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II

(Preparatory Acts)

COMMITTEE OF THE REGIONS

59th PLENARY SESSION ON 13 AND 14 APRIL 2005**Opinion of the Committee of the Regions of 13 April 2005 on the Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund**

(2005/C 231/01)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a COUNCIL REGULATION laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, COM(2004)492 final — 2004/0163 (AVC);

Having regard to the decision of the European Commission of 16 July 2004, to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of the European Parliament to consult it on this subject;

Having regard to the decision of the Council of 21 December 2004 to consult it on this subject, under the first paragraph of Article 265 and the Article 80 of the Treaty establishing the European Community;

Having regard to the decision of its President of 26 May 2004 to instruct its Commission for Territorial Cohesion to draw up an opinion on this subject;

Having regard to the other proposals for regulations of the European Commission concerning the Cohesion Fund, COM (2004) 494 final — 2004/0166 (AVC), the European Regional Development Fund (ERDF), COM (2004) 495 final — 2004/0167 (COD) the European Social Fund, COM(2004) 493 final — 2004/0165 (COD) and the 'Establishment of a European grouping of cross-border cooperation (EGCC)', COM(2004) 496 — final 2004/0168 (COD);

Having regard to its opinion on the Third Report on Economic and Social Cohesion (CdR 120/2004 fin) ⁽¹⁾;

Having regard to its Outlook report on Governance and simplification of the Structural Funds after 2006 (CdR 389/2002 fin) ⁽²⁾;

⁽¹⁾ JO C 318 du 22.12.2004, p. 1

⁽²⁾ OJ 2003/C 256/01

Having regard to its opinion on 'Partnerships between local and regional authorities and social economy organisations: contribution to employment, local development and social cohesion', (CdR 384/2001 fin) ⁽³⁾;

Having regard to the draft opinion of Mr Albert Bore on the financial perspectives (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), adopted by the commission for Territorial Cohesion on 26 November 2004 (CdR 162/2004 rev. 3);

Having regard to the draft opinion of Mr Rosario Condorelli on the Proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund (ERDF), (CdR 233/2004 rev.1);

Having regard to the draft opinion of Mr Paiva on the Proposal for a Regulation of the European Parliament and of the Council on the Cohesion Fund, (CdR 234/2004);

Having regard to the draft opinion of Mrs Fernandez Felgueroso on the Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund, (CdR .../2004);

Having regard to its draft opinion (CdR 232/2004 rev. 3) adopted by the Commission for Territorial Cohesion Policy on 4 February 2005 (**rapporteurs: Mr Nilsson**, Kommunalrad/ORDF and **Mr Tatsis**, Proedros Nomarchiakakis Aftodioikissis Dramas-Kavalas-Xanthis);

Whereas:

1. WHEREAS the key yardstick for the Committee's assessment continues to be the objective set out in Article 158 of the EC Treaty. Strengthening economic and social cohesion in order to promote the overall harmonious development of the Community and reducing differences between regions particularly in respect of reducing the development shortfalls of the most disadvantaged areas, will make a significant contribution to strengthening the role of regional and local authorities in Europe, and contribute to the achievement of the Lisbon and Göteborg agendas;
2. WHEREAS Article III-220 of the Treaty establishing a Constitution for Europe strengthens the cohesion objective by introducing a territorial dimension, '*In order to promote its overall harmonious development, the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion*';
3. WHEREAS enlargement has produced additional demands for cohesion in Europe that will require long-term and persistent efforts.

adopted the following opinion at its 59th plenary session on 13 and 14 April 2005 (meeting of 13 April).

THE COMMITTEE OF THE REGIONS

principles of solidarity and cooperation, thus representing one of the main cornerstones of the integration between the people and territories of the Union;

INTRODUCTION

I. General context

1. Holds that according to Art. 158 of the European Union Treaty the regional dimension of the cohesion policy is all important and it has to be strengthened after the enlargement in order to promote the harmonious development of the European Union.

2. Judges as positive the results attained in recent years in terms of cohesion and the impact of regional policy of the European Union with respect to strengthening the Community's social and economic cohesion as a whole; it also reiterates that cohesion policy endorsed by the Treaties is the most powerful, visible and important instrument used to implement

3. Accepts the European Commission financial proposals allocating EUR 336.1 billion to cohesion policy and the distribution of this amount amongst the three objectives. It considers the Commission's funding proposal to be adequate for continuing to aid regions in the EU15 and at the same time supporting the new Member States on an equal footing, if the resources are distributed fairly and focused on solving the most serious problems. This proposal is accepted for the time being under the express condition that the Commission and the Member States will seek to secure a reasonable increase, in view of the new requirements due to the Enlargement.

⁽³⁾ JO C 192 du 12.8.2002, p. 53

4. Considers that any reduction of the budget proposed by the E.C in whatever form will put in danger the basics of the Cohesion Policy and consequently undermine the principle of solidarity that represents after all a distinct and essential element of the identity of European integration.

5. Consequently rejects any attempted budgetary adjustments of the amounts proposed by the Commission in terms of allocation of funds between objectives.

6. Re-emphasises the inextricable linkage between an effective European-wide regional policy and the implementation of the Lisbon-Goteborg agenda. Future EU growth and competitiveness across all regions of Europe will be promoted by a continuation of EU cohesion policy involving all the regions, rather by a re-nationalisation of this policy; EU competitiveness depends on the competitiveness of each region.

7. Warns that delays to the start of the programming period as a result of protracted negotiations on the financial perspectives will lead to financial disruption and instability across the local and regional authorities of the EU.

II. A new partnership for cohesion policy

8. Approves the **concentration of resources and priorities on the three objectives** (Convergence, regional Competitiveness and Employment and Territorial Cooperation). This will improve the internal coherence, in terms of coordination between the Structural Funds at Community level and coordination with specific sectoral European policies, and external coherence, in terms of link between the different action levels (local, regional, national and European).

9. Welcomes the fact that the **Cohesion Fund** will apply to Member States with GNI lying below 90 % of the Community average. A political solution should be sought for Member States that will no longer be eligible as a result of enlargement.

10. Welcomes the proposal that Structural Funds support under the '**Convergence Objective**' be focused on sustainable regional and local economic development.

11. Welcomes the proposal of the Commission to find a solution for the regions affected by the so-called **statistical effect** within the new Convergence Objective. However, the relevant provision in the draft regulation does not go far enough, as it offers no planning certainty with regard to the scale of the support and the application of the rules governing aid.

12. Approves the Commission's proposal to create a '**Competitiveness and Employment**' Objective for all the regions that do not fall under the Convergence Objective;

special attention could be devoted to regions with serious socio-economic problems and significant need for structural adaptation: these regions should be defined according to unique criteria; it also approves the fact that this new objective is to apply to the regional level as a whole.

13. Agrees that the **regions** totally covered by Objective 1 in 2006 and not eligible under the Convergence Objective, be classed as 'phasing in' regions and continue to benefit from the Structural Funds so that they are involved in the pursuit of the regional competitiveness and employment objective on fair and equitable terms.

14. Expresses appreciation for the creation of a specific '**Territorial Cooperation Objective**' and the mainstreaming of transnational, cross-border and network cooperation but also demands to include interregional co-operation as an independent strands in the new objective. This objective must place special emphasis on disseminating innovation and best practices in order to promote competitiveness in the EU.

15. Agrees that the support of the Funds takes into account the **territorial dimension of Europe**, with a special emphasis on the reinvigoration of urban areas, regions dependent on fishing, regions that present particular geographical and natural handicaps (islands, sparsely populated areas, mountain and border regions) and the outermost regions.

16. Welcomes the newly proposed **Neighbourhood Instrument** as an instrument that reinforces the vision for a Common European house and invites the European Commission to make clear proposals for the coordination between this instrument and the objective of territorial cooperation, in order to maximise mutual synergies.

17. Points out that it is necessary to re-think certain transnational spaces in order to take into account the new political geography of Europe in view of the **future enlargement**, and proposes retaining those transnational cooperation zones from the present 2000-2006 period which have met Community requirements of consistency and efficiency and have served to develop the common interests and opportunities of the regions covered by them.

18. Welcomes the integration of the **gender perspective** during all the stages of the programming, implementation, and evaluation of the Funds.

19. Appreciates the efforts made towards **simplifying the administration**, improving transparency and management of the Funds governed by the General Regulation and urges that the same approach be taken for the implementing provisions to be adopted by the Commission.

20. Supports the proposals for strengthening **partnership** and cooperation between local, regional, national and Community authorities, as well as with private and social actors, in the whole programming, implementation and evaluation process for the Structural Funds and Cohesion Fund.

21. Is in favour of the introduction of the **strategic approach** in the programming system because it leads to a new political process that will have the capacity to raise both the quality of the planning and the effectiveness and efficiency of the management. At the same time, it offers the opportunity for better coordination between the national strategies and the strategic objectives of cohesion policy.

22. Considers that the introduction of the **national strategic reference frameworks** will transfer management responsibilities to the managing authorities of the operational programmes and consequently estimates that the role of the regional and local authorities in all phases of the cohesion policy can be further strengthened.

23. Recognises that the addition of new exceptions regarding the application of rule N+2 increases the **flexibility** and helps the regions especially those of the new Member States to absorb in a timely and orderly manner the cohesion policy funds although it considers that the Commission should undertake more efforts to attain greater flexibility.

III. The views of the Committee of the Regions

24. Points out that simplification is not only a matter of decentralisation, but also a question of **greater accountability** of the system as a whole. The Committee of the Regions underlines the importance for the partnership principle and the involvement of elected representatives from local and regional authorities and calls on the Commission to encourage Member States to make use of the possibility for concluding tripartite agreements, where necessary.

25. Supports the Commission's effort to reinforce the **principle of subsidiarity**. In the efforts of simplification, the Committee of the Regions would therefore like to stress the importance not to increase the centralisation at the Member State level. It is important to secure the process of subsidiarity as well at local and regional level. The objective must not be to only hand over responsibility to the Member States, but to engage relevant actors at the appropriate stage of the implementation of the cohesion policy objectives. Therefore, wishes to see the subsidiarity principle applied within Member States and not just between the Member States and the European Union.

26. Considers that the deeper involvement of regional and local authorities in all the phases of the next programming period will positively contribute to the resolution of the

problems of absorption that appeared in the current programming period.

27. Calls on the European Commission to provide a supportive framework for **territorial differentiation in the State Aid rules** and regulations, to allow for targeted public investment, especially where this can correct real market failure in order to achieve the territorial cohesion objective.

28. Proposes that some **very sparsely populated regions** will be treated as a special case with due regard to the seriousness of the prevailing conditions, as stated in the Accession Treaties of Sweden and Finland.

29. Considers that the proposal on **the implementation of the European Territorial cooperation** Objective should be expressed more clearly. Considerable efforts should be made to simplify administrative formalities especially in the case of support programmes, which are administered on both sides of borders, since highly complex EU legal and administrative provisions have considerably hampered cross-border cooperation thus far.

30. Appreciates the inclusion of **maritime borders** for the purpose of territorial cooperation, and demands that the limit of 150 km should be interpreted in a flexible manner, in order to permit meaningful cooperation between regions that have common sea borders.

31. Suggests that in order to improve the effectiveness and **efficiency of interregional cooperation**, the regional programmes cover a full range of strategic themes presenting added value at European level and sufficient financial resources.

32. Welcomes the attention given by the Commission to strengthening **social inclusion** and calls for more measures able to respond to the needs of the people with disabilities.

33. Considers that greater attention should be given to issues relating to the ageing population, which is one of the greatest challenges facing Europe over the coming decades.

34. Strongly recommends that future programmes financed by the Structural Funds cover such issues as urban renewal, social deprivation, economic restructuring and public transport all of which tend to concentrate in metropolitan regions. The Structural Funds must support sustainable development in cities.

35. Is concerned about establishing the rate of Community co-financing in relation to the total public expenditure, as this might discourage private sector participation in programmes. Therefore, it proposes to calculate the contribution from the Funds in relation to the total national expenditure, as an essential tool to reinforce **private-public partnerships**.

36. Urges that the Committee of the Regions is actively consulted through participation at **the Spring European Council's** annual examination of competitiveness and cohesion agendas. This would provide local and regional authorities with opportunities to bring forward issues and good practice as required for improved functioning of the open method of coordination in the implementation of Lisbon and Göteborg agendas.

37. Argues that the **national strategic reference framework** should be a concise strategic document, leaving sufficient scope for the operational programmes led by the regions to determine the specific objectives and actions for each region. In addition, it is important to ensure that the document does not delay the procedure for approving the operational programmes or create further constraints on their implementation.

38. Asks the Commission to maintain the current system for the **performance reserve**.

39. Proposes to look into a system where only **reimbursable VAT** would not be eligible for contribution within ERDF,

similar to what the Commission has already proposed for the ESF. At present, this creates concrete costs for actions at local and regional level. As the VAT is an income for the State, a model should be identified in order to remove the negative impact on local and regional level.

40. Considers that the **N+2 rule** continues to have a negative impact in the beginning of the programming period, especially in the case of the territorial cooperation objective, as well as significant investment projects that do not reach the threshold amount of major projects. This impact could be considerably reduced if an increase in the payment on account not subject to automatic decommitment were provided for.

41. Demands that the operational programmes, priorities and measures make clear references to binding environmental commitments.

42. Holds that cohesion policy should promote a spatial development policy able to take into account the existing trans-European cooperation structures and the perspectives of cooperation under common territorial characteristics.

THE COMMITTEE OF THE REGIONS' RECOMMENDATIONS

TITLE I

OBJECTIVES AND GENERAL RULES ON ASSISTANCE

CHAPTER I

Scope and definitions

Recommendation 1

Article 2, paragraph 5

Text proposed by the Commission	CoR amendment
5) 'public expenditure': any public contribution to the financing of operations whose origin is the budget of the State, of regional and local authorities, of the European Communities related to the Structural Funds and the Cohesion Fund and any similar expenditure. Any contribution to the financing of operations whose origin is the budget of public law bodies or associations of one or more regional or local authorities or public law bodies within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts 9 shall be regarded as public contribution;	5) 'public expenditure': any public contribution to the financing of operations whose origin is the budget of the State , of national, regional and local authorities, of the European Communities related to the Structural Funds and the Cohesion Fund and any similar expenditure. Any contribution to the financing of operations whose origin is or associations of one or more regional or local authorities or public law bodies within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts 9 shall be regarded as public contribution;

Reason

Public expenditure is public contribution from public bodies. It is unnecessary to specify where the public funds come from. This only creates obstacles and limitations instead of creativity at local and regional level together with the partnership, as referred to in Article 10.

Recommendation 2*Article 3, paragraph 1*

Text proposed by the Commission	CoR amendment
<p>1. The action taken by the Community under Article 158 of the Treaty shall be designed to strengthen the economic and social cohesion of the enlarged Community in order to promote the harmonious, balanced and sustainable development of the Community. This action shall be taken with the aid of the Funds, the European Investment Bank (EIB) and other existing financial instruments. It shall be aimed at meeting the challenges linked to the economic, social and territorial disparities, which have arisen particularly in countries and regions whose development is lagging behind, to the speeding-up of economic and social restructuring, and to the ageing of the population.</p> <p>The action taken under the Funds shall incorporate, at national and regional level, the Community's priorities in favour of sustainable development by strengthening growth, competitiveness and employment, social inclusion, as well as the protection and quality of the environment.</p>	<p>1. The action taken by the Community under Article 158 of the Treaty shall be designed to strengthen the economic and social cohesion of the enlarged Community in order to promote the harmonious, balanced and sustainable development of the Community. This action shall be taken with the aid of the Funds, the European Investment Bank (EIB) and other existing financial instruments. It shall be aimed at meeting the challenges linked to the economic, social and territorial disparities, which have arisen particularly in countries and regions whose development is lagging behind, to the speeding-up of economic and social restructuring, and to the ageing of the population.</p> <p><u>In pursuing the cohesion policy objectives the community shall contribute to the harmonious, balanced and sustainable development of economic activities in the EU territories.</u></p> <p>The action taken under the Funds shall incorporate, at national, regional and local level, the Community's priorities in favour of sustainable development by strengthening growth, competitiveness and employment, social inclusion, as well as the protection and quality of the environment.</p>

Reason

By highlighting the aim of the cohesion policy at large and making the activities and action a second sub-level of the paragraph, we put back the core to the common cohesion policy at Community level. The recommendation is in line with Article 1 of Regulation 1260/99 which provides that 'in pursuing these objectives the community shall contribute to the...'. The drafting in the current proposal for regulation clearly shifts the emphasis: 'the action taken under the Funds shall incorporate at national and regional level, the Community priorities in favour of sustainable development by strengthening growth' (financial goal). This provision clearly has a different emphasis from the current proposal.

Recommendation 3*Article 3, paragraph 2, point a)*

Text proposed by the Commission	CoR amendment
<p>a) the 'Convergence' objective shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment through increasing and improving the quality of investment in physical and human capital, the development of innovation and of the knowledge society, the adaptability to economic and social changes, the protection and improvement of the environment as well as administrative efficiency. This objective shall constitute the priority of the Funds.</p>	<p>a) the 'Convergence' objective shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment through increasing and improving the quality of investment in physical and human capital, <u>infrastructure, entrepreneurship</u>, the development of innovation and of the knowledge society, the adaptability to economic and social changes, the protection and improvement of the environment as well as administrative efficiency. This objective shall constitute the priority of the Funds.</p>

Reason

It is important for the 'Convergence' objective, to have a clear emphasis on infrastructure issues, occurring not only physical infrastructures, but also human capital and entrepreneurial infrastructure as also for the development of innovation and of the knowledge society, for the protection and improvement of the environment and the improvement of the administrative efficiency.

Recommendation 4*Article 6, paragraph 1*

Text proposed by the Commission	CoR amendment
When presenting the national strategic reference framework referred to in Article 25, each Member State concerned shall indicate the NUTS I or II regions for which it will present a programme for financing by the ERDF.	When presenting the national strategic reference framework referred to in Article 25, each Member State concerned, by agreement with the regions, shall indicate the NUTS I or II regions for which it will present a programme for financing by the ERDF. <u>In accordance with Article 34(2), a Member State can also propose programmes at a different more appropriate territorial level.</u>

Reason

For the sake of clarity, it is important to include here a specific reference to Article 34 (point 2), according to which a Member State is allowed to propose operational programmes at a different territorial level than NUTS I or NUTS II regions.

Recommendation 5*Article 7, paragraph 3*

Text proposed by the Commission	CoR amendment
For the purpose of cooperation networks and exchange of experience, the territory of the Community shall be eligible.	For the purpose of cooperation networks and exchange of experience, <u>For interregional cooperation, which can cover a wide field, from exchange of experience to investment projects, the territory of the Community shall be eligible.</u> <u>The aim is to ensure that projects in region's adjoining former internal borders and new external borders of the Union will still be possible in the future.</u>

Reason

Trans-national cooperation takes place within one of the thirteen designated regions. In addition to this form of cooperation, there is also a need to establish cooperation projects with regions throughout the EU not covered by the designations 'cross-frontier' or 'trans-national' cooperation. If cooperation is confined to the exchange of information or the establishment of networks, this does not do full justice to the needs of regions to move to more extensive cooperation with other regions in the EU. The broad field of cross-border and trans-national cooperation therefore also needs to embrace interregional cooperation.

CHAPTER IV

Principles of assistance**Recommendation 6***Article 10 paragraph 1*

Text proposed by the Commission	Amendment
Assistance from the Funds shall be decided by the Commission within the framework of close cooperation, hereinafter 'partnership', between the Commission and a Member State. The Member State organises, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates, namely:	Assistance from the Funds shall be decided by the Commission within the framework of close cooperation, hereinafter 'partnership', between the Commission and a Member State <u>and the regions</u> . The Member State organises, in accordance with current national rules and practices, a partnership with the <u>appropriate</u> authorities and bodies which it designates , namely:

Reason

It is necessary for the regulation to guarantee the involvement of the regions in all phases of the negotiation of the Funds. The Commission's proposal makes the regions' involvement in the negotiation procedure subject to their designation by the Member State. It is essential that the regions be direct discussion partners of the Commission when negotiating Fund intervention in this area of responsibility.

In its White Paper on Governance the Commission itself points out that the regions' increased responsibility for implementing Community policies (and it refers specifically to cohesion policy) has not been matched by an increase in their real participation in the EU. It adds that this is because national governments do not sufficiently involve the regions in the preparation of their positions on Community policies. One way of ensuring that the regions participate in cohesion policy is for the regulations to lay down rules for their involvement in the negotiating procedure.

In conclusion, the regulation should recognise the regions as managing and paying authorities, and for this it is necessary that they be directly involved in consultations with the Commission during all phases of the Fund negotiating procedure.

Recommendation 7*Article 10, paragraph 1 c)*

Text proposed by the Commission	CoR amendment
c) any other appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women.	c) any other appropriate body representing civil society, environmental partners, non-governmental organisations, <u>social economy organisations</u> , and bodies responsible for promoting equality between men and women.

Reason

The partnership should strengthen the inclusion of the social economy organisations.

Recommendation 8*Article 10, paragraph 2*

Text proposed by the Commission	CoR amendment
2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category. The partnership shall cover preparation and monitoring of the national strategic reference framework as well as the preparation, implementation, monitoring and evaluation of the operational programmes. Member States shall involve each of the appropriate partners, and particularly the regions, in the various programming stages within the time limit set for each stage.	2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category. The partnership shall cover preparation and monitoring of the national strategic reference framework as well as the preparation, <u>financing</u> , implementation, monitoring and evaluation of the operational programmes. Member States shall involve each of the appropriate partners, and particularly the regions and cities, in the various programming stages within the time limit set <u>appropriate for having an impact on</u> each stage.

Reason

It is important that the partnership will be given a chance to have an impact on the programming stages. This can only be done with appropriate amount of time to its disposal. As well an impact on the issues of financing is important and should be added.

CHAPTER V

Financial framework**Recommendation 9***Article 15 (2)*

Text proposed by the Commission	CoR amendment
<p><i>Article 15</i></p> <p>Global resources</p> <p>1. The resources available for commitment from the Funds for the period 2007 to 2013 shall be EUR 336.1 billion at 2004 prices in accordance with the annual breakdown is shown in the Annex 1.</p> <p>For the purpose of their programming and subsequent inclusion in the general budget of the European Communities, these amounts referred to in the first subparagraph shall be indexed at to 2 % per year.</p> <p>The breakdown of budgetary resources between the objectives defined in Article 3(2) shall be such to achieve a significant concentration on the regions of the 'Convergence' objective.</p> <p>2. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Articles 16, 17 and 18 and without prejudice to the provisions referred to in Articles 20 and 21.</p>	<p><i>Article 15</i></p> <p>Global resources</p> <p>1. The resources available for commitment from the Funds for the period 2007 to 2013 shall be EUR 336.1 billion at 2004 prices in accordance with the annual breakdown is shown in the Annex 1.</p> <p>For the purpose of their programming and subsequent inclusion in the general budget of the European Communities, these amounts referred to in the first subparagraph shall be indexed at to 2 % per year.</p> <p>The breakdown of budgetary resources between the objectives defined in Article 3(2) shall be such to achieve a significant concentration on the regions of the 'Convergence' objective.</p> <p>2. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Articles 16, 17 and 18, and by region, and without prejudice to the provisions referred to in Articles 20 and 21. <u>Particular attention should be paid to areas with severe and permanent natural and demographic handicaps, such as the northernmost regions with very low population density, and island, cross-border and mountainous areas.</u></p>

Reason

The regions should be involved in the distribution of the Funds. In making the breakdowns by Member State, the Commission proposal places this distribution exclusively in the hands of the Member States. In fact, the first draft of the Third Cohesion Report established that the funding would be distributed on the basis of an indicative breakdown by region laid down by the Commission. This subparagraph was dropped from the final report. It should also be pointed out that the criteria set out in Articles 16, 17 and 18 cover distribution by the State and thus criteria for distribution by the regions should be added.

The second addition is necessary to bring the general regulation into line with the relevant provisions of the constitutional Treaty (Article III-220).

Recommendation 10*Article 17, paragraph 2*

Text proposed by the Commission	CoR amendment
<p>2. The appropriations referred to in paragraph 1, subparagraph a) shall be divided equally between the programmes financed by the ERDF and the programmes financed by the ESF.</p>	<p>2. The appropriations referred to in paragraph 1, subparagraph a) shall be divided equally between the programmes financed by the ERDF and the programmes financed by the ESF, <u>according to a ratio to be determined on the basis of regional conditions; there should also be a substantial level of decentralisation in respect of the implementation of these provisions.</u></p>

Reason

The switch from an economy based on agriculture and traditional manufacturing industries to a knowledge-based economy requires considerable efforts on the part of the business world to bring about innovation in the field of products, processes and marketing. Assistance under the ERDF would be a more effective vehicle for achieving this goal than assistance under the ESF.

TITLE II

STRATEGIC APPROACH TO COHESION

CHAPTER I

*Community strategic guidelines on cohesion***Recommendation 11***Article 23*

Text proposed by the Commission	CoR amendment
For each of the objectives of the Funds, those guidelines shall in particular give effect to the priorities of the Community with a view to promote balanced, harmonious and sustainable development.	For each of the objectives of the Funds, those guidelines shall in particular give effect to the priorities of the Community with a view to promote balanced, harmonious and sustainable development, <u>mainly through the reduction of regional disparities in conformity with Lisbon strategy and Gothenburg objectives</u>

Reason

The CoR wishes to recall that the basic objective of regional policy is the reduction of regional disparities, as stated in Article 158 of the Treaty.

Recommendation 12*Article 25, paragraph 1*

Text proposed by the Commission	CoR amendment
The Member State shall present a national strategic reference framework which ensures that Community structural aid is consistent with the Community strategic guidelines, and which identifies the link between Community priorities, on the one hand, and national and regional priorities in order to promote sustainable development, and the national action plan on employment, on the other hand. The framework shall constitute a reference instrument for preparing the programming of the Funds.	The Member State shall present a national strategic reference framework which ensures that Community structural aid is consistent with the Community strategic guidelines, and which identifies the link between Community priorities, on the one hand, and national, regional and urban priorities in order to promote sustainable development, and the national action plan on employment, on the other hand. The framework shall constitute a <u>concise and strategic</u> reference instrument for preparing the programming of the Funds.

Reason

It is sensible to add a reference to urban priorities in the light of the requirement that each national strategic reference framework specifies the priorities for urban interventions.

The CoR thinks that sufficient scope should be left for the operation programmes led by the Regions to determine the specific objectives and actions for each Region.

Recommendation 13*Article 25, paragraph 2*

Text proposed by the Commission	CoR amendment
2. Each national strategic reference framework shall contain a summary description of the Member State's strategy and its operational implementation.	2. Each national strategic reference framework shall contain a summary description of the Member State's strategy and its operational implementation. <u>This strategy should be guided by the partnership approach as defined in article 10.</u>

Reason

It is good to establish a national strategic framework but it should be strongly influenced by the local and regional situation.

Recommendation 14*Article 27 paragraph 1*

Text proposed by the Commission	CoR amendment
<p>Annual report by Member States</p> <p>For the first time in 2008 and at the latest by 1 October each year, each Member State shall present to the Commission a report on the progress in implementing its strategy and achieving its goals, taking particular account of the indicators set, and their contribution towards implementing the Community strategic guidelines on cohesion, as well as of available evaluations.</p> <p>The report shall refer to the national action plan on employment.</p>	<p>Annual report by Member States</p> <p>For the first time in 2008 2009 and at the latest by 1 October each year, each Member State shall present to the Commission a report on the progress in implementing its strategy and achieving its goals, taking particular account of the indicators set, and their contribution towards implementing the Community strategic guidelines on cohesion, as well as of available evaluations.</p> <p>The report shall refer to the national action plan on employment.</p>

Reason

The beginning of the strategic programming leading to a proper evaluation of cohesion policy should be 2009.

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the structural funds and the cohesion fund**Recommendation 15***Article 31, paragraph 5*

Text proposed by the Commission	CoR amendment
The Commission shall adopt each operational program as soon as possible after its formal submission by the Member State.	The Commission shall adopt each operational program as soon as possible <u>within six months</u> after its formal submission by the Member State.

Reason

There must be a limit in time for how long the Member State will have to wait for the final decision by the Commission. The amendment results adhere to a more precise timetable.

Recommendation 16*Article 32, paragraph 1*

Text proposed by the Commission	CoR amendment
At the initiative of the Member State or the Commission, and after approval by the Monitoring Committee, operational programmes shall be re-examined and, if necessary, revised for the rest of the programming period following significant socioeconomic changes or in order to take greater or different account of the Community priorities, particularly in the light of Council conclusions.	At the initiative of the Member State, or the Commission, or the eligible areas concerned, and after approval by the Monitoring Committee, operational programmes shall be re-examined and, if necessary, revised for the rest of the programming period following significant socioeconomic changes or in order to take greater or different account of the Community priorities, particularly in the light of Council conclusions. <u>This revision procedure will conform to Article 10.</u>

Reason

It is of importance that the partnership, as stated in Article 10, will have influence on the decision of re-examination of the programmes.

Recommendation 17*Article 32, paragraph 2*

Text proposed by the Commission	CoR amendment
2. The Commission shall adopt a decision on the requests for revision of operational programmes as soon as possible after formal submission of the request by the Member State.	2. The Commission shall adopt a decision on the requests for revision of operational programmes as soon as possible <u>within three months</u> after formal submission of the request by the Member State.

Reason

There must be a limit in time for how long the Member State will have to wait for the final decision by the Commission. The amendment results adhere to a more precise timetable.

Recommendation 18*Article 36, paragraph 4*

Text proposed by the Commission	CoR amendment
4. Operational programmes financed by the ERDF shall contain in addition to the 'Convergence' and the 'Regional competitiveness and employment' objective: a) actions for inter-regional cooperation with, at least, one region of another Member State in each regional programme;	4. Operational programmes financed by the ERDF may contain in addition to the 'Convergence' and the 'Regional competitiveness and employment' objective: a) actions <u>aiming</u> for inter-regional cooperation with, at least, one region of another Member State in each regional programme;

Reason

At the moment of the decision of the actions, the specified region must be stated. It is not possible to determine in advance which region or regions to cooperate with on programming level. The projects themselves have to be able to decide upon the region/regions to cooperate with.

Recommendation 19*Article 40, paragraph 3*

Text proposed by the Commission	CoR amendment
3. The Commission shall adopt a decision as soon as possible after the submission by the Member State or the managing authority of all the information referred to in Article 39.	3. The Commission shall adopt a decision as soon as possible <u>at the latest six months</u> after the submission by the Member State or the managing authority of all the information referred to in Article 39.

