried out; such a Council enables the respective professional groups concerned also to play a role in this context. It is equally important to promote an autonomous social dialogue between the parties involved in collective bargaining.

9.7 Representative bodies are still in the process of being established in Croatia. Not all occupational groups have their own representative bodies.

9.8 Trade union membership was virtually obligatory prior to 1990. Following the economic changeover, trade unions in the individual republics which succeeded the Republic of Yugoslavia, developed along very different lines. Compulsory trade union membership was abolished everywhere and the trade union organisations were completely restructured. Croatia has a large number of individual trade unions and five trade union associations which are, by virtue of their strength, also represented on the Croatian Economic and Social Council.



9.9 Because of the fragmentation of trade unions into five national associations, the interests of workers are not always adequately looked after, e.g. in the Economic and Social Council. Efforts are therefore being made to establish an umbrella organisation for the individual trade union associations. It would, in the EESC's view, be deplorable if, because of this situation, the Croatian trade unions were not to be in a position fully to carry out the role which they have been given under the new system of labour relations.

9.10 The bodies representing employers are the Croatian Economic Chamber and the Union of Croatian Employers. The Economic Chamber is divided into trade and professional and regional groups. Its most important task is to provide support for business both inside and outside Croatia, for example by organising trade fairs and, above all, by providing further training for its members. Membership of the Economic Chamber is compulsory for all business enterprises registered in Croatia.

9.11 Up to 1996 the Economic Chamber was responsible for representing the employers in negotiating collective agreements. This task has now been taken over by the Union of Croatian Employers, an umbrella body representing twenty-three occupational associations and based on the principle of voluntary membership. It is clear that the latter body represents the interests of only part of the overall number of Croatian enterprises. SMEs also have their own association but this body, too, represents only part of the enterprises concerned. It is, in the EESC's view, essential for the employers' organisations to find solutions which will ensure that the interests of all enterprises are defended in a representative way both on the Economic and Social Council and vis-à-vis the government.

9.12 There is an existing legal basis for the separate and independent representation of the interests of agriculture and forestry but it has, up to now, not been acted upon. The interests of farmers are to be represented in a separate section of the Economic Chamber. The EESC shares the view expressed in the report from the World Bank that the interests of farmers are not adequately represented, which is seen as a considerable drawback in the context of preparing Croatia for the adoption of the CAP. The EESC hopes that the Croatian Farmers' Union, which has been operating as an association for a number of years, will be called upon to serve as an interlocutor, will be involved in appraisal procedures and may soon become established as a forceful, independent body representing the interests of Croatian farmers.

## 10. Summary and recommendations

10.1 Croatia declared itself independent from Yugoslavia on 25 June 1991. There were many victims amongst the civil population as a result of the ensuing war with Serbia, which also devastated large parts of the country and, above all, damaged, to an enormous extent, Croatia's economic development.

10.2 In the last few years there have been considerable political and economic changes in Croatia. The democratisation process has made considerable progress. The macro-economic indicators have shown a tremendous improvement, particularly since 2000. In this context, it should be borne in mind that Croatia has to cope with not only its conversion from the old system to an effective market economy but, above all, with the consequences of the war.

10.3 Over the last few years, economic development in Croatia has been characterised by a welcome high level of growth and the stabilisation of prices. In contrast to this situation, however, the level of unemployment, particularly in rural areas, continues to constitute the major, unresolved social problem; the balance of trade deficit has also shot up, as has the level of government debt.

10.4 The EESC highlights the role played by the autonomous social dialogue in promoting the reform process and points out that, in line with its remit, the Economic and Social Council should, in future, too, continue to be taken seriously by the government.

10.5 In individual areas of the economy, such as the banking sector, Croatia has achieved considerable success in its privatisation process. From an overall standpoint, however, Croatia's privatisation process is being pursued less rigorously than is the case in the acceding states. This is serving to impede private investment just as much, as for example, the question of unresolved ownership of property. The EESC hopes that the new government will not only resolutely press ahead with privatisation but will also remove other outstanding obstacles to private investment.

10.6 If the requisite number of new jobs are to be created in Croatia, considerable importance should be attached not only to providing support for the establishment of new enterprises, particularly SMEs, but also to improving training and further training.

10.7 At the Zagreb Summit on 24 November 2000, the EU held out to the Western Balkan states the prospect of accession to the EU and the introduction of support programmes. This prospect was conditional upon fulfilment of the 'Copenhagen Criteria' and the obligations deriving from the EU Treaty. Croatia was the first of the Western Balkan states to submit its application for EU membership, which was presented on 21 February 2003. The EESC regards this decision as a positive development as it indicates that Croatia has opted to participate in the process of European integration.

10.8 The EESC recognises the enormous efforts made by Croatia to meet the prerequisites for EU membership. The action programme adopted by the Croatian Government with a view to implementing the Stability and Association Agreement has an important role to play in this context, as does also the programme adopted by the government at the end of 2002 with a view to Croatia's integration into the EU.

10.9 The objectives which have been set out are undoubtedly very ambitious. If the conditions for EU membership are to be met, there is an urgent need to carry out a comprehensive reform process. It is of decisive importance in this context not just to introduce the requisite legislative measures, which were decided upon in 2003, but also to fulfil, in good time, the administrative prerequisites for ensuring that these measures are effectively applied.

10.10 In the EESC's view, it is also of key importance to the success of the project that the necessary reforms, liberalisation measures and adjustments to comply with EU law receive the support of the people. This, in turn, is dependant upon the public being adequately informed of the importance and the impact of EU membership. The EESC therefore recommends that organised civil society as a whole – not just a number of individual occupational associations – be involved in the necessary decision-making processes. These organisations must also be in a position to provide their members with factually well-founded information.

10.11 The EESC joins the European Commission in expressing its concern over the ongoing unresolved problems in the fields of the administration of justice, measures to combat corruption, the processing of applications for asylum and, in particular, unresolved problems in connection with the Interna-

tional War Crimes Tribunal for the Former Yugoslavia in The Hague. The EESC highlights the fact that the resolution of these problems will be of quite critical importance when it comes to assessing whether the Copenhagen Criteria can be regarded as having been met.

10.12 The EESC recognises the express intention of the Croatian Government fully to meet the obligations set out under the Dayton and Paris Peace Agreements. In this context carrying out the task of repatriating the large number of refugees will pose a considerable challenge.

10.13 In the EESC's view, normalising Croatia's bilateral relations with its direct neighbours is a very essential aspect of Croatia's preparations for EU membership.

10.14 The establishment of strong civil society organisations and an active participatory democracy are also key prerequisites for the achievement of stability and prosperity. The EESC therefore regards it as a positive development that the institutional prerequisites for the social dialogue and the civil dialogue have either been put in place or are in the process of being put in place. A factor of decisive importance in this context is that all occupational groups should be in a position to bring an influence to bear through the medium of representative bodies which are truly representative and well organised.

Brussels, 31 March 2004.

*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 Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance'**

(COM(2003) 828 final - 2003/0324 (CNS))

(2004/C 112/21)

On 30 January 2004, the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The European Economic and Social Committee decided to ask the Section for the Single Market, Production and Consumption to carry out the work on the subject.

In view of the urgency of the matter, at its 407<sup>th</sup> plenary session held on 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee appointed Mr Retureau as Rapporteur-General and adopted the following opinion by 53 votes in favour, two against and two abstentions.

**1. The proposed Council Decisions presented by the Commission**

courts, which retained jurisdiction with regard to validity and to disputes relating to patents issued by the European Patent Office (EPO), as well as for certificates issued by national patent offices.

**1.1 Presentation of the proposed decision**

1.1.1 Two proposals were adopted on the same day. The purpose of the first is to confer jurisdiction on the Court of Justice in disputes relating to the proposed Community patent. The second establishes a Community Patent Court (CPC) attached to the Court of First Instance (CFI) and a patent appeal chamber at the CFI. It also defines the scope *ratione materiae*, *ratione personae* and *ratione loci* of cases brought before the CPC and appeals brought before the CFI regarding disputes relating to Community patents. Finally, it covers any possible appeals to the Court of Justice where there is a serious risk of compromising the homogeneity of law or jurisprudence regarding Community patents.

1.1.2 The European Council held in Lisbon in March 2000 adopted a general programme to increase the competitiveness of the Union's economy in order to turn it into a knowledge-based economy that would be the most competitive in the world. This ambitious programme breaks down into a number of areas, including that of industrial property. In respect of this, the Council relaunched the creation of a system of Community patents in order to mitigate the limitations of the current systems for protecting technological inventions, in order to help stimulate investment in research and development in the European Community.

1.1.3 The Commission, in the introduction to the proposal, recalls the failure of the first attempts to create a Community patent, which began in the early 1970s. The 1973 Munich Convention (European Patent Convention, EPC) was a first step forward, in that it established a system for examining and issuing patents in several states that signed up to the Convention (currently all the countries of the EEA, the Swiss Confederation, Monaco, Liechtenstein and several of the candidate countries), but without modifying the national systems and

1.1.4 In an attempt to overcome the limitations of the Munich Convention, a Community Patent Convention was signed in Luxembourg on 15 December 1975 in order to create a unitary title at Community level. This convention, like the Munich Convention, was too limited in scope. It never came into force, as not enough countries ratified it. However, this attempt was followed in 1989 by an agreement on Community patents, which included, among other things, a protocol on disputes regarding validity and infringement of such patents, but these agreements never came into force either.

1.1.5 Consequently, two non-Community systems currently co-exist within the Union and, more widely, the EEA and some other countries: national patents, issued by national patent offices and subject to the domestic courts of the country of issue; and European patents, resulting from the Munich Convention of 1973, which determined the applicable substantive law and allowed for a single patent to be issued in those signatory countries to the convention specified by the applicants, but did not specify the applicable territorial law nor which national courts had jurisdiction.

1.1.6 Thus, for a single dispute relating to a patent issued in several countries, the applicants are obliged to initiate as many sets of proceedings as there are competent national courts, and to do so in as many official languages as are applicable, which constitutes a significant obstacle to exercising intellectual property rights created by the issue of patents in several countries. Indeed, it is possible that each set of proceedings may have a different outcome, depending on the national law of the country in question.

1.1.7 Progress on the Community patent project is both extremely desirable from the point of view of economic interest groups and necessary to the functioning of the Single Market. In order to move things forward, the Commission published a Green Paper on the subject on 25 June 1997 <sup>(1)</sup>. This was followed by consultations, studies and practical proposals.

1.1.8 Following the Lisbon European Council, the Commission presented, on 1 August 2000, a proposal for a regulation of the Council on the Community patent, concerning all the legal and judicial aspects of this single certificate, which would be valid throughout the European Union. The Committee has already expressed its support for the proposal <sup>(2)</sup>.

1.1.9 These patents will be examined and issued by the European Patent Office once the Community has taken the necessary step of signing up to the Munich Convention <sup>(3)</sup>, and thus according to the same substantive law as European patents, which will remain in force alongside the new Community patent once this has been created.

1.1.10 The Community Patent Regulation, presented by the Commission in 2000 <sup>(4)</sup>, was subjected to a lengthy debate in the Council before the revised text was finally published on 4 September 2003, as it raises a number of legal, financial and linguistic questions. The territoriality of industrial property law will in part be called into question for the purposes of the Community patent. However, some national terms of reference will remain in place, provisionally in some cases and permanently in others.

1.1.11 The Council, which has sole jurisdiction in these matters according to the legal basis of the proposals under discussion, has yet to make a final decision. In the meantime, the Commission has based these two proposals on the Council's common political approach (discussed at the Competitiveness Council on 3 March 2003 and at the Employment, Social Policy, Health and Consumer Affairs Council three days later) <sup>(5)</sup>. The first proposal concerns the conferral of jurisdiction on the Court of Justice; the second, the creation of specialised panels, their composition, their statute and their powers, proceedings and appeals brought before them, and the amendments to the statute of the Court of Justice and the CFI that these new panels and powers require.

1.1.12 The aim is to prevent territorial and material fragmentation of litigation concerning the validity of the Community patent and of industrial property rights that arise directly from it, as well as of any supplementary protection certificates associated with that patent, by creating a single Community court that will need to be accessible to natural and legal persons and be operational by 2010 at the latest.

<sup>(1)</sup> OJ C 129 of 27.4.1998.

<sup>(2)</sup> OJ C 155 of 29.5.2001.

<sup>(3)</sup> This would mean revising the Munich Convention according to the diplomatic method, which will involve all the signatory states, whether they are members of the Community or not.

<sup>(4)</sup> See the EESC opinion on the proposal for a Council Regulation on the Community Patent issued on 29.3.2001, published in OJ C 155 of 29.5.2001.

<sup>(5)</sup> Memo from the secretariat of the Council to delegations, inter-institutional dossier 2000/0177 (CNS), No 7159/03 PI 24 of 7 March 2003.

## 1.2 *Proposal for a decision establishing the CPC and concerning appeals before the CFI*

1.2.1 The legal basis for the proposal for a decision establishing the CPC and concerning appeals before the CFI is principally to be found in Articles 220, 225, 225a and 245 of the EC Treaty. Other articles of the EC Treaty <sup>(6)</sup> and the Protocol on the Statute of the Court of Justice <sup>(7)</sup> are also relevant. The Statutes of the Court and of the CFI will be amended to the extent that is strictly necessary and according to the provisions of the Council's final decision, after consulting the Court and the political institutions of the Communities, on the proposal of the Court itself or of the Commission.

1.2.2 The Commission proposes the creation of a CPC by 2010 at the latest. It would be based at the headquarters of the CFI and have seven judges, including a President of the Court elected by his peers for a renewable three-year term. The CPC, made up of two chambers with three judges each, will be attached to the CFI, and will hear disputes on infringement and validity of Community patents, in line with the jurisdiction conferred on the Court of Justice. In addition, a specialised panel of three judges will be created at the CFI as a court of appeal against decisions of the CPC. In cases where Community law and case law need to be reconciled, the Court of Justice will be able to act as a court of revision, within strictly defined limits. Judges will be appointed for a renewable six-year term; every three years, three or four judges in turn will be replaced in order to ensure both regular renewal and continuity of the court.

1.2.2.1 Since it covers private disputes, the patent court does not, in principle, affect the validity of Community acts; however, private persons will need to be able to challenge, where appropriate, some of the provisions relating to the validity of patents, but only within the limits of their particular case, without being able to request that a Community act be struck down.

1.2.2.2 Decisions of the Court will also be enforceable against Member States, who have the same status as private persons with regard to patents applied for by a State and to infringement.

<sup>(6)</sup> Articles 241, 243, 244 and 256 of the EC Treaty and Article 14 of Annex II of the Statute; with regard to Article 256, the Court will itself apply the order of enforcement to its decision, in order to avoid delays.

<sup>(7)</sup> OJ C 325/167 of 24.12.2002. The Statute of the Court can be amended by the Council acting unanimously (Article 245 of the EC Treaty) at the request of the Court or of the Commission; depending on the origin of the request, the Commission or the Council are consulted, as is the Parliament. However, the amendment cannot apply to Title I of the Statute of the Court.

1.2.3 For the CPC, the appointment of judges, the election of the president, appeals before the CFI and any other provisions specific to the Court, such as the composition, powers and specific procedural provisions of the chambers, which are different or constitute an amendment to the Statute of the Court of Justice and the CFI ought, as far as possible, to be inserted into the Annex to the Statute of the Court relating to judicial panels.

1.2.4 The judges are chosen from a list drawn up by a Consultative Committee. This list must contain twice as many names as there are vacant posts. Appointments are made by the Council acting unanimously. The judges will have to demonstrate a high level of expertise and experience in patent law. The Consultative Committee will be appointed by the Council and be made up of seven members, most of whom will be former judges of the Court of Justice, the CFI or the CPC, and possibly 'lawyers of recognised competence', all of whom will be highly competent and impartial individuals.

1.2.5 Technical experts will assist the judges throughout the handling of a case. They will be selected from the main scientific and technological sectors that are subject to patent applications. There will be no Advocate-General.

1.2.6 The language of proceedings shall be that of the domicile of the defendant or, where his country uses more than one official Community language, an official language chosen by him. However, with the agreement of the Court, the parties may choose any official language as the language of proceedings; in the event of any appeals, these will be heard in the language used at first instance. The parties present and witnesses will, at the hearing, be able to speak in an official language other than the language of proceedings; in this case, translation and interpreting into the language of proceedings will have to be provided.

1.2.7 The losing party can bring an appeal against a decision of the CPC before the specialised appeal panel of the CFI.

1.2.8 Any revision of a final judgement by the Court of Justice will be subject to very strict and restrictive conditions, for reasons of legal certainty; only fundamental new facts or criminal acts that were a decisive factor affecting the decision that became *res judicata* will constitute grounds for an appeal.

1.2.9 The main provisions for derogation from the current rules of the Court of Justice and of its CFI logically flow from the nature of the litigation and of the parties to the proceedings, and also aim to avoid procedural delays and strengthen the legal certainty of judgements. They should, as far as

possible, be included in the future Rules of the Court and affect the Statute, which is an integral part of the Treaties, as little as possible. The main specific provisions planned for the patent court are as follows:

- written and oral proceedings: more streamlined and flexible than the Court of Justice, possible use of ICT; use of ICT, such as video conferencing, is proposed;
- representation: the parties will be able to be assisted by patent agents, chosen from the list of agents approved by the EPO. Legal aid is planned in order to ensure access to justice for all;
- emergency, interim and penalty measures: possible at any stage of the proceedings, even before the hearing; these may include injunctions to act or to abstain from an act, possibly accompanied by penalties, *saisie-contrefaçon*, evidence protection, and any other emergency or interim measure that flows from the application of Community law on protection of industrial property and of the relevant provisions of the WTO TRIPS agreements included in this decision and other Community acts <sup>(1)</sup>;
- any decisions relating to disputes concerning the Community patent will have the enforcement order appended directly by the relevant judicial panel and will be immediately applicable by the competent authorities of the country or countries in which the decisions are to apply as soon as they are requested to do so by the beneficiary of an interim or final decision; the enforcement procedure will be that of the country receiving the request;
- any request by the applicant for interim measures that would be financially prejudicial to the defendant before the judgement will have to be accompanied by guarantees in case his claims are not upheld;
- the decisions of the CPC will have to be listed in the Community Patent Register;
- only final decisions will be communicated to the Member States.

1.2.10 Each Member State will designate a limited number of national courts to hear disputes relating to the Community patent brought during the transitional period. For the purposes of enforcement in another Member State, the decisions of these courts will be subject to the convention on jurisdiction and the enforcement of judgments, subject to special provisions that may be included in the future Regulation <sup>(2)</sup>.

<sup>(1)</sup> EESC opinion 1385/2003 of 29.10.2003, Rapporteur: D. Retureau.

<sup>(2)</sup> Among the legal instruments already adopted with regard to civil and commercial law with the Committee's approval, Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is worth mentioning, as it appears relevant to the matter in hand.

1.2.11 A number of additional provisions concerning the functioning of the court, its registry, and its staff are included in the proposal; these provisions are logical, coherent, and in line with the usual activities and responsibilities of a court of this nature. Therefore, it does not seem worthwhile to look at them one by one in this presentation of the proposed decision.

## 2. The Committee's comments

2.1 The Committee notes that the proposal is in line with the EC Treaty and with the Protocol on the Court of Justice. The Committee supports the proposal in principle, subject to the following comments.

2.1.1 The CPC will handle disputes between private persons, unlike the disputes usually handled by the Court, and will do so in an area requiring specialised legal and technical knowledge. Given that the CPC is attached to the CFI and consists of two chambers of three first-degree judges and a president, and that a specialised appeal panel of three judges, incorporated within the CFI, is created, the general rules on the operation of courts are upheld. The Committee also supports the appointment of patent experts to assist the Court, rather than commissioners or advocates-general; the Committee believes that this will strengthen the authority and value of judgements.

2.1.2 The creation of a CPC attached to the CFI and of a specialised appeal panel within the CFI of the Court of Justice to handle cases relating to Community patents is necessary and appropriate, given that it relates to a single Community industrial property certificate: the future Community patent. The advantage of chambers dedicated exclusively to hearing disputes relating to the Community patent both at first instance and at second instance will be that parties to proceedings will be able to settle their disputes more quickly and efficiently by distinguishing this litigation from more general litigation handled by the CFI. The CFI will operate as an appeal body, and in certain restricted cases the Court of Justice will be able to act as a supreme body able to review previous decisions.

2.1.3 This will offer owners of technological patents and supplementary industrial property certificates all the appropriate procedural guarantees. The procedure will avoid referrals back from the CFI to the CPC, and settlements between parties will be possible before the Court, which will allow matters to be settled more quickly. Matters other than validity and infringement will remain within the jurisdiction of national courts, which is in line with the principle of subsidiarity.

