

# Official Journal

## of the European Union

C 117

Volume 47

English edition

### Information and Notices

30 April 2004

#### Notice No

#### Contents

Page

#### I Information

.....

#### II Preparatory Acts

#### European Economic and Social Committee

#### 408th plenary session, 28 and 29 April 2004

2004/C 117/01	Opinion of the European Economic and Social Committee on the 'proposal for a Regulation of the European Parliament and of the Council on materials and articles intended to come into contact with food' (COM(2003) 689 final – 2003/0272 COD) .....	1
2004/C 117/02	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators' (COM(2003) 723 final – 2003/0282 (COD)) .....	5
2004/C 117/03	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community' (COM(2003) 847 final - 2003/0333 (COD)) .....	10
2004/C 117/04	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the quality of fresh waters needing protection or improvement in order to support fish life' (Codified version) (COM(2004) 19 final – 2004/0002 (COD)) .....	11
2004/C 117/05	Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on a single framework for the transparency of qualifications and competences (Europass)' (COM(2003) 796 final) .....	12

EN

Price:  
18 EUR

(Continued overleaf)

Notice No	Contents (continued)	Page
2004/C 117/06	Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 77/388/EEC as regards the place of supply of services' (COM(2003) 822 final - 2003/0329 (CNS)) .....	15
2004/C 117/07	Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 2003/49/EC as regards the possibility for certain Member States to apply transitional periods for the application of a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States' (COM(2004) 243 final - 2004/0076 CNS) .....	21
2004/C 117/08	Opinion of the European Economic and Social Committee on 'Assessing the EU sustainable development strategy - exploratory opinion' .....	22
2004/C 117/09	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament: Towards a thematic strategy on the sustainable use of natural resources' (COM(2003) 572 final) .....	38
2004/C 117/10	Opinion of the European Economic and Social Committee on the 'Communication of the Commission to the Council, the European Parliament and European Economic and Social Committee: An internal market without company tax obstacles – achievements, ongoing initiatives and remaining challenges' (COM(2003) 726 final) .....	41
2004/C 117/11	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital' (COM(2003) 703 final - 2003/0277 (COD)) .....	43
2004/C 117/12	Opinion of the European Economic and Social Committee on the 'Proposal for a decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable' (COM(2004) 96 fin - 2004/0025 (COD)) .....	49
2004/C 117/13	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Århus 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 - 2003/0242(COD)) .....	52
2004/C 117/14	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters' (COM(2003) 624 final - 2003/0246 (COD)) .....	55
2004/C 117/15	Opinion of the European Economic and Social Committee on 'The repercussions of trade policy on industrial change, with special reference to the steel sector' .....	58

## II

*(Preparatory Acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 408TH PLENARY SESSION, 28 AND 29 APRIL 2004

**Opinion of the European Economic and Social Committee on the 'proposal for a Regulation of the European Parliament and of the Council on materials and articles intended to come into contact with food'***(COM(2003) 689 final – 2003/0272 COD)**(2004/C 117/01)*

On 28 November 2003, the Council decided to consult the European Economic and Social Committee, under Articles 53 and 54 of the Treaty establishing the European Community, on the 'Proposal for a Regulation of the European Parliament and of the Council on materials and articles intended to come into contact with food' (COM(2003) 689 final – 2003/0272 COD).

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 5 April 2004. The rapporteur was Ms Sharma.

At its 408th plenary session of 28 and 29 April 2004 (meeting of 28 April 2004), the European Economic and Social Committee adopted the following opinion by 84 votes to 2.

**1. Introduction**

1.1 Directive 89/109/EEC provided the basis for the assurance of a high level of protection of human health and of consumers' interests in relation to materials and articles intended to come into contact with food whilst ensuring the effective functioning of the internal market.

1.2 Technological progress have produced materials to maintain or improve the condition of the food and prolong its shelf life – 'active' materials. Other new packaging applications known as 'intelligent' food contact materials and articles are used to give information about the condition of the food.

1.3 It is currently unclear under Directive 89/109/EEC, if 'active' or 'intelligent' types of packaging are covered by national or Community legislation. The new proposal clarifies that these two types of food contact materials and articles are covered by the Regulation and sets basic rules for their use. It also foresees the possibility of drafting specific implementing measures for them.

1.4 The evaluation of substances is currently carried out by the Scientific Committee on Food (SCF). It is however necessary, for reasons of transparency, to establish more detailed procedures for the safety assessment and authorisation of substances used for the manufacture of food contact materials.

1.5 Food contact materials and articles need to be traceable at all stages of manufacture, processing and distribution and general rules of traceability for food contact materials, in line with similar traceability provisions for food and feed established in Article 18 of Regulation (EC) No. 178/2002.

1.6 Some additional provisions of labelling are proposed to better inform the consumers and the users of the food contact materials.

**2. Gist of the Commission proposal**

2.1 The Commission document proposes to replace the existing framework directive on packaging legislation and additionally consider regulation for the traceability of active and intelligent packaging.

2.2 Active and intelligent packaging can be summarised simplistically in two main forms: Absorbers – packaging which removes excesses (for example oxygen absorbing materials) or Releasers – packaging which has a slow release mechanism of preservatives or flavourings into the food contents. In all cases, it is important to highlight that the packaging and either the absorbers or release ingredients must comply with both food and labelling EU legislation and therefore be safe for food. As such the Proposal must be in line with Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

2.3 The present proposal aims at modifying Directive 89/109/EEC to take into account the issues mentioned above. It also integrates for reasons of simplicity the symbol which should accompany food contact materials and articles determined in Directive 80/590/EEC. The proposed Regulation will therefore replace and repeal Directives 89/109/EEC and 80/590/EEC.

2.4 The Council Directive 89/109/EEC on the approximation of the laws of the Member States relating to materials and articles intended to come into contact with foodstuffs (Framework Directive) establishes the general principles applicable to all food contact materials including principles of 'inertness' of the materials and 'purity of the food, together with lists of authorised substances used in the manufacture of food contact materials to the exclusion of all others (positive lists) and the groups of materials and articles to be regulated by implementing measures (specific directives), including the evaluation of substances by the Scientific Committee on Food (SCF) and the opinion of the Standing Committee on Foodstuffs.

2.5 The overall policy objective in terms of expected impacts is:

- To secure a high level of protection of human health and the interests of the consumer.
- To ensure the free movement of materials and articles intended to come into contact with food.
- To take into account important technological developments in the area of food packaging.
- To ensure better traceability as well as labelling of materials and articles intended to come into contact with food.
- To improve the transparency of the authorisation process by specifying the various phases of the procedure.
- To give the possibility to the Commission to adopt for the implementing measures not only directives, but also deci-

sions and regulations, as the latter are more appropriate for provisions, such as positive lists.

- To ensure better enforceability of the rules through the establishment of Community and national Reference Laboratories.

### 3. General comments

3.1 The provisions on active and intelligent food contact materials and articles are general and establish the regulatory status of these packaging applications in the Community to the benefit of the concerned industry, the consumers and the Member States.

3.2 The additional labelling requirements will ensure a more informed use of the food contact materials and articles by the purchaser and the final consumer.

3.3 Improving traceability of food contact materials will be beneficial for the consumer in case of a problem, and will allow a more limited withdrawal of deficient products by the companies.

3.4 The basic approach suggested to reach the above-mentioned objectives is to improve and harmonise Community legislation on materials and articles intended to come into contact with food by introducing the proposed rules.

3.5 In terms of respecting the subsidiarity and proportionality principles the Framework Directive 89/109/EEC was adopted on the grounds that differences between national laws of the Member States impeded the free movement of these materials and articles. Directive 89/109/EEC approximated those laws to achieve the free movement of food contact materials and articles whilst protecting consumer's health and interests. This Directive also established a list of materials and articles to be covered by specific directives. This approach was successful and should be continued.

3.6 The adoption of a Regulation instead of a Directive is justified by the technical nature of the act and will lead to the direct application of the proposed rules throughout the Community. This is important in the perspective of an enlarged Community that will soon comprise 25 Member States and that will certainly benefit from homogenous and directly applicable rules throughout its territory.

3.7 Community authorisation for the substances used in the manufacture of food contact materials is already foreseen in Directive 89/109/EEC. Thus, no new obligations arise for business from the provisions on the authorisation procedure.

3.8 The Commission's Proposal contains the following general obligations for applicants:

3.8.1 To send the application for the authorisation of a substance to the national competent authority of a Member State, in first place.

3.8.2 To inform the Authority about new information which may influence the evaluation of the safety in the use of an authorised substance.

3.9 The general obligations for business operators responsible for the manufacture, processing, importation, or distribution of food contact materials, include the following:

3.9.1 To label all materials and articles that are intended to come into contact with food, including those for which this use is obvious by their nature and which were so far excluded from this obligation by Directive 89/109/EEC.

3.9.2 To instruct on the permitted uses of active and intelligent materials and articles, in order to enable the users of those materials and articles to comply with relevant legislation applicable to food.

3.10 Business operators are obliged:

3.10.1 To comply with the conditions of use and restrictions attached to the authorisation of substances for manufacturing food contact materials.

3.10.2 To have in place systems to identify the suppliers to their businesses of materials and articles and where appropriate the substances and products used for their manufacture. On request, they should be able to make this information available to the competent authorities.

3.10.3 To identify to whom their products have been supplied and, upon request, to make this information available to the competent authorities.

3.10.4 To adequately label or identify the materials and articles placed on the market in the Community to allow their traceability.

#### 4. Specific comments

4.1 The EESC supports the Commission document COM(2003) 689 and praises the Commission for its continued consultation with trade associations and consumer representative organisations in reaching its final document. The Committee also welcomes the introduction of the positive list.

4.2 The EESC notes that the Commission has identified problematic issues (contained within this document for reference) and is aware that there will not be an extended assess-

ment of the proposal. However, the EESC additionally would request the Commission to consider that the current proposal lacks clarity in the initial paragraphs on three main issues:

i. The document proposes to replace the existing framework directive on packaging legislation and additionally consider regulation for the traceability of active and intelligent packaging. The EESC understands that further examination of plastic packaging will also be under review in the near future.

ii. A clear definition of active and intelligent packaging and how they work. Although consultations with consumer groups have taken place, clear simple definitions and consumer education leaflets would be valuable to remove ignorance and fear.

iii. Clarity that in all cases, the packaging and either the absorbers or release ingredients must comply with EU legislation on food safety and food labelling. All migrating ingredients to and from the packaging must be listed on the ingredients label and be food safe.

4.3 The implications of additional regulation and procedures for small and medium sized enterprises (SMEs) in the food manufacturing and packaging industries will impose additional auditing procedures on food manufactures and reflective costs for packaging manufactures, many of which are difficult to absorb for smaller companies.

4.4 The implications of the new authorisation procedures for materials and designs in an industry not traditionally accustomed to such regulation, in particular time scales, security of design and the restrictive procedures may lead to reduced innovation and competitiveness in the industry. Tight checks on imported products must be made to retain a productive and competitive global industry.

4.5 The EESC understands that it is the Commission's intention to reduce onerous auditing procedures, requiring only a 'Certificate of Conformity' or 'Compliance Approval Certificate' to be issued 'one-step before and one-step after' in the supply chain. However, in the Commission document this is open to misinterpretation with the use of the words 'whereby at least'. Guidelines to assist the food industry, with reference to the correct checks required, should be laid down by the Commission together with clear information to assist them, enforcement officers, and Member States on the specific provision for traceability to prevent any extension of requirement or due diligence, in reviewing the correct information from packaging manufacturers throughout the supply chain. This should be done in an assistive manner, rather than further regulation imposed on an already heavily regulated industry.

4.6 The EESC would request the Commission to consider some additional funding to support both a public and industry campaign. The public awareness campaign is to educate consumers and the users of the food contact materials on the additional provisions of labelling, and how to dispose of the packaging with environmental consideration. An awareness raising campaign for the food industry and consumers should be supported by Member States and Regional Development Agencies. The EESC raises concerns in relation to the correct labelling of active and intelligent materials and articles, with provisions to rule out that such systems may mislead the consumers in relation to the quality or condition of the food. In no case may the use of active packaging mask natural spoilage. The EESC would additionally request the Commission to conduct trials on the nutritional value of product contained in active packaging versus unpackaged product, so that the consumer can be can have an informed choice. Currently consumers are unaware whether active package retains or depletes nutritional content. The EESC understands that comprehensive labelling for active and intelligent packaging is currently under consideration and believe that product testing for nutritional risk or benefit should be carried out in conjunction with the new legislation.

4.7 Whilst the EESC accepts that the packaging is subject to current food legislation, it highlights that this must be legible,

clear and understandable. However, further clarity on labelling is required immediately. It must not be open to misinterpretation or false claims. Whilst not directly related to this Commission document, the EESC would wish to highlight the need for further labelling on plastic packaging to prevent misuse, particularly on heating when in contact with food and fats. This consideration could be made with the additional labelling legislation and the review of plastic packaging and labelling regulations.

4.8 Particular attentions should be paid to imported food products where the 'symbol' which should accompany food contact materials and articles should be determined as genuinely being used on authorised products. This responsibility has been designated to the importer, however complete traceability from a non-EU source may be more difficult to determine. This combined with foreign language labelling may lead to inferior products appearing in the EU, harming EU food and packaging manufacturers, and potentially health risks for the consumer.

4.9 The EESC understands that a long lead time for both the food and packaging industries to allow for the use of packaging currently in stock will be made. This is essential to avoid environmental consequences and industry costs for packaging removal and destruction particularly for items, which cannot be recycled.

Brussels, 28 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 Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators'**

(COM(2003) 723 final – 2003/0282 (COD))

(2004/C 117/02)

On 11 December 2003, the Council decided to consult the European Economic and Social Committee, under Articles 95 and 175 of the Treaty establishing the European Community, on the 'Proposal for a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators' (COM(2003) 723 final - 2003/0282 (COD)).

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 5 April 2004. The rapporteur was Mr Pezzini.

At its 408th plenary session (meeting of 28 April 2004), the European Economic and Social Committee unanimously adopted the following opinion.

## 1. Introduction

1.1 The issue of batteries and accumulators has been the subject of debate for a number of years now because of the scale of the phenomenon: approximately 800 000 tonnes of automotive batteries, 190 000 tonnes of industrial accumulators and 160 000 tonnes of portable batteries are placed on the European market each year.

1.2 Furthermore, the sector is growing fast, not least as a result of the development of new electronic consumer appliances. The world market is increasing in value by around 9 % every year. In terms of quantity, the annual increase in tonnes is approximately 1 % for batteries and 1.5 % for industrial batteries and accumulators.

1.3 Lastly, it must be pointed out that, with the increase we hope and expect to see in the use of renewable energy sources such as wind or solar energy to produce electricity, the need for proper technology for storing this electricity will increase considerably. This will be an additional substantial factor contributing to the demand for a growing market in powerful, safe batteries and accumulators.

1.4 The current European legislation, particularly the legislation on batteries, does not appear to have succeeded in controlling the risks posed by waste effectively, and it has not created a uniform framework for battery collection and recycling. In 2002, less than half the total volume of portable batteries sold was collected and recycled, the majority being disposed of in the environment. However, the majority of automotive and industrial batteries and accumulators are already being collected because of the commercial value of recycled lead and the existence of proper collection systems for industrial nickel-cadmium accumulators.

1.5 The legislation proposed is in line with the objectives set by the Sixth Community Environment Action Programme <sup>(1)</sup>, with the strategy on the prevention and recycling of waste – which the Committee has already endorsed <sup>(2)</sup> – and, lastly, with Directive 2000/53/EC on end-of-life vehicles <sup>(3)</sup> and Directive 2002/96/EC on waste electrical and electronic equipment <sup>(4)</sup>. The Committee has expressed its opinion on the latter two directives as well on several occasions <sup>(5)</sup>, advocating the introduction of ambitious targets for recovery, re-use and recycling (CES 1407/2000, point 3.4.1).

1.6 Lastly, it must be pointed out that the Commission has recently adopted a proposal for a framework directive on establishing a framework for the setting of eco-design requirements for energy-using products <sup>(6)</sup>, on which the Committee has drawn up an opinion <sup>(7)</sup>; the Commission intends the environmental aspects of all energy-using products to be incorporated at the design stage. Within and in line with this framework, implementing directives for each product would be drawn up on the basis of Article 95(3) of the EC Treaty.

1.7 Before submitting the current proposal, the Commission carried out an in-depth impact assessment (Extended Impact Assessment – ExIA), which weighed up the best long-term political solutions. As part of this exercise, it held a public stakeholder consultation which saw the participation of approximately 150 stakeholders, including national, regional and local authorities, battery and accumulator firms and associations, and various non-governmental organisations and consumer and retailer organisations.

<sup>(1)</sup> OJ L 242, 10.9.2002.

<sup>(2)</sup> EESC opinion CESE 1601/2003 of 10-11 December 2003.

<sup>(3)</sup> OJ L 269, 21.10.2000.

<sup>(4)</sup> OJ L 37, 13.2.2003.

<sup>(5)</sup> ESC opinion CES 289/1998 of 26/2/1998 and ESC opinions CES 1407/2000 and CES 937/2003 of 17 July 2003.

<sup>(6)</sup> COM 2003/453 of 1.8.2003.

<sup>(7)</sup> CESE 505/04.

## 2. Main elements of the proposal for a directive

2.1 The main aims of the proposal, which covers all types of batteries and accumulators, are as follows:

- to introduce a ban on the landfilling and incineration of batteries and accumulators,
- to promote effective collection schemes (minimum of 160 grams per inhabitant per year for portable batteries) which involve no cost for the consumer,
- to set recycling output targets, in order to ensure the proper functioning of the internal market,
- to reduce collection and recycling costs as a result of the higher collection rates introduced.

2.2 The principal measures contained in the Commission's proposal can be summarised as follows:

- a) the repeal of the existing directives <sup>(1)</sup> on both batteries and accumulators, and the replacement thereof with a new single legal instrument;
- b) an obligation to collect and recycle all spent batteries and accumulators, in order to avoid their incineration or final disposal and to make it possible to recover the different metals which they contain;
- c) the introduction at EU level of a framework regulating national collection, recycling and promotion schemes in terms of subsidiarity. Under the new provisions, producers, wholesalers and retailers, importers and exporters will be required to take back industrial batteries and accumulators, while consumers will be able to return portable batteries and accumulators free of charge. As regards automotive batteries and accumulators, the rules laid down in Directive 2000/53/EC on end-of-life vehicles will continue to apply;
- d) the prohibition of the final disposal of industrial and automotive batteries and accumulators in landfills or by incineration;

<sup>(1)</sup> Council Directive 91/157/EEC in OJ L 78, 26.3.1991, as amended by Commission Directive 98/101/EC in OJ L 1, 5.1.1999, with references to:  
Commission Directive 93/86/EEC in OJ L 264, 23.10.1993  
Commission Decision 2000/532/EC in OJ L 226, 6.9.2000  
Commission Communication COM(2003) 301  
Commission Communication COM(2003) 302.

- e) the establishment of a uniform minimum target across the European Union of 160 grams per inhabitant for the collection of all spent portable batteries and accumulators as a basis for efficient national collection schemes; an additional specific monitored collection target of at least 80 % is to be set for nickel-cadmium batteries and accumulators because of their hazardousness;
- f) a requirement for Member States to ensure that producers of batteries and accumulators, or third parties acting on their behalf, set up recycling facilities, with the possibility of exporting spent products for further treatment;
- g) a requirement for Member States to promote the use of advanced recycling technologies and participation in the Community eco-management and audit scheme (EMAS);
- h) recycling requirements, with higher efficiencies for nickel-cadmium and lead-acid batteries, to be updated regularly in line with technical progress;
- i) a requirement for Member States to ensure that producers finance the management of spent batteries and accumulators, providing adequate guarantees by their inclusion in a specific register; in addition, to facilitate the possibility of financial agreements being concluded between producers and users, where industrial and automotive batteries are concerned;
- j) a list of the information which must be provided to the consumer and a requirement for producers to mark products with a special symbol. Products containing mercury, lead or cadmium must be marked with the chemical symbol of the metal in question;
- k) a review clause, with reviews based on evaluation of the results of monitoring. The ensuing report is to be published in the Official Journal;
- l) the option of using environmental agreements with economic operators to transpose certain parts of the Directive;
- m) a requirement for Member States to establish effective, proportionate and dissuasive penalties.

## 3. General comments

3.1 The Committee supports the objectives of ensuring consistency between Community legislation on batteries and accumulators and of streamlining and simplifying the complex documentation and consolidating it into a single legislative instrument. The resulting harmonised standards would ensure greater protection of the environment in a competitive European single market which is respectful of materials and natural resources.



3.2 The Committee feels, however, that, as far as possible, the scope of Directive 2002/96/EC on WEEE should be extended to cover all types of batteries and accumulators, in order to avoid both mushrooming of legislation and procedures and duplication. Indeed, Directive 2002/96/EC on WEEE will have to be implemented by the Member States as of 2004 – some parts coming into force as of 2006 – with the introduction of collection, recycling and monitoring schemes, national WEEE registers, arrangements for apportionment of responsibility and financing.

3.3 As regards the present proposal for a directive, the Committee points out the need for a legal basis ensuring:

- harmonised standards, compliance with which can be fully monitored with comprehensive penalties for non-compliance, applying to all producers, both EU and non-EU, who place batteries and accumulators on the European market;
- high levels of environmental and public health protection;
- a completely level playing field for operators, including where operators are from different countries, as regards equal rights where choice and incentives are concerned and equal obligations in the areas of production and marking, registration and monitoring, collection and recycling;
- promotion of innovation and technical and technological progress, not least given the likely increase in the use of safe batteries and accumulators for storing renewable energy;
- effectiveness and sustainability of costs and procedures, securing the sustainable development of the most competitive knowledge-based economy in the world by 2010;
- fixed permissible recycling rates which are certain and measurable;
- uniform national registration and guarantee measures for placing products on the market and the mutual recognition of such measures, in order to avoid the extra burden of registering more than once.

3.4 In this regard, the Committee believes that there are four possible options:

- splitting the present proposal into two proposals for directives, each with its own single legal basis: Article 95 of the EC Treaty for the part of the directive relating to technical specifications and Article 175 of the EC Treaty for the part for which responsibility is delegated to the Member States under the subsidiarity principle;
- Article 95, in particular paragraph 3 thereof, which would ensure a coherent, harmonised approach and a legislative framework which is uniformly binding throughout the EU, with free-flowing production, sale and marketing in all the markets of the Union, as a response to the globalisation of the world batteries market;

— Article 175, which allows legislation enhancing environmental protection to differ between the Member States, but which cannot guarantee harmonised standards that are binding throughout the European single market;

— the current dual legal basis – Article 95 and Article 175 – for the single directive currently being proposed: Article 95(1) for Chapters II, III, VIII and Annex II, and Article 175(1) for Chapters IV, V, VI and VII.

3.5 In this regard, the Committee would point out that there are numerous directives with a substantial environmental protection component which are based on Article 95 of the EC Treaty, such as the Directive on waste management, the Packaging Directive, the Directive on the restriction of the use of certain hazardous substances in electric and electronic equipment (RoHS) <sup>(1)</sup> and Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances <sup>(2)</sup>, which the Commission's proposal is intended to supersede. The Committee would, in addition, point out that Article 95(5) and (6) authorise Member States wishing to do so to go further where environmental protection is concerned, upon presentation of proper grounds.

3.6 In view of the requirements relating to the legal basis described in point 3.3 and the considerations expressed in point 3.5 above, and in view of the need to provide a single, coherent, simplified framework for future legislation, the Committee recommends the adoption of a single directive.

3.7 As far as the legal basis is concerned, while the Committee endorses the possibility and compatibility of using both Article 95 (harmonisation of the internal market) and Article 175 (environmental protection) it feels that it would be appropriate for a directive to be adopted with a single legal basis as far as possible, and for the directive to be based as fully as possible on Article 95, to ensure equal treatment and costs across the board for products freely circulating on the European single market, with all due consideration for the need to provide high levels of environmental protection while avoiding distortion of competition and unequal treatment and without increasing or duplicating administrative costs or tasks.

3.8 In the event that it be deemed essential to use Article 175, in addition to Article 95, the Committee recommends that Article 175 be used as the basis for the provisions on national collection schemes (Chapter IV), treatment and recycling schemes (Chapter V) and consumer information measures (Chapter VII). However, the remaining provisions – in particular those relating to registration systems – should be harmonised pursuant to Article 95 in order to ensure a genuine single market.

<sup>(1)</sup> Directive 2002/95/EC of 27 January 2003 in OJ L 37 of 13.02.2003 – EESC Opinion in OJ C 116, 19.12.2001.

<sup>(2)</sup> OJ L 78, 26.3.1991.

3.9 The proposal covers all types of batteries and accumulators of all dimensions and categories, except those used for national security or for military or space research. While the Committee acknowledges the reasons for excluding these categories, it feels, in view of the large-scale use of batteries and accumulators in military and security applications, that the Member States should be given responsibility for properly addressing the issue of the use, collection and recycling of batteries and accumulators, using their own methods and procedures, with due consideration for the need to secure high levels of environmental and health protection.

3.10 The Committee believes it is important, for the sake of uniformity of EU legislation, that all directives should use the same definitions. Consequently, the draft directive's definition of 'producer' should agree with the definition used in the WEEE Directive, viz. producers and retailers of own-label goods, and importers and exporters. The Committee stresses the importance of the principle that each 'producer' is individually responsible for placing the product on the market, and the importance of the guarantees to be provided by 'producers' to the national registers as regards the collection, treatment and recycling of industrial and automotive batteries and accumulators and the treatment of portable batteries. Moreover, each link in the collection chain – town councils, retailers, consumers, producer-importers and public authorities – should be responsible for their own part of the process.

3.11 The Committee would stress the importance of making collection schemes, as far as possible, consistent with or similar to those provided for by other directives and, in particular the schemes provided for by the WEEE Directive. The Committee endorses the proposed collection levels (grams per inhabitant per year) for all spent portable batteries and accumulators, to be introduced as of five and a half years from the adoption of the directive. There are already effective schemes for the collection and recycling of automotive and industrial batteries and accumulators, in the form of take-back agreements and Directive 2000/53/EC as regards end-of-life vehicles. In terms of the percentage laid down for nickel-cadmium batteries, the proposed target of 80 % in five years may, perhaps, be too ambitious and compliance difficult to monitor, particularly where portable batteries are concerned.