Reason

There must be a limit in time for how long the Member State will have to wait for the final decision by the Commission. The amendment results adhere to a more precise timetable.

Recommendation 20*Article 41, paragraph 1*

Text proposed by the Commission	CoR amendment
The managing authority may entrust the management and implementation of a part of an operational programme to one or more intermediate bodies, designated by the managing authority, including local authorities, regional development bodies or non-governmental organisations, which shall ensure the implementation of one or more operations in accordance with the provisions of an agreement concluded between the managing authority and that body.	The managing authority may entrust the management and implementation of a part of an operational programme to one or more intermediate bodies, designated by the managing authority, including <u>regional and</u> local authorities, regional development bodies or non-governmental organisations, which shall ensure the implementation of one or more operations in accordance with the provisions of an agreement concluded between the managing authority and that body.

Reason

It seems appropriate to specify that regional authorities may also be entrusted the management and implementation of a part of an operational programme through a global grant.

TITLE IV

EFFECTIVENESS

CHAPTER I

Evaluation**Recommendation 21***Article 45 paragraph 1*

Text proposed by the Commission	CoR amendment
1. The strategic guidelines of the Community, the national strategic reference framework, and the operational programmes shall be the subject of evaluation. Evaluations shall aim to improve the quality, effectiveness and consistency of Fund assistance and the implementation of operational programmes. They shall also appraise their impact with respect to the strategic objectives of the Community, to Article 158 of the Treaty and to the specific structural problems affecting the Member States and regions concerned, while taking account of the needs of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment.	1. The strategic guidelines of the Community, the national strategic reference framework, and the operational programmes shall be the subject of evaluation. Evaluations shall aim to improve the quality, effectiveness and consistency of Fund assistance and the implementation of operational programmes. They shall also appraise their impact with respect to the strategic objectives of the Community, to Article 158 of the Treaty and to the specific structural problems affecting the Member States and regions concerned, while taking account of the needs of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment, <u>equality between men and women, non-discrimination on the grounds covered by Article 13 of the EU Treaties, social inclusion and accessibility for disabled persons.</u>

Reason

Non-discrimination and social inclusion are important commitments and goal of the European Community and must be explicitly recognised in the objectives for the strategic guidelines.

CHAPTER II

Reserves

Recommendation 22

Article 48

Text proposed by the Commission	CoR amendment
<p>1. Within the context of the annual debate referred to in Article 29, the Council shall in 2011, in accordance with the procedure laid down in Article 161 of the Treaty, allocate the reserve referred to in Article 20 among the Member States to reward progress made as compared with the initial situation:</p> <p>a) for the 'Convergence' objective, on the basis of the following criteria:</p> <p>i) growth in the per capita gross domestic product measured at NUTS II level, in relation to the Community average, on the basis of the data available for the 2004-2010 period;</p> <p>ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004-2010 period;</p> <p>b) for the 'Regional competitiveness and employment' objective, on the basis of the following criteria:</p> <p>i) pro rata to those regions having spent between 2007 and 2010 at least 50% of their ERDF allocation on innovation-related activities as referred to in Article 5(1) of Regulation (EC) No [...];</p> <p>ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004-2010 period.</p> <p>2. Each Member State shall allocate the amounts concerned among operational programmes taking into account the criteria referred to in the previous paragraph.</p>	<p>1. Within the context of the annual debate referred to in Article 29, the Council shall in 2011, in accordance with the procedure laid down in Article 161 of the Treaty, allocate the reserve referred to in Article 20 among the Member States to reward progress made as compared with the initial situation:</p> <p>a) for the 'Convergence' objective, on the basis of the following criteria:</p> <p>i) growth in the per capita gross domestic product measured at NUTS II level, in relation to the Community average, on the basis of the data available for the 2004-2010 period;</p> <p>ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004-2010 period;</p> <p>b) for the 'Regional competitiveness and employment' objective, on the basis of the following criteria:</p> <p>i) pro rata to those regions having spent between 2007 and 2010 at least 50% of their ERDF allocation on innovation-related activities as referred to in Article 5(1) of Regulation (EC) No [...];</p> <p>ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004-2010 period.</p> <p>2. Each Member State shall allocate the amounts concerned among operational programmes taking into account the criteria referred to in the previous paragraph.</p> <p><u>1. Each Member State, in close consultation with the Commission, shall assess under each objective and not later than 31 December 2010 the performance of each of their operational programmes on the basis of a limited number of monitoring indicators reflecting effectiveness, management and financial implementation and measuring themed-term results in relation to their specific initial targets.</u></p> <p><u>These indicators shall be decided by the Member State in close consultation with the Commission considering the indications given by regional authorities taking account of all or part of an indicative list of indicators proposed by the Commission and shall be quantified in the existing different annual implementation reports as well as the mid-term evaluation report. The Member States shall be responsible for their application.</u></p> <p><u>2. At mid-term and not later than 31 March 2011, the Commission shall allocate, in close consultation with the Member States concerned, under each objective, on the basis of proposals from each Member State, taking account of its specific institutional features and their corresponding programming, the commitment appropriations to the operational programmes and their priorities which are considered to be successful.</u></p>

Reason

We consider that the Commission's proposal to change the 'philosophy' and the allocation of the reserve, for quality and performance between the Member States, is not appropriate. We think that the reserve for quality and performance should be allocated by the Member State, as it used to be done during the third programming period (2000-2006).

Recommendation 23*Article 49*

Text proposed by the Commission	CoR amendment
<p>National contingency reserve</p> <p>1. The Member State shall reserve an amount of 1% of the Structural Fund annual contribution for the 'Convergence' objective and 3% of the Structural Fund annual contribution for the 'Regional competitiveness and employment' objective to cover unforeseen local or sectoral crises linked to economic and social restructuring or to the consequences of trade opening.</p> <p>This reserve assists the adaptability of the concerned workers and the economic diversification of the regions concerned, as a complement to the operational programmes.</p> <p>2. Each Member State proposes specific operational programmes for the budgetary commitments covering the entire period in order to respond to the crises referred to in the previous paragraph.</p>	<p>National contingency reserve</p> <p>1. <u>The Member State shall reserve an amount of 1% of the Structural Fund annual contribution for the 'Convergence' objective and 3% of the Structural Fund annual contribution for the 'Regional competitiveness and employment' objective to cover unforeseen local or sectoral crises linked to economic and social restructuring or to the consequences of trade opening.</u></p> <p>This reserve assists the adaptability of the concerned workers and the economic diversification of the regions concerned, as a complement to the operational programmes.</p> <p>2. Each Member State proposes specific operational programmes for the budgetary commitments covering the entire period in order to respond to the crises referred to in the previous paragraph.</p> <p><u>Any modifications to the programme which may be necessary shall be subject to a simplified and speeded-up approval procedure.</u></p>

Reason

A significantly simplified and speeded-up programme modification procedure is essential in order to respond quickly.

TITLE V

FINANCIAL CONTRIBUTION BY THE FUNDS

CHAPTER 1

Contribution of the funds**Recommendation 24***Article 50, point d)*

Text proposed by the Commission	CoR amendment
d) the rate of mobilisation of private financing, in particular under public-private partnerships, in the fields concerned.	d) the rate of mobilisation of private financing, in particular under public-private partnerships, in the fields concerned.

Reason

The term 'rate' refers to something countable. The following articles of the chapter (51-53) do not define anything about that, such as the methods of measuring it, the upper ceilings etc.

Recommendation 25*Article 51, paragraph 2*

Text proposed by the Commission	CoR amendment
The contribution from the Funds shall be calculated in relation to the total public expenditure.	The contribution from the Funds shall be calculated in relation to the total <u>public and private</u> expenditure.

Reason

The CoR is concerned about establishing the rate of Community cofinancing in relation to the total public expenditure, as this might discourage private sector participation in programmes. Therefore, it proposes to calculate the contribution from the Funds in relation to the total national expenditure, as an essential tool to reinforce private-public partnerships.

Recommendation 26*Article 51, paragraph 3*

Text proposed by the Commission	CoR amendment
<p>The contribution from the Funds for each priority shall be subject to the following ceilings:</p> <p>a) 85% of the public expenditure co-financed by the Cohesion Fund;</p> <p>b) 75% of the public expenditure co-financed by the ERDF or the ESF under operational programmes in regions eligible under the 'Convergence' objective;</p> <p>c) 50% of the public expenditure co-financed by the ERDF or the ESF under operational programmes under the 'Regional competitiveness and employment' objective;</p> <p>d) 75% of the public expenditure co-financed by the ERDF under operational programmes under the 'European territorial cooperation' objective;</p> <p>e) the co-financing rate for specific measures financed under the additional allocation for the outermost regions provided for in Article 5(4) shall be 50% of the public expenditure.</p>	<p>The contribution from the Funds for each priority shall be subject to the following ceilings:</p> <p>a) 85% of the public and private expenditure co-financed by the Cohesion Fund;</p> <p>b) 75% of the public and private expenditure co-financed by the ERDF or the ESF under operational programmes in regions eligible under the 'Convergence' objective;</p> <p>c) 50% of the public and private expenditure co-financed by the ERDF or the ESF under operational programmes under the 'Regional competitiveness and employment' objective;</p> <p>d) 75% of the public and private expenditure co-financed by the ERDF under operational programmes under the 'European territorial cooperation' objective;</p> <p>e) the co-financing rate for specific measures financed under the additional allocation for the outermost regions provided for in Article 5(4) shall be 50% of the public and private expenditure.</p>

Reason

In the context of the Third Cohesion Report, issued in February 2004, the European Commission was still in favour of private co-financing. Now the draft regulation provides for co-financing with public funds only. In contrast to the current funding period, practicable private co-financing resources could no longer be used in the funding of EU projects if the regulation were to be adopted.

Private co-responsibility should be brought into play instead of being totally excluded. Such a rule would first and foremost affect broad areas of preventive labour market policy and contribute to a situation where measures of this kind are no longer undertaken to the present extent. This sector in particular is characterised by a particularly high level of innovation and a variety of public-private partnerships.

Recommendation 27*Article 51 paragraph 4*

Text proposed by the Commission	CoR amendment
<p>4. The maximum contribution from the Funds shall be increased to 85% of public expenditure for operational programmes under the 'Convergence' and the 'Regional competitiveness and employment' objectives in the outermost regions and for operational programmes of the outlying Greek islands under the 'Convergence' objective.</p>	<p>4. The maximum contribution from the Funds shall be increased to 85% of public expenditure for operational programmes under the 'Convergence' and the 'Regional competitiveness and employment' objectives in the outermost regions and for operational programmes of the outlying Greek islands under the 'Convergence' and 'Regional competitiveness and employment' objectives.</p>

Reason

A large proportion of the Greek islands are covered by the 'Regional competitiveness and employment' objective, and it is therefore unjustifiable, counterproductive and unfair to exclude them.

TITLE VI

MANAGEMENT, MONITORING AND CONTROLS

CHAPTER I

Management and control systems**Recommendation 28**

Article 58, paragraph 7 (new)

Text proposed by the Commission	CoR amendment
	<p>7. <u>Subject to Article 57(1) the tripartite agreements between local and regional bodies, the Member State and the Commission may be applied. This kind of agreement may contribute to consolidate the partnership principle, linking together local, regional, national and trans-national elements.</u></p>

Reason

If all parties agrees it should be possible to strengthen the cooperation on all levels by tripartite agreements. This should be part of the general regulation in order to stress the importance of the local and regional involvement as well as the partnership, stated in Article 10.

TITLE VII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

SECTION 3

Pre-financing**Recommendation 29**

Article 81 paragraph 1

Text proposed by the Commission	CoR amendment
<p>1. Following the Commission decision approving the contribution from the Funds to an operational programme, a single pre-financing amount shall be paid by the Commission to the body designated by the Member State. This pre-financing amount shall represent 7% of the contribution from the Structural Funds and 10.5% of the contribution from the Cohesion Fund to that operational programme. It may be spread over two financial years, in accordance with the availability of budget funds.</p>	<p>1. Following the Commission decision approving the contribution from the Funds to an operational programme, a single pre-financing amount shall be paid by the Commission to the body designated by the Member State. This pre-financing amount shall represent 7%10.5% of the contribution from the Structural Funds and the Cohesion Fund to that operational programme. It may be spread over two financial years, in accordance with the availability of budget funds. <u>Two-thirds shall be paid during the first financial year and the remaining third shall be paid during the second financial year.</u></p>

Reason

Increasing the proportion of the contribution not subject to automatic decommitment and splitting the payment in this way are a response to the need for a more realistic expenditure pattern during the initial years of a project's implementation; these measures are based on the arrangements already established in respect of the Cohesion Fund.

TITLE VIII

COMMITTEES

CHAPTER 1

ERDF, Cohesion Fund and Fund Coordination Committee**Recommendation 30***Article 104 (add new point)*

Text proposed by the Commission	CoR amendment
<p>1. The Commission shall be assisted by the ERDF, Cohesion Fund and Fund Coordination Committee (hereinafter: the 'committee').</p> <p>2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.</p> <p>3. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.</p> <p>The period referred to in Article 4(3) of Decision 1999/468/EC is fixed at one month.</p> <p>4. The committee shall draw up its rules of procedure.</p> <p>5. The EIB and the EIF shall appoint a non-voting representative.</p>	<p>1. The Commission shall be assisted by the ERDF, Cohesion Fund and Fund Coordination Committee (hereinafter: the 'committee').</p> <p>2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.</p> <p>3. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.</p> <p>The period referred to in Article 4(3) of Decision 1999/468/EC is fixed at one month.</p> <p>4. The committee shall draw up its rules of procedure.</p> <p><u>5. The European Economic and Social Committee and the Committee of the Regions shall each appoint one non-voting representative.</u></p> <p><u>6. The EIB and the EIF shall appoint a non-voting representative.</u></p>

Reason

The two Committees are commendatory parts of the European Union, so they should be clearly named within the framework of close cooperation. The Committees' working framework referred to in this Article should be further defined as it is in Regulation 1260/99, Articles 47 and 48. This is in conformity with the partnership principle.

Brussels, 13 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions of 13 April 2005 on the Proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund (ERDF)

(2005/C 231/02)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund, COM(2004) 495 final — 2004/0167 (COD);

Having regard to the decision of the European Commission of 16 July 2004 to consult it on this subject, under Article 265(1) of the Treaty establishing the European Community;

Having regard to the decision of its President of 26 May 2004 to instruct its Commission for Territorial Cohesion to draw up an opinion on this subject;

Having regard to the Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, COM(2004) 492 final — 2004/0163 (AVC), and the Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC), COM(2004) 496 final — 2004/0168 (COD);

Having regard to the Communication from the Commission to the Council and the European Parliament on Building our common future: policy challenges and budgetary means of the enlarged Union 2007-2013, COM(2004) 101 final;

Having regard to the Communication from the Commission on European neighbourhood policy — strategy paper, COM(2004) 373 final;

Having regard to the Communication from the Commission on a stronger partnership for the outermost regions, COM(2004) 343 final;

Having regard to its outlook report on Governance and simplification of the Structural Funds after 2006, CdR 389/2002 fin;

Having regard to its opinion on the Third Report on economic and social cohesion, CdR 120/2004 fin ⁽¹⁾;

Having regard to its opinion of 18 November 1998 on the Proposal for a Council Regulation (EC) on the European Regional Development Fund, COM(1998) 131 final, CdR 240/98 final ⁽²⁾;

Having regard to its draft opinion, adopted on 4 February 2005 by the Commission for Territorial Cohesion Policy (rapporteur: Mr Rosario Condorelli, Member of Catania Municipal Council (IT ELDR) (CdR 233/2004 rev. 2);

Whereas

1. in response to the heightened regional imbalances in the Union stemming from enlargement in May 2004, a new and greater commitment has been made to meet the challenges of convergence, competitiveness and employment, and European territorial cooperation by means of both specific cohesion policy instruments, geared to the new cohesion policy objectives for 2007-2013, and a combination of all Community funds available for this purpose, based on those under the CAP and fisheries policies;

⁽¹⁾ OJ C 318, 22.12.2004, p. 1

⁽²⁾ OJ C 51, 22.2.1999, p. 1

2. these cohesion policies for the 2007-2013 period must be designed and pursued consistently and in line with the Lisbon and Gothenburg strategies, which have the aim of building a knowledge-based society in the Union under the banner of sustainable development. Responsibility for these strategies has so far fallen primarily to the individual Member States and for this reason have not yet been systematically built into the procedures for the integrated implementation of other Union policies;
3. to this end the National Strategic Framework and the operational programmes should be consistent with the strategic guidelines for cohesion adopted by the Council, thus ensuring that Community priorities are adequately taken into account;
4. the demands of simplification have resulted in monofund programmes, with the exception of certain categories of action where both the ERDF and the Cohesion Fund may contribute to a single programme;
5. in this way the requirement for integration between the various programmes and funds and for coordination between cohesion policy and other Union policies is both confirmed and, where possible, strengthened;
6. within this architecture, determined by the general regulation, the role of the ERDF may be significantly boosted as a benchmark for linking the Union's different policies and programmes in pursuit of the objectives of convergence, competitiveness and employment, and territorial cooperation;
7. the architecture, as reflected in the proposal for a general regulation and the proposal for a regulation on the ERDF, also assigns the task of ensuring that such links and simplifications are carried out mostly to the Member States and, where stipulated by the relevant constitutional provisions, to the regions;
8. the Commission's proposals give greater importance than in the past to local communities, particularly urban ones, albeit within operational programmes on a regional scale. The possibility of delegating the global grant instrument to them is explicitly included, as has been successfully tried out in practice through the Urban Community initiative and as is laid down in Article 36(4)(b) and Article 41 of the Regulation laying down general provisions on the funds;
9. maintaining and reconciling multiple objectives (alignment of Member States' regional policies with European strategies, subsidiarity, simplification, optimisation of financial resources, etc.) entails a broader mobilisation of all official players, ranging from the European Commission down to local authorities within an environment increasingly geared to multilevel governance. It also entails the adoption of measures which can — potentially in advance-foster greater vision and programming capacity, together with enhanced management and monitoring skills of all the official players involved, commensurate with their respective roles. At the same time, the social partners must be encouraged to contribute actively to the proposal and to vigilance;
10. it therefore essential that no part of the package of regulations governing cohesion policy for the 2007-2013 period, and in this particular case the regulation governing the ERDF, contain any scope for misinterpretation or any loopholes, and that it make a precise distinction between the roles of the different public players, accompanying the referral to national legislation with a strong reference to the third party principle which must be applied to each official player, starting with the Commission, with respect to the next link in the institutional chain;

adopted the following opinion on 13 April 2005, during its 59th plenary session (meeting of 13 April).

General provisions concerning the convergence and regional competitiveness and employment objectives (Chapters I and II of the Commission's proposal)

1. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS

1.1 expresses first and foremost its firm opposition to any residual attempts to renationalise European regional policy, in view of the added value which Community cohesion programmes bring to the pursuit of the Treaty's objectives;

1.2 reiterates its opinion that the Commission's funding proposal of 0.41 % of gross national income (including rural development and fisheries measures, 0.46 % of GNI) would be an acceptable compromise for future cohesion policy;

1.3 appreciates the consistency of choice demonstrated by confirming the priority of developing the less favoured regions of the enlarged EU and raising funding for operations in these sectors accordingly;

1.4 urges the Member States to adopt, on behalf of so-called 'phasing in' regions, and within the national strategic framework, adequately funded measures that effectively meet the challenges of competition and the process of convergence;

1.5 appreciates the efforts made to simplify the funds' administration and management, despite persistent doubts regarding their efficacy;

1.6 welcomes both the new architecture, one of the effects of which is to raise territorial cooperation to the status of third objective of cohesion policy, accompanied in practice by substantial financial resources, and the content of the actions to be financed under the draft ERDF regulation, these proposed actions being linked to the Lisbon and Gothenburg strategies. It wishes in particular to emphasise the relevance of the proposed options:

- the priority given to actions concerning research and innovation under both the convergence and regional competitiveness and employment objectives, with special consideration for projects based on cooperation between scientific research centres in the EU-15 and those in new Member States;
- the increased attention focusing on sustainable development issues, reflected in the environment, transport, energy and/or natural and technological risk prevention and management actions;

— the consideration given to accessibility issues, including ICT access, under the regional competitiveness and employment objective, representing a considerable innovation in comparison with the current period;

— the pivotal role played by urban policy;

— the recognition that inter-regional cooperation is a relevant aspect of regional programming, insofar as it promotes the objectives of convergence and of developing the regional competitiveness of employment.

1.7 regrets that, as was also recommended in the European Parliament report on cohesion policy, interregional cooperation will not remain a separate financing strand under the territorial cooperation objective;

1.8 is impressed by the Commission's open-mindedness regarding the territorial dimension of cohesion, reflected in the case-by-case approach to territories with highly specific problems (urban and rural areas, islands and mountain areas, areas dependent on fisheries, the outermost regions, sparsely populated areas, (Nordic areas in particular) and regions bordering the new Member States and on the new external borders). It is particularly pleased that European economic and social cohesion is considered crucial to sustainable growth, since it believes that Europe's future cannot be planned while there are still abandoned rural areas or areas excluded from the opportunities provided by the internal market. The steps to provide appropriate support for these and the outermost regions natural handicap, as defined in the Treaty, to compensate them for the specific obstacles to their development and to secure full access to the internal market are welcomed regrets, however, that greater attention is not given to issues relating to the ageing population, which is one of the greatest challenges facing Europe over the coming decades;

1.9 notes, nevertheless, that recitals (1 and 10) of the proposal under consideration recognise only 'certain islands' as facing handicaps. This contradicts provisions under Declaration No. 30, annexed to the Amsterdam Treaty and sanctioned under Article III-220 of the Draft European Constitution. The Committee considers that the above-mentioned recitals should show greater consistency in law and of interpretation, particularly in the light of Article 52(1) a) of the proposal for a general regulation. Similar considerations apply to mountain and border regions, in the light of Article III-116 of the Draft Treaty establishing a Constitution for Europe, and Article 52 of the proposal for a general regulation;

1.10 notes that under the new Community policy approach, there is a recognition that the regions and local authorities are not only the most appropriate level for taking regional and cohesion policy decisions but also the most efficient level for ensuring their delivery, as argued by the European associations of regions and local authorities at the Leipzig Conference (May 2003). Greater involvement of grassroots levels is essential to enhance the visibility of the Community's activities among its citizens and to ensure greater effectiveness and simplification of Community interventions;

1.11 believes however that the partnership between regional and local authorities must be strengthened, particularly with urban authorities, by focusing on joint objectives, and that this partnership must be deepened in appropriate ways according to national rules and existing practice;

1.12 welcomes the fact that greater resources may be earmarked for targeted, high quality actions in urban areas — which is where in practice the greatest capacity for innovation and opportunity for social inclusion is to be found — within the framework of operational programmes to be managed under sub-delegation procedures as set out in Article 36(4)(b) of the draft general regulation on the Structural Funds;

1.13 recommends that the process of adopting the entire Structural Funds package be completed with care before 1 January 2007, in order to provide the national implementing bodies with sufficient time to prepare the new operational programmes, and also to provide the appropriate Commission bodies with enough time to verify the management capacity of such bodies.

2. The Committee of the Regions' recommendations

The Committee of the Regions recommends:

2.1 that the text of Article 1, second paragraph should also include areas with demographic handicaps;

2.2 that the text of Article 3 include types of investments for cultural assets (in line with the provisions of the second paragraph of Article 8(1), investments for buildings and equipment for training activities and active employment policy, and types of operating expenditure for such training and active employment policy activities, insofar as they may be covered by the ERDF;

2.3 that consistency between regional policy goals and specific measures for some types of territories be improved;

2.4 adding to the introduction of Article 5 that, under the 'regional competitiveness and employment objective', assistance provided by the ERDF must allow for greater flexibility in setting priorities for the so-called 'phasing in' regions;

2.5 that in Article 5(3)(a) cabotage and cross connections by air between Class I and II airports be added; and in addition to regional, local and interregional inland waterways, maritime routes connecting islands and, in particular, smaller islands be added;

2.6 citing cooperation between maritime regions under Article 6(1) and (2), specifying in both cases that the maritime cooperation in question may be either bilateral or multilateral;

2.7 adding volcanic eruptions, and forest fires, together with the ensuing deforestation, to the natural disasters listed under Article 6(2)(c), without prejudice to the provisions of Article 33(1), of the proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund — COM(2004) 492 final;

2.8 that the areas referred to in Article 4(3) be included among the priorities set out in Article 6;

2.9 that the term 'VAT' in Article 7(a) be replaced by 'reimbursable VAT' as in Article 11 of the draft regulation on the ESF and in the current programming cycle;

2.10 that the term 'housing' in Article 7(d) be replaced by 'housing, with certain exceptions, restricted to the convergence objective, including categories of operations of social relevance such as residential homes for the vulnerable and temporary accommodation for non-EU immigrants';

2.11 concerning the final paragraph of Article 9, that the general guidelines and criteria according to which the Member States and the regions are to ensure complementarity and coherence between actions co-financed by the ERDF and those co-financed by the ESF, EAFRD and EFF and ensure *in itinere* and *ex post* checks, be included within the national reference framework referred to in Article 25 of the draft general regulation;

2.12 that careful consideration be given to the impact of including the ERDF in the more general framework of reform proposals concerning provisions on the Structural Funds in terms of social benefits and the promotion of actions on behalf of disadvantaged sectors of society (persons with a disability, persons at risk of social exclusion, etc.);

2.13 emphasis be given to the potential of structural funds to promote integration in multicultural and multilingual areas.

General provisions concerning the European territorial cooperation objective (Chapter III of the Commission's proposal)

3. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS

3.1 appreciates the decision to include European territorial cooperation as a priority of the EU's cohesion policy;

3.2 welcomes the recognition of the maritime borders within the framework of cross-border cooperation, as explicitly recommended in its earlier opinion CdR 120/2004 final; and emphasises, in particular, the importance of such cooperation to integrating the outermost regions in the surrounding area in a realistic way;

3.3 points out that since the European grouping of cross-border cooperation (EGCC) (COM(2004) 496 final) also addresses transnational, and not only cross-border, cooperation programmes, the instrument's title should be amended to reflect its all-embracing character: 'European grouping of trans-European cooperation'.

4. General recommendations

The Committee of the Regions recommends:

4.1 enhancing the experience of existing regional, city and local authority networks that have proved successful and supporting the establishment of new networks for inter-regional cooperation and European territorial cooperation;

4.2 clarifying responsibilities, procedures and timetables for the preparation of programmes, especially cross-border and

transnational ones, and for their submission to the European Commission;

4.3 also including Objective 3 in the national strategic framework and so reaffirming the Member States' commitment to supporting territorial cooperation programmes and ensuring procedures that adequately secure national co-financing and guarantee greater coherence for actions in the sphere of:

- programming relevant to the other two objectives;
- actions undertaken at national and regional level using national and regional funds;
- actions undertaken in fulfilment of the proximity policy in relation to the accession of applicant countries and other EU policies;
- actions undertaken within the context of regional and local development programmes promoted by other international bodies (e.g. OECD, the World Bank etc.);

4.4 assessing how to strengthen — in compliance with the objectives of territorial cooperation, as defined in the relevant national strategic reference frameworks under Article 25 of the ERDF regulation, — the active participation of local and regional communities in the development and implementation of programmes;

4.5 determining the procedures, criteria and timetables under which the Commission is to allocate resources and adopt programmes;

4.6 clarifying the identity of the beneficiary (Articles 16 and 21) and the related requirements as well as the position and functions of the certification authority;

4.7 making provision for the operations covered by Article 19 may, on occasion, be carried out within a single Member State, provided they comply with at least of the four ways set out in the article.

5. The Committee of the Regions' recommendations

Recommendation 1

Recital (1)

Text proposed by the Commission	CoR amendment
Article 160 of the Treaty provides that the European Regional Development Fund (ERDF) is intended to help redress the main regional imbalances in the Community. The ERDF therefore contributes to reducing the gap between the levels of development of the various regions and the extent to which the less favoured regions and islands, including rural areas, are lagging behind.	Article 160 of the Treaty provides that the European Regional Development Fund (ERDF) is intended to help redress the main regional imbalances in the Community. The ERDF therefore contributes to reducing the gap between the levels of development of the various regions and the extent to which the less favoured regions and islands , including rural <u>and urban</u> areas, <u>islands, mountain areas, sparsely populated areas, cross-border regions, and declining industrial regions</u> , are lagging behind.

Reason

Recitals 1 and 10 of the proposal under consideration recognise only 'certain islands' as facing handicaps (and establish a totally arbitrary connection with Article 160 of the Treaty). This contradicts the provisions of Declaration no. 30, annexed to the Amsterdam Treaty, which are reaffirmed under the Conclusions of the Nice Council of December 2000 and sanctioned under Article III-220 of the Draft European Constitution. In view of the foregoing, the Committee considers that the above-mentioned recitals should show greater consistency in law and of interpretation, particularly in the light of Article 52(1) a) of the proposal for a general regulation, and the specific reference to the matter made in Article 10 of the proposal under consideration. Similar considerations apply to mountain areas, in the light of the above-mentioned Article 52, and, for the sake of completeness, should be extended to all regions that suffer a handicap.

Recommendation 2

Recital (6)

Text proposed by the Commission	CoR amendment
Building on the experience and strengths of the Urban Community initiative foreseen by Article 20(1)(b) of Council Regulation (EC) No. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, the urban dimension should be reinforced by fully integrating measures in that field into the operational programmes co-financed by the ERDF.	Building on the experience and strengths of the Urban Community initiative foreseen by Article 20(1)(b) of Council Regulation (EC) No. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, the urban dimension should be reinforced, <u>through adequate level of investment in the objective of sustainable urban development</u> , by fully integrating measures in that field into the operational programmes co-financed by the ERDF.

Reason

The urban dimension can only be reinforced if an adequate level of investment in sustainable urban development is ensured.

Recommendation 3

Recital (10)

Text proposed by the Commission	CoR amendment
The ERDF should address the problems of accessibility and remoteness from large markets confronting areas with an extremely low population density, as referred to in Protocol No 6 to the Act of Accession of Austria, Finland and Sweden. The ERDF should also address the specific difficulties encountered by certain islands, mountain areas and sparsely populated areas whose geographical situation slows down their development.	The ERDF should address the problems of accessibility and remoteness from large markets confronting areas with an extremely low population density, as referred to in Protocol No 6 to the Act of Accession of Austria, Finland and Sweden. The ERDF should also address the specific difficulties encountered by certain islands, mountain areas, rural and urban areas, sparsely populated areas <u>and cross-border areas</u> whose geographical situation slows down their development.