2.1.4 The Committee considers that the ability given to private individuals to mount an indirect challenge to certain Community acts in relation to their private dispute (a technique known in French as *exception d'illégalité*, whereby a defence is made on the basis that the law of which the defendant is in breach is itself illegal) concerning the validity of a patent, without giving the CPC the power to strike down the Com-

munity acts in question, is justified on the basis of respect for the rights of defendants. However, the Committee considers that it would be appropriate that consequences be drawn from this, for example by the Court of Justice, to which the Commission could make a mandatory referral in cases where the CPC has accepted an *exception d'illégalité* defence.

2.1.5 For the transitional period, it is necessary to highlight the risk that the limited number of national courts appointed by each country might produce diverging decisions and case law, particularly as regards the interpretation of Articles 52-57 of the European Patent Convention. It would be appropriate to make provisions for the Court of Justice to be able, where necessary, to intervene subsequently as a revision body, in the limited circumstances that would allow such a procedure.

2.1.6 The Committee would like the proposed CPC, for its part, to give a measured interpretation, in line with the general principles of judicial interpretation, of the conditions of patentability in cases concerning the validity of a certificate, notably with regard to the exclusions clearly stated in Articles 52 *et seq.* of the EPC. It is concerned about future developments — parallel or divergent — of Community law and of the EPC, in particular with respect to the independence of Community law in relation to any changes that may be made to the EPC's provisions on patentability in the future, and would like the Commission quickly to propose arrangements for examining and issuing Community patents that would guarantee the supremacy of Community industrial property law with respect to possible amendments at the CPC of the conditions of issue and validity of the European patent by the EPO.

2.1.7 The Committee supports the provisions that allow disputes to be resolved quickly, such as the possibility of settlement before the court.

2.1.8 It considers the proposals presented by the Commission relating to the jurisdiction and the specific organisation of the Court for cases relating to Community patents to be well thought through, well-constructed, balanced, and likely to enable disputes to be resolved efficiently.

2.1.9 In the light of this, the Committee finds it all the more regrettable that the Council was unable, on 11 March last year, to make progress on the Regulation on the Community patent; the Committee would once again emphasise the importance of the creation of the Community patent as soon as possible, in order to support the innovation and competitiveness of European businesses, and finds delays for linguistic or other reasons, that are not fundamental in nature but could lead to excessive costs that would negate the advantage of a Community patent, to be unacceptable. All the Member States are parties to the EPC, which has only three official languages of application; there is no reason to adopt more binding and more expensive provisions for a Community patent.



2.1.10 The Committee very much hopes, for the sake of innovation and the creation of skilled jobs in Europe, that the Council will quickly decide in favour of a low cost patent, without excessive procedural costs or requirements that would remove its attraction and effectiveness.

#### *Specific comments*

2.2 The CFI already has jurisdiction in disputes relating to industrial property with respect to trademarks and designs, which are managed by the Office for Harmonisation in the Internal Market. It might perhaps have been worth considering the creation of an Industrial Property Court attached to the CFI, with jurisdiction over all existing and future Community property industrial certificates, and a specialised appeal panel within the CFI for these certificates, in order to centralise litigation on industrial property within the Community. However, this question could be looked at in the more distant future, once the patent court has gathered sufficient practical experience — say, after 2013. This possibility of a wider jurisdiction is already open to the CFI's judicial appeals panel. The Committee supports this wholeheartedly.

2.3 The CPA proposed that, in addition to their high level of expertise on the subject of patents, the appointed judges would also have to have a wide knowledge of languages (as there will not be one judge from each country); this provision of the CPA was not retained by the Commission. The Committee regrets this, as parties to proceedings, whether applicants or defendants, should be able not only to be heard but also, as far as possible, to have a chance of being understood in one of the Community languages by at least one of the judges hearing the case, notwithstanding the provision of specialised interpreting for each hearing. All other things being equal, preference should be given to judges who have mastery of several official Community languages.

2.4 If matters relating to the ownership of the certificate remain under national jurisdiction, it must be noted that the matter of rights of salaried or contracted inventors is handled differently in different countries. Out of concern for fairness, and in order to avoid one-sided contracts on patent ownership and the share or compensation paid to inventors, it would be

appropriate to seek further harmonisation of laws applicable to the Community patent with regard to the rights of certain categories of inventor in relation to the owner of the certificate. (Generally speaking, patents are applied for by businesses, which retain the ownership rights; it is far less usual for the application to be lodged by the actual inventor, who may, by dint of contract or of national law, receive royalties for the use of his invention, but often has no rights at all.)

2.5 The Committee notes with interest the Commission's declaration that the costs of examining, issuing and maintaining the Community patent will be 50 % lower than those for the European patent; nonetheless, regulations on intermediation in Community patents (advisers, patent attorneys) should be introduced in good time to prevent significant distortions in the real cost of obtaining a patent and to ensure that applicants have access to properly qualified service providers. The EPO list of approved intermediaries could be used as a reference, but an indicative or mandatory scale of charges for the various services could be considered. Similarly, the role and fees of national patent or industrial property offices should be taken into consideration, as should the possibility of approving technical translators specialising in patents, always keeping in mind quality and affordability of services.

2.6 The legislative financial statement shows that if the parties are required to bear the costs of the proceedings, the Council, voting on the schedule of fees by qualified majority, will have to take into consideration the need for fair access to justice, and not set amounts that might be a deterrent for individuals or SMEs. In any case, the Committee does not believe that the costs of services to private persons can be covered by these fees alone, taking into consideration the CPC's draft budget and the principle of keeping down the costs of obtaining, keeping and protecting industrial property in comparison with the European patent and the national patents of the most developed non-EU countries. The Committee therefore hopes that the court fees for the first instance and for appeals will remain low, in order to maintain the Community patent's strategic advantage for the competitiveness of businesses, particularly Community SMEs.

Brussels, 31 March 2004.

*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 Decision conferring jurisdiction on the Court of Justice in disputes relating to the Community patent'**

(COM(2003) 827 final - 2003/0326 (CNS))

(2004/C 112/22)

On 30 January 2004, the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The European Economic and Social Committee decided to ask the Section for the Single Market, Production and Consumption to carry out the work on the subject.

In view of the urgency of the matter, at its 407th plenary session held on 31 March and 1 April 2004 (meeting of 31 March), the European Economic and Social Committee appointed Mr Retureau as its rapporteur-general and adopted the following opinion by 56 votes in favour, 1 against and 1 abstentions.

**1. The proposed Council Decision presented by the Commission**

1.1 The purpose of the proposal is to confer jurisdiction on the Court of Justice in disputes relating to the proposed Community patent.

1.2 The European Council held in Lisbon in March 2000 adopted a general programme to increase the competitiveness of the Union's economy in order to turn it into a knowledge-based economy that would be the most competitive in the world. This ambitious programme breaks down into a number of areas, including that of industrial property. In respect of this, the Council relaunched the creation of a system of Community patents in order to mitigate the limitations of the current systems for protecting technological inventions, in order to help stimulate investment in research and development in the European Community.

1.3 The Council, which has sole jurisdiction in these matters according to the legal basis of the proposals under discussion, has yet to make a final decision. In the meantime, the Commission has based this first proposal, which concerns the conferral of jurisdiction on the Court of Justice, on the Council's common political approach (discussed at the Competitiveness Council on 3 March 2003 and at the Employment, Social Policy, Health and Consumer Affairs Council three days later) <sup>(1)</sup>.

1.4 The aim is to prevent territorial and material fragmentation of litigation concerning the validity of the Community patent and of industrial property rights that arise directly from it, as well as of any supplementary protection certificates associated with that patent, by creating a single Community court that will need to be accessible to natural and legal persons and be operational by 2010 at the latest.

1.5 The legal basis for the proposal to confer jurisdiction on the Court of Justice in disputes relating to the Community

patent <sup>(2)</sup> is Article 229a of the EC Treaty, introduced by the Treaty of Nice. The EC Treaty provides that the Council, on a proposal from the Commission and after consulting the Parliament, can confer jurisdiction on the Court of Justice, within the limits it lays down, to hear disputes relating to Community intellectual property titles. The Council recommends the adoption of these provisions by the Member States. These will then ratify them according to their respective constitutional arrangements.

1.6 The Court's jurisdiction will (if strictly interpreted) cover disputes relating to the infringement and validity of Community patents and supplementary certificates. The nature of admissible actions is set out in the revised proposal for a Council Regulation on the Community patent <sup>(3)</sup>: with respect to infringement, these are actions to stop infringement and actions for the declaration of non-infringement, as well as sanctions in the case of infringement; with respect to validity, these are invalidity actions and counter claims for invalidity. The Court will also have the power to take emergency measures and to order penalty payments that may be necessary in the disputes it will be handling.

1.7 Provision is made for transitional measures for Community patents, which might come into effect before the creation of the CPC in 2010; the designated courts of Member States would have jurisdiction in applying the substantive law of the Munich Convention and relevant Community law to disputes initiated before the creation of the CPC, and would in all cases be required to see through to the end any proceedings that had already been started.

**2. General comments**

2.1 The Committee notes that the proposal is in line with the EC Treaty and with the Protocol on the Statute of the Court of Justice. The Committee supports the proposal in principle, subject to the following comments.

<sup>(2)</sup> COM(2003) 827 final of 23.12.2003.

<sup>(3)</sup> Memo from the Presidency to the Intellectual Property (Patents) group, text (revised) of proposal 10404/03 PI 53 of 11 June 2003, subsequently revised by the Patents group on 4 September 2003, document number 12219/03.

<sup>(1)</sup> Memo from the secretariat of the Council to delegations, inter-institutional dossier 2000/0177 (CNS), no 7159/03 PI 24 of 7 March 2003.

2.2 The Committee subscribes to the point of view that a single court with exclusive jurisdiction applying uniform rules and jurisprudence is necessary for the fair application of Community patent law to disputes arising within the Community. Such a solution gives parties to court proceedings the assurances of legal certainty and stability they are entitled to expect. The right to be heard in one's own language is also respected at hearings.

2.3 The Committee considers that the ability given to private individuals to mount an indirect challenge to certain Community acts in relation to their private dispute (a technique known in French as *exception d'illegalité*, whereby a defence is made on the basis that the law of which the defendant is in breach is itself illegal) concerning the validity of a patent, without giving the Community Patent Court the power to strike down the Community acts in question, is justified on the basis of respect for the rights of defendants. However, the Committee considers that it would be appropriate that consequences be drawn from this, for example by the Court of Justice, to which the Commission could make a mandatory referral in cases where the CPC has accepted an *exception d'illegalité* defence.

2.4 For the transitional period, it is necessary to highlight the risk that the limited number of national courts appointed by each country might produce diverging decisions and case law, particularly as regards the interpretation of Articles 52 to 57 of the European Patent Convention. It might be appropriate to make provisions for the Court of Justice to be able to intervene subsequently as a revision body, in the limited circumstances that would allow such a procedure, in order, where necessary, to harmonise jurisprudence created by the national courts responsible for hearing disputes relating to the Community patent, as it would be unfair if different solutions were reached in similar cases. This could, in particular, relate to the conditions of validity of a certificate issued by the EPO, whose Opposition Division and Board of Appeal are known for their sometimes questionable jurisprudence on conditions of patentability<sup>(1)</sup>, which is not always adhered to by the national courts.

2.5 The supplementary protection certificate (medicines and plant protection products) does not yet exist for the Community patent and will be the subject of a later proposal by the Commission. The Committee considers it risky to include in the Court's jurisdiction disputes involving a certificate that has been proposed but whose nature and existence remain uncertain. A different, broader definition of the Court's jurisdiction (for example, 'Community patents and other Community indus-

trial property certificates') could be considered in order to allow for future developments. The extension of protection or its future application to various fields of patentable inventions will doubtless raise contradictory issues, and one should be cautious about prejudging right now solutions and the nature of certificates which might one day be the subject of decisions by the Community legislator.

2.6 The Committee supports the Court being given the power to adopt interim measures (orders to act or abstain from an act, evidence protection, cease and desist orders) and sanctions, including penalty payments, without which the resolution of disputes would lack effectiveness. For practical reasons, the implementation of the CPC's final or interim enforcement decisions will need to be left to the competent national authorities, who have powers of coercion according to the respective laws. For cases not covered by the conferral of jurisdiction on the Court, national courts remain competent; such cases could include contracts relating to Community patents, or disputes relating to the ownership of such patent. The Committee also supports these solutions, but has a number of specific comments to make about them.

2.7 Finally, the Committee considers the conditions of entry into force of this decision to be logical and necessary, as it requires alterations to national rules on jurisdiction and judicial organisation, about which Member States will have to inform the Commission in advance, as well as the effective and simultaneous creation of the CPC, which will be created by the proposed Council decision commented upon in a separate opinion.

### 3. Specific comments

3.1 The CFI already has jurisdiction in disputes relating to industrial property with respect to trademarks and designs, which are managed by the Office for Harmonisation in the Internal Market. It might perhaps have been worth considering the creation of an Industrial Property Court attached to the CFI, with jurisdiction over all existing and future Community intellectual property certificates, and a specialised appeal panel within the CFI for these certificates, in order to centralise litigation on industrial property within the Community. However, this question could be looked at in the more distant future, once the patent court has gathered sufficient practical experience — say, after 2013. This possibility of a wider jurisdiction is already open to the CFI's judicial appeals panel. The Committee supports this wholeheartedly.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> For example, a patent was granted for a genetically modified animal (oncogenic mouse), whereas animal races and species are not patentable.

**Opinion of the European Economic and Social Committee on 'realities and prospects for appropriate environmental technologies in the candidate countries'.**

(2004/C 112/23)

On 17 July 2003, the European Economic and Social Committee decided to draw up an opinion, under Rule 29(2) of its Rules of Procedure, on the following subject: realities and prospects for appropriate environmental technologies in the candidate countries.

The Section for Agriculture, Rural Development and Environment, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 4 March 2004. The rapporteur was Mr Ribbe.

At its 407th plenary session, held on 31 March and 1 April 2004, (meeting of 31 March), the European Economic and Social Committee adopted the following opinion by 80 votes to one, with two abstentions:

**1. Starting point — general observations on environmental technologies**

1.1 It is clear from a large number of studies and public reports that, whilst much has already been done in order, for example, to provide clean air and water, considerable efforts undoubtedly still have to be made, both in the existing Member States and also in the candidate countries, in order to safeguard the fundamental natural requirements for human life, to conserve Europe's national heritage, to comply with the existing environmental laws and to set Europe on the road to achieving sustainable development.

1.2 It is well known that environmental technologies have an important role to play in providing solutions to particular environmental problems. The Commission is fully aware of this and has drawn up an Environmental Technologies Action Plan for the EU <sup>(1)</sup>, which is currently being discussed with the institutions involved and organised civil society. The EESC has welcomed this measure since the application of environmental technologies (e.g. sewage plants and filtration plants) has brought about important progress in the field of environmental conservation in recent years and decades. This applies in the case of both fixed plants, such as industrial plants or power stations, and also in the case of mobile technical facilities.

1.3 The setting — and subsequent tightening — of motor vehicle exhaust emission limits are an example of a clean environment technology which has undergone constant technical development. This example does, however, also demonstrate that:

— particularly progress as regards the development and introduction of environmental technologies such as catalytic converters, can frequently only be realised in the wake of intense political debate; people will remember how opposed the motor-vehicle industry was at the time to the

introduction of these measures. Furthermore, this political debate appears to be stirring again, this time in connection with diesel-particulate filters;

— environmental technologies are not without their limits; whilst it has been possible to decisively reduce nitrogen oxide and sulphur dioxide emissions, in particular, there are still no technologies which can be readily applied in practice for curbing, for example, CO<sub>2</sub> or CFC emissions, which are clearly responsible for one of the greatest environmental challenges with which we will have to contend in future, namely climatic problems.

1.4 Environmental technologies have therefore become a key element of environmental policy. In cases where technical solutions, alone, cannot provide an adequate, successful answer to problems, structural changes will however be required. In this opinion, the EESC will however confine itself to examining various aspects of the field of environmental technologies.

1.5 Environmental technologies are, however, important not just on grounds of environmental policy. The scientific work and industry involved in environmental technologies have now become an important economic factor and source of employment; turnover in this field in the EU is in excess of EUR 183 billion <sup>(2)</sup>. The EESC has also already welcomed the European Commission's recent communication entitled Developing an action plan for environmental technology <sup>(3)</sup>.

1.6 Past experience does, however, show that, as is the case in many other sectors of the economy, there is not enough funding available in the field of environmental technologies to enable all the projects which have been identified and recognised as being essential to be implemented within the desired timeframe. Many essential environmental measures may therefore not be realised.

<sup>(2)</sup> See the European Commission Report on environmental technology for sustainable development – COM(2002) 122 fin.

<sup>(3)</sup> See the EESC Opinion on the Commission's Communication entitled Developing an action plan for environmental technology (COM(2003) 131 fin), CESE 1027/2003; this opinion has not yet been published in the OJ.

<sup>(1)</sup> COM(2004) 38 final of 28.1.2004.

*The situation in the candidate countries*

1.7 It is neither possible nor desirable for this opinion to make a general appraisal of the situation and the trend, as regards the environment and environmental conservation, in the candidate countries. The situation is much too complex to enable this trend to be summed up in purely positive or negative terms. One thing which is clear is that, in the last few years, the situation with regard to many of the directly obvious (local) cases of environmental damage in the candidate countries has undergone a tremendous improvement. On the other hand, other, less directly obvious, environmental problems have arisen <sup>(1)</sup>. There is, however, no doubting the fact that the closure of particularly polluting industries and the introduction of 'clean' technologies has, in recent years, made it possible to reduce many direct health risks caused by environmental pollution.

1.8 Nonetheless, very much still has to be done if the environmental standards prescribed by EU law are to be met. Investments in environmental infrastructure totalling, approximately, between EUR 80 billion and EUR 110 billion will be required in order to apply the existing body of EU law in the CEEC <sup>(2)</sup>. Funding is, however, in short supply in the candidate countries, too, and public investments in the environment also have to compete with the demands of other forms of public expenditure in fields such as social policy, education and infrastructure. In the case of investments by industry and private individuals, too, the aim is to avoid the misallocation of funds, wherever possible. It will therefore be necessary to make the most effective use of the available funding and to seek efficient solutions which provide good value for money.

1.9 This opinion will therefore deal with environmental technologies in the central and eastern European countries (CEEC). A large number of the examples used in this opinion derive from Poland. Poland is, on the one hand, the largest of the candidate countries which will receive a considerable proportion of future EU aid. Poland is, on the other hand, also characterised, like virtually no other candidate country, by sharp distinctions between urban and rural areas; as this opinion will demonstrate, this situation is of considerable relevance in the context of environmental technologies. Poland is also virtually in a class of its own amongst the candidate countries as regards the further radical changes in the industrial sector facing the country. Finally, Poland was also chosen as an example in view of the fact that the EESC has a long history of cooperating with Poland in the field of environmental conservation.

1.10 The observations and demands expressed in this opinion are, however, applicable to all of the candidate countries and are also valid with regard to many of the existing EU Member States.

<sup>(1)</sup> e.g. problems brought about by the increased use of personal forms of transport: mention should also be made of problems relating to the protection of species and environmental pollution problems such as those brought about by agri-industrial investments e.g. the establishment of enormous pig-rearing plants in Poland by the US investor Smithfield.

<sup>(2)</sup> COM(2001) 304 final – The challenge of environmental financing in the candidate countries, page 6.

*Funding for environmental conservation in the candidate countries*

1.11 In the last few years, i.e. in the run-up to enlargement, the EU has already demonstrated its commitment by making grants towards environmental investment in the candidate countries. This is an important and welcome new departure vis-à-vis earlier EC enlargements. By making available this funding, the Commission highlights the growing importance of environmental conservation. Up to now, the EU has made available a number of programmes, including Phare and ISPA and, to a certain extent, SAPARD; in this context, attention should be drawn to the difficulties repeatedly underlined by the Commission with regard to the use of funds.

1.12 In the period 1995 to 2000 EUR 398.2 million was made available under the PHARE programme and EUR 460.2 million under the ISPA programme for investments in the environmental sector; the bulk of the investment was devoted to water projects (which accounted for some 82.3 % of all funding), followed by waste-disposal projects (15.7 % of the funding) and measures to combat air pollution (2 % of the funding) <sup>(3)</sup>. Over the six-year period 1995 to 2000, Poland received funding totalling EUR 233.4 million (representing an average allocation of approximately EUR 40 million per year).

1.13 It should, however, be borne in mind, in this context, that the ISPA programme was not introduced until 2000. Since its establishment, the ISPA programme has made available approximately EUR 500 million for investment in environmental projects in the CEEC each year. Poland's share of this funding amounts to between 30 and 37 %.

1.14 Whilst the financial assistance already provided by the EU undoubtedly provided valuable help to the candidate countries, in the past, it should, however, be pointed out that the bulk of the funding was provided by the candidate countries themselves and this will also have to be the case in the future. Funding provided by the PHARE and ISPA programmes is able to cover only a small part of the funding requirements of the candidate countries in the environmental sector: 1.1 % of overall funding requirements in respect of water projects; 0.75 % in respect of waste-disposal projects; and only 0.03 % of the funding requirements in respect of measures to combat air pollution (figures provided by the European Court of Auditors) <sup>(4)</sup>.