3.12 Moreover, the Committee endorses the possibility of extending the implementation deadlines for another three years where mountain and rural areas, thinly populated areas and islands are concerned. It also endorses the application of specific measures for the new Member States.

3.13 As regards the recycling requirements proposed, the Committee endorses the principle that all batteries must be recycled except those which are not in good enough condition for recycling or are to be considered hazardous waste. All

recyclable batteries collected should be recycled using the Best Available Technology Not Entailing Excessive Cost<sup>(1)</sup>. The Committee can support the target of a recycling efficiency of 55 % – 65 % for lead-acid batteries and 75 % for nickel-cadmium batteries – by average weight of the materials contained, in order to ensure proper competition between different kinds of recycling, modernised in line with technological developments.

3.14 As regards financing systems, the Committee feels that it must be possible for all market operators to pass on the costs sustained to customers and to the end consumer, in the same way as public operators pass on their costs to the public through taxes on waste. Portable battery 'producers' are responsible for financing transport from central collection points to deposits and for financing recycling, while where the financing of the collection, treatment and recycling of industrial and automotive batteries is concerned, producers and users must be able to draw up cost-sharing agreements. Where export to other Member States or third countries takes place (Article 16), the Committee feels that any external effects of transport should be taken into account.

3.15 The Committee believes that a proper policy of informing, training and involving consumers and the public from school and pre-school age onwards is essential for the achievement of the proposed objectives of a single market and environmental and health protection.

3.15.1 Although a number of northern European countries have found that increasingly the sales price does not appear to have had any repercussions, it has been calculated that, if all the collection and recycling costs for spent portable batteries were to be borne by the consumer, the annual increase in cost per household would be between EUR 1 and EUR 2.

3.15.2 What is needed is, first and foremost, better consumer information and more effective awareness-raising campaigns targeting consumers. In this regard, in addition to local and national information campaigns, the Committee proposes that specific education measures be implemented from school age onwards, focusing on games, in order to encourage involvement in the collection of spent portable batteries, and on familiarity with the symbols used to mark products. The economic operators in the production and distribution chain should provide clear, simple instructions on the storage conditions for the product and on the time frames for decommissioning in dedicated collection points.

3.15.3 Ways of actively involving the consumer could be explored by introducing incentives such as competitions in which points are collected by taking back spent batteries, or other financial incentives.

<sup>(1)</sup> BATNEEC.

3.16 The Committee believes that the three-yearly report on the implementation of the directive and its impact on the smooth functioning of the internal market and environmental and health protection should be accompanied not only by summaries of the national reports but also by the recommendations of Community-level producer and consumer organisations and by a report on technical and technological progress in the field. These reports should be submitted to the Committee for perusal.

#### 4. Conclusions

4.1 The Committee stresses the importance of providing a consistent regulatory framework with harmonised standards, so as to ensure greater environmental protection in a competitive European single market in batteries and accumulators.

4.2 The Committee also stresses the importance of preserving the sustainability of an expanding market and its capacity for innovation, avoiding excessive regulation hindering technical and technological progress, either in terms of extending a product's life cycle – and thus limiting the amount of spent products – or as regards increasing reliability, power and safety, which have become necessary in view, not least, of the growing need to store electricity produced by increasingly widespread use of renewable energy sources, such as wind and solar power.

4.3 The Committee reiterates the need to avoid mushrooming of legislation and procedures and the consequent risk of creating more administration and barriers to the development of innovative products.

4.4 The Committee endorses the possibility and compatibility of using a single legal basis which includes both Article 95 and Article 175, each relating to a clearly specified, distinct part of the directive. However, in order to ensure a high level of environmental protection in a single market with a level playing field, it would advocate the use as far as possible of Article 95, with due consideration being given to the options provided for in paragraph 3 (high level of protection) and in paragraphs 5 and 6 (introduction or preservation of provisions increasing protection).

4.5 In order to avoid unnecessary red tape, the Committee stresses the need for collection, recycling and registration schemes to be coordinated with the WEEE Directive.

4.6 The Committee stresses the importance of the principle that each 'producer' is individually responsible for placing a product on the market and the importance of the guarantees which 'producers' are to provide for national registers under harmonised registration systems. Moreover, each link in the collection chain – town councils, retailers, consumers, producer-importers, public authorities – should be responsible for their own part of the process.

4.7 The Committee endorses the principle that all batteries should be recycled except those which are not in good enough condition to be recycled and are to be considered hazardous waste. All recyclable batteries collected should be recycled according to the Best Available Technology Not Entailing Excessive Cost<sup>(1)</sup>.

4.8 As regards financing systems, the Committee feels that it must be possible for all market operators to pass the costs sustained on to customers and to the end consumer.

4.9 The Committee believes that a proper policy of informing, training and involving consumers and the public from school and pre-school age onwards is essential for the achievement of the proposed objectives of a single market and environmental and health protection.

4.10 The Committee believes that the three-yearly report on the implementation of the directive and its impact on the smooth functioning of the single market and on environmental and health protection should also be submitted to the European Economic and Social Committee in order to ensure the necessary interaction with organised civil society.

Brussels, 28 April 2004.

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

---

<sup>(1)</sup> BATNEEC.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community'**

(COM(2003) 847 final - 2003/0333 (COD))

(2004/C 117/03)

On 22 January 2004 the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the 'Proposal for a Directive of the European Parliament and of the Council on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community' (COM(2003) 847 final – 2003/0333 (COD)).

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 5 April 2004. The rapporteur was Ms Sánchez Miguel.

At its 408th plenary session of 28 and 29 April 2004 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 97 votes for, none against and one abstention.

## 1. Introduction

1.1 The purpose of the proposal is to undertake a codification of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community<sup>(1)</sup>. The new directive will supersede the various acts incorporated in it<sup>(2)</sup>; the proposal fully preserves the content of the acts being codified and hence does no more than to bring them together with only such formal amendments as are required by the codification itself.

Brussels, 28 April 2004.

## 2. General comments

2.1 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.

2.2 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.

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

---

<sup>(1)</sup> Carried out in accordance with the Communication from the Commission to the European Parliament and the Council – Codification of the *acquis communautaire*, COM(2001) 645 final.

<sup>(2)</sup> See Part A of Annex II of the proposal.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the quality of fresh waters needing protection or improvement in order to support fish life' (Codified version)**

(COM(2004) 19 final – 2004/0002 (COD))

(2004/C 117/04)

On 29 January 2004, 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 'Proposal for a Directive of the European Parliament and of the Council on the quality of fresh waters needing protection or improvement in order to support fish life' (COM(2004) 19 final - 2004/0002 (COD)).

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 5 April 2004. The rapporteur was Ms Santiago.

At its 408<sup>th</sup> plenary session (meeting of 28 April 2004), the European Economic and Social Committee adopted the following opinion with 102 votes in favour and one abstention.

## 1. Introduction

The purpose of this proposal is to undertake a codification of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life<sup>(1)</sup>. The new Directive will supersede the various acts incorporated in it<sup>(2)</sup>; the 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.

Brussels, 28 April 2004.

## 2. General comments

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.

3. 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.

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

---

<sup>(1)</sup> Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

<sup>(2)</sup> See Annex III, Part A of the proposal.



**Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on a single framework for the transparency of qualifications and competences (Europass)'**

(COM(2003) 796 final)

(2004/C 117/05)

On 14 January 2004, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 149 of the Treaty establishing the European Community, on the 'Proposal for a Decision of the European Parliament and of the Council on a single framework for the transparency of qualifications and competences (Europass)' (COM(2003) 796 final).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2004. The rapporteur was Mr Dantin.

At its 408th plenary session on 28 and 29 April 2004 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 93 votes with four abstentions:

## **1. Introduction**

1.1 In its 1997 'Proposal for a Council Decision on the promotion of European pathways for work-linked training, including apprenticeship' (COM(97) 572 final) <sup>(1)</sup>, the Commission basically indicated that, in the context of the completion of the single market and, more generally, that of the building of a Europe without frontiers, trainee mobility was becoming an increasingly important dimension of European citizenship, as well as an instrument of multi-cultural and social integration.

1.2 Lack of transparency in qualifications and competences has often been regarded as an obstacle to mobility, for either educational or occupational purposes, and a constraint on developing the flexibility of labour markets in Europe.

1.3 With a view to remedying this situation, an explicit emphasis has been placed on these issues at both national and European level over recent years.

1.3.1 At the Lisbon European Council of March 2000, the Presidency conclusions identified increased transparency of qualifications as one of three main components in an approach aiming at a better match between the skills and qualifications provided by education and training systems and the emerging needs of the knowledge society in terms of the level and quality of employment and lifelong learning.

1.3.2 Two years later, the Barcelona European Council set the objective for European education and training to become a world quality reference by 2010. To this end, it specifically called for further action to ensure the transparency of diplomas and qualifications through appropriate instruments.

1.3.3 To do so, the Communication from the Commission on an Action Plan for skills and mobility (COM (2002) 72 final) called for the implementation and development of instruments supporting the transparency and transferability of quali-

fications to facilitate mobility within and between sectors, as well as for the establishment of a One-stop European Mobility Information Site as part of a wider European network to provide comprehensive and easily accessible information to citizens on key aspects of jobs, mobility, learning opportunities and the transparency of qualifications in Europe. Moreover, the Council Resolution on skills and mobility of 3 June 2002 called for increased cooperation, inter alia with a view to establishing a framework for transparency and recognition based on the existing instruments.

1.3.4 Increased cooperation has begun in vocational education and training. Inspired by the 'Bologna process' in higher education, this process is based on two policy documents, the Copenhagen Declaration of 30 November 2002 and the Council Resolution of 19 December 2002 on the promotion of enhanced European cooperation in vocational education and training.

1.3.4.1 The Copenhagen Declaration expressly called for action to increase 'transparency in vocational education and training through the implementation and rationalisation of information tools and networks, including the integration of existing instruments such as the European CV, certificate and diploma supplements, the Common European Framework of reference for languages and the Europass into one single framework'.

1.4 The present proposal for a decision establishes a single framework for the transparency of qualifications and competences advocated by the Council Resolution of 19 December 2002, providing for the implementation and support measures it deems to be appropriate.

## **2. General comments**

2.1 The Committee welcomes the overall content of this proposed European Parliament and Council Decision.

<sup>(1)</sup> ESC Opinion 635/98 of 29 April 1998 – Rapporteur: Mr Dantin – (OJ C 214 of 10.7.1998)

2.1.1 Indeed it shares the view that greater transparency of qualifications and skills will facilitate mobility throughout Europe for the purposes of lifelong learning, while helping ensure that these develop along quality lines. Transparency will also help boost mobility for professional reasons, between both countries and sectors, and may also contribute to an individual's personal development.

2.1.1.1 In doing so, this mechanism will contribute to employment policy and growth by facilitating the transferability of qualifications. By adding a new dimension to training in Europe, it will help strengthen European citizenship and at the same time assist in the consolidation of the single market.

2.2 The Committee generally approves of the practical, specific way proposed for implementing this guideline, which entails creating a document containing a description and certification of the skills and qualifications acquired by the holder through basic or continuous training or professional experience.

2.2.1 This portfolio, presented in a standardised fashion, will set out:

- the 'European curriculum vitae' developed by CEDEFOP;
- the 'language portfolio' which standardises presentation of language skills;
- the 'diploma supplement' which sets out a person's academic career in order to make it easier to give equivalent ratings for qualifications, thus facilitating mobility;
- the 'certificate supplement' which sets out a person's professional qualifications, in the same way as the 'diploma supplement'; and
- lastly the 'Europass training' document – from which the name 'Europass' in this proposal is derived – which outlines skills acquired in the course of work-linked training, part of which is carried out in another Member State. This document will henceforth be known as the 'Mobilipass'.

In addition to these 'Europass documents', there may be other documents approved by the Commission after consultation with the Europass National Agencies.

2.3 The Committee also agrees that each Member State should appoint a Europass National Agency (ENA) responsible, at national level, for coordinating all Europass activities, if necessary replacing existing bodies with a similar role, such as the 'contact points'.

2.3.1 These agencies may be viewed as genuine 'one stop shops', since their task is to:

- coordinate – in conjunction with the relevant national bodies – procedures for issuing Europass documents or for making them available;
- promote the use of Europasses, inter alia via the Internet;

- ensure that suitable information and guidelines on the Europass and Europass documents are available to the public;

- provide the public with information and guidelines on learning opportunities in Europe, how education and training systems are structured, and other questions linked to mobility for learning purposes; and

- manage – at national level – the financial aid granted by the Community for all Europass-related activities.

2.3.2 Moreover, the Committee welcomes the fact that a European network of Europass National Agencies is being set up, coordinated by the Commission. This will make it easier to pass on information and good practices from one Member State to another, thus helping improve the quality and effectiveness of each agency's work.

2.4 Overall, the incorporation of existing tools in a coordinated framework which is promoted and monitored in each country by a single body – linked to others by a Europe-wide network – and which is backed up by suitable information systems at national and European level, will make it easier to gain access to these documents, secure greater consistency between them and raise their profile. A portfolio of document references improves communication efficiency more than a series of unrelated documents. This is a passport for rendering people's qualifications more readable and more easily communicable.

2.5 The Committee is interested to note that the thrust of the decision in hand is on the same lines as the 'Framework of actions for the lifelong development of competences and qualifications', agreed upon by the social partners in February 2002. Indeed in this connection, the social partners – in addition to the priority action which they felt had to be given to the recognition and validation of skills and qualifications – stressed the need to improve transparency and transferability as a means to facilitate geographic and occupational mobility and to increase labour market efficiency.

2.5.1 As pointed out in the Commission text, the social partners have a key role to play in relation to this decision and its implementation. The Advisory Committee for Vocational Training, comprising representatives of the social partners and Member States' national authorities, should be regularly informed about the implementation of this Decision.

2.5.2 This point should be included in the evaluation report on the Decision's implementation, which the Commission is to submit to the European Parliament and the Council every four years.

2.5.3 The evaluation report constitutes both an integral part and logical follow-up to the present Decision and its implementation. Consequently, when it is published, the EESC wishes the report to be referred to it for an opinion.

### 3. Specific comments

3.1 The proposed Decision provides for the possibility of including in the portfolio – in addition to the European-level instruments – other transparency-related mechanisms which might have been drafted at national and sectoral level, after approval by the Commission and consultation with the Europass National Agencies (see point 2.2 above).

3.1.1 The Committee feels that the process involved here is obscure, as are the criteria governing it, its *modus operandi* and all the aspects relating to this possibility, because they are not clearly defined. It seems necessary to clarify what is entailed in this process and make it more 'transparent'.

3.2 The Committee would stress the importance which should be attached to the information and communication campaigns to be carried out at European, national and sectoral level.

3.2.1 In fact, the measure under discussion is not only of value to young first-time job seekers, but it also targets the whole labour market. It is therefore crucial that it should not only be publicised in universities, but also brought to the attention of, and widely used by, employment and recruitment agencies.

3.2.2 Over and above the basic requirements, in order to be effective, these campaigns must also target the general public. From this point of view, it is vital that information on all aspects of this measure be available on-line and that a logo be devised which both conjures up an image of what is involved and is easy to recognise.

3.2.3 Making the information available on-line will mean that the network link-up between all Europass National Agencies will be more effective and will also mean that access will potentially be available to all workers, migrant workers included; the Committee welcomes this move.

3.2.4 However, although making Europass II information available on-line is crucial for achieving maximum efficiency, this must not preclude the use of paper documents, so as not to exclude those workers without internet access from making use of this system.

3.3 The Committee agrees that the responsibilities covered by 'Europass training' should be extended. Indeed turning 'Europass training' into the 'Mobilipass' entails a change of content by including more than just work-linked training. It will be able to cover other kinds of training, such as the ERASMUS programme and more generally all the Community programmes on education and apprenticeship. It will thus provide a more complete picture of knowledge acquired when moving around Europe to study and work.

3.4 Financially speaking, the budget earmarked for this is similar to the one set aside in previous years for 'Europass training', despite the fact that the new measure now entails much more and the European Union is about to be enlarged to 25 members. This budget has only been drawn up for the 2005-2006 period, and it has been pointed out that the funds set aside for the following years 'will not be substantially higher'.

3.4.1 The Committee recommends that well before 2010, when the evaluation report is due to be submitted to the Parliament and the Council, a financial report should be compiled on the first two years of operation, and used as a basis for determining the budgets for 2007 and beyond.

### 4. Conclusions

4.1 Overall, the Committee welcomes the proposal.

4.2 The principles and implementation arrangements contained in this measure provide a coherent, logical follow-up to the series of guidelines and decisions taken at the Lisbon and Barcelona European Councils and set out in the November 2002 Copenhagen declaration.

4.3 Greater transparency as regards qualifications and skills will make mobility easier throughout Europe, not only for professional purposes, but also for education and training.

4.4 The Europass will provide a useful contribution to employment policy and to boosting employment. By adding a new dimension to training, education and apprenticeship in Europe, it will help strengthen European citizenship and at the same time contribute to the consolidation of the single market.

4.5 The Committee supports the move to establish a Europass National Agency in every Member State; these could be viewed as genuine 'one stop shops' in this sphere.

4.6 The social partners must be involved in implementing this measure.

4.7 The proposed Decision would be more precise if it clearly indicated the arrangements and criteria for determining which national and sectoral instruments can be incorporated into the Europass II portfolio.

4.8 The Committee stresses how important it is for the success of this process for information and communication campaigns to be carried out and for all aspects of this measure to be made available on-line.

4.9 The Committee would suggest that a financial evaluation be carried out after two years of operation.

Brussels, 28 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 Directive amending Directive 77/388/EEC as regards the place of supply of services'**

(COM(2003) 822 final - 2003/0329 (CNS))

(2004/C 117/06)

On 13 January 2004, the Council decided to consult 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 77/388/EEC as regards the place of supply of services' (COM(2003) 822 final - 2003/0329 (CNS)).

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 14 April 2004. The rapporteur was Mr Burani.

At its 408th plenary session on 28 and 29 April 2004 (meeting of 28 April) the European Economic and Social Committee adopted the following opinion by 99 votes to one with one abstention.

## 1. Introduction

1.1 On 23 December 2003, the Commission presented a proposal for a Council directive <sup>(1)</sup> amending Directive 77/388/EEC, known as the Sixth Directive, as regards the place of supply of services.

1.2 This proposed directive, whose purpose is to change the place of supply of services where these transactions take place between taxable persons, is part of the Commission's work programme to improve the functioning of the internal market.

1.3 On 7 July 2000, the European Commission adopted a communication which presented its strategy to improve the operation of the VAT system within the context of the internal market <sup>(2)</sup>. The purpose of this strategy was to draw up an action programme aimed at achieving four key objectives:

- simplification of the existing rules;
- modernisation of the existing rules;
- more uniformity in applying the current rules;
- a relaunch of administrative cooperation.

The proposal submitted to the EESC's scrutiny relates to the second objective.

1.4 Several other initiatives of the Commission have enabled progress to be made towards achieving these objectives. Thus, with regard to simplification, the Council adopted Directive 2000/65/EC of 17 October 2000, which removed, with effect from 1 January 2003, the right of Member States to impose the appointment of a fiscal representative on intra-Community businesses carrying out transactions in a Member State other than that in which they were established.

<sup>(1)</sup> COM(2003) 822 final - 2003/0329 (CNS).

<sup>(2)</sup> EESC opinion: OJ C 193 of 10.07.2001, p. 45.

1.5 Similar ideas worthy of a brief mention are allowing all taxable persons to carry out their obligations by electronic means, the harmonisation of the content of invoices and the acceptance of an electronic invoice, and the directive concerning e-commerce.

## 2. Content of the proposed directive

### 2.1 Current situation

2.1.1 Article 9 of the Sixth Directive defines the place of VAT taxation of supply of services. The special nature of this article is that it sets out a general principle, which is being applied less and less (Article 9-1), and that it provides for exceptions that now affect an increasing number of transactions (Articles 9-2 and 9-3).

- Article 9-1 defines the place of the supply of services as being the place where the supplier is established. The general principle is therefore to tax the supply of services in the country in which the supplier is established;
- Article 9-2 defines a large number of exceptions to this principle:
  - in point (a), it states that services connected with immovable property are taxed in the country in which the property is located;
  - in point (b), it states that transport services are taxed at the place where transport takes place, having regard to the distances covered;
  - in point (c), it states that cultural, artistic, sporting, scientific, education, leisure, or similar activities are taxed in the country in which they are physically carried out. The same applies to work on and valuations of movable tangible property;



- in point (e), it gives a list of services for which the country of taxation is the country in which the customer is established, where the customer is a taxable person established in a country of the Union other than that of the supplier, or where he is established outside the Union. These services, an exhaustive list of which is supplied in the appendix, are generally known as 'immaterial' services;
- in point (f), it states that for services covered by the last indent of (e), i.e. services supplied by electronic means, to non-taxable persons established within the European Union, the place of taxation is the country of the Union where these persons are established. This is to take account of Article 1 of Directive 2002/38/EC of 7 May 2002, which amends Directive 77/388/EEC.

## 2.2 *The reasons for the current situation*

2.2.1 The current situation of the regime of the place of taxation of the supply of services, which is defined by an unusual principle (taxation in the country in which the supplier is established), and by various exceptions (taxation in the country in which the service is carried out or taxation in the country in which the purchaser is established) is due to the options that were taken up when the Sixth Directive was adopted.

2.2.2 During the preparatory work for drafting that text, the Commission stated that it was faced with the difficulty of harmonising the varied legislation of Member States, who had different rules regarding the place of taxation of supply of services, with some countries preferring the place of establishment of the supplier, others, the place where the purchaser of the service was located.

2.2.3 In adopting the Sixth Directive, which represented a big step in the completion of the Single Market, the Commission's intention was, of course, to create a unified definition of the place of taxation of supply of services in order to reduce, or indeed eliminate, the risks of double taxation or non-taxation of certain transactions. The choice made by the Commission in 1978, and agreed by all the Member States, was made on the basis of the various laws in force at the time and of the nature of the most commonly supplied services of the era.

## 2.3 *The consequences of the current situation*

2.3.1 The Committee shares the widely-held view that the current situation has two sets of consequences that may be prejudicial to the development of the Single Market:

2.3.1.1 The rules currently in force are extremely complex and go against the spirit of simplification on which VAT legislation should be based. They are a hindrance to the activities of businesses within the Union, particularly SMEs, and are in

marked contrast to the Commission's stated aims of simplifying the tasks required of businesses and citizens.

2.3.1.2 The current rules lead to unfair situations of non-taxation or double taxation, which can result in putting businesses established outside the Union at an advantage, and businesses established within the Union at a disadvantage. The main reason for this lies in the fact that Article 9-2(e) applies only to a specific, limited list of exceptions, and that adding to this list would entail the long and laborious process of amending the directive.

2.3.2 The application of Article 9-2(e) allows for the taxation of services in the country of the customer, even if the supplier is established outside the European Union and, conversely, to exempt from tax those services rendered by suppliers established within the territory of the Union to purchasers established outside the EU. This mechanism ensures the neutrality of the tax and equality between EU-based suppliers of these services and businesses established outside the Union.

2.3.3 However, the above-mentioned rule is not mandatory: if a Member State decides not to apply it, particularly because the services in question are not included in the above-mentioned list, services 'exported' by our businesses are subjected to VAT (place of the supplier), and 'imported' services are not, which destroys the neutrality of the tax and puts businesses established within the European Union at an undue disadvantage.

## 2.4 *The Commission proposals*

2.4.1 In order to remedy this situation, the Commission has presented the proposed directive now under consideration. This:

- proposes that the place of taxation of services supplied by one taxable person to another be changed (Article 9). The general principle will be the taxation of the supply of services in the country of the customer;
- takes the opportunity to clarify (Article 1(1)) that services rendered within the same legal entity – i.e. between different establishments of the same company, even where these are established in different countries – are not treated as supplies.

2.4.1.1 According to the Commission, the application of this principle would allow the above-mentioned problems to be remedied, by making it a principle that services supplied between taxable persons must be taxed in the place of their actual consumption, which, generally speaking, is the place in which the customer is established.

2.4.1.2 As regards services supplied to non-taxable persons, the place of taxation continues to be the country in which the supplier is established.



2.4.2 Finally, as regards taxable persons who carry out both activities that are subject to VAT and activities that are not, the Commission proposes that they be considered, when they are the purchasers of a service, as taxable persons, except where the services they are buying are for their own consumption.

2.4.2.1 According to the Commission, this redrafting of Article 9 of the Sixth Directive allows most of the difficulties outlined above to be resolved.

2.4.3 Next, the proposed directive provides for a number of exceptions:

- for tax purposes, the place of supply of services relating to an immovable property would continue to be the country in which the property is located;
- hotel services and motorway tolls are also taxed in the country in which the buildings or motorways are located;
- for passenger transport services, tax would apply in the country where the service is carried out, proportionate to the distance travelled;
- the place of taxation of cultural, artistic, sporting, entertainment or similar services will be the country in which the service is physically carried out. This exception to the principle is in line with the general economic principles of the tax and allows the effects of service suppliers locating in countries with low VAT rates to be avoided.

2.4.4 However, the new version of the article excludes from its scope scientific and educational activities, which puts them into the scope of the general principle. The aim of this, according to the Commission, is to simplify the obligations of businesses operating in scientific research and education, which are key sectors for economic development, and which are also unlikely to relocate within the Union solely because VAT rates are different.

### 3. Comments and proposals

3.1 The Committee is in agreement with the aims of the proposal and, on the whole, with the formulation of the new regulations. However, these still seem rather complicated and therefore give rise to the concerns and the requests for clarification that follow. On the other hand, it recognises that the matter is complex and that rules of a general nature cannot always address the various particular cases that arise in the day-to-day lives of businesses.

#### 3.2 Passenger transport (Article 9b)

3.2.1 The Commission proposes to define the place of supply as 'the place where the transport is effected, proportionate to the distances covered'. This is difficult to interpret:

firstly, it is not clear what is 'the place where the transport is effected' (point of departure? destination?), especially in the case of air transport; and secondly, doubts arise about the need to calculate as many rates of VAT as there are countries covered by the journey ('proportionate to the distances covered'). Establishing criteria for land transport is difficult enough, but air and sea transport are likely to face even more serious problems of interpretation and implementation. The EESC considers a new, clearer formulation to be necessary. Above all, the rules should be harmonised such that passenger transport is treated in the same way as the transport of goods (see Article 9e).