Reason

This amendment brings the wording of Recital 10 in line with the amendments proposed under Recital (1) and ensures that the two recitals are more generally consistent, which is not wholly the case in the present version of the proposal.

Recommendation 4

Article 1(2)

Text proposed by the Commission	CoR amendment
It lays down specific provisions concerning the treatment of urban and rural areas, of areas dependent on fisheries, of the outermost regions, and of areas with natural handicaps.	It lays down specific provisions concerning the treatment of urban and rural areas, of areas dependent on fisheries, of the outermost regions, and of areas with natural <u>or demographic handicaps</u> .

Reason

Explicit reference to demographic handicap, insofar as it covers sparsely populated regions, fulfils the need for completeness and coherence.

Recommendation 5

Article 3(2)

Text proposed by the Commission	CoR amendment
The ERDF shall contribute towards the financing of: a) productive investment; b) infrastructure; c) other development initiatives including services to enterprises, creation and development of financing instruments such as venture capital, loan and guarantee funds and local development funds, interest subsidies, neighbourhood services, and exchange of experience between regions, towns, and relevant social, economic and environmental actors; d) technical assistance as referred to in Articles 43 and 44 of Regulation (EC) No (...).	The ERDF shall contribute towards the financing of: a) productive investment; b) infrastructure; c) other development initiatives including services to enterprises, creation and development of financing instruments such as venture capital, loan and guarantee funds and local development funds, interest subsidies, neighbourhood services, and exchange of experience <u>cooperation</u> between regions, towns, and relevant social, economic and environmental actors; d) technical assistance as referred to in Articles 43 and 44 of Regulation (EC) No (...); <u>e) investment in the cultural heritage;</u>

Reason

Limiting territorial cooperation to the exchange of experience appears unduly restrictive since the latter constitutes only one aspect of the former.

Furthermore, it would also seem appropriate, on the basis of positive experiences under ERDF funding, to identify and specify investment in restoring, restructuring and showcasing cultural heritage. It would also seem appropriate to clearly define eligibility with regard to current expenditure in order to ensure completeness and consistency with other articles in the proposal (see Article 8(2)).

Recommendation 6

Article 4(4)

Text proposed by the Commission	CoR amendment
4) Prevention of risks, including development and implementation of plans to prevent and cope with natural and technological risks;	4) Prevention of risks, including development and implementation of plans to prevent and cope with natural <u>risks (forest fires and floods for example)</u> and technological risks;

Reason

Forest fires and floods should be specifically mentioned because these constitute a frequent risk in large areas of the EU.

Furthermore, the new wording clarifies 'to cope with' in the sense that it includes activities (extinguishing forest fires, for example) needed to reduce as much as possible the negative impacts of a phenomenon of this type (fire, flood) which is not classed as a major disaster and therefore not eligible for assistance from the EU Solidarity Fund.

Recommendation 7

Article 4

Add new point 10

Text proposed by the Commission	CoR amendment
	10) <u>Social infrastructures and services which contribute to the creation of jobs and to gender equality at work;</u>

Reason

The areas on which the ERDF is to focus its assistance, listed in Article 4 of the Proposal for a Regulation, do not include some of the actions being financed in the current period 2000-2006, in particular social infrastructures and services.

It makes sense to continue these actions, since they create jobs in an area currently considered a potential source of new jobs that the European institutions, amongst others, hope to exploit.

Furthermore, this employment sector can enable women to access the job market in less developed regions, reinforcing the principle of gender equality and the reconciliation of family and professional life.

Recommendation 8

Article 5

Text proposed by the Commission	CoR amendment
Under the 'Regional competitiveness and employment' objective, the ERDF shall focus its assistance, in the context of regional sustainable development strategies, on the following priorities:	Under the 'Regional competitiveness and employment' objective, <u>and without prejudice to the provisions of Article 8,</u> the ERDF shall focus its assistance, in the context of regional sustainable development strategies, on the following priorities, <u>demonstrating greater flexibility in the so-called 'phasing-in' regions:</u>

Reason

This addition makes the opinion more consistent with the recommendations made by the Committee of the Regions in its opinion on the Third report on economic and social cohesion.

Recommendation 9

Article 5(1)

Text proposed by the Commission	CoR amendment
Innovation and the knowledge economy, through support to the design and implementation of regional innovation strategies conducive to efficient regional innovation systems, and specifically:	Innovation and the knowledge economy, through support to the design and implementation of regional innovation strategies conducive to efficient regional innovation systems, <u>specifically</u> inter alia , the following:

Reason

Given the economic and social specificity of each territory and their different development potential and needs, more flexibility should be allowed to define the specific measures in the different regions and urban areas in the context of the three priorities set for ERDF intervention.

Recommendation 10

Article 5(1) — add new indent

Text proposed by the Commission	CoR amendment
	e) <u>The impetus to growth and employment provided by SMEs, i.e. areas of entrepreneurial activity like the establishment of a firm, the transfer of ownership, entrepreneurial dynamism, foreign trade, the development of areas of expertise and the establishment of suitable infrastructure.</u>

Reason

Support is particularly important in regions with socio-economic problems, so as to create the conditions for economic and employment growth.

Recommendation 11

Article 5(1) — add new indent

Text proposed by the Commission	CoR amendment
	f) <u>building and equipping technology and research and development centres</u>

Reason

In order to fulfil the objectives of the Lisbon and Gothenburg strategy with regard to research and innovation, the creation of high quality research and technology centres should also be supported. Therefore, the areas for action in the priorities proposed in Article 5 of the ERDF Regulation should be geared to the objectives set out in the Community strategy, otherwise the implementation of a policy for growth and real cohesion between the EU's regions will prove impossible.

Recommendation 12

Article 5(2) — add new indent

Text proposed by the Commission	CoR amendment
Environment and risk prevention, and specifically:	Environment and risk prevention, and specifically inter alia, the following: a) <u>areas which promote sustainable development and have a clear environmental dimension, and investments that help to fulfil the objectives of Article 174 of the Treaty with regard to the environment;</u>

Reason

The eligible areas mentioned in the Proposal are only examples, as in the current ERDF; therefore the proposed text should be clear and consistent with the current regulations, which state, 'inter alia, the following'. The example of sustainable development is added because it is considered particularly interesting.

Recommendation 13

Article 5(2) — add new indent

Text proposed by the Commission	CoR amendment
	f) <u>building infrastructures for waste disposal, water supply and waste-water treatment.</u>

Reason

The priority on 'environment and risk prevention' should include activities in the area of water supply, waste water and waste disposal, since problems still persist which hinder competitiveness in European regions.

Recommendation 14

Article 5(3)

Text proposed by the Commission	CoR amendment
3) access, outside major urban centres, to transport and telecommunication services of general economic interest, and specifically:	3) access, outside major urban centres , to transport and telecommunication services of general economic interest, <u>and specifically inter alia, the following:</u>

Reason

When promoting access to transport and telecommunications services, major urban centres should not be excluded from the outset.

Recommendation 15

Article 5(3)(a)

Text proposed by the Commission	CoR amendment
a) strengthening secondary networks by improving links to TEN-transport networks, to regional railway hubs, airports and ports, or to multimodal platforms, by providing radial links to main railways lines, and by promoting regional and local inland waterways;	a) strengthening secondary networks by improving links to TEN-transport networks, to regional railway hubs, airports and ports, or to multimodal platforms, by providing radial links to main railways lines, and by promoting regional and local inland waterways, <u>cabotage, maritime routes connecting islands, and especially smaller islands, ports which are smaller than Class A ports, and cross connections by air between Class I and II airports;</u>

Reason

All islands, regardless of size, share a number of common problems. Islands depend on both sea and air transport for links between each other and with the mainland. This fact should be highlighted, and it should be emphasised that these problems are worse in the case of smaller islands.

This would ensure that certain types of sea and air routes in European peripheral maritime regions are not neglected.

Recommendation 16

Article 6(2)(c)

Text proposed by the Commission	CoR amendment
c) risk prevention, including the promotion of maritime security and protection against flooding, marine and inland water pollution, prevention of and protection against erosion, earthquakes and avalanches. Programmes may include the provision of equipment and development of infrastructure, drawing up and implementing transnational assistance plans, common risk mapping systems, and the development of common instruments for studying, preventing, monitoring and controlling natural and technological risks	c) risk prevention, including the promotion of maritime security and protection against flooding, marine and inland water pollution, prevention of and protection against erosion, earthquakes and seismic risks, volcanic eruptions, forest fires and avalanches. Programmes may include the provision of equipment and development of infrastructure, drawing up and implementing transnational assistance plans, common risk mapping systems, and the development of common instruments for studying, preventing, monitoring and controlling natural and technological risks.

Reason

These particular types of disaster should be mentioned for the sake of completeness.

Recommendation 17

Article 6(2)

Text proposed by the Commission	CoR amendment
d) the creation of scientific and technological networks connected with issues relating to the balanced development of transnational areas, including the establishment of networks between universities and links for accessing scientific knowledge and technology transfer between R&TD facilities and international centres of R&TD excellence, the development of transnational consortia for sharing R&TD resources, twinning of technology transfer institutions, and development of joint financial engineering instruments directed at supporting R&TD in SMEs.	d) the creation of scientific and technological networks connected with issues relating to the balanced development of transnational areas, including the establishment of networks between universities, <u>higher education institutions</u> and links for accessing scientific knowledge and technology transfer between R&TD facilities and international centres of R&TD excellence, the development of transnational consortia for sharing R&TD resources, twinning of technology transfer institutions, and development of joint financial engineering instruments directed at supporting R&TD in SMEs; <u>regions of different geographical position should be encouraged to take part in each of these cooperation instruments, with the aim of extending competitiveness and innovation throughout Europe.</u> e) <u>by encouraging entrepreneurship and, in particular, the development of SMEs, tourism, culture, and IT-usage</u>

Reason

The involvement of regions coming under the convergence and competitiveness objectives, as well as the various transitional arrangements (regions affected by the statistical effect and the natural effect) in the same cooperation instrument will facilitate more fruitful exchange of experience and will have a more positive impact on cohesion.

Furthermore networks should not be limited to universities, but should include other higher education institutions, since these tend to be closer to business and since not all regions have a university though they will often have another higher education institution.

Strengthening entrepreneurship with respect to developing tourism, IT, etc., are ideal forms of cooperation in terms of pooling experience. Regions can support each other, and borders are often irrelevant. This key aspect of the knowledge economy should therefore not be excluded from transnational cooperation.

Recommendation 18

Article 6(3)

Text proposed by the Commission	CoR amendment
3) reinforcement of the effectiveness of regional policy by promoting networking and exchange of experience among regional and local authorities focusing on the topics referred to under Article 5(1) and (2) and Article 8, including cooperation network programmes covering the whole Community and actions involving studies, data collection, and the observation and analysis of development trends in the Community.	3) <u>promotion of inter-regional cooperation aimed at reinforcement of the effectiveness of regional policy by promoting support for networking and exchange of experience among regional and local authorities focusing on the topics referred to under Article 5(1) and (2) and Articles 8, 9, 10 and 11 including cooperation network programmes covering the whole Community and actions involving studies, data collection, and the observation and analysis of development trends in the Community. Furthermore, networks and experience sharing are instruments for implementing the activities cited under paragraphs 1 and 2 of this Article.</u>

Reason

The Committee of the Regions welcomes the Commission's proposal to create a new objective 'European territorial cooperation'. Nevertheless, the new objective covers only cross-border and transnational cooperation, but not interregional cooperation. The latter would therefore only be possible in the form of cooperation networks and experience sharing, as is the case for the framework programmes for the other objectives. The Committee is opposed to such a separation of the three tried and tested types of cooperation that have thus far characterised European territorial cooperation. The new objective should provide for a specific strand of financing for interregional cooperation.

It is possible that, for a variety of reasons, certain regions throughout Europe might feel affinities with each other, and for this reason fairly substantial cooperation cannot be excluded.

Regions may learn from each other and often borders have no significance in this context. Projects cannot therefore be excluded at the outset.

To achieve territorial cohesion, it is vital that the ERDF should fund cooperation networks on subjects relating to regions with specific geographical features.

Recommendation 19

Article 7(a)

Text proposed by the Commission	CoR amendment
The following expenditure is not eligible for a contribution from the ERDF: a) VAT;	The following expenditure is not eligible for a contribution from the ERDF: a) <u>reimbursable</u> VAT;

Reason

This would ensure that the rule endorses previous and ongoing practice for ERDF programmes. It would also comply with the provisions of the ESF regulation and so avoid incomprehensible discrepancies within the European cohesion policy.

Recommendation 20

Article 7(d)

Text proposed by the Commission	CoR amendment
d) housing;	d) housing, with certain exceptions, restricted to the <u>convergence objective, including categories of operations of social relevance such as residential buildings for the vulnerable and temporary accommodation for non-EU immigrants;</u>

Reason

The eligibility of expenditure for constructing or restructuring residential buildings, under the convergence objective, for specific vulnerable categories and for non-EU first generation immigrants would appear to be consistent with the social objectives of European cohesion. It would also be instrumental in enabling Community policy to overcome structural problems generated by migratory flows from non-EU countries.

Recommendation 21

Article 8(1),

Text proposed by the Commission	CoR amendment
In the case of action involving urban regeneration as referred to in Article 25(4) a) and 36(4) b) of Regulation (EC) No (...), the ERDF shall support the development of participative, integrated strategies to tackle the high concentration of economic, environmental and social problems affecting urban agglomerations. This may combine the rehabilitation of the physical environment, brownfield redevelopment, and the preservation and development of the historical and cultural heritage with measures to promote entrepreneurship, local employment and community development, as well as the provision of services to the population taking account of changing demographic structures.	In the case of action involving urban regeneration as referred to in Article 25(4) a) and 36(4) b) of Regulation (EC) No (...), the ERDF shall support the development of participative, integrated strategies, <u>to be implemented within the context of the Member States' legal frameworks, to strengthen sustainable growth and to tackle the high concentration of economic, environmental and social problems affecting urban agglomerations.</u> This may combine the rehabilitation of the physical environment, brownfield redevelopment, and the preservation and development of the historical and cultural heritage with measures to promote <u>innovation and the knowledge economy</u> , entrepreneurship, local employment and community development, as well as the provision of services to the population taking account of changing demographic structures.

Reason

The legal basis for the relevant participative strategies is strengthened by anchoring the participative strategies cited in the proposal, with implicit reference to sub-delegation under Article 36(4)(b) of the coordination regulation, to the Member States' organisational frameworks and the principle of subsidiarity.

Given the crucial role of cities for regional development, it is important for the effectiveness of cohesion policy and their contribution to the Lisbon and Gothenburg objectives, that structural funding is more explicitly related to urban needs and potential in the regions. This can be achieved by introducing sustainable urban development actions, which should include, but at the same time go beyond, 'urban regeneration' measures.

In the context of integrated urban development actions, emphasis should be put amongst others on measures aiming to promote innovation and the knowledge economy in light of the goals set by the Lisbon Agenda.

Recommendation 22

Article 9(3)

Text proposed by the Commission	CoR amendment
Member States and regions shall ensure complementarity and coherence between the actions co-financed by the EAFRD and those co-financed by the EFF on the one hand, and the actions co-financed by the ERDF on the other hand. To this end, for actions under points 1), 3) and 5) Member States shall set when preparing operational programmes clear demarcation criteria for actions to be supported from the ERDF by virtue of this Article, on the one hand, or from the EAFRD by virtue of Article 49(1), a), b) and i) of Regulation (EC) No. (...), for rural areas, or from the EFF by virtue of Article (...) of Regulation (EC) No. (...) for areas dependent on fisheries.	Member States and regions shall ensure, within the framework of the operational programmes under Article 36 of <u>Council Regulation (EC) (...), complementarity and coherence, in compliance with the coordination measures under Article 25(4)(c) between the actions co-financed by the EAFRD and those co-financed by the EFF on the one hand, and the actions co-financed by the ERDF on the other hand. To this end, for actions under points 1), 3) and 5) Member States and regions shall set when preparing operational programmes clear demarcation criteria for actions to be supported from the ERDF by virtue of this Article, on the one hand, or from the EAFRD by virtue of Article 49(1), a), b) and i) of Regulation (EC) No. (...), for rural areas, or from the EFF by virtue of Article (...) of Regulation (EC) No. (...) for areas dependent on fisheries. In addition, provision should be made for itinere checks to monitor compliance with the above-cited need for complementarity and coherence.</u>

Reason

The main intention is to establish a link with the relevant coordination rules. If appropriately included in the text, alongside the measures under Article 25(4)(c) (national reference framework), its scope would be reinforced.

Reference to Member States and regions would be consistent with the beginning of the paragraph, where both Member States and regions are mentioned.

The amendment at the end of the paragraph refers to mechanisms that are typical of the *acquis communautaire* and instrumental in strengthening the functions to which they apply.

Recommendation 23

Article 11

Text proposed by the Commission	CoR amendment
In accordance with the additional allocation referred to in Article 16(1) d) of Regulation (EC) No (...) and by way of derogation from Article 3(2) of this Regulation, the ERDF shall help finance operating aid in the outermost regions to offset the additional costs incurred in the areas covered by Article 4 and in the following additional areas, with the exception of products falling within Annex I to the Treaty:	In accordance with the additional allocation referred to in Article 16(1) d) of Regulation (EC) No (...) and by way of derogation from Article 3(2) of this Regulation, the ERDF shall help finance operating aid in the outermost regions to offset the additional costs incurred in the areas covered by Article 4 and in the following additional areas, with the exception of products falling within Annex I to the Treaty:
a) support for goods transport services and start-up aid for transport services;	a) support for goods transport services and start-up aid for transport services;
b) support linked to storage constraints, the excessive size and the maintenance of production tools, and the lack of human capital on the local labour market.	b) support linked to storage constraints, the excessive size and the maintenance of production tools, and the lack of human capital on the local labour market.
	<u>It shall also help to finance the investment needs arising from the remoteness of these regions, especially investment in the transport infrastructure necessitated by territorial fragmentation and investment necessitated by rapid population growth.</u>

Reason

The specific programme should cover not only operating costs but also the investment needs arising from the remoteness of these regions. It should be pointed out that some outermost regions will no longer be covered by Objective 1 in the forthcoming period, but will still suffer the permanent constraints affecting such regions and will still have investment needs arising from their remoteness, which has to date received financial support under cohesion policy.

Recommendation 24

Article 12(6)

Text proposed by the Commission	CoR amendment
<p>6) the implementing provisions for the operational programme:</p> <p>a) designation by the Member State of all the entities stipulated in Article 14;</p> <p>b) a description of the monitoring and evaluation systems as well as the composition of the monitoring committee;</p> <p>c) a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;</p> <p>d) the provisions laid down to ensure the publicity of the operational programme;</p> <p>e) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by Regulation (EC) No. (...);</p>	<p>6) the implementing provisions for the operational programme:</p> <p>a) designation by the Member State of all the entities stipulated in Article 14;</p> <p>b) a description of the monitoring and evaluation systems as well as the composition of the monitoring committee;</p> <p>c) a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;</p> <p>d) the provisions laid down to ensure the publicity of the operational programme;</p> <p>e) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by Regulation (EC) No. (...);</p> <p><u>f) a description of modalities for regional and local involvement, implemented by each Member State participating in the operational programme, as provided under Article 10 of Council Regulation (EC) (....) during the preparatory phase of said programme, and any future programmes;</u></p>

Reason

It is essential that Member States apply partnership rules even in the context of territorial cooperation objectives, especially at the level of regional and local authorities. For instance, it would be inconceivable to implement cross-border cooperation programmes without the large-scale involvement of local cross-border communities, from the proposal phase onwards. The same applies to cities in the case of promoting European city networks. It would therefore appear that the success of an operational programme and its acceptance by the European Commission depend entirely on each participating Member State indicating how the relevant rules have been applied and how it intends to apply them during the implementing phase.

Recommendation 25

Article 12 — add new paragraph

Text proposed by the Commission	CoR amendment
	<p><u>The Member States shall ensure that the regional and local authorities participate in the programming, managing and monitoring of cross-border and transnational cooperation operations.</u></p>

Reason

It is necessary to ensure that regional authorities participate in all phases of cross-border and transnational cooperation programmes.

Recommendation 26**Article 14(3)**

Text proposed by the Commission	CoR amendment
Each Member State participating in the operational programme shall appoint representatives to sit on the monitoring committee referred to in Article 64 of Regulation (EC) No. (...).	Each Member State participating in the operational programme shall appoint representatives to sit on the monitoring committee referred to in Article 64 of Regulation (EC) No. (...), <u>ensuring that the participating regional and local authorities are appropriately represented, in accordance with the institutional and constitutional framework.</u>

Reason

In the view of the successful role played by regional and local bodies during INTERREG III A, B and C, Member States would be in compliance with the principles of partnership and subsidiarity if they included representatives of regional and local authorities amongst their delegates to the monitoring committee of the operational programme. Representatives would be selected from the appropriate public body, on a case by-case-basis.

Brussels, 13 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Proposal for a Regulation on the Cohesion Fund

(2005/C 231/03)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a Council regulation establishing a Cohesion Fund (COM(2004) 494 final — 2004/0166 (AVC);

Having regard to the decision of the European Commission of 15 July 2004, to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of its President of 26 May 2004 to instruct its Commission for Territorial Cohesion to draw up an opinion on this subject;

Having regard to Council Regulation (EC) No. 1164/ 94 which established the Cohesion Fund and which was subsequently complemented by Regulations (EC) No. 1264/99 and (EC) 1265/99;

Having regard to the other proposals for regulations of the European Commission concerning the *general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund*, COM(2004) 492 final, 2004 /0163 (AVC) and the European Regional Development Fund (ERDF), COM(2004) 495 final — 2004/0167 (COD);

Having regard to its opinion on the Third Report on Economic and Social Cohesion (CdR 120/2004 fin) ⁽¹⁾;

Having regard to its Outlook report on Governance and simplification of the Structural Funds after 2006 CdR 389/2002 fin ⁽²⁾;

Having regard to its draft opinion, adopted on 4 February 2005 by the Commission for Territorial Cohesion Policy (rapporteur: Mr Antonio Paiva, Presidente da Câmara Municipal de Tomar (PT/EPP) (CdR 234/2004 rev. 2);

adopted the following opinion at its 59th plenary session of 13-14 April 2005 (meeting of 13 April).

1. The Committee of the Regions views

THE COMMITTEE OF THE REGIONS

1.1 welcomes the framework proposal of the European Commission for the regulations of structural funds for the period 2007-2013;

1.2 is convinced that, taking into account the enlargement of the Union to 25 Member States and subsequently to 27, the Commission's financial proposal to allocate 0.41 of Gross National Income (increasable to 0.46 with the inclusion of aid for rural development and fishing) and earmarking EUR 336.3 billion for financing the three Objectives (78 % Convergence Objective; 18 % Regional Competitiveness and Employment Objective and 4 % Territorial Cooperation) is the minimum compromise for future cohesion policy;

1.3 is pleased that the scope of assistance from the cohesion fund has considered the support of projects that present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks, rail, river and sea transport, intermodal transport systems and their interoperability, management of road and air traffic, clean urban transport and public transport;

1.4 welcomes the fact that the cohesion fund will apply to member States with GNP lying below 90 % of the Community average. A political solution should be sought for Member States that will no longer be eligible as a result of enlargement;

1.5 is of the view that the Member States beneficiaries of the Cohesion Fund should not be penalised with the suspension of the financial assistance of the Cohesion Fund when in accordance with Article 104 (6) of the Treaty the excessive public deficit exists in a beneficiary Member State;

1.6 trusts that the European Commission will clarify whether the suspension, if it exists, refers only to new projects to be approved after 1 January of the year following the decision;

1.7 is convinced that the European Commission has to analyse the advantages and disadvantages of considering the same general regulations for both the ERDF and the ESF and for the Cohesion Fund. The explanatory memorandum presented does not clarify this opinion of the Commission's proposal. The CoR considers that a cost-benefit analysis of this change on Cohesion Fund regulations should be provided;

⁽¹⁾ OJ C 318 of 22.12.2004, p. 1

⁽²⁾ OJ 2003/C 256/01

1.8 trusts that the European Commission has a reason to change from a project-by-project (Article 1 paragraph 3 of EC No. 1164/ 94 — regulation of current Cohesion Fund) analysis to a program analysis (last paragraph of point 5.2 of the explanatory memorandum of document COM(2004) 492 final — regulation for structural funds) of the proposals of the Member States receiving support from the Cohesion Fund. This method is going to be completely different from the one that is being used now. The European Commission should justify this change according to the results of an evaluation, which should be carried out, for the current Cohesion Fund.

2. The Committee of the Regions' Recommendations

Recommendation 1

New recital 5

Text proposed by the Commission	CoR amendment
	<u>The Cohesion Fund must also take account of the social aspects of sustainable development and must contribute towards achieving social inclusion, in particular in relation to accessibility and the removal of barriers for people with disabilities to combat discrimination of disabled persons, in accordance with Article 13 of the Treaty.</u>

Reason

The Structural Funds, notably the Cohesion Fund, is an essential tool for reducing and alleviating social exclusion of vulnerable groups such as in removing barriers for disabled persons in all areas of life in particular by promoting and creating an accessible physical environment for disabled persons in relation to information communication technologies, transport and the built environment.

Recommendation 2

Article 2 — point 1

Scope of assistance

Text proposed by the Commission	COR amendment
Trans-European transport networks, in particular priority projects of European interest as identified by Decision No. 1692/96EC;	Trans-European transport networks, in particular priority projects of European interest as identified by Decision No. 1692/96EC <u>and their respective links namely ports and airports.</u>

Reason

Especially Outermost Regions of the European Union need these links to reduce isolation from the European Continent and provide access to the Trans-European Network.

Recommendation 3

Article 3 — point 1

Rules on eligibility of expenditure

Text proposed by the Commission	COR amendment
The following expenditure shall be ineligible: 1) VAT; 2) interest on debt; 3) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned; 4) housing; 5) decommissioning of nuclear power stations	The following expenditure shall be ineligible: 1) VAT; 2) interest on debt; 3) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned; 4) housing; 5) decommissioning of nuclear power stations

Reason

In the current Cohesion Fund, VAT is eligible and there is no reason for stricter rules than the existing ones.

Recommendation 4

Article 4

Conditions applying to access to Fund assistance

Text proposed by the Commission	COR amendment
<p>1. Assistance from the Cohesion Fund shall be conditional on the following rules.</p> <p>2. If the Council:</p> <p>a) has established in accordance with Article 104(6) EC that excessive government deficit exists in a beneficiary Member State, and</p> <p>b) has decided in accordance with Article 104(8) EC that the Member State concerned, in response to a Council Recommendation issued under Article 104(7) EC has not taken effective action or that the action taken has proven to be inadequate,</p> <p>it decides to suspend either the totality of part of the financial assistance from the Fund for the Member State concerned with effect from 1 January of the year following the decision. The suspension concerns the commitments.</p> <p>3. The Council decides to lift the suspension of the financial assistance from the Fund if it establishes that the Member State concerned has taken the necessary corrective action. The Commission proceeds to the re-budgetisation of the commitments suspended.</p> <p>4. The Council takes the decisions referred to in paragraphs 2 and 3 on a qualified majority on a proposal from the Commission.</p>	<p>1. Assistance from the Cohesion Fund shall be conditional on the following rules:</p> <p>2. If the Council:</p> <p>a) established in accordance with Article 104(6) EC that excessive government deficit exists in a beneficiary Member State,</p> <p>b) has decided in accordance with Article 104 (8) EC that the Member State concerned, in response to a Council Recommendation issued under Article 104(7) EC has not taken effective action or that the action taken has proven to be inadequate,</p> <p>it decides to suspend either the totality of part of the financial assistance from the Fund for the Member State concerned with effect from 1 January of the year following the decision. The suspension concerns the commitments.</p> <p>3. The Council decides to lift the suspension of the financial assistance from the Fund if it establishes that the Member State concerned has taken the necessary corrective action. The Commission proceeds to the re-budgetisation of the commitments suspended.</p> <p>4. The Council takes the decisions referred to in paragraphs 2 and 3 on a qualified majority on a proposal from the Commission.</p> <p><u>The Member States eligible for funding from the Cohesion Fund shall be Member States whose per capita Gross National Income (GNI) measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on (...), is less than 90% of the Community average.</u></p>

Reason

Article 4 should be replaced by a new paragraph, which should list the member States eligible to Cohesion Fund.

If Article 4 remains as the European Commission proposes, the Cohesion Fund beneficiary Member State will be penalised twice. One of the penalisations is similar to the one applied to any other EU Member State with an excessive public deficit. The other penalisation will be the suspension of the Cohesion Fund for the Member State concerned.

Although it is understandable that the Cohesion Fund beneficiary States must meet the conditions of economic convergence, the suspension of the Cohesion Fund will bring greater difficulties to a Member State that already has a GNP below the Community average.

Furthermore, it is not clear whether the suspension applies to new projects approved after 1 January of the year following the decision and what happens to the ones that have been approved before that date.