1.15 In the period up to 2000, overall foreign assistance in financing environmental measures in Poland, generally accounted for 'only' some 5 % of the total amount of investment in environmental measures; contributions from the EU also represented only part of the external aid.

<sup>(3)</sup> Source: EU News, Nr. 20 dated 28.5.2003, calculations made by the European Court of Auditors.

<sup>(4)</sup> Ibid.



1.16 This situation will, however, change substantially once Poland has joined the EU. Of the EUR 7.3 billion in funding to be provided to Poland by the EU Structural Funds in the period 2004-2006, the sum of EUR 545 million will, according to the Polish Environment Ministry, be devoted to environmental measures. Aid provided under the ISPA programme will subsequently be replaced by aid from the Cohesion Fund, which will make available almost EUR 7.6 billion in the period 2004-2006. Poland is due to be allocated between 45 % and 52 % of this sum, which represents an allocation of between EUR 3.4 billion and almost EUR 4 billion. Aid from the Cohesion Fund is, as is well known, divided equally between investments in environmental projects and transports projects. In future a sum of between EUR 1.3 billion and EUR 1.5 billion in EU funding for environmental projects will be made available to Poland each year.

1.17 The use of EU funding to finance environmental conservation measures in the candidate countries has, up to now, been far from optimal. If substantially more money is now to be made available in the future, closer attention must be paid than has hitherto been the case to ensuring that these sizeable sums are used effectively and not frittered away on illusory growth plans or inappropriate projects, involving, for example, the use of disproportionate and excessively expensive technology. In its Special Report No. 5/2003 on the financing of environmental infrastructure projects in the candidate countries, the European Court of Auditors criticised, *inter alia*, the fact that projects were repeatedly being approved even though there was a risk of establishing excess capacity and therefore a danger of making uneconomic use of EU funding and giving rise to unnecessarily high operating costs. One of several examples quoted in the special report is the sewage treatment plant at Szczecin in Poland, which operates at only 40 % of its capacity.

## 2. What are 'appropriate' technologies and why are they needed?

2.1 In the EESC's view, 'appropriate' environmental technologies can play a very important role when the following objectives are being pursued:

- devising effective projects for resolving local problems;
- making financial savings, perhaps not at the planning stage but certainly at the investment stage and in respect of ongoing costs; and
- creating jobs at local and regional levels.

2.2 In the view of the EESC, the term 'appropriate technologies' implies that, in every single case, solutions have to be sought which are geared not only to technical feasibility and technical effectiveness but also pay close attention to the local situation and the situation of local people.

2.3 A number of examples are set out below to illustrate what, in the EESC's view, is meant by the term 'appropriate technologies'.

### 2.3.1 Clean air/energy efficiency

2.3.1.1 When Poland definitively severed its links with its communist past at the end of the 1980s, environmental conservation became a matter of the utmost importance in the political arena. This is hardly surprising in view of the fact that many people were severely affected by the extremely high level of environmental pollution, caused mainly by the industrial plants but also brought about coal-fired domestic heating.

2.3.1.2 In Krakow investigations were carried out to determine how the level of sulphur dioxide pollution could be reduced; this pollution was not only endangering public health but it was also responsible for the large-scale destruction of the facades of houses which represented a cultural and architectural heritage of extremely high value. One of the first planned measures was to carry out a large-scale renovation of two power stations.

2.3.1.3 Alternative calculations, made at the same time, had, however, shown that, for the same cost as that incurred in technically upgrading the power stations, twice as high a reduction in the level of sulphur dioxide could have been achieved by using the money to replace coal-fired domestic heating systems and to carry out domestic energy-saving measures (through the use of measures such as insulation and heat-saving glazing).

2.3.1.4 Implementation of the latter measures would also have enhanced the living conditions of the local population and given a shot in the arm to local craft industries, thereby making a much higher contribution towards boosting the local economy. Despite this, the funding was used to renovate the power stations; the selection of this option can undoubtedly be put down to the fact that it was also in the interests of the large foreign companies, which ultimately picked up the bulk of the orders.

### 2.3.2 Sewage treatment

2.3.2.1 Poland is currently making tremendous, and welcome, efforts to improve sewage treatment. After a start was made on the construction or renovation of sewage-treatment plants, first of all mainly in large towns and cities, many planning and building measures are now also underway — or have already been completed — in smaller towns and villages, too.

2.3.2.2 In the case of lightly populated rural areas the kind of central solutions which are undoubtedly right for conurbations are frequently less appropriate, both on technical and financial grounds. Nonetheless, in virtually all cases, such 'state of the art' solutions are planned.

2.3.2.3 A case in point is the district of Sokoly in the Province of Podlaskie in north-east Poland. This district covers 160 km<sup>2</sup> and comprises over 29 villages which, under the current plans, are all to be linked to the sewage-treatment plant currently in the course of construction in the central town of the district.



2.3.2.4 In addition to the construction of the technical plant itself, the system of drains always constitutes one of the main items in the investment and maintenance budgets. Poland's national sewage disposal programme of December 2003 stipulates that the construction or modernisation of sewage-treatment plants is to account for only one third of total investment; two-thirds of total investment has to be allocated to the drainage system. In the case of Sokoly, it is planned to install pressure pipes (together with the corresponding cost-intensive pumping stations), in order to transport the sewage to the central treatment plant. In the case of conurbations the length of drain constructed per inhabitant is generally 0.5 metres – 2 metres, whereas in rural areas a drain length of 5-10 metres per inhabitant may be the bare minimum. In the case of Sokoly, it is planned to construct, in some cases, far more than 20 metres and even as much as 40 metres of drain per inhabitant, excluding the drains connecting individual houses to the network.

2.3.2.5 The proposals put forward by the persons responsible for sewage-disposal planning can, in no way, be regarded as constituting an appropriate solution in the light of the local conditions. The proposed solution is very strongly reminiscent of the bad planning in the field of sewage disposal carried out in the former German Democratic Republic (GDR) following re-unification which led to the levying of exorbitant sewage-disposal charges and which now constitutes a real disincentive from a business-location standpoint. In the former GDR, too, projects were carried out which were based on illusory expectations of growth and an inappropriate transfer of large structures to rural areas.

2.3.2.6 Very high sewage charges resulting from the adoption of inappropriate solutions have a damaging effect on economic development in the regions concerned in two ways: on the one hand, money which has to be spent on excessively high sewage charges could be used to promote economic development in other fields and, on the other hand, higher sewage charges can deter businesses — particularly businesses which require a high level of water consumption — from becoming established in the areas concerned.

2.3.2.6.1 An umbrella body, established in the German Federal State of Thuringia in the period since re-unification, which brings together citizens campaigning against expensive sewage-treatment projects, maintains that, in the case of local authority joint ventures to provide water and sewage services, costs go through the roof once investments are partly supported by the Structural Funds. The Friedrichsroda local authority has, for instance, recently informed residents that they would be asked to pay a contribution of over EUR 10,000 in order to be connected to water-supply and sewage-disposal systems; in one case a resident was even charged EUR 99,000 to be connected to these services<sup>(1)</sup>. Residents who were earlier cajoled into approving sewage-treatment projects through talk of high-capital investment grants are now responding with indignation when they hear about the subsequent costs, which were earlier concealed from them.

2.3.2.7 In this context, the EESC would also draw attention to the criticism expressed by the European Court of Auditors

relating not only to excessively large sewage disposal projects but also to the activities of somewhat incompetent advisors who sell expensive projects virtually 'off the peg'.

2.3.2.8 Another example, this time from Mirosławice, in the municipality of Trzebiatów on the Baltic, demonstrates that the fear expressed by the EESC that there would be a repetition of the earlier bad planning in this field is a real fear; it also shows that the examples identified by the European Court of Auditors are not isolated occurrences. This situation may have serious consequences, also with regard to the use of appropriate technologies. In Trzebiatów financial aid was used to construct an excessively large sewage treatment plant. In Mirosławice, which is part of the municipality of Trzebiatów, the German Federal Foundation for Environmental Conservation wanted to provide assistance for the establishment of a demonstration project involving the construction of a sewage treatment plant using a technology based on natural processes of treating sewage, which had been specially developed for small towns and villages on the Baltic Sea coast. After the project had been two years in preparation and despite the fact that the local authority had given its approval and planning and building permission had been granted, the local authority ended up by withdrawing from the project because it was discovered that the central sewage treatment plant in Trzebiatów, which had been built a short time before, urgently needed, because of its excessively large size, other towns and villages to be connected to it in order to enable it to operate more effectively. The project to utilise a decentralised, appropriate solution for the treatment of sewage, and to provide a demonstration project in that field, was thus dropped.

### 2.3.3 Sewage-sludge treatment

2.3.3.1 As the proverb says, necessity is the mother of invention. The official in charge of sewage treatment for the local authority Zambrow in north-east Poland had (hitherto) no funding available to enable him to install technical equipment for sewage-sludge treatment. He came up with the following solution: part of the sewage sludge is composted, making use of earthworms, which he describes as 'his most faithful and most effective workers'; a further part of the sewage sludge is spread on reed beds in the sewage-treatment plant, which have developed into a real paradise for nature. Members of the public and farmers are keen to take away the compost as they value its soil-enriching properties<sup>(2)</sup>. In Zambrow the cost of sewage-sludge treatment amounts to only 5 % of the equivalent costs incurred by treatment plants which process and dispose of the sewage sludge using technical solutions. A factor of decisive importance here — and this is also one aspect of determining whether the technique employed is 'appropriate' — is that, in the case of Zambrow, the sewage sludge is not contaminated by harmful substances (and this is the case in many rural communities in the candidate countries). As a result of the process described above, the local district of Zambrow has the lowest sewage-treatment costs of the region. Although Zambrow has an effective and cost-efficient sewage and sewage-sludge treatment plant, the solution devised by the local official himself is only rarely put forward as a model for new systems.

<sup>(2)</sup> The EESC recognises the problems associated with the use of sewage sludge as a fertiliser for agricultural land. It very often happens that a strict ban has to be imposed on this practice because of concentrations of pollutants in the sewage sludge. For further observations on the general issue of sewage sludge, see the EESC Opinion on the revision of Council Directive 86/278/EEC on the use of sewage sludge in agriculture, OJ C 014 of 16.1.2001, pages 141 to 150.

<sup>(1)</sup> Thüringische Landeszeitung/Eisenach Presse of 24.10.2003.

2.3.3.2 The EESC points out that, particularly in the case of rural areas, there are perfectly practical (appropriate) sewage treatment technologies in respect of which the problem of sewage sludge does not even arise, e.g. in the case of plant-based sewage-treatment facilities.

#### *Further examples*

2.3.4 Whilst not claiming to have come anywhere near to producing an exhaustive list, further possible examples of appropriate environmental technologies may be quoted, namely decentralised energy-generation facilities.

2.3.5 Germany is a country which, for the past few years, has been making increased use of renewable sources of energy, which have a neutral effect on levels of carbon dioxide. Germany can thus be cited as an example of how the use of appropriate environmental technologies can also establish a beneficial link between environmental issues and employment.

2.3.6 Germany is now using more steel for the construction of windmills than is used in the ship-building industry. In particular areas suffering from structural weaknesses, such as East Friesland, the use of wind power has made it possible to create several thousand new jobs.

2.3.7 It is now becoming increasingly worthwhile for farmers in Germany to build and operate methane gas plants in order to provide a new, additional source of income. Schools and other public buildings are increasingly being heated using locally-produced renewable sources of energy, such as wood shavings, rather than the traditional fossil fuels, such as oil and gas, which have to be imported over long distances. In the coal-producing area of Nordrhein-Westfalen alone, over 1000 wood pellet combustion plants have been set up, thereby not only making for a cleaner environment but also creating new jobs.

2.3.8 For every heating installation burning wood shavings used to heat, for example, town halls, schools, municipal halls, residential homes for old people or hospitals in small towns, there is soon a need for three, four or even five farmers to obtain supplies of small-dimensioned wood from forests, to cut the wood and to see to its transport to the heating plants.

2.3.9 In countries such as Austria and the Scandinavian states, too, there has, for example, been a boom in the construction and operation of wood pellet plants. In the candidate countries, on the other hand, virtually no renewable energy plants have so far been established.

### **3. Lessons to be learned from the abovementioned examples**

3.1 The EESC recommends the Commission to carry out a closer examination, as part of its planned strategy for

promoting environmental technologies, of the reasons behind such differences in the use of appropriate environmental technologies. The EESC does of course realise that it is especially necessary for the right basic economic conditions to apply. Particularly in those countries (such as Poland) which continue to have a highly subsidised coal industry, which is not matched by the provision for support for alternative forms of energy, even energy saving measures are, in some cases, uneconomic.

3.2 In addition to the lack of the requisite legal bases, attention should also be drawn, above all, to the comparatively poor financing conditions. When interest rates can be as high as 20 %, investments are not always redeemed within a short period, in some cases despite the considerable energy-saving potential involved. Contracting models (privately funded, unit-linked, etc. models) could therefore become highly important and should be promoted to a greater extent.

3.3 It must be in the interests of the European Commission — also from the point of view of promoting sustainable development — to identify the shortcomings which continue to hamper the use of appropriate environmental technologies and to help to remove these shortcomings.

3.4 With this aim in view, attention should also not be focused solely on the candidate countries; we should certainly also take a look at the situation in the existing Member States. In this context it is clear, that in addition to the basic economic conditions, a number of other factors also play a role. In the course of its work, the EESC has been very interested to note that in the various EU Member States, where the initial situation is almost the same, there is a very different level of use of appropriate environmental technologies. In Greece, for example, almost every house now has a solar energy device mounted on the roof (for the purpose of providing hot water and, increasingly, also for the generation of electricity). The use of such devices is much less common in Italy or Spain.

3.5 Although in countries such as Poland and other CEEC similar approaches have barely got off the ground, the country is nonetheless already benefiting from the increasing use of appropriate, decentralised environmental technologies in the EU Member States. This is due to the fact that a number of wood pellet production plants have recently come into operation in Poland; the wood pellets produced are, however, destined almost exclusively for export to Sweden, Finland and Austria.

3.6 In this context, the EESC wishes to draw attention to the fact that consideration should be given to using not only standard environmental technologies but also appropriate technologies in apparently not directly related fields, since these latter technologies, too, may have a very beneficial effect on environment and regional policy.

3.7 To give another example, small cheese dairies or farm dairies, which in many EU Member States are the veritable epitome of regional specialities and regional identity, have been hitherto unknown in Poland. It was even argued by representatives of the authorities that, under EU provisions, the construction and operation of small cheese dairies would not be authorised. Such decentralised processing plants are, however, not only of importance to local agriculture and also to local craft industries but also contribute indirectly towards stabilising economic circulation at regional level and stabilising small-scale farming production, thereby also helping to preserve nature and the environment.

3.8 The abovementioned examples selected by the EESC should not give rise to the mistaken belief that it is opposed to the adoption of large-scale solutions in the field of environmental technologies. There is no doubt that, in particular cases, large-scale solutions, too, may represent appropriate solutions. When we bear in mind that half of the pollution of the Danube in Hungary is produced by the city of Budapest, we neither want to, nor can we, reject the notion of large sewage-treatment plants. The EESC is rather seeking to draw attention to the fact that it is necessary to seek solutions best suited to the respective local conditions, in order to:

- avoid the misallocation of funding;
- implement measures which are the most advisable in the interests of the local population and the local economy;
- make progress with sustainable development through the use of appropriate environmental technologies, which can massively reduce energy and raw material inputs and help to promote growth and the creation of jobs.

3.9 The EESC would therefore to a certain extent warn against a 'fascination' with large projects, a phenomenon which can be observed in some quarters; this fascination may be given a further boost in the CEEC if the abovementioned increase in funding occurs in the next few years. The EESC is not seeking to stand in the way of certain measures but rather to promote other measures.

3.10 The EESC expresses its concern over the widespread lack of knowledge of appropriate technologies in the candidate countries and also over the fact that the (quite small number) of engineering offices and authorisation bodies tend to prefer large-scale solutions, even in cases where the use of such solutions is not a sound idea. This frequently substantially puts up the cost of investments, which has a clearly beneficial impact on the fees received by engineering offices. It should also be borne in mind that, in the light of the environmental objec-

tives, people believe that they are acting 'on the safe side' by using 'established' technology.

3.11 The latter motive also frequently lies behind the action taken by administrations, ranging from that of the European Commission to that of local authorities. Furthermore, concentrating on a small number of large projects gives rise to a lower level of administrative expenses; it should be borne in mind that, in Brussels and at other levels, administrations frequently lack the staff capacity to enable them to switch to appropriate solutions, which are often on a smaller technological scale. The fact that the economic cost of concentrating on a smaller number of large projects far outweighs increased expenditure on staff brought about by adopting 'appropriate solutions' appears to be a matter which is of interest to no-one. A further factor to be taken into consideration is that large-scale facilities also frequently do not require a high level of aid at all since, in such cases, it is easier to find private investors than when funding has to be obtained from small and medium-sized local authorities.

3.12 In those candidate countries which used to have a strongly centralised system there is clearly the additional factor that the belief in centralised, uniform solutions is not yet, by any means, finally overcome in all quarters.

3.13 The examples described above demonstrate that the use of appropriate small- or medium-scale technologies to eliminate environmental pollution at local level makes it possible to achieve the same or, in some cases, even better results at lower cost. Such appropriate technologies:

- are, in some cases, clearly more difficult to apply and more expensive at the planning stage;
- are generally cheaper in the investment phase; this has the benefit of enabling more plants to be constructed for the same sum, thereby enabling more to be achieved in creating a cleaner environment;
- involve much cheaper maintenance costs, thereby enabling savings in costs to be made by local populations; these 'savings' can be used to finance other measures which promote the economy<sup>(1)</sup>;
- in many cases also provide employment opportunities for local craft industries, whereas large-scale solutions can frequently only be carried out by specialist firms; this should be seen as a benefit for the local and regional economies.

3.14 Curiously enough, appropriate, cost-effective solutions tend to have a negative image.

<sup>(1)</sup> In the case of Kamieniec in the Grodzisk district of western Poland (Wielkopolskie), it is planned to construct a total of 917 individual sewage treatment plants, rather than one single central facility. It is assumed that this will bring a 60 % reduction in investment and operating costs vis-à-vis the corresponding costs of a central facility backed up by a drainage network (W. Halicki, Zielona Góra, 2003).



#### 4. Shortcomings and barriers and how they can be removed

4.1 In the next few years the candidate countries will thus be provided with a considerable amount of aid for environmental investments. The way in which these sums are used will mainly depend on the decisions taken by the responsible authorities in these countries.

4.2 The EESC realises that the EU will not place any direct obstacles in the way of the candidate countries if they consider making use of appropriate environment technologies. This is, however, an inadequate response. In the EESC's view, the EU needs to provide active technical and financial assistance.

4.3 The EESC confirms that the prospects of increased use being made of such technologies will only really be enhanced if:

- the blatant knowledge deficit as regards the opportunities provided by appropriate environmental technologies is removed by a transfer of expertise, which will need to be expanded on a very large scale;
- good examples are publicised and if demonstration plants are established;
- the requisite basic legal and economic conditions are created;
- the financial prerequisites and possibilities are improved, possibly by setting up a special fund; and
- political decision-makers at all levels are given the opportunity to have possible alternative planning measures examined to determine their feasibility and compatibility with the relevant EU (and national) laws;
- the social partners and civil society organisations are involved, in order to promote popular awareness in this field.

#### *Promotion of knowledge and awareness of appropriate environmental technologies*

4.4 Decisions on investments in environmental projects will, in future, increasingly be taken at the local level. Decision-makers, and in particular those in small municipalities, who do not have their own specialist staff, almost always have to rely on external expertise in respect of planning work and the subsequent implementation of investments. Some of the engineering offices which are consulted do not have sufficient knowledge, and in some cases also do not have the will, to propose more appropriate and cheaper solutions than 'state of the art' solutions and solutions which are better on social or environmental grounds. In the final analysis, the services provided by engineering offices are, as a rule, paid for in accordance with the volume of building work to be carried out, rather than in accordance with whether the offices have chosen the solution which is the most favourable in the long term and is best suited to local conditions.

4.5 It also happens not infrequently that the bodies which draw up the plans also have links with construction companies or suppliers of technology. The interest of planning bodies, industry and also politicians in selecting large 'off the peg' projects should not be underestimated: the level of fees paid to architects and engineers provide good reasons for this, as does the interest of the construction industry in obtaining large contracts. Observations like that which a manufacturer of drainpipes was heard making to a young technician: 'Of course, they, too, earn money from every metre' are not isolated cases, and the likelihood of taking part in a showy, prestigious opening ceremony for a major project, with TV and press coverage, may appear to be a more attractive proposition to some local politicians than the implementation of 20, 50 or 100 small projects which attract virtually no attention.