3.2.2 The Commission states that nothing in this field has been changed relative to the current situation. However, the EESC points out that the rules to be applied are, as already stated, extremely complicated. Furthermore, they may in practice give rise to different interpretations in individual cases, which will cause doubts over interpretation and create more work for taxpayers and the authorities. The whole sector is one where greater clarity and simplicity are necessary. The EESC suggests that the rules should be radically revised in terms of their wording and, if necessary, their substance.

#### 3.3 Specific services to taxable persons (Article 9d)

3.3.1 The Commission proposes that these be taxed in the country of the supplier, subject to all three of the following conditions being fulfilled:

- the services are rendered in the Member State in which the supplier is established;
- the services require the physical presence of the service provider and that of the customer;
- the services are provided directly to an individual for immediate consumption.

3.3.2 With respect to the third condition, if 'individual' means a natural person who belongs to an organisation subject to VAT, the rule seems to make sense; however, if this is the case, the EESC would suggest that, in order to reduce the burdens on businesses, it would be useful to repeal the Eighth VAT Directive and introduce a cross-border right of deduction.

3.3.3 This category of exception does not include hire and long-term (more than thirty days) lease transactions. These transactions would therefore be taxed in the country of the customer, contrary to what is currently the case. A consequence of this would be to prevent certain customers from taking advantage of the rights of deduction in the supplier's country when these are more favourable than those in the country in which they are established.

3.3.3.1 However, the EESC notes that large transactions such as the leasing of aircraft and ships are included in this category; the benefits to businesses of moving takings from one country to another could be significant enough to encourage relocations.

#### 3.4 *Transport of goods for non-taxable persons (Article 9e)*

3.4.1 Article 9e defines the place of supply of these services as the place of departure. The Committee would like clarification as to how this article, which clearly concerns transport carried out for the account of private persons, is consistent with the way in which passenger transport is treated, which does not distinguish between taxable and non-taxable persons and defines the place of taxation as being 'the place where transport takes place, having regard to the distances covered'.

3.4.2 The second paragraph of this article says that Member States need not apply the tax to that part of the transport that is made over waters which do not form part of the territory of the EU. This exemption may well be logical, but the EESC firmly opposes the granting to Member States of powers (in other articles as well as this one) to grant exceptions or not. In an area such as taxation, where harmonisation is a long way from being achieved, the freedom to choose carries the risk of worsening the existing differences in the way taxpayers are treated.

3.4.3 As regards the application of the rule, the criticisms and suggestions made in paragraph 3.2.2 above also apply.

#### 3.5 *Electronically supplied services to non-taxable persons (Article 9g)*

3.5.1. This article provides that the place of supply for services supplied by persons established outside the Community shall be the place where the non-taxable person is established. The Commission has made it clear that non-EU suppliers must register for VAT in the country of the customer, collect any VAT that is due and remit it to the country of the customer. This rule would apply until July 2006. Apart from the obvious consideration that the above period is extremely limited, and that nothing is said about what decisions will subsequently be taken, the EESC would point out that such a rule might be observed by large suppliers of electronic services, but is likely to be largely evaded by small or occasional suppliers of services to individuals.

#### 3.6 *Other provisions*

3.6.1 The other exceptions relate to non-taxable persons, whom the text is obliged to take into account, as it amends the whole of Article 9. The current rules are maintained and require no comment. The Committee would point out that whilst it may be desirable at a later stage to harmonise the

principles of taxation between taxable persons and non-taxable persons, steps must be taken to ensure that such a change would not increase the administrative burden on suppliers or consumers. This development should enable a universal roll-out of one-stop shops of the type that now exists for services supplied electronically.

#### 4. **Conclusions**

4.1 As a general comment, the EESC notes that, with regard to taxable persons, the proposed directive enables the principles governing the place of taxation of goods and those governing the supply of services to be brought closer together. This development will simplify traders' obligations and, in certain cases, put EU businesses on an equal footing with those outside the EU, as is already the case for the rules on import and export of goods. The Committee can only agree with this approach.

4.1.1 In this context, the EESC calls for an accurate reflection of the different types of services provided, with a distinction being made between universal services of general interest and private services.

4.2 The proposed directive needs clarifying in a number of places; the number of exceptions to exceptions also needs to be reduced to a minimum, as these risk further complicating a subject that is already quite complex in and of itself. Ultimately, the new rules are a long way from achieving the Commission's general aim of simplifying matters. The text should also be revised so as to remove as far as possible Member States' room for interpretation of the provisions and the tax authorities' margin of decision-making autonomy.

4.3 The new rules have reduced to a minimum the cases in which suppliers are obliged to register for VAT in the customer's country, and they therefore favour the reverse-charge mechanism, i.e. payment by the taxable person, giving rise to the right of deduction for taxable activities.

4.3.1 The reverse-charge mechanism raises the problem of checks. In order to allow for these, the Commission also proposes to extend to services the VIES (VAT Information Exchange System), which has been in existence for goods since 1993. However, it is well known – and the Commission itself admits – that this system does not work satisfactorily, despite having been in operation for over ten years. The Commission maintains that adding in the system data relating to services to those relating to goods 'would not impose a significant burden on administrations'. The EESC does not agree with this point of view. Not only would there be an additional burden, but it is also doubtful that the 2008 deadline for putting this system into operation will be met, given the difficulties that the existing system already faces.

4.4 In conclusion, the EESC would like to make two final comments. The first is that VAT is the most widely-evaded tax in Europe, and that such evasion a) encourages large-scale fraud, which in turn feeds organised crime, and b) requires Member States to expend significant resources to combat such evasion. The cost of collecting this tax is not known, but it is certainly very high. We must add to our conclusions that this state of affairs arises not from the rules, but from the system itself. It is surely time that the experts thought up alternative systems that would ensure a level of revenue at least equal to the current one but would be less costly to society as a whole and more efficient from the point of view of collection. The

EESC believes that the time has come for the Commission and the Member States to set up a think tank of experts, economists, and tax specialists in order to seek an innovative and bold solution.

4.4.1 The second comment is a socio-economic one: the application of VAT, with all its faults outlined above, creates inequalities in treatment within the internal market of citizens/consumers, which are diametrically opposite to the much-talked-about policy of cohesion, and furthermore has quite a number of exceptions to the rule. This is another reason for reviewing VAT.

Brussels, 28 April 2004

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

---

## APPENDIX

**List of services covered by Article 9-2 (c)**

- c) the place of supply of services relating to:
- cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organizers of such activities, and where appropriate, the supply of ancillary services;
  - ancillary transport activities such as loading, unloading, handling and similar activities;
  - valuations of movable tangible property;
  - work on movable tangible property;
- shall be the place where those services are physically carried out.

**List of services covered by Article 9-2 (e)**

- e) The place where the following services are supplied, when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:
- transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
  - advertising services;
  - services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying of information;
  - obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this point (e);
  - banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
  - the supply of staff;
  - the services of agents who act in the name and on behalf of another, when they procure for their principal the services referred to in this point (e);
  - the hiring out of movable tangible property, with the exception of all forms of transport;
  - telecommunications. Telecommunications services shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception;
  - telecommunications services within the meaning of this provision shall also include provision of access to global information networks;
  - radio and television broadcasting services;
  - electronically supplied services, inter alia, those described in Annex L.
-

**Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 2003/49/EC as regards the possibility for certain Member States to apply transitional periods for the application of a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States'**

(COM(2004) 243 final - 2004/0076 CNS)

(2004/C 117/07)

On 14 April 2004 the Council of the European Union decided to consult 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 2003/49/EC as regards the possibility for certain Member States to apply transitional periods for the application of a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States' (COM(2004) 243 final - 2004/0076 CNS).

The European Economic and Social Committee decided to entrust the Section for Economic and Monetary Union and Economic and Social Cohesion with the preparatory work on this subject.

In view of the urgent nature of this work, the European Economic and Social Committee decided at its 408th plenary session held on 28 and 29 April 2004 (meeting of 28 April) to appoint Mr Burani as rapporteur-general and adopted the following opinion unanimously.

## 1. The Commission proposal

1.1 The purpose of this proposal is to amend Directive 2003/49/EC so as to incorporate transitional periods, for the application of the directive, following requests by the Czech Republic, Latvia, Lithuania, Poland and Slovakia.

1.2 As the directive was adopted on 3 June 2003, after the signing of the Act of Accession on 16 April 2003, it was not included in Chapter 9 of Annexe II of the Act of Accession. Nevertheless, the directive constitutes part of the Community *acquis* and therefore applies from the date of accession – 1 May 2004.

1.3 In May and July 2003, the acceding States were invited formally to submit their requests for transitional periods. The Czech Republic and the Republics of Latvia, Lithuania and Poland each submitted formal requests for transitional periods.

1.4 The Commission's assessment of the derogation requests took account of:

- the current withholding taxes applicable in the requesting countries under their domestic income legislation;
- the rate of withholding taxes on interest and royalty payments provided for in the Tax Conventions on Income and Capital of the requesting countries;
- the budgetary effect of abolishing the withholding taxes; and
- the transitional periods granted to existing Member States (Greece, Portugal and Spain).

1.5 Taking into account their present economic situations, their status as capital importing countries, the ongoing economic transition and their relatively low level of budget revenues, the acceding States might face budgetary difficulties were they required to abolish withholding taxes on interest and royalties payments.

1.6 The Commission assessed the acceding countries' requests against this background, taking into account their specific needs. Under these principles, any transitional periods should be of short duration and proportionate to the problem that they seek to address.

1.7 The Commission proposes that, with the exception of Slovakia, which only asked for two years, a transitional period of six years should be granted to all requesting states for the application of the directive regarding the taxation of payments of royalties; and a transitional period of six years should be granted to Latvia and Lithuania regarding the taxation of payments of interest – it being considered that six years should be sufficient to allow appropriate adjustments to be made. For a period of four years, the rate of tax applied by Latvia and Lithuania, to payments of interest, may not exceed 10 % and for the remaining two years, that rate may not exceed 5 %.

## 2. The opinion of the European Economic and Social Committee

2.1 The EESC welcomes the fact that the Commission has studied the requests submitted by the accession countries in an appropriate and coherent manner.

2.2 As the directive is part of the Community *acquis*, the acceding States will be required to apply it as of 1 May. If the transitional period is not approved, these countries may experience budgetary difficulties.



2.3 Given that existing EU members have been granted temporary exemptions in this area, it is only fair and reasonable in terms of both principle and precedent that the accession States should also be able to benefit from temporary exemptions where this can be justified.

2.4 In conclusion, the EESC recommends the approval of this directive, which will give a clear political signal to the accession States that the EU is fully committed to their development. In order to ensure that the accession States are not placed in a situation that could entail budgetary difficulties, the EESC calls on the Council to adopt this directive as soon as possible.

Brussels, 28 April 2004

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

---

**Opinion of the European Economic and Social Committee on 'Assessing the EU sustainable development strategy - exploratory opinion'**

(2004/C 117/08)

On 12 November 2003, in a letter from Ms Loyola de Palacio, the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on 'Assessing the EU sustainable development strategy.'

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 5 April 2004. The rapporteur was Mr Ribbe, and the co-rapporteur was Mr Ehnmark.

At its 408<sup>th</sup> plenary session on 28 and 29 April 2004 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 77 votes to 23, with 14 abstentions:

**0. Summary**

0.1 Efforts have been under way for many years to promote sustainable development in the EU and curb non-sustainable trends. In a bid to consolidate and step up these efforts, a sustainable development strategy was adopted for the Union at the EU summit in Gothenburg. However, the most recent studies by European Commission indicate that efforts so far remain inadequate and that, on this front, Europe continues to face major challenges.

0.2 This exploratory opinion, drawn up by the Committee at the Commission's request, examines the range of problems facing the EU on the road towards sustainable development and considers how the EU should strengthen its sustainable development strategy. The reasons are manifold. One is that, in politics and society, views vary widely as to what actually constitutes sustainable development and the extent to which our current production and consumption patterns are already compatible with sustainability considerations or have to be changed – in other words what specifically needs to be done and by whom (cf. point 2.2 below).

0.3 The Committee feels that one key task of the revised sustainable development strategy is to make clear that, for the most part, sustainable development involves changes, which if the ways and means of achieving them are chosen correctly, can be for the better and that society as a whole benefits as a result. On that point for the better and that society as a whole benefits as a result. On that point, however, there is nowhere near a consensus, and indeed, doubts are being raised as to whether it is possible to square Europe's economic competitiveness with sustainable development.

0.4 The Committee has never doubted that a healthy economy with flourishing businesses is the key condition for employment and environment and the further development of society, or conversely that it is also, to an increasing extent, the direct result of the level and quality of the latter factors. So far, it has proved impossible to get over the message that, in that sense, sustainable development generates significant new opportunities. One reason for that is that no adequate response has yet been given to many of the issues raised in various demands and publications (cf. point 2.2). People are unclear about the consequences, and so scepticism gains ground. The Committee therefore urges the Commission to discuss in detail and clarify all the basic issues of understanding involved, as part of a broad social debate with organised civil society (cf. point 2.3). This also includes issues that have so far been taboo.

0.5 Sustainable development means further developing the market economy. It means linking environment, employment and competitiveness even more closely with issues of distributive and intergenerational justice (cf. point 2.1.10 below). The sustainable development strategy must therefore think in much longer timeframes and take account of many more aspects than the Lisbon strategy. The key aim of the latter is to make Europe the most competitive, knowledge-based economy in the world by 2010. In point 2.4, therefore, the Committee looks at the links between the two strategies and at how they can best complement each other. In saying that, however, the Committee also notes that some issues do remain unresolved.

0.6 Free market forces are already regulated today, among other things by environmental and social obligations, and the implementation of a consistent sustainable development policy will continue this process. For some sectors, that will give a new boost to growth while, for unsustainable activities, it will mean economic decline. Thus, sustainable development will also involve reducing unsustainable trends. This calls for debate about taxation, subsidies, licensing and regulation to ensure implementation of this sustainability model.

0.7 The Committee is clear that the current EU sustainable development strategy adopted at the Gothenburg summit needs revision. This revision must seek a better balance between the environmental, economic and social dimensions of sustainability (cf. point 3.2 ff). The strategy must also make clear how the individual EU policies can be framed more coherently (cf. point 3.8 ff) and how the requisite national, regional and even local sustainable development strategies can be interlinked (cf. point 5).

0.8 Sustainable development not only necessitates changes in production and consumption patterns within the EU, but must of course also have an impact on international trade, including therefore the WTO. Any policy which, for example, internalises all external costs and takes account of additional factors as well for the sake of sustainable development can produce competitive disadvantages vis-à-vis other economies which ignore, in full or in part, the principle of sustainability. In such a case, it must be possible to compensate for sectoral trade disadvantages. Therefore, in point 6, the Committee asks the Commission to take account of the external aspects and thus, *inter alia*, to urge a change in WTO rules.

0.9 The future sustainable development strategy is more likely to succeed if it includes measures and objectives that are quantified as far as possible, and lays down readily understandable indicators for monitoring progress and evaluating the effectiveness of policies (cf. point 7). In the sustainable development strategy, that is difficult as there is no point at which the target can be said to have been reached. Seen in that light, therefore, sustainable development is not so much a goal as a process, and that does not make policymaking any easier.

Nonetheless, an attempt should be made to lay down the clearest possible objectives and set a timeframe. Frequently, that will involve a large number of intermediate steps. To make that clear, the Committee cites the Kyoto objectives.

0.10 Sustainable development policy obviously also needs to be reviewed. Above all, however, it needs to be transparent, since sustainable development depends on wide social consensus and broad support. This requires a broad range of knowledge, including about what sustainable development actually is, what its impact will be and what will happen if we fail to implement sustainable development policy. The new strategy should therefore be worked out and subsequently implemented in the context of a broad policy debate (cf. point 8). The participatory process must, however, be quite different from the one pursued in the run-up to Gothenburg. At that time, the deadlines were much too tight and there was no genuine social discussion of the kind conducted, to some extent, during the compilation of this EESC exploratory opinion.

## 1. Foreword

1.1 In a letter dated 12 November 2003, Ms de Palacio, vice-president of the European Commission, asked the European Economic and Social Committee to draw up an exploratory opinion on the EU sustainable development strategy as input to the main political orientations for a review of the strategy. The Commission asked the Committee to:

- assess the progress made towards achieving the headline objectives of the sustainable development strategy;
- assess the need for broadening the strategy;
- analyse the consequences of enlargement;
- discuss the possibility of constructing a stronger linkage to national strategies;
- discuss the importance of including the external aspects and follow-up to Johannesburg under the general strategy;
- discuss the need to set clearer strategic objectives and indicators;
- provide insights on how to improve implementation procedures; and
- provide ideas on how to devise a communication strategy on sustainable development.

1.2 However, this exploratory opinion also seeks to carry forward the ongoing internal debate within the Committee, as organised civil society at every political and administrative level has to play an instrumental role in – and contribute towards – making sustainable development a reality for the good of present and future generations.

## 2. Assessment of progress made towards achieving the headline objectives

### 2.1 *Towards sustainable development: the current state of play*

2.1.1 The European Economic and Social Committee has no doubt that, over the past few years, sustainable development has become an increasingly important topic for political discussion. The Commission has undoubtedly recognised the fundamental importance of this issue, and sustainable development is also formally enshrined in the European Treaties <sup>(1)</sup>. The Committee expects sustainable development to be consolidated as an overarching objective in the upcoming constitution.

2.1.2 The Commission can now point to a broad range of sustainable development initiatives. The attempt to establish the requisite links between economic, social and environmental issues has clearly become more important – and attracted more attention – in recent years. To take one example, the June 1998 Cardiff European Council invited all relevant formations of the Council to establish comprehensive strategies for taking account of environmental and sustainable development concerns within their respective policy areas <sup>(2)</sup>. Regrettably, this process – where very little is happening at the moment – cannot be considered successfully completed. The Lisbon strategy that has been launched in the meantime has so far proved to be an inadequate vehicle for sustainable development – hence the decision at the Gothenburg European Council to add an environmental dimension.

2.1.3 The Gothenburg European Council, drawing on a communication from the Commission, selected four out of six proposed priority issues for the sustainability debate. These are:

- climate change
- transport
- public health
- natural resources.

The eradication of poverty and population ageing were not selected. As a result, the sustainable development strategy appears to focus on the environmental dimension and pay less attention to social aspects. The Committee feels this sends out an inadequate signal. The Committee considers such structural aspects as fundamental to a long-term perspective, to taking into account the global dimension of the strategy, and, last but not least, to citizens' commitment to its improvement.

<sup>(1)</sup> See Art. 2, EC Treaty

<sup>(2)</sup> Cardiff European Council presidency conclusions, 15 and 16 June 1998, no. 34

2.1.4 The Commission has started subjecting its own policies – or at least policy elements – to scrutiny in a bid to establish whether it is on the right track towards achieving sustainable development. Probably the most recent (partial) assessment is the Communication from the Commission to the Council and the European Parliament entitled the 2003 Environment Policy Review <sup>(3)</sup>. In this paper, the Commission examines the environmental dimension of sustainability and arrives at some very sobering conclusions <sup>(4)</sup>.

2.1.4.1 On the issue of climate protection, the Gothenburg summit announced the intention of making 'demonstrable progress' by 2005 already in achieving the Kyoto commitments <sup>(5)</sup>. However, as the Environment Policy Review makes clear, the EU is unlikely to be in any position to achieve the Kyoto objectives if it sticks to its current policy.

2.1.4.2 On transport too, there is no indication that the EU is on the right track towards a more sustainable policy. Transport-related climate-damaging emissions are still on the increase, for instance, and in particular trends are 'not encouraging in acceding countries: there has been a sharp fall in rail and bus transport and higher growth rates in air and private car transport than in the EU' <sup>(6)</sup>.

2.1.4.3 On the health front, the Commission notes that some 60,000 people in the EU's large cities die each year as a result of excessive air pollution. One child in seven suffers from asthma and numbers have risen dramatically in the past few years <sup>(7)</sup>.

2.1.4.4 On the question of natural resources, the outlook also remains pretty poor. Particularly in the field of biodiversity, the Commission still sees major difficulties for the EU <sup>(8)</sup>.

2.1.5 The Commission finally came to the conclusion in December 2003 that a great many measures have been taken over the past few years to protect the environment but that not enough has yet been done in 'curbing current unsustainable environmental trends' <sup>(9)</sup>. This is by no means a welcome finding, but nor is it wholly surprising, since the Commission's 1999 Communication on Europe's environment: Towards Sustainability <sup>(10)</sup> had already made the point that 'progress towards sustainability has clearly been limited' and that 'the trends highlighted in this Communication ... show that we are not on track in ensuring sustainable development'.

<sup>(3)</sup> COM(2003) 745 final, 3.12.2003, including the annex

<sup>(4)</sup> These conclusions fully concord with European Environment Agency studies. See [http://reports.eea.eu.int/environmental\\_assessment\\_report\\_2003\\_10/en](http://reports.eea.eu.int/environmental_assessment_report_2003_10/en)

<sup>(5)</sup> Gothenburg European Council presidency conclusions, 15 and 16 June 2001, no. 28

<sup>(6)</sup> COM(2003) 745 final

<sup>(7)</sup> COM(2003) 745 final

<sup>(8)</sup> COM(2003) 745 final

<sup>(9)</sup> COM(2003) 745 final

<sup>(10)</sup> COM(1999) 543 final, p. 22

2.1.6 The upshot of all of this is, in the Committee's view, that we are just at the start of a doubtless difficult road towards sustainable development. This is also clear from the fact that, in some key areas of environment policy, the Commission has only just started drawing up the papers that, ultimately, are supposed to set out specific strategies. The Committee is so far unaware of any papers at all being drawn up on progress made in the economic and social dimension of the sustainability debate.

2.1.7 The Committee's current impression, therefore, is that

- the Commission is undoubtedly right in its assessment of the difficulties Europe faces in the field of sustainable development;
- tools and measures – both theoretical and practical – have already been worked out, discussed and, in some cases, even implemented (e.g. an end to harmful subsidies, greater support for sustainable procedures and the internalisation of external costs);
- these tools and measures are not, however, being put into practice consistently enough.

2.1.8 Thus, the Committee agrees with the Commission that 'many of the current environmentally unsustainable trends stem from a lack of attention to inter-linkages between sectors, leading to policies in different areas working against one another rather than being mutually supportive. This lack of policy coherence renders policies both more costly and less effective and thus hinders progress towards sustainable development.' <sup>(1)</sup>

2.1.9 That the Commission is aware that some of its own policies are more of a hindrance than a help to sustainable development is all the more significant in that it also recognises the vital need for sound political leadership on this front: 'Strong political commitment will be needed to make the changes required for sustainable development. While sustainable development will undoubtedly benefit society overall, difficult trade-offs between conflicting interests will have to be made. We must face up to these trade-offs openly and honestly. Changes to policy must be made in a fair and balanced way, but narrow sectional interests must not be allowed to prevail over the well-being of society as a whole.' <sup>(2)</sup>

2.1.10 The Committee notes the EU's failure, in its consideration of the sustainability issue to date, to include in any discernible way key matters such as intergenerational justice (are we living at the expense of future generations?), distributive justice (are we living at the expense of other societies,

for instance the Third World?) or global poverty eradication. Or at least, it has failed to give an adequate airing to these matters. A better solution might well be for the Commission to monitor sustainable development constantly, not only in terms of the environment, but taking account of the economic and social dimension as well. The 2001 Stockholm European Council already made the point that 'the forthcoming [broad economic policy] guidelines should also integrate the promotion of sustainable development' <sup>(3)</sup>. That, however, has still to happen. In this context, the issues in question would have to be addressed just as fully as the question of what the long-term environmental impact would be if the entire world population were to adopt our current production and consumption system unchanged <sup>(4)</sup>.

2.1.11 The EU financial perspective for 2007-2013 <sup>(5)</sup> could have been an opportunity to give a decisive impulse to sustainable development. However, the Committee notes that it is not enough merely to press ahead unchanged with current policies that have raised difficulties for sustainable development, and to pursue them in future under the 'sustainable growth' budget heading. The Committee points out that, first of all, 'sustainable development' and 'sustainable growth' are two different things, which should be mutually reinforcing but may indeed conflict (cf. point 2.3). Hence, a clear distinction is also needed in the financial perspective.

2.2 *Why have we not yet made more decisive progress? What are the difficulties on the path to sustainable development?*

2.2.1 The Committee feels that sustainable development is not making sufficient progress for the following reasons:

- no consensus has yet been reached on assessing the current state of play – let alone on the action to be taken – either globally or at EU, national, regional or local level;
- there is a great deal of uncertainty as to what sustainable development actually means and how future development will differ from the situation in which we live today – which, in turn, generates fears and resistance in the sectors potentially affected;
- it still remains unclear how the sustainable development agenda fits into day-to-day policy, what form it is to take and how, in practice, the sustainability angle is to be incorporated into all the relevant policy areas;
- and how to resolve the potential conflict between a rigorous sustainable development policy and, for example, world trade rules (WTO) <sup>(6)</sup>.

<sup>(3)</sup> Stockholm European Council presidency conclusions, 23 and 24 March 2001, no. 48

<sup>(4)</sup> The Committee notes that, at the moment, 20 % of the people consume some 80 % of all resources. Thus, because of the exorbitant energy consumption, 5 % of the living population (USA) generate 25 % of all CO<sub>2</sub> emissions.

<sup>(5)</sup> Communication from the Commission to the Council and the European Parliament Building our common future – Policy challenges and budgetary means of the Enlarged Union, 2007-2013, COM(2004) 101 final

<sup>(6)</sup> see also point 6

<sup>(1)</sup> COM(2003) 745 final, p. 22

<sup>(2)</sup> COM(2001) 264 final



2.2.2 The Committee considers the sustainable development strategy as the overarching political objective for the coming decades. All current policies and programmes must be channelled towards it, and must be consistent with – and conducive to – long-term sustainability objectives. That applies to the Lisbon strategy (see point 2.4) and to all other policy strategies and schemes currently in the pipeline.

2.2.3 Politically, the Commission can build on broad popular support. Surveys have shown that a very large majority of the population support the principle of intergenerational justice and the objective of using no more resources than it is possible to regenerate, although only a minority have actually ever heard the term 'sustainable development'. In other words, people can identify with the overall policy objectives of sustainable development, but only a small minority are au fait with the term sustainable development itself. That indicates a major problem of communication that must be resolved.

2.2.4 It is easy to agree on relatively woolly definitions of sustainable development such as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' <sup>(1)</sup>. Such statements brook no denial.