Brussels, 13 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Proposal for a Directive of the European Parliament and of the Council on market access to port services

and the

White Paper on the review of Regulation 4056/86, applying the EC competition rules to maritime transport

(2005/C 231/04)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a Directive of the European Parliament and of the Council on market access to port services (COM(2004) 654 final; 2004/0240 (COD)) and the White Paper on the review of Regulation 4056/86 applying the EC competition rules to maritime transport (COM(2004) 675 final);

Having regard to the decision of the Council of 2 December 2004, to consult it on this subject, under the first paragraph of Article 265 and Article 80 of the Treaty establishing the European Community;

Having regard to the decision of its president of 3 November 2004 to instruct its Commission for Territorial Cohesion Policy to draw up an opinion on this subject;

Having regard to the Communication from the Commission to the European Parliament and the Council on Reinforcing quality service in sea ports: A key for European transport and the Proposal for a Directive of the European Parliament and of the Council on Market access to port services (COM(2001) 35 final) and the Amended Proposal for a Directive of the European Parliament and of the Council on Market access to port services (presented by the Commission pursuant to Article 250(2) of the EC Treaty (COM(2002) 101 final));

Having regard to its opinion of 20 September 2001 on the Communication from the Commission to the European Parliament and the Council on Reinforcing quality service in sea ports: A key for European transport (CdR 161/2001 fin) ⁽¹⁾;

Having regard to the opinion of the European Economic and Social Committee of 29 September 2001 on the Proposal for a Directive of the European Parliament and of the Council on Market access to port services (CES 1495/2001);

Having regard to the Report of the Standing Committee of the EFTA States of 2 May 2002 on the Proposal for a Directive of the European Parliament and of the Council on market access to port services;

⁽¹⁾ OJ C 19 of 22.1.2002, p. 3

Having regard to the Joint text of 22 October 2003, approved by the Conciliation Committee provided for in Article 251(4) of the EC Treaty, on the Directive of the European Parliament and of the Council on market access to port services (PE-CONS 3670/03 — C5-0461/2003 — 2001/0047 (COD));

Having regard to the Report, of 4 November 2003, of the European Parliament Delegation in the Conciliation Committee on the Joint text approved by the Conciliation Committee on the Directive of the European Parliament and of the Council on Market access to port services (A5-0364/2003);

Having regard to its opinion of 29 September 2004 (CdR 163/2004 fin) ⁽¹⁾ on the Proposal for a Directive of the European Parliament and of the Council on Enhancing port security (COM(2004) 76 final);

Having regard to Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the Transparency of financial relations between Member States and public undertakings;

Having regard to Council Regulation (EEC) No. 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 [now Articles 81 and 82] of the Treaty to maritime transport, last amended by Regulation 1/2003 of 16 December 2002;

Having regard to the Presidency Conclusions of the Lisbon European Council, held on 23 and 24 March 2000, in which the Commission is urged to 'speed up liberalisation in areas such as gas, electricity, postal services and transport';

Having regard to the White Paper of 12 September 2001 on European transport policy for 2010: Time to decide (COM(2001) 370 final);

Having regard to Commission Regulation No. 823/2000 of 19 April 2000 on the Application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia);

Having regard to Council Regulation (EC) No. 1/2003 of 16 December 2002 on the Implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

Having regard to the Report of the OECD Secretariat of 16 April 2002 on Competition policy in liner shipping;

Having regard to the European Commission's consultation paper of March 2003 on the Review of Regulation 4056/86 on the detailed application of Articles 81 and 82 of the Treaty to maritime transport;

Having regard to the comments received in respect of the European Commission's consultation paper on the review of Regulation 4056/86;

Having regard to the Report of the Erasmus University in Rotterdam, dated 12 November 2003, on the assistance which it provided in processing the comments received by the Commission in respect of its consultation paper on the review of Regulation 4056/86;

Having regard to the European Commission's discussion paper, drawn up in December 2003, on the review of Regulation 4056/86;

Having regard to the European Liner Affairs Association (ELAA) Paper on the Review of Regulation 4056/86: Proposals for a new regulatory structure, dated 6 August 2004;

Having regard to the draft opinion (CdR 485/2004 rev.1) adopted by its Commission for Territorial Cohesion Policy on 4 February 2005 (Rapporteur: Mr Rolf Harlinghausen, Member of the Europe Committee of the Hamburg Parliament (DE/EPP);

⁽¹⁾ OJ C 43 of 18.2.2005, p. 26

Whereas:

- 1) liberalisation of the transport sector has been one of the key objectives of the EU and its Member States, particularly since the adoption of the Lisbon Agenda in 2000;
- 2) transport policy, in particular, is one of the priority areas of the Commission for Territorial Cohesion Policy and also of the Committee of the Regions, as a whole, as has been demonstrated by a large number of its opinions on this subject, in particular the opinion prepared by Mr Lamberti on the initial draft of the Directive on port services. The CoR thus underlines the fundamental contribution made by EU transport policy to the achievement of cohesion in an enlarged and even more diverse European Union;
- 3) in the next few years the EU will have to contend with a considerable growth in demand for transport services. This increase, arising, inter alia, as a result of economic growth, the enlargement of the EU and the stepping-up of trade relations, will, moreover, affect freight traffic to a considerable extent;
- 4) in view of the fact that capacity is likely to be overloaded, above all as regards road transport infrastructure, it is therefore essential that considerable efforts be made to channel traffic flows and to extend transport infrastructure. The environmentally friendly maritime transport sector will play a key role in this respect as, in view of its potential capacity, it can help to transfer freight transport from the roads and to bring about more sustainable transport development. The establishment and extension of an effective intermodal transport network will have a decisive impact on coastal regions, port regions and hinterland areas and consequently also on port industries in these areas and the enterprises involved in maritime transport. It may be assumed that this positive impact on the internal market as a whole will also be clearly visible in areas such as the Baltic region;
- 5) the establishment of efficient transport systems is a prerequisite for the achievement of the goal of making the EU competitive at international level. Reliable basic conditions have to be established in order to provide incentives for a further bolstering of investment in the transport sector. With this aim in view, EU law will have to comply with the principles of effective competition and free access to markets and also meet requirements in respect of security of investment, adequate safety provisions, socially acceptable working conditions and a high level of environmental standards;
- 6) cargo handling costs in EU ports are substantially lower than the equivalent costs in North America and Asia; it is thus vital for the measures to be taken to help bring about an improvement in the competitiveness and the efficiency of EU ports to be discussed, on the basis of an analysis of the shortcomings of the current situation. No such analysis is however as yet available;
- 7) attention should also be drawn to the fact that effective complex structures have been established in recent decades, particularly in ports but also in the field of maritime transport. This development has helped to ensure that many of the enterprises established or operating in the EU and its ports are already amongst the most profitable and most competitive in the world. Changes to the basic legal conditions should therefore take adequate account of their impact on structural interdependencies within the transport sector and interdependence between this sector and the other branches of the economy. The Commission has also recognised the complex nature of these structures by making provision for considerable financial outlay in order to establish effective, competitive transport systems, such as 'short sea shipping' and the 'motorways of the sea';
- 8) it is essential to adopt a sensitive approach when organising deregulation — which is indisputably necessary — in the field of maritime transport and port services. The requisite transitional provisions should — also on employment grounds — strive to avoid placing enterprises established in or operating in the EU at a disadvantage — however temporary — vis-à-vis other world market players and to avoid bringing about upheavals in the EU;
- 9) a comparison of the situation at worldwide level demonstrates that, in respect of both maritime transport and port services, basic conditions with regard to competition policy and competition law differ to a very considerable extent. Industrial policy considerations should therefore play a role when determining the extent, scope and speed of market liberalisation within the EU. Such considerations have up to now been totally disregarded. Complementary employment policy measures should also be put in place to minimise possible negative, short-term impacts of liberalisation;

adopted the following opinion at its 59th plenary session of 13-14 April 2005 (meeting of 13 April):

I. Proposal for a Directive of the European Parliament and of the Council on Market access to port services

1. General comments made by the Committee of the Regions

THE COMMITTEE OF THE REGIONS

1.1 endorses the Commission's desire to establish a special Community framework for port services. This endorsement is all the stronger in view of the fact that ports are to be found in 20 of the now 25 EU Member States;

1.2 welcomes the fact that in the Proposal for a Directive, the Commission sets out its fundamental objectives of ensuring competition and efficiency in the port sector. Where inefficiencies exist, the instruments of liberalisation, freedom of access to the markets and transparency can help to achieve these objectives;

1.3 agrees with the Commission that, in addition to the application of the transparency Directive to port enterprises, it is also essential to adopt aid guidelines in respect of port investment which are clear and transparent, on the one hand, but also flexible, on the other hand, in order to ensure continuing fair and efficient competition in the port sector;

1.4 is pleased that the Commission is making it possible for publicly-owned ports to provide port services in the interests of promoting effective competition;

1.5 does, however, regret that only a short time after the failure of its initial attempt to secure approval of its proposals, the Commission is now submitting a further proposal for a Directive, setting out stricter provisions in a number of key regulatory areas, without having carried out the requisite analyses. The new proposal for a Directive contains a large number of amendments based, for the most part, on the initial draft, which was rejected by both the Council and the European Parliament; some of these amendments clearly fall short of the results of the conciliation process;

1.6 deplores the lack of adequate consideration of the prevailing market structure with regard to European ports and port services. There is, in reality, a high degree of competition between individual ports in the EU, with the result that only those ports which are efficient and provide good value for money are able to stand up to the competition in the EU;

1.7 concludes that, as a result of the intense competition between ports, the only services which will be able to operate successfully within ports are those which are based on efficient and inexpensive production methods. As inefficient providers of port services have a detrimental effect on the competitiveness of the overall operation of individual ports, competition between ports will oblige such service providers to improve their productivity;

1.8 regrets the failure to take adequate account of the fact that competition is not confined solely to activities within ports; whole transport networks are also in competition with one another. Interventions in one component area of these transport networks — in this case ports — have an impact on the whole logistics chain in hinterland transport. The new proposal for a Directive therefore, in reality, regulates far more

than simply access to port services. These proposals would have unforeseeable consequences in the field of logistics;

1.9 fears that there will be a drop in the number of active providers of port services in the EU if the proposal for a Directive is implemented in its current form. The possibility cannot be excluded that a small number of service providers from ports outside the EU, who earn high rates of return on their investments in their own monopolistic home markets, will step up their penetration of key ports in the EU and successfully take part in selection procedures by making high financial bids. This would be the case in particular, when the size of the bid was the only, or the decisive, selection criterion. This would significantly jeopardize the current structure of port industries in the EU, which is characterised by a large number of public and private terminal operators. Were it to be the case that a small number of terminal operators were able, in this way, to control a sizeable share of the market in cargo handling operations at ports, this would lead to the establishment, in the EU too, of monopolistic structures incompatible with the goal of achieving a higher level of competition;

1.10 fears, in addition, that there will be a drop in the level of investment by port-service providers. The proposal for a Directive creates uncertainties with regard to the duration of contracts and compensation which would lead to a considerable decrease in the expected level of amortisation revenue. These uncertainties will also put up the cost of refinancing investments as the banking sector will, in pursuance of the Basel II Requirements, pay greater attention to the risks concerned. Just these two consequences of the proposal for a Directive will result in a considerable reduction in investment incentives;

1.11 identifies an infringement of both the subsidiarity principle, set out in Article 5 of the EC Treaty, and the principle of proportionality as the proposal for a Directive pays only very scant attention to the fact that, at the level of the Member States, competition has already been liberalised between EU ports. With their existing form and scope, the provisions set out in the proposal for a Directive are therefore not necessary;

1.12 therefore expresses its concern that the measures put forward in the proposal for a Directive will not achieve the Commission's objectives, which are themselves to be explicitly welcomed; it fears that the current trend towards bringing about considerable increases in growth and efficiency at EU ports and in respect of port services is more likely to be damaged by these proposals;

1.13 regards it as appropriate that ports' scope to provide port services themselves is not confined to specific situations but extends across the board. Steps must be taken to ensure that fair and transparent conditions of competition are safeguarded in cases where port authorities themselves are competing with other — private — bidders in selection procedures;

1.14 would add that there are qualitative differences in the various language versions of the proposal for a Directive, thereby making it more difficult to carry out an appraisal of the document;

Individual aspects of the proposal for a Directive

THE COMMITTEE OF THE REGIONS

1.15 fears that the proposed requirements in connection with mandatory authorisation will involve port authorities in a vast amount of red tape, which flies in the face of the goals of a 'liberalising' Directive. The proposal for a Directive stipulates that all port services covered by the Directive (technical — nautical services such as pilotage, towing and mooring services, all activities linked to the handling of cargo and passenger services) will, in future, require authorisation. This requirement also covers port services which hitherto did not require authorisation. In future, port authorities would have to issue far more authorisations than had hitherto been the case as, for example, property owners, too, who operate port services on their own property would also need to have an authorisation. Parties carrying out self-handling in respect of cargo and passenger operations ('self-handlers') would also need to have an authorisation, although such authorisations could be provided for an unlimited period, albeit only for as long as self-handlers continue to comply with the criteria for issuing such authorisations. Port authorities would also be obliged to monitor authorisations. In addition to checking compliance with the criteria for issuing authorisations, it would also be necessary to carry out checks with regard to compliance with, for example, employment and social provisions, a task which is basically the responsibility of the social partners. In individual cases, these obligations taken overall, could also exceed the capacity of a given port authority;

1.16 believes that it is possible that the proposed mandatory authorisation in the case of property owners will infringe property rights and will also be incompatible with Article 295 of the Treaty establishing the European Community, under which Member States' rules governing the system of property ownership shall not be prejudiced. In the event that property owners see their bids in respect of their own port facilities rejected under a selection procedure and the contract awarded to a third party, such property owners would be unable to provide port facilities any more on their own property. As the port authorities are not the owners of the port areas in question, they would have no right of access to these areas and are therefore not in a position to conclude a contract of lease with a third party, without the agreement of the owner of the property. In particular, the port authority cannot compel the owner of the property to conclude a contract with the third party which has made the successful bid under the selection procedure. Authorisations awarded under such circumstances would therefore be ineffective;

1.17 points out that complications could arise in connection with the proposed selection process. In cases where limitations are imposed, the proposal for a Directive stipulates that the only authorisations which shall remain in force are those which are issued under a selection procedure. All authorisations which had, on the other hand, been properly issued in accordance with current legal provisions would cease to be valid. As the proposed new legislative act would have retroactive effect in this case, port authorities would therefore be required, once the Directive comes into force, to organise selection processes for re-issuing all authorisations, including existing authorisations;

1.18 considers that steps to give Member States sole responsibility for establishing rules on calculating compensation for the residual value of a company run the risk of distorting competition. For example, when calculating compensation it

might be possible to provide for (hidden) additional deductions on property rent. Therefore the principle laid down in the Directive to set compensation on the basis of transparent rules established in advance, does not adequately formalise what is required of national rules on calculating compensation. At the same time any Community rules must take into account differences between the respective national depreciation provisions and tax systems so as to avoid causing distortions in competition. In line with these principles, European, rules could for instance make the application of generally applicable national depreciation provisions mandatory. Any divergence should only be allowed if there are suitable grounds for doing so. Moreover, rules on calculating compensation should be made public, or at least the Commission should be notified thereof, in order to promote transparency;

1.19 fears that various individual provisions set out in the proposal for a Directive will result in a reduction in investment; the provisions in question are as follows:

- a) the new, shorter durations of authorisations are out of step with the period required for amortisation. These excessively short durations will have the effect of making some long-term investments by no means profitable or lead to a situation whereby the prices charged hitherto — which were advantageous when compared with international rates — will have to be increased in order to ensure more rapid amortisation;
- b) the proposal for a Directive does not include any provision for extending the duration of existing authorisations. Under the proposal, authorisations cannot be extended without organising a new selection process, thereby running the risk that authorisations may be lost. Under these circumstances, it is likely that long-term investments will only be carried out at the beginning of the duration of a given authorisation. Thereafter the incentive to invest diminishes continuously as the authorisation period runs out;
- c) the proposed compensation rules are inadequate. Investment in modern technical equipment does not just require a capital outlay; considerable expenditure also has to be made on training employees and adjusting work management. In order to ensure that operations are effective, it is also essential to spend considerable resources on positioning enterprises within the differentiated network of the transport chain. If compensation payments fail to take account of this expenditure, expectations as regards profitability are diminished from the very moment when investment plans are being drawn up. These measures will have the effect of either reducing investment or stopping investment altogether;

1.20 points to the fact that the lack of transitional provisions will produce considerable legal uncertainty in the case of port-service providers already providing such services. Enterprises which are already active on the market cannot rely on being able to continue their activities in future to the same extent. If a new port-service provider wishes to enter the market in future and if limitations are imposed, the port-service providers which are already active on the market will already have to take part in a selection procedure, thereby running the risk of losing their authorisations. On the one hand, this situation will undermine confidence in existing contracts and, on the other hand, uncertainty as to the continuing existence of authorisations will lead to a significant decrease in the readiness to invest. A one-sided infringement of current contracts will also give rise to the risk of sizeable demands for compensation;

1.21 predicts a decline in the level of attractiveness of EU ports to cruise ships as a result of the restrictions which are to be placed on self-handling operations. Under the proposal for a Directive, self-handling, using the ship's sea-faring crew, would be authorised only in the case of Short Sea Shipping and the Motorways of the Sea operations. International cruise ships would therefore no longer be entitled to carry out on-board checks using their own sea-faring crew;

1.22 fears that the proposed measure whereby self-handlers may use their own land-based personnel will lead to 'social dumping', a decline in both the quality and the productivity of port services and conflicts with technical and political safety requirements (ISPS). Moreover, the selection procedure system proposed by the Commission would be undermined if, for example, handling enterprises were to receive authorisations to carry out loading work but were, in reality, not able to use these authorisations because shipping companies carried out self-handling;

1.23 welcomes the flexible nature of the provisions governing pilotage services which enable the Member States to set proper criteria in respect of national conditions for granting authorisation and the selection of service providers. The Committee does, however, wonder whether it is advisable to make it obligatory for the Member States to report to the Commission on measures to improve the effectiveness of pilotage services as, in the case of these services — as is also underlined in the proposal for a Directive itself — the criteria of the safety of maritime transport and personal expertise are the decisive factors.

2. Recommendations by the Committee of the Regions

THE COMMITTEE OF THE REGIONS

2.1 considers that the Directive should not be approved in its present form, because it does not promote competition in the port sector, but creates partly unnecessary or inadequate rules which are prejudicial to the interests of, in particular, small and medium-sized port service providers and which encourage social dumping; the Directive thus decreases efficiency of ports and restricts opportunities for them to engage in fair competition. The Commission's stated objectives will not be achieved via this Directive;

2.2 considers it essential to carry out a differentiated analysis of the current situation of the market for port services before organising further consultations. The only way effectively to tackle the danger of having an over-regulated market for port services, with the attendant decrease in competition and drop in the efficiency, is by having a detailed understanding of the existing weaknesses in the key market sectors of the EU port industry;

2.3 is convinced that it is essential to respect existing commitments and provide enterprises which are already active on the market with a guarantee as to their continued existence in order to reduce legal uncertainty. Enterprises which are already active on the market should therefore be exempted from mandatory authorisation for the duration of existing contracts or authorisations; alternatively existing authorisations should remain in force up to the maximum durations laid down in the proposal for a Directive. At the very least,

however, appropriate transitional periods should be set, i.e. these periods should be prolonged in order to bring them into line with the objective requirements of the enterprises concerned;

2.4 takes the view that compensation provisions should be introduced in the Member States which would be aligned on the various national depreciation provisions, even after the due expiry of authorisations, and would, at the same time, be geared to the current value of an enterprise on the fictitious assumption that its authorisation is to remain in force. Such a provision would take account of both expenditure, of an investment nature, by the enterprises concerned on organisation, staff and the positioning of the enterprise in the transport network and also of the various basic institutional conditions;

2.5 believes that Community law should specify which factors may or must be taken into consideration in the rules on calculating compensation. However, such rules must take into account differences between the various national depreciation provisions and tax systems;

2.6 advocates that the duration of authorisations be geared to the term of the investments carried out. Furthermore, in the case of long-term investment carried out only in the course of the duration of an authorisation, options should be provided for extending the authorisation. The Committee recommends that at least the time-limit provisions set out in the proposal put forward by the Conciliation Committee of the European Parliament and the Council in respect of Port Package I should be incorporated into the present proposal for a Directive;

2.7 proposes that the mandatory authorisation requirement be replaced by an authorisation requirement which would take effect only in the case of the imposition of a limitation on the number of service providers. This would bring about a considerable saving of resources;

2.8 considers it essential that provision for self-handling be unreservedly restricted to sea-faring crew members of the vessels concerned. In order to avoid 'social dumping' and on grounds of safety, Member States should be allowed to restrict self-handling to port-users whose vessels sail under the flag of an EU Member State;

2.9 takes the view that the area of application of the proposal for a Directive should be extended to include access waterways to ports. Rivers and canals which are accessible to maritime transport should also be included in the scope of the Directive, even if they are not used exclusively as access waterways to ports. This proposal is, however, subject to the express proviso that the other recommendations put forward by the Committee of the Regions are implemented. Extending the area of application of the proposal for a Directive without taking account of the other recommendations would, on the other hand, aggravate the problems which have been described;

2.10 strongly supports the Commission's intention to draw up transparent guidelines in respect of the granting of aid to ports;

2.11 believes that the only way to make EU ports more efficient and to increase competitiveness is by taking account of the recommendations put forward by the Committee.

II. White Paper on the review of Regulation (EEC) No. 4056/86 applying the EC competition rules to maritime transport

3. General comments made by the Committee of the Regions

THE COMMITTEE OF THE REGIONS

3.1 praises the Commission for its endeavours to carry out a review of Regulation 4056/86, applying the EC competition rules to maritime transport and for its desire, with that aim in view, to make intensive use of and to incorporate in its work the expertise of maritime transport operations and their associations;

3.2 agrees with the Commission that any future provisions will, at any rate after a transitional stage, have to comply, fully and without exception, with the standard conditions set out in Article 81(3) of the Treaty establishing the European Community;

3.3 fully concurs with the Commission in its desire to fully abolish the exclusions in respect of pricing and supply agreements and additional agreements which serve to restrict competition;

3.4 agrees with the Commission that the exclusion of cabotage and tramp services from the competition implementing rules enshrined in Regulation 1/2003 may be repealed as there are actually no obvious valid reasons for maintaining this exclusion. A further reason for repealing these exclusions is the fact that this would be a way of tackling, from the outset, a case of unequal treatment of European operators in respect of competition law, however implausible this case may be;

3.5 welcomes the fact that the White Paper presented by the Commission closely examines the issue of the compatibility of existing provisions with EU competition law; the Committee does however have the impression that there is indeed strong circumstantial evidence that the current provisions are no longer compatible with the provisions of Article 81(3) of the EC Treaty; it could, nonetheless be advisable to provide more sound underlying data to back up the conclusions in this regard set out by the Commission. This could provide the Commission with a way of accommodating the reservations expressed by maritime shipping enterprises and also of complying with the requirements of Article 253 of the EC Treaty;

3.6 takes the view that a comprehensive impact analysis has yet to be provided; the Committee is confident that such an analysis will play a key role, at the latest at the stage when concrete regulatory proposals are being drawn up; in this context greater consideration should be paid, in particular, to the impact on trade flows, investment, market shares and consumer prices. The objection that such an analysis would be made more difficult to carry out in view of the fact that, as liner conferences have been in existence for many years, there is a lack of data with regards to competitive market operations, is only partially applicable. The issue at stake here is an area in which any liberalisation drive will have to contend with a sector which was previously highly regulated;

3.7 wonders, in particular, whether any amendments should not also focus more strongly on employment aspects. The Commission points out that there is likely to be a higher level of concentration on the market which would give a boost to innovation. Whilst such a development should be endorsed from the research and industrial policy standpoints, it could,

however, have a negative impact on employment in enterprises;

3.8 takes the view that the proposal put forward by the European Liner Affairs Association (ELAA), to continue to make provision for the exchange, on a non-discriminatory basis, of particular data not linked to named enterprises and aggregated with a delay should be examined in a favourable light. In the final analysis, freely available market information may lead to greater transparency and thus also promote competition. A price index accessible to all market participants would be a key component part of the system, the aim being to take over the guideline role played by existing conference tariffs. In this context it is, however, absolutely essential to ensure that effective monitoring takes place and that the measures are confined to the mere exchange of information;

3.9 wishes to stress, that the primary issue at stake here — in addition to the question of the continued existence of particular provisions, where necessary in modified form — is the need to meet the requirements of enterprises which are established and active on the EU market by introducing appropriate and differentiated transitional measures. Such measures should be aligned first and foremost, on the findings of a comprehensive impact analysis. In this context, the Committee wishes to draw attention to the fact that, from the outset, Regulation 4056/86 provided absolute exemption from EU competition provisions solely in the case of maritime transport; this sector therefore always had to reckon with the fact that these provisions would be reviewed at a later stage. A demand that the existing provisions continue to be applicable or that transitional measures be introduced can therefore not be based solely on grounds of ensuring legal certainty and protecting confidence. The legislative body should, nonetheless, take account of the fact that the liner conference system has been in existence for many years, that practices are deeply rooted and that business relations have been built around the conference system;

3.10 does not share the view that the provisions set out in Article 2 of Regulation 4056/86, concerning authorisation to conclude technical agreements, should actually be repealed. The objections raised by the Commission, namely that the provisions in question were 'merely declaratory', created confusion and were interpreted too broadly by shipowners, would not be resolved by repealing the provisions; this would rather have the effect of strengthening the objections since technical agreements would be authorised even if there were no legal provision to that effect. The absence of express provisions would more likely result in the creation of additional delimitation problems. The Committee is of the opinion that a provision which continues to define, in express terms, the agreements which are authorised may therefore maintain legal certainty and provide guidance. This is also subject to the proviso that Article 2, or the corresponding future provision, is adjusted accordingly, should the way in which the future competition regime is formulated render the hitherto existing provisions invalid. The future provision could be included in the block exemption for consortia (Regulation 823/2000);

3.11 takes the view that global standardisation of the basic legal conditions would appear to be desirable on competition and industrial policy grounds. This observation is all the more apposite in view of the fact that the EU market is henceforth to be liberalised and other shipping nations currently do, to some extent, regulate competition on their markets to a larger degree than is the case with current EU law in respect of the European market;

3.12 draws attention to the fact that the White Paper has, up to now, not paid sufficient attention to the impact which abolishing or amending Regulation 4056/86 would have on current international law, on the one hand, and the removal of possible conflicts of law, on the other hand;

3.13 considers that the planned repeal of Article 9 of Regulation 4056/86, which makes provision for negotiations in the event of conflicts of law between the EU and non-EU states, should be reviewed. Whilst it is recognised that this provision has up to now not yet been invoked, this situation could change, particularly if, as has been planned, current competition law governing maritime transport undergoes a thorough revision. Furthermore, there may be a need to hold negotiations not only in cases where one constitutional state requires something which another constitutional state prohibits but also in cases where a measure is permitted in one constitutional state but banned in another such state.

4. Recommendations made by the Committee of the Regions

THE COMMITTEE OF THE REGIONS

4.1 appeals to maritime transport enterprises and associations not to close their minds to the economic advantages which could be gained, in the general public interest, by increasing competition;

4.2 advocates shaping the substance and timing of the subsequent process in such a way to ensure that the reservations expressed by shipping enterprises and their associations can be addressed on an ongoing basis. Detailed explanations should be given regarding the extent to which these reservations can be taken into consideration or have to be rejected. This is the only way to ensure the establishment of a competition regime for maritime transport which is sustainable, ensures legal certainty and is, wherever possible, accepted by all the parties involved;

4.3 therefore calls for the implementation, wherever possible, of a comprehensive impact analysis which would examine more closely the impact on trade flows, investment, market shares and consumer prices. The Committee recommends that attention be paid, in particular, to employment and social-policy aspects when examining the impact of liberalisation;

4.4 takes the view that the proposal put forward by the European Liners Affairs Association (ELAA) provides an effective basis for future regulatory measures; in this context, the Committee regards it as absolutely imperative, for the purposes of ensuring effective monitoring, to involve the Commission — from the point of view of both personnel and organisation — in the operation of the body which the ELAA proposes to be set up for the purposes of gathering and passing on information not relating to named enterprises. Furthermore, the Committee takes the view that consideration should be given to the idea of also channelling all flows of information via the Commission, or an observer appointed by the Commission, and even to the idea of having the proposed body established directly within the Commission. This would make it possible for the Commission to analyse, on an ongoing basis the impact which the exchange of information had on the market and on competition on the market. As reliable results can only be expected after the scheme has been in operation for a relatively

long period of time, it would be advisable to adopt a regulatory measure for a limited period and on a trial basis, with the option to extend it;

4.5 calls for consideration be given to whether the transitional arrangements could perhaps be aligned on amortisation periods or on the length of time the shipowners concerned are likely to need in order to make changes, with regard to the vessels which they have purchased or are leasing for long or short periods, in order to bring their operations into line with the new conditions;

4.6 urges that investigations be carried out to determine whether it would be possible for the duration of transitional periods to be geared also to geographical considerations, i.e. whether they could be aligned on the conditions prevailing on the regional markets concerned. This being the case, the transitional periods for the Baltic area could be rather short, as there are few liner conferences in this area, whereas the transitional period for the Atlantic routes could be rather longer, as liner conferences play a major role in this area;

4.7 wishes to draw attention to the fact that the establishment and duration of transitional periods could also be geared to 'market-share thresholds';

4.8 calls for the existing uncertainties with regard to Article 2 of Regulation 4056/86 not to be seen as grounds for repealing the provisions set out in this Article but rather as grounds for reviewing the substance of these provisions within the framework of Regulation 4056/86 and Regulation 823/2000. On the one hand, steps should be taken to ensure that these provisions are compatible with Article 81(3) of the EC Treaty and are in line with the future competition regime and, on the other hand, it would be advisable to spell out more concretely those sections of the provisions which the Commission fears will be interpreted too broadly by maritime transport enterprises or in respect of which the Commission has established that such broad interpretations have already been made. The enterprises concerned should be advised to submit proposals on this matter of their own accord, if they wish to ensure that the provisions set out in Article 2 are retained;

4.9 takes the view, moreover, that both at bilateral and multilateral level and also in the context of cooperation within existing international organisations, further efforts might well be advisable with a view to achieving global conditions of competition which would be more uniform and therefore fairer. In this context checks should also be carried out to determine whether, and to what extent, provisions introduced by non-EU states could serve as an example for the EU;

4.10 recommends that Article 9 of Regulation 4056/86 be retained, at least on the basis of a limited-duration provision valid for several years, with the option of being extended.

Brussels, 13 April 2005

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the First Annual Report on Migration and Integration (COM(2004) 508 final)

(2005/C 231/05)

THE COMMITTEE OF THE REGIONS,

HAVING REGARD TO the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the First Annual Report on Migration and Integration (COM(2004) 508 final);

HAVING REGARD TO the Commission decision of 16 July 2004, to consult the Committee on this matter, under the first paragraph of Article 265 of the Treaty establishing the European Community;

HAVING REGARD TO the decision of its president of 3 November 2004 to instruct the Commission for External Relations to draw up an opinion on the subject;

HAVING REGARD TO the Handbook on Integration for policymakers and practitioners released by the European Commission (Directorate-General for Justice, Freedom and Security) in November 2004;

HAVING REGARD TO its opinion on immigration policy (Communication from the Commission on a common policy on illegal immigration (COM(2001) 672 final) and on asylum policy (Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001) 510 final — 2001/0207 (CNS)) adopted on 16 May 2002 (CdR 93/2002 fin) ⁽¹⁾;

HAVING REGARD TO its opinion on the Green Paper on a Community return policy on illegal residents (COM(2002) 175 final) adopted on 20 November 2002 (CdR 242/2002 fin) ⁽²⁾;

HAVING REGARD TO its opinion on the amended Proposal for a Council Directive on the right to family reunification (COM(2002) 225 final — 1999/0258 CNS) adopted on 20 November 2002 (CdR 243/2002 fin) ⁽³⁾;

HAVING REGARD TO its opinion on the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service (COM(2002) 548 final — 2002/0242 CNS) adopted on 9 April 2003 (CdR 2/2003 fin) ⁽⁴⁾;

HAVING REGARD TO its opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on immigration, integration and employment (COM(2003) 336 final) adopted on 12 February 2004 (CdR 223/2004 fin);

HAVING REGARD TO its opinion on the Communication from the Commission to the Council and the European Parliament on the presentation of a proposal for a directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Community COM(2004) 178 final — 2004/0061 (CNS) — 2004/0062 (CNS) — 2004/0063 (CNS), adopted on 17 November 2004 (CdR 168/2004 fin);

⁽¹⁾ OJ C 278 of 14.11.2002, p. 44.