4.6 The provision of incorrect information, either deliberately or inadvertently, happens more often than may be imagined. For example, the EESC heard of cases in which political decision-makers were clearly given to understand that, apparently, EU law authorises only the building of central sewage treatment plants to which all parts of a town or village are connected. We are, of course, dealing here with incorrect information, but such a case also provides an indication of the problems resulting from a lack of knowledge.

4.7 There is also a number of additional considerations, some of which are of a practical nature and some of a psychological nature, as set out below. It is often quite a simple matter to construct 'state of the art' plants; the process proceeds from the drawing board in the engineering office. Decentralised, appropriate solutions frequently require a higher level of planning input, much more detailed knowledge and frequently require a high level of determination to succeed, whilst, at the same time, they are likely to result in a smaller payment. Who wishes to embark upon a more difficult course of action, if the straightforward route is also the more lucrative route? By employing available, large-scale 'state of the art', solutions, planners and political decision-makers are convinced that they are acting 'on the safe side'. People do not so readily have confidence in small-scale solutions, which are often regarded as tending to be 'poor', primitive and unsafe solutions. Returning to the example of Zambrow (see point 2.3.3 above), how can a simple official responsible for a sewage treatment plant come up with an idea which did not occur to engineers (or maybe the engineers did not want to come up with such a solution)?

4.8 In the EESC's view, it is particularly important to provide both political decision-makers and engineering offices with information and training. The Commission would be well advised to consider, for example, setting up independent 'skill centres for appropriate technologies' in the candidate states. Such centres could have the task of organising the requisite transfer of expertise and providing advice to both local-level decision-makers and civil society bodies; the proposed skill centres could therefore virtually have the role of stimulating demand for appropriate environmental technologies. If necessary, they could also play a role in the administration of special assistance funds (see point 4.16 et seq. below).

4.9 Support could be provided for the work of these skill centres by setting up a European database; the European Environment Agency could be involved in the establishment and maintenance of this database, which could contain information on cost-effective, appropriate environmental technologies which have proved their worth in the view of authorities in the EU and therefore acquire a form of 'quality label'. The Guide to Alternative Sewage Treatment Processes issued by the European Commission's Environment DG may be regarded as a step towards the achievement of the above goal.

4.10 No method is more impressive and better at removing distrust of appropriate environmental technologies than enabling the parties concerned to inspect practical examples of such technologies. The Mayor of Sokoly (see point 2.3.2.3 above) halted his plans for connecting systems in all parts of the municipality to the central sewage treatment plant after he had been able to inspect operational alternative methods<sup>(1)</sup>.

4.11 The EESC therefore takes the view that the supply and transfer of appropriate technologies must also be 'appropriate'; in particular, these aspects must be backed up by actions designed to secure social acceptance, which is not always readily forthcoming amongst the general public, on the one hand, and local administrations, on the other hand.

4.12 With this aim in view, information, consultation and participation procedures should be introduced, involving the socio-economic players and the general public.

4.13 It might also be a valuable exercise to promote partnerships between, on the one hand, regions and/or municipalities in the EU which have gained interesting experience in the application of appropriate technologies and, on the other hand, regions and/or municipalities in the new Member States which are on the point of making similar (or indeed, different) choices. Furthermore, a degree of priority should be given to projects under the Interreg Programme and other Community programmes which promote the use of appropriate environmental technologies.

4.14 The European Action Plan for Environmental Technology, currently being elaborated, considers ways of removing barriers which impede the dissemination of EU environmental technologies. Appropriate training programmes and programmes of visits — which would be welcomed by EESC — would undoubtedly provide one way of achieving this objective. Here, too, the important issue is the form taken by such programmes. Programmes of visits are not, in all cases, bound to be geared to showing participants only the most advisable solutions. Not infrequently, purely purchasing factors play more of a central role.

#### *Financial aspects*

4.15 The Commission is rightly able to point out that in its aid arrangements it does not, in general, exclude the use of appropriate environmental technologies. Criticism may,

however, be expressed over the fact that, for example, projects funded under the Cohesion Fund have to involve a minimum investment of EUR 10 million in order to be eligible for assistance. Many extremely effective small projects are thus debarred from benefiting from aid amounting up to 85 % of the investment sum.

4.16 It is clear from an analysis of aid practice pursued up to now that priority was given to the larger towns and cities. This is initially understandable, insofar as investments in these areas were able to bring about correspondingly higher reductions in environmental pollution and also in view of the fact that, for example, the Waste Water Directive makes provision, first of all, for sewage treatment in larger towns and cities. At the same time, however, there is a need to set out ideas for promoting the use of appropriate technologies as the course of future investment is now already being mapped out.

4.17 The EESC is fully aware of the fact that the Cohesion Fund does not only provide assistance for projects in cities; it also provides assistance for, for example, implementing sewage-treatment plans drawn up by associations. Whilst it is, therefore, conceivable for smaller projects to be bundled together, this does, however, seldom happen. As the decision on the provision of grants from the Cohesion Fund is taken in Brussels, the EESC recommends that applications for aid should include a clear calculation of the respective costs (investment costs and subsequent costs) of centralised, semi-centralised and decentralised technical projects. By thus encouraging applicants for aid to address, at least in general terms, alternative concepts, this could help to bring about considerable financial savings in the investment stage and also help to avoid high subsequent costs.

4.18 In Poland there is a variety of possible sources of funding for environmental measures, for which projects involving a small level of investment are also, in principle, eligible, namely: national, regional and, in some cases, local environmental conservation funds, the Ecofund<sup>(2)</sup> and other funds. In future, these funds will, however, increasingly be used to provide the requisite finance for projects co-funded by the EU. In concrete terms, this means that it may be assumed that funding arrangements for appropriate environmental technologies will not be made any easier, even though projects involving such technologies are frequently quickly amortized or do, in the long term, involve the lowest level of follow-up costs.

4.19 The EESC therefore proposes that consideration be also given to introducing a degree of earmarking of funding specifically for investments involving appropriate technologies. A given percentage of funding under the Cohesion Fund could, for example, be set aside for projects involving less than a given level of investment. Projects funded in that way could clearly no longer be approved on an individual basis by the EU Commission; the introduction of such a special fund would, however, represent a milestone in the campaign to spread ideas relating to appropriate technologies.

<sup>(1)</sup> In connection with a project organised by the German Federal Foundation for the Environment, the German Federal Ministry of the Environment and the environmental organisation 'Euronature'.

<sup>(2)</sup> The Ecofund is financed on the basis of remission of debt, granted on a bilateral basis. This fund will continue in existence to 2010.



4.20 In connection with the drawing-up of this opinion, there also was renewed discussion in the EESC of a demand, once raised by, amongst other people, the former President of the European Court of Auditors, Prof. Bernhard Friedmann, namely that EU aid programmes should no longer provide grants, which were not repaid, but should offer (lower-interest rate or interest-free) loans<sup>(1)</sup>.

4.20.1 Under the aid arrangements adopted up to now, assistance was provided for, for example, the construction of sewage-treatment plants in some municipalities, whereas aid was not forthcoming for such projects in other municipalities, on grounds of limited financial resources. This situation does, in principle, lead to injustice. In the environmental field, this means that at present (poorer) rural municipalities are slipping further and further behind (generally more affluent) towns and cities as a result of the aid arrangements pursued up to now.

4.20.2 If, on the other hand, funding was provided not in the form of grants but rather in the form of loans made available from a revolving fund, this could potentially result in the launching of an increased number of projects. There could also be an additional benefit in that parties in receipt of loans may possibly use the money in a more careful and responsible way than is the case with grants.

4.20.3 One problem which, for example in Poland, could make it difficult to restructure aid programmes in the above-mentioned way is the current indebtedness of municipalities. High levels of indebtedness are already frequently impeding preparations for investments to comply with EU requirements at local level. In 2001 local government bodies in Poland were indebted to the tune of 12.3 billion Polish Zlotys (PLN) (equivalent to EUR 3 billion); in 2002 the corresponding figure was PLN15.4 billion (c. EUR 4 billion) and the trend in indebtedness is rising. This means that many municipalities have reached the legally admissible threshold for indebtedness and are unable to take on any more loans.

4.21 In the case of private investments in appropriate technologies (in fields such as energy-saving measures and the increased use of renewable sources of energy alternative building materials and building constructions), the above-mentioned special revolving fund providing interest-free loans or loans at favourable rates of interest could provide an attractive alternative form of funding. Consideration should be given to linking such a fund to the proposed skill centres.

4.22 A possible way in which additional funding can be mobilised is through the participation of the private sector in the provision of public services (public-private partnerships - PPP).

4.23 Public-private partnerships do not, however, only offer opportunities - they also involve risks. The adoption of a PPP model which is not properly balanced may, for example, lead to considerable price increases. A project carried out in the Hungarian capital of Budapest, for example, involved massive price increases of over 200 % which led to considerable ill-feeling between the private operator and the city authorities.

## 5. Summary

5.1 Environmental technologies have a key role to play in reducing environmental pollution and bringing about sustainable development.

5.2 With a view to avoiding the misallocation of funding, it is important to pay very careful attention to ensuring that the solution adopted is that which is best suited to the situation concerned.

5.3 Whilst the use of appropriate environmental technology may, in some cases, involve higher planning costs, considerable savings may be made in both the investment and the operational phases and more, lasting jobs may be created. The savings made in this way could be used to ease the burden on both public and private budgets. Appropriate environmental technologies are thus one of the measures which the situation now calls for.

5.4 Appropriate technologies are however often methods which are unknown and all too infrequently unused in both the candidate countries and the current EU Member States. This can be put down, in part, to the tremendous shortage of know-how and uncertainty over whether it is indeed possible to comply with the prescribed standards by using alternative technologies.

5.5 The EESC calls upon the Commission to address this issue in-depth in connection with the implementation of the action plan for promoting environmental technologies. The establishment of skill centres for appropriate technologies in the candidate countries might be one way of starting to reduce this information shortfall.

5.6 Part of the aid made available should be paid into a fund used, first and foremost, to finance smaller measures. The Cohesion Fund, which does not provide assistance to any projects involving sums of less than EUR 10 million, gives too little aid to appropriate solutions. When applications are made for assistance from the Cohesion Fund, it would be helpful if applicants were to provide information indicating why they had opted to use the proposed technology and what alternatives had been rejected.

Brussels, 31 March 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

<sup>(1)</sup> 'Financial control - helping to promote the European venture', an address given by Prof. Friedmann on the occasion of the award of the 'Europäischer Bulle' Prize 2001, offered by the European Taxpayers' Association.

**Opinion of the European Economic and Social Committee on the**

- **'proposal for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (Reach), establishing a European Chemicals Agency and amending Directive 1999/45/EC and Regulation (EC) {on Persistent Organic Pollutants}' and the**
- **'proposal for a Directive of the European Parliament and of the Council amending Council Directive 67/548/EEC in order to adapt it to Regulation (EC) of the European Parliament and of the Council concerning the registration, evaluation, authorisation and restriction of chemicals'**

(COM(2003) 644 final - 2003/0256 COD - 2003/0257 COD)

(2004/C 112/24)

On 8 December 2003 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 proposals

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 2004. The rapporteur was Mr Braghin.

At its 407<sup>th</sup> plenary session (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion with 129 votes in favour, no dissenting votes and two abstentions.

## **1. Introduction**

1.1 Over the last thirty years, control of chemicals has steadily been transferred to Community level. The first Community instrument in this field was Directive 67/548/EEC on the approximation of rules relating to the classification, packaging and labelling of dangerous substances. Alongside these rules, the directive also made provision for a future requirement to provide further information on chemicals placed on the market <sup>(1)</sup>. The sixth amendment to this directive (contained in Directive 79/831/EEC) introduced a procedure for the notification of 'new substances', i.e. substances first placed on the market after 18 September 1981. The seventh amendment (contained in Directive 92/32/EC) laid down uniform principles and rules for the notification procedures.

1.2 The legislation was subsequently extended to cover the determination, evaluation and control of the risks of both new and existing substances. The basic principles for this were laid down in Council Regulation 793/93, as supplemented by Regulation 1488/94 in the case of existing substances and by Directive 93/67/EEC in the case of new substances.

1.3 The Chester Environment Council in April 1998 decided that the existing legislation should be reviewed in order to develop a new coherent and integrated approach to chemicals policy in line with the precautionary and sustainability principle, with an appropriate distribution of responsibilities between the parties involved in the control of chemicals. The matter was discussed again by several subsequent Councils. The Commission, working in the broader context of the sustainable development espoused by the Helsinki European Council in December 1999, then put forward its white paper on chemicals, entitled Strategy for a future chemicals policy

(COM (2001) 88 final). The white paper was drawn up jointly by the Environment and Industry DGs, so as to take balanced account of both the competitiveness objectives of the chemicals industry and environmental protection requirements <sup>(2)</sup>.

1.4 The new system envisaged in the white paper (termed REACH: Registration, Evaluation, Authorisation of Chemicals) involved a uniform regulatory framework for both existing and new substances, based on three elements: registration, evaluation and authorisation of substances with hazardous properties. The overriding aim was to guarantee a high level of protection for human health and the environment. To this end, the onus and responsibility of providing appropriate information and an initial risk evaluation was transferred to the manufacturer/importer and, in specific cases, to downstream users. The system was to be introduced within a precise timeframe, giving precedence to particularly problematic products and to substances produced in particularly high quantities.

## **2. Key points of the proposal**

2.1 The present proposal for a regulation and a directive therefore aims to replace the existing legislation because the Commission thinks that it is inefficient, not conducive to innovation and unable to guarantee sufficient protection for human health and the environment. The new system is designed to meet five key objectives:

- to establish a coherent registration system that progressively covers both new and existing substances, over a differentiated timeframe of around ten years from the entry into force of the new regulation;

<sup>(1)</sup> OJ 196 of 16.8.1967, p.1.

<sup>(2)</sup> EESC opinion: CESE 1327/2001 of 17 October 2001 in OJ C 36 of 8.2.2002.

- to move the burden of risk assessment from government agencies to the producing/importing companies, who at the same time remain responsible for providing complete information dossiers on the characteristics of the substance which they intend to register;
- to include downstream users in requests to supply information and in the testing of substances, when necessary and appropriate;
- to introduce an authorisation procedure for hazardous substances;
- to ensure greater transparency and openness for the public by providing easier access to information on chemicals.

2.2 The proposal seeks to simplify the complex existing legislation on the use of chemicals and enshrine it in a single instrument. This will entail the repeal of a number of existing directives and regulations. The proposal is based on the above-mentioned REACH system obliging companies which produce or import more than a tonne of a chemical per year to register it on a single central database. Producer and importer firms will have to supply not only technical information on the properties, uses and safe handling of substances (as already required under existing legislation), but also on their safety and on management of the risk to man and the environment. This information will then have to be passed on in the successive stages of the production chain, so that users can use or market the substances responsibly and wisely and without risking the health of workers, final consumers or the environment.

2.3 The proposal as it now stands was drafted with involvement of all interested parties. The process included an internet consultation, beginning in May 2003 and lasting two months, on an initial draft regulation. This yielded some 6000 opinions, from all the parties concerned. On the basis of the various views expressed, the draft was amended to produce the present version. The requirements have been simplified in accordance with the quantities produced or imported. In the Commission's view, the direct and indirect costs of implementation will therefore be considerably lower than previously forecast.

2.4 A new European Chemicals Agency will manage the substances database, receive the registration dossiers, and be responsible for providing the public with non-confidential information. The agency will have a number of committees with differing roles, and a board of appeal.

2.5 All substances of which more than a tonne is produced or imported in a year must be registered. The Commission thinks that for around 80 % of these, no further action will be required.

2.6 The dossiers will be evaluated by competent authorities set up by the Member States, who will check their compliance with the registration requirements (which vary according to the quantities produced or imported), the animal testing conditions, and the quality and completeness of the assessments of the risk for human health and the environment. The substance evaluation programme will be based on a rolling plan prepared by the relevant national authority, using the priority criteria set by the Agency.

2.7 Substances which cause particular concern, such as CMRs, PBTs, vPvBs (<sup>(1)</sup>), and other substances with serious and irreversible effects on health or the environment, will require authorisation for specific uses by the Commission. Authorisation will only be granted if the use of the substance can be properly controlled; otherwise an analysis will be made of the level of the risk, the socio-economic importance and the existence of substitutes, in order to ascertain whether authorisation is justified. In order to ensure that the risks are acceptable, restrictions can be introduced following a proposal from the Commission or a Member State, according to the procedure set out in Article 130. These restrictions can include a ban on use.

2.8 To safeguard the competitiveness of the sector, the current version of the proposal has reduced the number of test requirements and made them less complex than in the initial version (which reflected existing legislation), particularly as regards substances with volumes between 1 and 10 tonnes. A number of substances are being exempted, including polymers and some intermediaries, and the rules for downstream users have been simplified. The Commission proposes that safety information may be exchanged in the form of safety data sheets (SDS). These sheets are already used in the existing legislation, but they are now being modified. The new measures should help companies achieve the desired results with minimum cost.

2.9 Innovation should be encouraged by raising the current threshold for new substances, exempting quantities between 10 kg and 1 tonne from the test requirements, making it easier for downstream users to find new innovative substances, and extending to 10 years (15 in the pharmaceutical sector) the exemption period for substances at the research stage.

2.10 These measures have significantly reduced the estimated costs – both the direct costs to industry and the indirect costs, which are much lower than the anticipated benefits for human health.

(<sup>1</sup>) Substances that are carcinogenic, mutagenic or toxic to reproduction (CMRs), substances that are persistent, bio-accumulative and toxic (PBTs) and substances that are very persistent and very bio-accumulative (vPvBs).

### 3. General comments

3.1 The Committee reiterates its view that sustainable development and protection of health and the environment should be among the EU's priority objectives. The Committee's earlier opinion on the white paper thus supported the introduction of the REACH system and endorsed its objectives, including the move to make manufacturers, importers or users responsible for preparing documentation on chemicals with a view to registration and an initial risk assessment. The Committee also supported the establishment of an EU registration system and of a Community body to manage it. The Committee recognises that the regulation proposed by the Commission has identified the right objectives and that it will reduce the requirements for registering new substances; these requirements are viewed as one reason why so few new substances have been registered in Europe in the last twenty years. The new regulation should thus encourage innovation. At the same time, however, it will form a significant undertaking not just for the chemicals sector but for the production system as a whole.

3.1.1 The EU economy is going through a period of modest growth, and legislative initiatives that could threaten competitiveness, industrial growth and jobs must therefore be scrutinised very carefully. As many stakeholders have pointed out, the impact assessment available does not definitively establish that the proposed REACH system strikes an effective costs/benefits balance. The Committee agrees that as far as possible and bearing in mind the need to fulfil safety requirements, the competitive capacity of the EU chemical industry must not be hampered, as the industry is a world leader and is a key sector in almost all Member States. The repercussions for all the other production sectors which use chemical substances and preparations must also be addressed, including sectors that might appear to be less affected (e.g. iron and steel, textiles, engineering, electronics) and those in which SMEs could face special difficulties, bearing in mind the new dimension of the 25-member Union.

3.1.2 The Committee urges that consideration be given to amendments to the regulation that help to simplify procedures. In this context, the dialogue with stakeholders which was launched very fruitfully in the extended consultation process in 2003 should be continued, so as to safeguard legitimate health protection requirements and the equally legitimate requirements of competitiveness and employment. To this end, the Committee calls for more effective practical measures to promote development and innovation opportunities. Such measures are particularly necessary for SMEs, as the costs of the REACH system could eat into a significant percentage of their turnover.

3.1.2.1 The Committee notes and endorses the initiatives launched by the Commission and the European Chemicals Bureau as part of an 'interim' strategy pending finalisation of the legislative instruments by the European Parliament and the Council. The strategy includes involvement of stakeholders in the preparation of more user-friendly technical guidance documents, more detailed impact assessments for specific sectors,

and the formation of strategic partnerships for pilot implementing projects. Having acquired direct knowledge of experience in this field in North-Rhine Westphalia, the Committee applauds this approach and hopes that it will be involved in it too. It reserves any further comments until the results of the pilot stage are known.

3.1.3 Regulatory simplification, the possibility of a more rapid evaluation based on more extensive knowledge, and the provision of more detailed information on the characteristics and risks inherent in the production and use of chemicals throughout the production chain could all have beneficial effects: productivity could increase and there could be positive spin-off for the whole development of environmental legislation<sup>(1)</sup>. A competitive advantage could also be secured: such an advantage is obvious in the case of the waste treatment sector, or other sectors which manufacture products for the final consumer, provided there are appropriate mechanisms (e.g. a label recognisable to the consumer) to act as a form of market recognition and 'reward' for manufacturers who adapt to environmental and consumer health protection legislation. These objectives must be pursued expressly, and could become operational if EU standards are adopted internationally following targeted action by the Community authorities. To achieve this, a constructive dialogue will also be needed with the relevant authorities, economic operators and the world of work, together with an information and education policy for the final consumer.