2.2.5 Phrases like 'Let's not repeat our mistakes' — often heard in connection with EU enlargement — also trip easily off the tongue. They remain just words, however, if nothing is said about what precisely those mistakes are or if countermeasures are put forward but not acted upon. Transport policy is a good case in point.

2.2.6 One objective of the sustainable development strategy must therefore be to identify the negative trends more clearly than in the past and to work out how to counter them. Work should also be stepped up to promote positive examples and development trends.

2.2.7 A strategy is defined as a detailed plan for achieving a specific goal, factoring in, from the outset, those elements that might potentially impact any action taken. Thus, the future EU sustainable development strategy should:

- provide clear objectives;
- outline the individual tools to be used to reach the objective(s); which also involves setting out precisely the responsibilities, remits and scope for exerting influence in each case;
- divide, if necessary, long-term objectives into intermediate goals that can be regularly monitored using readily comprehensible indicators;
- address those factors that may cause problems in this process; and

<sup>(1)</sup> Our Common Future – the Brundtland report, World Commission on Environment and Development, 1987

- see to it that all policy areas are consistently analysed and assessed using sustainability criteria.

2.2.8 Sustainable development is more a qualitative process and only some of its objectives can be readily quantified using specific figures. Many other policy areas have definable objectives (x % growth, y % unemployment or a limit value of z), but, with sustainable development, we shall never reach the stage at which we can say that, as soon as a particular measure is in place or a certain law adopted, then our goal will be achieved. As political objectives remain somewhat vague for many people however, it is all the more important to set out, using specific examples drawn from real life, what sustainable development actually means and what impact a strategy will have.

2.2.9 In an own-initiative opinion of 31 May 2001 <sup>(2)</sup>, the Committee welcomed the then draft EU sustainable development strategy. The Committee said it was 'aware that policies for sustainable development contain in part and by their very nature a radical approach to the development of society in the future. Some painful decisions will have to be taken along the road.' On this point, however, the EU sustainable development strategy is extremely woolly and far too abstract. It fails to make truly clear the specific changes that lie ahead – and at which level – and the necessary impact of this long-term policy on today's economic and commercial life.

2.2.10 In the foreword to the EU brochure on sustainable development, the Commission president, Romano Prodi does indeed say that sustainable development 'is not an academic concept with no practical importance — it is about real issues and real choices that profoundly affect our daily lives.' <sup>(3)</sup> However, the highly abstract strategy is not specific enough about what these profound effects actually are. That is one of the critical shortcomings that must be remedied in future.

2.2.11 The Committee stands by its commitment to sustainable development. It agrees that sustainable development is neither a luxury for 'rich' societies, nor just one of several possible options. It is necessary to move away from patterns of production and consumption that have proven to be non-sustainable. The aim, after all, is to safeguard the very foundations of human life – which are also the foundations of economic activity. Sustainable development is thus a *sine qua non* for meeting future challenges.

2.2.12 It should be continually underlined that sustainable development implies fundamental changes in how society functions. Citizens must be empowered, on the basis of knowledge and training, to make sustainable development a reality and meet the challenges that it poses for the future.

<sup>(2)</sup> Opinion of the European Economic and Social Committee on the preparation of a European Union strategy for sustainable development, OJ C 221, 7.8.2001, p. 169-177

<sup>(3)</sup> [http://europa.eu.int/comm/sustainable/docs/strategy\\_en.pdf](http://europa.eu.int/comm/sustainable/docs/strategy_en.pdf)



2.2.13 The Committee stands by this statement, in the knowledge that substantial changes will certainly come about. It doubts that there will be nothing but win-win situations in this context. If genuine progress is to be made, however, then it is vital to provide a clear link between the abstract issues and objectives and the practicalities of the real world. It is essential to provide people with a clear picture close up of seemingly remote issues. This means that the strategy has to provide answers to a wide range of unresolved issues, including:

- What might be the specifics of the factor 10 concept mentioned in the Commission Communication Towards Sustainability<sup>(1)</sup> which seeks in the longer term to cut industrial countries' use of resources to one tenth of current levels in absolute terms and to distribute resources more fairly across the world? Is this concept to be made mandatory as part of the sustainable development strategy? How can a (growing) economy operate, how can transport function if only a tenth of the raw materials is available? Where are the realistic limits to resource efficiency? What tools could or should be used to implement this approach?
- What form can a competitive economy (that also creates high-quality jobs) take if climate-damaging emissions have to be cut by some 70 % worldwide? <sup>(2)</sup> How would competitiveness change once the factor 10 concept is also applied to the energy sector, i.e. if the share of renewables has to grow much more strongly than so far planned?
- What economic sectors will face difficulties if they have to meet the considerable external costs of non-sustainable production methods? Which will see renewed growth? How will that structural change pan out in practice and how should it be framed and supported at a political level?
- What specific policy measures will be needed, for instance, to decouple transport growth from economic growth? What will such measures mean for the division of labour in the economy?
- What, specifically, will be done to tackle the abolition of subsidies that undermine sustainable development? What particular subsidies are involved?

<sup>(1)</sup> Cf. COM(1999) 543, 24.11.1999, p. 15, point 4.4: Efficient use and management of resources and the opinion of the European Economic and Social Committee on the Communication from the Commission - Europe's Environment: What directions for the future? The Global Assessment of the European Community Programme of Policy and Action in relation to the environment and sustainable development, 'Towards Sustainability', OJ C 204, 18 July 2000, p. 59-67

<sup>(2)</sup> For Europe, that could mean an even greater reduction, given the rises expected across the world.

- How are external costs to be internalised (and by when)? What impact will that have on, for instance, transport, where the Commission itself notes that 'less than half of the external environmental costs .... are internalised in the market prices' thereby encouraging 'unsustainable ... demand'? <sup>(3)</sup> What would it mean for the energy sector if the average external costs of electricity production were to be factored into final consumers' bills (approximately 4-5 cent per kilowatt-hour for coal- and 3-6 cent for oil-fired electricity production)? <sup>(4)</sup>

2.2.14 The strategy's failure to provide readily understandable answers to such questions may very well generate fears in certain circles – and ultimately lead to resistance to the policy in question. This risk is particularly great if the impression is created that sustainable development is more of a complication and a threat to the economy and is thus not seen as an opportunity for the future. The Committee's fear is that we in Europe have now reached that stage. That explains why sustainable development has run into difficulties and why reports on the issue have not so far been more positive.

2.2.15 Although worthy of support, the following key statement by the Gothenburg European Council does nothing, for the time being, to remedy this state of affairs. The Council states that: 'clear and stable objectives for sustainable development will present significant economic opportunities. This has the potential to unleash a new wave of technological innovation and investment, generating growth and employment.' <sup>(5)</sup> This important message, which the Committee endorses, has not to date been credibly conveyed to – or rather has not been taken on board by – large swathes of society and industry. Sustainable development is not yet recognised as a genuine engine for industry and growth.

2.2.16 For the Committee it is clear that implementing sustainable development will require huge investments in areas such as building renovation, environmentally-sound transport systems, sustainable energy production and promotion of environmental technologies. These investments, which will create many jobs and give a new fillip to growth, are essential to making sustainable development a reality.

2.2.17 Due consideration must be given to the issues of allocating financial resources, if a sustainable development strategy is to become a reality. The framework for a climate conducive to such investments must be created by policymakers on the basis of consultation with – and the participation of – organised civil society. Public budgets must lay down appropriate investment priorities. Heavy investment will also be needed in the private sector as well, however, in order to boost the economy and the labour market.

<sup>(3)</sup> SEC(1999) 1942, 24.11.99 p. 14

<sup>(4)</sup> Figures from External Costs – Research results on socio-environmental damages due to electricity and transport; EU Commission – Community Research, 2003

<sup>(5)</sup> Gothenburg European Council presidency conclusions, 15 and 16 June 2001, no. 21

2.2.18 If, however, we do not succeed in making clear that sustainable development generates significant new opportunities for the economy, then there can be no constructive political debate on sustainable development and on ways of achieving it.

2.2.19 In addition to the fact that both the objectives and the political tools are too vague and abstract, there is another shortcoming in the sustainable development strategy to date, namely that even interested observers are unable to keep track of where all the provisions are to be found. The Committee notes the vast amount of paperwork dealing with this issue to a greater or lesser extent – and in greater or lesser depth<sup>(1)</sup>. To the interested reader, it is not clear which statements and provisions are mandatory. Even the EU webpages fail to provide any additional help in that regard.

2.2.20 The Committee recognises that it is very difficult for the Commission to persuade people to support those facets of the sustainable development debate in areas which they feel do not directly concern them. That is true even for relatively 'live' issues (e.g. nature conservation, where some people wonder why less biodiversity is a problem or why, say, the disappearance of the stork is such a bad thing. It is even more difficult to convey to people that large carnivores such as lynx and wolves are also part of Europe's cultural and natural heritage and deserve protection.) Two much more thorny issues have already been touched on: distributive justice and intergenerational justice. People generally speaking do recognise that future generations should have the opportunity to have a good life, but there is a broad and noticeable trend in society to put many of life's economic imponderables on the back burner. This is hardly conducive to the sustainability debate.

### 2.3 *The need to clear up some basic issues of understanding*

2.3.1 For the Committee, sustainable development represents a further, pro-active development of the market economy, expanded to take account of environmental issues and other considerations such as intergenerational and distributive justice.

2.3.2 In widening the approach in this way – by no means an easy task – the Committee considers one thing to be vital: the new sustainability strategy must make clear that, when it is being implemented, the economic, social and environmental conditions must be such that sustainable development has the least possible adverse effect on European economic competitiveness, but rather acts as a new stimulus for growth.

<sup>(1)</sup> The brochure on the European Union's sustainable development strategy alone quotes the conclusions of the Gothenburg European Council, the Commission Communication on the EU sustainable development strategy, the consultation paper for drawing up a sustainable development strategy and the minutes of a hearing co-hosted by the Commission and the European Economic and Social Committee on the issue. We also have the sixth environment action programme and the Lisbon strategy, and will shortly have other strategies on, inter alia, the sustainable use of natural resources (N.B.: ... mention the others)

2.3.3 The Committee is aware that industry is instrumental in developing and implementing better technologies to decrease unsustainable trends and resource use. In order to play its role, industry needs to be competitive, and only competitive companies can increase employment and contribute to social goals.

2.3.4 The sustainability debate likes to work with images. One such image is of three pillars shoring up sustainable development, each equally warranted and each equal in value, one economic, one social and one environmental.

2.3.5 The three pillars are deemed to be closely linked, making it vital, when framing policy, not to jeopardise the existing balance. In economically difficult times in particular (such as those that Europe is currently experiencing), it is claimed that nothing should be done to upset industry. The view taken is that long-term growth is essential and that, if necessary, cutbacks might have to be made, at least for a time, in environmental protection or social policy.

2.3.6 A contrasting image to this pillar model is the paradigm of buoys in a waterway. The buoys indicate the environmental and social limits within which the ship (i.e. industry) can move freely, but it may not leave the waterway.

2.3.7 The Committee would urgently recommend that, as part of the sustainability debate, the Commission engage in robust debate on these images and the philosophies that lie behind them. The Committee does not doubt the need for a balanced relationship between economic, social and environmental considerations. The three dimensions, pillars or elements are intrinsically linked. The natural environment is essential as the basis and source for economic activity which can ensure social wealth and a higher quality of life, and therefore a stable and sound natural environment is a prerequisite for sustainable development. It is equally clear, however, that sustainable development is much more than 'just' traditional environment policy in a new guise using new methods.

2.3.8 The heads of state or government met in Rio in 1992 and in Johannesburg in 2002, because economic activity as it had operated up to then was clearly pushing various limits. It became clear that certain types of economic activity spawn social and environmental problems and that in trying to resolve these problems environmental protection technology is reaching its limits.

2.3.9 As part of the sustainable development strategy, therefore, the Committee feels it is right to discuss issues that have so far been seen as well-nigh taboo. One of these questions concerns permanent economic growth as the primary goal and the key aspect of all policies. The Committee has of course over the past few years consistently emphasised the importance of growth for economic development and has also backed a growth initiative as part of the Lisbon strategy.

2.3.9.1 However the Committee feels that, on the issue of growth, a distinction should increasingly be made. It is especially important to identify those areas in which growth is particularly desirable from a sustainability angle. One such area – and on this point the Commission agrees – is renewable energy. However, renewable energy often remains too expensive compared to less sustainable energy resources and is thus a problem for industry. The basic conditions have to be changed by dedicated policy instruments and it is up to the sustainable development strategy to identify and lay down in detail what needs to be done to bring that change about.

2.3.9.2 On the other hand, clearer mention should be made of those areas in which further growth is more undesirable and counterproductive. In Germany, EUR 40 billion are spent each year on so-called health costs<sup>(1)</sup> – the result of people's poor nutrition and reluctance to exercise. In terms of per-capita input into GDP, therefore, Germans on average contribute more simply by failing to take proper care of their health than Indians do through economic activity (some EUR 470 per year). Although it does create jobs, growth in this sector is not desirable from a sustainability angle. Seen in this light, sustainability may indeed be, in part, a constraining factor for economic growth. This example also shows that GDP alone, whilst it is a useful indicator of economic activity, is not (and does not claim to be) an appropriate indicator of social well-being or a yardstick for public or environmental health.

2.3.9.3 Growth, however, is not only a qualitative issue affecting Europe. It also has a global quantitative dimension. In its communication entitled *Europe's Environment*<sup>(2)</sup>, the Commission notes that, as globalisation continues, trade flows increase and western patterns of behaviour spread, per-capita GDP is set to rise by 40 % between 1990 and 2010 and by 140 % by 2050. Despite the transfer of technical know-how and environmental technologies, this 'may also have an impact on global CO<sub>2</sub> emissions, which are forecast to rise by a factor of three by 2050'. The climate disaster would be complete.

2.3.10 Another sustainability issue which the Commission should address in greater depth is the shape of future produc-

tivity trends. The Committee is glad to offer its services as a partner in this venture. There is no doubt that improving productivity is essential for businesses to press ahead with development. Productivity has always been seen as an engine for employment and prosperity, because high productivity has so far made it possible to offer more goods and services at lower prices, thus stimulating new demand and creating new jobs.

2.3.10.1 In purely economic terms, high productivity is not a sustainability indicator. To take one example: Brazil undoubtedly has, economically speaking, the most productive sugar industry in the world but that benefits only a few multinational companies; the local populace and the environment are exploited to the extreme.

2.3.10.2 Productivity, though, has to be redirected towards sustainable development. Productivity must not be measured only in terms of value of the product divided by its production cost, but evaluated in a broader context, complementing it with quality of life and less use of non-renewable resources at global level.

2.3.10.3 Future productivity trends should be used as an engine for sustainable development. Examples of productivity gains conducive to sustainable development include improvements in environmental performance and the more efficient use of raw materials and energy. Governments and the Community must initiate interventionist policies to give incentives that are consistent with this reorientation.

2.3.11 Thus, the sustainability debate should be more deliberately controversial than in the past, bringing together diametrically opposing viewpoints ('We need growth at any price' versus 'Growth cannot be sustainable' and 'Productivity growth is the mainspring of the economy' versus 'Productivity generates more and more problems for the environment and society'). This is because, far more than in other policy areas, sustainable development is contingent on a broad social consensus.

## 2.4 *The relationship between the Lisbon strategy and the sustainability strategy*

2.4.1 The Lisbon strategy is distinct from the sustainability strategy on three key points. It:

- clearly puts the focus on economic growth and economic reforms in order to achieve more and better jobs and social cohesion;

<sup>(1)</sup> In fact they are sickness-funding costs.

<sup>(2)</sup> COM(1999) 543 final, 24.11.1999, p. 21

- has a clear time limit (2010); and also
- has an almost purely European focus (its purpose is to make Europe the most competitive, knowledge-based economic area).

2.4.2 The Committee welcomed the addition, at the Gothenburg summit, of an environmental chapter to the Lisbon strategy, and the adoption of a sustainable development strategy – albeit with relatively limited content.<sup>(1)</sup> The fact that the Council only recently reiterated its call for environmental considerations to be incorporated more into the Lisbon strategy shows the shortcomings still existing on this front. Taking greater account of environmental protection can help to make the Lisbon strategy more consistent with the sustainability strategy, but it is clear that this will not automatically follow.

2.4.3 It should also be noted that important matters (such as distributive justice and intergenerational justice) that were considered at Rio and Johannesburg to be essential for sustainable development are not directly covered by the Lisbon strategy and will therefore not necessarily result from its implementation.

2.4.4 The two strategies must be coherent under the overarching objective of long-term sustainable development. This means that sustainable development objectives must permeate all policy areas of the Lisbon strategy. In this way, the Lisbon strategy can and should be an important intermediate step on the way to sustainable development, but cannot be a substitute for a long-term sustainability strategy.

2.4.5 The economic growth generated by the Lisbon strategy must be qualitative and decoupled from resource use to a greater extent, so that it is compatible with sustainable development. However, this also means that the Lisbon strategy can make an important contribution to the sustainability strategy if it helps refocus the economy on a more sustainable model.

2.4.6 It is essential therefore that, like other EU spending, investments in the context of the EU growth initiative meet the sustainability criteria. On that score, the Committee would point out that this issue has been widely examined within organised civil society<sup>(2)</sup>. The Committee recommends that, in a specific communication to the Council, the Parliament, the CoR and the EESC, the Commission should address the consis-

tency between EU investments (including those funded by the EIB) in transport, energy and other infrastructure projects and sustainable development policy.

### 3. The need to broaden the strategy

3.1 While the Committee certainly feels it is appropriate to home in on certain issues, it must nonetheless draw attention to the risk that key elements of sustainable development may thereby fall by the wayside. From the point of view of substance it is necessary to scrutinise the broad questions that were extensively discussed in Rio and Johannesburg, but which are barely touched on in the EU's current sustainability strategy (such as the influence our economic activity has on global poverty, distributive justice and intergenerational justice).

#### *Step up the debate on the social dimension*

3.2 In addition to the four policy areas ultimately addressed at Gothenburg, the plan of implementation adopted at the 1992 Earth Summit in Rio also picked up on issues such as poverty eradication. The draft sustainability strategy submitted to the Gothenburg European Council<sup>(3)</sup> also made the point that 'one in every six Europeans lives in poverty'. However, the Council did not address the two key social issues.<sup>(4)</sup> Sustainable development in the EU must not, however, focus only on poverty within the Union, but must also address the impact of our economic activity on global poverty and the chances for future generations. The Committee does not feel that adequate consideration has so far been given to the issues of distributive and intergenerational justice. The fact that development aid is running at less than half of the promised levels is just one sign that a great deal remains to be done before a coherent policy may be said to be in place. Nor can this shortcoming be offset by the Everything but arms or similar initiatives.

3.3 As well as the eradication of poverty, another key issue mentioned by the Commission in the first draft of its sustainable development strategy was population ageing. While both issues have been incorporated (at least verbally) into the Lisbon strategy, they are not included in the longer-term sustainable development strategy as this focuses on environmental issues. That must be remedied and the social dimension must be discussed in greater depth.

<sup>(1)</sup> Gothenburg European Council presidency conclusions, 15 and 16 June 2001, extracts from nos. 20 and 21: 'The European Council agrees a strategy for sustainable development which completes the Union's political commitment to economic and social renewal, adds a third, environmental dimension to the Lisbon strategy and establishes a new approach to policy making.' (...) 'Clear and stable objectives for sustainable development will present significant economic opportunities. This has the potential to unleash a new wave of technological innovation and investment, generating growth and employment.'

<sup>(2)</sup> See, among other things, the Investing for a sustainable future manifesto in which the European Environmental Bureau (EEB), the European Trade Union Confederation (ETUC) and the Platform of European Social NGOs (Social Platform) put forward proposals

<sup>(3)</sup> Communication from the Commission: A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development, COM(2001) 264 final, 15.5.2001

<sup>(4)</sup> Poverty eradication and population ageing



3.4 Apart from the global issues mentioned above, the upcoming strategy must also focus on the question of employment and environment: what can be done to create new, skilled jobs through environmental protection and sustainable development?

3.5 Due to the high importance of the social dimension of sustainable development, the relations between social and economic-environmental issues must be discussed and expressed in concrete terms.

3.6 The EESC therefore underlines that the social dimension must be given very high attention in the review of the strategy for sustainable development. Any failure to do so will in the end harm the whole strategy and support for it.

3.7 The EESC proposes that the forthcoming review of the EU strategy for sustainable development pay particular attention, even beyond 2010, to four areas of the social dimension:

3.7.1 A sustainable working life focuses on quality of work within a full employment society. Quality of work is about creating a good working life throughout an individual's career. The increasing demands for mobility and flexibility must be met by deploying major resources on stimulating life-long learning and new adapted forms of social protection. Combining working life and family life must be made easier. At the workplace, priority must be given to health and safety, work organisation and working hours in order to increase worker satisfaction and self-confidence. Gender equality is one of the cornerstones of policies for improving quality of work.

3.7.2 The social and economic consequences of the ageing of the population need profound analysis in order to anticipate the changes in society and to adapt the policies required. Reforms have been taken or are underway in all Member States to achieve long-term sustainable pensions. In particular, the trend of retiring early before the age of 60 in many countries is putting pressure on pensions systems. Solidarity between generations has to be promoted. Policies must focus on welfare for children and their families in order to build the foundations for the welfare of the next generations. Too many children live in poverty, leave school early and have a bleak future. The Committee will draw up an opinion on relations between generations; the opinion will also focus on the role of the organised civil society in bridging generation gaps.

3.7.3 Society must be inclusive for all citizens, giving them rights and possibilities to achieve those rights. Eradication of poverty is a key objective. The homeless, drug addicts, criminals and other excluded groups must be reintegrated into society. Ethnic minorities, immigrants and other groups that risk exclusion are priority target groups for active policies for

social inclusion. Consistent and outreaching efforts to support education and training are among the most important tools. Shaping inclusion policies for all citizens is one of the crucial measures for improving possibilities for a good quality of life.

3.7.4 The issue of healthcare and new emerging health risks has become ever more urgent in recent years. The EU and the Member States have launched initiatives in response to alarming reports of health risks due to food, water, chemicals, tobacco etc. The EU for its part has responded with an umbrella programme to promote health and healthcare, and in particular programmes for fighting diseases caused by environmental factors and by erroneous lifestyles. There is, however, a lack of coordination and cooperation between the various programmes to support health and combat health risks. The Committee has underlined this in a number of opinions. According to the Committee, health safety is a collective obligation and a fundamental right for citizens. The Committee will prepare an opinion on this issue in order to draw conclusions from emergencies and devise an innovative approach of forward-looking analysis which will serve as a basis for future debate. In this context, the Committee will highlight the cost-benefit effects of resources spent on healthcare.

3.7.5 A Sustainable Social Development Charter covering the above fields and setting out the relevant fundamental rights of citizens could provide a great stimulus. It would have to be accompanied by an EU Action Programme, aiming at coordinating the various actions, and assist Member States in focusing priority areas. The Committee underlines that this approach could be of specific added value in the context of the present and future enlargement of the European Union.

#### *EU policy coherence*

3.8 The new strategy should also indicate how spending from the Structural Funds can be brought into line with the debate on sustainability in the new EU funding period (2007 onwards). 'Establishing sustainable development as an overarching objective of cohesion' <sup>(1)</sup> is an idea of the Commission that ought to be pursued. The Commission needs to give the recipients of the Structural Funds clear qualitative goals in order to improve coherence. The Committee is looking forward to the debate on the new financial perspective and the inclusion of tools and monitoring mechanisms to promote sustainability. It is no longer acceptable, for example, for the Commission to, on the one hand, criticise the thrust of transport policy when in practice it sometimes helps to finance it through the Structural Funds. These inconsistencies must be eliminated. When awarding subsidies, the EU must lay down sustainability conditions and see to it that these are met.

<sup>(1)</sup> COM(2003) 745 final, p. 34



3.9 Regional development in general in the Member States, which is co-financed via the Structural Funds, also requires close assessment, however. The largest single payment made to agriculture from the Structural Funds over the past few years has been a EUR 40 million investment grant for a large dairy plant in Saxony, Germany. Thanks to EU support and the use of cheap Czech milk, this large plant is one of the most efficient and productive in Europe. As part of the sustainability strategy, the Commission should consider whether support for the further centralisation of processing structures is always consistent with sustainability objectives. European taxpayers surely have the right to know whether investment projects co-financed by the EU are consistent with the sustainability concept. A kind of sustainability impact assessment is thus required.

3.10 Another aspect of policy coherence is to check whether research and development policy is fully consistent with the sustainability debate.

3.11 The same also applies to finance and tax policy, although the Committee is perfectly aware that this is a matter more for the Member States than for the EU. How does the stability pact fare on the sustainability front? Can new tax initiatives foster sustainability? <sup>(1)</sup> The EESC calls on the Commission to directly incorporate environmental and social criteria in any reform of the stability and growth pact and to make these just as binding as the economic and financial criteria. As regards the development of the use of economic instruments, more environmental taxes and charges have been used in the last few years, and there is a slow but growing move towards environmental tax reform as some countries change their tax base, reducing labour-related taxes and increasing taxes and charges on environmental pollution, resources and services <sup>(2)</sup>.

3.11.1 The planning and implementation of public procurement projects which support sustainable development would make its mark, as public procurement accounts for 16 % of EU GDP and would certainly also send out a signal to, for instance, businesses or private households.

3.12 Moreover, the Committee feels there is no doubt that the role of business is crucial in progressing towards sustainable development. It believes the EU should draw up and commit itself to a policy of sustainable production and consumption on the basis of a dialogue and

partnership between the European business community and public authorities in line with the conclusions of the Johannesburg World Summit. The aim would be to encourage measures to promote efficiency in products and production processes and to encourage sustainable patterns of consumptions in order to optimise resource use and minimise waste. Business organisations at European level <sup>(3)</sup> should be encouraged to take up a leadership role in promoting sustainable patterns of production and consumption that meet societal needs within environmental limits.

#### 4. The consequence of enlargement

4.1 It was not sustainable development, but the adoption of the *acquis* that was the subject of the accession negotiations. It is beyond doubt that the problems that need to be addressed by sustainable development arose within the framework of the law and not outside it.

4.2 As members of the United Nations, virtually all the new Member States have worked out a national sustainable development strategy. As with the current EU Member States, there are considerable inconsistencies between the sustainability strategies and actual policy on the ground (see point 5 below).