⁽²⁾ OJ C 73 of 26.3.2003, p. 13.

⁽³⁾ OJ C 73 of 26.3.2003, p. 16.

⁽⁴⁾ OJ C 244 of 10.10.2003, p. 5.

HAVING REGARD TO its draft opinion (CdR 339/2004 rev. 1) adopted by the Commission for External Relations on 3 December 2004 (rapporteur: Mr Iskra, Member of Malmö City Council (SE, EPP);

WHEREAS this first annual report paints a picture of migratory trends in Europe, addresses and analyses the changes that have taken place in immigration, and describes the action taken at national and European level with regard to admission and integration;

WHEREAS it will provide a new tool for assessing the development of the common immigration policy;

WHEREAS the ageing population and the shrinking working-age population will probably lead to more immigration flows that will become increasingly necessary to meet the needs of the wider Union;

WHEREAS the Thessaloniki European Council underlined the need to establish a common European framework for framing national policies and envisaged the definition of common basic principles with a view to encouraging the establishment of this framework;

adopted the following opinion at its 59th plenary session, held on 13 and 14 April 2005 (session of 13 April).

1. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS

1.1 welcomes the Commission's first annual report on migration and integration as an important basis for the development of a comprehensive strategy for the integration of immigrants in the new enlarged European Union;

1.2 recognises the significance and scope of global migration, and its importance for diversity and development, particularly in the local community. The Committee fully endorses the importance of coordinating immigration, asylum and integration policy within the European Union. This is even more important now in the enlarged Community;

1.3 stresses that the national level is responsible for implementing legislation, while the task of facilitating immigrant reception, settlement and integration falls to the regional and local level. The Committee of the Regions would therefore particularly stress the important role of the local and regional authorities, whose responsibilities include planning, housing, education and the labour market, which impact directly on integration and can promote social cohesion, social integration and sustainable societies;

1.4 notes that the report focuses on the development of immigration policy at national and EU level. The EU's failure on the integration front is partly due to the fact that the local and regional authorities have not been involved in policy framing. The local and regional authorities are the tier of government that is closest to citizens, but the consequences of implementation at local level have most often been disregarded and not always taken into consideration;

1.5 regrets the lack of consultation with local and regional authorities on both statistics collection and analysis prior to

drawing up the report. Various measures have been adopted in the Member States to cope with the increasing diversity in today's societies. Those experiences — both positive and negative — are of particular importance now that migratory flows are increasingly diverse and global, and the Member States need to take in immigrants and refugees from more and more countries, rather than just those with which they have had commercial or historical/cultural ties;

1.6 recalls that integration issues must be included in all policy areas if social cohesion is to be achieved. The Community's immigration and integration policy must be in harmony with the EU's more overarching objectives in social policy, economic policy, and foreign and development policy, and comply with such fundamental European values as equal opportunities, human rights, human dignity, tolerance, respect for diversity, measures to combat discrimination, and promotion of increased participation in the community;

1.7 would highlight the fact that integration is a duty for society as a whole, requiring input from both immigrants and the local population in order to achieve sustainable social cohesion and growth;

1.8 regrets the absence in this report of any details on integration and implementation of immigration policy, and stresses that the Commission should further promote exchanges of information and experience; The Handbook on Integration for policymakers and practitioners released by the European Commission (Directorate-General for Justice, Freedom and Security) in November 2004 is a first encouraging step in this direction by providing concrete information on integration best practices and results.

Immigrants and the labour market

1.9 acknowledges that, while labour market issues are of crucial importance for the integration of immigrants, they cannot be taken out of context since the degree of integration also depends on a number of other factors, such as social background, education and language skills, and participation in the life of the community. The successful integration of immigrants is a step towards achieving a society in which everyone has a stake, to the benefit of both the individual, the local community and society in the broader sense;

1.10 welcomes the increasing awareness within the EU of immigrants' creativity and entrepreneurship. The growth of entrepreneurship and new businesses are of crucial importance to successful integration processes and represents an important contribution towards achieving the Lisbon Strategy;

1.11 notes that the report is dominated by the case for immigrant labour. Nevertheless, it establishes that family reunification or some other form of humanitarian protection account for the bulk of immigration. There is an urgent need for strategies to deal with the large group of immigrants that are outside the labour market, for economic, social and political reasons. The importance of women for successful integration must not be underestimated since they often provide a direct link with children in the family;

1.12 deplores the fact that the report does not even mention the almost 500 000 asylum seekers in the European Union who are awaiting a decision on residence or similar permits, the vast majority of whom are outside the regular labour market;

1.13 would underline that the assertion that EU citizens have achieved high employment must be further clarified, since local and regional situations differ radically. It is, of course, legitimate to refer to the EU's high employment rate, but the irregular local and regional distribution should also be mentioned;

1.14 stresses that the disparity between the national level's focus on the need for immigrant labour, and the local level's efforts to combat exclusion, marginalisation and xenophobia, reinforces the need for dialogue and cooperation between all levels concerned.

Democratic aspects of integration policy

1.15 highlights the fact that different levels of society debate immigration and integration policy in significantly different ways. This leads to different approaches and hampers the effectiveness of any measures. At the same time, it paves the way for mistrust in society, which can lead to contempt for the political system. This mistrust and contempt can be exploited by extreme political groups;

1.16 notes that the distance and lack of dialogue between the political levels has partly led to the emergence of parties with an isolationist xenophobic agenda. Several anti-EU and xenophobic parties have grown out of a local base;

1.17 welcomes the inclusion of equality perspectives in the report, despite the serious omission of any description of equality-focused integration measures. Measures that can release immigrant women's skills have a valuable social, economic and democratic impact;

1.18 considers that the formal right to vote, which will help to increase the involvement of immigrants in the democratic process, is a minimum standard which has not yet been achieved in all Member States. New citizens must, however, also be integrated more successfully. Voting rights tend to be ignored where there is a strong sense of exclusion. This right and the opportunity to influence changes in society are worth nothing to someone who is out of work or lacks social status;

1.19 stresses that the employment strategy and the social integration strategy only mention guidelines to cover labour needs. However, there is no mention of the bulk of immigrants who come to the European Union for family reunification or to seek humanitarian protection. The social integration strategy is incomplete without guidelines for this large group;

1.20 stresses that the report describes activities that are carried out locally. However, the information is inadequate, and there is no information about implementation practice and results. It is hard to say how the economic resources are deployed in integration efforts, since the report does not include the local and regional levels;

1.21 emphasises that in many parts of the European Union, tax revenues are collected at national level, while the economic burden of dealing with immigration-related exclusion falls on the local level. The lack of any consultation between the different levels is an obstacle to best use of economic resources.

2. Committee of the Regions' recommendations

2.1 calls upon the Commission to exploit the expertise local and regional authorities have acquired after decades of hands-on experience of integration efforts and implementing immigration policy. In order to facilitate and to improve integration-related exchanges of information, ideas and experience, the national contact points should be encouraged to consult with regional and local authorities and major towns and cities in order to benefit from their experience;

2.2 also calls on the Commission to maintain continuous contacts with the Committee of the Regions in connection with the adoption of the annual reports in order to discuss how local and regional experience of integration efforts can best be taken on board;

2.3 stresses that progress on integration will require that local authorities set clear objectives that can be followed up and evaluate their implementation. In addition, authorities at national and regional level should evaluate their own actions; and would remind the Commission of the need for evaluation of the various integration strategies that are currently applied;

2.4 emphasises that initiatives designed to ensure that economic support for a common immigration policy is effective must take account of regional differences. Support should encourage flexible solutions, and the local and regional levels must be given the freedom to choose their approach;

2.5 urges the Commission to consider, in the debate about future European cohesion policy, the initiatives carried out in certain regions where Structural Fund support might be reduced and where the immigrant population has increased significantly in recent years. This applies particularly in the major towns and cities;

2.6 stresses that the dialogue with immigrant organisations will be inadequate if it is only pursued at national and EU level. Integration policy and religious and cultural issues are essentially addressed in people's everyday lives, at local level. The importance of local cross-border dialogue cannot be overemphasised in the drive to bolster solidarity across ethnic, religious and cultural divides;

2.7 calls for the local and regional authorities to be able to contribute to the preparation of national action plans for integration and employment. This would make it easier to compare approaches and build on good practice, as well as analyse the actual impact and results of Member States' strategies;

2.8 emphasises that the report dwells on the horizontal and national level, while the measures discussed are implemented at

local level. There is clearly a need for a vertical approach. If the objective of accurate, objective analysis is to be achieved, trends at all levels must be illustrated, including those levels where policy is implemented. The national integration contact points must be backed up by local and regional equivalents;

2.9 stresses that immigration is not sufficient to cover EU labour shortages in the long term, and would refer to its opinion on the contribution of older people to the labour market;

2.10 emphasises how important it is for immigrants, particularly women, to be seen as a resource and a generally valuable addition to the labour market, and for the workforce to be diverse. Equal treatment is a principle that must apply in the workplace;

2.11 emphasises that the sum of local and regional differences gives a better picture of employment rates than national averages. Analyses based on national averages provide an inadequate basis for regional diversity measures. Successful strategies must be devised from a bottom-up perspective;

2.12 calls for measures to address the large number of employees that have entered the EU illegally. Mechanisms must be introduced to enable immigrants in breach of current immigration legislation to legalise their position without delay, where appropriate. The ability to provide decent standards of reception should, however, be a factor here;

2.13 welcomes the report's recognition of the need to mainstream immigration issues throughout all policy areas and to step up cooperation between national, regional and local authorities and with civil society. In addition to the vertical dialogue, the debate regarding distribution of resources must also be addressed;

2.14 calls for the inclusion of references to immigrant health and emphasises the importance of cooperation between local healthcare services (primary healthcare) and other parties that are working to achieve successful integration;

2.15 stresses the importance of implementing financial instruments to enable decentralised cooperation on immigration, and of continued support for local and regional efforts to promote integration through the EU Structural Funds and initiatives such as Equal and Urban. In this connection, particular attention should be focused on ongoing efforts within the framework of the new INTI pilot project, which is designed to support integration-related dialogue, networks and cooperation at EU level;

2.16 stresses that the individual immigrant's need to work to support himself must be acknowledged and encouraged. In addition to the economic aspects, entrepreneurship and small businesses contribute to positive social development. The opportunity to own and run a company impacts on integration and it should therefore be given increased public support;

2.17 recalls that women are discriminated against both on grounds of gender and ethnic origin. If gender issues are taken into account, efforts for better integration of immigrants will be more target-oriented and effective;

2.18 emphasises that the achievement of a successful integration policy requires other values — in addition to economic ones — to be taken into account. Immigration opens up

perspectives that can enrich individual citizen's lives, just as it can provide the EU with skills that are valuable in a global context;

2.19 stresses the importance of the work of non-governmental organisations in close cooperation with the local and regional authorities and supports their programmes to speed up immigrants' integration into the political and social life of the country (learning the language, getting to know the country's culture and democratic principles, social and political education, safeguarding immigrants' own national identity, etc.). It is always the absolute responsibility of the national level to work to achieve the smooth integration of immigrants into society, in close cooperation with local and regional authorities, and to maintain a dialogue with non-governmental organisations.

Brussels, 13 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Study on the links between legal and illegal migration

(2005/C 231/06)

THE COMMITTEE OF THE REGIONS,

Having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Study on the links between legal and illegal migration (COM(2004) 412 final);

Having regard to the decision of the European Commission of 4 June 2004 to consult it on this matter, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of its president of 5 April 2004 to instruct the Commission for External Relations to draw up an opinion on this subject;

Having regard to the Treaty establishing the European Community, and in particular Article 63(2)(b) thereof;

Having regard to the Presidency Conclusions on the Hague Programme: Strengthening Freedom, Security and Justice in the European Union, and in particular Specific Orientations on Asylum, Migration and Border Policy (p. 1.2) and the External Dimension of Asylum and Migration (p. 1.6);

Having regard to its opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on immigration, integration and employment (COM(2003) 336 final, CdR 223/2003 fin ⁽¹⁾);

Having regard to its opinion on the Communication from the Commission to the Council and the European Parliament on the presentation of a proposal for a directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Community COM(2004) 178 final — 2004/0061 (CNS) — 2004/0062 (CNS) — 2004/0063 (CNS), adopted on 17 November 2004 (CdR 168/2004 fin);

Having regard to other of its opinions dealing specifically with refugee policy (CdR 90/2001 fin ⁽²⁾; CdR 214/2001 fin ⁽³⁾; CdR 93/2002 fin ⁽⁴⁾; CdR 249/2003 ⁽⁵⁾);

Having regard to its draft opinion (CdR 337/2004 rev. 1) adopted on 7 February 2005 by the Commission for External Relations (rapporteur: Cllr Keith Brown, Member of Clackmannanshire County Council (UK/ UEN-EA));

- 1) Whereas, the study concludes that 'there is a link between legal and illegal migration but the relationship is complex and certainly not a direct one';
- 2) Whereas, the study outlines a number of policy initiatives in the development of a common migration;
- 3) Whereas the study emphasises the need for more reliable and comparable statistics at an EU level;
- 4) Whereas the ageing population and shrinking work-age population will lead to skill shortages in the EU labour market and cause a continued need for migration into the EU;
- 5) Whereas the Hague Programme agreed by the European Council in November 2004 outlines a work programme in the development of a common migration policy,

adopted the following opinion at its plenary session of 13 and 14 April 2005 (session of 13 April):

1. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS

a. Appreciation period

1.1 welcomes the European Commission's study on the links between legal and illegal migration and feels that it makes a worthwhile contribution to the development of an EU immigration policy, particularly in the outline of policy initiatives contained in the study;

1.2 takes a keen interest in the study in view of the major role played by regional and local authorities in the reception, settlement and integration of migrants. Local and regional authorities play a leading role in the provision of public services to migrants and these services include housing, education, health and employment services;

1.3 wishes to view the study in the context of the development of an EU migration and asylum policy particularly the undertakings made at the Tampere European Council in October 1999 and the adoption by the European Council of the Hague Programme in November 2004 which emphasises the importance of migration policy;

1.4 is concerned at the slow progress made by the European Council in the development of an EU migration policy based on the conclusions agreed at the Tampere Council;

1.5 notes that the study concludes that 'there is a link between legal and illegal migration but the relationship is complex and certainly not a direct one since a variety of different factors has to be taken into consideration;' would stress however that illegal migration is a major concern in the EU as it can undermine policies designed to promote regular migration and can promote hostility in host communities. Therefore, effective prevention of the illegal migration is crucial for the internal security and safety within the EU. In addition, illegal migrants can be placed in personal danger and subject to the risk of exploitation. In view of these considerations, a balanced policy which will promote measures to ensure equitable levels of regular migration together with measures to discourage illegal migrants is essential;

⁽¹⁾ OJ C 109, 30.4.2004 pp 46-49.

⁽²⁾ OJ C 19, 22.1.2002 pp 20-22.

⁽³⁾ OJ C 107, 3.5.2002 pp 85-88.

⁽⁴⁾ OJ C 278, 14.11.2002 pp 44-48.

⁽⁵⁾ OJ C 23, 27.1.2004 pp 30-32.

1.6 stresses its concern about the use of the term illegal migration, especially when many migrants in this category are not the subject of criminal proceedings and so we would prefer to use the phrase irregular migration where appropriate;

1.7 notes that the study outlines a significant number of gaps in research and calls upon the European Commission to construct a research programme to fill these gaps and so influence policy-making;

1.8 notes that the study refers to other EU policies which affect migrants such as development policy and the European Employment Strategy. In addition, is aware of a wide range of EU policies that have an influence on migration policy particularly in areas of social and economic policy and calls for the formation of a group in the European Commission across the Directorates General to coordinate activities which affects migrants;

b. Re-enforcing consultation and information at EU level

1.9 agrees with the study's conclusions that there is a lack of reliable and comparable data at EU level and believes that the Commission's action plan for Community statistics in the field of immigration (COM(2003) 179 final) and the first annual report on migration and integration (COM(2004) 508 final) begins to address this issue;

1.10 emphasises the important role played by local and regional authorities in the collection of data and statistics and calls for the full involvement of local and regional authorities in consultations about the introduction of reliable and comparable data across the European Union after comparable data has been collected;

1.11 supports the study's call for 'a more intensive and targeted use of consultation and information exchange' and welcomes the establishment of an expert group known as the Committee on Immigration and Asylum and a network of National Contact Points for Integration;

1.12 agrees with the establishment of a European Migration Network and an Observatory and believes that local and regional authorities have an important role to play in this Network as they can contribute with concrete direct experience and best practices;

1.13 believes that there should be greater opportunities for the exchange of experience and best practice including activities such as peer-group review in terms of immigration policy and notes that this could be done through the adoption of the open method of coordination in the development of EU

immigration policy and urges the European Council to adopt the European Commission's proposals in this area;

c. Development of new policy initiatives within the framework of the EU common immigration policy

Legal migration

1.14 supports the European Commission's view that due to the demographic decline and ageing of the population, recruitment of third-country nationals and immigration into the EU is likely to continue and increase. This theme is mentioned in the Kok Report which states that 'ageing will raise the demands for pensions and healthcare assistance at the same time as it reduces the number of people of working age to produce the necessary wealth.' ⁽¹⁾ In addition, Kok reminds us of European Commission projections that 'estimate that the pure impact of ageing populations will be to reduce the potential growth rate of the EU from the present rate of between 2–2.25 % to around 1.2 % by 2040' ⁽²⁾ moreover, other positive economic and social externalities in the context of migration should be stressed i.e. new human capital, specialisation, human enrichment';

1.15 emphasises the pivotal regional dimension in the EU immigration and integration policies and believes that this is an important area of debate. The regional dimension is a crucial one as some EU regions are losing population and suffering from severe skills shortages while other regions have rapidly growing populations with pressures on local services and affordable housing; believes that there is much work to be done in developing the regional and local dimension of migration particularly in the area of integration. Currently, this is being developed through the INTI programme. In 2004, the programme was allocated EUR 6 million but 158 grant applications were received requesting total grants of EUR 42.58 million. The Committee calls for a substantial increase in the funding of this programme for the period 2007-2013;

1.16 welcomes the European Commission's intention of launching a comprehensive consultation process on the admission of labour migrants The Green Paper on *An EU approach to managing economic integration* (COM(2004) 811 final) was published in 2005 and feels that its involvement in the consultation process is essential given the potential effects of migration on regional labour markets and the services provided by local and regional authorities;

1.17 agrees with the study when it states that strengthening the integration of third-country nationals legally resident in Member States is 'an essential objective of EU immigration policy' and is achieved through integration into the labour market, facilitating the mobility of third-country nationals within the EU and the recognition of the qualifications of third-country nationals;

⁽¹⁾ 'Facing the challenge – The Lisbon Strategy for growth and employment' – Report from the High Level Group chaired by Wim Kok: page 13. (November 2004)

⁽²⁾ Kok: page 13.

1.18 welcomes the principle of mobility established in the Directive on the status of long term residents (November 2003.) This introduced mobility rights for those resident in the EU for more than five years and mobility for third-country nationals has been facilitated by an extension of Regulation 1408/71; agrees a degree of mobility can be found in the Commission's proposals for the admission of foreign students and for researchers;

1.19 stresses the need to recruit more researchers in the EU so that the goals of Lisbon can be met. The Committee feels that this area of recruitment will be an important test for the development of a EU migration policy and its ability to fill skill shortages. In its Communication to the Council and European Parliament on the *Admission of third-country nationals to carry out scientific research* (COM(2004) 178 final), the European Commission estimated that 700,000 additional researchers were needed by 2010 if the EU was to meet its Lisbon targets;

1.20 notes that the Justice and Home Affairs Council agreed a general approach to the Directive in November 2004. While this approach includes the recognition of qualifications, working conditions and tax benefits, it does not seem to include a relaxation of the conditions of entry for the families of short-term researchers. The Committee feels that this is a key factor in the recruitment of researchers and would bring the EU Member States into line with other countries such as the USA and Canada;

1.21 emphasises the important role of the European Employment Strategy and the European Social Fund in providing training and employment skills which are crucial in the integration of recent migrants. The integration into the labour market of disadvantaged groups has been a key theme of the European Employment Strategy to sustain labour supply, maximise adaptability, and respond to sectoral and regional shortages of labour. The new EU Employment Guidelines have the objective of reducing the employment gap between EU national and non-EU nationals which showed a difference of 11.7 % in 2002. The study makes no reference to activities under the European Social Fund to promote the integration of immigrants into the labour market and the innovative work done by local and regional government in this area;

1.22 notes the study's conclusions about the effectiveness of regularisation measures from both the point of the view of the migrant and of the Member States and believes that large scale regularisation measures are not usually the most appropriate way of solving the problems of irregular migration.

Nevertheless, regularisation on a case-by-case basis can be a useful instrument when dealing with many examples of irregular migration;

1.23 agrees with the study's findings that 'gives weight to the view that regularisations should not be considered as a way of managing migration flows as in reality they often appear as a negative consequence of immigration policy' but regularisation may be necessary, on a case-by-case basis, when immigrants become embedded within local communities to bring people out of the hidden economy, increase tax revenues and promote social cohesion. The comments of a House of Lords' report is interesting in this context; ⁽¹⁾

1.24 agrees with the House of Lords' report which stated 'some form of regularisation of long term illegal immigrants is unavoidable if a growing underclass of people in an irregular situation, who are vulnerable to exploitation, is not to be created.' The House of Lords' report emphasises the need to minimise the 'pull' factors caused from regularisation and suggests that this can be to a large extent overcome by looking at individual cases rather than a large scale amnesty. Lastly, the House of Lords believes that amnesties can 'provide a rare opportunity to obtain reliable information on the size and nature of the illegal immigrant population'; ⁽²⁾

Illegal immigration

1.25 takes note of the many forms of illegal migration and the difficulties in conducting research in these areas. However, feels that there needs to be further research on the different types of illegal immigrant so that policies can be formulated more effectively. In this respect it should be important to differentiate between:

- people who have entered legally but have overstayed;
- people who have permission to stay in the country but are in breach of their conditions of entry;
- people who have had asylum applications refused;
- irregular entrants who have not been granted leave to enter because they entered at places not authorised to allow entry and without the necessary papers;

1.26 supports the views expressed in the study that the development of a Community return policy, the setting-up of key cooperation agreements with countries of origin, and transforming undeclared work into regular employment are key elements in the fight against irregular immigration;

⁽¹⁾ House of Lords Select Committee on the European Union: 'A Community Policy on Illegal Immigration': Session 2001-2002: 37th Report

⁽²⁾ House of Lords Report: paragraph 112.

1.27 welcomes the proposals in the study relating to the development of a Community return policy. A proposal for a Return Action Programme was agreed by the European Council in November 2002 and more rapid progress on its implementation now needs to be made;

1.28 agrees with the study when it states that 'the cooperation of third countries is vital if illegal migration flows are to be reduced' and recent conclusions from European Councils which have 'underlined the need for a comprehensive approach to migration, addressing human rights, political and development issues in countries of origin and transit';

1.29 endorses the synergy between migration and development policies which is outlined in the study and believes that development policy can improve the economic and social conditions in third countries and so reduce the 'push' factors which lead to migration to the EU;

1.30 emphasises the need for the European Union to be active in the promotion of joint initiatives with neighbouring countries through programmes such as the New Neighbourhood Instrument, Tacis, Meda, Encas and INTERREG. It is important that a 'ring of friends' is created so that peace and solidarity can be extended in the countries bordering the EU now that the Union has been enlarged. The European Union needs to work in partnership with these countries to improve their economic and social situation and reduce 'push' factors such as high unemployment, poor wages, lack of democracy and organised crime. One of the priority areas for cooperation will be the management of migration. Some neighbouring countries have developed action plans specifically targeted at irregular migration and the EU is ready to support their implementation, also actions against irregular migration of those countries which will prepare such plans;

1.31 stresses the key role played by local and regional authorities in programmes like Tacis, Meda, Encas and INTERREG and reminds the Commission and Member States that local and regional authorities should play a key role in the development of successor programmes;

1.32 broadly welcomes the proposals for the New Neighbourhood Instrument but is disappointed that the Instrument (which is the subject of a separate opinion of the Committee of the Regions) does not give a greater role for local and regional government especially as many policy areas covered by the Instrument cover local and regional government competencies;

1.33 agrees with the study when it emphasises the need to tackle the unregulated labour market and the shadow economy stating that 'the shadow economy is estimated to be between 7-16 % of EU GDP although this is by no means entirely made up of illegal immigrants'. There is a need for the transformation of undeclared work into regular employment and this was

included as one of the ten priorities of the 2003 employment guidelines. Several Member States outlined special measures for foreign workers and migrants in an irregular situation in their 2003 National Employment Action Plans (NAPs) and the Committee welcomes the call in the Hague programme for Member States to hit the targets for the reduction of the unregulated labour market which are set out in the European Employment Strategy;

1.34 points out the need for greater support of border regions as they are in comparison with other regions affected especially by irregular entry to a larger extent and supports the establishment of the European Corps of Border Guards together with the early warning system as the effective common management of the Union's external borders have to be achieved, moreover, judicial cooperation and cooperation among police corps on both central and regional/local level should be further promoted;

2. The Committee of the Regions' recommendations

THE COMMITTEE OF THE REGIONS

2.1 reminds the EU institutions of the important part that regional and local authorities play in the integration of migrants and, in view of this role, emphasises the key role that local and regional authorities play in a number of initiatives outlined in the study. These include the exchange of experience on integration measures, the development of programmes such as the New Neighbourhood Instrument and the successor programmes to Tacis and INTERREG etc., and therefore recommends the full involvement of local and regional government in these programmes;

2.2 argues that there should be greater opportunities for the exchange of experience and best practice including activities such as peer-group review in terms of immigration policy and notes that this could be done through the adoption of the open method of coordination in the development of EU immigration policy and urges the European Council to adopt the European Commission's proposals in this area;

2.3 calls upon the European Commission to form a Group involving staff Directorates General whose policies and actions affect third-country nationals so that existing activity can be more effectively integrated and coordinated;

2.4 calls for the publication of a research programme by the European Commission to fill the gaps in research noted in the study;

2.5 calls for a substantial increase in the INTI programme so that local and regional authorities can take part in a greater number of EU-funded transnational projects dealing with the integration of migrants;

2.6 emphasises the important role of migration in terms of filling skill shortages and calls upon the European Council to develop effective policy initiatives in these areas including the recruitment of third-country nationals for scientific research;

2.7 stresses the opportunity to devise suitable development policies in third countries. It is also important for studies on migration to take account of the new features of migration flows, such as the high proportion of women involved, as this is crucial to the formulation and implementation of immigration policies;

2.8 calls for the full involvement of local and regional government in the development of reliable and comparative data at EU level;

2.9 welcomes the European Commission's intention of launching a comprehensive consultation process on the Green

Paper on *An EU approach to managing economic integration* (COM(2004) 811 final) and reminds the Commission of need to consult fully with it and local and regional government in this process;

2.10 believes that urgent action is necessary to develop further the European Migration Network and Observatory with, again, the full involvement of local and regional government;

2.11 expresses concern on the slow progress made by the European Council in the development of an EU immigration policy and actions resulting from the Tampere European Council in 1999. In view of these concerns emphasises the need to make prompt decisions on issues laid out in the Hague Programme.

Brussels, 13 April 2005

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin: 'improving access to durable solutions'

(2005/C 231/07)

THE COMMITTEE OF THE REGIONS,

Having regard to the Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin: 'improving access to durable solutions' COM (2004) 410 final;

Having regard to the decision of the European Commission of 25 August 2004 to consult it on this matter, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of its president of 5 April 2004 to instruct the Commission for External Relations to draw up an opinion on this subject;

Having regard to the Treaty establishing the European Community, and in particular Article 63(2)(b) thereof;

Having regard to the Treaty establishing a Constitution for Europe, in particular Articles II-61, II-78, II-79 and III-266, III-267 and III-268;

Having regard to the Geneva Convention relating to the status of refugees of 28 July 1951, supplemented by the New York Protocol of 31 January 1967;

Having regard to the Presidency Conclusions on the Hague Programme: Strengthening Freedom, Security and Justice in the European Union, and in particular Specific Orientations on Asylum, Migration and Border Policy (point 1.2) and the External Dimension of Asylum and Migration (point 1.6.);

Having regard to its opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on immigration, integration and employment (COM(2003) 336 final, CdR 223/2003 fin ⁽¹⁾);

Having regard to its opinions dealing specifically with refugee policy (CdR 90/2001 fin ⁽²⁾; CdR 214/2001 fin ⁽³⁾; CdR 93/2002 fin ⁽⁴⁾; CdR 249/2003 ⁽⁵⁾);

Having regard to its draft opinion (CdR 338/2004 rev. 1) adopted on 7 February 2005 by the Commission for External Relations (rapporteur: Mr Sértő-Radics, Mayor of Úszka municipality (HU/ELDR));

- 1) Whereas, in order to achieve durable solutions, sharing of responsibilities among Member States concerning the managed entry in the EU of persons in need of international protection should be improved, and the protection capacity of the countries of origin should be enhanced with a view to framing and implementing a common refugee policy in all Member States;
- 2) Whereas, for this objective to be achieved, there is a need for the Member States and regions concerned — including countries or regions of origin or transit — to be provided with the requisite funding, taking EU enlargement and the needs of new Member States into special consideration;

adopted the following opinion at its 59th plenary session, held on 13 and 14 April 2005 (session of 14 April).

1. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS

1.1 endorses the European Commission's proposals on the *managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin* 'improving access to durable solutions' and supports in particular the proposed EU Regional Protection Programmes improving the protection capacity of countries in the regions of origin (neighbouring and transit countries);

1.2 points to the need to follow the recommendations of the United Nations High Commissioner for Refugees regarding gender-related persecution as one of the grounds for recognising refugee status;

1.3 appreciates the European Commission's intention to involve transit countries in its approach to persons in need of international protection, but considers that there should be more emphasis on transit countries with regard to the role of the regions and the provision of appropriate support for them;

1.4 emphasises that the effects of the reception of persons in need of international protection are most evident at local level in the communities which receive these groups; it is therefore of vital importance to involve local and regional authorities in making decisions on the reception and integration of asylum seekers and refugees;

1.5 draws particular attention to the key role of local and regional players as regards the responsibility they bear in the reception of persons in need of international protection and in actions promoting integration; consequently regrets that the

European Commission's proposal does not provide for sufficiently wide consultation of local and regional authorities in planning the implementation of the programme and taking decisions on its funding. The proposal does not do enough to ensure that local and regional players have an opportunity to participate in developing good practice in connection with Community actions;

1.6 believes it is important, in that respect, to secure greater coherence and integration between domestic and foreign policy objectives, instruments and procedures, especially regarding issues of a cross-border nature;

1.7 draws attention to the fact that cooperation and joint action by the local and regional authorities concerned, including local and regional authorities in Member States of reception, countries of origin and countries of transit, can make a substantial contribution to support for persons in need of international protection;

1.8 considers that further analysis and examination of the EU Resettlement Scheme is needed with regard to its likely social impact, particularly on labour markets, in less developed territories suffering from high unemployment in the Member States and regions concerned;

1.9 acknowledges the importance of EU policy supporting the population living in underdeveloped poor countries and regions, but on the other hand emphasises the importance of equitable treatment for all EU citizens, in order to give the opportunity for measures under the Resettlement Scheme enjoying wider support among citizens of Member States;

⁽¹⁾ OJ C 109, 30.4.2004 pp. 46-49.

⁽²⁾ OJ C 19, 22.1.2002 pp. 20-22.

⁽³⁾ OJ C 107, 3.5.2002 pp. 85-88.

⁽⁴⁾ OJ C 278, 14.11.2002 pp. 44-48.

⁽⁵⁾ OJ C 23, 27.1.2004 pp. 30-32.

1.10 proposes that the European Commission, in cooperation with NGOs and other stakeholders, should engage in further study of the legal issues involved, with a view to establishing objective and uniform criteria enabling cases of persons requiring international protection for their settlement to be identified, and thus to ensure respect for human rights and the absence of discrimination, and to guarantee the requisite legal support for countries and regions of reception. It also feels that it is important to ensure integration into the labour market of refugees arriving in Member States under resettlement schemes, on the basis of which they should enjoy equal rights with *all* EU citizens.

2. The Committee of the Regions' recommendations

THE COMMITTEE OF THE REGIONS

2.1 supports the communication of the Commission as a good basis of the further evaluation works, but in particular with regard to the EU resettlement scheme, considers that further analysis and examination are needed, and therefore recommends extending the deadline for submission of the resettlement scheme proposal to the Council to enable drafting of a more carefully prepared document;

2.2 calls for greater involvement of local and regional authorities in framing and implementing the immigration and

asylum policies, at the same time providing them with the requisite financial support;

2.3 proposes considering extension of the scope of funding under Regional Cooperation and the New Neighbourhood Policy, which are included in the third main objective of the Structural Funds for the 2007-2013 period, to cover these tasks; and hopes that the joint multilateral programmes conducted under that objective and the bilateral action plans that will be implemented as part of neighbourhood policy will be coordinated effectively;

2.4 given the scale of migration in the Mediterranean zone, it is proposed that in future calls under programmes for regulating migration flows, such as the AENEAS programme, priority be given to projects focusing on action in this area;

2.5 calls for an implementation of the EU resettlement schemes which ensures the equal treatment both of refugees to be resettled in Member States and of all EU citizens;

2.6 supports the implementation of the Presidency's Conclusion of the Hague Programme and considers it desirable to invite the local and regional authorities into the proposed intercultural dialogue between all members of society within common forums and activities in order to improve mutual understanding of all policy areas related to integration.

Brussels, 14 April 2005

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Communication from the Commission — European Neighbourhood Policy — Strategy paper

(2005/C 231/08)

THE COMMITTEE OF THE REGIONS,

Having regard to the Communication from the Commission to the Council and the European Parliament — European Neighbourhood Policy — Strategy Paper (COM (2004) 373 final);

Having regard to the Commission's decision on 13 May 2004 to consult it in accordance with the provisions of the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision by its Bureau on 15 June 2004 to instruct the Commission for External Relations to draw up an outlook opinion on the matter;

Having regard to the Communication from the Commission to the Council on the Commission proposals for action plans under the European neighbourhood policy (ENP) (COM(2004) 795 final);

Having regard to the proposal for a Council decision on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Jordan Action Plan (COM(2004) 796 final);

Having regard to the proposal for a Council decision on the position to be adopted by the European Community within the Joint Committee established by the Interim Association Agreement on trade and cooperation with regard to the adoption of a Recommendation on the implementation of the EU-Palestinian Authority Action Plan (COM(2004) 789 final);

Having regard to the Proposal for a Council Decision on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Tunisia Action Plan (COM(2004) 792 final);

Having regard to the proposal for a Council decision on the position to be adopted by the Communities and its Member States within the Cooperation Council established by the Partnership and Cooperation Agreement establishing a partnership between the European Communities and its Member States, of the one part, and Ukraine, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Ukraine Action Plan (COM(2004) 791 final);

Having regard to the proposal for a Council decision on the position to be adopted by the Communities and their Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Israel Action Plan (COM(2004) 790 final);

Having regard to the proposal for a Council decision on the position to be adopted by the European Communities and their Member States within the Cooperation Council established by the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Moldova Action Plan (COM(2004) 787 final);

Having regard to the 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;

Having regard to the Proposal for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument COM(2004) 628 final;

Having regard to the Communication from the Commission: Paving the way for a New Neighbourhood Instrument COM(2003) 393 final;

Having regard to the Report of the European Parliament on Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours (COM(2003) 104 — 2003/2018(INI));

Having regard to its opinion on the Communication from the Commission to the Council and the European Parliament: *Wider Europe — neighbourhood: a new framework for relations with our eastern and southern neighbours* (CdR 175/2003 fin) ⁽¹⁾;

Having regard to its outlook opinion on the Euro-Mediterranean Partnership and local and regional authorities: the need for coordination and a specific instrument for decentralised cooperation (CdR 327/2003 fin ⁽²⁾);

Having regard to its opinion on Local and regional government in Russia and the development of cooperation between the EU and Russia (CdR 105/2004);

Having regard to its opinion on Northern Dimension — Second Action Plan 2004-2006 (CdR 102/2003 fin ⁽³⁾);

Having regard to its draft opinion on the Commission to the Council and the European Parliament: Building our Common Future: Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013 (CdR 162/2004 rev. 3) (rapporteur: Cllr Sir Albert Bore, Birmingham City Council (UK, PES));

Having regard to its draft opinion (CdR 336/2004 rev. 1) adopted on 7 February 2005 by the Commission for External Relations (rapporteur: Lord Hanningfield, Essex County Council (UK/EPP)).

- 1) Whereas, in the light of the European Neighbourhood Policy, it should now look to extend its external relations activities, within the parameters of its resources and institutional mission, beyond the current accession states to include, but not exclusively, those countries detailed in the ENP;
- 2) Whereas, its priority for external relations must remain with the local and regional authorities of the existing applicant countries;
- 3) Whereas, it should also give high priority under the ENP to dialogue and cooperation with all the states on the EU's northern, eastern and southern borders;

adopted the following opinion at its 59th plenary session, held on 13 and 14 April 2005 (session of 14 April).

1. The Committee of the Region's views

1.1 General remarks on European Neighbourhood policy

1.1.2 acknowledges that with the recent enlargement of the European Union and subsequent changes to its external borders, this policy is a timely and welcome step forward designed to share the benefits of the EU's enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned;

THE COMMITTEE OF THE REGIONS

1.1.1 welcomes this important and necessary document by the European Commission, providing as it does a real and genuine opportunity to define and improve relations between the European Union and its neighbouring countries;

1.1.3 agrees that the European Neighbourhood Policy offers a means to reinforce relations between the European union and neighbouring countries and to prevent the emergence of new dividing lines between them;

⁽¹⁾ JO C 23 du 27.1.2004, p. 36

⁽²⁾ OJ C 121 of 30.4.2004 p. 18-25

⁽³⁾ OJ C 23 of 27.1.2004, p. 27

1.1.4 stresses that the European Neighbourhood Policy whilst offering an improved relationship between the EU and its neighbouring countries is distinct from the process of enlargement itself and should be viewed in such a context;

1.1.5 stresses the importance that local and regional government has to play in this process and is concerned at the absence of any substantive mention and defined role for local and regional government within the Policy;

1.1.6 agrees that the policy will encourage neighbourhood countries to participate in various EU activities, through greater political, security, economic and cultural cooperation;

1.1.7 considers that the European Neighbourhood Policy seeks to support efforts to achieve greater respect for improved human rights, civil society and develop good governance in these countries;

1.1.8 welcomes, in this connection, the recent political developments in Ukraine and in Georgia. The European Neighbourhood Policy must actively support this country's progress towards greater democracy and a market economy;

1.1.9 agrees that the European Neighbourhood Policy seeks to improve trade relations and economic development between the EU and neighbourhood countries;

1.1.10 acknowledges that the European Neighbourhood Policy is important to promoting the closer cooperation between countries included in the ENP and the EU in combating terrorism, illegal immigration and cross-border crime such as drugs and human trafficking;

1.1.11 supports efforts, in ENP countries with different ethnic minorities, to find innovative solutions to promote co-existence and respect for universally recognised fundamental principles.

1.2 *Local and regional dimension of the European Neighbourhood policy:*

THE COMMITTEE OF THE REGIONS

1.2.1 highlights that local and regional authorities in ENP countries should, wherever possible, play a greater role in the process of democratisation and devolution;

1.2.2 underlines that according to one of the Union's main principles — subsidiarity — which allows the most appropriate

level of management to be chosen, local and regional authorities play a crucial and unique role in this context as they can ensure lasting and properly orientated relations;

1.2.3 notes the effectiveness of the bottom-up approach in encouraging the democratisation process;

1.2.4 adds that in practice local and regional authorities serve as good democratic apprenticeships for citizens, and hence are an important player in ensuring well-functioning democracies;

1.2.5 highlights the importance of developing and consolidating local government by means of cross-border cooperation and of making greater use of exchanges and shared knowledge with existing Euro-regions as a way of achieving the objectives set out in the Action Plan for each country;

1.2.6 notes the difficulties experienced by the local and regional authorities of those countries identified in the ENP in taking the necessary measures to adapt their administrative structures to European structures;

1.2.7 wishes to share with those countries outlined in the ENP the experience gained by its members as a result of their contacts with local and regional authorities in the candidate countries during the enlargement process;

1.2.8 believes that local and regional authorities are the most appropriate level for decentralised cooperation with partner countries;

1.2.9 recalls the areas where the expertise of local and regional government has most to offer these countries:

- a. regional and spatial planning;
- b. urban planning;
- c. agriculture, fisheries and rural development;
- d. environment, resource management and civil protection;
- e. the sub-regional dimension of transport and energy;
- f. policies promoting SMEs;
- g. policies promoting employment;
- h. cultural and sporting initiatives;
- i. policies for safeguarding and fostering heritage;

j. social proximity policies;

k. education and training;

l. health and social care;

m. managing immigration flows, reception and integration policy;

n. housing;

o. security and safety measures;

p. public procurement;

1.2.10 recalls that there is scope for action by local and regional authorities that complements and goes beyond the traditional limits of cooperation at the level of central governments. Indeed, it is at this level that the ENP as proposed by the Commission can be really effective;

1.2.11 points out that the decentralised cooperation practices developed in recent years have highlighted the responsibility that local authorities bear in their role as a catalyst for new cooperation processes.

1.3 *Geographic coverage*

THE COMMITTEE OF THE REGIONS

1.3.1 notes that those countries included in the ENP are diverse in their economic, social and political development and furthermore do not start from the same point in regard to their relations with the EU;

1.3.2 believes that strong regional and local institutions elected by and accountable to the people are necessary for truly democratic societies and anticipates the entry into force in 2006 of federal legislation on the remit of Russian regional and local authorities to be a step forward for potential cooperation between devolved authorities in the EU and Russia, notably by clarifying competencies with regard to cross-border cooperation;

1.3.3 is concerned that no direct mention is made within the ENP as to the ongoing problems in regard to Kaliningrad although accepts that the issue is adequately addressed in other documents and work of the Commission;

1.3.4 welcomes the decision to include the Southern Caucasus — Armenia, Azerbaijan and Georgia — in the European Neighbourhood Policy;

1.3.5 further welcomes the commitment of the EU to 'support credible, concrete and sustained reform efforts, in particular in the above mentioned priority areas, by additional means of assistance' ⁽¹⁾.

1.4 *Action Plans*

THE COMMITTEE OF THE REGIONS

1.4.1 supports the idea of an all encompassing Action Plan jointly agreed by partner countries and the EU as the most effective way to achieve the objectives of the European Neighbourhood Policy;

1.4.2 agrees that the ambition and pace of development of the EU's relationship with each partner country will be determined by its degree of commitment to common values as well as its will and capacity to implement the priorities agreed in the Action Plan;

1.4.3 emphasises the importance of a strong focus on poverty alleviation and the importance of tackling corruption, described as 'a significant obstacle to reform in many ENP countries';

1.4.4 believes that it would have been advantageous for each Action Plan to have contained a specific section on the role of local and regional government in the relevant partner country, detailing clear targets for both the role of local government and the ways by which the partner country intended to devolve powers and strengthen local and regional government. This desire should be commuted to the Commission with a view that such a specific section should be incorporated in the next tranche of Action Plans;

1.4.5 believes that its members have an important role in analysing and debating the funding made available to each partner country especially in light of the statement made in the ENP strategy paper, 'The Commission has proposed that existing funds or their successors be increased significantly under the new financial perspectives, in keeping with the priority given by the EU to the ENP.' The new simplified funding mechanism intended for adoption in 2007 additionally makes such analysis and debate a priority.

1.5 *European Neighbourhood Instrument*

THE COMMITTEE OF THE REGIONS

1.5.1 welcomes the proposed new simplified funding system, the European Neighbourhood Instrument;

1.5.2 believes that the Commission as a priority must provide greater information and technical details as to how the Instrument will work in practice, how it will be administered and how it will be scrutinised.

⁽¹⁾ European Neighbourhood Policy – Strategy Paper, 12.5.2004, p.11

2. The Committee of the Regions' Recommendations

THE COMMITTEE OF THE REGIONS

2.1 believes that the use of its members' experience could be used to develop local and regional democracy, which is indispensable to political stability in the countries identified;

2.2 recommends that in order to overcome the difficulties facing local and regional authorities in those countries identified in the ENP, the CoR develops suitable mechanisms to encourage direct dialogue and information transfers;

2.3 recommends that those countries carrying out the necessary reforms to place themselves on the road to democracy and free and fair elections should receive the full benefit of the ENP;

2.4 recommends that the European Neighbourhood Policy offers the prospect of new contractual agreements with partner countries which could take the form of European Neighbourhood Agreements. The scope of these would be defined in the light of progress in meeting the priorities set out in the Action Plans;

2.5 proposes that the Action Plans will be monitored using existing structures under the various Partnership and Cooperation/Association Agreements, with formal progress reports produced between two and five years after the Action Plans are adopted;

2.6 recommends to the European Commission that, like enlargement before, its members should play a leading role in the evaluation of the progress of the Action Plans focusing primary on the steps to empower and modernise local and regional government;

2.7 recommends that for the next tranche of Action Plans for each neighbourhood country a specific section on the role of local and regional government in each partner country should be included, detailing clear targets for both the role of

local government and the ways by which the partner country intends to devolve such powers including a clear and transparent timeframe to achieve such an objective;

2.8 believes that any Action Plan must have joint ownership with the priorities based on clear and credible economic incentives for promoting positive change and thus assist the targeting of technical assistance;

2.9 believes that there is an urgent and fundamental need to improve and modernise local and regional government in those countries identified in the ENP including a dramatic improvement in regard to fair and free elections, democratic values and political freedoms at the local level and recommends that the Commission initiates a specific programme as part of the Action Plan for each neighbourhood country to achieve this objective (see appendix 1);

2.10 recommends that within the proposed new simplified funding system, the European Neighbourhood Instrument, serious thought should be given to a specific financial instrument that is tailor-made for decentralised cooperation and is intended for use by local and regional authorities to help modernise and reform their operations in the neighbourhood countries;

2.11 recommends that the European Commission gives to it and its members the possibility to play a leading and active role in assessing and discussing the new European Neighbourhood Instruments;

2.12 recommends, in order to facilitate this process, that a conference is held in 2006 that would seek to bring together representatives from local and regional government from all states as outlined in the ENP with the possibility of four separate conferences dealing in turn with the Mediterranean Region, the Baltic Sea Region and the countries of Eastern Europe and the Middle East.

Brussels, 14 April 2005

The President
of the Committee of the Regions
Peter STRAUB

Appendix

Local and Regional Government in ENP Countries

Belarus

The country is divided into 6 voblastsi and one municipality. Belarus has a three-tier system for local governments. The divisions are regional, district, city, village and settlement soviets (councils). The regional soviets are the highest-ranking units and direct the activities of the district soviets, which in turn direct city, village and settlement soviets. Soviet representatives are to be elected every four years. The soviets 'coordinate functions of the whole local self-government system; fulfil public, economic and social-cultural construction within the framework of their authorities; take care of natural resources, public property, protection of the environment, etc.' ⁽¹⁾

Moldova

Moldovan politics is dominated by tensions between the central government and separatists in the Transnistrian and Gagauzia regions. Ethnic, social, economic and cultural differences between Moldovans, Russians, Ukrainians and Gagauz came to a head in 1990 when Moldovan was proclaimed the national language. Both regions claimed to be separate regions from Moldova. Gagauzia has been granted special constitutional status and this has ended the major conflict between separatists and the central government. Negotiations facilitated by Russia, the OSCE and Ukraine have been unable to solve the conflict between Transnistrian and Moldova.

The latest local and regional elections were held in May and November 2003 and were considered to meet basic international standards..

Legislation in March 2003 reorganised local government back to the Soviet period. The country is now divided into 33 'rayons', replacing the twelve regional 'judeti' (counties).^{*} More specifically, there were 9 'judeti', 1 municipality, 1 autonomous territorial unit, and 1 territorial unit. The reorganisation was proposed in the Communist Party's re-election manifesto in 2001 and mirrors the party's regional organisation. Many people have criticised the Communist Party for reorganising local government to solidify their hold as the majority governing party and gain an advantage in local government elections. ⁽²⁾

Ukraine

Ukraine is divided into 24 oblasti, 1 autonomous republic, and 2 municipalities with oblast status. These divisions are outdated and left over from the Soviet era. Oblasti are further subdivided into 'radas' (councils). Representatives for the radas are chosen by single mandate district elections. These elections are not usually fair — the heads of district and regional administrations, appointed by the President, often interfere in local elections. Opposition parties have 'demanded the introduction of a proportional system in regional and district elections to prevent the domination of a 'non-party' bureaucracy'. ⁽³⁾

Regional votes held since the parliamentary elections of 2002 have not met international standards, but are improving. For example, 'during the Mukacheve mayoral election in April 2004, OSCE representatives noted an attack on a polling station, intimidation, and physical assault resulting in the hospitalisation of an observer. Other problems such as theft of ballots were also reported and the election result was widely seen as fraudulent'. ⁽⁴⁾ Local elections in Odessa and Poltava in May and June 2004 were an improvement despite problems with voter registration. It is obvious that local government is not completely democratic.

Russia

Russia is divided into 49 oblasts, 21 republics, 10 autonomous okrugs, 6 krais, 2 federal cities, and 1 autonomous oblast. Or it is divided into 89 subjects, 21 national administrative units (national republics), 66 territorial units and 2 federal cities. ⁽⁵⁾ Local government within the Russian Federation continues to struggle with decentralisation following the dissolution of the Soviet Union. As a result of the transition to a federal state, many national republics gained more power than other federal units. For example, national republics' legislation often contradicts federal legislation.

⁽¹⁾ Local Government and Regional development Initiative, Report on Belarus 1994, <http://unpan1.un.org/intradoc/groups/public/documents/UNT/C/UNPAN003979.htm> 25.10.2004

⁽²⁾ FCO Country Profile, <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019672579768>, 25.10.2004

⁽³⁾ UNPAN Nations in Transit 2004: Country Report Ukraine, <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN017053.pdf>, 25.10.2004

⁽⁴⁾ FCO Country Profile, <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019745009984>, 25.10.2004

⁽⁵⁾ UNPAN Modernising the Relationship between Levels of Government Russia, <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN009033.pdf>, 25.10.2004

President Putin introduced a program of reforms in 2000 to solve inefficiencies in local government organisation. Under this program, Russia is divided into 7 major regions by consolidating the various federal units. The institution of the Executive Representative of the President of the Russian Federation was created for each federal unit. The primary goal of this program is to increase efficiency of public management and governance and the development of local government 'as a major agency of civil society and maintenance of responsible government'. ⁽¹⁾

Following the terrorist attack in Beslan, September 2004, President Putin announced a radical reform in regard to the election of the country's 89 regional governors. Rather than being directly elected they will be in future nominated by the president, then confirmed by regional legislatures. The plan was endorsed by the country's Duma in October 2004.

Algeria

Algeria is divided into 48 provinces (wilayas, singular — wilaya) each with an elected local council that serves as the main governing body. The latest municipal elections were held in October 2002. Turnout for elections is usually around 50 % and is hindered by the many regional conflicts between the central government and Berber insurgents. ⁽²⁾ There is a lack of local autonomy; governors report directly to the Ministry of the Interior. Decentralisation has been effective at the provincial level in managing local infrastructure and services. ⁽³⁾

Egypt

Egypt is divided into 26 governorates (muhafazat, singular — muhafazah). The central government wields a large amount of power in local governing bodies because of a system of top-down political appointments. 'At each level, there was a governing structure that combined representative councils and government-appointed executive organs headed by governors, district officers, and mayors, respectively.' ⁽⁴⁾ Local government is ineffective in delivering government services.

Decentralisation gained momentum under President Sadat. Local governments were given the power to raise taxes but were forced to spend large amounts of money on government schemes and often went into debt. They were also encouraged to enter into partnership with private companies, which supported the relationship between the central government and the country's rich and elite. Under Mubarak, the process of decentralisation has continued and local governments now reflect more local concerns and less central policy.. Local government is also used as a means of control. 'The district police station balanced the notables, and the system of local government (the mayor and council) integrated them into the regime.' ⁽⁵⁾

Israel

Israel is divided into 6 districts (mehozot, singular — mehoz). The districts are further divided into fourteen subdistricts, each headed by district commissioners appointed by the Prime Minister. District commissioners are responsible for reviewing policy of the district councils and enacting national legislation within the district. The municipal and local council members are elected by proportional representation and party lists and the mayor is elected directly by voters in specific municipalities. Local government is responsible for administering public goods and levying local taxes. ⁽⁶⁾

Jordan

Jordan's local government reflects the fact that power rests with the King and his government. The country is divided into 12 governorates, each headed by an appointed commissioner. The governorates are further divided into administrative subregions. Subregions include towns, villages and municipalities. Larger municipalities have elected district councils and elected mayors. District governments are basically a vehicle for central governmental policy and legislation. ⁽⁷⁾ Municipal and regional governments rely on the central government for allocation of funds and the administration of public services and infrastructure, limiting their ability to address local issues. Rapid urbanisation has put pressure on local governments and municipalities to provide adequate services. Recent decentralisation has mainly taken the form of privatising state-owned industries. ⁽⁸⁾

⁽¹⁾ UNPAN Modernising the Relationship between Levels of Government Russia, <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN009033.pdf>, 25.10.2004

⁽²⁾ FCO Country Profile, <http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1018535850896>, 26.10.2004

⁽³⁾ UNDP-Programme On Governance in the Arab Region (POGAR), <http://www.pogar.org/countries/algeria/decentralisation.html>, 28.10.2004

⁽⁴⁾ US Library of Congress Country Studies, <http://countrystudies.us/egypt/113.htm>, 27.10.2004

⁽⁵⁾ US Library of Congress Country Studies, <http://countrystudies.us/egypt/113.htm>, 27.10.2004

⁽⁶⁾ US Library of Congress Country Studies, <http://countrystudies.us/israel/85.htm>, 27.10.2004

⁽⁷⁾ Jordan national website, <http://www.kinghussein.gov.jo/government2.html>, 27.10.2004

⁽⁸⁾ UNDP-POGAR, <http://www.pogar.org/countries/jordan/decentralisation.html>, 28.10.2004

Lebanon

Lebanon's local government is uncertain at the moment as the central government attempts to rebuild the nation after 16 years of civil war. The central government took over local administration as a means of retaining control during the war. The debate between a strong central government versus a decentralised state will affect the development of local government in the years to come. ⁽¹⁾ Syria's continued involvement in Lebanon has reinforced central government. Decentralisation in practice has little support from the government due to the political instability of the country. ⁽²⁾

Lebanon is divided into 6 governorates, which are further subdivided into administrative municipalities. The first local elections in 35 years were held in 1998. 'Voter participation was high, on average between 60-70 %. In Beirut only 30 % voted but this was perceived to be due to voters thinking that the result was a foregone conclusion. There was little evidence of fraud or violence. The elections mark a further stage in post conflict reconstruction.' ⁽³⁾ Local governments rely on the central government for allocation of funds, which limits their ability to address local issues.

Libya

Libya was historically made up of distinct regions, which were consolidated into a federation under King Idris. This federation was replaced with a unitary system in 1963. The ten governorates were basically an extension of the central government. After Qadhafi's revolution in 1969, the local divisions were further consolidated to allow for greater oversight by the central government. 'For the most part, subnational government continued to function as a hierarchical system of administrative links with the central government rather than as a vehicle for popular representation or participation.' ⁽⁴⁾ The current local administration, according to the CIA World Fact Book, consists of 25 municipalities (note — the 25 municipalities may have been replaced by 13 regions).

The process of decentralisation faces many hurdles. Oil exports are a major part of Libya's economy and its revenues help to prop up the government. 'The highly centralised nature of the distribution of oil profits in Libya has undermined efforts to achieve decentralisation.' ⁽⁵⁾ Although Libyan law gives local governments responsibility for education, industry and communities, in practice the central government dictates local policy. 'By law, Libya has one of the most politically decentralised systems in the Arab region. Local governmental institutions extend over education, industry, and communities. But in practice, the central leadership dictates the power of these institutions. Civil society and all non-state political organisations are actively suppressed, creating little political participation from the bottom up. Many of the elites who could be expected to fill positions of local leadership reside overseas.' ⁽⁶⁾

Morocco

The process of decentralisation began in the 1960s as a response to growing social pressures. 'The major constraints on the decentralisation process are first of all, the absence of coordination between levels of government, and then the weak capacity of civil society organisations and local governments.' ⁽⁷⁾ The biggest hurdle facing the development of local government is Morocco's strong central government and lack of local democracy. The constitutional monarchy is still powerful and is slowly evolving to a parliamentary system. The parliament is democratically elected and the latest elections held in 2002 were the most free and fair in the region. ⁽⁸⁾

The country has 37 provinces and 2 wilayas and 'as part of a 1997 decentralisation/regionalisation law passed by the legislature 16 new regions (provided below) were created.' Each province is governed by an assembly, which is elected by the municipal councils. Municipalities oversee infrastructure and local services. They are often constrained by lack of funding as they lack fiscal autonomy. The last municipal election was held in 1997 and was criticised as fraudulent by opposition parties. ⁽⁹⁾

⁽¹⁾ World Bank: Municipalities in Lebanon, <http://www.worldbank.org/wbi/mdf/mdf1/munici.htm>, 27.10.2004

⁽²⁾ UNDP-POGAR, <http://www.pogar.org/countries/lebanon/decentralisation.html>, 28.10.2004

⁽³⁾ FCO Country Profile, <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1018721190906>, 27.10.2004

⁽⁴⁾ US Library of Congress Country Studies, <http://countrystudies.us/libya/70.htm>, 27.10.2004

⁽⁵⁾ UNDP-POGAR, <http://www.pogar.org/countries/libya/decentralisation.html>, 27.10.2004

⁽⁶⁾ UNDP-POGAR, <http://www.pogar.org/countries/libya/decentralisation.html>, 27.10.2004

⁽⁷⁾ UN case studies, <http://www.ciesin.org/decentralisation/English/CaseStudies/morocco.html>, 27.10.2004

⁽⁸⁾ FCO Country Profiles, <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1020281580149>, 27.10.2004

⁽⁹⁾ UNDP-POGAR, <http://www.pogar.org/countries/morocco/decentralisation.html>, 28.10.2004

Syria

Syria is divided into 14 provinces 'that are headed by governors appointed by the Ministry of Interior. These governors report directly to the president. The governors control provincial government offices as well as the local offices of ministries and state-owned enterprises. Below the provinces, there are, in descending order of authority, districts, counties, and villages. Locally elected administrative councils administer these governments, though in practice they remain highly dependent on central leadership.' ⁽¹⁾ Syria's extensive civil service and history of strong central leadership is a hindrance to the development of local governmental organisation. Administration is dependent on decision-making of a small group of individuals at the top. The last local elections were held in 1999. ⁽²⁾ Some decentralisation programs have begun under Prime Minister Miru, but decentralisation will probably be a slow process unless local democracy is developed simultaneously.

Tunisia

Tunisia has a highly centralised government that has not been receptive to the notion of decentralisation. Politics is dominated by the ruling Rassemblement Constitutionnel Democratique (RCD) and President Ali, who has been in power since 1987. The tradition of central planning includes government control of the economy. There have been some moves towards decentralisation through the establishment of municipal councils, but these are not developed consistently throughout the nation and are mainly instruments of the central government.

Tunisia is divided into 24 governorates, each headed by governors appointed by the government. The governorates have legislative assemblies made up of members both elected and appointed. Most rural areas lack local governing bodies and the central government retains control over fiscal policy and taxation. 'Many municipalities have been frustrated by a lack of funds. The lack of a uniform or standardised municipal structure in Tunisia has allowed some local governments to push ahead, while others trail behind.' ⁽³⁾ The latest local elections were held in 2002 with the majority of seats going to RCD candidates.