### 3.2 The European Chemicals Agency

3.2.1 The Commission proposes the establishment of a European Chemicals Agency to manage the technical, scientific and administrative aspects of the REACH system and ensure the consistency of the evaluation and decision-making process at Community level. Under the proposal, the Agency is to provide criteria to guide Member States' selection of substances for evaluation and will also issue opinions and recommendations in the authorisation and restriction procedures, as well as giving guidelines on data confidentiality.

3.2.2 The Committee fully endorses the decision to set up an Agency rather than merely extending the duties of the European Chemicals Bureau within the Joint Research Centre (as had been proposed in the white paper). However, the Committee feels that the powers and responsibilities assigned to the Agency are too limited. According to the Commission proposal, its role is solely to provide scientific and/or technical advice, while the operational management of the system appears to be largely left to the Member States, who are to operate on the basis of guidelines, opinions and recommendations from the Agency. The Committee wonders whether under such a system it will be possible to select evaluation priorities in a truly effective and consensual manner, and ensure that every decision draws on the wider spectrum of competences and specialisations presumably to be found in the Agency's committees.

<sup>(1)</sup> For example the water framework directive, the IPPC directive, and the directives on hazardous waste.



3.2.3 The example of the European Agency for the Evaluation of Medicinal Products (which the proposal rightly considers as the most similar body) shows that analysing dossiers centrally makes it easier to strike a fair balance between differing viewpoints, while national agencies – especially when faced with a new responsibility – have a tendency to apply the precautionary principle. The Committee believes that it is both possible and desirable to harness the national authorities in a network in which they can continue to carry out well coordinated and jointly defined operational duties. The experience of the European Chemicals Bureau confirms that involving local authorities in a network and giving them responsibilities is important for establishing a consensus in the decision-making process.

3.2.4 The Committee therefore thinks that the new Agency should be given precise duties and responsibilities in a number of areas: for setting the criteria for deciding evaluation priorities; for drawing up opinions on authorisation requests; for participation in the adoption procedure for restrictions on some dangerous substances and preparations; and for drawing up proposals for EU harmonisation of classifications and labelling. The tasks and membership of the Agency's bodies (the management board, committees, forum and board of appeal) will have to be revised in the light of this new definition of duties and responsibilities.

3.2.5 In particular, the Committee does not think that setting up a body made of national representatives is the best way of settling disputes or dealing with appeals arising as a result of divergences between national authorities. The Committee advocates the establishment of a forum for collecting and disseminating useful information, updating databases, and providing technical assistance for the relevant authorities and businesses (especially small firms). This forum should include scientists and experts chosen by the Agency, *inter alia* from the industry.

3.2.6 In general, the Committee hopes that the Agency will be structured and financed in such a way that it can immediately assume full responsibility for evaluation, albeit involving and drawing on the expertise and staff of the competent national authorities where necessary or appropriate but without *a priori* limiting its powers and responsibilities. Pending the establishment of the Agency, the Committee also hopes that the European Chemicals Bureau, in conjunction with national and local authorities and stakeholders, will be in a position to verify the smooth operation of the processes devised during pilot schemes or in specific fields.

3.2.7 In particular, the Committee points out the inadequacy of the provisions in Article 105 for involving stakeholders, which merely mention 'contacts' with representatives of industry, consumer protection, worker protection and environmental protection organisations.

### 3.3 *The registration system*

3.3.1 The regulation requires companies which manufacture or import one tonne or more of a chemical to submit a technical dossier to the competent authorities containing information on the substance and a preliminary report on the determination and reduction of the risk. For volumes of 10 tonnes or more, 100 tonnes or more and 1000 tonnes or more, there is an increasingly tight scale of requirements for the tests to be used for drafting the report.

3.3.1.1 Companies are likely to have to develop new tests and knowledge about substances according to their importing and manufacturing needs, and hence their registration requirements, and use this knowledge to ensure that any possible risks are managed in a responsible and well informed manner. They will also have to inform downstream users of the risks involved in such uses, and these users will only have to produce a chemical safety evaluation if the product is to be used for a purpose other than the one foreseen.

3.3.1.2 The registration system will undoubtedly require significant commitment of time and resources, especially for importers and downstream users who have not had to fulfil similar obligations in the past. However, the new system is vital for protecting human health and the environment, and for the proper operation of the single market. Moreover, it could give the most innovative companies and those best able to adapt to the new market conditions the opportunity to extend their market.

3.3.2 There is a certain logic in requiring speedier action and more extensive information when larger volumes of chemicals are produced/imported; this approach is simple, and can be applied directly. However, it is not necessarily the best way of identifying real risk, either in terms of intrinsic hazard or of exposure. Retaining a criterion (that of volumes) which the Committee has already described as too rough could involve unjustified costs for companies (<sup>1</sup>).

3.3.3 The practical application of the system could be made more flexible, as regards the complexity of the dossier which every manufacturer/importer must submit in their registration application, and with a view to pinpointing substances which, although produced or imported in quantities of less than 10 tonnes, require a more thorough risk analysis. This flexibility could be achieved by making use of the analyses of intrinsic hazards and of the information on use and exposure that is already available or easily obtainable from data already in the possession of manufacturers and authorities, and also by drawing on existing knowledge and analysis of structural affinities with known problematic or dangerous substances. The Committee calls on the Commission to explore this avenue as a way of fine-tuning the operation of the REACH system.

(<sup>1</sup>) See the Committee's earlier opinion on the white paper, point 5.1.

3.3.4 The Commission proposes a series of rules on data availability, with a view to reducing animal testing and the costs for companies. In particular, the most important data can be shared, subject to payment of a fee. Assistance will also be provided to find other registrants to exchange data with. However, this mechanism does not appear to have sufficient support nor to be able to encourage alliances, other than between partners who already cooperate or are already tied to each other for supply reasons.

3.3.5 Although the concern to reduce animal testing deserves support, this is only one aspect of the problem. More effective systems should be put in place for reducing if not eliminating unnecessary duplication of dossiers and tests, including analytical and *in vitro* tests. To this end, arrangements should be devised for encouraging cooperation between manufacturers, importers and downstream users, with mechanisms for sharing out costs in a way that is fair and that can also be borne by SMEs. The Committee thinks that it would be worth considering forms of assistance for the preparation of dossiers and encouraging interested parties (especially downstream users and SMEs) to form groupings on a voluntary basis, while guaranteeing the safeguarding of intellectual and industrial property rights.

3.3.6 Provision is made for information all along the production chain, both upstream and downstream, with the sheet required under Annex I replacing the safety data sheet currently provided under Directive 91/155/EEC. The two-track system that will inevitably exist for a number of years may pose problems for the smooth operation of the single market.

### 3.4 *Evaluation (Title VI)*

3.4.1 Evaluation – of both the dossier and the substances – is to be conducted by the Member States. The task of the Agency will just be to develop criteria for prioritising substances for evaluation and to intervene in the event of evaluation differences between Member States. During the start-up period in particular, the fact that a Member State's evaluation mechanism has to be approved by other Member States by means of a written procedure could slow matters down considerably, and perhaps even lead to cross-vetos.

3.4.2 A precondition for using substances safely and minimising the risk to people and the environment is the availability of scientifically sound data that have been collected in a uniform manner and validated (i.e. undergone a control process – the evaluation provided for in Title VI), with a solid analysis of the costs/benefits ratio in specific uses. The first stage in determining the risk is the establishment of a chemical safety report, which is now to be the responsibility of the manufacturer/importer (whereas in the present system it is up to the competent authority), together with the provision of substance data. The ensuing dossier and substance evaluation procedure is a delicate and complex matter, based on the information provided by manufacturers/importers, and the resulting deci-

sions are extremely important. The Committee therefore thinks that it should primarily be the job of the Agency, albeit in close cooperation with the relevant national authorities, as this would ensure speedier action, a more consistent approach and the involvement of wider competences.

3.4.2.1 Giving this task to the Agency does not mean wresting power from the relevant national authorities: the Agency's specialist and political bodies should draw up evaluation priorities and give the national authorities the task of carrying out the specific evaluation activities. The national authorities could always propose independently that a substance be evaluated if they so wish, explaining why they take this view and then including it in the centralised decision-making process.

3.4.3 One shortcoming of the current proposal is that, except in the case of particular substances that have already been singled out, it makes no explicit provision for the evaluation of possible interactions and accumulation processes which might render the use of certain chemicals more dangerous. The Committee thinks that rather than being left up to companies, this aspect should be included in the Agency's operating programmes, in cooperation with the relevant national authorities.

3.4.4 An unforeseen threat could be posed by substances, preparations, products and articles imported from regions of the world that conceivably do not have adequate controls and do not respect the GLP required for compiling the data that are to be supplied for registration and risk evaluation. The competent authorities should be particularly attentive to this, *inter alia* so as not to give an undue competitive advantage to non-EU producers.

3.4.5 The Committee calls for clearer identification of the responsibilities of manufacturers, importers and downstream users – in the form of specific provisions if necessary – in order to deal with cases in which they fail to meet the regulation's requirements regarding documentation, risk evaluation and measures to ensure more controlled and safer use.

### 3.5 *Authorisation*

3.5.1 The aim of the authorisation system is to guarantee the smooth operation of the single market and ensure that the use of substances of particular concern is properly controlled or that these substances are replaced by safer alternative substances or technologies. The Committee endorses this aim, and therefore agrees that the producer/importer should be required to supply further data in order to show that the risks can be controlled or that they are outweighed by the socioeconomic benefits. The Committee also agrees that authorisation should be granted for a single specific use, so that use can be controlled more effectively and so that downstream users can be properly informed.

3.5.1.1 The Committee thinks that in any event the authorisation should apply for a limited time. It therefore suggests that after five years a further evaluation and ensuing authorisation be undertaken, if necessary, as is the case with other authorisation procedures. This would stimulate innovation for the development of safe alternatives and would encourage application of the substitution principle as a first alternative for dangerous chemicals.

3.5.2 The restrictions laid down in the authorisation must be introduced across the whole EU and must be independent of production/import volume, so as to avoid any serious risk to health or the environment. The Committee agrees that a recast version of Directive 76/769/EEC should provide the starting point for the new procedure regarding restrictions, but calls for early action to update the lists of dangerous substances in cases where there is a sound scientific basis for so doing.

3.5.3 The Committee points out that the legislation governing the protection of the health and safety of workers from the risks related to the use of chemical substances should continue to apply and to be developed, without prejudice to REACH. Consideration should doubtless be given to determining the extent to which it would be possible to incorporate provisions to this effect into the REACH legislation and to enhance its compatibility with Council Directive 98/24/EC, which sets out obligations to carry out assessments, in consultation with the parties concerned.

3.5.4 The Committee thinks that other substances with risks equivalent to those of CMRs, PBTs and vPvBs (already identifiable with clear, objective criteria and thus included in Annex XIII) should be taken into consideration as soon as the risks are identified, and should be subject to the authorisation process independently of the quantities used.

### 3.6 Downstream users

3.6.1 The Committee approves the move to oblige downstream users to consider the safety of their uses of substances, primarily on the basis of information from their supplier, and to take appropriate risk management measures. They are required to notify any new use which had not been envisaged (and therefore documented) by the supplier. For this requirement to be feasible, especially for SMEs, the supplier must have completed his registration and must provide the downstream user with non-confidential data regarding the substance. A weakness of the current proposal is that the producer/supplier is not likely to have to provide a complete set of information. This could place an excessive burden on the downstream user when it comes to obtaining documentation. The Committee thinks that this aspect, and the possibility of having recourse to the Agency, need further clarification if the implementing costs of the new system really are to be kept down.

3.6.2 In this context it would be helpful to hold a series of seminars or conferences with interested parties to check on the situation, both in the production sectors that are most likely to

be affected (the paints and varnishes, pigments, tanning, timber and furniture, synthetics, electrical and electronic appliance industries would seem to be particularly hit by the cost of the documentation to be supplied) and in SMEs, as these are often dependent on a single supplier and thus lack bargaining power for obtaining data under economically acceptable conditions. Without further investigation and a clear regulatory framework, unfairness could arise in the abovementioned cases and in similar ones.

### 3.7 Data sharing

3.7.1 The Commission proposes a number of measures for sharing the data collected and avoiding unnecessary animal testing. The Committee supports this objective and agrees that new registrants should be able to use these data, either by making a direct payment to the originator or via an arbitration board. However, the Committee thinks that the proposed measures are not specific enough: the provisions for the use of shared data need to be fleshed out in order to ensure fair conditions for all operators, especially SMEs.

3.7.2 The Committee supports the pre-registration mechanism for firms that are preparing for a registration, so as to enable them to share the data already available, provided that there is a guarantee that confidential information will not be disclosed. It also supports the setting-up of 'substance information exchange fora' (SIEF), whose role could extend beyond the currently proposed aim of avoiding duplicate animal testing.

### 3.8 Worker information and training

3.8.1 The Committee thinks that the information provided by the REACH system is essential for evaluating and reducing risks relating not only to health and environmental protection but also to the health and safety of workers in the workplace. This information is thus extremely important for the conduct of any professional activity.

3.8.2 Experience built up in recent years in the chemicals sector, through regular dialogue between the social partners, shows that the availability and proper use of this information has enabled the sector to achieve a lower level of workplace accidents and environmental damage than other sectors.

3.8.3 In the light of this fruitful experience, which has not been widely reported, the Committee stresses the added value of providing workers and their representatives with any useful information obtained from the evaluation of the chemical safety of a substance or preparation and contained in the safety data sheets. The Committee therefore hopes that the fruitful experience in the chemicals sector will be extended to downstream sectors, for example by means of special training programmes for workers and their representatives, building on the protection instruments laid down in existing legislation on dangerous substances and promoting more harmonised application thereof.

### 3.9 Impact assessment

3.9.1 The Commission's figures for the direct and indirect costs of the system over the next ten years have been criticised by various parties as being too low. The Committee notes the new evaluation which takes account of the changes made to the earlier draft document following consultations. The impact assessment has thus been expressly updated and should be more realistic. However, a number of imponderables remain, particularly as regards indirect costs, downstream users, and the impact on the new Member States.

3.9.2 The Committee therefore asks the Commission to launch a specific debate on this with the various sectoral organisations at EU and national level, particularly in those sectors which private studies suggest will be particularly affected by the new regulation. The Commission should thus be able to ascertain whether its analysis is justified and review any measures that prove to be excessively burdensome.

3.9.3 The Committee is concerned about the possible economic impact and asks the Commission to make a more detailed assessment of this, bearing in mind the importance of the use of chemicals across all sectors of the economy, including agriculture and services. The Committee also asks the Commission to give more thought to the potential impact on the acceding countries.

3.9.4 It is thought that the new system will encourage innovation, and it is certainly true that some of the measures will make it easier to identify and market more new substances. The Committee therefore approves these changes. In general, however, it considers that the mechanisms (which are mostly automatic) designed to encourage innovation are still too generic, and that not enough has been done to gauge the impact in quantitative terms.

3.9.5 At first sight the costs/benefits ratio appears very favourable, especially in the health field. However, it must not be forgotten that while the costs are borne directly by economic operators, the benefits will generally be felt elsewhere or by society as a whole, and over a longer period than the costs. This may well explain many of the negative reactions and concerns voiced. To counter these, action is needed on two fronts. Firstly, efforts should be made to achieve a broader consensus, backed up by sectoral analyses (quantitative and otherwise). Secondly, a pro-active policy must be adopted to safeguard competitiveness, making the EU legislation a benchmark for other areas of the world. This calls for targeted action by the Commission in all international forums.

## 4. Conclusions

4.1 Whilst the Committee supports the objectives and application of the REACH system, it thinks that particular attention must be paid to the implementing arrangements, with a view

to ensuring that the new legislation (however opportune) does not jeopardise the competitiveness and growth of the industry and hence aggravate employment problems. This requirement, which relates to the drive to pursue socially, economically and environmentally sustainable development, takes on a more concrete aspect in the present instance, as the impact assessment does not establish a proven balance between costs and benefits.

4.2 The political commitment to provide legislation safeguarding health, safety and environmental impact for all chemical users and for the general public has to be met without damaging the competitiveness of the industry. The Committee therefore calls on the Commission, the European Parliament and the Council to give serious consideration to any amendment that could help to simplify procedures, cut red tape and thus reduce the attendant costs, continuing the consultations with stakeholders with this aim in mind.

4.3 The Committee also recommends devising measures to inform interested parties, and particularly SMEs and downstream users, of the content of the regulation and the changes introduced. This should help to counter the present negative attitude which does not fully appreciate the advantages of simplifying existing chemicals legislation, having a swifter and more efficient evaluation (with fewer risks and ensuing responsibilities), and easier application of environmental legislation (on emissions, waste, worker safety, etc.).

4.4 Similarly, it must be explained that the annexes contain implementing instructions, generic guidelines, and technical and scientific provisions regarding research and experiment methodology; they do not increase red tape but make the regulation easier to apply, nor are they any more voluminous than the annexes to the existing legislation. Where legally possible, it might therefore be useful to introduce a clear distinction between those annexes that are to have legal force and those which can be used as an 'operator's guide' or guideline for experts. These latter annexes could then be more easily updated in the light of technical and scientific progress.

4.5 The Committee appreciates the method used by the Commission to draw up the proposal, which has involved extensive consultations. It hopes that the consultation and involvement of stakeholders will continue so that the text can be further improved, notably by:

- making any alterations that help simplify procedures and therefore reduce costs, without changing the objectives being pursued;
- extending and strengthening the tasks of the future European Chemicals Agency (in particular in the dossier and substance evaluation procedure – Title VI) so that it becomes the hub of the new system, in close and constructive cooperation with the competent national authorities;



- modifying the duties and membership of the Agency's bodies so as to ensure balanced representation of the various responsible parties and bring in Europe's top scientists;
- setting up instruments and methods to prevent unnecessary duplication of dossiers and tests, and help reduce animal testing, and devising mechanisms to ensure a fair distribution of costs;
- clarifying the distribution of duties between manufacturers/importers and downstream users, as some of the chemicals produced/imported are subsequently purchased by businesses that market mixtures for a variety of uses;
- drawing up a support plan for SMEs and downstream users in particular, to facilitate the implementation of the REACH system and the setting-up of groupings for this purpose;
- finding more specific automatic instruments to encourage innovation and the identification and marketing of new substances.

4.6 The Committee stresses the need for a more detailed impact assessment, in particular as regards indirect costs, the costs for some key downstream user sectors, and the potential

impact on the acceding countries, with a view to ascertaining whether the criticisms made of the studies conducted to date are justified.

4.7 Lastly, the Committee calls for a vigorous political campaign to promote the provisions of the REACH system worldwide, pressing home their essential role in protecting public and worker health and the environment and, last but not least, in defending the competitiveness of the European chemicals industry.

4.8 The Committee welcomes the pilot implementing schemes and practical trials already being conducted in some Member States and involving regional authorities and other interested parties, with a view to simplification and a more concrete impact assessment. The Committee also welcomes the work being done by the Commission and the European Chemicals Bureau, together with stakeholders, to draw up sectoral guidelines for the practical implementation of the REACH system. The Committee thinks that when drawing up the final legislative instruments, all the EU institutions should make use of the experience obtained during this interim stage. It reserves the right to issue an additional opinion assessing the results of the present exercise.

Brussels, 31 March 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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#### APPENDIX

##### to the opinion

##### (Rule 39 of the Rules of Procedure)

The following amendments, which received at least one quarter of the votes cast, were defeated in the course of the debate:

##### Add a new point 3.4.4, as follows:

'In order to ensure the reliability of the information made available in respect of registered chemical substances, it is, in the EESC's view, vital to have an appropriate system of quality assurance. Such a system can be established (a) by means of internal quality assurance measures introduced by the economic players, backed up by external certification or (b) by independent experts. This will enable data and supporting documentation to be qualitatively comparable and useable throughout Europe, thereby making it possible for the authorities to hand over to the enterprises part of their responsibility for carrying out checks.'

Vote:

For: 27 Against: 64 Abstentions: 13

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**Opinion of the European Economic and Social Committee on the 'proposal for a Council Directive repealing Directive 72/462/EEC'**

(COM(2004) 71 final - 2004/0022 CNS)

(2004/C 112/25)

On 27 February 2004 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.

On 24 February 2004, the Bureau of the European Economic and Social Committee instructed the Section for Agriculture, Rural Development and the Environment to prepare the Committee's work on the subject.

Given the urgent nature of the work, at its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March 2004), the European Economic and Social Committee appointed Mr Donnelly as rapporteur-general and adopted the following opinion unanimously.

## **1. Introduction**

1.1 In 2000 the Commission announced a radical shake-up of food hygiene legislation with the publication of the White Paper on Food Safety. The key aspects of this reform were the simplification of legislation in the area of food and feed safety and in the area of animal health that relates to food safety.

1.2 The objectives of the White Paper were to be achieved through the implementation of a very comprehensive action programme. This included the Proposal for setting up the European Food Safety Authority and a Proposal for a regulation on General Food Law. This objective has been achieved in the form of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down general principles and requirements of food law establishing the European Food Safety Authority and laying down procedures in matters of Food Safety.