4.3 The EESC has dealt with the economic, social and environmental problems of the future Member States and the applicant countries in many of its opinions. It agrees with the Commission that, on the one hand, the environmental situation has already radically improved in part or can be expected to do so in the future as a result of technical improvements, such as the installation of filters or the construction of sewage treatment works. On the other hand, some clearly unsustainable trends can be observed <sup>(4)</sup>.

4.4 The example of - in some cases disastrous - energy efficiency, for example in buildings, illustrates that resource conservation, protection of the environment and job creation - particularly in SMEs - could definitely go hand in hand. However, there is no sign of policies in the accession countries adopting an appropriate strategy.

4.5 Rather, the trend in the future Member States and the applicant countries seems to be towards the relatively rapid adoption of the patterns of production and consumption that are common in the EU, and with them the sustainability problems that the EU is currently trying to address.

<sup>(1)</sup> It is strange, for instance, that across Europe, human labour (despite its oversupply) is heavily taxed while the environment (which is becoming increasingly depleted) is subject to virtually no tax at all.

<sup>(2)</sup> See, for example, the latest Eurostat publication: Environmental Taxes in the European Union 1980-2001: First signs of a relative 'green tax shift' - Eurostat 2003

<sup>(3)</sup> Based, for instance, on the example set globally by the World Business Council for Sustainable Development

<sup>(4)</sup> In areas such as transport and agriculture. For example, the biggest pork producer in the USA (Smithfield) is currently investing in gigantic pig farms in Poland, which has nothing to do with sustainable (or multifunctional) agriculture.

4.6 It will be particularly important to let the people in the new Member States and the applicant countries know that sustainable development will benefit them, too, and does not mean giving up their newly-gained 'quality of life'. Failure to do this alone could make the implementation of the EU's sustainability strategy more difficult for the simple reason that the relevant Commission initiatives could meet with increasing resistance from representatives of the new Member States and the applicant countries in the Council.

4.7 At EU level, it is vital to lay down conditions and to see to it that sustainability become a factor in the distribution of financial support. Information must be provided at political level and in public administrations in the new Member States in order to give practical assistance to the appropriate authorities in their decision-making<sup>(1)</sup>.

## 5. The link between the EU strategy and national and local strategies

5.1 Sustainable development is not a matter for the EU alone. There is no doubt that the EU plays a significant role; however, Member States, regions, businesses and individual citizens also have a share of the responsibility. In future, there needs to be better integration of all areas of activity and it is essential that the specific responsibilities, powers and remits of individual political and administrative players be clearly set out and interlinked as part of coordinated strategies. Now that more or less all the Member States – including four of the new Member States – have developed their own sustainability strategies, it would be worthwhile evaluating these national strategies, assessing their effectiveness, and examining the extent to which they are consistent and how they stand in relation to the EU's sustainability strategy.

5.2 Without wishing to pre-empt any detailed study of the issue, it is clear that national strategies' approaches to sustainability vary widely. Some strategies focus on the environmental dimension, while others address the three facets of sustainability and present overall strategies for future social development. Most national strategies were certainly not framed as a means of implementing the EU strategy but were drawn up nationally to meet the Rio commitment on national sustainable development strategies. Nonetheless, the key elements of the EU strategy are also reflected in most of the national strategies. As these strategies have different priorities and are at different stages in their implementation – and also vary in terms of participation and revision arrangements – the Committee expects that a detailed study will provide extensive comparative material and establish a good basis for mutual learning and the transfer of best practices. The Committee is ready to cooperate

with national sustainable development councils and their umbrella organisation, the European Environmental Advisory Councils (EEAC) network in order to stimulate such exchanges or provide a clearing house for the exchange of information and best practices.

5.3 Not only transport and energy policy, but also important EU reforms in 2003, clearly demonstrate how necessary it is for the EU and the Member States to work together in harmony. As part of the agricultural reform, Agricultural Commissioner Fischler proposed redesignating 20 % of the resources from the first pillar to rural development and agro-environmental measures. This policy would certainly have been a move towards sustainable development. However, the Member States decided in favour a much smaller modulation. Also as part of the agricultural reform, the EU has given Member States scope to divert 10 % of the funds that have hitherto taken the form of direct farm payments, to measures in support of sustainable development. It appears that, when they come to implement the Luxembourg decisions, no Member State will take up that option. In fisheries policy, too, where the current unsustainable policy is now threatening not only fish stocks, but also the livelihoods of fishermen, it took a very long time to reach agreement on conservation measures. This demonstrates the need for very close cooperation in drawing up and implementing sustainability policy.

5.4 While the overall conditions for sustainable development need to be put in place via the European and national strategies, much of the practical implementation will be done at regional and local level. Appropriate objectives and measures must be worked out as part of the Local Agenda 21 in close collaboration with the responsible policymakers and organised civil society. Sustainable development is impossible without a 'bottom-up' approach of this kind.

5.5 The Committee thus also considers sustainable development as an area of practical social and economic activity on all levels. Sustainable development establishes a wide-ranging framework for action, which, however, requires specific knowledge and skills. It is a framework that is geared very strongly towards knowledge and awareness. So far, neither European education systems nor informal education have done enough to help get the message across.

5.6 Hence, sustainable development – both as a framework for action and an end in itself – must be incorporated in particular into education and training, and thus become something that, in principle, every individual has to aim for and work on in his or her immediate (geographical and social) environment.

<sup>(1)</sup> The Committee provides practical information on this issue in its opinion, currently in the pipeline, on appropriate environmental technologies in the new Member States.

5.7 EU sustainable development policies are thus particularly important within the Union as they can give an enormous boost to local trends and measures on this front at local level.

5.8 One issue that should, in the Committee's view, be addressed with the highest priority is the refocusing of the aforementioned EU policies in order to kick-start the framing and promotion of comprehensive sustainable development schemes at local level. The Committee therefore proposes that particular support be given to those programmes that are based on cooperation between organised civil society and local authorities and are designed on an individual basis to achieve specific and measurable (quantitative and qualitative) objectives by drawing on authoritative knowledge, education and lifelong learning.

## 6. External aspects

6.1 The future competitiveness of economies is, of course, a key issue. Stringently pursuing a policy that has sustainable development as its target and leads, for example, to the introduction of the latest environmental technology or the internalising of external costs, etc., can or indeed must produce competitive disadvantages if, on the one hand, other economies fully or partly ignore the principles of sustainability and, on the other hand, these disadvantages are not compensated for in trade.

6.2 The scenario outlined in the previous paragraph is precisely the situation the EU now faces. The refusal of the USA and Russia to ratify the Kyoto Protocol, and indeed the Bush administration's stated intention to defer some environmental legislation in order to stimulate the economy, is a clear indication that one of the most important economic powers in the world prefers an apparently different and unsustainable kind of development.

6.3 It will be all the more important to increase the pressure during international negotiations on those countries that have rejected the principles of sustainability to a greater or lesser extent. They should be persuaded – as far as possible – to live up to their responsibility and to introduce measures to ensure sustainable development.

6.4 However, this is not sufficient. The EESC has already examined this fundamental problem in its opinion on the future of the CAP. <sup>(1)</sup> The Commission must therefore work – much harder than it has done hitherto – to ensure that, for example, sustainability criteria such as clear environmental, animal welfare and social standards are integrated into the WTO negotiations as a matter of urgency. Sustainability therefore has to do not only with production and consumption but

also to a very large extent with international trade. However, in the WTO, much too little account has so far been taken of sustainability considerations.

6.5 Just as it is necessary to accept developing countries' argument that they no longer wish to suffer, for example, from agricultural subsidies, so too must other countries accept that the EU can no longer tolerate the abandonment of domestic production because it cannot compete with rival products that are produced using methods that distort competition and are unacceptable from a sustainability angle; to illustrate this, the EESC points to the above-mentioned example of sugar (see point 2.3.10.1).

6.6 The EU's revised sustainability strategy should give thorough consideration to this policy area and set out an appropriate strategy <sup>(2)</sup>.

6.7 A strategy of this kind also involves, among other things, forming coalitions with countries prepared to make joint moves towards sustainable development. This might include in particular the ACP countries with which the EU enjoys special relations.

6.8 The EU sustainability debate has its roots in earlier UN efforts on this front, which, in turn, also spawned national strategies. In the long run, these different strands cannot operate separately, but need to be linked up. The new EU sustainability strategy should set out how the various tiers (international, EU, national, regional and local) can be merged to form a coherent policy.

6.8.1 At Johannesburg, the EU committed itself not only to existing international development targets, including those laid down in the Millennium Declaration, but also to a number of new and quantifiable detailed objectives and to the world summit's plan of implementation. That must be reflected in the EU sustainability strategy.

## 7. Discuss the need to set clearer strategic objectives and indicators

7.1 The Committee supports the Commission's opinion that 'the likelihood that ... strategies succeed increases if they include:

- objectives that are quantified as far as possible, and measures;
- European, national, regional and local components;
- indicators for monitoring progress and evaluating the effectiveness of policies'. <sup>(3)</sup>

<sup>(1)</sup> Opinion of the European Economic and Social Committee on the future of the CAP, OJ C 125, 27.5.2002, p. 87-99 This states: 'In principle, the Committee therefore expects that world trade policy must enable societies or economic areas to protect their producers and customers against products which were either not produced in accordance with the sustainable production rules recognised and practised in their areas or which do not meet imposed standards.'

<sup>(2)</sup> See point 2.2.5, which pointed out that a strategy needs to take account of foreseeable difficulties from the outset.

<sup>(3)</sup> COM(1999) 543 final, p. 23

7.2 A more in-depth sustainability strategy must make clear that there will be structural changes (and what these are likely to be), but that in the long term, these changes to the framework will be good for employment, social justice and the environment. Enough clear and readily understandable indicators should be laid down in each of the various fields (economic, environmental and social) in order to monitor progress on the road to sustainable development. The Committee considers that work currently being done by Eurostat is going in the right direction. It rejects the ideas that have been mooted in the context of the Lisbon strategy, such as that of reducing the number of indicators (in the case of environmental protection, going as far as to reduce the indicators to one, namely CO<sub>2</sub> emissions). The European Environment Agency's core set of environmental indicators can help to complement the structural indicators.

7.3 As well as using indicators to identify development trends, scenarios should be also be drawn up for use in establishing so-called 'milestones'. As sustainable development has no final objective, all the stakeholders involved must be clearly made aware of the direction of the venture and the ultimate impact of various development trends on, for instance, a particular economic sector or on the daily lives of ordinary people.

7.4 The Committee recommends that extensive benchmarking be conducted and that a list be drawn up of good and bad examples of sustainable development.

## 8. How to improve the implementation procedure

8.1 In this opinion, the Committee stresses that the reasons for insufficient progress include a poor understanding of what sustainable development actually is, the resultant fears and resistance in the sectors potentially affected, and the absence of any clear short-, medium- and long-term objectives, with the result that sustainability is not properly incorporated into all the relevant policy areas. Addressing these shortcomings should also facilitate implementation.

8.2 As the 2003 Brussels European Council made clear, 'in order to deliver the full set of reforms proposed in Gothenburg, it is crucial that the EU institutions and the Member States take action to enhance the effectiveness and coherence of existing processes, strategies and instruments'.<sup>(1)</sup> The European Council made particular reference to the Cardiff process, decoupling objectives and structural indicators, together with the need to monitor progress and identify best practices<sup>(2)</sup>.

8.3 Under the Gothenburg decisions, the Commission had already been asked to make their proposals more coherent by subjecting them to a sustainability impact assessment. Last year, the Commission introduced a detailed impact assessment, modelled on the sustainability impact assessment already in use in trade policy. The detailed impact assessment is made by the appropriate Commission departments and serves to underpin and substantiate Commission proposals. The examples so far fail, as yet, to provide a sufficiently integrated view of the issues at hand, but focus too much on cost-benefit analyses. For its part, the sustainability impact assessment is conducted as a joint venture with the relevant stakeholders.

8.4 The Committee notes that the road map on the follow-up to the Gothenburg conclusions has not been updated. The Committee is unaware of any preliminary work in this field despite the fact that the road map is due for review at the 2004 spring European Council<sup>(3)</sup>. It is not surprising, however, that the absence of clear objectives makes it impossible to draw up a road map.

8.5 A stocktake of the Cardiff process is also due at the 2004 spring European Council<sup>(4)</sup>. The Committee expects the stocktake – that is, regrettably not available on time – to say that the sectoral strategies of the various Council formations have so far existed largely on paper.

8.6 There is a clear need for a much greater degree of political commitment to the long-term aim of sustainable development. At EU level this requires a much clearer, better coordinated approach to policymaking on sustainable development within the European Commission. The Commission should produce an annual sustainable development report. It also requires a much greater commitment to making the Cardiff Process function effectively and that specific Councils (energy, competitiveness, economic, transport, agriculture, etc.) prepare annual reports to indicate progress towards a more sustainable approach in their own policy areas. The European Parliament should set up a procedure to allow itself to have a coordinated approach to sustainable development issues. The European Economic and Social Committee should be encouraged to stimulate debate on sustainable development issues and to work in close cooperation with national sustainable development councils to step up the level of public debate and involvement on sustainable development.

## 9. Recommendations for a consultation and communication strategy on sustainable development

9.1 In all its documents, the Commission recognises the importance of communication. In the conclusions from Gothenburg, the European Council emphasises the 'importance of consulting widely with all relevant stakeholders' (point 23).

<sup>(1)</sup> Brussels European Council presidency conclusions, 20 and 21 March 2003, no. 57

<sup>(2)</sup> *ibid*

<sup>(3)</sup> Brussels European Council presidency conclusions, 20 and 21 March 2003, no. 58

<sup>(4)</sup> *ibid*.



9.2 In its sustainability strategy (<sup>1</sup>), the Commission writes, among other things: 'There are concerns that the policy responses have been driven more by narrow sectional interests than the wider interests of society. This perception is part of a wider malaise. Many believe that policy has become too technocratic and remote, and is too much under the influence of vested interests. To tackle this rising disaffection with the political process, policy making must become more open. An open policy process also allows any necessary trade-offs between competing interests to be clearly identified, and decisions taken in a transparent way. Earlier and more systematic dialogue – in particular with representatives of consumers, whose interests are too often overlooked – may lengthen the time taken to prepare a policy proposal, but should improve the quality of regulation and accelerate its implementation.'

9.3 Communication and consultation are two different things. The Committee considers it vital, first of all, to draft the future new sustainability strategy in very close collaboration with the parties concerned, i.e. with the Member States (in order to secure better link-up between the strategies) and with civil society. Selling an internally drafted strategy to the outside world is not enough. The strategy must be the fruit of open consultation and coordination if, when presented in its new and eminently practical guise, it is to meet with the requisite broad acceptance and support.

9.4 The Committee considers it absolutely essential that a much more participatory process should be used in future to develop the sustainability strategy. It recalls that the draft sustainability strategy that formed the basis for the discussions in Gothenburg was published just two months after the consultation document. The discussions that are urgently required in order to reach a broad social consensus (see points 2.2 and 2.3) need far more time than they have hitherto been allowed.

9.4.1 This exploratory opinion can definitely be seen as a first step in a participatory process of this kind. The Committee trusts that the undertaking to publish a relevant draft in May/June 2004 will be honoured. Civil society should then be given enough time to discuss the draft. The Committee considers three months at least to be an appropriate time frame.

9.4.2 To keep a watch on the further drafting of the new strategy, a stakeholder forum should be convened, similar to the one staged for the strategy on the sustainable use of natural resources.

9.4.3 Finally, the outcome of the consultation process should be discussed with the parties involved. Not until that has been done should the new Commission adopt the new sustainability strategy. It should then draw up its policy programme in the light of the new sustainability strategy.

(<sup>1</sup>) COM(2001) 264 final, p. 9 (under the heading 'Improve communication and mobilise citizens and businesses')

9.4.4 The Committee is happy to keep an eye on and support this process, and accepts Environment Commissioner Margot Wallström's offer (<sup>2</sup>) to organise the consultation process jointly with the Commission.

9.5 As already stated in point 2 above, efforts should be made in the next few months to deepen the sustainability strategy and to give it practical form. It is vital to give the strategy substance as people can be guided by clear goals but not by visions.

9.6 In future, information on the strategy should also be greatly improved – among other things, all the measures should be summarised in a single document.

9.7 The Committee would also like to see better coordination in future between the sustainability debate and education/training and research policy. Judicious coordination between education/training and the sustainability debate also means, indirectly, that everyone has an opportunity to take part in the process.

9.7.1 Education/training policy, which can certainly be understood as part of the communication strategy, will focus in particular on developing long-term, joined-up thinking within a social context.

9.7.2 The analysis of unsustainable trends in our societies is most often made within a timeframe of five to ten years, and seldom beyond that. This is understandable, bearing in mind the difficulties. At the same time, measures for promoting more sustainable development will often have to work within timeframes of fifteen to twenty years or more (generations). This illustrates one of the profound problems in tackling unsustainable trends and measures to combat them: the lack of scientifically reliable methods for outlining alternative scenarios. Consideration should be given to the creation of an EU long-term policy think-tank on sustainable development and the promotion of sustainable lifestyles. Sustainable development has to rely, of necessity, on alternative scenarios covering a number of issues and trends, and on critical thinking. The Committee proposes that in the revised sustainable development strategy, a special research effort is included for the development of comprehensive sustainable development simulation models. These must indicate not only the social and economic impacts of a rigorous sustainable development policy, but also the social and environmental effects that the failure to halt unsustainable trends is likely to have.

(<sup>2</sup>) See speech at the EESC, 17 March 2004



9.7.3 The modernising of workplaces and the introduction of environmental-friendly technologies will have effects on the level of employees' education and training. The more advanced the production methods, the more hierarchical structures are broken down, and the greater the need for in-service training and lifelong education for everyone in the labour market. A society marked by an ambition to think and act in terms of sustainable development must be a society marked by high levels of education and training.

9.7.4 Without doubt, a knowledge-intensive society is, in the long run, a sine qua non of sustainable development. Yet it is also a consequence of it. This means, inter alia, that the education systems must include much more knowledge about the issues of unsustainable trends. An understanding of the challenges will add to the understanding of measures to be taken.

Brussels, 28 April 2004.

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

---

APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendments, which received at least one quarter of the votes cast, were rejected in the course of the discussion (Rule 39(2) of the Rules of Procedure).

**Point 2.1.3:**

At the end of the second sentence, add:

'... to social and economic aspects.'

*Outcome of the vote*

For: 37, against: 51, abstentions: 8.

**Point 2.3.10.1:**

delete

*Outcome of the vote*

For: 33, against: 65, abstentions: 2.

**Point 2.3.10.2:**

delete

*Outcome of the vote*

For: 33, against: 62, abstentions: 3.

**Point 3.6:**

delete

*Outcome of the vote*

For: 32, against: 53, abstentions: 6.

---

**Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament: Towards a thematic strategy on the sustainable use of natural resources'**

(COM(2003) 572 final)

(2004/C 117/09)

On 1 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 'Communication from the Commission to the Council and the European Parliament - Towards a thematic strategy on the sustainable use of natural resources' (COM(2003) 572 final).

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 5 April 2004. The rapporteur was Mr Ribbe.

At its 408<sup>th</sup> plenary session on 28 and 29 April 2004 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 54 votes to one; with six abstentions:

## **1. Preliminary remarks**

1.1 This communication must be considered as the Commission's first, preparatory step towards a strategy on the sustainable use of natural resources that is to be submitted in 2004 and is due for adoption in 2005. The communication seeks to launch a debate with all the stakeholders concerned – thus also including sections of civil society – with the ultimate aim of arriving at a broadly coordinated and widely accepted strategy paper.

1.2 To advance this coordination process, the Commission has, for instance, set up a Stakeholder Forum that has now started in-depth consultations <sup>(1)</sup>.

1.3 The purpose of the upcoming strategy is to develop and set out ideas for a further, necessary reduction in the environmental impacts of resource use. The essential aim is to substantially step up moves to decouple future economic growth from resource use.

1.4 The scheme is thus to be understood as a kind of 'substrategy' designed to give practical shape to the EU's sustainability strategy that is currently being revised.

1.5 The upcoming strategy is to be built on three strategic components:

- ongoing knowledge gathering about the often interconnected impacts throughout the life cycle of the resources used (from extraction, through use, to the waste phase);
- a policy assessment, designed, among other things, to demonstrate that 'there is currently no mechanism for assessing how far policy choices ... are compatible with the overall aim of decoupling economic growth from the impacts of resource use'; the resource strategy will be calculated to set matters to rights on that front in future;

- policy integration, i.e. to integrate resource-related environmental issues more fully into other policy areas.

1.6 In material terms, this paper must be considered in close connection with two other initiatives launched, like this strategy, by the Commission as part of the implementation of the sixth environment action programme – i.e. the framing of (i) a strategy on the prevention and recycling of waste and (ii) integrated product policy. The European Economic and Social Committee adopted opinions on both those issues at its December 2003 plenary session <sup>(2)</sup>.

1.7 The timescale given for the strategy is twenty-five years.

## **2. General comments**

2.1 The Commission paper begins by defining the term 'natural resources'. Natural resources include the (renewable and non-renewable) raw materials necessary for human activities, and the different environmental media, such as water, soil, air and the landscape.

2.2 The Commission paper explicitly refers to the Johannesburg World Summit on Sustainable Development where it was agreed that, 'protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements for, sustainable development.' <sup>(3)</sup>

<sup>(2)</sup> Opinion of the European Economic and Social Committee on the Communication from the Commission: Towards a thematic strategy on the prevention and recycling of waste, COM(2003) 301 final, and the opinion of the European Economic and Social Committee on the Communication from the Commission to the Council and the European Parliament: Integrated Product Policy, building on environmental life-cycle thinking, COM(2003) 302 final, OJ C 80, 30.3.2004, p. 39-44.

<sup>(3)</sup> Plan of Implementation of the World Summit on Sustainable Development, Introduction, paragraph 2

<sup>(1)</sup> Also involving the European Economic and Social Committee.

2.3 In other words, sustainable development is impossible without the proper protection and sound use of resources. The Commission therefore also explicitly views the planned strategy as one (of a number) of ways in which environmental protection can help foster sustainable development.

2.4 In findings that may come as a surprise to many people with an interest in environmental protection and are likely to fuel much controversial debate during the framing of the strategy, the Commission considers that, while some renewable resources, such as fisheries and freshwater, face major difficulties, non-renewables are seen as giving much less cause for concern. Given that, in the 1970s and 1980s, so many basic studies of the then nascent environmental movement focused on the impending depletion of non-renewable resources<sup>(1)</sup>, statements such as 'the fact that a given resource is finite does not automatically imply that this resource will become scarce' not only require some detailed explanation, but are also liable to send out the wrong political signal and be misconstrued as somehow giving the all-clear.

2.5 In the long-term, of course, such statements are clearly without any foundation. Despite continued finds of new non-renewable resource deposits over the past few years, and the fact that earlier forecasts about the timeframes for expected resource depletion have not proved wholly accurate<sup>(2)</sup>, it is clear that, for instance, oil, coal and other non-renewable raw materials are finite. To compound matters, although moves to decouple resource consumption and growth have already seen some success over the past few years, that has not yet been enough to resolve the overall issue. One reason is that world-wide growth rates have more than made up for any successes on this front.

2.6 The Commission's comments can thus only be considered in conjunction with the strategy's timeframe. In fact, in the coming twenty-five years, there may not yet be any critical shortages of non-renewable resources. Indeed, the Committee feels that, for a sustainability strategy and for the potential implementation of the 'factor ten' project touched on by the Commission,<sup>(3)</sup> a twenty-five-year timeframe is much too short.

2.7 Hence, the strategy must also carry a clear message about non-renewable resources that looks beyond that timeframe, as it is vital, even at this stage, to prepare the ground for an appropriate sustainable policy in this sector too.

<sup>(1)</sup> Cf. *The Limits to Growth*: a report for the Club of Rome's project on the predicament of mankind, 1972

<sup>(2)</sup> For instance, the forecasts of the Club of Rome (see footnote 4) or the US Council on Environmental Quality, *Global 2000 – Report to the President*, 1980

<sup>(3)</sup> Under which the same level of economic performance is to be achieved in future while cutting resource use to just a tenth of current levels.

2.8 The Commission is undoubtedly right to point out that, as far as non-renewable resources are concerned, the main environmental problem is not, for instance, their continued availability, or otherwise, in the ground. As the examples of coal, oil and gas show, the real environmental problem lies not in whether these raw materials are available or not, but rather in how they are actually used (extraction and, in this case, combustion, with the resultant carbon dioxide emissions).

2.9 In terms of sustainable development – which is undoubtedly the Commission's point at issue here – the question of availability is certainly of relevance, because even if it were possible to limit or even eliminate the environmental impacts of resource use, we have a duty to future generations not to allow resources to be depleted or exploited in what is, in historical terms, such a short space of time.

2.10 The EU is currently working on a range of (necessary) new strategies or revising existing ones. As well as the overarching sustainability strategy, these cover areas such as waste avoidance and recycling, integrated product policy, the protection of the marine environment, aquacultures and the field of health and the environment. The Committee endorses all these initiatives but would ask the Commission to consider the risk that those parties not directly affected might lose sight of the overall picture and find it difficult to see which issues are addressed by each particular strategy – and how each one fits into the 'hierarchy' of the various strategies that are in place.

2.11 The Committee therefore feels it would be useful

- to detail exactly how each strategy fits into the overall policy framework;
- to identify the links to the other strategies and topical policy areas at EU level and in the Member States; and
- to set out where and how the various strategies ultimately come together. The Committee, however, has no doubt that the sustainable development strategy is paramount and that it is from that that the resource strategy – and other strategies – must be derived.

2.12 The Committee also considers it vital to outline in the broadest possible terms the practical impact of each of the planned strategies on potential stakeholders. That also includes setting out the responsibilities involved and identifying which players are responsible for which specific issues at which political level – and the degree of authority they enjoy – as well as what the issues that have to be addressed actually are. The Committee thus expects that the upcoming strategy will not only set out in detail the scope for EU action in the field of natural resource use, but will also identify the responsibilities that accrue at the level of the Member States (or the local and regional authorities as the case may be).

2.13 The Committee sees conveying the relevant knowledge to broad sections of the population as a key task.

2.14 The strategy must focus strongly on the potential impact on industry, working life and the labour market. At numerous junctures and in many different documents, the Commission has consistently stressed that job creation and environmental protection are not opposite poles, but can complement each other effectively. This strategy must prove that to be the case. Companies are right to want, as far as possible, long-term legal certainty and the security to plan ahead. The strategy must indicate what companies have to expect in the coming years.