There is both local and governmental support for the further development of local governments. Civil society organisations are pushing for greater participation in local affairs. The government sees this as an opportunity to diffuse political tensions and retain political stability. It has also implemented regional development plans to create new infrastructure and decentralise management of infrastructure. ⁽⁴⁾

Armenia

Armenian politics has been dominated by the struggle with Azerbaijan for the Nagorno-Karabakh region, populated primarily by citizens of Armenian descent. Armenia is divided into 11 provinces. The last local elections were held in November 1996. Despite the fact that the presidential elections were criticised by many as unfair and resulted in violent clashes between protesters and the police, the Council of Europe observers deemed these elections to have been free and fair. ⁽⁵⁾ Local governments are merely an extension of the central government to implement policy. ⁽⁶⁾ Rampant corruption and a weak political system has limited the development of local governing organisations.

Azerbaijan

Azerbaijan continues to struggle economically and politically due to the conflict with Armenia over the Nagorno-Karabakh region. Its resources are strained by the loss of territory and the need to provide services for over 800 000 refugees. Although Azerbaijan has many petroleum reserves, these are not well developed. There are so many problems with national government, including election fraud, corruption and a crackdown on opposition parties and the media, that local government seems to be fairly undeveloped and ineffective. Azerbaijan is divided into 59 rayons, 11 cities, and 1 autonomous republic.

Georgia

The political climate over the past decade has been tumultuous. However, despite the various assassinations of top officials and assassination attempts on President Shevardnadze, elections held in 1992 and 2004 have been seen as generally free and fair. Georgia is moving towards democracy and in recent years has enjoyed greater political stability. Georgia's administrative divisions include 9 regions, 9 cities, and 2 autonomous republics.

⁽¹⁾ UNDP-POGAR, <http://www.pogar.org/countries/syria/decentralisation.html>, 27.10.2004

⁽²⁾ FCO Country Profile, <http://www.fco.gov.uk/servlet/ServletFront?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1021373886647>, 28.10.2004

⁽³⁾ UNDP-POGAR, <http://www.pogar.org/countries/tunisia/decentralisation.html>, 28.10.2004

⁽⁴⁾ UNDP-POGAR, <http://www.pogar.org/countries/tunisia/decentralisation.html>, 28.10.2004

⁽⁵⁾ FCO World Book, <http://www.fco.gov.uk/servlet/ServletFront?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019233781786>, 28.10.2004

⁽⁶⁾ US Library of Congress Country Studies, <http://countrystudies.us/armenia/47.htm>, 28.10.2004

Opinion of the Committee of the Regions on the Proposal for a Council Regulation establishing an Instrument for Pre-Accession Assistance (IPA)

(2005/C 231/09)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a Council Regulation establishing an Instrument for Pre-Accession Assistance (IPA) (COM(2004) 627 final — 2004/0222 (CNS));

Having regard to the decision of the European Commission of 29 November 2004 to consult it on this matter, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of its Bureau of 28 September 2004 to instruct the Commission for External Relations to draw up an opinion on this subject;

Having regard to the whole package revising the external aid framework adopted by the European Commission on 29 September 2004 including in addition to the instrument for pre-accession assistance: 1) Proposal for a Regulation of the European Parliament and the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument (COM(2004) 628 final — COD 2004/219); 2) Proposal for a regulation of the European Parliament and the Council establishing a financing instrument for development cooperation and economic cooperation (COM(2004) 629 final); 3) Proposal for a Regulation of the Council establishing an Instrument for Stability (COM(2004) 630 final — CNS 2004/223);

Having regard to the decision by the European Council on 16-17 December 2004 to open negotiations with Turkey;

Having regard to the conclusions reached by the European Council in 17-18 June 2004, to the effect that Croatia is a candidate country for membership; to the presidency conclusions of the European Council of 16 and 17 December 2004 on opening accession negotiations with Croatia; and on the decision of the Council of the European Union of 16 March 2005 that the commencement of accession negotiations has been postponed until such time as full cooperation with the ICTY has been confirmed;

Having regard to its opinion on the financial perspectives: Communication from the European Commission Building our common Future — Policy challenges and Budgetary means of the Enlarged Union 2007-2013 COM(2004) 101 final, CdR 162/2004 fin, (Rapporteur: Cllr Sir Albert Bore, Birmingham City Council (UK, PES));

Having regard to the Resolution of the Committee of the Regions of 18 November 2004 on the opening of negotiations for Turkey's accession to the EU;

Having regard to its draft opinion (CdR 498/2004 rev. 1) adopted on 7 February 2005 by the Commission for External Relations (rapporteur: Ms Ruth Coleman, Leader of the North Wiltshire District Council (UK/ELDR);

- 1) Whereas, the draft regulation is dependent on an agreement between the Member States on the financial perspectives (see above);

adopted the following opinion at its 59th plenary session, held on 13 and 14 April 2005 (session of 14 April).

1. The Committee of the Regions' views

Potential Candidate Countries as a means of streamlining support and enhancing co-ordination between the different components of support;

THE COMMITTEE OF THE REGIONS

1.1 welcomes this Instrument as a response to the demands for more flexibility and simplicity in the system for pre-accession assistance and as an improved tool for bridging the gap between pre-accession and accession;

1.2 recognises that lessons have been learnt from earlier accession instruments and therefore welcomes the creation of a single framework for pre-accession assistance to Candidate and

1.3 recognises the difference between pre-accession aid and traditional development aid, in that pre-accession aid is (a) directed towards the goal of accession in the short or medium term and (b) intended to prepare countries for the time after accession. The overall objective of pre-accession assistance is progressive alignment with the standards and policies of the European Union;

1.4 welcomes the decision to offer pre-accession assistance both to Candidate Countries and Potential Candidate Countries: both groups to have access to the components:

- Transitional Assistance and Institution Building
- Regional and Cross-Border Cooperation;

Candidate Countries to have access in addition to the components:

- Regional Development
- Human Resources Development
- Rural Development;

1.5 welcomes the reduction in the number of budget lines covering pre-accession assistance as this will enable greater flexibility to meet the needs of Candidate and Potential Candidate Countries;

1.6 believes that the proposal that management of assistance to Candidate Countries may include decentralised management whereas assistance to Potential Candidates Countries will continue to be centrally managed is a balanced one;

1.7 welcomes the merge of the budget lines provided by DG Regio and DG Enlargement for cross-border cooperation. This will enable a more flexible system with one management authority;

1.8 welcomes the streamlining and improved coordination of pre-accession support to Candidate and Potential Candidate Countries and to the democratic institutions in those countries, including local and regional government.

2. The Committee of the Regions' recommendations

2.1 highlights the fact that the scope of the proposed assistance includes many areas in which local and regional government has experience and thus could take an important role, including:

- strengthening democratic institutions
- economic reform
- promotion and protection of human rights and fundamental freedoms and enhanced respect for minority rights
- the development of civil society
- regional and cross-border cooperation;

2.2 recommends that local and regional government within the European Union should offer a wide range of expertise in the areas for assistance listed in paragraph 1.4 (above), which could be delivered for example by means of information exchange or technical assistance programmes or by assisting in conferences with the aim of familiarising local/regional government in the Candidate/Potential Candidate Countries with the Community acquis;

2.3 urges local and regional authorities to consider using the opportunity offered in Article 16 to participate in tenders and contracts for delivery of the programmes for assistance under this Instrument;

2.4 suggests conducting regular monitoring and evaluation of the IPA by the European Commission. Where regional and local matters are concerned, this should be in cooperation with the Committee of the Regions. This would improve the management of projects to cover the actual needs of both sides, the EU and candidate or potential candidate countries.

Brussels, 14 April 2005

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time

(2005/C 231/10)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time COM(2004) 607 final — 2004/0209 (COD);

Having regard to the decision of the Council of 20 October 2004 to consult it, in accordance with the provisions of Article 137(2) of the Treaty establishing the European Community;

Having regard to the decision of its president on 3 November 2004 to direct its Commission for Economic and Social Policy to prepare an opinion on the subject;

Having regard to Directive 93/104/EC concerning certain aspects of the organisation of working time as amended by Directive 2000/34/EC;

Having regard to the Communication from the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions concerning the re-exam of Directive 93/104/EC concerning certain aspects of the organisation of working time;

Having regard to the Second Phase of Consultation of the Social Partners at Community Level concerning the revision of Directive 93/104/EC concerning certain aspects of the organisation of working time;

Having regard to the jurisprudence of the European Court of Justice concerning interpretation of certain provisions of the Directive in case C-303/98, *Sindicato de Médicos de Asistencia Pública (SIMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* and case C-151/02, *Landeshauptstadt Kiel v Norbert Jaeger*;

Having regard to the principle of subsidiarity enshrined in Article 5 of the Treaty Establishing the European Community — Article 5 ECT;

Having regard to the Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EC);

Having regard to the target set by the Lisbon European Council on 23/24 March 2000 for the European Union to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion;

Having regard to its draft opinion (CdR 329/2004 rev. 2) adopted on 11 February 2005 by its Commission for Economic and Social Policy (Rapporteur: Baroness Joan Hanham, Member of the Royal Borough of Kensington and Chelsea (UK-EPP);

adopted the following opinion at its 59th plenary session, held on 13 and 14 April 2005 (meeting of 14 April).

1. Views of the Committee of the Regions

European Union with a significant role in managing public services such as social care, health and civil protection services;

THE COMMITTEE OF THE REGIONS:

1.1 welcomes the Commission initiative to amend the Working Time Directive at this stage as there is an urgent need to resolve a number of issues in respect of the interpretation and application of the Working Time Directive at member state level;

1.2 reminds the Commission, Parliament and Council that local and regional authorities are major employers within the

1.3 remains concerned that failure to find a satisfactory solution will add to the immediate problems of skilled labour shortages in the health and social care sector throughout the EU and that in the short term this will result in even greater economic migration in these sectors from the new Member States and poorer countries outside of the EU to the established Member States and that this will be to both the short and long term detriment of the health and social care sectors in the new Member States and poorer countries outside the EU;

1.4 believes that while there is a technical side to the issue of regulating working time, there are also implications for the type of society which Europe wishes to be; that when Europe is seeking to promote greater entrepreneurship, creativity, and active citizenship, while providing individuals with a better work-life balance, the regulation of working time has implications for all these aspirations, and therefore must be considered in this context;

1.5 recognises that the Commission proposal on the definition of working time attempts to remove the legal uncertainty created by the ECJ rulings in the Jaeger and SIMAP cases. The aim of European legislation must be to ensure that on-call provisions remain an important factor in the ability to provide quality and continuous health services and residential care, including care of vulnerable adults and children;

1.6 recognises that a possible negative effect of returning to the pre-SIMAP/Jaeger position is that there could be situations where patterns of work could exist in which workers may spend large amounts of time on-call at the workplace and that, if not effectively managed, this could potentially impact on the health and safety of such workers, and possibly others, such as customers and the public, and also on a worker's ability to balance work and family life;

1.7 points out, however, that the Working Time Directive is a health and safety measure designed to place limits on working hours to achieve a balance between work and rest. It is not a measure to define other terms and conditions of employment, such as the agreement to, or the financial compensation for working a particular pattern of hours. These are matters to be agreed on an individual or collective basis in accordance with the practices and procedures in individual Member States or work sectors as appropriate. In addition, whatever pattern of work is envisaged, the employer retains responsibility for the health and safety of workers and should have measures in place to ensure that their health and safety is not prejudiced;

1.8 accepts that currently the ability to extend the reference period, used for the calculation of the average hours worked per week, is only available in a limited number of workplaces covered by derogations or if a collective agreement can be reached to this effect; therefore favours the rapid introduction of an annualised approach to working hours, especially in industries which are subject to strong seasonal variations in demand for their products or services. This would be a useful contribution to the competitiveness agenda;

1.9 observes that the rule of application for the calculation of average working time for workers employed on shorter contracts is effectively the same as that which applies currently

for workers who work less than the standard reference period of 4 months;

1.10 notes that the proposal on the provision of compensatory rest removes the obligation created by the ECJ ruling in the Jaeger case to grant compensatory rest immediately. This would remove the confusion created by the judgement. In most cases 72 hours will be a reasonable period within which to afford compensatory rest;

1.11 observes that the Commission's proposals would retain the right for workers to opt-out of the maximum average 48 hour week, in Member States which take up this option, but that in some workplaces this option would be dependent on collective agreements. This area of the proposal if pursued would require further clarification as under it, individuals may also agree to opt-out in workplaces where there is the absence of a collective agreement. Consequently it is not sufficiently clear exactly when this facility is to apply. It may for example only be intended to apply to small employers in Member States which do not traditionally have widespread collective bargaining structures, such as the UK. Although it may also be intended to be of relevance to any of the new Member States which do not have well developed social dialogue processes including collective agreements;

1.12 agrees that the decision to opt out of the 48 hour maximum average working week is a voluntary choice for an individual worker and that they must not be put under pressure by their employers to do so. There must be adequate protections to ensure that this does not occur, but also additional measures to ensure that their health and safety is protected where they do opt out;

1.13 observes that many of the conditions which are to apply to the 48 hour opt-out already apply to the individual opt-out as it exists now; but some do not provide any obvious further protection for workers and should be removed or reserved to Member States;

1.14 considers that the requirement that the opt-out must be for a maximum period of one year and then renewable would give the false impression that the duration of the opt-out is fixed for one year, whereas the true position is that individuals have the freedom to rescind the opt-out at any time;

1.15 acknowledges that the provision that any opt-out signed at the same time as the employment contract would be null and void would provide some protection for workers who otherwise may feel pressurised to opt-out. However, individuals may early in their working life with a new employer wish to work longer hours in order to earn additional income and so it must be clear at what stage of employment an employee has the right to opt-out. This would be particularly relevant where

workers are engaged on short-term contracts in order to respond to a seasonal peak in workload. Also, given that there is no universal understanding of the definition of a probationary period, the additional requirement that an employee may not sign an opt-out whilst serving a probationary period will lead not only to questions of interpretation but also deny such an employee the ability to earn additional income;

1.16 draws attention to the unusual anomaly created by the new proposal that an employee who opts out, when authorised by a collective agreement, may not work in excess of 65 hours in any one week, while recognising that this is an unusually high number of hours to work and would not be the norm, it does mean that whilst an employee who opts-out cannot work more than 65 hours in any one week, an employee who has not opted-out and is therefore subject to the maximum average 48 hour working week, can. In addition, it appears that an employee who works in a workplace where there is no collective agreement or worker representation and who opts-out on an individual basis would also not be subject to the maximum limit of 65 hours in any one week;

1.17 considers that the additional requirement to keep detailed records of all of the hours worked by opted-out workers would add to bureaucracy and that a better solution might be for the Directive to place the responsibilities for prescribing an employer's obligations with the competent authorities within each member state. These authorities will have the ability to integrate such requirements within the overall Member State's health and safety strategy and the obligations placed on employers.

2. The Committee of the Regions' recommendations

The Committee of the Regions recommends

Urgent resolution

2.1 that the Commission, Parliament and Council endeavour to seek an urgent conclusion to the proposals in order that there is clarity and confidence in the Working Time Directive;

Definition of working time

2.2 that the new definition of working time incorporating two new categories of time: 'on-call time' and 'inactive part of on-call time' be accepted, i.e. that during on-call time, which refers to time when a worker is required to be available at the workplace in order to commence performing his/her activities or duties at the employer's request, the inactive part of on-call time will not be counted as working time unless Member States decide otherwise, or a collective agreement is made to that

effect. Periods during the on-call period when workers actually perform work will be classed as working time;

Reference periods for the calculation of average weekly working hours

2.3 that the Commission proposal that Member States be given the ability, if they wish, to set a standard reference period of up to 12 months for all workers, subject to the provision that, in respect of fixed-term employees, the reference period cannot be longer than the length of the employment contract if this is less than one year, be accepted.

Compensatory rest

2.4 that, although the Commission proposal that where workers are denied their right to daily and weekly rest they must be provided with equivalent periods of compensatory rest within a reasonable period which can be no longer than 72 hours, is a significant improvement on the current situation resulting from the ECJ decision in the Jaeger case, in order to account for a wide range of sectors and working practices serious consideration must be given to providing for a longer period over which compensatory rest could be granted. In addition, Article 17 should allow the possibility to extend the time limit, in accordance with national practice, by law or collective agreement;

The individual 48 hour opt-out

2.5 that if the EU and its Member States wish to promote greater entrepreneurship, creativity and active citizenship, and at the same time facilitate a better work-life balance for individuals, the current ability for Member States to utilise the possibility for workers to freely opt-out of the maximum average 48 hour working week on an individual basis should be gradually phased out, in favour of initiatives which promote these other aspirations;

2.6 that the Commission proposal that the ability to opt-out of the 48 hour maximum would only be available where this option is provided by a collective agreement or an agreement between the two sides of industry at national or regional level, or by means of collective agreements at the appropriate level be endorsed.

Further conditions on the 48 hour opt-out

2.7 that the Commission's efforts to ensure that individuals who opt out do so out of a free choice in the knowledge that they may freely opt back in without fear of detriment, be strongly supported;

2.8 therefore that the following conditions be retained:

- The worker's agreement must be obtained
- No worker is subjected to a detriment because he/she is not willing to agree to opt out.

2.8.1.1 That the following conditions be removed:

- The agreement must be valid for a period not exceeding one year, i.e. it must be renewable
- No worker works more than 65 hours in any one week, unless the collective agreement provides otherwise.

2.8.1.2 That the following conditions be removed or be reserved to national Member States to implement as required in accordance with their national practices and procedures having regard to their relevance in respect of their own national legal and industrial relations systems:

- An agreement given at the time of signature of the individual employment contract or during any probationary period shall be null and void
- The employer keeps up-to-date records of all workers who opt out and of the number of hours actually worked
- The records are at the disposal of the competent authorities, which may for health and safety reasons, prohibit or restrict the possibility of exceeding maximum weekly working hours
- The employer provides the competent authorities, at their request with information on the number of hours actually worked by the workers concerned.

Brussels, 14 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Proposal for a Regulation of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE+)

(2005/C 231/11)

THE COMMITTEE OF THE REGIONS,

HAVING REGARD TO the Proposal for a Regulation of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE+) COM(2004) 621 final — 2004/0218 (COD);

HAVING REGARD TO the Decision of the European Commission of 1 October 2004 to consult it on this subject, under Article 175(1) of the Treaty establishing the European Community;

HAVING REGARD TO the decision taken by its president on 26 May 2004 to instruct the Commission for Sustainable Development to draw up an opinion on this subject;

HAVING REGARD TO the Communication from the Commission to the Council and the European Parliament on Financing Natura 2000 COM(2004) 431 final;

HAVING REGARD TO its opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the 6th Environment Action Programme of the European Community entitled 'Environment 2010: Our future, Our choice' and the Proposal for a Decision of the European Parliament and of the Council laying down the Community Environment Action Programme 2001-2010 COM(2001) 31 final — CdR 36/2001 fin ⁽¹⁾;

HAVING REGARD TO its opinion on the Communication from the Commission to the Council and the European Parliament entitled 'Building our Common Future: Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013' COM(2004) 101 final — CdR 162/2004 fin;

HAVING REGARD TO its draft opinion (CdR 253/2004 rev. 1) adopted on 1 March 2005 by its Commission for Sustainable Development (rapporteur: Mrs Michèle Eybalin, Member of the Regional Council of Rhône-Alpes) (FR-PES);

adopted the following opinion, by a unanimous vote, at its 59th plenary session, held on 13 and 14 April 2005 (meeting of 14 April).

⁽¹⁾ OJ C 357, 14.12.2001, p. 44

Views and recommendations of the Committee of the Regions

1. General considerations

THE COMMITTEE OF THE REGIONS

1.1 shares the standpoint of the European Commission that the LIFE+ instrument cannot be considered in isolation from the overall redefinition of EU financial interventions and the conditions for implementing the different aspects of EU environmental policy; considers that it would, however, have been desirable to:

- carry out a comprehensive stocktaking of EU financial interventions in the environmental field by making an assessment of the relevance and the impact of each of the funding measures in relation to the aims of the measures themselves and the general objectives of the successive EU action plans for the environment;
- make an assessment of the European added value of the projects financed under the various programmes (programmes managed directly by DG Environment, on the one hand, and programmes incorporated into other EU financial measures, on the other hand) and to make an assessment of the coherence between these projects and the projects supported by DG ENVI;

1.2 considers that the European Commission should have backed up the proposal for the Regulation on LIFE+ with an analysis of the funding requirements in respect of the implementation at local and regional level of the various EU environmental policy priorities and an appraisal of these interventions in respect of the principle of subsidiarity;

1.3 appreciates the European Commission's desire to pursue the goal of simplification by having recourse to a single instrument but highlights the current difficulties in understanding the real scope for financing environmental projects under the various financial instruments to be established in the period 2007-2013 and draws attention to the need to coordinate the various funding measures in order to encompass the various EU priorities and means of intervention;

1.4 notes that the projects hitherto funded under the LIFE Environment strand (projects in respect of the industrial environment) and the LIFE Third Countries strand will no longer be eligible for funding under LIFE+ and calls for the inclusion of an environmental strand in the 'Competitiveness and Innovation' and 'Neighbourhood instrument' programmes, under which the abovementioned projects could be funded over the period 2007-2013 to be specified and guaranteed;

1.5 considers that all of the abovementioned elements need to be spelled out before making proposals in respect of the contents and the means of financing projects which are in line

with the key priorities of EU environmental policy (and with the work of the European Environment Agency (EEA)); if the abovementioned points are not underlined, the proposal for a Regulation on LIFE+ will be regarded more as a financial engineering measures, the rationale behind which is difficult to grasp, and project initiators will be unable to clearly identify EU priorities and the possibilities of giving the green light to their initiatives;

1.6 warns that only studies, conceptual work and planning activities are eligible for support under the draft LIFE+ programme and that specific implementing measures will no longer qualify for funding from the LIFE programme's resources; the disadvantage of the Commission's drive to merge all priorities for support (Structural Funds and the Rural Development Fund) is that environmental projects will have to compete with other activities.

2. Contents and implementing provisions of LIFE+

THE COMMITTEE OF THE REGIONS

2.1 expresses its concern over the desire expressed by the European Commission to delegate a very substantial part of the programming and the budget (between 75 % and 80 %) of the LIFE+ instrument to the various Member States, without defining, in the proposal for a Regulation, the procedures and conditions in respect of these 'decentralisation' measures;

2.2 warns of the need for vigilance in order to ensure that the desire to achieve simplification and flexibility, which underlies the proposal for a Regulation, does not lead to a 'renationalisation' of EU environmental policy and points out that, for the first time, a key programme for supporting one of the major internal policies of the European Commission is being 'nationalised' for no good reason, as European funding is already available for taking action for the benefit of the environment at local level;

2.3 considers it inappropriate that all the criteria for defining the measures to be financed are set out in a multi-annual strategic programme and annual work programmes and draws attention, in this context, to the fact that the funding arrangements (rates of grant, actions and eligibility criteria) are not spelled out in the proposal for a Regulation;

2.4 calls for the concept of 'European added value' to be clarified and explanations to be provided as to the bearing which this objective is to have on the nature and selection of the projects and its bearing on the other sources of EU funding which could intervene; stresses, in this context, the need to draw up a number of objective criteria and to explore the possibility of modulation in respect of clear European added value;

2.5 draws attention to the desire, set out in section 3 of the Explanatory Memorandum, to make LIFE+ a simplified and proportionate instrument and expresses the hope that vigilance will be demonstrated in applying this proportionality to the five main lines of intervention, bearing in mind that, irrespective of budgetary constraints, steps should be taken to ensure that the LIFE+ instrument does not become the tool of just part of EU environmental policy; this vigilance must be exercised when the two multi-annual programmes, which it is planned to formulate at EU level (2007-2009 and 2010-2013) are drawn up; vigilance should, however, also be shown in the event of the possible establishment of national programmes;

2.6 calls upon the Commission, in this context, to make an appraisal of the consequences and the feasibility of introducing minimum commitment thresholds in respect of each of the intervention priorities;

2.7 expresses its deep concern over the maintenance of priorities and the possibilities for funding certain projects, in particular the funding of the establishment and management of the NATURA 2000 network of sites, as well as projects to improve the environmental condition of surface waters; believes that the financial instruments provided for under the Financial Perspective for 2007-2013 are not such as to ensure successful implementation of the network; and calls upon the European Commission to explain the links and shed light on the available (earmarked) budgets under each of the financial instruments (European Agriculture Fund for Rural Development (EAFRD) and ERDF), other than LIFE+, which should provide a source of funding for these projects;

2.8 requests the Commission in particular to significantly increase the EUR 300 million annual budget allocated to LIFE+ in order to cater for a variety of needs and to earmark a minimum percentage for implementation of the NATURA 2000 network;

2.9 has reservations about the area of intervention covered by the 'Implementation and Governance' strand, which seeks to improve the 'knowledge base' for the development and implementation of environmental policy; without wishing to call the need for such a measure into question, these interventions would appear to fall, first and foremost, within the remit of the European Environment Agency (EEA);

2.10 calls upon the European Commission, therefore, to improve the definition of the actions which it is planned to carry out under this heading and to improve the coordination between these measures and both the initiatives and the budgets of the EEA.

3. Involvement of local and regional authorities in the implementation of LIFE+

THE COMMITTEE OF THE REGIONS

3.1 considers that the expenditure commitments in respect of improvements to the environment provided for under the forthcoming financial perspectives should ensure that efficient and effective back-up action is taken at EU level in such a way as to trigger, by means of the multiplier effect, actions at national, regional or local level and stresses that the bulk of expenditure in this field has to be met by regional and local bodies and that regional and local authorities are major players in the funding of these actions;

3.2 considers that LIFE+ must not, however, serve as a mere back-up instrument for these interventions; as is the case with the projects financed under the current LIFE instrument, LIFE+ should rather provide funding, geared to initiatives which provide a specific European added value in the field of EU environmental policies;

3.3 attaches great importance to the involvement of local and regional authorities in the establishment and implementation of funding programmes in the environmental field; does, however, express its concern over the fact that this role is not set out in clear and explicit terms in the proposal for a Regulation, despite the fact that the Commission wishes to decentralise, to a considerable extent, the programming and management of LIFE+;

3.4 takes the view that there is a need to clarify a number of the conditions relating to the implementation of the LIFE+ instrument, as regards the procedures for co-financing operations between the LIFE+ instrument, on the one hand, and the Member States, local and regional authorities and other public and private players, on the other hand, and draws attention, in this context, to the difficulties encountered by several players — in particular private sector players — in securing funding for environmental projects having a low level of cost effectiveness simply by pursuing a proactive approach;

3.5 urges that, in this context, steps be taken to explore flexible methods of partnership and to establish an approach based on a tripartite model, geared to the use of methods incorporating activities carried out under contract, thereby involving local and regional governments in the achievement of political objectives, with a view to giving a shot in the arm to the implementing mechanisms.

Brussels, 14 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Proposal for a Council Regulation laying down specific measures for agriculture in the outermost regions of the Union

(2005/C 231/12)

THE COMMITTEE OF THE REGIONS,

Having regard to the Proposal for a Council Regulation laying down specific measures for agriculture in the outermost regions of the Union [COM(2004) 687 final — 2004/0247 (CNS)];

Having regard to the decision of the European Commission of 28 October 2004 to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to its President's decision of 20 January 2005 to instruct the Commission for Sustainable Development to draw up an opinion on this subject;

Having regard to its opinion on the Commission Report on the measures to implement Article 299(2) — the outermost regions of the European Union (COM(2004) 147 final — CdR 156/2000 fin ⁽¹⁾);

Having regard to its opinion on the Commission's package of draft regulations subtitled 'A long-term policy perspective for sustainable agriculture' (COM(2003) 23 final — CdR 66/2003 fin ⁽²⁾);

Having regard to its opinion on the Communication from the Commission on a stronger partnership for the outermost regions (COM(2004) 343 final — CdR 61/2004 fin;

Having regard to the Communication from the Commission on a stronger partnership for the outermost regions: assessment and prospects (COM(2004) 543 final);

Having regard to its draft opinion (CdR 509/2004 rev. 1) adopted on 1 March 2005 by its Commission for Sustainable Development [rapporteur: Mr Almont, Mayor of Schoelcher (FR-EPP)];

WHEREAS

1. the outermost regions, as recognised by Article 299(2) of the Treaty, have since 2001 been covered by a specific framework for Community intervention in the area of agriculture entitled 'a programme of options specific to the remote and insular nature' of these regions, stemming from a Council Decision of 1989;
2. these programmes, which are part of the Community's policy in favour of the outermost regions, include measures intended to improve the conditions for producing and marketing agricultural products from these regions;
3. in spite of the value and efficacy of the measures implemented, the permanent structural handicaps facing the outermost regions (especially dependence on a small number of economic sectors, distance from centres of supply and large markets, the ensuing additional costs, and the lack of food self-sufficiency) fully justify continuing and stepping up such programmes, in particular by means of support measures for the supply of raw materials for animal and human consumption, and for the expansion of the livestock and vegetable sectors, which are the building blocks of socio-economic development in these regions;

⁽¹⁾ OJ C 144 of 16.5.2001, p. 11.

⁽²⁾ OJ C 256 of 24.10.2003, p. 18.