1.3 The actions in the area of the simplification of food and feed law and the reforms in the area of official controls are in an advanced state. These should be formally implemented by Member States by 1 January 2006. The seamless integration of the hygiene rules and of the official controls, from farm to fork was also a key objective. This is reflected in the proposals.

1.4 The animal-health requirements for the importation of meat and meat products have been recast and updated by Council Directive 2002/99/EC. This must be formally implemented by Member States by 1 January 2005.

1.5 The recent outbreaks of foot-and-mouth disease (FMD) and also classical swine fever (CSF) have also prompted a recast of animal-health legislation relating to the import of live animals. This has already been sent to the Council for a Directive laying down animal-health rules for the importation into the Community of certain live animal, and amending Directives 90/426/EEC and 92/65/EEC (COM (2003) 570).

It is therefore proposed to repeal Directive 72/462/EEC with regard to animal-health conditions for live animals, as it is no longer relevant.

## **2. Gist of Commission Proposal**

2.1 This proposal repeals Directive 72/462/EEC from 1 January 2005 as regard the animal-health rules for the importation of meat and meat products.

2.2 From 1 January 2006 the proposal repeals Directive 72/462/EEC as it relates to rules on public health and official controls for meat and meat products.

2.3 A date has yet to be agreed depending on the formal date of implementation on the proposal for a Council Directive laying down animal-health rules for the importation of certain live animals and amending Directives 90/426/EEC and 92/65/EEC. As from this date to be agreed Directive 72/462/EEC is repealed as regard the animal-health rules for the importation of live animals.

2.4 The implementing rules established under Decisions adopted for the import of live animals, meat and meat products under Directive 72/462, as listed in the Annex to this proposal will remain in force until they are replaced by measures adopted under the new regulatory framework.

### 3. General comments

3.1 The EESC welcomes this proposal as part of the ongoing review of Community measures in matters relating to animal health. The EESC supports the concept of consolidating the rules governing the imports of live animals.

3.2 The EESC is also very much in favour of the ongoing process of simplification of Community legislation.

3.3 The EESC welcomes the rapid progress made in the implementation of the action plans on Food Safety through the implementation of the objectives set out in the White Paper on Food Safety.

3.4 The EESC finally welcomes the clear separation of the rules governing animal health requirements for the importation of meat and meat products, on public health rules in food and feed hygiene, on official controls of food and feed and on animal-health rules for the importation of live animals.

### 4. Specific comments

4.1 The EESC recognises the potential risks in the area of animal health particularly as a consequence of the new borders the EU will have after the enlargement; the EESC therefore recommends that sufficient resources are made available by the Commission for the inspection and auditing of the implementation and transposition of the relevant Directives.

### 5. Conclusions

5.1 The EESC supports the Commission's proposal, in the interests of completion of the process of legislative review and simplification.

Brussels, 31 March 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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**Opinion of the European Economic and Social Committee on a**

- **‘proposal for a Council Directive amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation’**

(COM(2004) 42 final - 2004/0016 (CNS))

and on a

- **‘proposal for a Council Directive amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation’**

(COM(2004) 185 final - 2004/0067 (CNS))

(2004/C 112/26)

On 18 February 2004 the Council decided to consult the European Parliament and the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Council Directive amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation

COM(2004) 42 final - 2004/0016 (CNS)

and on 31 March 2004, the Council decided to consult the European Parliament and the European Economic and Social Committee on the

Proposal for a Council Directive amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation

(COM(2004) 185 final - 2004/0067 (CNS)).

In view of the urgent nature of the work, the Committee decided at its 407<sup>th</sup> plenary session (meeting of 31 March 2004) to appoint Mr Allen as rapporteur-general and adopted the following opinion by 33 votes in favour, one vote against with one abstention.

## **1. Introduction**

1.1 Council Directive 2003/96/EC (adopted on the 27 October 2003) on the restructuring of the Community framework for the taxation of energy products came into force on 1 January 2004. Directives 92/81/EEC and 92/82/EEC were repealed as from 31 December 2003.

1.1.1 Directive 92/81/EEC and 92/82/EEC applied minimum rates of excise duty to mineral oils. The new Energy Tax Directive 2003/96/EC applies minimum rates of excise duty to nearly all energy products including coal, gas and electricity. It also updates the minimum rates of excise duty for mineral oils which remained unchanged since 1992.

1.1.2 The Energy Tax Directive was intended to reduce the distortions of competition between Member States as a result of divergent rates of tax: reduce distortions of competition between mineral oils and other energy products that were not

previously subject to EU tax legislation: increase the incentive to use energy more efficiently (so as to reduce dependency on imported energy and cut carbon dioxide emissions); and allow Member States to offer companies tax incentives in return for specific undertakings to reduce emissions.

1.2 The level of excise duties applied by many of the Accession countries is, in some cases, significantly lower than in the EU. Some Accession countries already comply with the minimum rate set by Directive 92/82/EEC, others are preparing to comply with their commitment to apply the minimum rates contained in 92/82/EEC by 1 May 2004. Poland and Cyprus negotiated some derogations from this in the Treaty of Accession. The minimum excise duty for unleaded petrol under 92/82/EEC is EUR 287 per 1,000 litres but under the new energy tax Directive the minimum rate becomes EUR 359 per 1,000 litres.



1.3 Unless the energy tax Directive is amended the Accession member states will have to adopt its provisions from 1 May 2004. The effect of this on their economies (i.e. taxation of energy products and electricity) could have serious social and economic consequences given the much lower duties on energy products that they apply at present. The massive cost increases that would result could cripple their SMEs as well as putting a huge burden on industry and consumers. Poorer households would be particularly badly affected. Therefore, they have sought temporary exemptions or reductions on the levels of taxation on energy products and electricity which they must charge.

## 2. Gist of the proposals

2.1 In November 2003 the Accession member states, except Cyprus, submitted requests to the Commission for certain exemptions from the requirements of the Energy Tax Directive. The Accession Treaty of the 16.4.2003 provides that with respect to EU legislation adopted after 16.5.2003 that the Accession countries must have the opportunity to submit requests for any exemptions with respect to such legislation that they regard as necessary. The Commission must examine such requests and if found to be justified make a proposal to the Council. The Commission require a detailed justification for every demand submitted.

2.1.1.1 Cyprus did not submit at that time any request for transitional arrangements. However, the situation in Cyprus has evolved, and the Cyprus authorities introduced in early February 2004 specific demands for transitional periods. The Commission, therefore, has to propose a directive<sup>(1)</sup>, based on Article 93 of the EC Treaty, to amend the Energy Tax Directive.

2.1.2 The Commission viewed as acceptable most of the requests received in the case of the Energy Tax Directive to allow exemptions from the EU minimum rates. The Commission proposed that a few exemptions requested for either unlimited or for excessively long periods of time should be subject to proportionate time limits. The Commission rejected a request for a tax exemption for waste oils as it would have contradicted EU environmental policy.

2.2 The proposed Council Directive would ensure that the principles which governed the granting of transitional periods for existing Member States would apply equally to the Accession member states. The measures proposed would therefore be:

— strictly limited in time and generally last no longer than 2012;

— proportionate to the effective problem they address;

<sup>(1)</sup> Directive COM(2004) 185 final.

— include, where relevant, a progressive alignment towards the EU applicable minimum rates.

2.3 Given that existing EU Member States have been granted temporary exemptions from the Directive's obligations the European Commission has accepted that the candidate countries may need a longer time-frame in which to apply the Directive's provisions. The purpose of this proposal is therefore to set out the exact time-frame and scope on temporary exemption or reductions in the levels of taxation on energy products and electricity in each of the ten candidate countries. Each individual country is assessed separately based on their unique needs.

2.4 To conclude, the Commission argues that the proposed revision is both reasoned and proportionate and in favour of the acceding Member States. It therefore calls for a speedy application of the proposal in order to avoid any legal vacuum at the time of enlargement.

## 3. Comments

3.1 The EESC in its earlier opinion on the Proposal for a Council Directive on restructuring the Community framework for the taxation of energy products (CESE 1194/1997) strongly agrees with the idea that eco-taxes must not be allowed to lead to a higher overall tax burden. To ensure tax neutrality taxation of the labour factor must be reduced proportionally. Eco-taxes must not lead to European firms becoming less competitive and jobs being lost. Low income groups must not have to face greater hardship. These views are also relevant to the Accession states.

3.2 The EESC is satisfied that the Commission sought a detailed justification for every demand made by the Accession states and that the Commission did a proper and consistent evaluation of the requests.

3.3 In the majority of the Accession states electricity and energy products used for heating are not subject to excise duties. It is clear that the sudden imposition of the EU minimum rates of excise duties could cause significant inflation and also a sudden increase in household costs. This would lead to a very negative reaction among the majority of citizens in the Accession states towards the EU project.

3.4 The economies of the Accession states require major financial assistance to get them on the road to development and integration with the existing EU15. A sudden imposition of EU minimum rates of excise duties would hinder social and economic development especially in the poorer areas. This would lead to a widening of the gap between the well developed and the less developed areas; consequently we could see widespread social unrest.

3.4.1 From figures recently published for 2001, regional GDP per capita in 90 % of the regions in the Accession countries is below 75 % of the EU15 average. There are ten regions where the regional GDP per capita is less than 35 % of the EU15 average. In Poland there are five regions where regional GDP per capita is less than 32 % of the EU15 average.

3.4.2 Five of the Accession states have been allowed transition periods to reach the minimum tax rate under the Energy Tax Directive for motor fuels. This will cause serious distortion of the motor fuels market especially in border areas where motor fuel is far cheaper in the Accession state side of the border. Many Motor fuel retailers on the side of the border where higher tax rates apply will go out of business while those at the other side will experience windfall profits.

#### 4. Conclusions

4.1 The EESC recommends that the Commission monitor the motor fuel situation carefully and if necessary review the

motor fuel concessions if the distortion in competition becomes excessive.

4.2 The EESC recommends to the Commission that in the case of the long-term concessions a periodic review should take place to establish that these concessions continue to ensure the efficient use of energy, the need to cut carbon dioxide emissions and the need for incentives to cut emissions.

4.3 Given that existing EU members have been granted temporary exemptions in this area, it is only fair and reasonable both in terms of principle and precedent that Accession states should be able to avail of temporary exemptions over a slightly longer time-frame where this can be justified.

4.4 The approval of this Directive before 1 May will give an essential political signal to the Accession states that we are fully committed to their development.

4.5 The EESC recommends the approval of these directives.

Brussels, 31 March 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

## Opinion of the European Economic and Social Committee on 'Economic diversification in the accession countries – role of SMEs and social economy enterprises'

(2004/C 112/27)

On 17 July 2003 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on Economic diversification in the accession countries – role of SMEs and social economy enterprises.

The Consultative Commission on Industrial Change (CCIC), which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 March 2004. The rapporteur was Ms Fusco and the co-rapporteur was Mr Glorieux.

At its 407th plenary session held on 31 March and 1 April 2004 (meeting of 1 April 2004), the European Economic and Social Committee adopted the following opinion unanimously:

### 1. Introduction: definitions and objectives

1.1 The accession of ten new countries to the European Union is an unprecedented historic event, both because of the number of countries concerned and because of the profound social and economic changes this will bring for these countries and for Europe as a whole. With this in mind, and in accordance with the priority of strengthening the EESC's presence in the debates on the future of Europe (based on the speech made on 11 December 2002 by the president, Mr Briesch), this own-initiative opinion is intended as a contribution, emphasising the participation of civil society and its organisations, to the process of political opinion-forming during this period of enlargement. <sup>(1)</sup>

1.2 In addition, this opinion is intended to contribute to the debate on the consequences of enlargement described in the Wim Kok report (*Enlargement of the European Union — results and challenges*) of 26 March 2003, by emphasising the role which small and medium-sized enterprises (SMEs) and social economy enterprises (SEEs) play in economic diversification (including its social implications) in the accession countries, and the challenge of integrating them fully in the single market. The EESC wishes to contribute to the various Community initiatives intended to ensure full success for their accession, including their economic and social cohesion in the current industrial changes.

1.3 SMEs, a term which also includes micro-enterprises with their special features, are enterprises corresponding to precise numerical criteria defined by the European Commission (see Appendix, Table 1) <sup>(2)</sup>.

1.4 SEEs belong to a group of four families: cooperatives, mutual societies, associations and foundations. They are characterised by the primacy of their social objectives, rather than the need for maximum returns — this often gives rise to a link with their local area and local development — and by the satisfaction of needs that other sectors of the economy cannot satisfy alone. Their basic values are: solidarity, social cohesion, social responsibility, democratic management, participation and autonomy <sup>(3)</sup>.

1.5 The Lisbon European Council of March 2000 laid down the objective of making Europe the most dynamic and competitive knowledge-based economy in the world, while stressing the need to create 'a friendly environment for starting up and developing innovative businesses, especially SMEs' and adding that 'The competitiveness and dynamism of businesses are directly dependent on a regulatory climate conducive to investment, innovation, and entrepreneurship.' <sup>(4)</sup> On that basis the Feira European Council (19 and 20 June 2000) approved the European Charter for Small Enterprises, which states that 'Small enterprises are the backbone of the European economy [and] are a key source of jobs and a breeding ground for business ideas' <sup>(5)</sup>. The Lisbon strategy also maintains that economic growth is a key factor for ensuring social cohesion in Europe.

<sup>(1)</sup> As early as 14-17 November 2000, at the conference held at the EESC on enlargement (*Towards a partnership for economic growth and social rights*), the members of the Joint Consultative Committees (JCCs) involving the applicant countries had raised the most important problems encountered by those countries and the need to engage in a dialogue on certain essential themes, such as the SMEs' contribution to the various economies and the lack of social dialogue. See EESC opinion 1635/2003.

<sup>(2)</sup> Recommendation 2003/361/EC, replacing Recommendation 96/280/EC (OJ L 124 of 20.5.2003, p. 36), which will come into force on 1.1.2005. From the current Recommendation to the new one, these definitions remain the same. Only the turnover figures or the balance-sheet total change.

<sup>(3)</sup> B. Roelants (co-ord): Preparatory Dossier for the First European Social Economy Conference in Central and Eastern Europe, 2002, p. 31. Common denominators drawn up on the basis of definitions prepared by the EU Commission, the Committee of the Regions, the CEP-CMAF (European Conference of Cooperatives, Mutual Societies, Associations and Foundations) and the FONDA (linked to organisations at the origin of the social economy concept).

<sup>(4)</sup> Presidency conclusions – Lisbon, 23 and 24.3.2000, point 14

<sup>(5)</sup> The European Charter for Small Enterprises: Luxembourg, Office for the Official Publications of the European Communities, 2002. The Commission states that the Charter was recognised in Maribor on 23.4.2002 (see [http://europa.eu.int/comm/enterprise/enterprise\\_policy/sme-package/index.htm](http://europa.eu.int/comm/enterprise/enterprise_policy/sme-package/index.htm)). The Committee and the Parliament continue to urge that the Charter should have legal force, and that it should be expressly included in the European Convention's chapter on industry.

'A strategy for full employment and better jobs for all', COM(2003) 6 final

The Commission subsequently argued that the challenges making it necessary to adopt the Lisbon agenda are the requirements to increase the supply of jobs, raise the employment percentage, improve technical knowledge and ensure an ordered flow from agriculture and industry to services without worsening the regional disparities in the countries themselves <sup>(1)</sup>.

1.6 The EESC, in its opinion 242/2000 <sup>(2)</sup>, stressed the importance of SEEs and indicated that they are fundamental to entrepreneurial pluralism and diversification of the economy <sup>(3)</sup>. Most SEEs are included in the EU's standard definition of SMEs <sup>(4)</sup>. Those which do not match that definition, because of their size, generally have certain characteristics in common with SMEs, such as a low level of external investment, no stock exchange listing, proximity of owner-shareholders, and a close link with the local social fabric.

1.7 The Commission acknowledged that SMEs are the bedrock of European industry, with 66 % of total employment and 60 % of the EU total of value added, excluding the agricultural sector. In 1999 the proportion of the applicant countries' employment accounted for by SMEs was even higher at 72 %, excluding the agricultural sector. The job total for micro-enterprises (fewer than 10 workers) is the most significant, with 40 % of total employment <sup>(5)</sup>, and is a good argument for paying special attention to enterprises of this type (see Appendix, Table 2).

1.8 In the EU, the social and economic importance of the enterprises and organisations of the social economy is growing: with about 9 million workers (full-time equivalent), they account for 7.9 % of civilian waged employment <sup>(6)</sup>. Moreover, they involve a considerable proportion of civil society, since it is estimated that more than 25 % of the EU's citizens are members of them as producers, consumers, savers, inhabitants of a dwelling, policy-holders, students, volunteers etc. In the acceding and applicant countries of central and eastern Europe, the number of cooperatives alone is estimated at 15,000 enterprises, providing more than 700,000 jobs and involving nearly 15 million members; after a period of decline, these too have entered a new phase of growth <sup>(7)</sup>. SEEs develop particularly in a number of sectors such as health, the environment, social services and education <sup>(8)</sup>. Thus they have an essential role in the creation of social capital, the capacity to employ disadvantaged people, social welfare, revitalising local economies, and

modernising local management models. They have perfected social and environmental impact assessment systems.

1.9 In several current EU Member States there is major interaction between conventional SMEs and SEEs. Cooperative banks often promote start-up and development projects by conventional SMEs. Social economy structures have proved useful in strengthening conventional SMEs when these have wished to form networks, groups or joint support schemes, achieve economies of scale or set up mutual guarantee schemes for bank loans.

1.10 The EESC, in its opinion of 24-25 September 2003 on *Industrial change: current situation and prospects — An overall approach* prepared by the CCIC, takes the view that the concept of change is different from that of restructuring, pointing out that in fact 'it is a much more dynamic concept. On the one hand it embraces the on-going development of the company (establishment, development, diversification, change); but, on the other hand, the business world is closely linked with the European political and social environment in which it develops, and which in its turn influences the process of industrial change' <sup>(9)</sup>. Moreover, 'Today it is important to dwell on the proactive concept of change in order better to anticipate and manage the economic, social, organisational and environmental repercussions of industrial change' <sup>(10)</sup>. This concept of change is particularly important given the accelerating pace of restructuring, in a context characterised by globalisation, EU enlargement, the deepening of the Single Market, and technological, industrial and social changes.

1.11 The present opinion takes account in particular of the Commission report 'Managing Change' of 2 November 1998, drafted by a high-level group chaired by Mr Pehr Gyllenhammar <sup>(11)</sup> on which the EESC issued a critical but positive opinion, welcoming the fact that it acknowledged that industrial change created new possibilities and that it stressed the need for job creation, expressing the view that 'The broad strategy of seeking stimulus from an approach built on benchmarking, innovation and social cohesion is valid.' As regards the SMEs, the EESC emphasised that they could not overcome on their own the problems of industries in decline or those resulting from serious and sudden crises. The EESC took the view that large-scale changes must be managed through a collective effort based on flexible territorial partnerships of a voluntary nature <sup>(12)</sup>.

<sup>(1)</sup> Opinion of the Economic and Social Committee on *The social economy and the single market*, CES 242/2000 of 3.3.2000

<sup>(2)</sup> In a recent study, the OECD specifies that the 'social economy' is a broader concept than the non-profit sector, since it is less strictly linked to non-distributional constraints, whereby organisations cannot legally redistribute their surplus to their owners (OECD, Paris, 2003, *The non-profit sector in a changing economy*, p. 299).

<sup>(3)</sup> McIntyre et al.: *Small and medium enterprises in transitional economies*, Houndmills: Macmillan, p. 10

<sup>(4)</sup> Industrial policy in an enlarged Europe, Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, COM(2002) 714 final.

<sup>(5)</sup> CIRIEC 2000: *The enterprises and organisations of the third system: strategic challenge for employment*, University of Liège

<sup>(6)</sup> Calculated on the basis of the study carried out by the International Cooperative Alliance in 1997 and funded by the European Commission.

<sup>(7)</sup> See the charter of the CEP-CMAF (European Conference of Cooperatives, Mutual Societies, Associations and Foundations).

<sup>(8)</sup> Point 2.1.1.

<sup>(9)</sup> Ibid.

<sup>(10)</sup> Opinion of the Economic and Social Committee on *Managing Change — Final Report of the high level group on economic and social implications of industrial change*, CES 698/99

<sup>(11)</sup> EESC opinion of 7.7.1999, OJ C 258 of 10.9.1999, 3.7.2 and 3.7.3

<sup>(12)</sup> With the exception of Poland and Hungary. See European Commission: *Impact of enlargement on industry*,



1.12 Faced with the industrial changes since the 1990s, with increasing globalised competition and entrepreneurial concentration, and on the eve of their forthcoming inclusion in the Single Market, the SMEs and SEEs of most of the accession countries are coping with enormous challenges. At the same time, bearing in mind the decisive role they play in socio-economic terms, it is urgently necessary for the EU as a whole to reflect on the best way to make the most of their role, support their adaptation to these challenges, and promote their innovative and funding capacity, their entrepreneurial spirit and their competitiveness.