It is of course also important to signal the changes needed in the overall framework in order to facilitate synergies of this kind. Clarification is needed as to whether new initiatives on taxes and charges can promote the sustainable use of natural resources. As regards the development of the use of economic instruments, more environmental taxes and charges have been used in the last few years, and there is a slow but growing move towards environmental tax reform as some countries change their tax base, reducing labour-related taxes and increasing taxes and charges on environmental pollution, resources and services <sup>(1)</sup>.

### 3. The EESC's specific comments

3.1 The Committee very much endorses this paper. A resource strategy is sorely needed to achieve the goal of decoupling resource use (and the concomitant environmental impact) even further from economic growth.

3.2 The Committee feels that the twenty-five year timescale is clearly too short. It backs moves by the Commission to focus on difficulties that can be resolved in the short- and medium term. However, that must not mean more or less shelving already identified long-term issues.

3.3 It is essential, therefore, to insert a section on long-term issues, which are, in the main, likely to relate to non-renewable resources, as otherwise misunderstandings might arise about the strategy as a whole. Consideration should thereby be given not only to the environmental difficulties involved, but also to issues of overall physical and/or political availability. The Committee therefore welcomes those sections of the communication that address regional and European availability. The problem with oil, for instance, relates not only to how much of

it there actually is. Availability (and thus dependence) are very serious political issues, as witnessed by the oil crisis of the 1970s and a number of other, more recent events. The main global economic blocs appear to have very different approaches to this question.

3.4 The Committee feels that the strategy focuses too much on tangible resource use and that too little attention is paid to the protection aspect, i.e. the intangible dimension of the issue. The Committee therefore recommends not only expanding the title of the strategy to include a reference to protection, but also to give a higher profile to the concept of protection overall. This could also be tied in with the Johannesburg deliberations (see also point 2.2 above).

3.5 Landscapes are clearly another example of key resources. The Alps, for instance, have a sensitive ecosystem and are also a tourist attraction <sup>(2)</sup>. The strategy must also address the overuse of landscapes (e.g. through spiralling traffic levels). Specific examples such as these would also make it possible to clearly establish the links to other policy fields (e.g. agriculture) and to the areas of responsibility mentioned above. The diversity of European landscapes – the result, among other things, of highly heterogeneous agricultural land use – is an important part of European culture and identity, and must be preserved.

3.6 As the Commission rightly points out, some renewables are being overexploited at an alarming rate. In the case of wood, for instance, the Commission notes that only part of the annual growth is actually exploited, leaving considerable potential for its further (environmentally sound) use as a raw material. On the one hand, this is no doubt true, but two points also have to be borne in mind. Forests, like all ecosystems, not only have a tangible function, but are also of key intangible importance as, for instance, ecosystems or recreational areas. These considerations – and forests' protective role, for instance, in flood and avalanche control – may well clash with any all-out commercial exploitation by the forestry industry. On the other hand, forest resources are distributed very unequally and the tremendous forest damage in parts of the accession countries (e.g. in the Erzgebirge/Krušné hory, Krkonoše and Jizerské hory mountains) has not only destroyed potentially useful local resources but, along with other factors, was also to blame for some of the torrential flooding on the rivers Oder, in 1997, and Elbe, in 2002.

Brussels, 28 April 2004.

*The President*

*of the European Economic and Social Committee*

Roger BRIESCH

<sup>(1)</sup> See, for example, the latest Eurostat publication: Environmental Taxes in the European Union 1980-2001: First signs of a relative 'green tax shift' – Eurostat 2003.

<sup>(2)</sup> Cf. Opinion of the European Economic and Social Committee on the future of upland areas in the EU, OJ C 61, 14.3.2003, p. 113-122.

**Opinion of the European Economic and Social Committee on the 'Communication of the Commission to the Council, the European Parliament and European Economic and Social Committee: An internal market without company tax obstacles – achievements, ongoing initiatives and remaining challenges'**

(COM(2003) 726 final)

(2004/C 117/10)

On 24 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 'Communication of the Commission to the Council, the European Parliament and European Economic and Social Committee: An internal market without company tax obstacles – achievements, ongoing initiatives and remaining challenges' (COM(2003) 726 final).

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 14 April 2004. The rapporteur was Mr Cassidy.

At its 408<sup>th</sup> plenary session (meeting of 28 April 2004), the European Economic and Social Committee adopted the following opinion by 56 votes in favour and 14 votes against, with three abstentions.

## 1. Introduction

1.1 The Communication is an overview of the European Commission's efforts to remove the tax obstacles affecting businesses operating across frontiers within the internal market. It is not a proposal for tax harmonisation. It is only concerned with the elimination of tax obstacles to cross-border business and to removing an obstacle to the smooth functioning of the internal market and removing tax related inefficiency arising from 15 different bases of assessment.

1.2 The European Economic and Social Committee (EESC) has been consulted on other Commission Communications on tax matters. In 2001, it was consulted on the Commission Communication on 'Tax policy in the European Union – Priorities for the years ahead' (COM(2001) 260 final). The rapporteur of the EESC opinion was Mr Morgan. It was generally supportive of the Commission's tax policy objectives particularly in the need to coordinate corporate taxes to eliminate difficulties particularly for SMEs arising from national variations.

1.3 In 2002, the EESC published a further opinion again with Mr Morgan as the rapporteur on the Commission's proposals concerning fiscal competition and company competitiveness. The EESC opinion particularly stressed the need to give priority to VAT, personal pensions and transfer pricing<sup>(1)</sup>. Different national regulations prevent the creation of a 'level playing field' in corporate tax treatment between companies established in different Member States.

1.4 Also in 2002 an own initiative opinion (rapporteur: Mr Malosse, co-rapporteur: Mrs Sanchez-Miguel) very strongly urged the speeding up measures to avoid double taxation, particularly the proposal to set up a Joint EU Forum on transfer pricing. Furthermore it approved the aim of having an internal market free from tax barriers while stressing the importance of establishing common principles to encourage an internal market. The objective of a harmonised tax base for all EU

companies is compatible with the tax sovereignty of the EU's Member States and regions because it preserves their power to fix the level of tax.

1.5 In 2003, the Committee issued an opinion on the Commission proposal for a Council directive amending a Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries in different member states (COM(2003) 462 final). The rapporteur-general was Mrs Polverini. The gist of the Committee opinion was to support the Commission's proposals aimed at eliminating or at least reducing double or multiple taxation of profits distributed by a subsidiary in the State of a parent company or permanent establishment.

1.6 In 2003, the Committee gave a further own-initiative opinion on common principles of taxation, convergence of tax laws and the possibility of qualified majority voting on tax issues. The rapporteur was Mr Nyberg. The conclusion was that the following three issues be addressed:

- use the open method of cooperation to find the most efficient tax systems;
- introduce a common company tax base;
- use Qualified Majority Voting to establish minimum levels for the corporate tax rate.

## 2. The current communication

2.1 The Communication highlights the tax obstacles affecting businesses, particularly SMEs, operating across frontiers within the internal market. In spite of its earlier 2001 Communication, the tax obstacles identified then still largely exist. It recalls that it has submitted a number of specific proposals and initiatives aimed at removing specific tax obstacles.

<sup>(1)</sup> The prices charged for goods and services provided to companies belonging to the same group.



2.2 The Commission is continuing to work towards a more wide ranging, long term solution whereby companies would be allowed to use a single company tax base (taxable profits) for all their EU wide activities. The Commission believes that this is the only way of overcoming tax problems in the internal market in a systematic way.

2.3 The EESC acknowledges the steps the Commission has taken *inter alia* for the revision of the Merger Directive 90/434/EC and the Parent/Subsidiaries Directive 90/435/EC.

### 3. Suggestions

3.1 The EESC has been supportive of the Commission in its efforts to eliminate distortions of the internal market arising from different rules and regulations on company tax treatment in the various member States. This problem can only become worse after the enlargement of the EU to include ten new Member States on 1 May 2004.

3.2 So, a new impetus is required towards consolidating the arrangements for corporate tax such as an agreement between Member States as to what is allowable and what is not allowable against national tax. The need for a common tax base is a priority.

3.3 The EESC hopes that Member States will acknowledge the difficulties of companies, especially SMEs. They do not have the resources to cope with 15 (soon to be 25) different rules. It believes that there is merit in the possibility of 'Home State Taxation' <sup>(1)</sup> (HST) for SMEs perhaps with a turnover ceiling.

3.3.1 The Commission pilot project on 'Home State Taxation' provides a solution for cross-border activities of SMEs, making their fiscal administrative burden lighter. A test of an HST system could start on a bilateral basis and could eventually be widened to the whole of the EU following a positive evaluation.

3.4 A common European tax base is an important first step. The EESC believes that the International Financial Reporting Standards (IFRS) are too burdensome and should not be imposed on SMEs as they are principally intended for publicly quoted companies (IFRS rules could be a starting point for arriving at a tax base). The proposal of the Commission needs to be adapted in order to be applicable for SMEs. An adapted set of IAS/IFRS Standards, taking into account the specific needs of SMEs with respect to the administrative burdens and taxation, should be developed. A harmonised tax base and new accounting standard could lead to higher taxation. It should be

possible for those countries to counteract such a shift by changing its tax rates. Nor must the needs of the future 'European Company' (*Societas Europea*) be overlooked.

3.5 A further suggestion is that the multitude of double taxation agreements between Member States themselves and between Member States and third countries such as the USA is confusing and inconsistent - there is no uniformity. The EESC urges the European Commission to undertake a study of double taxation treaties in all sectors aimed at providing a guide of 'best practice' and finding a solution which is acceptable to all parties.

3.6 The Commission Communication puts forward an interesting suggestion that the principle of 'most favoured nation' between Member States might be required at some time in the future and it notes that first discussions with member states on this issue are to be held shortly.

3.7 The EESC is once again urging on Member States, the main influence, the need for an agreement which will allow and encourage SMEs especially to expand outside their home country and in the process create jobs, SMEs being the main creators of new jobs. The EESC firmly supports the Commission's desire to have agreement between Member States on the tax base for companies.

3.8 The lack of real progress in the EU decision-making process on corporate taxation leads to a shift from political decisions taken by the Council and the European Parliament to the ECJ. Also without political decisions there is a need for judicial decisions on the different taxations systems. The ECJ's jurisprudence <sup>(2)</sup> is beginning to have far reaching effects on tax systems notably on Member States' dividend tax systems. Without progress in the Council on taxation matters the EESC therefore hopes that the Commission will quickly produce its guidance on interpreting ECJ tax decisions.

3.9 The EESC could endorse enhanced cooperation between subgroups of member states who wish to make progress on tax issues as a way of getting round the present unanimity requirement.

3.10 Finally, the EESC acknowledges the difficulty faced by Member States changing their present systems. They need to be able to compare their existing tax take with their likely share under any new system. This will require open coordination between them and the need for trust and confidence between all of them.

Brussels, 28 April 2004.

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

<sup>(1)</sup> Tax rules in the home state for a company are used for all its tax payments but with the tax rates of each country where it has its activities.

<sup>(2)</sup> A recent example: C-446/03 Marks & Spencer plc v. David Halsey (HM Inspector of Taxes) (UK) - cross-border compensation of losses.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital'**

(COM(2003) 703 final – 2003/0277 (COD))

(2004/C 117/11)

On 3 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 'Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital' (COM(2003) 703 final – 2003/0277 (COD)).

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 Ms Sánchez Miguel.

At its 408th plenary session of 28 and 29 April 2004 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 56 votes to 11 with four abstentions.

## 1. Introduction

1.1 The draft directive on cross-border mergers, presented by the Commission, has been subject to lengthy delays as part of the broader interruption in the legislative process involving the draft company law directives. As well as this proposal for a tenth company directive concerning mergers, the proposals for a fifth directive on management and representation bodies of public limited companies, and for a fourteenth on transfer of registered offices, continue to be deadlocked. There are a variety of reasons for this, but in all cases there has been difficulty in achieving consensus on recognising workers' right to information and participation in the relevant company processes, requiring appropriate legal modifications.

1.2 The adoption of the European Company Statute (ECS) and of its accompanying directive on the involvement of employees<sup>(1)</sup>, together with other directives governing workers' rights to information and consultation, and their protection in the event of company transfers – which also apply to companies created by cross-border mergers<sup>(2)</sup> – has made it considerably easier to reactivate the process of presenting the pending legislation to harmonise European company law. The present proposal on cross-border mergers is a clear example of this. The EESC attaches importance to this new move towards Community harmonisation of company law in the light of European enlargement, bringing in countries with models of company organisation which differ both from those of the present Member States and from each other.

1.3 The proposal, presented in 2003, contains several major differences with respect to the 1985 proposal<sup>(3)</sup>.

1.3.1 Firstly, whereas the 1985 proposal applied exclusively to cross-border mergers of public limited companies, the 2003 proposal applies to mergers of companies with share capital, which means that the possibility of cooperation and grouping between companies of different Member States is extended to other types of company more in keeping with the European business fabric: SMEs.

1.3.2 Secondly, the proposals differ in terms of the rules of referral employed. The 1985 proposal refers consistently to the Third Directive on national mergers<sup>(4)</sup>, whereas the 2003 proposal generally refers to national merger legislation, except for the specifically cross-border aspects of the mergers it covers. Such referral is practicable largely because national legislation has already been harmonised under the terms of the Third Directive, and it has beneficial effects since it simplifies merger forms and procedures and is familiar to the social, legal and economic players involved in mergers, enabling both uncertainty and the high economic cost entailed by such operations to be reduced.

1.3.3 Thirdly, the main difference between the 2003 draft directive and the 1985 proposal is the inclusion, in Article 14, of employee participation in cross-border merger processes, which were explicitly ruled out in the recitals to the 1985 proposal. The inclusion of this aspect of cross-border mergers was clearly rendered necessary by the fact that, for the most part, mergers have repercussions for employees in the undertakings concerned and by the recognition of employees' rights with regard to corporate governance under both Community legal provisions and numerous voluntary agreements. It is our

<sup>(1)</sup> Regulation (EC) 2157/2001 and Directive 2001/86/EC, OJ L 294, 10.11.2001.

<sup>(2)</sup> Directive 97/74/EC on European works councils, Directive 2000/23/EC on employees' rights in the event of transfers of undertakings and Directive 2002/14/EC on informing and consulting employees.

<sup>(3)</sup> Proposal for a Tenth Directive concerning cross-border mergers of public limited companies. COM(84) 727 final, OJ C 23, 25.1.1985, p.11.

<sup>(4)</sup> Directive 78/855/EEC of 9 October 1978, being the third company directive.

belief that referral to the ECS and its accompanying directive, with regard to employee participation in cases where the national laws applicable to the company created by the merger do not impose such involvement, facilitates adoption of the proposed directive, since it avoids the need to repeat discussions within the Community institutions.

1.4 It should be borne in mind that the proposal for a directive is part of the programme to modernise company law and enhance corporate governance in the European Union<sup>(5)</sup>, which includes an action plan which aims, in the short-, medium- and long-term, to bring about thorough-going legislative changes. These are intended to go beyond implementation of the pending proposals for company law directives, and to launch initiatives both legislative (directives) and non-legislative (recommendations and others), concerning compulsory information on corporate governance, a stronger role for non-executive directors, full shareholder democracy (one share, one vote), etc. More specifically, the present draft directive was on the list of short-term actions (2003-2005) regarding company restructuring and mobility.

1.5 It should also be borne in mind that the present directive represents a step on the way to implementing the European company (SE) as a valid legal vehicle throughout the EU, specially designed to meet the needs of SMEs, and which has met with broad support in the EESC. It should be pointed out in this regard that the Commission's communication of 21 May 2003 took on board the recommendation of the High Level Group that the Tenth Directive on cross-border mergers should be adopted before presentation of a proposal on the SE statute, pending a prior viability study.

1.6 The reform undertaken by the company tax directives<sup>(6)</sup>, although not mentioned in the present draft directive, is also a relevant issue. It is becoming abundantly clear<sup>(7)</sup> that the delay in the constitution of the SE results from the unresolved problem of tax complexity arising from the relevant Community legislation and, in particular, of double taxation arising from mergers. Cross-border mergers governed by the present proposal may be considered to be similarly affected and, given that the proposal is geared principally to SMEs, lower costs should be encouraged in order to make such mergers attractive.

1.7 Lastly, it is also worth pointing out that the tenth directive is needed because at present some EU Member State national laws allow cross-border mergers between their companies with share capital (as has happened in practice, for example between Spanish and Italian companies) while others do not<sup>(8)</sup>.

## 2. Gist of the proposal for a directive

2.1 The proposed directive regulates cross-border mergers, considering as such mergers between companies with share capital that have their head offices in - and are governed by the laws of - different EU Member States (Article 1).

2.2 The forms that a merger may take are those recognised by the ECS, i.e. by acquisition, by the formation of a new company or by the transferral of all a company's assets and liabilities to its holding company (Article 1).

2.3 Merger procedures will be subject to the national laws of the countries in which the companies involved in the merger have their head offices. The procedure for carrying out a cross-border merger - whatever form it may take - must however meet a number of specific minimum requirements laid down in the proposed directive (Article 2).

2.3.1 Firstly, the companies involved must draw up common draft terms of merger containing the particulars laid down in Article 3 of the proposal, i.e. the identity of the merging companies, the ratio applicable to the exchange of securities or shares of each company and the rights conferred on holders of such securities or shares and members enjoying special rights. The draft terms must also include information on arrangements for the involvement of employees in the company created by the merger in order for the merger to go ahead.

2.3.2 Secondly, the proposal addresses the prior publication of the merger, once the draft terms have been drawn up. The fact that this must be done not less than one month before the date of the general meeting is particularly relevant, as during this time creditors and minority shareholders can exercise their rights. Article 4 of the proposal refers back to Article 3 of the first company directive 68/151/EEC<sup>(9)</sup> establishing the legal procedure for publication. The purpose of this is to guarantee the legal security of all those involved in a cross-border merger.

<sup>(5)</sup> Communication from the Commission to the Council and the European Parliament COM(2003) 284 final of 21 May 2003.

<sup>(6)</sup> Council Directive amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States; Council Directive amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States. EESC Opinion 312/2004 of 25 February 2004.

<sup>(7)</sup> Reference to the conclusions of the task force on SE taxation.

<sup>(8)</sup> The national laws transposing Directive 78/855/EEC established two models regarding the compatibility of authorisations for cross-border mergers. One group, comprising Italy, Luxembourg, Portugal, Spain and the UK, allowed such operations while a second group, made up of the Netherlands, Sweden, Ireland, Greece, Germany, Finland, Denmark and Austria did not. Belgium occupies an intermediate position, only allowing mergers by acquisition.

<sup>(9)</sup> Amended by Directive 2003/58/EC, OJ L 221, 4.9.2003.

2.3.3 The proposal also stipulates that experts must draw up a report intended for members (Article 5) before the date of the general meeting of each company, which will approve the common draft terms of merger (Article 6). Owing to its practical relevance in terms of reducing the costs of a merger (an aspect particularly relevant for SMEs), attention should be drawn to the possibility of appointing one or more independent experts for all the companies involved, following a request to the competent authority. This option is also provided in the ECS for setting up an SE by means of a merger.

2.3.4 Once the draft terms of merger have been approved by each general meeting, the competent authority will scrutinise the legality of the merger (Articles 7 and 8), and the conclusions of this scrutiny will be published in the relevant public register (Article 10) in order to determine the date on which the cross-border merger takes effect (Article 9) and its likely consequences, depending on the type of merger: by acquisition (Article 11(1)), by the formation of a new company (Article 11(2)) or by the transferral of assets and liabilities to the holding company (Article 13). The legal security of the merger is guaranteed by the fact that it may not be declared null and void once the process is completed (Article 12).

2.4 Regarding arrangements for the involvement of employees in the company created by the merger, those used in the company created by the merger will apply, subject to national laws. If the new company is not subject to a participation system under the law of the country in which it is created and if at least one of the merging companies is operating under an employee participation system, the rules on participation laid down in both the ECS and the Directive on employee involvement – which provides a legal model in the event that agreement is not reached between employees' representatives and management (Article 14) - will apply.

### 3. General comments

3.1 The EESC welcomes the proposal for a directive on cross-border mergers, from the point of view of both ongoing legislative policy and the legal techniques employed.

3.2 With regard to the first point, the proposed directive extends the possibility of merger to other companies in the EU, particularly SMEs.

3.2.1 Once it enters into force on 8 October 2004 (Article 70), the adoption of the ECS will enable public limited companies located in different Member States to form an SE by means of a merger (Articles 2, 17 et seq). Once it enters into force, the future directive on cross-border mergers will introduce another type of merger allowing companies with share capital located in different Member States - whether they be public

limited companies, partnerships partly limited by shares, incorporated private companies or other forms of company, such as cooperative societies, meeting the requirements of the first company directive<sup>(10)</sup> - to merge their assets by means of a cross-border merger, with the company created by the merger being subject to the legislation of one Member State.

3.2.2 Extending this new type of merger – i.e. cross-border mergers – to other types of company will be particularly relevant for SMEs, as these companies tend to be limited companies. Moreover, it is a fact that the EU's real economy is based on a system in which large companies coexist with SMEs, the latter being a key factor for economic development and, in particular, the largest source of employment in Europe, as well as being particularly good at adapting to changing circumstances and cyclical downturns and at innovation. It can therefore be concluded that one of the objectives of Community legislative policy should be to improve the competitiveness of SMEs and that one of the most appropriate tools is that of merging companies to create new legal forms that safeguard cross-border operations while making it easier to obtain financing from banks and the capital markets.

3.3 As mentioned above, the proposal would also seem a positive step in terms of the legal techniques employed, which seek to simplify the legislative model applied to the two most important aspects of the new proposal: the type of company and employee participation.

3.3.1 Regarding the type of company, the proposal addresses only the cross-border aspects of mergers, which, as a general rule, are also governed by the rules on mergers laid down in each of the national laws concerned. These have already been harmonised following the transposition of the Third Council Directive on mergers, though there are a number of significant disparities between the Member States that must be taken into account once this proposal is adopted. This system offers additional legal security to all the parties concerned and is the legal model confirmed by practices in the Member States. In this connection, consideration should be given to including information on the expected effects on jobs and an impact assessment in the draft terms of cross-border mergers.

3.3.2 Regarding employee participation in the merging companies, the system of referral to the European Company Statute and the Directive on employee involvement avoids reopening the debate which caused so many delays in the adoption of these rules and regarding which a broad consensus has been reached among all the interested parties. In terms of employee participation, therefore, Article 14 of the draft directive should, at least, ensure the protection of acquired rights provided for in Directive 2001/86/EC in relation to the establishment of a European company by way of merger. The EESC

<sup>(10)</sup> Directive 68/151/EEC.



feels that Article 14 should be amended accordingly in order to reduce the risk – inherent in the current version – of lower employee participation standards in the businesses and undertakings concerned. In this regard, the EESC feels that it is essential that the national systems implemented enable all employees of the merged company, including those working outside the country where the company has its headquarters, to have the same rights, in line with the system for involvement set up for each type of company.

3.4 While it welcomes the proposed Directive, the EESC would however like to bring a number of relevant aspects to the Commission's attention.

3.4.1 The legal basis used, which concerns company law (Article 44 TEC), should be broadened to include Article 308 TEC, since it is not only the survival of the merged companies which is at stake, but also that of their employees' jobs. Article 308 also becomes a legal basis for Directive 2001/86 supplementing the Statute for a European company as regards employee participation, which is referred to in Article 14 of the present proposal.

3.4.2 One aspect that may cause confusion when the future directive is transposed is the system for scrutinising the legality of the merger (Articles 7 and 8), according to which each Member State will designate the authorities competent to scrutinise the legality of the merger as regards that part of the procedure which concerns each merging company and the completion of the merger. Article 10 of the 1985 proposal for a directive also laid down a preventative system for scrutinising legality, albeit with a number of derogations regarding which it referred to the procedure laid down in Article 16 of the third company directive <sup>(1)</sup>. The EESC believes that harmonising the European registry system by basing legitimacy on the content of the register – i.e. the assumption that information is correct and valid – and the principle of legality – according to which the registrar would be responsible for the legality of registered acts and documents – could simplify the system for scrutinising the legality of cross-border mergers by means of a referral.

3.4.3 Another aspect that must be considered by the Commission is the protection of the rights of third parties, including outstanding pay, as a combined interpretation of Article 4(c) and Article 11(3) could in practice undermine these rights. While Article 4(c) requires each of the merging companies to publish the arrangements made for the exercise of the rights of creditors and minority shareholders (who, where appropriate, will have a right to be bought out if such a right, though not recognised in this legislation, is provided in national legislation), Article 11(3) stipulates that the special formalities that must be completed before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties must be carried out by

the company created by the merger. To avoid a potentially damaging interpretation of the rights of third parties, a reference should be included to the right of third parties to oppose the merger in the event that their rights have not been safeguarded, which would seem to be the purpose of Article 11(3).

3.4.4 A third aspect that should be clarified is the definition of the scope and effects of the directive regarding the right to employee involvement.

3.4.4.1 Firstly, it should be borne in mind and indicated in the text that the stipulated information must include, as a minimum, the information required under Directives 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and 2002/14/EC on informing and consulting employees. The EESC considers that national rules on information and consultation are not sufficient, since they do not take account of cross-border issues. The rules on European Works Councils do not always apply, as they only relate to companies that employ at least 1,000 workers, including at least 150 in different countries. For this reason, the EESC again advocates that the proposal should include rules guaranteeing workers the same rights to information and consultation as those that apply to European companies.

3.4.4.2 Secondly, non-compliance with the legal obligation to inform and consult workers in practice has a damaging effect on employment, in the absence of specific measures to protect it.

3.4.4.3 Thirdly, the content of Article 14 should be clarified in order to prevent over-referral to legislation of a transnational nature, such as the ECS Regulation, and that of a national nature, such as the directive on the involvement of employees. It must be made clear that the applicable systems are:

- the national participation system for merging companies;
- the negotiated model, in accordance with the provisions of the directive on employee involvement, if no provision for such involvement is made in national law;
- the mandatory model which would apply in the event of non-agreement between the parties would be that set out in Part 3 of the Annex to the directive on employee involvement.

## 4. Conclusions

4.1 The EESC reiterates its view that the proposed directive is positive and practical.

4.2 It would, however, like to draw the Commission's attention to two issues that the proposal fails to address.

<sup>(1)</sup> Directive 78/855/EEC.