4. in its May 2004 Communication on a stronger partnership for the outermost regions, the Commission expressed the view that 'following the 2003 reform of the common agricultural policy, there is still a need to ensure the stability of the resources allocated to maintaining support for the outermost regions and, as far as possible, to decentralise decision taking and simplify the management arrangements' of these programmes;
5. the proposed reform, which is to come into force before the 2007 deadline, in spite of the programming schedule for certain measures, is deemed not to affect the substance of the current programming and not to financially penalise the regions covered by the programme;
6. by proposing to base the budget envelope allocated to the 'supply' part of the relevant programmes on the average of the 2001-2003 historical references, the Commission is in practice penalising the eligible regions and overlooking the fact that in 2001 the new legislative framework had not come into force; it also disregards any potential increase in supply needs, thereby failing to guarantee the flexibility needed for the development of the system;
7. in addition to the management measures, the proposed reform also modifies the legal form of the programmes by merging the three Regulations 1452/2001, 1453/2001 and 1454/2001 into a single joint regulation;
8. it is therefore essential to ensure that the Commission's proposal to reform the instrument's management methods does not compromise the basic principles and objectives of the Posei schemes, and specifically:
 - a. compensation for handicaps arising from remote location,
 - b. support for economic diversification in agriculture,
 - c. development of diversified sectors designed to uphold local employment,
 - d. the target of food self-sufficiency;
9. in the Member States benefiting from these programmes, local and regional authorities play a key role in territorial economic development, and Community interventions in the fields covered by the present regulation must be consistent with locally-implemented development policies;

adopted the following opinion at its 59th plenary session, held on 13 and 14 April 2005 (meeting of 14 April):

1. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS:

1.1 **considers** that the regulation, which specifically concerns the outermost regions of the Union, should be based exclusively on Article 299(2) of the Treaty, which is the legal basis allowing specific measures to be adopted in favour of the outermost regions, including in connection with the Common Agricultural Policy;

1.2 **welcomes** the Commission's acknowledgement of the value of a stronger partnership with local authorities, enabling the specific problems of the regions concerned to be tackled in a more targeted way through support programmes for the development of their agriculture;

1.3 **emphasises**, nevertheless, that programme management must not anticipate the way constitutional powers are divided between the Member States and the regional authorities of the outermost regions with regard to intervention in the agricultural sector;

1.4 **believes** that the simplification of management methods sought by the Commission by means of the greatest possible decentralisation must be accompanied, where the eligible Member States and operators are concerned, by simpli-

fication of procedures, especially those concerning programming and programme evaluation, monitoring, adjustment and checks;

1.5 **stresses** that simplification of management methods must not lead to a reform of the instrument's substance or affect the continuation or purpose of these measures; in consequence, the Member States should be granted maximum flexibility in defining and, where appropriate, adjusting the measures and levels of aid under the programmes;

1.6 similarly, **stresses** that the planned reform must not affect the level of financial support required for programme implementation; the budget stabilisation envisaged is consequently incompatible with the concept of development which underlies these programmes;

1.7 therefore **considers** that Community support for the supply of the outermost regions must not be downgraded compared with the present state of affairs as a result of the proposed historical reference periods, but rather must be based on 2004 for the French overseas departments and on the average for 2002, 2003 and 2004 for Madeira, the Azores and the Canary Islands, allowing the budget envelope to be adjusted in line with changing needs, particularly given the often unequal competition from third countries;

1.8 **recalls** that Community support for measures to assist local production must be viewed from a long-term standpoint, in order to give a clearer view of the future to the eligible sectors. This requires long-term commitments on the part of operators, and the planned programmes should therefore be of a multiannual nature;

1.9 in order to reflect the large number of factors, particularly economic (market fluctuations, etc.) and climate-related (cyclones, hurricanes, drought etc.) which can affect the implementation of certain measures, **hopes** that the level of financial support for these measures can be set with the greatest possible flexibility, and that the planned budgets can be adjusted on a measure-to-measure basis and between different years within the proposed programming;

1.10 **asks that**, in the same way as for the provisions adopted by the Council in connection with the 2003 CAP reform, the Commission be allowed to increase the budget envelopes allocated to 'measures to assist local agricultural products' under Title III of the draft regulation, in order to keep pace with the growth of local production;

1.11 **considers** that this support scheme to promote economic diversification of agriculture and the development of activities that will boost local employment should not affect the development of agri-businesses which use raw materials covered by the specific supply arrangements only for self-supply and traditional exports, bearing in mind the small size and market of the outermost regions, which penalises them in an increasingly open and competitive market.

2. The Committee of the Regions' recommendations

Recommendation 1

First citation

Text proposed by the Commission	CoR amendment
Having regard to the Treaty establishing the European Community, and in particular Articles 36, 37 and 299(2) thereof,	Having regard to the Treaty establishing the European Community, and in particular Articles 36, 37 and 299(2) thereof,

Reason

Article 299(2) is the appropriate legal basis for establishing the measures proposed in the title of the present draft regulation, focusing specifically on the outermost regions. For the outermost regions, it should represent the normal legal basis, since its very inclusion in the body of the Treaty establishes that, far from jeopardising the Union's integrity, it meets the cohesion objectives defined in the Treaty.

Recommendation 2

Title II

Specific supply arrangements

Article 2

Text proposed by the Commission	CoR amendment
1. Specific supply arrangements are hereby introduced for the agricultural products listed in Annex I, which are essential in the outermost regions for human consumption, for the manufacture of other products or as agricultural inputs.	1. Specific supply arrangements are hereby introduced for agricultural products which are essential in the outermost regions for human consumption, for the manufacture of other products or as agricultural inputs, <u>to be defined in the specific multiannual programme to be presented by each Member State.</u>

Reason

Annex I to the Commission proposal contains a list of products covered by the specific supply arrangements. The Commission also proposes that this list may be revised using the comitology procedure. The Committee of the Regions supports the Commission's objective of simplifying the arrangements and giving the Member States greater flexibility; this list should only be drawn up when the programmes are being adopted, on a proposal from the Member State concerned.

Recommendation 3

Article 4(2)

Text proposed by the Commission	CoR amendment
<p>2. The restriction provided for in paragraph 1 shall not apply to products processed in the outermost regions from products having benefited from the specific supply arrangements which are:</p> <p>a) exported to third countries or dispatched to the rest of the Community within the limits of traditional exports and traditional dispatches. Those quantities and the third countries of destination shall be specified by the Commission in accordance with the procedure laid down in Article 26(2), on the basis of the average of exports or dispatches during the years 1989, 1990 and 1991;</p> <p>b) exported to third countries as part of regional trade flows in accordance with conditions specified under the procedure referred to in Article 26(2);</p> <p>c) dispatched from the Azores to Madeira or vice versa</p> <p>No export refund shall be granted for the products thus exported.</p>	<p>2. The restriction provided for in paragraph 1 shall not apply to products processed in the outermost regions from products having benefited from the specific supply arrangements, which are:</p> <p>a) exported to third countries or dispatched to the rest of the Community within the limits of traditional exports and traditional dispatches. Those quantities and the third countries of destination shall be specified by the Commission in accordance with the procedure laid down in Article 26(2), on the basis of the average of exports or dispatches during the years 1989, 1990 and 1991;</p> <p>b) exported to third countries as part of regional trade flows in accordance with conditions specified under the procedure referred to in Article 26(2);</p> <p>c) dispatched from the Azores to Madeira or vice versa</p> <p>No export refund shall be granted for the products thus exported.</p>

Reason

This limitation could be extremely prejudicial to the outermost regions.

The sustainable development of rural communities in the outermost regions depends partly on the existence of agri-businesses which can add value to local products and provide an important locomotive for development by creating new jobs, fostering innovation and introducing new cultures and practices.

The small physical size and market of the outermost regions is a serious constraint on the development of agri-businesses in an increasingly open and competitive market.

Recommendation 4

Article 5(2)

Text proposed by the Commission	CoR amendment
<p>2. The supply programmes shall be approved in accordance with the procedure referred to in Article 26(2). The list of products contained in Annex I may be revised in accordance with the same procedure, in the light of demand developments in the outermost regions.</p>	<p>2. The supply programmes shall be approved in accordance with the procedure referred to in Article 26(2). The list of products contained in Annex I may be revised in accordance with the same procedure, in the light of demand developments in the outermost regions.</p>

Reason

In order to further simplify the instrument, as desired by the Commission, and to offer the Member States maximum flexibility, we propose that the list of eligible products be established by each Member State at the programming stage. The Commission would continue to control Member States' choice of products when the programmes are adopted, laying down the products, quantities and levels of aid. The Member States would continue to be consulted in the context of the comitology procedure by which the supply programmes are approved.

Recommendation 5

Article 8a

Text proposed by the Commission	CoR amendment
	<p>Sugar</p> <p>During the period referred to in Article 10(1) of Council Regulation (EC) No. 1260/2001, C sugar as referred to in Article 13 of that Regulation, exported in accordance with the relevant provisions of Regulation (EEC) No. 2670/81, and introduced for the purposes of consumption in Madeira and the Canary Islands in the form of white sugar falling within CN code 1701 or into the Azores in the form of raw sugar falling within CN code 1701 12 10, shall benefit, under the terms of this Regulation, from the scheme of exemption from import duties within the limits of the forecast supply balances referred to in Article 3.</p>

Reason

The purpose is to incorporate Article 18 of Commission Regulation 20/2002, as amended by Commission Regulation 127/2005, which enables C sugar to be imported into the Canary Islands, Madeira and the Azores, into the Proposal for a Council Regulation. Given that the draft Council Regulation for the new Posei already embodies many of the questions to be included in the subsequent implementing regulation, this article should be included in the above-mentioned draft Posei Regulation in order to provide legal backing for the import of C sugar into these outermost regions.

Recommendation 6

Title III

Measures to assist local agricultural products

Article 9

Text proposed by the Commission	CoR amendment
1. Community support programmes for the outermost regions shall be established containing specific measures to assist local lines of agricultural production within the scope of the Title II of Part Three of the EC Treaty.	1. Multiannual Community support programmes for the outermost regions shall be established containing specific measures to assist local lines of agricultural production within the scope of the Title II of Part Three of the EC Treaty.

Reason

The programming approach implies continuity of measures. In sectors such as vegetables or livestock, which require long-term visibility, it should be possible for programmes to extend over the entire duration of the future 2007-2013 programming period.

Recommendation 7

Article 12(a)

Text proposed by the Commission	CoR amendment
A Community support programme shall contain: (a) a quantified description of the current agricultural production situation taking into account the results of available evaluations, showing disparities, gaps and potential for development, the financial resources deployed and the main results of operations undertaken under Council Regulations (EEC) Nos. 3763/91, 1600/92, 1601/92 and (EC) Nos. 1452/2001, 1453/2001 and 1454/2001;	A Community support programme shall contain: (a) a quantified description of the current agricultural production situation taking into account the results of available evaluations, showing disparities, gaps and potential for development, the financial resources deployed and the main results of operations undertaken under Council Regulations (EEC) Nos. 3763/91, 1600/92, 1601/92 and (EC) Nos. 1452/2001, 1453/2001 and 1454/2001;

Reason

The evaluation required by the Commission should not go as far back as 1991, since it evaluated the Poseidom, Poseima and Poseican programmes in 2000, prior to the adoption of Regulations 1452/2001, 1453/2001 and 1454/2001.

Secondly, the evaluation under Articles 27(2), 39(2) and 25(2) respectively of these regulations has not been carried out by the Commission. It is not the Member States' task to fulfil this obligation.

Lastly, an assessment of the impact of the measures since 1991 would run counter to the aim of simplification guiding the draft regulation, and would add considerably to the Member States' workload. In consequence, the evaluation of the Posei measures should cover the period of their implementation since the adoption of these regulations, i.e. 2002, 2003 and 2004.

Recommendation 8

Article 12(d)

Text proposed by the Commission	CoR amendment
d) a schedule for the implementation of the measures and a general indicative financing table showing the resources to be deployed;	d) a schedule for the implementation of the measures and a general indicative financing table showing the resources to be deployed; <u>budgetary flexibility between different measures under a single programme may be envisaged throughout the programme's duration;</u>

Reason

The particular situation of the outermost regions, in particular the small size of their markets and their dependence on a small number of economic sectors, entails close interdependence between the sectors covered by the present programme. In order to maximise these sectors' chances of attaining their development objectives, and in keeping with the purpose of simplifying the management of the instrument, the greatest possible degree of budget flexibility should be allowed between different measures within a single programme, throughout the whole of the relevant period. This would ensure that the desired effectiveness is achieved.

Recommendation 9

Article 19(2)

Text proposed by the Commission	CoR amendment
2. Notwithstanding Article 19(1) of Regulation (EC) No. 1493/1999, grapes from prohibited direct-producer hybrid vine varieties (Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont) harvested in the Azores and Madeira may be used for the production of wine which must remain within those regions. By 31 December 2006 Portugal shall have gradually eliminated vineyards planted with prohibited direct-producer hybrid vine varieties, with, where appropriate, the support provided for in Chapter III of Title II of Regulation (EC) No. 1493/1999.	2. Notwithstanding Article 19(1) of Regulation (EC) No. 1493/1999, grapes from prohibited direct-producer hybrid vine varieties (Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont) harvested in the Azores and Madeira may be used for the production of wine which must remain within those regions. By 31 December 2006 <u>2013</u> Portugal shall have gradually eliminated vineyards planted with prohibited direct-producer hybrid vine varieties, with, where appropriate, the support provided for in Chapter III of Title II of Regulation (EC) No. 1493/1999.

Reason

The mountainous nature of the region (88 % of the land has slopes of more than 16 % gradient) and the structure of farm ownership (average farm size of less than 0.4 ha, spread over a number of very small plots) mean that restructuring vineyards is both physically difficult and expensive. Given the socio-economic importance of wine-growing for the region, it is important that the deadline for restructuring vineyards growing varieties prohibited under Community legislation should be extended.

Recommendation 10

Article 20(4)

Draft opinion	Amendment
<p>4. Notwithstanding Articles 2 and 3 of Council Regulation (EC) No. 2597/97, the production in Madeira of UHT milk reconstituted from milk powder originating in the Community shall be authorised within the limits of local consumption requirements, insofar as this measure ensures that locally produced milk is collected and finds outlets. This product shall be used for local consumption only.</p> <p>Detailed rules for the application of this paragraph shall be adopted in accordance with the procedure referred to in Article 26(2). The detailed rules shall determine, in particular, the quantity of locally produced fresh milk to be incorporated into the reconstituted UHT milk referred to in the first subparagraph.</p>	<p>4. Notwithstanding Articles 2 and 3 of Council Regulation (EC) No. 2597/97, the production in Madeira of UHT milk reconstituted from milk powder originating in the Community shall be authorised within the limits of local consumption requirements, insofar as this measure ensures that locally produced milk is collected and finds outlets. This product shall be used for local consumption only.</p> <p>Detailed rules for the application of this paragraph shall be adopted in accordance with the procedure referred to in Article 26(2). The detailed rules shall determine, in particular, the quantity of locally produced fresh milk to be incorporated into the reconstituted UHT milk referred to in the first subparagraph; <u>this quantity shall be obligatory if there is no guaranteed outlet for local production.</u></p>

Reason

The amendment seeks to ensure that the region's locally produced milk always finds an outlet, and to give its dairy industry more flexibility in managing local production and the reconstituted milk produced.

The setting of a minimum quantity of milk to be incorporated causes constraints for the sector. In the case of Madeira's dairy industry, for instance, local milk production has not been sufficient to cover the percentage currently in force.

Recommendation 11

Article 24

Text proposed by the Commission	CoR amendment
<p>1. The measures provided for in this Regulation, except for Article 16, shall constitute intervention intended to stabilise the agricultural markets within the meaning of Article 2(2) of Council Regulation (EC) No. 1258/1999.</p> <p>2. The Community shall finance the measures provided for in Titles II and III of this Regulation up to an annual maximum as follows:</p> <ul style="list-style-type: none"> — French overseas departments: EUR 84.7 million, — Azores and Madeira: EUR 77.3 million, — Canary Islands: EUR 127.3 million <p>3. The amounts allocated annually to the programmes provided for in Title II may not exceed:</p> <ul style="list-style-type: none"> — French overseas departments: EUR 20.7 million, — Azores and Madeira: EUR 17.7 million, — Canary Islands: EUR 72.7 million 	<p>1. The measures provided for in this Regulation, except for Article 16, shall constitute intervention intended to stabilise the agricultural markets within the meaning of Article 2(2) of Council Regulation (EC) No. 1258/1999.</p> <p>2. The Community shall finance the measures provided for in Titles II and III of this Regulation up to an annual maximum as follows: <u>calculated on the basis of the amounts spent on financing the specific supply arrangements during the 2004 reference period and on the average for 2002, 2003 and 2004 for Madeira, the Azores and the Canary Islands, and on the basis of the expenditure ceilings applicable to support for local production.</u></p> <ul style="list-style-type: none"> — French overseas departments: EUR 84.7 million, — Azores and Madeira: EUR 77.3 million, — Canary Islands: EUR 127.3 million <p>3. The amounts allocated annually to the programmes provided for in Title II may not exceed:</p> <ul style="list-style-type: none"> — French overseas departments: EUR 20.7 million, — Azores and Madeira: EUR 17.7 million, — Canary Islands: EUR 72.7 million

Reason

In basing its definition of the budget envelope for the supply arrangements on the historical references for the 2001-2003 period, the Commission ignores both its progressivity, which was particularly marked in 2004, and the impact of the changes that were introduced with the 2001 reform of the Posei programmes. The use of an average provides a better reflection of the true situation as it lessens the impact of atypical years or circumstances. Using the years 2002/2004 is more logical than the Commission's proposal (2001/2003) as the 2001 Posei reform was in force throughout these years. The 2002/2004 average provides a better reflection of the situation in Madeira, the Azores and the Canary Islands.

Following the Luxembourg Compromise of 30 June 2003, which allowed the outermost regions to be excluded from the scope of decoupling of direct aid in the livestock sector, it was felt appropriate to provide for the introduction of a specific programme, to be integrated into the 'measures to assist local agricultural products' under the present draft regulation. The budget allocation for this programme was set in accordance with the payments made during the last year of application of the CMO for the livestock sector, as laid down in Article 147 of Regulation 1782/2003.

The same calculation method should also be applied to the specific supply arrangements for the French overseas departments, granting a budget envelope reflecting the last year of application of the arrangements, i.e. 2004, due to the particular developments there. The amounts laid down in the present article must therefore be revised accordingly.

Recommendation 12

Article 26

Text proposed by the Commission	CoR amendment
1. The Commission shall be assisted by the Management Committee for Direct Payments established by Article 144 of Regulation (EC) No. 1782/2003, except for the implementation of Article 16 of this Regulation, for which it shall be assisted by the Committee on Agricultural Structures and Rural Development set up by Article 50 of Regulation (EC) No. 1260/1999.	1. The Commission shall be assisted by the Management Committee for Direct Payments established by Article 144 of Regulation (EC) No. 1782/2003, except for the implementation of Article 16 of this Regulation, for which it shall be assisted by the Committee on Agricultural Structures and Rural Development set up by Article 50 of Regulation (EC) No. 1260/1999. <u>For the plant health programmes under Article 18, the Commission shall be assisted by the Standing Committee on Plant Health established by Decision 76/894/EEC.</u>

Reason

In view of the scope of the plant health programmes, and in order to comply with the comitology procedure, the adoption of plant health programmes under Article 18 should be submitted to the Standing Committee on Plant Health, not the Management Committee for Direct Payments.

Brussels, 14 April 2005.

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on The area of freedom, security and justice: the role of regional and local authorities in implementing the Hague Programme

(2005/C 231/13)

THE COMMITTEE OF THE REGIONS,

HAVING REGARD TO the decision of its Bureau of 15 June 2004, in accordance with Article 265(5) of the Treaty establishing the European Community, to instruct the Commission for Constitutional Affairs and European Governance to draw up an opinion on *The area of freedom, security and justice: the role of regional and local authorities in implementing the Hague Programme*;

HAVING REGARD TO the Communication from the Commission to the Council and the European Parliament — *Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations* (COM(2004) 401 final) and the decision of the European Commission of 2 June 2004 to consult it on this subject;

HAVING REGARD TO the Treaty establishing a Constitution for Europe, signed on 29 October 2004, and the establishment of an Area of Freedom, Security and Justice in Part I (Article I-42) and Part III (Articles III-257 to III-277) of the treaty;

HAVING REGARD TO the conclusions of the European Council held in Brussels on 4 and 5 November 2004 (14292/04), which adopted a new multiannual programme known as the Hague Programme to strengthen the Area of Freedom, Security and Justice over the next five years;

HAVING REGARD TO its opinion on *The local and regional dimension of the Area of Freedom, Security and Justice* (CdR 61/2003 fin ⁽¹⁾);

HAVING REGARD TO its opinion on *Crime prevention in the European Union* (CdR 355/2003 fin ⁽²⁾);

HAVING REGARD TO its draft opinion on the *Fourth Report on citizenship of the Union and the Communication from the Commission on the Fundamental Rights Agency* (rapporteur: Ms du Granrut, member of the Picardy Regional Council (FR/EPP) (CdR 280/2004);

HAVING REGARD TO the Recommendation of the European Parliament to the Council and to the European Council on the future of the area of freedom, security and justice (A6-0010/2004);

HAVING REGARD TO its draft opinion (CdR 223/2004 rev. 1) adopted on 3 March 2005 by the Commission for Constitutional Affairs and European Governance (rapporteur: Risto Koivisto, President of Tampere Regional Council, Mayor of Pirkkala (FI/PES));

- 1) WHEREAS the local and regional dimension is essential to realising the Area of Freedom, Security and Justice;
- 2) WHEREAS the objectives of the Hague Programme largely coincide with the remits of local and regional authorities;

adopted the following opinion at its 59th plenary session, held on 13-14 April 2005 (meeting of 14 April).

1. Comments of the Committee of the Regions

THE COMMITTEE OF THE REGIONS,

a) General points

1.1 considers the Hague Programme to be well-balanced and therefore a good basis for establishing the area of freedom, security and justice, but would point out that the programme does not take sufficient account of the role played by local and regional authorities in implementing the area of freedom, security and justice;

⁽¹⁾ OJ C 73 of 23.3.2004, p. 41

⁽²⁾ OJ C 43 of 18.2.2005, p. 10

1.2 notes that in many of the Member States regional and local authorities are responsible for legislation relating to justice, police and home affairs and its implementation, and that local and regional authorities also provide many services of general interest that serve to prevent crime and promote social and economic integration;

1.3 emphasises the need for further progress on this issue and notes that the original Tampere programme is still relevant, and that therefore full implementation of the objectives of the Tampere programme and the additions to it must continue to be the basis for Union action;

1.4 notes that respect for democracy, human rights and the judicial system, and an approach based on self-government and independence of citizens are key factors in establishing a safe and just society;

1.5 emphasises that establishing an area of freedom, security and justice requires general social development that will further the achievement of these goals, since the area of freedom, security and justice cannot be set up solely on the basis of policing and other control measures;

1.6 points out that the programme drawn up for establishing the area of freedom, security and justice will not work properly unless there are moves from the bottom up to remove the causes of insecurity due to factors such as inequality. The AFSJ cannot be established only from the top down on the basis of planned measures, which is why local authorities play a key role in implementing the area of freedom, security and justice in Europe;

1.7 is convinced that the real basis for considerable progress with regard to the area of freedom, security and justice will be provided by the entry into force of the treaty establishing a European Constitution as it simplifies voting procedures for adopting new legislation and gives the European Parliament a greater role.

b) *Fundamental rights and citizenship*

1.8 regards as important the statement in the Hague Programme that incorporating the Charter of Fundamental Rights into the constitutional Treaty will place the Union under a legal obligation not just to respect, but also to promote, the application of basic rights in the Union;

1.9 intends to endorse the setting-up of a European Fundamental Rights Agency whose Management Board should include a representative of local and regional authorities, given that citizenship and fundamental rights are, first and foremost, to be enjoyed at grassroots level.

c) *Asylum and migration policy*

1.10 welcomes the fact that with the entry into force of the treaty establishing a Constitution for Europe the EU will have the means to elaborate a fully-fledged immigration policy;

1.11 notes that progress in the sphere of migration policy has not been entirely satisfactory, since not all the proposed directives have been implemented. It is also important that the directives already adopted be effectively implemented;

1.12 stresses the need for a European system of controlled legal migration which offers real hope to would-be immigrants and which seeks to eliminate the desperation which leads many to resort to smuggling gangs;

1.13 notes that controlling illegal immigration, and the smuggling and trafficking of people — which hits women and children particularly hard — is an essential component of a comprehensive approach to immigration, and that initiatives on illegal immigration and expulsion or repatriation must be continued;

1.14 emphasises that cooperation with third countries is important in preventing illegal immigration and trafficking of people, as well as protecting refugees and legal migration.

d) *Combating organised crime and terrorism, and EU anti-drugs strategy*

1.15 notes that in combating crime and drugs, and in the fight against terrorism, effective cross-border control measures must be accompanied by efforts to understand and contain the causes of marginalisation and radicalisation. Of key importance here are the measures taken by local and regional authorities to provide citizens with basic services, design safe housing and integrate immigrants;

1.16 welcomes the decision of the European Council to include the European Union's Strategy on Drugs 2005-2012 in the Hague Programme and supports its objective of influencing drug use and trafficking by stressing health protection, social cohesion and public security;

1.17 would support the proposal to increase cooperation and exchange of information between Member States' police forces at national, regional and local level and customs authorities;

1.18 considers that preventing and fighting terrorism should continue to be a top priority and emphasises that more effective instruments must be used to deal with the financing of terrorism. In order to combat financial crime, transparency must be increased so that financial transactions can be traced.

e) *Judicial cooperation*

1.19 agrees with the European Commission that it is important to tighten up the general implementation of EU legislation and effectiveness of judicial cooperation in all the Member States;

1.20 notes that most European Union legislation is implemented at local and regional level.

f) *Border controls*

1.21 supports the establishment of a European Return Fund;

1.22 welcomes the approaches set out in the Hague Programme aimed at improving the effectiveness of external border controls;

1.23 notes that freedom, justice, external border controls, combating terrorism and internal security cannot be treated as separate issues;

1.24 considers the decision to set up a European Agency for the Management of Operational Cooperation at the External Borders to be a timely one. Sufficient economic and other resources must be guaranteed to enable the agency to become fully operational on 1 May 2005.

g) *Funding of measures*

1.25 points out that the Action Plan for the area of freedom, security and justice cannot be properly implemented unless there is adequate funding for the measures;

1.26 is pleased that in its *Communication on policy challenges and budgetary means of the enlarged Union 2007-2013* the European Commission mentions freedom, security and justice as core values which constitute key components of the European model of society, and makes European citizenship one of the European Union's future funding priorities. The Committee shares the Commission's view that European citizenship as a political concept hinges on the completion of an area of freedom, justice, security and access to basic public goods.

2. Recommendations of the Committee of the Regions

THE COMMITTEE OF THE REGIONS,

a) *General recommendations*

2.1 supports the decision to continue the Union's action in this sphere by preparing a programme for the area of freedom, security and justice containing detailed priorities and a precise timetable;

2.2 believes it is essential when drawing up the programme to take account of the role played by local and regional authorities in realising the area of freedom, security and justice.

b) *Fundamental rights and citizenship*

2.3 notes that human and fundamental rights must be respected in all measures intended to create the area of freedom, security and justice;

2.4 is pleased that the Hague programme raises the question of strengthening the rights deriving from Union citizenship, and firmly supports the protection of rights deriving from citizenship, since developing Union citizenship must continue to be a key principle underlying Union action.

c) *Asylum and migration policy*

2.5 notes that local and regional authorities play a key role in the social integration of immigrants, and calls for adequate resources to be provided for their integration measures;

2.6 notes that the integration of immigrants is strongly influenced by national legislation and social security. Differences in national systems must be taken into account when decisions are taken on common European frameworks;

2.7 considers it important that national governments in future continue to be responsible for deciding whether there is a need for work permits to be granted to citizens of third countries. Immigration must be based on actual workforce needs in various sectors and various Member States; it stresses that it is for Member States to determine the number of migrant workers admitted;

2.8 notes that the degree of mobility within the European Union has not been very high and that attention must be paid to increasing mobility within the Union in certain contexts and to improving free movement of the Union's citizens and their family members.

d) *Combating organised crime and terrorism, and EU anti-drugs strategy*

2.9 considers that the criminal justice part of the programme should give priority to serious crime which has cross-border implications, and that the fight against minor and local crime should be left to Member States' national legislation, thus recognising that crime prevention policies remain an area in which the EU can contribute effectively to bringing genuine 'European added value' to national, regional or local measures. Mutual recognition of judicial decisions should be given priority over harmonisation of the criminal justice system;

2.10 recalls that, although the key objective in combating terrorism is to ensure the security of citizens, this should not lead in practice to a violation of fundamental rights and, in this context, calls on the European Commission to present a proposal on the protection of personal data in the framework of the fight against terrorism;

2.11 considers that the fight against drugs should continue to be waged on many fronts, by trying to reduce both demand and supply;

2.12 repeats its suggestion that the European Commission should set up a support strategy within existing programmes and if necessary within new ones, to complement social, urban planning and education and training policy initiatives and enhance public participation and a sense of community;

2.13 also repeats its call for a European Observatory for urban safety to be set up as a lightweight structure providing a European instrument for collecting, organising and processing data on the victims of crime and perceptions of insecurity, promoting and coordinating research, and designing policies. These measures would be used not just in areas of European Union competence, but also for building regional and local partnerships;

2.14 supports the European Commission's proposal that the scope of the new European Neighbourhood and Partnership Instrument should include strengthening cooperation on justice and home affairs, including matters of asylum and migration flows, as well as repression and prevention of terrorism and organised crime.

e) Judicial cooperation

2.15 calls for the representatives of regional and local authorities to be closely involved in planning and implementing measures when legislation adopted to set up the area of freedom, security and justice is put into effect at national level;

2.16 recommends that particular attention be paid to promoting the principle of mutual recognition in the context of judicial cooperation, and that opportunities be improved for citizens and authorities to obtain information about other countries' judicial systems and bodies.

f) Border controls

2.17 considers it useful, when duly motivated and on a legitimate case-by-case basis, to set up specific arrangements to preserve traditional cross-border relations at the external borders of the European Union without constituting a threat to security for citizens and guaranteeing the protection of EU land

borders with neighbouring countries as well as borders between two Member States that have not yet abolished checks on persons at their common border.

g) Funding of measures

2.18 urges the European Commission as soon as possible to provide for the funding instruments required to implement the area of freedom, security and justice, for example by ensuring that the funding requirements of local and regional authorities are taken into account when drawing up the rules on the funding instruments;

2.19 recommends that the funding programmes should include adequate support for measures of local and regional authorities to integrate immigrants, and notes that the conditions for using funding should not be made too restrictive. In particular, restrictions imposed on the basis of the grounds for immigration are not effective in practice from the point of view of integration;

2.20 recommends that the programmes provide the possibility for officials to be exchanged between the Member States' local and regional authorities, as this would be the best way to promote the use of good practice;

2.21 notes that local and regional authorities should be able to take part in the work of the bodies responsible for managing the funding programmes;

2.22 emphasises that the funding programmes and Structural Fund support for implementing the area of freedom, security and justice must be compatible and complementary, and that meeting this objective requires that the various European Commission DGs concerned work together closely in preparing the funding programmes;

2.23 calls on the European Commission to draw up a comprehensive communication strategy on the funding options for the area of freedom, security and justice, so that those responsible for implementing measures have ready access to information about different sources of funding.

Brussels, 14 April 2005.

The President
of the Committee of the Regions
Peter STRAUB