## 2. Comments on the special features of the accession countries as regards SMEs, SEEs and economic change

### 2.1 *Economic changes and diversification in the accession countries*

2.1.1 In the course of their transition from a command economy to a market economy, the accession countries of central and eastern Europe have undergone a profound industrial change. Liberalisation has been abrupt, with a corresponding loss of traditional export markets, and a sizeable fall in industrial employment <sup>(1)</sup>.

2.1.2 After a decade of restructuring, the manufacturing industries of the accession countries of central and eastern Europe have come closer to the EU's model for production and employment structures. Manufacturing industries have taken advantage of direct foreign investments to modernise, generating a gap in productivity and profit levels between foreign-owned and national-owned enterprises. While some countries have advanced towards sectors with higher added value, the others appear to maintain a specialisation in labour-intensive, low-skilled activities, with more market shares in certain industries <sup>(2)</sup>. In addition, industry has caught up mainly in the large cities, with the risk of widening gaps between regions in the future <sup>(3)</sup>. There is also a risk of enterprises of this type relocating to the border countries of the future EU, as labour costs rise in the accession countries.

<sup>(1)</sup> SEC (2003) 234, 24.2.2003, p. 7

<sup>(2)</sup> Particularly the agri-food and beverages, wood, textile and metal-based industries.

<sup>(3)</sup> Ibid., note 18, p. 8

2.1.3 Industrial change in the context of enlargement also includes a growth of intra-industrial trade and other types of partnership (joint ventures, mergers, temporary partnerships etc.) between the accession countries and those of the EU <sup>(4)</sup>, as well as sub-contracting by large enterprises to SMEs. This development is a decisive factor for ensuring a fairer distribution of the benefits of enlargement and a smoother integration into the Single Market. If the resulting economies of scale are significant, there can be greater complementarity between large enterprises and SMEs, and the latter can have a fundamental role to play as sub-contractors and suppliers of services.

2.1.4 Market services represent a growing proportion of the GDP of the accession countries, reaching 54 % in 2001, but in a context of sub-contracting and interconnections between industry and services. However, the industry represented 33 % of their GDP in 2001, and will continue to be important <sup>(5)</sup>.

2.1.5 Apart from the market services mentioned above, and noting that in absolute terms, between 1994 and 2002, the majority of new jobs are found in the services sector, employment in services to local communities has risen very little, or in some cases has fallen <sup>(6)</sup>. This sector, of considerable socio-economic importance, also shows a significant gap between the accession countries and those of the EU, both in terms of economic importance and in terms of employment <sup>(7)</sup>.

2.1.6 The EESC would point out that SMEs in countries in transition tend to have greater flexibility and innovation potential than large companies, with generally higher productivity in services and in 'niche' manufacturing sectors. In general they show more entrepreneurial spirit. However, the company failure rate remains very high, even if in some countries <sup>(8)</sup> the ratio between the gross and net rates for SME start-ups is more favourable than in some of the EU Member States (see Appendix, Table 4).

### 2.2 *Social impact of the changes*

2.2.1 The analysis of employment growth by significant sector in the applicant countries between 1995 and 1999 shows that employment in SMEs has increased noticeably whereas that in large companies has declined (see Appendix, Table 3). According to the report by the European SMEs Observatory, this growth could be due to as much to job losses in large companies as to their replacement by SMEs, but did not make up for job losses <sup>(9)</sup>.

<sup>(4)</sup> Especially in the case of the Czech Republic, Slovenia, Hungary and to a lesser extent Poland. This type of trade is seen particularly in the textile, electrical, optical, and transport-equipment sectors.

<sup>(5)</sup> Ibid., note 18, p. 1 and pp. 4-5

<sup>(6)</sup> Especially in Bulgaria, Hungary and Poland.

<sup>(7)</sup> Vidovic, H., *The service sectors in Central and Eastern Europe*, Research Report, September 2002, No. 289, page 16

<sup>(8)</sup> Such as Poland and the Czech Republic.

<sup>(9)</sup> Some net losses were noted, particularly in Lithuania and Slovakia.

2.2.2 The transition period has brought with it growing poverty and inequality<sup>(1)</sup>. Among other problems, analyses based on incomplete data show that women are clearly disadvantaged on the labour market<sup>(2)</sup>.

2.2.3 In recent years, the social protection and health systems of the accession countries have undergone many reforms. To a large extent, certainly, these countries are facing the same problems as the current EU Member States: rising expenditure and stagnating or falling revenue. Even so, they generally fall short of the European average in health care terms. Life expectancy there is 6 years less than that in the Member States<sup>(3)</sup>.

### 2.3 Role and challenges of SMEs and SEEs in the accession countries

2.3.1 The current accounts deficit in the accession countries at present, and restrictions imposed by the stability pact, will put further pressures on public expenditure<sup>(4)</sup>. It is therefore necessary to find innovative ways of meeting public interest needs<sup>(5)</sup> — an area where SEEs in particular can play an important role, as is the case in several EU countries<sup>(6)</sup>. This is all the more important in former industrial regions, where there is a general lack of conventional investment, and in rural regions, where many agricultural SMEs are disappearing. In a significant number of the acceding and applicant countries of central and eastern Europe, SEEs are already by far the main employer of disabled people.

2.3.2 The European Charter for Small Enterprises acknowledges that, while the latter are the backbone of the European economy, they are also the most sensitive of all to changes in the business environment. This is even more true in the accession countries, which have together officially approved the Charter<sup>(7)</sup>. The challenge for SMEs and SEEs as regards their capacity to compete in the Single Market is significantly greater this time than in all the previous waves of enlargement. Among the most important constraints upon them are the lack of skilled labour, access to financing and administrative regulations (see Appendix, Table 5).

<sup>(1)</sup> Tang et al., 2002: *Winners and losers of EU integration*, Washington, World Bank, p. 8. Age is one of the main factors in discrimination. Other vulnerable groups include the disabled, and minorities such as the Roma.

<sup>(2)</sup> Women are more likely than men to leave the labour market definitively. When they do return to the labour market, they are more likely than men to be unemployed in some of the accession countries. Cf. UNICE, *Economic Survey of Europe, 1999-1*, Table 41, Gender differences in employment in 1997.

<sup>(3)</sup> According to the AIM (International Association of Mutual Benefit Organisations). Among the main problems are the rapid rise in expenditure, long waiting lists, a lack of data for assessment and organisation of services, under-the-counter payments to providers of medical treatment, etc.

<sup>(4)</sup> Kumar et al., 2002: *Transitional impacts and the EU enlargement complexity*, Ljubljana, University of Ljubljana, pp. 25-36

<sup>(5)</sup> Tang et al., 2002, p. 44

<sup>(6)</sup> Cf. in particular the Italian system of social cooperatives. See also the Best Procedure Report 2001 (SEC 2001/1704 – 29/10/2001). The measures described in the BEST report are an important source of knowledge for improving the business environment in the accession countries.

<sup>(7)</sup> Maribor 2003

2.3.3 The European Commission's Green Paper on Entrepreneurship states that SEEs, because they have to apply 'business principles and efficiency to achieving social and societal objectives, ... face particular challenges in accessing finance, management training and advice.'<sup>(8)</sup> These challenges are all the more serious in the accession countries, where they are not the only ones faced by SEEs. In particular, cooperatives there are often regarded as a vestige of the earlier regime, although they appeared there a century and a half ago, and have generally adapted well to the introduction of the market economy. The regulations or prejudices to which they are subjected often limit their access to the market. However, in economies in transition, the combination of small cooperative producers, local cooperative savings and cooperative lending institutions, and local authorities (as promoters, guarantors, and sometimes partial holders of financial holdings both in production and in financing institutions) is entirely natural<sup>(9)</sup>.

2.3.4 SMEs and SEEs in the accession countries are an important instrument of employment and re-employment in the major industrial changes in progress, from declining sectors and those which reduce employment to traditional sectors (crafts and trades) and others which are expanding, such as services to enterprises, the new information and communication technologies, high-technology sectors, construction and public works, proximity services (including health) and tourism.

2.3.5 The SMEs and SEEs in these countries can play an important role in this process of change in various ways, already tried out in the EU countries, with many cases of good practices: through the employment of people new to the labour market; through support for the innovative capacity of micro-enterprises and small enterprises; through the reemployment of people made redundant in businesses obliged to reduce their staff or shut down; through setting up social welfare mutual societies; through the creation of new businesses in the growing sectors; through the development of services and subcontracting; through the transfer of enterprises in crisis to their workers; and through qualitative transformation within the same sector. In addition, SEEs can make certain specific contributions to this process of change both through their capacity to train entrepreneurs, which has already been demonstrated in the present EU countries, and through the values they promote, such as socially responsible entrepreneurship, democracy and citizens' participation, involvement (including financial) of workers in the enterprise, social inclusion, and interest in local and sustainable development.

<sup>(8)</sup> European Commission: Green Paper – Entrepreneurship in Europe, COM(2003) 27 final, point III.C.ii

<sup>(9)</sup> McIntyre, R.: *The complex ecology of small enterprises* (Chapter 3), in McIntyre and Dallago (eds.), 2003, *Small and Medium Enterprises in Transitional Economies*, Palgrave, Macmillan, in association with the United Nations University and the World Institute for Developmental Economics Research, pp. 49-50. The conclusions of the first Conference on the social economy in the central and eastern European countries are in line with this view. See <http://www.cecop.org/praha>

Glinkina, S.: *Small businesses, survival strategies and the shadow economy* (Chapter 4), in McIntyre and Dallago (eds.), 2003, *Small and Medium Enterprises in Transitional Economies*, Palgrave, Macmillan, in association with the United Nations University and the World Institute for Developmental Economics Research

2.3.6 Regularising the shadow economy is a challenge to be met in the accession countries. According to a 2003 study by the United Nations University <sup>(1)</sup>, this economy is unstable and cannot be a motor for growth or capital accumulation, as its primary function is survival by maintaining consumption. It contravenes labour standards and has negative macro-economic effects in the long term, such as erosion of the tax system, of the basis of the foreign exchange market and of social protection, thereby jeopardising effective macro-economic management. This economy preserves an irrational sectoral structure with an absolute predominance of micro-enterprises and low-level capitalisation, weak entrepreneurial initiative and a technology which soon becomes outdated. In the intensified competition which will follow accession to the EU, an industrial policy for the accession countries must urgently take account of this worrying situation, which the authorities of these countries should manage firmly.

### 3. Recommendation concerning an integrated programme for the promotion of SMEs and SEEs in the economic diversification of the accession countries

#### 3.1 General comments

The features that SMEs (including micro-enterprises) share with SEEs (see point 1.6), and the positive interplay that exists between them (see points 1.9 and 2.3.5), are powerful arguments for launching a new joint effort at EU level to promote and support them. The particularly serious challenges that SMEs and SEEs are facing in the context of accession (see section 2) make it particularly important to introduce support measures, so that these two types of enterprise can make an effective contribution to the development of the new Member States.

The EESC has taken account of the existing programmes for supporting SMEs in particular, but also notes the unsatisfactory nature of the existing structures for supporting SEEs and for promoting joint initiatives between SMEs and SEEs.

The EESC therefore proposes that an integrated programme be launched to support SMEs and SEEs in the accession countries. Such a programme should be promoted jointly by the EU Commission, the European Investment Bank, the European Investment Fund, the governments of the countries involved and the organisations that represent and support SMEs and SEEs at European and national level. The Structural Funds, which will become accessible to the accession countries from May 2004 onwards, should play a leading role in funding the activities of this integrated programme. A link should be ensured with the action plan relating to the Commission's communication on entrepreneurial spirit.

<sup>(1)</sup> It is particularly urgent for SMEs to be classified according to the NACE system.

#### 3.2 10-point programme

##### 3.2.1 Integrating the data

In most of the accession countries, statistics relating to SMEs and SEEs and their representation and support organisations are still highly inadequate and lack uniformity <sup>(2)</sup>. SEEs suffer even more than conventional SMEs from such lack of precision. At present there are no precise data on such enterprises in these countries, beyond the data provided by their federations where those exist. The EESC regards as very necessary the European Commission's proposal to set up a system of satellite accounts with the national statistical institutions, already tried out in some Member States <sup>(3)</sup>, while setting up a data collection system which is simple and clear enough for SMEs and SEEs to provide the data without difficulty. <sup>(4)</sup>

##### 3.2.2 Improving compliance with and effective implementation of the *acquis communautaire*, and the legal and administrative framework

3.2.2.1 Although a considerable effort is being made in the accession countries to incorporate the *acquis communautaire* into national laws and standards and then implement it as part of public policies, this work is still very incomplete as regards that part of the *acquis* that concerns SMEs and SEEs, especially in such areas as business policies, promoting SMEs, employment, social policy, social inclusion and corporate social responsibility, particularly as regards respect for the environment. This process should be substantially strengthened, particularly by training administrative staff and by assisting SMEs and SEEs in their efforts to comply progressively with Community standards, with the support of the EU Commission. The work currently being done in the field of the *acquis* and its implementation under the PHARE Business Support Programme should be continued. Moreover, although the accession countries have considerably improved their legislation on SMEs (particularly as regards bankruptcies), progress is still very slight as regards legislation intended to promote SEEs. The latest changes to the cooperative legislation of certain accession countries even constitute steps backward. Legislation on cooperatives and other types of SEE should therefore be reformed in several accession countries, and should be brought more into line with the statutes of the European cooperative society (and the future statutes of the European association and the European mutual society). Exchanges and comparative studies on legislation relating specifically to SMEs and SEEs should be launched. Moreover, under the laws of several accession countries the costs involved in setting up SEEs should be reduced, considering that they cannot call on external investments and that they usually remain anchored in the fabric of local society.

<sup>(2)</sup> European Commission, Consulting document on Cooperatives in Enterprise Europe, 7.12.2001, p. 34

<sup>(3)</sup> European Commission, Consulting document on Cooperatives in Enterprise Europe, 7.12.2001, p. 34

<sup>(4)</sup> Account should also be taken of Recommendation 193/2002 of the International Labour Organisation, adopted almost unanimously (apart from two abstentions) and particularly by the governments of the 15 EU Member States and the 10 accession countries, and especially of Article 7 on tax policies and public procurement, and of Articles 4 and 6 on cooperatives belonging to a wider sector also including mutual societies and associations.



3.2.2.2 For conditions for access to the Single Market to be really fair, it is necessary to modify as soon as possible the rules that restrict the access of SEEs to public works contracts in several accession countries. Moreover, account should also be taken in public procurement, as in taxation, of the productivity costs borne by some SMEs, and particularly SEEs<sup>(1)</sup>, in carrying out policies such as employing disadvantaged people or respecting social and environmental standards going beyond the legal minima<sup>41</sup>.

### 3.2.3 Active promotion of entrepreneurship through information and education

3.2.3.1 Whereas much progress seems to have been made in the accession countries on facilitating the procedures for setting up SMEs, particularly with the setting-up of information centres at local level, much remains to be done to ensure that public authorities are equally active in providing information on SEEs. Moreover, these information centres should do more to promote traditional trades and promising sectors, such as services to enterprises, proximity services, health services, ICT-related activities and tourism.

3.2.3.2 The EESC is pleased to note that the European Charter for Small Enterprises declares that 'Specific business-related modules should be made an essential ingredient of education schemes at secondary level and at colleges and universities' as should 'appropriate training schemes for managers in small enterprises'. However, this aim still seems far from being achieved in most of the accession countries. Moreover, these teaching programmes should also include a component on SEEs, which is not generally the case. The entrepreneur training potential of SEEs, which has been verified in the EU Member States, should be brought to the fore by promoting *inter alia* enterprise-to-enterprise training, and by giving SEE managers the opportunity of sharing their experience in enterprise management training centres for SME managers.

### 3.2.4 Promoting support and advice centres for the creation, development and transfer of enterprises

3.2.4.1 Just as start-ups should continue to be vigorously encouraged, above all in the most promising sectors, so the vital importance of making a success of transfers of enterprises to which there is no heir or which are in crisis should not be neglected in the current industrial changes. Successful transfers can safeguard not only the enterprise's activity, but also derived jobs and hence a substantial part of the local socio-economic fabric<sup>(2)</sup>. Transfers of enterprises to their workers, particularly through SEEs, have shown very high levels of success in the EU countries when the backup was adequate. This experience could be put to good use for any type of SME transfer.

<sup>(1)</sup> Activities covered by the concept of social responsibility of enterprises. The development of reporting activities would make it possible to take account of these progressive processes conducive to sustainable development.

<sup>(2)</sup> In addition, it has been observed that survival chances for transfers are on average higher than those for start-ups. See European Commission: 'Helping the transfer of businesses', DG Enterprise, 2003.

3.2.4.2 For every stage in the life of an enterprise, including its creation and transfer, SMEs and SEEs need a true support policy, as well as high-quality support, consultancy and backup services on enterprise strategy, design, innovation and technological know-how, research and development, quality certification etc., as shown also by a number of successful experiments in industrial areas of the EU. Among other things, the emphasis should be on cooperation between these support centres and universities, and on promotion of entrepreneurship among women and young people. Encouragement should also be given to support for the marketing and export of SMEs' and SEEs' products, especially through the recognition of typical products, and chambers of commerce and trades, together with occupational organisations, should be involved in promoting these products.

### 3.2.5 Improving the conditions for funding and access to funding

3.2.5.1 The question of capital for start-ups and transfers of SMEs and SEEs is fundamental. Improving the financial framework for setting up and developing enterprises of these types, and improving access to the Structural Funds and encouraging the initiatives of the European Investment Bank, as proposed by the Charter for Small Enterprises, are conditions that are as fundamental as support services. The EESC proposes that a financial mechanism be set up to combine various intervention tools over the entire growth cycle of SMEs and SEEs in the accession countries, with the EIB, the European Investment Fund and social economy banks being involved, together with funding through the Structural Funds<sup>(3)</sup>. Financial systems of public support for SME and SEE start-ups and transfers, and multiplier systems through solidarity funds, such as those that have already been successfully tried out in certain European countries, should also be encouraged<sup>(4)</sup>.

<sup>(3)</sup> Various European financial bodies (Crédit Coopératif, Crédit Mutuel and ESFIN in France, Coopfond (Legacoop) in Italy, and SOFI-CATRA in Belgium) are already working, in contact with the European Commission, to set up a 'Coop-Est' project involving various financial instruments to meet the needs for funding structures for SEEs.

<sup>(4)</sup> For the public mechanisms, especially in Italy and Spain, with the single payment of unemployment benefits. For the multiplier mechanisms, groups of SEEs have, in several centres of excellence in the EU, set up solidarity and risk-capital funds to fund their development. These funds generally have a multiplier effect on other funding, such as lending by commercial banks, and have shown their capacity to generate enterprises and jobs. Such funds already exist within some cooperative federations in the accession countries, but this type of effort should be vigorously supported in the context of the Structural Funds.



3.2.5.2 Attention should also be drawn to the role which can be played by ethical and solidarity-based funding networks in providing suitable financial tools to the accession countries' SMEs and SEEs. The Italian Parliament recently echoed this in a resolution adopted unanimously in October 2003. In particular, it is pointed out that various alternative-finance organisations are already working on a joint project which could serve as a guide for the new arrangements now being developed <sup>(1)</sup>.

3.2.5.3 Promotion should also be given to the idea of setting up mutual guarantee societies between SMEs and between SEEs, so that they can guarantee bank loans between themselves – a system which has proved itself in several EU countries, often in the form of a cooperative, mutual society or association <sup>(2)</sup>.

3.2.5.4 The EESC emphasises that it is also important to encourage solidarity-based funding of sickness, invalidity and pension costs by specialised SEEs such as mutual societies, like those which exist in the EU Member States.

### 3.2.6 Promoting SMEs and SEEs in the context of local development

SMEs and SEEs form part of the local fabric. Hence they have a fundamental role to play in the context of local development, and the local authorities should set up active partnerships with them to this end. <sup>(3)</sup> The partnerships between local authorities and social economy actors which exist in the EU should be actively promoted in the accession countries <sup>(4)</sup>.

### 3.2.7 Supporting the development of enterprise systems

The Charter for Small Enterprises underlines the importance of also developing groups, amalgamations, networks and clusters of enterprises. The experience gained in the EU countries, particularly with groups and consortia of cooperatives and mutual societies, often on a territorial or sectoral basis, shows that the development of systems of enterprises can be of vital impor-

tance for SMEs and SEEs with a view to defining together long-term enterprise strategies, increasing entrepreneurial scales in the same sector or region, developing their technological capacity and improving their competitiveness, while leaving the enterprises free to make their own decisions. In addition, the enlargement and deepening of the Single Market is a reason why SMEs and SEEs in the present and new EU Member States should use the future trans-European instrument that the European cooperative society will be. The EESC considers that the preparation of these various enterprise systems should be actively encouraged in the accession countries.