4.2.1 Firstly, the proposal fails to regulate the liability of administrators and experts involved in the merger. It must be remembered that Article 15 of the 1985 proposal established a general mechanism for liability, based on Articles 20 and 21 of the third company directive. It would, in general, be perfectly justified to add an article on the liability of administrators and experts to the 2003 proposal, not only because of the broad consensus that exists in all national systems of law, but also because the question of liability is included in many codes of corporate conduct and reports backed by the Commission <sup>(12)</sup>.

Brussels, 28 April 2004.

4.2.2 Secondly, this proposal needs to be coordinated with existing directives and the new proposals on tax reform in the area of mergers, etc. <sup>(13)</sup>, as cross-border mergers in the EU will only be viable in practice if there are effective company rules providing legal facility and security, as is the objective of this proposal for a tenth directive, and an appropriate ratio between the cost and tax benefits of such mergers. The EESC therefore believes that there is a need for coordination between DG Internal Market and DG Economic and Financial Affairs.

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

---

<sup>(12)</sup> Report of the High-Level Group of Experts on Company Law of 4 November 2002.

---

<sup>(13)</sup> See footnote 6.

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendments, which received at least one quarter of the votes cast (Rule 54(3), were defeated in the course of the debate:

**Amend the second sentence of point 3.4.4.3**

'It must be made clear that, in cases where there was employee participation in at least one of the companies involved in the merger, the applicable systems are:'

*Reason*

Without this addition the text of the opinion is inaccurate. If employee participation is to be applied to the new company, such a scheme must in fact have already applied to workers' representatives.

*Result of the vote:*

For: 29, against: 41, abstentions: 4.

**New point 3.4.4.4**

'The EESC is sceptical as regards the application of the mandatory model set out in Part 3 of the Annex to the directive on employee involvement as this may imply the export of codetermination systems to other Member States which have a totally different legal tradition.'

*Reason*

The application of this mandatory provision could result, for example, in the following situation: an enterprise from country A (where there is no employee participation) merges with an enterprise from country B (which has employee participation) and opts to have the registered office of the new enterprise located in country A. It would then be obliged to apply the law prevailing in country B, even if this is out of step with the company law of country A (monistic and dualistic systems).

*Result of the vote:*

For: 25, against: 40, abstentions: 4.

---

**Opinion of the European Economic and Social Committee on the 'Proposal for a decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable'**

(COM(2004) 96 final – 2004/0025 (COD))

(2004/C 117/12)

On 25 February 2004, the Council decided to consult the European Economic and Social Committee, under Article 157(1) of the Treaty establishing the European Community, on the 'Proposal for a decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable' (COM(2004) 96 final -2004/0025 (COD)).

On 24 February 2004, the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the work on the subject.

At its 408<sup>th</sup> plenary session of 29 April 2004, and in view of the urgency of the matter, the European Economic and Social Committee appointed Mr Pegado Liz as rapporteur-general and adopted the following opinion by 56 votes to one, with four abstentions.

## 1. Introduction

1.1 This proposal to establish a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable, known as eContentplus (2005-2008) <sup>(1)</sup> for short, takes account of the strategic objective of eEurope 2005 <sup>(2)</sup>, the achievements of the current eContent programme (2001-2004) <sup>(3)</sup>, the mid-term evaluation of this programme <sup>(4)</sup> and subsequent developments in technologies, legislation <sup>(5)</sup> and the market, as mentioned in the explanatory memorandum of the proposal in question.

## 2. The eContent programme (2001-2004)

2.1 The objectives of the eContent programme (2001-2004), which was welcomed by the European Economic and Social Committee (hereinafter referred to as the EESC) <sup>(6)</sup>, were defined as follows:

- a. create favourable conditions for the development of the European multimedia content industry;
- b. stimulate demand for, and use of, multimedia content;
- c. contribute to the professional, social and cultural development of citizens;
- d. promote the exchange of knowledge between users and suppliers.

2.2 The eContent programme covers the four-year period between January 2001 and January 2005 and is implemented through three action lines:

- a. improving access to and expanding use of public sector information;
- b. enhancing content production in a multilingual and multicultural environment;
- c. increasing dynamism of the digital content market.

## 3. The mid-term evaluation of the eContent programme

3.1 The mid-term evaluation of the eContent programme <sup>(7)</sup> recognised the programme's positive impact and expressed a recommendation to continue supporting digital content via Community policies and programmes.

3.2 The evaluation report also contains recommendations addressed to the Commission and the Member States on the implementation of the current eContent programme, in particular that the commercial dimension of projects should be emphasised and that the Commission should encourage cooperation and networking among the national contact points that disseminate information about the programme, with a view to improving the quality of service provided. The report concludes by pointing to the need for a follow-on programme and asks the Commission to maximise the programme's impact by restricting the potential target group.

<sup>(1)</sup> Proposal for a Decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable - COM(2004) 96 final – 2004/0025 (COD).

<sup>(2)</sup> Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – eEurope 2005: An information society for all – COM(2002) 263 final.

<sup>(3)</sup> Council Decision 2001/48/EC of 22 December 2000.

<sup>(4)</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions concerning the mid term evaluation of the multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the information society (eContent) – COM(2003) 591 final.

<sup>(5)</sup> In particular, the Directive on the re-use of public sector information [Directive 2003/98/EC of 17 November 2003], the Directive on copyright and related rights in the information society [Directive 2001/29/EC of 22 June 2001], the Directive on the legal protection of databases [Directive 96/9/EC of 11 March 1996] and a whole series of Directives to promote trade and on-line services in the internal market: e.g. the Directives on electronic commerce (22 May 2001) and electronic billing (20 December 2001) and the Directive and Regulation (7 May 2001) on VAT on digital products.

<sup>(6)</sup> Opinion of the Economic and Social Committee on the Proposal for a Council Decision adopting a multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the Information Society - COM(2000) 323 final – 2000/0128 (CNS).

<sup>(7)</sup> See previous footnote - COM(2003) 591 final.

3.3 The Commission shared the view that the programme's impact should be maximised and that some rationalisation of activities was needed. It also supported the view that multilingual and multicultural elements should be at the core of all the projects supported.

#### 4. The proposal to establish the eContentplus programme (2005-2008)

4.1 The objective of the financial support programme eContentplus is to make digital content in Europe more accessible, usable and exploitable, facilitating the creation and diffusion of information and knowledge – in areas of public interest – at EU level. The programme will thereby help to meet the objectives of eEurope 2005.

4.2 The overall emphasis of the programme, which has a proposed financial envelope of EUR 163 million over a four-year period (2005-2008), is on producing quality content that helps disseminate information and knowledge, and not just more content. The programme encourages the emergence of pan-European frameworks (services, information infrastructures, etc.) that facilitate the discovery and use of reusable and interoperable quality digital content with a view to creating new content-based services. Target areas for action will be public sector information, spatial data, and learning and cultural content.

4.3 In short, the programme envisages three operational goals:

- a. facilitating access to European digital content;
- b. improving quality by fostering best practice in the area of digital content;
- c. reinforcing co-operation and awareness between digital content stakeholders (in particular scientists, students, researchers, professionals, 'reusers', public services, etc.).

#### 5. Legal basis

5.1 The EESC agrees with the legal basis suggested by the Commission for this initiative (Article 157(3) of the Treaty establishing the European Community), which is moreover the same legal basis as the one used in the Council's Decision of

22 December 2000 adopting the Community eContent programme.

5.2 The EESC also considers the legal instrument used – a Decision – to be appropriate.

#### 6. General comments

6.1 The EESC welcomes the Commission's proposal to adopt a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable, known as eContentplus (2005-2008), which follows on from the eContent programme.

6.2 The EESC has in previous opinions expressed its support and encouragement for all initiatives to promote the information society, in particular the eEurope action plan, the multiannual MODINIS programme (2003-2005) <sup>(1)</sup>, network and information security policy <sup>(2)</sup>, combating computer-related crime <sup>(3)</sup>, the need to develop a non-discriminatory knowledge-based society <sup>(4)</sup>, the right to safe Internet access in terms of protection of personal data, commercial transactions and information services <sup>(5)</sup>, making Internet use safer by combating illegal and harmful content, and the reuse of public sector information <sup>(6)</sup>.

6.3 The EESC wholeheartedly agrees with the Commission's objective that Europe's cultural and linguistic diversity must be assured and as such be an integral factor in the development of the information society <sup>(7)</sup> and has recently adopted an exploratory opinion on creative industries in Europe <sup>(8)</sup> in which it explicitly states that the public authorities of the European Union, the Member States and the regions must help to strengthen diversity.

<sup>(1)</sup> Opinion of the European Economic and Social Committee on the Proposal for a Council Decision adopting a multi-annual programme (2003-2005) for the monitoring of eEurope, dissemination of good practices and the improvement of network and information security (MODINIS) - COM(2002) 425 final – 2002/0187 (CNS) of 25 October 2002.

<sup>(2)</sup> Opinion of the Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on network and information security: proposal for a European policy approach – OJ C 48 of 21.02.2002.

<sup>(3)</sup> Opinion of the Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Creating a safer information society by improving the security of information infrastructures and combating computer-related crime: eEurope 2002 – OJ C 311 of 7.11.2001.

<sup>(4)</sup> Opinion of the Economic and Social Committee on Public sector information: a key resource for Europe - Green Paper on public sector information in the information society – OJ C 169 of 16.06.1999.

<sup>(5)</sup> Opinion of the Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector – OJ C 123 of 25.04.2001.

<sup>(6)</sup> Opinion of the Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the re-use and commercial exploitation of public sector documents - COM(2002) 207 final - 2002/0123 (COD) of 11 December 2002.

<sup>(7)</sup> Opinion of the Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Principles and guidelines for the community's audiovisual policy in the digital age - COM(1999) 657 final of 19 October 2000.

<sup>(8)</sup> Exploratory opinion of the European Economic and Social Committee on Europe's Creative Industries of 28 January 2004.

6.4 Therefore, the EESC cannot but welcome the proposed Community action, which is intended to bring about the right conditions to overcome the technical and economic barriers created because there is too much diversity for relatively small national markets to absorb. The EESC welcomes the programme's approach, as it focuses on methods, tools, processes and services related to the design, development, access and distribution of high-quality digital content, while leaving the quantity of digital content produced up to market forces and other specific Community initiatives.

6.5 The EESC takes account of the fact that one of the conclusions of the mid-term evaluation report of the eContent programme points to the need to clarify the programme's focus in order to prevent user groups being too diverse and target markets too fragmented for the initiative to achieve the critical mass it needs to succeed.

6.5.1 The EESC therefore understands and accepts that the overriding principle of eContentplus is to maximise the impact on a group of participants. To this end, a clearer definition is needed of the criteria governing participants and the framework of objectives.

6.5.2 Nonetheless, in order to prevent an increase in regional asymmetries between beneficiaries of the eContent programme, the EESC calls on the Commission to widen the scope of the 'reinforcing cooperation and awareness' measure, in particular 'accompanying measures'.

## 7. Specific comments

7.1 As regards the programme's financial impact, the EESC requests clarification on why the appropriations for the 'Facilitating access to, use and exploitation of digital content' action for 2006 have been cut back [see point 6.1.1. Financial intervention (Commitment appropriations)], given that this occurs only once during the initiative's entire programming period.

7.2 Still with regard to the financial impact, and following on from the above comments, the EESC considers the overall appropriation for the 'Reinforcing cooperation and awareness' measure (between 6 % and 10 %), in particular the budget for programme evaluation measures, to be insufficient.

7.2.1 The EESC therefore urges the Commission to increase the appropriations in question and thereby attach greater importance to the mid-term evaluation of the programme.

7.3 Moreover, in view of the mid-term evaluation report's recommendations concerning the profile of the eContent follow-on programme <sup>(1)</sup>, in particular that the two overarching

requirements for all projects to be supported should be commercialisation – by favouring projects that have a high market potential and are of demonstrable interest to future user groups – and 'Europeanisation' – i.e. projects should be of interest to a wide group of European businesses and private users and at the same time enhance European cultural diversity – the EESC is of the view that the planned evaluation measures, as well as the evaluation report mentioned in Article 5(3) of the proposed Decision, must also gauge – as far as possible – the degree of satisfaction of users of the projects supported.

7.4 The Committee also recommends developing and promoting educational content and scientific and technical databases that can be accessed free of charge by all. Such material, which should be prepared by institutions, universities or associations, would make a significant contribution to the Lisbon strategy and the free movement of knowledge in Europe.

## 8. Summary and final comments

8.1 Acknowledging the role of digital content in improving people's access to information and stimulating the economic and social development of European businesses, the EESC is in favour of establishing the eContentplus programme as an instrument to encourage the reuse of public sector information and the creation of multilingual and multicultural European content.

8.2 The EESC agrees with the eContentplus programme's objective that Europe's cultural and linguistic diversity must be assured and as such be an integral factor in the development of the information society. It therefore welcomes the programme's approach, as it focuses on the design, development, access and distribution of high-quality digital content.

8.3 While it understands and accepts that the overriding principle of eContentplus is to maximise the impact on a smaller group of participants, the EESC points to the need to widen the scope and the respective financial impact of the 'reinforcing cooperation and awareness' measure, in order to mitigate the potential worsening of regional asymmetries between beneficiaries of the current Community initiative.

8.4 Moreover, in view of the mid-term evaluation report's recommendations concerning the profile of the eContent follow-on programme, the EESC recommends that the planned evaluation measures and reports should also gauge – as far as possible – the degree of satisfaction of users of the services supported by the programme.

Brussels, 29 April 2004.

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

---

<sup>(1)</sup> Point 3.2.3 - A possible profile for 'eContent II' - COM(2003) 591 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 application of the provisions of the Århus 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 - 2003/0242(COD))

(2004/C 117/13)

On 7 November 2003, the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Århus 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 - 2003/0242(COD)).

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 Mrs Sánchez Miguel.

At its 408<sup>th</sup> plenary session of 28 and 29 April 2004 (meeting of 29 April 2004) the European Economic and Social Committee adopted the following opinion by 68 votes to six, with seven abstentions.

## 1. Introduction

1.1 EU environmental policy, as laid down in Article 6 of the EC Treaty, and in particular the Community objective of promoting sustainable development, require European citizens to feel fully informed and involved regarding its implementation. For this reason, DG Environment has – through a series of mechanisms, laws, communications, conferences, etc. – stepped up the information and participation of environmental policy stakeholders.

1.2 Until today, most mechanisms were based on the introduction of provisions on public information and participation and, to a lesser extent, access to justice in respect of environmental matters.

1.3 According to Article 175(1) of the EC Treaty, the Commission is competent to adopt measures to ensure that environmental policy objectives are met. Thus the provisions on public participation should serve to promote and improve environmental protection. It should be pointed out that this information and consultation mechanism is already applied to other Community policies, in particular the CAP and industrial policy. Given the impact these policies have on sustainable development, it is essential that they are implemented in a transparent manner and that information is provided not only for stakeholders, but also for the public as a whole.

1.4 To date, the following legislation has promoted public information and participation regarding environmental matters:

— Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(1)</sup>;

— Directive 2003/4/EC on public access to environmental information <sup>(2)</sup>;

— Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment <sup>(3)</sup>.

1.5 In 1998, the European Community signed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Århus Convention'). This reaffirmed the objective of stepping up the involvement of European citizens in environmental matters, with a view to encouraging them to participate more fully in conserving and protecting their natural environment and thereby promoting sustainable development in Europe.

1.6 The current legal situation – characterised by the fact that not all the Member States have ratified the Århus Convention <sup>(4)</sup> – calls for action in two areas. Firstly, a legal instrument (Regulation) is needed to ensure that the requirements of the Convention on access to information, public participation in decision-making and access to justice are fully applied to the Community institutions and bodies. Secondly, the provisions aimed at the Member States must be supplemented with a proposal for a Directive on access to justice which incorporates the relevant provisions of the Århus Convention.

<sup>(1)</sup> OJ L 145 of 31.5.2001, p. 43. The Commission also adopted a Communication on Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission – COM (2002) 704 final of 11.12.02.

<sup>(2)</sup> OJ L 41 of 14.2.2003, p. 26.

<sup>(3)</sup> OJ L 156 of 25.6.2003, p. 17.

<sup>(4)</sup> It has been ratified by the following countries: Portugal, Belgium, France, Denmark and Italy.

## 2. Gist of the proposal for a Regulation

2.1 The proposed Regulation aims to apply the Århus Convention to the competent bodies of the EU, by introducing the necessary requirements for access to information, participation and justice in environmental matters. It therefore defines all those concepts relating to the subject matter of the proposed Regulation, as well as the reference bodies that will be subject to the obligations outlined below. It is important to point out that one of the definitions refers to environmental law.

2.2 Access to environmental information (Articles 3 to 7) incorporates the provisions of Regulation (EC) No. 1049/2001/EC, which is now extended to all Community institutions and bodies that perform an environmental function and not only the Parliament, Council and European Commission. These bodies have a responsibility to provide environmental information and must therefore find the most appropriate means of making this information available to the public and continuously updating it by whatever means available, preferably by public telecommunication networks. This will allow interested parties to have rapid access to the information they require. The following criteria must also be met with regard to information:

- information must be accurate and up to date;
- interested parties must have access to information so that requests for information can be dealt with quickly;
- the competent authorities must cooperate in providing information in the event of an environmental emergency.

2.3 Article 8 deals with public participation and sets out the conditions under which the public has a right to participate in the preparation of plans and programmes relating to the environment, when such plans and programmes are prepared by Community institutions and bodies and required by a provision. This enables qualified members of the public and environmental organisations to participate at an early stage, before such plans and programmes are adopted.

2.4 Access to justice is available to any qualified entity with legal standing. In other words, only those organisations recognised in accordance with Articles 12 and 13 are entitled to institute proceedings before the EU Court of Justice. However, as laid down in Article 9, a qualified entity with legal standing may also request a review of the administrative actions of the Community institutions and bodies and, if substantiated, all actions in breach of environmental law can be suspended, without the need for legal proceedings.

## 3. General comments

3.1 The EESC has repeatedly expressed its view that the EU's most appropriate instrument for ensuring compliance with environmental legislation is public participation in sustainable development policy, and that such participation must be based on transparency and checks to ensure that all parties comply with the relevant legislation, whilst guaranteeing the protection

of confidential information. Instruments such as access to information, participation in the preparation of plans relating to the environment and subsequent access to justice will not only help step up compliance with legislation, but will also improve public awareness and education concerning the conservation and use of existing natural resources.

3.2 In this new phase, with ten new countries about to join the EU, these new harmonising measures have to be proposed by the Commission. It is also essential for the Århus Convention to be ratified by all those European countries that signed it. It should also be ratified by the European Community, as this will increase instruments for environmental protection at world level, in particular those laid down in international conventions.

3.3 This new legal instrument is intended to complete the application of the Århus Convention, introducing a legal instrument aimed at the Community authorities. The cross-border impact of much environmental legislation calls for this act, as on many occasions it is the Community authority that must resolve questions of application. We must stress the role of the European Environment Agency in this task, as a centralised base for information and monitoring in the area of environmental legislation compliance throughout the EU.

3.4 Although the EESC welcomes the proposed legislation, it wishes to point out and clarify a number of aspects that are essential to fully meeting the stated objective.

3.4.1 The definitions provided in this proposal are based on, though differ slightly from, those found in the Århus Convention. They include, in particular:

3.4.1.1 The concept of qualified entity is defined in both proposals but not found in the Århus Convention, which refers only to 'the public concerned' and recognises as such any organisations promoting environmental protection. According to the Convention, it is not necessary for such protection to be their sole objective, only that they meet the relevant legal requirements for associations in each Member State. It would seem obvious that other non-profit organisations, such as trade unions, social economy and socio-occupational organisations, consumer associations, etc., also play an important role in protecting the environment at local, regional, national and European level.

3.4.1.2 The Regulation refers to Community institutions and bodies in a broad sense, referring back to Regulation (EC) No. 1049/2001. This is understood to include the EESC.

3.4.1.3 It must be pointed out that there are discrepancies in the wording of the list of areas covered by environmental law. The EESC recommends checking a number of key points, e.g. indent (v). It is essential that, as minimum requirements, all paragraphs relating to the harmonisation of environmental protection are worded in the same way. (N.B. This does not apply to the English version of the document.)

3.4.2 Environmental proceedings. Account should be taken of the fact that Article 9(5) of the Århus Convention clearly states that the parties – in this case the Community bodies – must provide information about access to procedures and establish ‘assistance mechanisms’ to remove or reduce financial and other barriers to access to justice in environmental matters.

#### 4. Specific comments

##### 4.1 *Regulation on access to information, public participation in decision-making and access to justice in environmental matters*

4.1.1 The EESC considers that the proposed Regulation strengthens the broad measures provided by the Commission to meet environmental objectives and, in particular, that it is the appropriate instrument to facilitate access to information, participation and access to justice for European citizens through their social, economic and environmental organisations vis-à-vis the Community institutions and bodies, including the agencies and public offices set up by the EC Treaty or on the basis thereof, except where these are using their judicial or legislative powers, so as to ensure that not only the Commission, but all institutions in the broadest sense of the term are answerable to citizens, as laid down in Regulation (EC) No. 1049/2001.

4.1.2 A key development is the introduction of the term ‘qualified entity’ in connection with access to justice (as opposed to the articles on information and participation, which stick to the term ‘the public’, as used in the Århus Convention). The EESC welcomes, in principle, the inclusion of this term as it believes it will facilitate access to justice, especially as such entities are not required to have a sufficient interest or maintain the impairment of a right. The EESC is concerned, however, by the restrictive nature of the criteria for recognising qualified entities, according to which environmental protection must be their sole objective. It would be more appropriate in the European context if organisations which have social and economic objectives, as well as competence in the area of environmental protection, were also recognised.

4.1.3 As regards public participation in the preparation of plans and programmes, as laid down in Article 8, the EESC would like to begin by reiterating that the reference to NGOs that promote environmental protection is potentially restrictive.

While not as restrictive as the definition of qualified entity, it could have the same effect, albeit owing to procedural inertia. The EESC also reiterates its request for the concept to be extended to all organisations whose objectives include environmental protection. Article 8 should also include a requirement for the Community institutions to publish the results of such participation. The EESC supports the extension provided for by the Århus Convention of access to environmental information and of public participation in drawing up plans and programmes on environmental matters by Community institutions and bodies. It hopes that those organisations will operate in such a way as to ensure effective participation, and that the results of such participation will be properly taken into consideration. It calls for the financing criteria of the activities listed in the annex to the Convention, and deliberations relating to GMOs and chemical substances, to be published transparently and in full, given the particular sensitivity of the public to environmental safety and the health protection issues that go with it.

4.1.4 From the point of view of the Århus Convention, Title IV on access to justice in environmental matters distorts the stated objective by stipulating that only qualified entities are entitled to request an internal review of administrative acts or initiate legal proceedings. While the EESC understands that the restrictive nature of the proposal stems from a desire for procedural simplicity, it believes that, where reviews or legal proceedings in the Community sphere are concerned, demonstrating an interest and competence would be sufficient grounds for taking such action.

4.1.5 The EESC does not believe that the field of activity of qualified entities should have to cover several countries.

4.1.6 Article 12(d) of the Proposal for a Regulation stipulates that a qualified entity must have its annual statement of accounts certified by an auditor. In accordance with the principle of subsidiarity, the Member States should be left to check compliance with national accounting requirements applicable to such organisations.

4.1.7 The EESC thinks that in order to reduce the cost of claims for state legal protection, the costs should be limited in line with the interests at stake and the financial support, as laid down in the Århus Convention.

Brussels, 29 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 Directive of the European Parliament and of the Council on access to justice in environmental matters'**

(COM(2003) 624 final - 2003/0246 (COD))

(2004/C 117/14)

On 7 November 2003, the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the 'Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters' (COM(2003) 624 final - 2003/0246 (COD)).

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 Mrs Sánchez Miguel.

At its 408<sup>th</sup> plenary session of 28 and 29 April 2004 (meeting of 29 April 2004) the European Economic and Social Committee adopted the following opinion by 76 votes to five, with eight abstentions.

## 1. Introduction

1.1 EU environmental policy, as laid down in Article 6 of the EC Treaty, and in particular the Community objective of promoting sustainable development, require European citizens to feel fully informed and involved regarding its implementation. For this reason, DG Environment has – through a series of mechanisms, laws, communications, conferences, etc. – stepped up the information and participation of environmental policy stakeholders.

1.2 Until today, most mechanisms were based on the introduction of provisions on public information and participation and, to a lesser extent, access to justice in respect of environmental matters.

1.3 According to Article 175(1) of the EC Treaty, the Commission is competent to adopt measures to ensure that environmental policy objectives are met. Thus the provisions on public participation should serve to promote and improve environmental protection. It should be pointed out that this information and consultation mechanism is already applied to other Community policies, in particular the CAP and industrial policy. Given the impact these policies have on sustainable development, it is essential that they are implemented in a transparent manner and that information is provided not only for stakeholders, but also for the public as a whole.

1.4 To date, the following legislation has promoted public information and participation regarding environmental matters:

- Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(1)</sup>;

<sup>(1)</sup> OJ L 145 of 31.5.2001, p. 43. The Commission also adopted a Communication on Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission – COM (2002) 704 final of 11.12.02.

- Directive 2003/4/EC on public access to environmental information <sup>(2)</sup>;

- Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment <sup>(3)</sup>.

1.5 In 1998, the European Community signed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Århus Convention'). This reaffirmed the objective of stepping up the involvement of European citizens in environmental matters, with a view to encouraging them to participate more fully in conserving and protecting their natural environment and thereby promoting sustainable development in Europe.

1.6 The current legal situation – characterised by the fact that not all the Member States have ratified the Århus Convention <sup>(4)</sup> - calls for action in two areas. Firstly, a legal instrument (Regulation) is needed to ensure that the requirements of the Convention on access to information, public participation in decision-making and access to justice are fully applied to the Community institutions and bodies. Secondly, the provisions aimed at the Member States must be supplemented with a proposal for a Directive, on access to justice which incorporates the relevant provisions of the Århus Convention.

## 2. Gist of the proposal for a Directive

2.1 The proposed Directive lays down the minimum requirements for access to judicial and administrative proceedings in environmental matters in order to ensure a better implementation of EU environmental law. These minimum requirements are intended both to promote compliance with the Århus Convention and to harmonise legislation in the EU Member States, with a view to preventing situations of inequality between economic operators and administrative authorities.