### 3.2.8 Strengthening the institutional representation of SMEs and SEEs

The EESC takes the view that it is necessary to develop, strengthen and make more effective the representation of the interests of SMEs and SEEs in the accession countries by representative organisations, the latter's capacity to negotiate with the authorities, their strategic action of promoting enterprise support services, and links among these organisations at all levels. The SMEs and SEEs in these countries must make their voices heard as key actors in the economic and social fabric. Hence the importance of continuing the considerable effort launched by the Phare Business Support Programme to help strengthen the representative organisations of SMEs and SEEs in the accession and applicant countries of central and eastern Europe <sup>(5)</sup>.

### 3.2.9 Developing the social dialogue

SMEs and SEEs in the accession countries must also be considered in their role as employers, even if work in them as a conventional employee coexists with work as a self-employed person and with worker ownership. As employers they must undertake to respect European and world labour standards. In addition, their representative organisations must enter into the social dialogue as independent actors, discussing not only labour relations but also all social policies with trade union organisations and the other economic and social actors at all levels. Activities in this direction should be actively promoted under the programme proposed here.

<sup>(1)</sup> By setting up a European Federation of Ethical and Alternative Banks (Febea) and a European Ethical and Alternative Finance Company (Sefea).

<sup>(2)</sup> See André Douette (2003): *La garantie des prêts aux petites et moyennes entreprises – Les systèmes de garantie membres de l'Association européenne du Cautionnement Mutuel*, Association européenne du Cautionnement Mutuel.

<sup>(3)</sup> Like those which exist within the European network of towns for the social economy (REVES), and which can be classified in three distinct categories:

<sup>(4)</sup> the creation of mixed public-private structures: for example, the Job Centre of the municipality of Genoa, the 'Gagner' agency in Roubaix, and the SAKA BYAGARD/SOKOYAN KYATALO day care centre in Kokkola, Finland;

— public support for the creation of general interest bodies, such as Genoa's Immigrant Services Centre or the ARKESIS integrated network for local development in Reggio Calabria;

— the service partnership, where the public sector provides a reference framework for the management and provision of general interest services by SEEs: for example, Pfefferwerk GmbH in the centre of Berlin, and cooperatives which directly manage the job centres of the provinces of Forlì, Cesena and Ravenna in Italy.

— Other important examples of multi-partnership at local level in the EU involving SEEs include the system of Italian social cooperatives combined in the Gino Matarelli Consortium for Social Cooperation (CGM), the home help sector, the new arrangements for the Société Coopérative d'Intérêt Général (SCIG) in France, the Solidarités des Alternatives Wallonnes network, women's cooperatives in Sweden, etc.

Ibid. See also Committee of the Regions: *Draft opinion of the Committee of the Regions on Partnerships between local and regional authorities and social economy organisations: contribution to employment, local development and social cohesion*, CdR 384/2001.

<sup>(5)</sup> This point is developed specifically in point 10 of the European Charter for Small Enterprises.

3.2.10 Encouraging and developing activities for the exchange of best practice between SMEs and SEEs in current EU countries and those in the accession countries

Initiatives by the EU Commission<sup>(1)</sup> show the importance of systematically enabling SMEs and SEEs in the accession countries to benefit from the experience of their counterparts in the EU countries in each of the areas discussed in points 3.2 to 3.2.9. Particular encouragement should be given to the EU Commission's efforts to set up a network for exchanging good practices regarding the quality of support services for SMEs. Such exchanges enable entrepreneurial actors in the accession countries to improve their development strategy by engaging in strategic consideration of the proposed models of excellence, and to establish themselves increasingly as actors which have to be taken into account by the public authorities in their policies.

#### 4. Conclusions

4.1 The EESC acknowledges that the success and effectiveness of SMEs and SEEs are not automatic and do not depend solely on the enterprises themselves. The opportunities for development of these enterprises and for them to fulfil their roles in the transitional economies and the economic diversification of the accession countries must be supported by a favourable environment which takes account of their particular characteristics. Such an environment should be promoted by means of a specific programme for these countries, comprising

the ten points mentioned above. The EESC calls on the Commission to promote such a programme for SMEs and SEEs in the accession countries.

4.2 In line with its opinions and declarations of recent years, the EESC intends to contribute both to launching the new support measures and to following them up. In particular, the EESC, in the context of its work on the internal market, will closely follow the development of SMEs and SEEs in the EU, paying particular attention to the new Member States.

4.3 The EESC takes the view that industrial policy in an enlarged Europe must take account much more effectively of the needs and challenges of SMEs and SEEs in the accession countries. It would draw attention to their needs, such as management education and training, innovation, quality, design, funding and cooperation instruments such as clusters, second- and third-degree structures, networks etc., which will be more and more necessary to meet the challenges of EU enlargement and internationalisation.

4.4 Finally, the EESC undertakes, and calls upon all the EU institutions, including the Commission, to develop a far-reaching dialogue with all the representative institutions and managers of SMEs and SEEs in the accession countries, in order to meet together the very serious challenges facing these enterprises during the process of their countries' accession to the EU, while remaining aware that this is a major development in the history of twenty-first century Europe as a whole.

Brussels, 1 April 2004.

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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<sup>(1)</sup> Particularly the *Phare* Business Support Programme with the UAPME's BSP1 and BSP2 for SMEs, and the CECOP's

**Opinion of the European Economic and Social Committee on the 'proposal for a Council Directive amending Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States'**

(COM(2003) 841 *final* – 2003/0331 (CNS))

(2004/C 112/28)

On 2 February 2004, 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 proposal.

The Committee decided to instruct the Section for Economic and Monetary Union and Economic and Social Cohesion to undertake the preparatory work.

In view of the urgent nature of the work, the Committee decided at its 407th plenary session of 1 April 2004 to appoint Mr Burani as rapporteur-general and adopted the following opinion unanimously:

## 1. Introduction

1.1 On 3 June 2003, the Economic and Financial Affairs Council adopted Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, as part of the so-called Tax Package. When the directive was adopted, the Council stipulated in a statement for entry in the minutes that 'the benefits of the ... Directive should not accrue to companies that are exempt from tax on income covered by this Directive', and authorised the Commission to take the appropriate precautionary measures.

1.2 Moreover, the Commission had already specified that 'it is necessary to ensure that interest and royalty payments are subject to tax *once* in a Member State'. In short, the directive, as supplemented by the amendments now being proposed, seeks to prevent loopholes in the legislation which provide opportunities for tax evasion in the case of interest and royalties payments between associated companies of different Member States.

1.3 To place this proposal in context, it should be remembered that the Commission has already presented two proposals identifying possible remedies to the restrictions imposed by direct taxation on cross-border economic activities in the single market:

— the first proposal, amending Directive 90/435/EEC of 23 July 1990, concerns the common system of taxation applic

able in the case of parent companies and subsidiaries <sup>(1)</sup>;

— the second proposal, amending Directive 90/434/EEC of 23 July 1990, concerns the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States <sup>(2)</sup>.

1.4 The introduction to the proposal states (although this is obvious) that the European Company, whose Statute will enter into force on 8 October 2004, is henceforth to be included in the list of companies which will be covered by the directive.

1.5 European cooperatives, which will be able to receive the benefits of the new legal Statute for a European Cooperative Society (SCE) from 2006 onwards, will also be covered by the directive: they will receive the same treatment as cooperatives in the Member State of their registered office.

## 2. Comments

2.1 Article 1(1) of the proposal amends the corresponding Article 1(1) of the existing directive, introducing a proviso which was not there before: interest and royalties paid to an associated company are to be exempt from tax *if they are subject to tax in the Member State in which the receiving company is situated*. The EESC endorses this, but wonders whether the need to monitor compliance with this condition might place an excessive burden on the tax authorities of the source state, which will be required to verify whether the beneficial owner is effectively subject to tax and whether it has fulfilled its tax obligations.

<sup>(1)</sup> EESC opinion, OJ C 32 of 5.2.2004, p. 118.

<sup>(2)</sup> EESC opinion CESE 312/2004 of 25.2.2004.

2.2 Article 1(2) replaces the annex to the existing directive, which briefly listed the different types of companies in the language of each country, with a much more detailed list which includes the European Company (SE) and the European Cooperative Society (SCE) as well. This list has the merit of being clearer and of removing some ambiguity where certain countries are concerned but, apart from these necessary improvements, it does not essentially add anything new.

2.3 Article 2 contains the implementing provisions. The Member States are to comply with the directive by 31 December 2004, bringing into force all the laws, regulations and administrative provisions necessary; they are also to forward to the Commission the text of the provisions and a correlation table between the provisions and the directive. The EESC points out that, in view of the amount of time required,

particularly in certain Member States, for Community provisions to be translated into national legislation, the deadline set would seem to be rather short. Given that the directive is to enter into force in all Member States *simultaneously*, it may be that the deadline needs to be extended by six months or more.

### 3. Conclusions

3.1 The EESC fully endorses the aim of the directive, which is part of a process of gradual fine-tuning of taxation provisions intended to avoid both tax evasion and double taxation. The directive should also indirectly facilitate harmonisation of taxation systems in the future and help to eliminate distortion of competition, which is currently all too apparent.

Brussels, 1 April 2004

*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 Regulation on actions in the field of beekeeping'**

(COM(2004) 30 final - 2004/0003 (CNS))

(2004/C 112/29)

On 30 January 2004, 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

On 24 February 2004, the Bureau of the European Economic and Social Committee decided to instruct the Section for Agriculture, Rural Development and the Environment to undertake the preparatory work.

In view of the urgent nature of the work, the European Economic and Social Committee decided at its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 1 April) to appoint Mr Joan Caball i Subirana as rapporteur-general and adopted the following opinion unanimously.

### 1. Introduction

1.1 Following its 1994 Communication on European apiculture <sup>(1)</sup>, the Commission proposed a Regulation laying down general rules for the application of measures to improve the production and marketing of honey, which was adopted by the Council in June 1997 (Reg. (EC) No. 1221/97) <sup>(2)</sup>.

1.2 In November 1997, the Commission issued Regulation (EC) No. 2300/97 <sup>(3)</sup> laying down the rules for implementing the Regulation 1221/97 and in June 2001, in line with Article 6 of Regulation (EC) No. 1221/97, the Commission presented

its first three-yearly report on the application of this Regulation in the Member States. In this report, the Commission concluded that the Regulation had been applied satisfactorily and therefore recommended leaving it unchanged.

1.3 In January 2004, the Commission presented its second assessment report on the application of national programmes in the Member States in which it proposes adopting a new regulation with a view to adapting the beekeeping sector's objectives to the current situation in the Community.

<sup>(1)</sup> COM(94) 256 final

<sup>(2)</sup> OJ L 173 of 1.7.1997, p. 1. Regulation as amended by Regulation (EC) No 2070/98 (OJ L 265 of 30.9.1998, p. 1).

<sup>(3)</sup> OJ L 319 of 21.11.1997



## 2. Gist of the proposal

2.1 The Commission proposes establishing national programmes for a period of three years, with the following measures:

- a. technical assistance to beekeepers and groupings of beekeepers;
- b. control of varroasis;
- c. rationalisation of transhumance;
- d. measures to support the restocking of hives in the Community;
- e. cooperation with specialised bodies for the implementation of applied research programmes in the field of beekeeping and apiculture products.

2.2 Under this new regulation, measures financed under Regulation (EC) No 1257/99<sup>(1)</sup> will be excluded from the apiculture programmes.

2.3 The Member States must carry out a study of the production and marketing structure in the beekeeping sector in their territory, which they must communicate to the Commission with the apiculture programme.

2.4 The Community will provide part-financing equivalent to 50 %, while expenditure by the Member States must be made by 15 October each year at the latest. The Commission will present a report on the implementation of this Regulation to the European Parliament and the Council every three years.

## 3. General comments

3.1 Beekeeping has a number of unique characteristics that set it apart from other types of agricultural activity. Its main functions are rural development, helping to maintain the ecological balance, and, as an economic activity, the production of honey and other beekeeping products. It is important to point out that bees play a vital role as primary pollinating agents and in terms of their contribution to maintaining biodiversity. In this connection, the FAO estimates that the economic value of entomophilous pollination by bees is twenty times the commercial value of all beekeeping products<sup>(2)</sup>. In some Member States, beekeeping is practised in less prosperous regions and is the only way of maintaining the rural fabric and agricultural employment.

<sup>(1)</sup> OJ L 160 of 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 1783/2003 (OJ L 270 of 21.10.2003, p. 70).

<sup>(2)</sup> Information taken from the publication *Frutales y abejas*, Juan B. Rallo García, 1986, MAPA, Agricultural Advisory Service Publications, Spanish Ministry of Agriculture, Fisheries and Food, NIPO: 253-86-034-2, ISBN: 84-341-0529-2, p. 13.

3.2 The Committee wishes to point out that Regulation (EC) No 1221/97 is the only common support instrument for beekeepers in the European Union and must therefore be retained. However, this instrument is based on a part-financing system that falls far short of aid currently provided under the Common Agricultural Policy and is by no means sufficient to resolve structural difficulties and guarantee the profitability of bee farms in the European Union. The European beekeeping sector is subject to an unstable market that is very dependent on world honey prices, to increasing climatic adversity caused by climate change and to bee losses in some regions as a result of external contamination.

3.3 The EESC believes that the complex nature of this Regulation in administrative terms and the excessive inflexibility when it comes to fulfilling the expenditure and investment criteria, together with the fact that the EAGGF financial year and that of the Member States end at different times (15 October and 31 December respectively) and the national programmes have different deadlines each year, make it considerably harder for countries to use the expenditure allocated to them. The EESC therefore calls on the Commission and the Council to harmonise the criteria used to determine expenditure and investment eligible for aid, in order to ensure that the scheme used to allocate aid to each country guarantees as fair a level of support as possible for all European beekeepers.

3.4 The Commission points out that the aim of controlling varroasis and other related diseases is to reduce the cost of treating hives. In its report it therefore recommends treating hives with approved products (i.e. those that do not leave any residue in the honey) as this is the only way of avoiding the consequences of this disease. In this regard, the EESC reiterates the need to encourage the pharmaceutical industry to conduct studies and research into new molecules that reduce the incidence of varroasis, as this is one of the main reasons for the emergence of other related diseases and accounts for 41 % of programmed expenditure in most Member States.

3.5 Controlling varroasis and other related diseases must continue to be one of the priority tasks of the sector. It is therefore important for this Regulation to provide for part-financing of this measure and for a genuine veterinary policy to control bee diseases to be implemented by the relevant Community institutions.

3.6 A number of Committee opinions<sup>(1)</sup> have already pointed to the need for the proposed regulation to refer to the movement of honey in the internal market and other aspects relating to the world honey market. The Commission should lay down quality standards for honey produced in the European Union and encourage the consumption of high-quality European honey under internal promotion policy and by using the PDOs, PGIs and TSGs. Furthermore, as the Commission recognises in its report, account should be taken of the extremely important consequences for the honey market of China's entry into the WTO, as well as plans to review existing preferential agreements and even draw up new ones. These agreements are permanent instruments of free trade policy in the world market and cause unfair competition and lower producer prices and incomes, to the detriment of European producers.

3.7 The Committee wishes to point out that quality control measures for honey have proved to be effective and should therefore be stepped up, both for imported honey and honey produced in the EU (analysis of floral origin and residues). These quality control measures, which are already one of the few stabilising factors in the market, are even more important in the light of the new Directive on labelling<sup>(2)</sup>, this being, moreover, the only way of distinguishing Community honey from imported honey. The EESC believes that for all these reasons the honey analyses measure should not be abolished, as proposed by the Commission. The EESC therefore proposes either leaving the title of the Council Regulation as it is or changing it to: 'On actions to improve production and marketing in the field of beekeeping'.

3.8 The EESC believes it would be a good idea to strengthen the principle of cooperation between the competent authorities in the Member States and representative organisations and cooperatives in the beekeeping sector, as this will help improve the way in which programmes are managed and ensure that they are administered transparently.

3.9 In view of the contribution of beekeeping to rural development and maintaining the ecological balance, the Committee believes that it needs to be afforded higher levels of support and protection, as existing aid under Regulation (EC) No. 1221/97 is not sufficient to guarantee the profitability of bee farms or prevent the disappearance of professional beekeeping.

3.10 The EESC stresses the importance of aid granted under Regulation (EC) 1221/97 in terms of developing the sector and boosting the number of professionals working in it, both of which are essential to achieving a multifunctional European agriculture. Despite the budgetary restrictions which the Commission itself recognises, both the total amount allocated

and the part-financing percentage laid down in this Regulation need to be increased.

3.11 The Committee points to the need for the Member States to carry out an in-depth study of the structure of the sector. This study, which will be submitted annually by the Member States to the Commission as part of the three-yearly national programmes and will cover production, marketing and price formation, is an essential tool for providing statistics on the changing face of beekeeping in the European Union.

3.12 In order to raise awareness among young people, in particular, about job opportunities in beekeeping, the Committee believes that the proposal's priority objectives must include vocational training programmes for young beekeepers.

#### 4. Specific comments

4.1 The Committee welcomes the Commission's proposal to extend actions in the sector to all beekeeping products. However, it also points out that calls by the Council of the European Union<sup>(3)</sup> to significantly improve the proposals put forward by the Commission have thus far been ignored.

4.2 The EESC is in favour of tripling, at least, the total amount of aid (currently EUR 16.5 million for the EU of 15) in order to meet the needs of the sector and proposes increasing the percentage of financing covered by the EAGGF Guarantee Section to at least 75 % of expenditure. Moreover, the Committee believes it is essential for the budget to be increased in view of imminent EU enlargement. The next enlargement in May 2004 is the sixth and most important enlargement in terms of the number of new members. Because beekeeping is such an important agricultural sector in the accession countries, the number of hives in Europe is expected to rise by 30 %. The existing budget would therefore fall far short of meeting the demands of an EU of 25.

4.3 The Committee believes it is important for a European observatory to be set up with the 2 % of the budget that the Regulation allocates for carrying out joint actions drawn up jointly by the Commission and sector representatives, in line with the principle of cooperation laid down in the Regulation itself.

4.4 The EESC points out that Community legislation<sup>(4)</sup> lays down that, as of 1 January 2005, the traceability of food must be ensured in the production and processing stages. Aid should therefore be provided to cover expenditure in this area and ensure that products are of a high quality.

<sup>(1)</sup> Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) laying down general rules for the application of measures to improve the production and marketing of honey. OJ C 206 of 7.7.1997, p. 60.

<sup>(2)</sup> Council Directive 2001/110/EC of 20 December 2001 relating to honey. OJ L 10, 12.1.2002, p. 47-52.

<sup>(3)</sup> 2410th meeting of the Agriculture Council, Brussels, 18 February 2004

<sup>(4)</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002; OJ L 31 of 1.2.2002, p. 1-24.

4.5 The EESC has serious reservations about the Commission's proposal for national programmes to be drawn up every three years as, while this could be simpler in administrative terms for the Member States, it would complicate the necessary annual presentation and review of national programmes. This would be a major disincentive to using such aid and would also increase the administrative problems currently experienced in some EU Member States. This in turn would have a detrimental impact on European beekeepers who already complain that in some Member States efforts are concentrated on measures that do not benefit them directly.

4.6 The Committee recalls that available funds are distributed annually on the basis of the Member States' estimates of expenditure and the number of hives. The EESC supports the idea of three-yearly national programmes, providing that they are subject to an annual review. This review must coincide with the distribution of funds, as has been the case until now, and be accompanied by mechanisms for reallocating funds that certain Member States are unlikely to be able to spend to other Member States, during each EAFFG financial year.

4.7 The EESC welcomes the European Parliament's resolution<sup>(1)</sup> of 9 October 2003 and is in favour of implementing measures to halt the decline in the bee population and promote its immediate recovery. It therefore welcomes the measures to support the restocking of hives in the Community proposed by the Commission, as this is an explicit recognition of the gravity of this problem.

4.8 In the EESC's view, there is a need for new support instruments, inter alia additional funding for controlling

varroasis and other bee diseases (account must also be taken of the emergence of new diseases) to offset the high cost of veterinary medicines.

4.9 The EESC believes it is also necessary to introduce a pollination premium to reflect the environmental contribution of bees in terms of maintaining biodiversity and the natural environment and an annual compensatory premium to offset income lost due to the fact that there is no Community preference in the European beekeeping sector.

4.10 The Committee believes that the proposed Regulation will do what its title suggests and urgently address the promotion and marketing of high-quality honey and consumer protection, by including measures to promote joint marketing, investment in packaging and classification centres, and measures to promote beekeeping products in general. It would therefore be a very good idea for this Regulation to retain the honey analyses measure, as it is a fundamental and strategic tool for promoting European beekeeping products and for protecting food quality and safety for consumers.

4.11 In order to improve the instrument for providing statistical data on the structure of the beekeeping sector, the EESC calls for Commission support and recommends setting up national observatories in the Member States in cooperation with producers' organisations. The main task of these observatories would be to monitor prices at source, in the internal market and across borders, update production costs (i.e. fixed and variable costs of bee farms) and assess the inventory of national hives, marketing structures and packaging costs.

Brussels, 1 April 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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<sup>(1)</sup> Resolution on the difficulties faced by the European beekeeping sector – Reference: RSP/2003/2569