<sup>(2)</sup> OJ L 41 of 14.2.2003, p. 26.

<sup>(3)</sup> OJ L 156 of 25.6.2003, p. 17.

<sup>(4)</sup> It has been ratified by the following countries: Portugal, Belgium, France, Italy and Denmark.



2.2 The proposal is based on definitions of stakeholders, procedures and acts or omissions that can give rise to proceedings.

2.3 The most important question is that of legal standing, or the right to institute judicial or administrative proceedings. Here a distinction is made between members of the public and qualified entities, i.e. the former are required to have a sufficient interest and maintain the impairment of a right or of procedures, while the fact that the latter are qualified exempts them from having a sufficient interest.

2.4 Bodies meeting the criteria laid down in Articles 8 and 9 will automatically be recognised as qualified entities and given legal standing, with no further requirements.

2.5 Article 6 allows for a request for internal review to be made if an administrative act or omission is thought to be in breach of environmental law, and aims to harmonise the time limit and form in which such requests are made in the Member States.

### 3. General comments

3.1 The EESC has repeatedly expressed its view that the EU's most appropriate instrument for ensuring compliance with environmental legislation is public participation in sustainable development policy, and that such participation must be based on transparency and checks to ensure that all parties comply with the relevant legislation. Instruments such as access to information, participation in the preparation of plans relating to the environment and subsequent access to justice will not only help step up compliance with legislation, but will also improve public awareness and education concerning the conservation and use of existing natural resources.

3.2 In this new phase, with ten new countries about to join the EU, these new harmonising measures have to be proposed by the Commission. It is also essential for the Århus Convention to be ratified by all those European countries that signed it. It should also be ratified by the European Community, as this will increase instruments for environmental protection at world level, in particular those laid down in international conventions.

3.3 Although the EESC welcomes the proposed legislation, it wishes to point out and clarify a number of aspects that are essential to fully meeting the stated objective.

3.3.1 The definitions provided in this proposal are based on, though differ slightly from, those found in the Århus Convention. They include, in particular:

3.3.1.1 The concept of qualified entity is defined in both proposals but not found in the Århus Convention, which refers only to 'the public concerned' and recognises as such any organisations promoting environmental protection. According to the Convention, it is not necessary for such protection to be their sole objective, only that they meet the relevant legal

requirements for associations in each Member State. It would seem obvious that other non-profit organisations, such as trade unions, socio-occupational organisations, social economy organisations, consumer associations, etc., also play an important role in protecting the environment at local, regional, national and European level.

3.3.1.2 The Directive refers to the public authority, i.e. the public administration at the various levels, but excludes institutions acting in a judicial or legislative capacity.

3.3.1.3 It must be pointed out that there are discrepancies in the wording of the list of areas covered by environmental law. The EESC recommends checking a number of key points, e.g. Article 2(1)(g)v. It is essential that, as minimum requirements, all paragraphs relating to the harmonisation of environmental protection are worded in the same way. (N.B. This does not apply to the English version of the document.)

3.3.2 Judicial actions. Criminal proceedings<sup>(1)</sup> are explicitly excluded from environmental proceedings, which can only take the form of administrative or judicial proceedings within the EU. This situation limits proceedings in the Member States, most of which have their own penal sanctions for environmental crimes. Moreover, Article 9(3) of the Århus Convention, on procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of environmental law, refers only to restrictions laid down in the law which has been contravened (i.e. national environmental law). In this way, the action taken depends on the contravention committed, so that the punishment fits the crime. The EESC believes that, in contrast to national law, the current wording of the proposed Directive could limit environmental proceedings.

3.3.3 Environmental proceedings. The proposals under discussion lay down a general formula according to which the Member States must provide for 'adequate and effective proceedings that are objective, equitable, expeditious and not prohibitively expensive'. In the EESC's view, although according to the subsidiarity principle judicial procedures should be laid down in national legislation, it would be a good idea to use the formula laid down in Article 9(5) of the Århus Convention, which clearly states that the parties must provide information about access to procedures and establish 'assistance mechanisms' to remove or reduce financial and other barriers to access to justice in environmental matters.

### 4. Specific comments

4.1 This proposal for a Directive completes the process of aligning legislation in the Member States with the Århus Convention. It establishes a common framework of procedural provisions to be applied to all the Member States, while guaranteeing the uniform application of environmental law. It is the cross-border dimension of many of the problems that calls for measures at Community level.

<sup>(1)</sup> Art. 2(f) of the Proposal for a Directive



4.2 The content of this proposal is compatible with Community rules on access, as laid down in other Community provisions. Nonetheless, Article 1 should stipulate that these are minimum requirements, in order to prevent Member States with more comprehensive environmental legislation, i.e. that recognises public action and criminal offences, being affected.

4.3 In Article 2 (Definitions), a number of paragraphs should be amended:

- c) in order for an entity to be considered a 'qualified entity', one of its objectives should be to protect the environment;
- f) environmental proceedings should include criminal proceedings;
- g) the concepts listed under 'environmental law' should be brought into line with those used in the Regulation, e.g. indent v);
- 2. this paragraph should stipulate that these are minimum requirements which must, under no circumstances, be lowered when transposed into national legislation.

4.4 There are two key issues in Articles 5 and 6 on the legal standing of qualified entities and their entitlement to request an internal review: (i) the legal standing of qualified entities in judicial proceedings in environmental matters is limited to a specific geographical area and (ii) a request for internal review can be submitted in another Member State providing the conditions of Article 5(1) are met. This is contradictory as, if qualified entities only have legal standing in judicial proceedings in a specific geographical area, this restriction should also apply to internal reviews. In both cases, the EESC believes that it would be fairer, in the light of the Århus Convention, if no

restrictions were placed on access to justice in either scenario and national conditions governing legal proceedings in this regard were maintained.

4.4.1 As regards the time limits laid down in Article 6, it would make more sense for them to be calculated from the date on which the administrative act is published as opposed to the date on which it is adopted, as it is impossible to know about the act if it has not been published.

4.5 As regards the criteria for recognition of qualified entities, the EESC reiterates its request for Article 8 to be extended to legal persons of which one of the objectives is to protect the environment.

4.6 Finally, with regard to Article 10 (Requirements for environmental proceedings), the EESC points out that Article 9(4) of the Århus Convention is more complete. The fact that the former does not include a reference to reducing financial and other barriers to access to justice could in fact make it harder for organisations with limited resources to have access to justice.

4.7 Article 8(d) of the Directive specifies that a qualified organisation must have its accounts certified by an auditor. In accordance with the principle of subsidiarity, Member States should be left to check compliance with national accounting requirements applicable to such organisations.

4.8 The EESC thinks that in order to reduce the cost of claims for State legal protection, the costs should be limited in line with the interests at stake and the financial support, as laid down in the Århus Convention.

Brussels, 29 April 2004

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

**Opinion of the European Economic and Social Committee on 'The repercussions of trade policy on industrial change, with special reference to the steel sector'**

(2004/C 117/15)

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 own-initiative opinion on 'The repercussions of trade policy on industrial change, with special reference to the steel sector.'

The Consultative Commission on Industrial Change was instructed to prepare the Committee's work on the subject.

At its 408<sup>th</sup> plenary session of 28 and 29 April 2004 (meeting of 29 April 2004), the European Economic and Social Committee decided to appoint Mr Lagerholm as rapporteur-general and adopted the following opinion by 46 votes in favour, 16 against and 8 abstentions.

**1. Introduction. Aim and scope of the opinion; definitions**

1.1 The steel sector, its process of continuous change and the impact of trade policy on that process, presents a case study of great value to other industrial sectors.

1.2 For the purpose of this own-initiative opinion, 'steel sector' is defined as the total of industrial activities related to steel production and steel distribution taking into account their important functions for the European steel-consuming industries. The scope of this opinion and the recommendations it contains therefore go well beyond the steel-making industry only.

1.3 In this document, 'industrial change' is meant to be the normal and continuous process of an industrial sector proactively responding to the dynamic movements in its business environment in order to remain competitive and create growth opportunities. Rather than being an objective of that process, changes to the structure of the sector are understood as a result of the response to these movements. 'Restructuring' refers to a particular form of industrial change and regularly is an ad hoc process of (often enforced) adaptation to the conditions in the business environment in order to regain competitiveness, leading to discontinuities in business activities. Restructuring has as its prime objective a fundamental change of structures in that industrial sector.

1.4 It is obvious that industrial change is largely driven by structural changes in the overall economic environment, especially by the dynamic change of market needs. Also internal (national and/or EU) policies of very different nature – i.e. legal, monetary, environmental, energy and last but not least, social – have a significant impact on industrial change, sometimes a decisive one. This of course can be very clearly observed monitoring the industrial change in the EU steel sector in the past 20 years. But this opinion only deals with EU trade policy, which by definition is an external element and sets the political framework for trade flows between the EU and other countries or economic regions of the world.

1.5 Consequently it has to be kept in mind that this opinion does not have as its aim to describe industrial change in the EU steel sector including all of the above-mentioned (internal) poli-

cies but only the interdependencies between the steel sector and (external) trade policy.

1.6 In this context it also has to be understood that the EU enlargement process is no longer an EU trade policy issue, which it has been to a considerable extent in the early phases of the accession negotiations with the then candidate countries. There will be a single enlarged common market by May this year leading to the conclusion that any further EU policies meant to assist industrial change and especially with the restructuring of the steel sector in the acceding countries, which is still necessary, are part of the internal EU policy framework.

**2. Significance of trade policy in the steel sector**

2.1 Companies compete in an increasingly global economy and the business conditions they face in the world market are key determinants of their competitiveness and growth opportunities. To a great degree, these conditions depend on the market framework put in place by policymakers: e.g. competition and internal market rules, international trade rules and specific rules and agreements on trade disciplines. This framework results from trade policies at both national and international levels. Ideally, it should stimulate and facilitate a permanent process of industrial change which reflects the dynamics of the global economy. It should certainly not have a negative influence on industrial change and hinder free and fair international competition. Indeed, trade policy should have as its main objective to secure the openness of the world trading system as well as to enforce 'fair play' on a level playing-field.

2.2 In this context it has to be pointed out that trade policy is an extremely important aspect of the European Union's political framework given that the EU is an export-oriented economy showing considerable surplus results in its trade balance. Consequently trade policy is an important driving factor for economic growth. The existence of a Commissioner and the DG Trade within the European Commission fully reflects the vital interest of the Community in the management of trade policy. The Lisbon Strategy to support the competitiveness of European economy certainly looks at the enhancement of internal parameters in the first place; but the success of such

efforts will largely show only in global markets which of course can only be reached by relevant and equally successful trade policy development.

2.3 In the steel sector, the significance of trade policy is extremely high. Steel, together with oil, is the most commonly traded industrial product between nations. Today, approximately one third of total world steel production is traded across borders: almost double the figure of thirty years ago. Conditions applying to international steel trade therefore present one of the most important factors for competitiveness in this sector. Similar observations can be made regarding the almost unlimited variety of steel consuming industries and their products – i.e. the automotive sector, shipbuilding and mechanical equipment. Trade policy directly affects how the steel sector with its different segments can respond to competition on its own domestic markets and how it can access third country markets. Trade policy is instrumental in shaping the rules-based system within which world trade operates and the extent to which it can respond to structural changes in its business environment.

2.4 The importance of international steel trade is reflected in the fact that more than 40 % of current WTO conflict cases are steel related. That figure reflects the continuing challenges of the sector in terms of the existence of inefficient capacities, often funded by state aid, which constitute a distorting influence on trade flows and it tells us that there exist fundamental flaws in the application of existing agreements on rules governing international trade by WTO members.

2.5 Finally, it has to be kept in mind that the EU steel sector constitutes an essential element of the European economy and contributes significantly to economic development. Steel is the fundamental and still most important industrial material with a global market volume of more than an estimated EUR 350 billion – more than ten times the market volume of any other industrial material – and essential for infrastructure development as well as for most of the different manufacturing sectors. A very efficient EU steel production is able to fulfil any market needs the important steel consuming sectors may develop, largely helped by equally efficient steel distribution systems which organise about two thirds of the market supply and render ever increasing services to steel consumption. Without its own highly competitive steel production the Community could not rely on its own resources and own know-how to develop still further the competitiveness of EU steel consuming industries among the world's leaders. Maintaining a vibrant steel sector should therefore be of major political concern to the EU.

### 3. Industrial change in EU steel production and trade policy

3.1 Steel production in the EU-15 has undertaken extensive restructuring efforts since the early eighties: a reduction of 50 million tonnes of market-effective steel making capacity, the closure of more than 50 % of its production sites and the reduction of the number of employees in the steel-making industry from 900,000 to 250,000. The EU-15 is the second largest steel producer in the world after China, producing about 160 million tons of crude steel per year, representing approximately 20 % of world steel output. Its turnover is calculated at about EUR 80 billion.

3.2 Today, European steel production (EU-15) is among the best, worldwide, in terms of manufacturing skills, equipment performance, product quality, distribution and service activities and innovative capacity. It is characterised by the co-existence of a few very large and truly global players, a number of smaller and specialised producers and numerous highly efficient distributors and service centres. The painful process of restructuring in the eighties and first half of the nineties, followed by a process of privatisation and consolidation, has resulted in a modern and competitive sector which could rightfully feel confident about its future and its capacity to successfully respond to the challenge of continuous change under free and fair trade conditions.

3.3 Indeed, in a market truly subject to the rules of free and fair competition, EU-15 steel production would even be more competitive than it is today. However, the international competitiveness of EU steel production is seriously threatened by protectionist measures and market distorting practices in third countries such as the S. 201 safeguard measures taken by the US government, which were ruled not to be in conformity with WTO rules by WTO panels. Also, non-viable excess capacities worldwide continue to destabilise the balance between supply and demand and thus steel prices – especially in poor global market situations.

3.4 In the extensive restructuring of the steel production in Europe in the 1980s and 1990s, trade policy played a key role. In response to the increase of third country imports and based on the European Coal and Steel Community (ECSC) treaty, the European Commission initiated its 'Volet Externe': a series of measures for peripheral protection which consisted essentially of bilateral agreements with the main steel exporting countries to voluntarily restrain their deliveries to the Community and which complemented the internal measures taken to control state aid, assist restructuring and for a time regulate the market. The measures stayed in force throughout the crisis period and maintained imports at around 10 % of apparent consumption.

3.5 Steel production in the new member states of the EU as of May 2004 is still in a process of structural change, key elements of that change process being cutting of non-viable excess capacities, bringing steel-making technologies up to modern standards, enhancing economic and market synergies through consolidation efforts and making the paradigm shift from a production-oriented approach to one which is market-oriented and based on customer oriented entrepreneurship. The EU-15 supported this process through a series of bilateral agreements with the candidate countries in the years before accession, implementing the EU rules based on the ECSC instruments. These regulations went as far as giving the European Commission the right of control and approval of national restructuring plans.

3.6 As a result, EU steel production in the enlarged Union will present itself in a different form on the world market. On one hand its position will be strengthened by the accession of the new member countries and the Union again becoming a more important net exporter of steel. On the other hand, the structures of EU steel production will be weakened by the sheer fact that steel undertakings in these countries are still in a process of restructuring. Trade policies will have to take the above circumstances into account, albeit within a rules-based system.

#### 4. Future challenges for trade policy and industrial change

Today, European steel production seems considerably vulnerable to policies and practices that breach trade disciplines. The European market for steel is the most open in the world. Following the zero-for-zero agreement on steel in the Uruguay round, tariff rates for imports of steel in the EU are eliminated in 2004. Imports of steel in Europe have grown very fast in recent years, rising from 14.5 million tonnes in 1997 to 24.6 million tonnes in 2002 - a 70 % increase - and turning the EU, which had been a net exporter for decades, into a net importer of steel in 1998. (In 2003 exports were again slightly larger than imports.)

From here on, looking into the future, a number of challenges can be identified that set the context of trade policy in relation to ongoing changes in the steel sector in the coming few years:

- The former CIS countries Russia, Ukraine and Kazakhstan – which are not WTO members - represent a region where EU trade policy is still steel-specific given the bilateral agreements regulating trade in steel products with these countries. These agreements represent a mature and pragmatic response to the challenges presented by these economies in transition: permitting a controlled development of trade and avoiding trade surges and an anti-dumping reaction during a period in which the industries of these countries are adjusting their capacities and developing their internal consumption. The possible accession of Russia to the WTO is another very important element for the EU steel industry.

- As compared to other industrial sectors, steel is still highly fragmented on a world scale; the process of consolidation has taken place solely in few regions such as the EU. It is, however, to be expected that in the coming years steel firms will increasingly be looking for cross-regional mergers and alliances, following the process of globalisation and consolidation in their industrial markets. Multilateral trade agreements should take account of that dynamic movement, lifting barriers to foreign investment as well as to in-company trade.
- In a global economy, the concept of 'home market' no longer exists. Already a large number of steel producing and distributing companies have operations in other regions and approach customers in these regions as an 'on-shore' supplier. Future trade policies will not only have to take into account this trend towards internationalisation, but will also have to encounter other dynamics of this industry with new steel producing regions looking for a position on the world steel planet. Many steel firms located in developing countries are already modern and competitive and their preferential treatment in the world trade system therefore cannot be justified.

#### 5. The EESC's comments on key trade policy issues in the steel sector

Given its present position and the future challenges it faces, the EU steel sector, in order to successfully respond to the dynamic movements in its business environment, will want to see the same openness and fairness in steel markets around the world as is the case for third country imports into the EU. Despite the negative outcome of the WTO meeting in Cancun in September 2003, the Doha Round still provides an opportunity to make significant progress in unrestricted market access between WTO members. It also permits discussions on improvements to existing rules, fine-tuning and reinforcing existing disciplines, notably anti-dumping. In a wider perspective, an effective launch of negotiations on the so-called Singapore issues, such as trade facilitation and trade and competition, would bring real benefits to the steel sector in Europe and indeed world-wide.

Without totally excluding the possibility of improving market access through a bilateral or regional approach with those regions or countries with which the EU has the greatest economic interest in terms of trade, the interests of the EU steel sector are served best in a multilateral trade system (WTO). This should be based on rules that are consistently transposed into national law by all countries and provides for instruments that are applied objectively with no political interference and implemented on an equal basis by all countries. Given the steel related trade policies and practices of certain countries in the past years, the efforts of the EU should focus strongly on the following points:

- priority to improving market access and removing barriers to trade;



- stronger rules on fair trade: anti-dumping, subsidies, safeguards;
- targeted and responsible use of WTO instruments: speedy, measured and proportionate redress only for combating unfair imports;
- above all: ending the abuse of trade instruments for nationalist and protectionist reasons, judging trade cases on their economic/technical rather than on their political merits;
- widely differing social and environmental standards in different parts of the world affect trade flows not only in steel but in many other sectors as well. The differences between economic regions regarding conditions to guarantee fundamental social rights and the protection of the environment lead to economic distortions in world-wide competition and have to be considered as problems not only of the industrial sectors involved but of all policy-makers - including trade policy. The most important elements of these basic statements can be further evaluated taking into account the following aspects.

#### 5.1 Market access

5.1.1 As stated above, the European market for steel is the most open in the world and European steel production is considerably vulnerable to policies and practices that breach trade disciplines. Consequently the European steel sector needs to see the same openness in markets around the world. Both European and multilateral trade policy instruments need therefore to remain mobilised with a view to removing obstacles to market access in third countries while providing effective remedies to unfair trade practices by those third countries accessing the EU steel market. The effective use of trade policy instruments is a legitimate interest of the steel industry.

5.1.2 The priority of the EU is that the Doha Round delivers effective gains in market access through tariff reductions accompanied by the simultaneous elimination of non-tariff barriers. As to the special and differential treatment (SDT) for developing countries, SDT should apply only on a case by case basis and distinguish between countries and sectors, according to their level of competitiveness. SDT in itself should not prevent tariff elimination by those developing countries with highly competitive steel industries.

5.1.3 Effective market access gains will only be achieved if tariff reductions are accompanied by the elimination of non-tariff barriers. Furthermore, the application of existing WTO rules can constitute a barrier to market access. The Doha Round provides an opportunity for governments to clarify existing rules and to harmonise their application on the basis of best practice.

#### 5.2 Anti-dumping

5.2.1 Anti-dumping measures are still necessary to defend the European industry against unfair trade practices but the operation of anti-dumping instruments must be impartial and non-discriminatory, the rules being applied to all equally and without exception unless especially provided by WTO rules. For that, discussions should be pursued to achieve a greater harmonisation of the implementation of the existing WTO agreement on anti-dumping, preferably towards EU anti-dumping standards.

5.2.2 Important objectives for a harmonised application and strengthening of the anti-dumping agreement should focus, above all, as the efficiency and effectiveness of the instrument: fair and expeditious timetables, early provisional determination of injury, mandatory adoption of the so-called 'lesser duty' rule, just to mention the most important.

5.2.3 If the main objective of a world-wide adaptation of EU standards regarding anti-dumping procedures cannot be achieved, the EU should optimise its own anti-dumping application, enhancing its effectiveness, efficiency, transparency and objectivity. The European steel sector must be enabled to fight effectively against dumped or subsidised imports from third countries. EU legislation on anti-dumping and anti-subsidy procedures is considerably more liberally organised than laid down by the WTO or is the case in other countries, notably the USA. This is true for example for the 'Community interest' clause and the 'lesser duty' rule. Practical implementation in the EU also exhibits weaknesses in comparison with other countries, the European Commission refusing to open proceedings to react to threat of injury, instead demanding proof of injury that has already occurred. Also, the Commission makes use of the maximum time periods for investigation in EU rules, leading to further delays. Finally, the EU needs of more rapid and effective monitoring of trade flows. These and other shortcomings should be corrected.

#### 5.3 Subsidies

5.3.1 Subsidies are discussed within the Doha Round as well as within the OECD, the latter having as its main objective the conclusion of a specific steel subsidies agreement (SSA). The pending OECD discussions are of extreme importance. An international agreement on a general prohibition of any kind of (direct or indirect) state aid for steel undertakings, with only a very limited number of green-lighted exemptions, would have a very strong positive impact on trade relations between countries. Indeed, the agreement on subsidies should above all address the root causes of steel trade disputes: subsidised excess and inefficient production capacities. These inefficient capacities intensify the trade problems of the industry, pressing more material than can be absorbed on international markets and certainly on the most open markets such as the EU.



5.3.2 The cornerstone of a new international agreement should be the prohibition of all specific subsidies but for a limited set of exemptions as they were foreseen in the European Steel Aid Code, the most important being subsidies for permanent closures including state aid to help with social consequences. All generic subsidies should be allowed, with the exception of those that contribute to the creation of new capacity or the maintaining in activity of uneconomic capacity. Special and differential treatment (SDT) can be envisaged for developing countries respectively for steel sectors facing the need to restructure. Temporary derogations for these countries and sectors should be conditioned by the long-term viability of the beneficiaries and to a reduction of capacity commensurate with the amount of subsidies received.

5.3.3 Negotiations should further aim to establish more effective (pre-)notification rules to strengthen a preventive approach and to establish a dissuasive system of sanctions, including the incorporation of automatic sanctions in case of violation of the obligation to pre-notify.

5.3.4 However, taking into consideration the number of participants and their until now widely divergent positions, there are strong concerns that the OECD negotiations will end up in a compromise 'window dressing' agreement and will not really improve on the current disciplines. Such an agreement should not be supported by the EU.

#### 5.4 *Trade policy, industrial change and the social dimension*

5.4.1 The restructuring of the European steel sector in the eighties and early nineties had dramatic consequences for employment. Trade policy instruments used by the European Commission during that episode were used to support the restructuring process. Then and now social and employment policies have a role to play in ensuring that the promotion of competitiveness and growth is part of the balanced implementation of trade policies in the context of industrial change processes. By constantly upgrading the skills of workers and the quality of work, they greatly contribute to a smooth and successful process of industrial change, serving the interests of all stakeholders.

5.4.2 Also, the increasing demand for corporate social responsibility may ultimately make a positive contribution to the competitiveness of the European steel sector in the context of the European Social and Economic Model.

5.4.3 Workers' interests are best met by an industry that can firmly stand on its own feet and has no need to hide behind the back of national governments to protect itself against fierce but fair competition. Steady employment, good labour conditions, sound future perspectives: the winds of free and fair trade can only help to achieve these goals. Finally, the steel sector today understands that its process of industrial change

should be managed so as to anticipate developments and avoid abrupt deterioration and structural damage with unacceptable social consequences.

#### 6. **EESC conclusions**

Considering the findings of this own initiative opinion on the repercussions of trade policy on industrial change, with special reference to the steel sector, the EESC reaches the following conclusions:

6.1 The EU steel sector has a vital and strategic interest for the European Union given the competitive technological knowledge base on which it is built and its strategic importance for the development of infrastructure within the EU and for most manufacturing sectors.

6.2 Industrial change in the EU steel sector has been effectively enhanced by the use of the ECSC instruments in the restructuring process - not least by the social dialogue that has been an integrated part of that process. While this was not able to prevent the restructuring process having profound repercussions for employment, compared with other sectors the impact was substantially alleviated by diverse social measures. Trade policy, the subject of this opinion, has, together with trade policy measures undertaken to support other instruments, played an important role in this restructuring process. The EU steel sector therefore may well serve as a case study on the implications of industrial change as well as the repercussions of trade policy on the potential success of change management and may provide lessons to be learnt for other industrial sectors.

6.3 Trade policy is an essential part of the market framework put in place by policymakers and has to ensure a level playing field and fair play on that field, on which the competitiveness and future growth opportunities of the sector largely depend.

6.4 In the EU steel sector there are considerable interdependencies between industrial changes designed to maintain existing, achieve missing or regain lost competitiveness and trade policy strategies designed to ensure the necessary success of change management in both domestic as well as in international markets. As a result, the EESC makes the following recommendations for trade policy to help with industrial change in the future:

- being an export-oriented economy, the European Union should continue a general policy of open market access, provided that common rules of fair trade are respected;
- the European Union should initiate and improve the development of multilateral trade regulations such as the intended steel subsidies agreement but not endanger existing high EU standards;

- 
- the European Union should continue to conclude bilateral agreements with important trading partners as far as multi-lateral regulations do not yet cover Community interests;
  - in all cases of unfair trade practices the European Union should make effective use of existing trade defence instruments and support the use of the WTO dispute-settlement rules.

Brussels, 29 April 2004.

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

---